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MONITORING REPORT

The **Principles** of **Public** **Administration**

BOSNIA AND HERZEGOVINA

**May
2022**

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The Principles of Public Administration

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List of abbreviations and acronyms

AG	Auditor General
APIF	Agency for Intermediary, IT and Financial Services
BAM	Bosnian mark
BD	Brčko District
BFD	Budget Framework Document
BFP	Budget Framework Paper
BiH	Bosnia and Herzegovina
CAF	Common Assessment Framework
COFOG	Classifications of the Functions of Government
CoG	centre-of-government
CoM	Council of Ministers
COSO	Committee of Sponsoring Organizations of the Treadway Commission
CPI	Centre for Public Interest
CSA	civil service agency
CSLL	Civil Service Law
DEI	Directorate for European Integration
DEIC	Department of European Integration and International Co-operation
DTAA	Department of Technical and Administrative Affairs
EBF	extra budgetary funds
EC	European Commission
EI	European integration
ERP	Economic Reform Programme
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
FIA	Financial Intelligence Agency
FMC	financial management and control
GAWP	Government Annual Work Plan
GDP	gross domestic product
GFFBP	Global Framework for Fiscal Balance and Policies
GS	General Secretariat of the Government (FBiH)
GSG	General Secretariat of the Government (RS)
HIA	head of internal audit unit
HJPC	High Judicial and Prosecutorial Council
HRM	human resource management
HRMIS	Human resource management information system
IA	internal audit
IC	internal control
IDDEEA	Identification Documents Registers and Data Exchange
IMF	International Monetary Fund
IPA	Instrument for Pre-accession Assistance
IPPF	International Professional Practice Framework for Internal Auditing

ISSAIs	International Standards of Supreme Audit Institutions
LAD	State Law on Administrative Disputes
LGAP	Law on General Administrative Procedure
LO	Legislative Office (State level)
MEI	Ministry of European Integration and International Co-operation
MoF	Ministry of Finance
MoFT	Ministry of Finance and Treasury
MoFTER	Ministry of Foreign Trade and Economic Relations
MoJ	Ministry of Justice
MSTDHEIS	Ministry of Scientific and Technological Development, Higher Education and Information Society of Republika Srpska
MTBF	medium-term budgetary framework
MTC	Ministry of Transport and Communication
OL	Office for Legislation (FBiH)
OLFBiH	Office of the Government of the FBiH for Legislation and Harmonisation with EU Regulations
OWIS	Procurement Review Body's internal information system
PAR	public administration reform
PARCO	PAR Co-ordinator's Office
PFM	public financial management
PI	Programme of Integration
PIFC	public internal financial control
PPA	Public Procurement Agency
PPL	Public Procurement Law
PPP	public-private partnership
PRB	Procurement Review Body
ReSPA	Regional School of Public Administration
RIA	Regulatory Impact Assessment
RoP	rules of procedure
RS	Republika Srpska
SAA	Stabilisation and Association Agreement
SAI	supreme audit institution
SGBD	Secretariat of Government of BD Government
SGCoM	Secretariat-General of the CoM
SISPPD	Strategy for Improving the Social Position of Persons with Disabilities
SMEs	small and medium-sized enterprises
SSL	Secure Sockets Layer
TMIS	information system for managing training in public procurement
TNA	training needs analysis
TSA	treasury single account
WCAG	Web Content Accessibility Guidelines
WJP	World Justice Project

Introduction

The Principles of Public Administration and the EU integration path – measuring the fundamentals

The *Principles of Public Administration*¹ set out what good public governance entails in practice and outline the main requirements to be followed by countries during the European Union (EU) integration process. Good public governance is key for achieving economic growth, competitiveness and better quality of life. Democratic governance and the rule of law require capable, accountable and effective public administrations. In its 2014 and 2018 Enlargement Strategies, the European Commission (EC) highlighted public administration reform (PAR) as one of three “fundamentals first” areas of the EU enlargement process: “Addressing reforms in the area of rule of law, fundamental rights and good governance remains the most pressing issue for the Western Balkans. It is also the key benchmark against which the prospects of these countries will be judged by the EU”².

A regional series – areas covered in 2021 and 2022

This monitoring report assesses the state of play and progress in improving the quality of national public administrations. Given the geostrategic importance of the Western Balkans to the EU, and the ongoing accession negotiations, SIGMA (Support for Improvement in Governance and Management) conducts regular monitoring of the region. In 2017, SIGMA established a baseline in all areas of public administration. This 2021/2022 report again covers all areas of public administration, completing a partial monitoring conducted in 2021 that covered policy development and co-ordination, accountability and public financial management (budget management and internal control and audit), and public procurement (excluding concessions and public-private partnerships). Performance is compared against regional averages.

Structured to provide key insights and recommendations to decision makers and detailed performance data to practitioners

The structure of the report mirrors that of the Principles. Each Principle has a dedicated section for its associated indicator(s). A country executive summary and summaries for each of the thematic areas have been introduced to the report. The analytical findings and the short- to medium-term recommendations are developed to guide reform efforts and inform the policy dialogue and discussions between the EC and the Government.

SIGMA wishes to thank the authorities for their collaboration in providing the necessary administrative data and documentation, as well as for active engagement during the two rounds of validation to improve the factual accuracy of all the information used. The collaboration with the Regional Cooperation Council on the Balkan Barometer has been excellent. We also thank the experts from EU member countries and national experts who contributed to the report. Finally, the support of the EC is, as always, appreciated.

¹ OECD (2017), *The Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

² European Commission (2018), *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, p. 4, [communication-credible-enlargement-perspective-western-balkans_en.pdf](https://ec.europa.eu/euipo/sites/default/files/communication-credible-enlargement-perspective-western-balkans_en.pdf) (europa.eu)

Methodology

Overall approach – focus on implementation and outcomes, analysing a variety of primary data sources against precise criteria and benchmarks for an objective assessment

The *Methodological Framework for the Principles of Public Administration*³ contains a set of standard indicators that SIGMA applies consistently to measure the preconditions and enablers of successful reforms (good laws, policies and procedures, institutional structures, human resources) and the actual implementation of reforms and subsequent outcomes (how the administration performs in practice).

The overall approach recognises that no single measurement method can fully capture the complex issues related to organisational and behavioural change. SIGMA uses information from administrative data, surveys, statistics, interviews, etc., which is cross-checked and triangulated to arrive at a balanced assessment.

Data sources and validation

The main quantitative and qualitative methods applied in the framework are:

- Desk reviews of legislation, regulations, reports (most recent are analysed if adopted before July 2021 and until March 2022, in the case of areas assessed in 2022)
- Interviews (conducted virtually March-May 2021 and in March-April 2022 with 100+ interviewees per administration, including civil society)
- Review of cases and samples of government documentation (most recent are analysed)
- Observations of practice and on-site verification (conducted virtually March-May 2021 with national expert support)
- Analysis of administrative data from public registries and national statistics (most recent when possible, otherwise from 2020/2021)
- Surveys of the population and businesses through the Balkan Barometer (conducted February-March 2021 and February-March 2022)⁴
- Surveys of 950 contracting authorities across the region (conducted February-April 2021).

Data was collected through SIGMA's tool for data collection, analysis and validation (PAR.IS). More than 10 000 documents were received regionally for analysis. Hundreds of government officials were provided direct access to SIGMA's detailed working sheets for calculation of numerical sub-indicator values and justifications for fulfilment of each of the criteria, in addition to fact-checking the draft monitoring reports.

For the areas of policy development and co-ordination, accountability and public financial management (budget management, internal control and audit and public procurement) the monitoring period covered July 2017-July 2021. For the areas of strategic framework of public administration reform, public service and human resource management, service delivery and public financial management (external audit), the monitoring period covered July 2017-March 2022.

³ OECD (2019), *The Methodological Framework of the Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-May-2019.pdf>

⁴ Regional Cooperation Council, <https://www.rcc.int/balkanbarometer/home>.

Indicator values reflect the level of maturity and preparedness of administrations – from 0 to 5

The indicator values provide an indication of the administrative capacity and overall performance of national public administrations. This provides an indication of the capability to effectively implement the EU *acquis* and participate in the policy-making processes of the EU.

The point allocation is constructed so that a country can only receive an overall value of 2 on the basis of the quality of its legislative and regulatory framework; a value of 3 cannot be achieved without showing that implementation of key processes is happening in practice; and in order to obtain a value of 4, the country needs to show a consistent achievement of relevant outcomes. The value of 5 is reserved for outstanding performance and full compliance with the Principles and the standards for good public governance.

Understanding how the indicator values are calculated

Across the six thematic areas, the framework is composed of 48 Principles. Each Principle has one or two indicators. There are 52 indicators in total, with 340 sub-indicators and 1 000 individual criteria. Indicator values are presented at the top of the overview tables, on a scale from 0 (lowest) to 5 (highest). The indicator value is based on the total number of points received for the sub-indicators. The point conversion tables are accessible in the Methodological Framework. A three-digit reference number precedes the titles of the indicators: the first number refers to the area, the second to the Principle and the third shows whether this is the first or second indicator belonging to that Principle.

If the required information to assess a sub-indicator is not available or is not provided by the administration, 0 points are awarded. All data requested is needed for a well-functioning public administration and SIGMA does not estimate performance in the absence of credible evidence.

Changes in methodology for calculating indicator values in 2021

In 2021, after consultations with the administrations and the European Commission, SIGMA decided to change the formula used to calculate indicator values to better take into account the specificity of Bosnia and Herzegovina. This new approach better reflects the Constitutional arrangements. However, the change means that direct comparability with the 2017 baseline was lost.

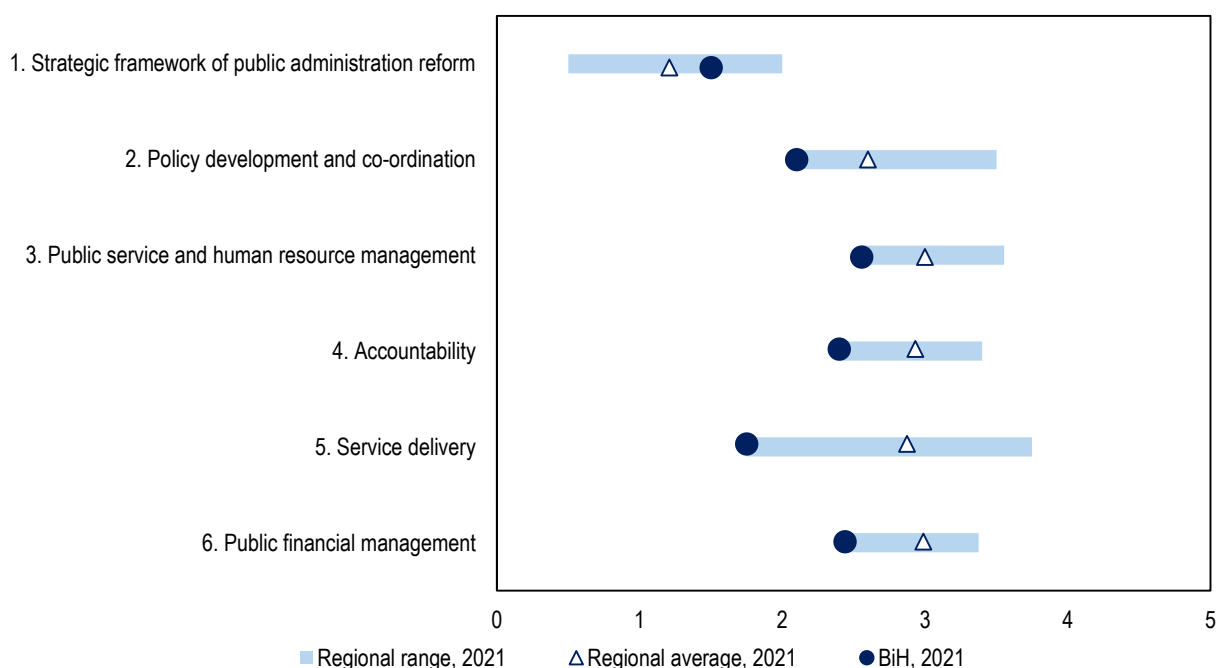
Whenever possible, data for the whole country is analysed (such as survey-based sources, indicators in the public procurement area or sub-indicators related to the Ombudsman Institution). In most cases however, indicator values are calculated by taking the simple arithmetic average of the number of points awarded from three levels: State level, Federation of Bosnia and Herzegovina and Republika Srpska. Values from the Brčko District are not included in the calculation of the indicator value, but the points allocation is shown. The indicator values are calculated for Bosnia and Herzegovina only, not for each level separately.

Executive summary

Bosnia and Herzegovina (BiH) presented its application for membership of the European Union (EU) in February 2016. In May 2019 the European Commission (EC) issued an Opinion on the application of BiH, providing a comprehensive roadmap for reforms necessary for integration with the EU. One of the fourteen recommendations that the EC presented in its Opinion explicitly refers to public administration reform (PAR), requiring BiH to “complete essential steps in public administration reform towards improving the overall functioning of the public administration by ensuring a professional and depoliticised civil service and a co-ordinated countrywide approach to policy making”.

In 2021 SIGMA conducted a partial assessment of selected areas of public administration in BiH, focusing on policy development and co-ordination, accountability and some aspects of public financial management (PFM) (budget management and public procurement). In the first half of 2022, the assessment process was completed and the reports on the remaining areas were prepared: strategic framework of public administration reform, public service and human resource management, service delivery and external audit. Compared to the 2017 SIGMA monitoring, progress in several areas is limited and some serious deficiencies, identified previously, remain unresolved. Even when the legislative framework has improved, the implementation is usually weak and fails to achieve the main objectives of the reforms. Significant progress has been achieved in the strategic framework of public administration reform, thanks to the adoption of the Strategic Framework for Public Administration Reform in Bosnia and Herzegovina 2018-2022 and its Action Plan for Public Administration Reform covering all administrative levels of BiH and four, separate PFM strategic documents with integrated action plans. But in all other areas BiH received the lowest indicator values of the Western Balkan administrations.

BiH is performing worse than other administrations in the region, except in strategic framework of PAR



The Strategic Framework for PAR in BiH is now complete [2022]

The strategic framework of PAR is comprised of a country-wide PAR Strategy and Action Plan and four PFM Strategies, covering the PFM area for each administrative level of BiH. Work on a unified, whole-of-country PFM Strategy is ongoing. The completion of the framework of planning documents is not followed by monitoring of PAR progress implementation. This might indicate that planned reform activities are not implemented. Furthermore, the PAR Strategy is set to expire at the end of 2022, and no formal decision has been taken on its extension or the development of a new PAR planning document. Non-state actors are not involved in monitoring the reforms. In the absence of systematic costing information for all planning documents, the financial sustainability of the reforms cannot be assessed. Managerial-level co-ordination of PAR is established at all administrative levels of BiH; however, managerial responsibilities for the reform activities are not systematically defined in all PAR-related planning documents. The political-level co-ordination of PAR and PFM and the administrative-level co-ordination of PFM is not functional. The administrative-level co-ordination of the PAR Strategy is limited because the 'Common Platform' document, which is envisaged to set forth the details of the co-ordination mechanisms, have not been formally adopted.

The way forward in the area of strategic framework of PAR:

- The Council of Ministers (CoM) of BiH and the Governments of the Federation of Bosnia and Herzegovina (FBiH), the Republika Srpska (RS) and the Brčko District (BD) should formally decide to extend the timeframe of the PAR Strategy (currently expiring in the end of 2022) or develop and approve new planning documents in due time.
- A unified, whole-of-country PFM Strategy should be adopted following public consultation process, with costed, reform-oriented activities and a monitoring framework with measurable indicators.
- The CoM of BiH and the Governments of the FBiH, the RS and the BD should adopt the Common Platform without further delay and begin systematic monitoring and reporting of the implementation of the reforms, in collaboration with non-state actors.

Actual implementation of regulations on policy development and co-ordination needs improvement at all levels of government [2021]

The Dayton Peace Agreement and the present Constitution of BiH created a complex governance structure wherein there is a clear split of competences between the State level, the two Entities and the Brčko District (BD). While there is no single country-wide centre-of-government institution, relevant institutions at different administrative levels perform most of the typical centre-of-government functions, with the exception of the co-ordination of policy content of proposals. The same applies to the medium-term policy planning system: while there is no single system covering BiH in its entirety, most of the administrative levels have established their own approaches that mostly meet requirements, with the exception of the State level, which does not regulate issues linked with sector strategies. Actual implementation of the regulatory framework for policy planning presents challenges at all levels. There are also significant shortcomings in terms of applying Regulatory Impact Assessment techniques in policy-making, and the public consultation process is not consistently used to improve policies before they are adopted. The legislative branch, at all levels of government, is entitled to scrutinise the work of the government, and co-operation with the executive branch happens also in practice. While the European Integration (EI) functions are clearly assigned to institutions at all levels of administration, and most of the required guidelines for carrying out EI-related tasks are present, the actual functioning of the EI co-ordination mechanisms is not meeting the set benchmarks. There is also a lack of a country-wide Programme of Integration that would set out approximation plans for harmonisation with the EU *acquis*.

The way forward in the area of policy development and co-ordination:

- The Council of Ministers (CoM) of BiH and the governments of the FBiH, RS and BD should improve the functioning of formal co-ordination mechanisms for both policy planning and policy development, and strictly follow set legal requirements regarding the quality of different draft documents and required analysis.

There has been some progress in the area of public service and HRM (for example development of HRM information systems), but serious problems related to depolitisation and integrity remain [2022]

The legislation regulates clearly the horizontal and material scope for the civil service in all levels of government. Nevertheless, some regulatory agencies are out of the civil service system and apply only the labour law. The lower division line of the civil service is blurred in all levels of government. Know-how and capacities for professional HRM are weak. There has been a significant advancement in the development of HRM information systems (HRMIS), except at the State level due to legal constraints, but the databases do not yet interoperate with payroll systems and other relevant registers. HR data is still scarce, and comprehensive reports on the civil service, with relevant indicators, do not exist. The PAR Strategy provides a sound policy framework for civil service reform. However, the lack of monitoring makes it impossible to conclude to what extent the reform progresses. The legislation envisages merit-based recruitment of civil servants at the State level and, to a lesser extent, in the FBiH. It has serious deficiencies in the RS and the BD. The members of the selection commissions are vulnerable to political influence except at the State level, and those coming from the recruiting bodies usually do not receive sufficient training. The civil service agencies (CSAs) manage centralised training using adequate training needs analysis, training planning, and evaluation methods. Nevertheless, budget resources for training are scarce, especially in the RS and the BD. Legislation upholds basic principles related to disciplinary procedures, but it presents important shortcomings. Only the RS has adopted an integrity policy framework for the public service. However, there is no evidence of implementing integrity measures in any of the four systems. Businesses' and citizens' perception of integrity in the public sector is seriously negative and well below average in the Western Balkans.

The way forward in the area of public service and human resource management:

- The CSAs and finance ministries should ensure interoperability of HRMIS with salary databases and other relevant registers. CSAs and responsible ministries should prepare fully-fledged, periodical reports on the civil service and use data to monitor and improve HRM.
- Parliaments at all levels should adopt amendments to legislation related to the recruitment of civil servants to guarantee professional composition of selection panels free from undue political influence, the appointment of first-ranked candidates to fill non-senior civil service vacancies, and clear rules for positive discrimination when it applies.
- Implementation of integrity measures in the civil service should be enhanced based on risk assessment and monitored.

There are some signs of improvement in the area of accountability, but the implementation is weak [2021]

Overall, the legal framework concerning the organisation, transparency, internal and external accountability, and liability of the public administration in BiH fulfils the minimum international standards. However, there is significant scope for improvement in some areas, particularly concerning the lack of clarity of the public administration structure defined in legislation and the inadequate, weak institutionalisation of the oversight functions in the area of free access to public information. Nevertheless, the most critical weaknesses relate to implementation. Governments at all levels are not promoting proactive disclosure of information, over which they have ample margin of manoeuvre. In addition, external oversight is inadequate as public institutions do not implement most of the Ombudsman Institution and State Audit offices' recommendations, except at the State level. The efficiency of courts in handling administrative cases varies sharply across BiH, and it is far below the European average except in the RS. In this context, public trust in public institutions, concerning their transparency and the effectiveness of oversight functions, is low and shows a declining trend.

The way forward in the area of accountability:

- Legislation on access to information (at all levels of government) should be amended to enhance transparency, establish clear and comprehensive catalogues of information to be proactively disclosed and clearly define procedures for supervision.

There is no central policy for improvement of service delivery [2022]

The Action Plan of the PAR Strategy 2018-2022 remains mostly unimplemented and there is no dedicated unit at any of the levels dealing with service delivery policy or digital service delivery. Only RS has developed a digital service delivery strategy. Enhancement of user-friendliness of administrative services for citizens or business comes at the initiative of individual service providers, not as a centrally promoted or supported policy line. This leaves several services still cumbersome and complex. The only area in which digitalisation has slowly picked up is taxes and customs, but inefficient interoperability and burdensome internal procedures hinder their implementation. Interoperability technical infrastructure suffers from lack of enforceability and support. Quality management has only slightly progressed.

All four Laws on General Administrative Procedure (LGAP) in BiH (State, FBiH, RS and BD) recognize the conventional principles of good administration. However, there is no evidence of any progress in harmonising special laws with the LGAP. Accessibility to administrative services slightly improved, but it is still at a low level. There is no attempt to improve accessibility for people with special needs or accessibility to services either digitally or over-the-counter. No system is in place to monitor service delivery performance, in terms of either quality or accessibility. The perceived quality of public services by both citizens and business is amongst the lowest in the region. Satisfaction with digital services is by far the lowest in the region.

The way forward in the area of service delivery:

- Finalise the e-Government Strategies at State, FBiH and BD levels, setting clear goals for digitalisation in public administration, establishing clear monitoring and continuous improvement mechanisms.
- Assign clear responsibility for service delivery policy to ministries (FBiH and RS) or centre-of-government institutions (the State and BD) and establish service delivery units in each of these to lead service delivery improvement (including digitalisation) across the government.

PFM strategies have been updated, but serious problems related to transparency and reporting remain unresolved; public procurement needs adoption of new legislation [2021/2022]

PFM strategies have been adopted up to 2025 to drive forward reforms. The budgetary frameworks and processes in place continue to be overly complex, with budget discipline undermined by the failures to observe the budget calendar, use of temporary financing measures and limited time for parliamentary scrutiny. While the level of public government debt is relatively low the approach to fiscal rules is inconsistent. There has been some progress in developing the transparency and comprehensiveness of budget reporting, but weaknesses remain and parliamentary scrutiny continues to be limited. The regulatory and operational frameworks for internal control (IC) and internal audit (IA) are largely in place. However, the implementation of IC systems and managerial accountability needs significant strengthening. The FBiH and RS face greater implementation challenges due to the numbers of institutions required to implement IC systems. While the establishment of IA units and implementation of IA has progressed, there are still significant areas for improvement. Both IC and IA are still in the formative stages of development and implementation in BD.

There has been no progress in the area of public procurement. The Public Procurement Law (PPL) has remained unchanged since 2014. Implementation of the PPL, in the common opinion of stakeholders, is very formalistic and harms the quality of the process. For example, mandatory self-declaration of economic operators, introduced in the PPL with the intention to ease participation, imposes more burdens and costs on participants. Understaffing of the Public Procurement Agency (PPA) is a source of serious concern given the volume, variety and importance of the PPA functions. The rising trend in the number of appeals submitted to the Procurement Review Body (PRB) requires strengthening of the PRB capacity. The lack of transparency and inconsistency of the PRB decisions and the duration of the review process, especially before the Court of BiH (one to three years), are the most critical aspects of the procurement review system.

The independence, mandate and organisation of the supreme audit institutions (SAIs) are well-defined in the SAI laws and are generally well-respected; however, they are still not anchored in the Constitutions. Appreciation of the SAIs' independence among the public remains low, although it has increased since

2017. With respect to the effectiveness of the external audit system, the implementation of the International Standards of Supreme Audit Institutions (ISSAIs) is well-advanced in the SAIs but there is still room for improvement, particularly in quality assurance arrangements. While the parliaments have used the reports of the SAIs to scrutinise the Executive, this has not been consistent across the levels of government. The implementation rate of the SAIs' recommendations remains low, limiting the impact of their work.

The way forward in the area of public financial management:

- The CoM of BiH and the Entity Governments should recommit themselves to observing the budget calendar as set out in the respective budget laws, as the delays in finalising and adopting the annual budgets undermines the budgetary system.
- The new PPL should be adopted.
- The SAIs should work closely with the parliaments at all levels and the auditees to organise awareness-raising events to improve the auditees' implementation rate of audit recommendations.

Strategic Framework of Public Administration Reform

The Principles of Public Administration

Strategic Framework of Public Administration Reform

Principle 1	The government has developed and enacted an effective public administration reform agenda which addresses key challenges.
Principle 2	Public administration reform is purposefully implemented; reform outcome targets are set and regularly monitored.
Principle 3	The financial sustainability of public administration reform is ensured.
Principle 4	Public administration reform has robust and functioning management and co-ordination structures at both the political and administrative levels to steer the reform design and implementation process.

Strategic Framework of Public Administration Reform

Summary and recommendations

The strategic framework of public administration reform (PAR) in Bosnia and Herzegovina (BiH) is now complete, an improvement since 2017. It is comprised of a country-wide PAR Strategy and Action Plan and four public financial management (PFM) Strategies, covering the PFM area for each administrative level of BiH. Work on a unified, whole-of-country PFM Strategy is ongoing. **The completion of the framework of planning documents is not followed by monitoring of PAR progress implementation.** This represents a major problem and might indicate that planned reform activities are not implemented. The co-ordination structures defined in the BiH PAR Strategy have not been formally established. Furthermore, the PAR Strategy is set to expire at the end of 2022, and no formal decision has been taken on its extension or the development of a new PAR planning document.

The strategic framework of PAR in BiH covers all PAR areas. While planning documents comply with most quality requirements, systematic information is missing on costs associated with the implementation of the activities planned, as is a detailed description of outcome-level indicators defined in the PFM Strategies. The central-planning documents of the different administrative levels of BiH recognise PAR as a priority to a varying degree. Consultation with external stakeholders has been properly ensured only in the case of the PAR Strategy and Action Plan, not for the different PFM Strategies.

While roles in monitoring and reporting are defined, a well-functioning monitoring and reporting framework is not in place, as no monitoring reports are developed about the implementation of the PAR Strategy or the PFM Strategies. Non-state actors are not involved in monitoring the reforms.

In the absence of systematic costing information for all planning documents, the **financial sustainability of the reforms cannot be assessed**. In the case of the PAR Action Plan and the Republika Srpska (RS) PFM Strategy, where systematic costing information on the reform activities is available, a very high degree of reliance on donor funding is observed.

Managerial-level co-ordination of PAR is established at all administrative levels of BiH; however, managerial responsibilities for the reform activities are not systematically defined in all PAR-related planning documents. The political-level co-ordination of PAR and PFM and the administrative-level co-ordination of PFM are not functional. The administrative-level co-ordination of the PAR Strategy is limited because the 'Common Platform' document, which is envisaged to set forth the details of the co-ordination mechanisms, has not been formally adopted.

Short-term recommendations (1-2 years)

- 1) The Council of Ministers (CoM) of BiH and the Governments of the Federation of Bosnia and Herzegovina (FBiH), the RS and the Brčko District (BD) should formally decide to extend the timeframe of the PAR Strategy (currently expiring in the end of 2022) or develop and approve new planning documents for PAR in due course to ensure that valid planning documents will be in place as of 1 January 2023.
- 2) A unified, whole-of-country PFM Strategy should be adopted following a public consultation process, with costed, reform-oriented activities and a monitoring framework with measurable indicators.
- 3) The CoM of BiH and the Governments of the FBiH, the RS and the BD should adopt the Common Platform without further delay and begin systematic monitoring and reporting of the implementation of the reforms, in collaboration with non-state actors.

Medium-term recommendations (3-5 years)

- 4) Within the framework of a review of the PAR Strategy and its Action Plan, a more systematic approach to action planning should be ensured, including the definition of managerial-level responsibilities for every reform activity.
- 5) The CoM of BiH and the Governments of the FBiH, the RS and the BD should strengthen the financial planning for PAR and gradually increase domestic PAR funding in order to reduce overreliance on donor financing.

Analysis

Principle 1: The government has developed and enacted an effective public administration reform agenda which addresses key challenges.

Overall, the value for the indicator 'Quality of the strategic framework of public administration reform' is 4.

Indicator 1.1.1. Quality of the strategic framework of public administration reform					
This indicator measures the quality of the strategy for public administration reform (PAR) and related planning documents (i.e. to what extent the information provided is comprehensive, consistent and complete), including the relevance of planned reforms.					
A separate indicator (1.1.3) measures financial sustainability and cost estimates in detail.					
Overall 2022 indicator value	0	1	2	3	4
Sub-indicators	Points				
	State level	FBiH	RS	BD	Average
1. Coverage and scope of PAR planning documents	5	5	5	5	5/5*
2. Prioritisation of PAR in key horizontal planning documents	1	0	1	0	1/2*
3. Coherence of PAR planning documents	2	2	2	2	2/4*
4. Presence of minimum content of PAR planning documents	6	6	7	6	6/7*
5. Reform orientation of PAR planning documents (%)	3	3	3	3	3/3*
6. Quality of consultations related to PAR planning documents	1	0	0	0	0/2*
Total⁵					17/23

*Average of the State level, FBiH and RS.

The strategic framework of PAR in BiH is comprised of the Strategic Framework for Public Administration Reform in Bosnia and Herzegovina 2018-2022⁶ (Strategic Framework for PAR in BiH) and its Action Plan for Public Administration Reform⁷ covering all administrative levels of BiH and four, separate PFM strategic documents with integrated action plans: the Strategy for Improving Public Financial Management in the Institutions of Bosnia and Herzegovina for the Period 2021-2025⁸, the Strategy for Public Financial Reform in the Federation of Bosnia and Herzegovina 2021-2025⁹, the Public Finance Management

⁵ Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-23=5.

⁶ Adopted by the Council of Ministers (CoM) of BiH on 25 September 2018, the Government of FBiH on 14 June 2018, the Government of the RS on 26 June 2020 and the Government of the BD on 8 June 2018.

⁷ Adopted by the CoM of BiH on 16 December 2020, the Government of FBiH on 8 October 2020, the Government of the RS on 19 November 2020 and the Government of the BD on 12 October 2020.

⁸ Adopted by the CoM of BiH on 18 February 2021.

⁹ Adopted by the Government of FBiH on 25 March 2021.

Strategy of Republika Srpska 2021-2025¹⁰ and the Strategy of Public Finance Management Reform in the Brčko District of Bosnia and Herzegovina for the Period 2021-2025 with Action Plan¹¹. The documents together cover all five key PAR areas. However, it is concerning that after a lengthy adoption period, the Strategic Framework for PAR in BiH is set to expire at the end of 2022 and there is no formal decision yet on whether its implementation timeframe will be extended or a new strategic planning document for the PAR area developed.

Table 1. Coverage of PAR substance areas in PAR-related strategic documents in BiH

Policy development and co-ordination	Public service and HRM	Accountability	Service delivery	Public financial management (PFM)
Strategic Framework for PAR in BiH and its Action Plan				State PFM Strategy FBiH PFM Strategy RS PFM Strategy BD PFM Strategy

The different BiH administrative levels recognise PAR as a priority to a varying degree. At the State level, the latest exposé of the CoM Chairman¹² covers all PAR areas with substantive details except for accountability, and the latest country-wide Economic Reform Programme (ERP) of BiH for 2022-2024¹³ provides detailed commitments on all five PAR areas. BiH does not have a valid plan for European integration (referred to as the Programme of Integration in BiH) and hence the prioritisation of PAR from this aspect is not in place. In the case of FBiH, given that no document exists as the political programme of the Government of FBiH. As there is no country-wide Programme of Integration, at the FBiH level prioritisation of PAR is observed only within the Development Strategy of FBiH 2021-2027¹⁴, in which all five PAR areas are recognised with substantive details. In the RS, both the exposé of the Prime Minister of the Government¹⁵ and the Economic Reform Programme of the Republika Srpska for 2022-2024¹⁶ prioritise all five PAR areas, though the area of accountability to a lesser extent. The RS also has its own, annual plan for European integration matters¹⁷. Given its more limited timeframe and scope, this document prioritises only the areas of public service and HRM, service delivery and PFM in sufficient detail. In BD,

¹⁰ Adopted by the Government of RS on 3 June 2021.

¹¹ Adopted by the Government of the BD on 17 December 2020.

¹² Speech of the Chairman-designate in front of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina on 5 December 2019.

¹³ There is no separate development plan in place for the State level of BiH. The BiH CoM adopted the latest Economic Reform Programme (ERP) for 2022-2024 on 23 March 2022. The document covers public financial management (PFM), service delivery and public service and human resources management (HRM) in more detail than the areas of accountability or policy development and co-ordination.

¹⁴ Adopted by the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina on 27 April 2021.

¹⁵ The Prime Minister gave the speech in front of the National Assembly of the Republika Srpska on 17 December 2019.

¹⁶ Adopted by the National Assembly of the Republika Srpska on 17 January 2021.

¹⁷ The Action Plan for Harmonisation of Regulations and Other General Acts of the Republika Srpska with the Regulations of the European Union for 2022 has been adopted by the RS Government on 10 February 2022.

the exposé of the Mayor¹⁸, as a short speech, does not prioritise PAR in detail. While the Development Strategy of the Brčko District of Bosnia and Herzegovina for the Period 2021-2027¹⁹ is a very comprehensive and well-targeted document that takes stock of shortcomings of the public administration in multiple respects, only the areas of policy development and co-ordination and service delivery are addressed through specific commitments and plans. In the absence of a country-wide European integration plan, PAR is not prioritised from this perspective.

Table 2. Prioritisation of PAR in horizontal planning documents in BiH

Level of government	Political planning document	Development planning document	European integration planning document
State	Exposé of the Chairman of the CoM	ERP of BiH 2022-2024 ²⁰	-
<i>Prioritised PAR areas</i>	<i>PDC, PSHRM, SD, PFM</i>	<i>PDC, PSHRM, ACC, SD, PFM</i>	-
FBiH	-	FBiH Development Strategy 2021-2027	-
<i>Prioritised PAR areas</i>	-	<i>PDC, PSHRM, ACC, SD, PFM</i>	-
RS	Exposé of the Prime Minister	ERP of the RS 2022-2024	RS EU Harmonisation Action Plan 2022
<i>Prioritised PAR areas</i>	<i>PDC, PSHRM, ACC, SD, PFM</i>	<i>PDC, PSHRM, ACC, SD, PFM</i>	<i>PSHRM, SD, PFM</i>
BD	Exposé of the Mayor of BD	BD Development Strategy 2021-2027	-
<i>Prioritised PAR areas</i>	-	<i>PDC, SD</i>	-

Note: The following abbreviations are used for the PAR substance areas: PDC - policy development and co-ordination, PSHRM - public service and human resource management, ACC - accountability, SD - service delivery, PFM - public financial management.

Given the distinct thematic scope, the Strategic Framework for PAR in BiH and its Action Plan are largely coherent with the different PFM Strategies. Only in sporadic cases does the PAR Action Plan define activity deadlines or implementation responsibilities differently from what can be found in the PFM Strategies²¹. At the same time, coherence of legislative activities planned for 2022 in the strategic documents with the legislative plans of the BiH administrative levels cannot be assessed, for two reasons.

¹⁸ The Mayor gave this speech in front of the Assembly of BD on 23 December 2020.

¹⁹ Adopted by the Assembly of the BD on 19 May 2021.

²⁰ While the BiH ERP for 2022 is a country-wide planning document, some administrative levels have adopted additional planning documents, either development strategies (FBiH and BD) or their own economic reform programme (RS). For the sake of assessment, these specific planning documents of administrative levels have been taken into account for calculation of indicator values, given the need to ensure that PAR is prioritised by the specific horizontal planning documents that individual BiH administrative levels have adopted.

²¹ For example, at the State level, the PAR Action Plan defines Q1 of 2021 as the deadline for its Measure 1.2.1. "Adopt/improve the legal framework for strategic, medium-term and annual planning, monitoring and reporting at all administrative levels in BiH", while the State-level PFM Strategy sets 2025 as the deadline for its similar Measure III.2.1. "Standardize long-term / strategic planning." This Measure also overlaps with the BD PFM Strategy Measure III.2.1. "Strengthen strategic / medium-term planning in relation to budgeting and investment processes."

First, no legislative plans are adopted and provided for assessment for the State level and FBiH. Second, the formulation of certain legislative activities both in the PAR Action Plan and in the PFM strategic documents are vague and do not provide enough clarity to identify the corresponding legislative activity in the 2022 annual legislative plan even if it exists²².

The Strategic Framework for PAR in BiH and the different PFM Strategies all provide detailed situation analyses and formulate reform objectives that are supported by outcome-level indicators to assess the attainment of the objectives. Apart from two outcome-level indicators defined in the Strategic Framework for PAR in BiH²³, all other indicators in both this document and all of the PFM Strategies have defined target values. The documents also include some provisions on monitoring, reporting and evaluation requirements that define reporting responsibilities and frequency.

Table 3. Overview of key characteristics of PAR-related planning documents in BiH

	Number of specific objectives	Number of indicators for specific objectives and measures	Number of activities
Strategic Framework for PAR in BiH and Action Plan	4	9 and 39	140
State level PFM Strategy	6	29	69
FBiH PFM Strategy	6	14	94
RS PFM Strategy	6	31	57
BD PFM Strategy	6	18	53

Note: *The PFM Strategies do not outline specific objectives but define goals for distinct pillars. These were considered as specific objectives.

**While the Strategic Framework for PAR in BiH defines outcome-level indicators for both specific objectives and the 'measures', the PFM strategic documents have indicators attached only to their pillars/specific objectives, not to their measures.

The PAR Action Plan, as well as all of the action plans of the PFM Strategies, contain activities that are supplemented by implementation deadlines and linked to specific institutions. Except for four activities in the PAR Action Plan²⁴, costing information is provided for all planned activities. The PFM Strategy of the

²² The following activities can be mentioned as examples: PAR Action Plan Activity 2.4.3. "Amend regulations to allow for the establishment of a remuneration system based on the appropriate analytical assessment and classification of jobs", PAR Action Plan Activity 3.3.11. "Align the legal framework with the identified and agreed recommendations including: - Reduce fees for initiating litigation by amending the regulations and aligning them with the European practice; - Review and improve the effectiveness of legal remedies against excessive length of judicial administrative proceedings by amending the legal framework", State-level PFM Strategy Activity III.2.2. "Improve the legal and methodological framework for medium-term planning, monitoring and reporting", RS PFM Strategy Activity I.1.1. "Updated Legal Framework in the area of Fiscal Accountability", BD PFM Strategy Activity III.1.1: "Consolidate and harmonize the Amendments to the legislation in the system of public financial management."

²³ The indicators "Percentage of institutions that effectively establish and use one-year staffing plans in relation to the total number of institutions at all administrative levels" and "Training costs in relation to the annual salary budget (%)" have no defined target values in the Strategic Framework for PAR in BiH. However, targets for these indicators were set in the PAR Action Plan.

²⁴ The PAR Action Plan activities 5.0.1., 5.0.2., 5.0.3., and 5.0.4. about the drafting of the PFM Strategies at the different administrative levels of BiH lack costing information. There is information that the administrative-level budgets will cover them.

RS, in its Appendix 1 – which contains the detailed Action Plan for implementing the Strategy – also has some costing details at the level of activities for 31 of its 57 defined activities. The PFM Strategies of the State level, FBiH and BD, on the other hand, do not provide substantive costing information at the level of activities, only some categorised cost indications per each reform pillar. The envisaged reform activities in both the PAR Action Plan and the different PFM Strategies are mostly reform-oriented, with only a few activities related to regular work or of a purely administrative nature²⁵.

Table 4. Overview of costing related information of PAR-related planning documents in BiH

Documents analysed		% of activities with costing information
State level	Strategic Framework for PAR in BiH and Action Plan, State level PFM Strategy	65
FBiH	Strategic Framework for PAR in BiH and Action Plan, FBiH PFM Strategy	58
RS	Strategic Framework for PAR in BiH and Action Plan, RS PFM Strategy	82
BD	Strategic Framework for PAR in BiH and Action Plan, BD PFM Strategy	70

Note: The percentage figures are calculated at each administrative level as the share of costed activities taking into account both the PAR AP and the activities from the PFM Strategies.

There are two noteworthy shortcomings related only to the PAR Action Plan. First, the institutional responsibility for certain activities²⁶ is assigned to the CoM of BiH and the Government of the FBiH, RS and BD. Given that the governments are the top decision-making bodies, but not implementing institutions, it is not good practice to assign implementation responsibility to them for reform activities. Second, the PAR Action Plan has one internal flaw in structuring the activities, as the actions under the service delivery area do not follow the same prudent approach observed in all other areas of the Action Plan. These area activities are numbered and grouped differently, making it difficult to have a clear overview of exactly how many activities are envisaged as parts of the reforms of each area²⁷. While external stakeholders were consulted on the Strategic Framework of PAR document and the PAR Action Plan and these documents, as well as the State level PFM Strategy, were published for comments at the State-level consultation platform for at least two weeks, the PFM Strategies of the FBiH, RS and BD did not undergo such processes and were not published for consultation purposes. The involvement of non-governmental stakeholders in developing the different strategic documents was very limited, as formal structures of working groups established to elaborate the Strategic Framework for PAR in BiH or the different PFM Strategies did not include non-governmental members. Other forms of consultations that included non-state actors were organised only in the case of the Strategic Framework for PAR in BiH and the PAR

²⁵ The PAR Action Plan activity 2.1.2. "Establish inter-ministerial working groups (IMWGs) to draft the necessary reform regulations for each civil service structure in BiH and provide coordination in the work of the IMWGs through information sharing and concrete solutions", activity 4.2.1.2. "Establish an Interdepartmental Working Group on Interoperability", the State-level PFM Strategy activity II.1.2. "Sign a memorandum of understanding between the Border Police and the ITA", the RS PFM Strategy activity II.2.2. "Strengthening the control function of PURS" and the BD PFM Strategy activity VI.1.2. "Strengthen the staff capacity of the Audit Office" are considered as not reform-oriented activities.

²⁶ These include, e.g., Activity 1.1.1. "Establish/improve the function of coordinating the content of policy proposals at all administrative levels" and Activity 2.3.1 "Amendments to the regulations governing the competencies of the institutions responsible for the HR planning process at the level of BiH and FBiH."

²⁷ Given that in the PAR Action Plan the activities under the area of service delivery are differently structured than in the rest of the document, using four digits (and additional letters for sub-activities) for activity numbering instead of three, for consistent counting purposes SIGMA took into account only three of the four-digit numbering in the service delivery area except in cases when the activities were indicated in separate rows with distinct implementation responsibilities and deadlines.

Action Plan by the PAR Co-ordinator and its Office (PARCO), but no such events were arranged for any of the PFM Strategies.

Conclusion

The strategic framework of PAR in BiH covers all PAR areas and is composed of documents of mostly good quality, but only the Action Plan for PAR provides sufficient costing information on the planned activities. The different strategic documents were published for consultation only at the State level, and involvement of non-governmental stakeholders in drawing up the reforms was ensured only for the Strategic Framework for PAR in BiH and its Action Plan. Coherence of planned PAR-related legislative activities with legislative plans at the different BiH administrative levels is hampered by both the vague formulation of planned actions and the absence of available legislative plans for 2022 at the State level and FBiH.

Principle 2: Public administration reform is purposefully implemented; reform outcome targets are set and regularly monitored.

Overall, the value for the indicator 'Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting' is 0.

Indicator 1.2.1. Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting						
This indicator measures the track record of implementation of PAR and the degree to which the goals were reached. It also assesses the systems for monitoring and reporting of PAR.						
Overall 2022 indicator value	0	1	2	3	4	5
Sub-indicators		Points				
	State level	FBiH	RS	BD	Average	
1. Comprehensiveness of PAR reporting and monitoring systems	1	1	1	1	1/8*	
2. Implementation rate of PAR activities (%)	0	0	0	0	0/4*	
3. Fulfilment of PAR objectives (%)	0	0	0	0	0/4*	
Total ²⁸					1/16	

*Average of the State level, FBiH and RS.

No functioning monitoring and reporting system is in place for either the Strategic Framework for PAR in BiH and its Action Plan or the PFM Strategies. While the Strategic Framework for PAR in BiH document defines the roles of different institutions in monitoring and reporting, it also indicates that these will be precisely established after the adoption of the Strategic Framework in the format of new decision on the Common Platform on the Principles and Implementation of the PAR in BiH. This new framework has not yet been adopted, hence the roles are not operationalised. In the case of PFM, the roles in monitoring and reporting are defined in the different strategies at all administrative levels. Monitoring tasks are also

²⁸ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

assigned to the working groups formed for the elaboration of the strategies at the State level²⁹ and in the BD³⁰, but not in the RS³¹. In the FBiH, no such working group has been established. Civil-society organisations are not members of any formal monitoring mechanisms or bodies, nor are they involved systematically in any other form in following up on the implementation of the different strategies.

Systematic measurement of progress in implementing the reforms is supported by detailed descriptions of the performance measurement indicators only in the case of the Strategic Framework for PAR in BiH, where an 'indicator passport document' has been developed. None of the PFM Strategies at any BiH administrative level has such detailed explanations.

Irrespective of the description of monitoring and reporting roles and processes in all strategic documents, monitoring reports are not developed for either the implementation of the Strategic Framework for PAR in BiH and Action Plan or any of the PFM Strategies. Consequently, the implementation rate of the reform activities or the attainment of the defined reform objectives cannot be assessed.

Conclusion

A functioning monitoring and reporting system, producing information about the implementation progress of the reforms, is not in place for either the Strategic Framework for PAR in BiH or the different PFM Strategies, even if the monitoring and reporting roles are roughly defined. Involvement of non-governmental stakeholders in following up the reforms is not ensured, as they are not systematically involved in any of the established bodies mandated with monitoring the reform progress, and there are no other mechanisms and practices in place for taking stock of the implementation of the reforms.

²⁹ Decision of the Council of Ministers (Decision No. 186/20 of 2 September 2020) on the Formation of a Working Group for the Development of the Strategy for Improving Public Financial Management in the Institutions of Bosnia and Herzegovina for the Period 2021-2025.

³⁰ Decision of the Government of the Brčko District of BiH of 1 July 2020 on the Formation of a Working Group for the Development of the Strategy of Public Finance Management Reform in the Brčko District of Bosnia and Herzegovina for the Period 2021-2025.

³¹ Decision on the appointment of the Working Group for the Development of the Strategy for Public Financial Management of the Republic Srpska 2021-2025, No. 04/1-012-2-139/19 of 17 January 2019.

Principle 3: The financial sustainability of public administration reform is ensured.

Overall, the value for the indicator 'Financial sustainability of PAR' is 1.

Indicator 1.3.1. Financial sustainability of PAR						
This indicator measures to what extent financial sustainability has been ensured in PAR as a result of good financial planning.						
Overall 2022 indicator value	0	1	2	3	4	5
Sub-indicators	Points					
	State level	FBiH	RS	BD	Average	
1. Costed PAR activities (%)	1	1	2	1	1/3*	
2. Completeness of financial information in PAR planning documents.	0	0	0	0	0/4*	
3. Actual funding of the PAR agenda	0	0	0	0	0/3*	
Total ³²					1/10	

*Average of the State level, FBiH and RS.

Costing of the different PAR reforms is incomplete, as only the PAR Action Plan and the RS PFM Strategy provide details on costs at the level of activities. In the case of the PAR Action Plan, 136 of its 140 counted activities are costed, while in the RS PFM Strategy, 31 of its 57 activities are costed. The State-level and the BD PFM Strategies provide some costing details per pillar, categorised by type of cost, but the available FBiH PFM Strategy chapter on costing does not provide information at such level of detail.

Only in the case of the PAR Action Plan can more detailed information be found on systematically calculated additional costs for implementing the activities, divided by source of funding. The PAR Action Plan does not contain costing information on the division of recurring and one-off costs or full costing that would also include the regular budgetary costs of the implementing institutions. Furthermore, the costs in the PAR Action Plan are calculated without being divided by the different administrative levels of BiH that are expected to implement them. The RS PFM Strategy Action Plan also provides some detail on the additional costs of activities by dividing their source, but often not precisely enough to be considered as a systematic approach to identify the exact source of funding.

All PAR strategic documents plan to rely heavily for implementation of the reforms on the availability of donor funds. For example, in the case of the PAR Action Plan, where the most exact calculations are developed, donors are expected to provide more than 90%.

The actual funding of PAR is not secured, not only because there is no adopted budget at the State level and temporary funding decisions provide funds only for the operative work of institutions (including the PARCO), not for the reform actions, but also because the PAR Fund – a joint funding source established by the BiH administrative levels and donors in the past – has been frozen and other donor funds systematically supporting the implementation of PAR are not in place. According to the latest Report of the Public Administration Reform Fund³³, a total of Bosnian marks (BAM) 10 580 469 in the PAR Fund is currently available.

³² Point conversion ranges: 0=0, 1-3=1, 4-5=2, 6-7=3, 8-9=4, 10=5.

³³ "Report of the Public Administration Reform Fund for the period 1 January-31 December 2021", Sarajevo: PAR Co-ordinator's Office, January 2022, p. 9.

In addition, implementation costs for activities within the PAR Action Plan are not disaggregated by administrative level; costing information in the PFM Strategies is sporadic and incomplete; and the structure of the budget documents of the FBiH, the RS and the BD does not present financial information in a way that would enable assessing the availability of funds for PAR.

Conclusion

Costing of the different PAR reforms is not systematic, as PFM Strategies – except for the RS PFM Strategy – do not provide a sufficient level of detail on costs per activity. Overall, the reforms are heavily dependent on the availability of donor funds. It is not possible to assess whether the actual funding of PAR is secured, given that the nature of how the different planning documents and budgets are structured does not allow for assessing the availability of funding and donor funding systematically supporting PAR is not secured.

Principle 4: Public administration reform has robust and functioning management and co-ordination structures at both the political and administrative levels to steer the reform design and implementation process.

Overall, the value for the indicator 'Accountability and co-ordination in PAR' is 1.

Indicator 1.4.1. Accountability and co-ordination in PAR						
This indicator measures the extent to which leadership and accountability in PAR are established, the regularity and quality of co-ordination mechanisms at both the political and administrative level, and the performance of the leading institution.						
Overall 2022 indicator value	0	1	2	3	4	5
Sub-indicators			Points			
	State level	FBiH	RS	BD	Average	
1. Establishment of organisational and managerial accountability for PAR.	4	4	4	4	4/6*	
2. Co-ordination mechanisms for PAR.	0	0	0	1	0/10*	
Total ³⁴					4/16	

*Average of the State level, FBiH and RS.

According to the Decision of the Chairman of the CoM of BiH "On the establishment of the public administration reform co-ordinator's office"³⁵, the PAR Co-ordinator "is in charge of co-ordinating activities related to the preparation, adoption and implementation of the strategy for public administration reform in BiH." Moreover, PAR co-ordination is assigned at the organisational level to different organisations at the different BiH administrative levels. At the State level, the organisational co-ordination is assigned to the State-level PARCO³⁶. In the FBiH, the Federal Ministry of Justice and its subordinate body, the Institute

³⁴ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

³⁵ Article 3 of the Decision of the Chairman of the CoM "On the establishment of the public administration reform coordinator's office", VM No. 302/04, Sarajevo: 28 October 2004.

³⁶ Council of Ministers of BiH Decision on the Establishment of the Coordinator's Office for Public Administration Reform, (Decision No. 302/04) 28 October 2004, Sarajevo. As per the amendment of the Decisions from 2004 (CoM

for Public Administration, is the overall co-ordinating institution³⁷. In the RS, the Ministry of Administration and Local Self-Government has the overall PAR responsibility³⁸. In the BD, the Office of the Mayor (as a public administration body) is responsible for PAR co-ordination activities³⁹.

At the managerial level, PAR co-ordination is assigned to the different-level PAR Co-ordinators and their offices⁴⁰. The State-level PAR Co-ordinator is positioned within the Office of the Chairman of the CoM of BiH overseeing the work of PARCO, while in the FBiH the PAR Co-ordinator is also the head of the Institute for Public Administration. In the RS, the PAR Co-ordinator is an Assistant Minister of the RS Ministry of Administration and Local Self-Government and hence leads the Department for Public Administration Reform and Normative Affairs within the Ministry. In the BD, the PAR Co-ordinator oversees the work of the Public Administration Reform Coordinator's Office within the Office of the Mayor.

The PAR Action Plan does not assign individual/managerial responsibilities for the reform activities. Responsibilities are set only at the institutional level and, for some activities, the ultimate responsibility is assigned to the CoM and the FBiH, RS and BD Governments, which are political bodies of ultimate decision-making. The PFM Strategies of the FBiH, RS and BD assign managerial responsibilities for most of their defined activities at the level of internal units of the FBiH and RS ministries of finance and the BD Finance Directorate. Only in the case of external-audit-related activities is responsibility assigned to the audit institutions, without any further detail about which structural units of the institutions are in charge. The State-level PFM Strategy assigns managerial responsibilities for some but not all activities at the level of the Ministry of Finance and Treasury (MoFT) structural units.

According to the Strategic Framework for PAR in BiH, the political-level co-ordination for PAR is to be ensured through the Co-ordination Committee. However, the CoM of BiH and the FBiH, RS and BD Governments have not yet adopted the decision, the Common Platform on the Principles and Implementation of the PAR in BiH. In addition, no substantive discussions on PAR had taken place at sessions of the CoM of BiH, or the FBiH, RS and BD Governments in 2021 or by the time of the monitoring in 2022. None of the PFM Strategies defines a separate political-level co-ordination forum for PFM reforms apart from the CoM of BiH and the FBiH, RS and BD Governments. According to information obtained from the representatives of the MoFT, the FBiH and RS Ministry of Finance (MoF) and the BD Finance Directorate, the CoM of BiH and the different Governments of the FBiH, RS and BD did not discuss PFM reform-related matters in 2021 or by the time of the assessment in 2022.

Administrative-level co-ordination for PAR is tasked to the joint meetings of the PAR Co-ordinators in the Strategic Framework for PAR in BiH. It also envisages further defining their joint working methods in the Common Platform on the Principles and Implementation of the PAR of BiH, including, for example, the Supervisory Teams that are envisaged as the mechanism for co-ordination and exchange of information⁴¹. Even in the absence of this, the PAR Co-ordinators have regular meetings to discuss PAR-related matters. In 2021, the PAR Co-ordinators met 11 times. Minutes and conclusions of these meetings indicate that

of BiH Decisions No. 249/10 of 14 September 2010), "The coordinator acts within the Office of the Chairman of the Council of Ministers of Bosnia and Herzegovina. The Office of the Public Administration Reform Coordinator performs material and financial operations independently".

³⁷ Article 7 of the Law on Federal Ministries and Other Federal Administration Bodies (Official Gazette of the Federation of BiH Nos. 58/02, 19/03, 38/05, 2/06, 8/06, 61/06).

³⁸ Article 16 of the Law on Republican Administration (Official Gazette of the Republika Srpska 115/18).

³⁹ Article 19, point e, of the Law on Public Administration of the Brčko District of BiH (Official Gazette of Brčko District of Bosnia and Herzegovina No. 25/20 - Consolidated text). Also, according to the Organisational Plan of the Office of the Mayor of the Brčko District of BiH of 10 July 2019, Article 2, "The Mayor's Office is responsible for: (...) k) public administration reform in BiH and the Brčko District of BiH."

⁴⁰ Decision of the CoM of BiH No. 149/19 of 15 October 2019; Decision of the Government of the Federation of Bosnia and Herzegovina on the appointment of the Coordinator for Public Administration Reform, Decision No. 1401/2018 of 29 November 2018; Decision of the Government of the Republika Srpska No. 04/1-012-2-3912/21 of 16 December 2021; Decision of the Mayor of the Brčko District No. 33-000765/21 of 8 April 2021.

⁴¹ Strategic Framework for PAR in BiH 2018-2022, p. 60.

the Co-ordinators take operative decisions related to issues essential for the implementation of the Strategic Framework, but not directly related to the content of the PAR policy.

Administrative-level co-ordination of PFM reforms is assigned to a working group in the case of the State level and the BD and to the Secretariat of the Federal Ministry of Finance at the FBiH, but no such co-ordination structure is defined in the RS PFM Strategy. The working group tasked with the elaboration of the RS PFM Strategy is not formally mandated for its implementation follow-up. Furthermore, in the case of FBiH the PFM Strategy and of the State level, the decision on the composition of the responsible working group does not mention the involvement of the audit institution in co-ordinating the implementation of these strategies, while entire pillars of their PFM reforms are dedicated to the issues related to external audit. Hence, only in the case of the BD can one speak of the establishment of a sufficiently comprehensive administrative-level co-ordination forum for PFM. The bodies in charge of administrative-level co-ordination of the PFM Strategies have not held any meetings, according to information obtained from representatives of the MoFT, the FBiH MoF and the BD Finance Directorate.

Table 5. Co-ordination of PAR-related planning documents in BiH

	Political level co-ordination	Administrative level co-ordination
Strategic Framework for PAR in BiH	Co-ordination Committee (not established yet)	Joint meeting of the PAR Co-ordinators; other intergovernmental mechanisms as envisaged by the Common Platform (not adopted yet)
State level PFM Strategy	-	PFM Working Group
FBiH PFM Strategy	-	Secretariat of the Federal Ministry of Finance
RS PFM Strategy	-	-
BD PFM Strategy	-	PFM Working Group

Neither the Strategic Framework for PAR in BiH nor the various PFM Strategies envisage systematic involvement of non-governmental stakeholders in the co-ordination of the PAR/PFM agenda. According to interviews with representatives of both the different PAR and PFM key institutions and civil society organisations⁴², no such practice is in place in any of the BiH administrative levels.

⁴² SIGMA assessment meeting on 24 March 2022 with representatives of Transparency International BiH, Centre for Public Interest (CPI), 'Why Not' Citizen Association.

Conclusion

Organisational and managerial responsibility for PAR is established at all administrative levels of BiH, but managerial responsibility for the planned activities is not defined in the case of the PAR Action Plan and is only partially set for the State-level PFM activities. PFM Strategies of the FBiH, RS and BD are more systematic in this respect. The political-level co-ordination of PAR and PFM and the administrative-level co-ordination of PFM are not functional. The PAR administrative-level co-ordination is only partially functional, as the Common Platform document setting forth the details of managing PAR is not yet adopted, substantially limiting the operative functioning of the PAR Co-ordinators' joint meetings in managing PAR. Non-governmental stakeholders are not systematically involved in following up the reforms.



Policy Development and Co-ordination

The Principles of Public Administration

Policy Development and Co-ordination

Principle 1	Centre-of-government institutions fulfil all functions critical to a well-organised, consistent and competent policy-making system.
Principle 2	Clear horizontal procedures for governing the national European integration process are established and enforced under the co-ordination of the responsible body.
Principle 3	Harmonised medium term policy planning is in place, with clear whole of government objectives, and is aligned with the financial circumstances of the government; sector policies meet the government objectives and are consistent with the medium term budgetary framework.
Principle 4	A harmonised medium term planning system is in place for all processes relevant to European integration and is integrated into domestic policy planning.
Principle 5	Regular monitoring of the government's performance enables public scrutiny and supports the government in achieving its objectives.
Principle 6	Government decisions are prepared in a transparent manner and based on the administration's professional judgement; legal conformity of the decisions is ensured.
Principle 7	The parliament scrutinises government policy making.
Principle 8	The organisational structure, procedures and staff allocation of the ministries ensure that developed policies and legislation are implementable and meet government objectives.
Principle 9	The European integration procedures and institutional set up form an integral part of the policy development process and ensure systematic and timely transposition of the European Union <i>acquis</i> .
Principle 10	The policy making and legal drafting process is evidence based, and impact assessment is consistently used across ministries.
Principle 11	Policies and legislation are designed in an inclusive manner that enables the active participation of society and allows for co-ordination of different perspectives within the government.
Principle 12	Legislation is consistent in structure, style and language; legal drafting requirements are applied consistently across ministries; legislation is made publicly available.

Policy Development and Co-ordination

[This part of the report is from November 2021]

Summary and recommendations

Overall, there have been no major changes in the policy development and co-ordination area in Bosnia and Herzegovina (BiH) since the 2017 SIGMA assessment. As different methodological approaches have been applied, it is not possible to make direct comparisons between the indicator values in the 2017 and 2021 assessments.

Most of the key centre-of-government (CoG) functions have been established at all administrative levels of government of BiH, with exception of the function of co-ordinating policy content of proposals before final adoption. There are no formalised and institutionalised co-ordination arrangements between the CoG institutions that allow them to check and harmonise their opinions on the quality of proposed policies and thus provide coherent and clear advice for final decision-making by the administrations. While interministerial consultation processes are regulated at all levels, the outcomes of these processes are not clearly presented to governments.

While government work-planning and monitoring processes, legal drafting and policy-making processes and tools (such as application of regulatory impact assessment and public consultations on new policies) are mostly regulated and supported, **detailed guidelines on sector strategic planning exist only in the Republika Srpska (RS) and the Brčko District (BD).** It should be noted that both the Federation of Bosnia and Herzegovina (FBiH) and the RS have recently introduced new regulatory frameworks on strategic planning systems, but their impact on the quality of planning is yet to be seen. It should also be noted that the State level is the only one that has no regulatory framework for sector strategic planning. Challenges and weaknesses exist in the quality of planning documents and actual implementation across all levels of BiH administration.

There are significant issues with monitoring and reporting practices for key government and policy-planning documents at all levels, especially in regard to the quality and consistency of monitoring and the use of outcome-oriented indicators and in clearly showing progress in achieving the set objectives. Monitoring reports on planning documents are not prepared regularly and are not proactively published and made available to citizens online. The review of samples provided during the assessment shows that there are major shortcomings in the quality of monitoring reports. The analysis is mostly rudimentary, providing very limited information on the impact of policy changes.

The European integration functions, such as daily co-ordination, planning and monitoring and legal harmonisation rules and procedures, are mostly in place from a regulatory perspective, as is the guidance institutions need to carry out their tasks regarding the process. However, current practice shows deviations from regulations, as there is still no adopted countrywide Programme of Integration setting out clear tasks and deadlines for actions related to European integration, and the co-ordination forums do not meet as frequently as envisaged. It should be noted that the RS is currently the only level with a formally approved EI action plan.

The legislative branches at all administrative levels have well defined regulations and procedures for scrutiny of the work of the executive level. It should be noted, however, that extensive use of urgent procedure for approval of laws can be observed, as well as limited discussion on implementation of laws and policies.

Regulatory impact assessment, as an *ex ante* tool for policy analysis, is formally established at all levels, but it is not systematically and fully used in practice. The same applies to public consultations. While regulatory requirements are in place, the actual practice is of limited quality, and outcomes of consultations are hard to trace. As a result, the impact of these essential policy-making instruments on the quality of policy design in BiH is minimal.

Short-term recommendations (1-2 years)

- 1) The Council of Ministers (CoM) of BiH, the governments of the FBiH, the RS, and the BD should ensure that the new whole-of-BiH European integration planning document (the Programme of Integration) is finalised and adopted as soon as possible. The political level co-ordination forum (the Collegium for EU integration) and the administrative-level co-ordination forum (the Commission for European Integration) should meet more regularly, monitor implementation of the Programme of Integration and take action to ensure more efficient and effective implementation.
- 2) The CoM of BiH should set up a legal framework for sectoral strategic planning and start implementing it. It should also carry out extensive capacity building of civil servants involved in sector policy planning. The FBiH and the RS should ensure full and consistent implementation of the procedures and standards set by the legal frameworks of their new planning systems.
- 3) Capacities of the CoGs at all administrative levels should be enhanced to provide the necessary guidance and support during implementation of the legal frameworks for sectoral strategic planning, as well as to carry out final checks and quality control of draft planning documents.
- 4) The CoM of BiH and the governments of the FBiH, the RS and the BD should establish a formal requirement to proactively publish online reports on implementation of key planning documents that include information on progress towards achievement of set objectives and outcomes.
- 5) The Rules of Procedure (RoP) of the Government of FBiH should be amended to foresee that the Office for European Integration becomes a formal part of the interministerial consultation process and to ensure that developed policies and planning documents are coherent and consistent with the EI process of the country.
- 6) The CoM of BiH and the governments of the FBiH, the RS and the BD should formally designate an institution (preferably a CoG body) to be in charge of scrutinising the quality of the public consultation process as well as the quality of reporting on this process and its outcomes. Also, a proactive system of informing stakeholders about upcoming consultations should be set up at all levels of government of BiH.
- 7) All administrative levels of BiH should ensure implementation of the existing rules and procedures for conducting *ex ante* Regulatory Impact Assessment (RIA) on regulatory proposals in line with the existing methodologies, targeting the most significant policy proposals first.

Medium-term recommendations (3-5 years)

- 8) The CoM of BiH and the governments of the FBiH, the RS and the BD should establish the function of co-ordination of policy content of proposals heading for approval within their respective CoG institutions, to ensure closer formal and informal co-ordination in regard to both policy planning and policy development. The respective CoG institutions should have a right to analyse draft proposals and send them back to initiating institutions if the package content is not coherent and consistent with set government priorities and previously announced policies.
- 9) All levels of the BiH administration should ensure systemic monitoring of implementation of sectoral policy-planning documents, by setting the quality requirements and reviewing the procedures, and should put in place activities to build the capacities required for these purposes. These monitoring reports should also be proactively published on line.
- 10) The ministries of the State level, the FBiH, the RS and the BD should establish clear internal rules to ensure that policy development and drafting of legislation are well-co-ordinated and that key elements, such as public consultation, are well prepared. On all levels, the executive branch should ensure sufficient staff capacities for ministries to implement requirements for impact assessment and consultation.

Analysis

Principle 1: Centre-of-government institutions fulfil all functions critical to a well-organised, consistent and competent policy-making system.

The overall value for the indicator “Fulfilment of critical functions by the centre-of-government institutions” is 3.

Indicator 2.1.1. Fulfilment of critical functions by the centre-of-government institutions						
This indicator measures to what extent the minimum requirements for functions critical to a well organised, consistent and competent policy-making system are fulfilled by the centre of government (CoG) institutions.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Critical functions are assigned to CoG institutions by legislation	7	7	7	7	7/8*	
2. Availability of guidelines to line ministries and other government bodies	3	3	4	4	3/4*	
3. Institutionalisation of co-ordination arrangements between the CoG institutions	0	0	0	0	0/4*	
Total ⁴³					10/16	

*Average of the State level, FBiH and RS.

The Dayton Peace Agreement and the present Constitution⁴⁴ of BiH have created a complex governance structure and, as the core executive, the CoM of BiH and the Governments of the FBiH, the RS and the BD are established and functioning. Therefore, due to the constitutional split of competences between the levels, there is no single CoG⁴⁵ in BiH.

Apart from the function of co-ordinating the policy content of proposals, including their coherence with government priorities, the critical CoG functions⁴⁶ are assigned to relevant institutions at all levels of the administration. Separate regulatory frameworks govern the functioning of the CoGs at the different levels⁴⁷.

⁴³ Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-12=3, 13-14=4, 15-16=5.

⁴⁴ The Constitution of Bosnia and Herzegovina, http://www.ohr.int/?page_id=68220.

⁴⁵ The Presidency, a collective body comprising three representatives of the constituent peoples of BiH, is the highest executive power. As a collective body of the heads of state, the Presidency has been assigned roles with regard to foreign policy and defence, and it is the body that submits a budget proposal to the BiH Parliamentary Assembly once the CoM of BiH has developed the draft.

⁴⁶ The critical functions of the CoG were defined in OECD (2017), *The Principles of Public Administration*, Paris, p. 19, http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf.

⁴⁷ Mainly through separate RoP: RoP of the CoM, July 2003, Official Gazette of BiH No. 107/03; RoP of the Government of the FBiH, February 2010, Official Gazette of BiH No. 79/09; RoP of the Government of the Republic of Srpska of December 2018; Official Gazette of the RS No. 123/18; RoP of the BD Government, April 2013, Official Gazette of the BD No. 9/13.

At the State level, the co-ordination of preparations for CoM sessions is assigned to the Administrative Service of the Secretariat-General of the CoM (SGCoM), and the Legislative Office of the CoM is responsible for ensuring legal conformity. The co-ordination of preparation and approval of the Government's strategic priorities and work programme and monitoring of the performance of the CoM is shared between the Office of the Chairman of the CoM and the SGCoM. The Annual Work Programme of the CoM is developed with the involvement of the sector for co-ordination of preparation, implementation, monitoring and evaluation of development documents and social inclusion analysis of the Department of Economic Planning. The functions of ensuring that policies are affordable and co-ordinating public-sector resource planning are assigned to the Ministry of Finance and Treasury (MoFT). The Information Service of the SGCoM co-ordinates the CoM's communication activities. The Administrative Service of the SGCoM manages relations with the Parliament and the President's Office. The Directorate for European Integration (DEI) is responsible for the co-ordination of European integration (EI) matters.

At the FBiH level, the co-ordination of preparations for government sessions and the management of relations with other institutions are performed by the General Secretariat of the Government (GS) of the FBiH. The Office of the Government of the FBiH for Legislation and Harmonisation with EU Regulations (OLFBiH) is responsible for ensuring legal conformity. The co-ordination of the preparation and approval of the Government's strategic priorities and work programme and the monitoring of the Government's performance are carried out primarily by the Federal Institute of Development Programming. The Federal Ministry of Finance (MoF) is responsible for ensuring that policies are affordable and for co-ordinating public-sector resource planning. The Public Relations Office of the Office of the Government of the FBiH co-ordinates the Government's communication activities. The Office of the Government of the FBiH for EI is responsible for the co-ordination of EI matters, except for legal harmonisation.

In the RS, the General Secretariat of the Government (GSG) is responsible for co-ordinating preparations for government sessions, co-ordinating preparation and approval of the Government's strategic priorities and work programme, monitoring the Government's performance and managing relations with other institutions. The Secretariat for Legislation is responsible for ensuring legal conformity. The MoF is responsible for co-ordinating public-sector resource planning and ensuring that policies are affordable. The Sector for Public Relations of the GSG leads co-ordination of the Government's communication activities. The Ministry of European Integration and International Co-operation (MEI) is in charge of co-ordination on EI matters.

In the BD, the Secretariat of Government of BD Government (SGBD) is responsible for co-ordinating preparations for government sessions, co-ordinating preparation and approval of the Government's strategic priorities and work programme and managing relations with other institutions. The Legislative Office of the Mayor's Office is responsible for ensuring legal conformity. The Information Sector of the SGBD co-ordinates the Government's communication activities. The Head Co-ordinator of the BD Government is responsible for monitoring the Government's performance, with the support of the SGBD. The Finance Directorate of the Brčko District of BiH is responsible for co-ordinating public-sector resource planning and ensuring that policies are affordable. The Department of European Integration and International Co-operation (DEIC) is responsible for EI-related co-ordination tasks.

With respect to the mandate of the CoG to lead co-ordination of policy content and ensure policy coherence, the function is: 1) not established (in the case of FBiH); 2) established mainly through the quality assurance of RIA processes, but only in terms of formal compliance (at the State level and at the BD); or 3) prescribed only partially (in the case of the RS, where coherence with government priorities is to be checked for medium-term and annual plans of the institutions, but no other aspects of policy coherence review are regulated).

All administrative levels of BiH have detailed regulations or guidelines supporting government work planning and monitoring processes⁴⁸, legal drafting⁴⁹, policy elaboration processes (mainly through the application of RIA)⁵⁰ and public consultation⁵¹. For sectoral strategic planning, detailed legal provisions or guidelines exist only in the RS and the BD⁵². Noteworthy recent regulatory changes occurred in the FBiH, which has adopted a new Law on Development Planning and new methodological Decrees⁵³ affecting both annual government work planning and strategy development. However, since their application has been postponed until 2022, they are not considered guidelines currently in place. Also, the RS National Assembly adopted a new Law on Strategic Planning and Development Management on 22 June 2021, but the related regulations or guidelines are not yet in place. However, given that the application of this new law extends beyond the current assessment period, this does not affect the findings on the existence of supporting documents for sectoral planning in the RS.

Co-ordination between CoG institutions in policy planning and policy development is very limited at all levels of the administration. Interviews with representatives of the main CoG institutions at all levels

⁴⁸ BiH State Decision on Annual Work Planning and Manner of Monitoring and Reporting on Work in the Institutions of Bosnia and Herzegovina, Official Gazette of BiH No. 94/14; Regulation on Work Planning and Reporting on the Work of the Government of the Federation of Bosnia and Herzegovina, Federal Ministries and Institutions, Official Gazette of the Federation of BiH No. 89/14 of 23 October 2014; Decision on the Procedures of Planning, Monitoring and Reporting on the Implementation of the Adopted Strategies and Plans of the Government of the Republic of Srpska and Republican Administrative Bodies No. 04/1-012-2-1328/16 of 9 June 2016; BD Rulebook on the Content and Methodology of Development, System of Monitoring and Supervision of the Implementation of Strategic Documents and Implementation Documents No. 02-000228/20 of 27 October 2020.

⁴⁹ The State level Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina, Official Gazette of BiH Nos. 11/05, 58/14, 60/14, 50/17 and 70/17 – Corrigendum; Rules and Procedures for Draft Laws and Other Regulations of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH No. 71/14; Rules for drafting laws and other regulations of the RS No. 01-330/14 of 5 March 2014; the BD Decision on the Procedures for Making Laws and Other Regulations No. 02-000186/20 and the Decision on the Adoption of Uniform Rules and Procedures for the Development of Laws and Regulations of the Brčko District of Bosnia and Herzegovina No. 01-02-512/12-1.

⁵⁰ The State level Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina, Official Gazette of BiH No. 11/05, 58/14, 60/14, 50/17 and 70/17 – Corrigendum; Rules and Procedures for Draft Laws and Other Regulations of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH No. 71/14; Regulation on the Regulatory Impact Assessment Procedure, Official Gazette of the Federation of BiH No. 67/20; the RS Decision on the Implementation of the Regulatory Impact Assessment Process in the Process of Making Regulations No. 04/1-012-2-628/19 of 27 February 2019; the BD Decision on the Impact Assessment Procedure and Methodology When Making Regulations No. 02-000278/17 and the Instruction on Implementation of the Impact Assessment Procedure During the Drafting of Regulations in Public Administration Bodies of the Brčko District of BiH No. 05-000577/18.

⁵¹ The State level Rules for Consultation in Legal Drafting VM No. 314/16, Official Gazette of BiH No. 05/17 of 20 December 2016; Regulation of the Rules for the Participation of the Interested Public in the Preparation Procedure of Federal Legal Regulations and Other Acts, Official Gazette of the Federation of BiH No. 51/12; Guidelines for the actions of the administrative bodies on public and consultations in legal drafting No. 04/1-012-2911/08 of 11 December 2008, amended in 2012 to also include consultation of bylaws, Official Gazette of BiH No. 73/12; the BD Decision on Consultation in Drawing Up Regulations and Other Acts No. 02-000338/14 of 3 March 2017.

⁵² Decision on the Procedures of Planning, Monitoring and Reporting on the Implementation of the Adopted Strategies and Plans of the Government of the Republic of Srpska and Republican Administrative Bodies No. 04/1-012-2-1328/16 of 9 June 2016; BD Rulebook on the Content and Methodology of Development, System of Monitoring and Supervision of the Implementation of Strategic Documents and Implementation Documents No. 02-000228/20 of 27 October 2020.

⁵³ Law on Development Planning and Management in the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH No. 32/17; Decree on triennial and annual work planning, monitoring and reporting in the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH No. 74/19; Decree on Strategic Documents Drafting in the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH No. 74/19.

confirmed that co-ordination and discussions among these institutions are limited to ad hoc cases and are not formalised. In the case of the Government Annual Work Plan (GAWP), only the Commission on Programmes and Reports on the Work of the FBiH Government⁵⁴ is tasked with reviewing the draft GAWP, consolidating the opinions of the CoG institutions on the draft and discussing those opinions during its meetings, but its actual functioning could not be assessed during the assessment period. These interviews also confirmed that, at the State level and in the RS and the BD, the role and commitment of the Legislative Offices and Ministries of Finance in reviewing the draft GAWPs was either very limited or non-existent⁵⁵. Consolidated comments on proposals or systematic prior discussions on proposals among the various CoG bodies is not in place at any level of the BiH administration.

Conclusion

The critical CoG functions are established at all levels, with the exception of the function of co-ordination of policy content of proposals. Detailed regulations or guidelines support the implementation of work planning and monitoring, legal drafting, policy development and consultations at all levels. Sector strategy development is regulated in the FBiH, the RS and the BD, but not at the State level. Co-ordination between the different CoG bodies is mostly ad hoc and is not formalised.

Principle 2: Clear horizontal procedures for governing the national European integration process are established and enforced under the co-ordination of the responsible body.

The overall value for the indicator “Fulfilment of European integration functions by the centre-of-government institutions” is 3.

Indicator 2.2.1. Fulfilment of European integration functions by the centre-of-government institutions						
This indicator measures to what extent the minimum criteria for European integration (EI) functions are fulfilled by the CoG institutions. As this indicator is used to assess the fulfilment of the minimum criteria, it does not measure outcomes or include quantitative indicators. The outcomes of some of these critical functions are captured by other indicators on policy development and co-ordination.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Proportion of the EI functions that are assigned to the CoG institutions by law	5	5	6	5	5/6*	
2. Availability of guidelines to line ministries and other government bodies	3	3	3	3	3/4*	
3. Government's capacity for co-ordination of EI	2	0	6	2	3/8*	
Total ⁵⁶					11/18	

*Average of the State level, FBiH and RS.

⁵⁴ Article 4 of the Regulation on Work Planning and Reporting on the Work of the Government of the Federation of Bosnia and Herzegovina, Federal Ministries and Institutions, Official Gazette of the Federation of BiH, No. 89/14 of 23 October 2014.

⁵⁵ Except for the BD, where the preparation of the Legislative Plan is co-ordinated by the Legislative Office.

⁵⁶ Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-13=3, 14-16=4, 17-18=5.

As defined in the Law on the CoM of BiH⁵⁷, the Law on Ministries and other Bodies of Administration of BiH⁵⁸, and the Rulebook on Internal Organisation of the Directorate for European Integration⁵⁹, the DEI has the ultimate mandate of co-ordinating and harmonising all EI-related activities of the relevant institutions at all levels of the administration⁶⁰. The DEI has also been tasked with: 1) leading and co-ordinating communication with EU structures on all EI-related matters; 2) participating in the preparation of policy proposals, draft laws and EI-related regulations and guidelines; and 3) providing advice concerning issues of harmonisation of the processes and activities of all of the jurisdictions of BiH for the implementation of obligations related to EI. Although the DEI at the State level has an overall mandate to lead and co-ordinate all EI matters for the whole country, all levels of the administration share the responsibility and authority for EI.

The majority of EI functions have been established in the respective EI institutions at both Entities and also in the BD. In the FBiH, this role is shared by the EI Office and the OLFBiH, which is responsible for harmonisation of FBiH regulations with EU regulations. In the RS, the MEI exercises these functions. In the BD, EI functions have been assigned to the DEIC. With the exception of the RS, BiH authorities have not formally established functions for the co-ordination of accession negotiations.

Formally adopted guidelines applicable to all levels of administration are available to support the fulfilment of EI functions in the areas of planning⁶¹, reporting⁶², translation⁶³ and alignment of national legislation

⁵⁷ Law on the CoM of BiH of 17 July, 2013, Article 23, Official Gazette of BiH Nos. 30/03, 42/03, 81/06, 76/07, 81/07, 94/07 and 24/08.

⁵⁸ Law of the State on Ministries and other Bodies of Administration of BiH, 7 March 2003, Article 18, Official Gazette of BiH Nos. 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09 and 103/09.

⁵⁹ Rulebook on Internal Organisation of the Directorate for European Integration, Decision No. 05/B-02-3-KT-1151-4/18 of 9 October 2018.

⁶⁰ The following key EI-related functions are expected to be defined and fulfilled by CoG institutions: 1) overall daily co-ordination; 2) planning of EI, including the costing of reforms; 3) monitoring of preparations for the EI process; 4) co-ordination of the transposition of the *acquis*; 5) co-ordination of EU assistance; and 6) co-ordination of EI-related negotiations.

⁶¹ The State level, the FBiH and the BD apply the Methodology for Development of the Programme of Integration of BiH in the EU, which was adopted by the Collegium for European Integration by Conclusion 8/2020 on 24 September 2020, while the RS also uses the RS Decision on the Procedure of Planning, Monitoring and Reporting on the Realisation of Adopted Strategies and Plans of the Government of the Republic of Srpska and Administrative Bodies of the Republic, Official Gazette of the Republic of Srpska Nos. 50/16 and 108/18) and the Decision on co-ordination of the republican administrative bodies in the implementation of activities in the field of European integration and international co-operation, Official Gazette of the Republic of Srpska, No. 119/18.

⁶² The State level, the FBiH and the BD apply the DEI's Guidelines for Reporting in the EI process (from April 2017, overwriting the previous CoM of BiH Guidelines for reporting to the European Commission in the process of European integration provided by the Council of Ministers of BiH from July 2013). The RS also applies its own two above-listed Decisions, as well as the Methodology of Reporting to the Institutions of the EU in the EI Process No. 17-03-020-131/16 of 18 January 2016.

⁶³ The State level, the FBiH and the BD apply the DEI's Handbook for translating European Union legal acts and Manual for translation of legislation in BiH into English (2019), while the RS applies its own Guidelines and recommendations for translation in the field of European integration and international co-operation (December 2015) and the Practicum for translation, editing of regulations of the Republic of Srpska due to the needs of the European integration process (December 2016).

with the *acquis*⁶⁴, as well as for the co-ordination in EI-related negotiations⁶⁵, but not for planning and monitoring of EU assistance. In this latter respect, the DEI has developed guidelines for development of Action Documents (IPA III), but there is no comprehensive and unified legal framework and whole-of-country agreement on the management, planning and co-ordination of EU assistance. While the existence of these guidelines and the proactive work of the DEI is commendable, it cannot replace an established, regulated framework.

Apart from the respective bodies consistently providing their opinions on draft legal acts transposing the *acquis*, the capacities for co-ordination of EI are generally not in place. This aspect has not been observed in the FBiH, as there were no samples that could be assessed. Neither the highest political-level co-ordination forum (the Collegium for EU Integration) nor the highest administrative-level body (the Commission for European Integration) has met frequently enough in the assessment period to be considered as a functioning co-ordination mechanism for EI⁶⁶.

While work started in September 2020 on the new, whole-of-BiH planning document (the Programme of Integration), the country still does not possess a countrywide planning document that sets out clear approximation plans with the EU *acquis*. However, the practice of developing annual Action Plans for realisation of priorities from the EU BiH Reports remained in place until mid-2020. The last such plan is the Action Plan for the realisation of priorities from the EU Analytical Report, covering the period from July 2019 to May 2020. It should be noted that the RS also has its own Action Plan for aligning RS legislation with the EU *acquis* and legal acts of the Council of Europe, for both 2020 and 2021. Consequently, except for the RS, no EI plan is currently in place.

The DEI developed a monitoring report on the implementation of the 2019 Action Plan, but no new Action Plan was developed for 2020 and there was no comprehensive report about progress on EI in 2020. Hence uninterrupted reporting practice is not in place for the State level, the FBiH and the BD. For the RS, regular, annual reporting is ensured through the Information on obligations for BiH and RS arising from the EU accession process, a report of the MEI submitted to the RS Government⁶⁷ and then to the National Assembly for adoption.

⁶⁴ The State and the FBiH use the CoM Decision on the procedure of harmonisation of the legislation of Bosnia and Herzegovina with the *acquis communautaire*, Official Gazette of BiH Nos. 75/16 and 2/18. The RS uses its Decision on the Procedure of Aligning the Republic of Srpska Legislation with the EU *acquis* and Practice and Standards of the Council of Europe, Official Gazette of the Republic of Srpska No. 119/18; Instructions on completing comparative reviews of harmonisation of draft and proposal of regulations with the EU *acquis* and legal acts of the Council of Europe, Official Gazette of the Republic of Srpska No. 102/14; Instructions on completing statements of harmonisation of draft and proposal Regulations with the EU *acquis* and legal acts of the Council of Europe, Official Gazette of the Republic of Srpska No. 102/14; and Methodology for Harmonisation of the Legislation of the Republic with the *acquis* of the European Union (February 2011). The BD applies its Decision on procedures in the process of harmonising the legislation of the Brčko District of BiH with legislation of European Union, Official Gazette of the Brčko District of BiH No. 9/14.

⁶⁵ The Guidelines for Reporting in the EI process elaborate on the process of co-ordinated inputs for different dialogues with the EU within the framework of implementation of the Stabilisation and Association Agreement (SAA) and are hence assessed as a valid guideline for EI-related negotiations.

⁶⁶ The Collegium held its last (fourth) meeting in May 2020, followed by two electronic meetings due to the COVID-19 situation and hence does not meet quarterly as required by the SIGMA assessment methodology. The Commission held its last meeting on 21 May 2021 and additional five electronic meetings were reported. Given that the SIGMA methodology expects at least monthly co-ordination meetings at the administrative level, this does not meet the requirements.

⁶⁷ The latest such report was adopted by the RS Government on 25 February 2021.

Conclusion

The majority of the EI functions are in place and their implementation is supported with written guidance. The co-ordination of the EI processes is not ensured as the countrywide co-ordination forums don't meet frequently enough. Planning and monitoring of the EI process are at a standstill, given that the new, whole-of-BiH Programme of Integration has not yet been finalised and the practice of regular reporting on the previous plans has stopped.

Principle 3. Harmonised medium-term policy planning is in place, with clear whole of government objectives, and is aligned with the financial circumstances of the government; sector policies meet the government objectives and are consistent with the medium term budgetary framework.

The overall value for the indicator "Quality of policy planning" is 2.

Indicator 2.3.1. Quality of policy planning						
This indicator measures the legislative, procedural and organisational set-up established for harmonised policy planning and the quality and alignment of planning documents. It also assesses the outcomes of the planning process (specifically the number of planned legislative commitments and sector strategies carried forward from one year to the next) and the extent to which the financial implications of sectoral strategies are adequately estimated.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Adequacy of the legal framework for policy planning	4	7	6	7	6/7*	
2 Availability of guidance to line ministries during the policy-planning process	3	3	3	1	3/4*	
3. Alignment between central policy planning documents	0	0	0	0	0/6*	
4. Planned commitments carried forward in the legislative plan (%)	0	1	2	0	1/4*	
5. Planned sectoral strategies carried forward (%)	1	0	0	0	0/4*	
6. Presence of minimum content in sector strategies	4	3	3	4	3/6*	
7. Completeness of financial estimates in sector strategies	0	1	0	1	0/5*	
8. Alignment between planned costs in sector policy plans and medium-term budget	0	0	0	0	0/3*	
Total ⁶⁸					13/39	

*Average of the State level, FBiH and RS.

Given the complex Constitutional setup, there is no single, medium-term policy-planning system in BiH. The policy-planning systems in the State, the Entities and the BD include horizontal government planning

⁶⁸ Point conversion ranges: 0-5=0, 6-12=1, 13-19=2, 20-26=3, 27-33=4, 34-39=5.

documents and sectoral strategies that help to plan and implement policies within the authority and jurisdiction of each level of the administration. The political priorities are prescribed in the exposés of the Chairman of the CoM and the Prime Ministers (the Government Programme). The key medium-term planning documents at all levels of the administration include the Medium-Term Government Programme (in the case of the State and the FBiH), annual and medium-term institutional plans (in the case of the State, the FBiH⁶⁹, the RS and the BD⁷⁰), the GAWP, the Budget Framework Document (BFD)⁷¹, and sectoral strategies.

The medium-term policy-planning systems have been established through separate laws and regulations at all levels of the administration. With the exception of the State level, they are recent and not yet fully operational. In the FBiH⁷², the RS⁷³ and the BD⁷⁴, the legal frameworks provide clarity on the status of various planning documents and a clear hierarchy of planning documents, prescribe the steps in policy planning and establish the system of sectoral strategic planning with a mandate for a CoG body to exercise quality control over them. As for the requirement for costing in sector strategies (including identification of sources of funding), the FBiH and the BD regulatory frameworks contain such provisions, but not the RS legislation. The role of government-level policy planning by a CoG body has been assigned at all administrative levels⁷⁵. At the State level, the regulatory framework for planning has not changed since the 2017 assessment. It still does not cover sectoral strategic planning, quality control or costing.

⁶⁹ Individual plans for ministries and other government institutions exist at the levels of the BiH State and the FBiH. Medium-term institutional plans, which are linked to the Medium-Term Government Programme, are elaborated by the ministries and adopted by the respective minister.

⁷⁰ In the RS, the institutional work plans are adopted by the Government. In the BD, medium-term institutional plans are called strategic plans.

⁷¹ The Budget Framework Document (BFD) contains macroeconomic projections and forecasts of budget resources for a three-year period. The preparation of the annual budget is based on the BFD at all levels of administration.

⁷² The Law on Development Planning and Management in the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH No. 32/17 and the Decree on triennial and annual work planning, monitoring and reporting in the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH No. 74/19. However, the implementation of the new Law has been postponed to 2022 with an Amendment to the Decree, Official Gazette of the Federation of BiH No. 2/21 and the former Regulation on Work Planning and Reporting on the Work of the Government of the Federation of Bosnia and Herzegovina, Federal Ministries and Institutions, Official Gazette of the Federation of BiH No. 89/14 of 23 October 2014 remained in force for this period.

⁷³ The new Law on Strategic Planning and Development Management in the Republic of Srpska was adopted by the RS National Assembly on 22 June 2021. Also, the previous Decision on the Procedures of Planning, Monitoring and Reporting on the Implementation of the Adopted Strategies and Plans of the Government of the Republic of Srpska and Republican Administrative Bodies No. 04/1-012-2-1328/16 of 9 June 2016 elaborates the details of planning, including sectoral strategic planning.

⁷⁴ The Law about the Budget of Brčko District of Bosnia and Herzegovina No. 01-02-764 /19 of 18 December 2019; the Rulebook on the Content and Methodology of Development, System of Monitoring and Supervision of the Implementation of Strategic Documents and Implementation Documents No. 02-000228/20) of 27 October 2020.

⁷⁵ At the State level, the Decision on the Medium Term Planning, Monitoring and Reporting Process in the Institutions of Bosnia and Herzegovina, Article 3 assigns this role to the DEP for medium-term planning, Official Gazette No 62 of 11 August 2014; and the Decision on Annual Work Planning and Manner of Monitoring and Reporting on Work in the Institutions of Bosnia and Herzegovina mandates the General Secretariat of the Council of Ministers for annual work planning, Official Gazette of BiH No. 94/14. In the FBiH, this task is assigned to the Federal Institute for Development Planning by the Law on Development Planning and to the GS, as per Article 7 of the Regulation on Work Planning and Reporting on the Work of the Government of the Federation of Bosnia and Herzegovina, Federal Ministries and Institutions. In the RS, Article 5 of the Decision on the Procedures of Planning, Monitoring and Reporting on the Implementation of the Adopted Strategies and Plans of the Government of the Republic of Srpska and Republican Administrative Bodies, No. 04/1-012-2-1328/16) of 9 June 2016 and Article 6 of the new Law on Strategic Planning task the GSG with government-level planning. In the BD, Article 4 of the Organisational Plan of the Office of the Mayor of Brčko District of Bosnia and Herzegovina provides this function to the Strategic Planning Department.

As demonstrated by the respective administrations of the State level, the FBiH and the RS, guidance is provided in the form of circulars or instructions for planning and monitoring of the GAWPs and for elaborating medium-term budget documents. While similar practice has also been indicated by representatives of the BD administration, no such document was provided for assessment⁷⁶. The review of sample sector strategies of all administrative levels of BiH⁷⁷, shows that guidance related to sectoral planning is not provided systematically at any level.

Alignment between central planning documents at all levels of the administration is weak. The priorities expressed in the GAWPs and the BFDs are either not coherent or are incomparable⁷⁸. While the BFDs do not include outcome-level indicators for measuring achievement of government priorities, the GAWPs do so for only in exceptional cases⁷⁹. Comparison of the legislative initiatives planned in the analysed sample strategies for 2021 with the corresponding legislative commitments expressed in the 2021 GAWPs shows that alignment between those stand at 60% for the State level, 57% for FBiH and 40% for the BD. Alignment could not be assessed for the RS, as none of the analysed sector strategies and their action plans indicate identifiable draft laws or exact deadlines by which they should be adopted by Government.

Analysis of the 2020 and 2021 GAWPs shows unrealistic planning practices with high legislative backlogs or plans for strategy development carried forward from one year to another.

⁷⁶ Except for medium-term budget preparation, where the practice is confirmed.

⁷⁷ The following sample sector strategies were analysed:

- State: Strategy of the reception and integration of citizens of BiH returning to BiH on the basis of readmission agreement; Mid-Term Strategy for Debt Management for the period 2019-2022; Strategy of Integrated Border Control in BiH for the period 2019-2023; Strategy of the System of Internal Controls in BiH institutions 2020-2025; Strategy against human trafficking in BiH for 2020-2023.
- FBiH: ICT Strategy of Land Register and Real Estate Cadastre 2019-2029; Action Plan for SME Development in the Federation of Bosnia and Herzegovina in the Period 2019-2020; Joint Socio-Economic Reforms for the Period 2019-2022; Strategy of Co-operation with the Emigrants of the Federation of Bosnia and Herzegovina for the Period 2020-2024; Action Plan for the implementation of the Small Business Act 2020-2021.
- RS: Adult Education Strategy 2021-2031; Strategy development of statistics of Republika Srpska 2030; Action plan of the Social Housing Development Strategy of the Republic of Srpska for the period 2020-2025; Mental health development strategy in the Republic of Srpska for the period 2020-2030; Social Housing Development Strategy in the Republic of Srpska (2020 - 2030).
- BD: Strategy for Development of Internal Financial Control System in to the Public Sector of the Brčko District of BiH for the Period 2021-2025; PFM Reform strategy 2021-2025; Strategy for the Development of Cooperation with Emigrants in the Brčko District of Bosnia and Herzegovina for the Period 2020-2024.

⁷⁸ Either no such priorities are set in the GAWP or the BFD, as is the case in the RS, or they set only vague priorities (e.g. "Building state functions related to meeting the requirements for the European Partnership" in the State level BFD 2021-2023; "preservation of macroeconomic stability and strengthening of fiscal discipline" in the FBiH BFD 2021-2023; and "(...) to maintain fiscal and financial stability, preserve the continuity of social benefits, plan and launch public investments through more efficient implementation of the capital budget, and especially strengthen the institutional fight against corruption" in the 2021 GAWP of the BD).

⁷⁹ The State-level GAWP contains 506 indicators attached to activities and defines 14 priorities or their underlying, so-called medium-term goals, but these are not supplemented by indicators. The FBiH GAWP includes 230 operational objectives with mostly output-level indicators and 53 so-called strategic goals without indicators. The RS GAWP does not contain whole-of-government priorities. It covers only the institutional strategic and operational goals, with only the latter complemented by indicators, mostly at output-level and many without tangible targets. In the BD, the GAWP is also a list of institutional goals and activities with indicators set at only the output level, if at all.

Table 1. Backlog of legislative and strategy-development commitments in relevant government planning documents of the BiH administration (% of total), 2021

	State	FBiH	RS	BD
Backlog of legislative commitments	60	50	35	62.5
Backlog of strategy development commitments	43	100	61.5	100

Source: SIGMA calculations are based on the information and data provided during the assessment.

Review of the sample strategies demonstrates that some but not all of the expected minimum-quality aspects are present in them. The main shortcomings are related to the development of outcome-level indicators with clear targets attached to the objectives of the strategies, as well clear assignment of responsibilities and deadlines for activities, given that several sample strategies were not supported by detailed action plans.

Table 2. Presence of minimum content in sample sector strategies

	State	FBiH	RS	BD
Situation analysis in majority of samples	Yes	Yes	Yes	Yes
Policy objectives in majority of samples	Yes	Yes	Yes	Yes
Outcome-level indicators in majority of samples	No	No	No	No
Target values for at least 90% of indicators	No	No	No	No
Assigned activities with deadlines in majority of samples	Yes	Yes	No	Yes
Monitoring and reporting requirements in majority of samples	Yes	No	Yes	Yes

Source: SIGMA assessment is based on the information and data provided during the assessment.

While all levels of the administration formally require the provision of information on the financial implications of draft regulations, primarily through the relevant RoP of the CoM or Government, review of the last five adopted sectoral strategies at the end of 2020⁸⁰ showed that the costing of strategies had not been carried out adequately at all levels. Only two of all the strategies submitted for review⁸¹ actually contained information on potential costs. An assessment of the consistency of the strategies with the medium-term budgetary framework was also hampered by the fact that the BFD, which is the main medium-term financial-planning document, does not include financial projections for the sector, strategy or programme.

Conclusion

The legal framework for planning, including sectoral strategic planning, is mostly adequate, with the exception of the State level of BiH which does not have a regulatory framework for sectoral planning. Guidance is mostly provided for annual planning, monitoring and medium-term budgeting, but not for strategy development. Central planning documents are not aligned and demonstrate implementation backlogs. Some, but not all, of the minimum quality elements of strategies are in place, but financial planning for them exists only in exceptional cases.

⁸⁰ The BD provided only three sample strategies for assessment.

⁸¹ One sample strategy from the FBiH and one from the BD.

Principle 4: A harmonised medium-term planning system is in place for all processes relevant to European integration and is integrated into domestic policy planning.

The overall value for the indicator “Quality of policy planning for European integration” is 1.

Indicator 2.4.1. Quality of policy planning for European integration						
This indicator analyses the legislative set-up established for policy planning of the European integration (EI) process and the quality and alignment of planning documents for EI. It also assesses the outcomes of the planning process (specifically the number of planned legislative EI-related commitments carried forward from one year to the next) and the implementation rate of planned EI related commitments.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Adequacy of the legislative framework for harmonised planning of EI	0	0	1	0	0/2*	
2. Quality of planning documents for EI	0	0	5	0	2/6*	
3. EI related commitments carried forward (%)	0	0	2	0	1/4*	
4. Implementation rate of the government's plans for EI-related legislative commitments (%)	0	0	0	0	0/4*	
Total ⁸²					3/16	

*Average of the State level, FBiH and RS.

BiH has not succeeded in establishing a regulatory framework for medium-term planning and monitoring of progress on EI for the whole country. A methodology for the development of the Programme of Integration (PI) has been approved by the Collegium for European Integration, the highest political level co-ordination forum for EI in BiH. Work on the PI started in September 2020, but it had not been finalised at the time of assessment. The previous practice of developing annual action plans for realisation of priorities from the EU progress report has stopped with expiry of the last Action Plan for realisation of priorities from the Analytical report of the EU in May 2020. Given that there is no plan in place covering the assessment period, it was not possible to assess the quality of EI planning from the perspective of its alignment with the GAWP, the proportion of initiatives carried forward from one plan to another or the implementation rate of EI-related legislative commitments⁸³.

The only exception currently is the RS, where EI-related commitments are also planned separately, through the action plans for harmonising legislation of the Republic of Srpska with EU *acquis* and legal acts of the Council of Europe⁸⁴, while non-legislative activities are covered in the institutional annual and multi-annual plans.

⁸² Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

⁸³ While a Final Report on the Implementation of the Action Plan for the Implementation of Priorities from the European Commission Analytical Report exists (developed by the DEI in July 2020), this does not replace a comprehensive stocktaking of EI-related progress for the whole assessment period.

⁸⁴ The latest Action Plan for Harmonisation of Regulations and Other General Acts of the Republic of Srpska with the Regulations of the European Union for 2021 was adopted in January 2021. The process of EI planning is also established in the regulatory framework, through the Decision on the Procedure of Planning, Monitoring and Reporting

While the RS Harmonisation Action Plan is a tabular list of legislative activities with set deadlines for implementation but no indication of costs, the GAWP indicates the source of funding for activities (although cost details are not elaborated) and provides the required details in terms of implementation deadlines for all its activities, including EI-related activities.

Comparison of the RS GAWP for 2021 with the 2021 EI Action Plan shows that the legislative alignment is high (92.6%), as only 2 out of the planned 27 EI-related draft laws in the EI Action Plan were not identifiable in the GAWP. Analysis of the 2020 and 2021 RS EI-related Action Plans demonstrates that 39.3% of all commitments planned for 2020 are carried forward to the following year⁸⁵. Since no report on implementation of the 2020 RS EI Action Plan has been shared for this assessment, the implementation rate of EI-related legislative commitments cannot be established.

Conclusion

A medium-term EI planning system has not been established for the whole country. While work on a new countrywide EI planning document has started, currently no comprehensive EI plan is in place for the whole country, as the previous planning practice stopped in May 2020. EU planning remained uninterrupted only in the RS, with a high level of alignment between the annual EI plan and the GAWP, but still with almost 40% of planned EI-related activities carried forward from one year to the next.

Principle 5: Regular monitoring of the government's performance enables public scrutiny and supports the government in achieving its objectives.

The overall value for the indicator "Quality of government monitoring and reporting" is 1.

Indicator 2.5.1. Quality of government monitoring and reporting						
This indicator measures the strength of the legal framework regulating reporting requirements, the quality of government reporting documents and the level of public availability of government reports.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Adequacy of the legislative framework for monitoring and reporting	3	4	5	4	4/8*	
2. Quality of reporting documents	0	2	0	2	1/12*	
3. Public availability of government reports	1	1	1	0	1/5*	
Total ⁸⁶					6/25	

*Average of the State level, FBiH and RS.

on the Realisation of Adopted Strategies and Plans of the Government of the Republic of Srpska and Administrative Bodies of the Republic, Official Gazette of the Republic of Srpska Nos. 50/16, 108/18.

⁸⁵ Of the 117 EI-related commitments planned by the 2020 Republika Srpska European Integration Action Plan, the same 46 commitments can also be found in the 2021 EI plan.

⁸⁶ Point conversion ranges: 0-3=0, 4-7=1, 8-12=2, 13-17=3, 18-21=4, 22-25=5.

The legal obligations for monitoring the Government's performance and budget execution have been established through separate laws and regulations at each level of the administration. At the State⁸⁷, FBiH⁸⁸, RS⁸⁹ and BD⁹⁰ levels, the relevant legal frameworks define the requirements for reporting on the implementation of the GAWPs, including legislative plans and the budget, on an annual basis. According to the existing legislation, the GAWP reports and budget execution reports have to be submitted to the relevant Parliament but, otherwise, explicit publication requirements for them exist only in the FBiH and the BD. While regular reporting obligations for EU-related matters are in place only in the RS⁹¹, the requirement to regularly report on the implementation of sector strategies is established at all administrative levels except the State⁹².

No 2020 GAWP report was provided for assessment at the State level and in the RS. Analysis of the FBiH and BD 2020 GAWP reports shows that they provide information on achievement of outputs, but not on outcomes. As for reporting on EI-related plans, as no separate plan is developed for the State, the FBiH or the BD, the so-called Final Report developed by the DEI in July 2020⁹³ and the RS EI report⁹⁴,

⁸⁷ Decision on Annual Planning, Monitoring and Reporting on the Work in the Institutions of BiH, adopted by the CoM in November 2014, Articles 9-11, Official Gazette of BiH No. 94/14; Law on Financing of Institutions of BiH, adopted on 2 December 2014, Article 22, Official Gazette of BiH No. 61/04.

⁸⁸ The FBiH Government Regulation on Planning and Monitoring of Government Work, adopted by the Government of the FBiH in October 2014, Article 20, Official Gazette of the Federation of BiH No. 89/14; Law on the Budget of the FBiH, adopted on 16 December 2013, Article 96, Official Gazette of BiH No. 102/13.

⁸⁹ The RS Government Decision on the Procedure of Planning, Monitoring, and Reporting on the Realisation of Strategies and Plans of the Government and Administrative Bodies of the RS Government, adopted on 9 June 2016, Section 2, Official Gazette of the RS No. 50/16; Law on the Budget of the RS, December 2012, Article 46, Official Gazette of the RS No. 121/12. Also the New Law on Strategic Planning and Development Management in Republic of Srpska adopted by the RS National Assembly on 22 June 2021, Article 23.

⁹⁰ The Law About the Budget of Brčko District of Bosnia and Herzegovina No. 01-02-764/19 of 18 December 2019, Article 101; RoP of the BD Government, April 2013, Article 29; Rulebook on the Content and Methodology of Development, System of Monitoring and Supervision of the Implementation of Strategic Documents and Implementation Documents No. 02-000228/20 of 27 October 2020, Annex VI.

⁹¹ Decision on the Procedures of Planning, Monitoring and Reporting on the Implementation of the Adopted Strategies and Plans of the Government of the Republic of Srpska and Republican Administrative Bodies No. 04/1-012-2-1328/16 of 9 June 2016, Article XXI; RS Methodology of Reporting to the Institutions of the EU in the EI Process, No. 17-03-020-131/16 of 18 January 2016.

⁹² Implementation of sector strategies:

- FBiH: Law on Development Planning and Management in the Federation of Bosnia and Herzegovina, Article 7, point g and Article 9, point f, Official Gazette of the Federation of BiH, No. 32/17; Decree on triennial and annual work planning, monitoring and reporting in the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH No. 74/19), Article 16. However, the application of these provisions has been postponed to start in 2022 only.
- RS: Decision on the Procedures of Planning, Monitoring and Reporting on the Implementation of the Adopted Strategies and Plans of the Government of the Republic of Srpska and Republican Administrative Bodies No. 04/1-012-2-1328 /16 of 9 June 2016, Article XXIII and Law on Strategic Planning and Development Management in Republic of Srpska, Article 27.
- BD: Law about the Budget of Brčko District of Bosnia and Herzegovina No. 01-02-764/19 of 18 December 2019, Article 35; Rulebook on the Content and Methodology of Development, System of Monitoring and Supervision of the Implementation of Strategic Documents and Implementation Documents No. 02-000228/20 of 27 October 2020, Annex XIII.

⁹³ Final Report on the Implementation of the Action Plan for the Implementation of Priorities from the European Commission Analytical Report, July 2020.

⁹⁴ Information on Obligations for Bosnia and Herzegovina and the Republic of Srpska Arising from the Process of Accession to the European Union with a Review of Measures and Activities Implemented During 2020, February 2021.

elaborated by the MEI have been analysed. Both reports are very comprehensive, but reporting is based on implemented activities, with no clarity on achieved outputs.

Only the RS provided sample reports on implementation of sector strategies for assessment purposes. Of the provided sample reports⁹⁵, only one contained information on achievement of outputs and none contained information on achievement of outcomes.

Public availability of various reports is very limited, as only the annual budget report is made public and even that is not the case for the BD. Reports on the implementation of the GAWP for 2020 (including legislative activities) are not publicly available at any level, but the 2019 reports were published in the State and the FBiH. Historically, the joint EI implementation reports developed by the DEI were not available publicly, but the Final Report on the Implementation of the Action Plan for the Implementation of Priorities from the European Commission Analytical Report is accessible to the public on line. The RS EI report or the provided sample strategy reports are not publicly available on line.

Conclusion

The legal framework for monitoring and reporting across all levels does not fully establish the requirements and standards for reporting on key government planning documents, including the EI and sectoral strategies. Furthermore, no formal requirement has been established to publish reports on key government planning documents at all levels (except for reports on budget execution). Proactive publication on line is rudimentary, as is the elaboration of reports on the implementation of strategies. The quality of reports is mostly poor, as they do not contain information on progress towards outcomes and objectives.

⁹⁵ The following reports were provided by the RS administration: Report on the implementation of the Strategy of Scientific and Technological Development; Report on the implementation of the Education Development Strategy for the period 2016-2021; Report on the implementation of the Culture Development Strategy 2017-2022; Report on the implementation of the Energy Development Strategy until 2035; Report on the implementation of the Strategy for the Development of Small and Medium Enterprises 2016-2020.

Principle 6: Government decisions are prepared in a transparent manner and based on the administration's professional judgement; legal conformity of the decisions is ensured.

The overall the value for the indicator "Quality of government monitoring and reporting" is 2.

Indicator 2.6.1. Transparency and legal compliance of government decision making

This indicator measures the legal framework established for ensuring legally compliant decision making, the consistency of the government in implementation of the established legal framework, the transparency of government decision making, and businesses' perception of the clarity and stability of government policy making.

Overall 2021 indicator value012345

State levelFBiHRSBDBosnia and Herzegovina

Sub-indicatorsPoints

1. Adequacy of the legislative framework for government session procedures	3	3	3	3	3/5*
2. Consistency of the CoG in setting and enforcing the procedures	2	3	1	3	2/4*
3. Timeliness of ministries' submission of regular agenda items to the government session (%)	0	0	3	0	1/3*
4. Openness of the government decision making process	4	3	3	3	3/4*
5. Perceived clarity and stability of government policy making by businesses (%)	0				0/4**
Total ⁹⁶					9/20

*Average of the State level, FBiH and RS. ** Country-wide data.

No single countrywide CoG exists in BiH, and decision-making powers are delegated to the CoM of BiH and the governments of the FBiH, the RS and the BD. At all levels of the administration, regulation establishes and defines the legislative and decision-making processes, including consultations⁹⁷. The

⁹⁶ Point conversion ranges: 0-1=0, 2-5=1, 6-9=2, 10-13=3, 14-17=4, 18-20=5.

⁹⁷ Sample draft laws:

- State: Rules of Procedure of the Council of Ministers of BiH, Official Gazette of BiH. CoM No. 107/03 of 3 July 2003; Uniform Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina, Official Gazette of BiH Nos. 11/05, 58/14, 60/14, 50/17 i 70/17 – Corrigendum; Rules for consultation in legal drafting, Official Gazette of BiH No. 05/17 of 20 December 2016.
- FBiH: Law on the Government of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH, Nos. 1/94, 8/95, 58/02, 19/03, 2/06 and 8/06; Rules of Procedure on the Work of the Government of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH No. 6/10 of 2 February 2010; Regulation of the Rules for the Participation of the Interested Public in the Preparation Procedure of Federal Legal Regulations and Other Acts Official Gazette of the Federation of BiH No. 51/12.
- RS: Rules of Procedure of the Government No. 04/1-012-2-3414/18 of 27 December 2018; Guidelines for Action of Republican Administrative Bodies in the Public and Consultations in Law Making, Official Gazette of the Republic of Srpska No. 123/08 of 11 December 2008; Decision on the implementation of the regulatory impact assessment process in legislative drafting, Official Gazette of the Republic of Srpska No. 21/19 of 27 February

legal framework at all levels clearly establishes the requirements and functions in relation to preparation and organisation of government sessions. It ensures review and checks of items submitted to the Government and the legal scrutiny of proposals, but it does not provide a mandate to a CoG body to ensure policy coherence and alignment among government priorities or authorisation to return proposals if they require substantive adjustments or are inconsistent with government priorities.

A review of samples of draft laws⁹⁸ at all levels of the administration showed that government institutions had performed formal legal and financial scrutiny to varying degrees. For example, at the State level, the dossier of one of the provided sample laws was incomplete, while in the RS, one of the sample law dossiers was incomplete, with no opinion from the MoF.

While deadlines are established at all levels for submission of documents before deliberation at the sessions of the Government, it was not possible to assess the timeliness of the submission of ministries' opinions to the Government sessions, as the required information was not provided, except for the RS, where this data is available. Analysis of the data provided shows that, in the RS, during the last quarter of 2020, 655 of the 670 submitted items arrived on time (98%). This is similar to the rate in 2019, when 659 items out of 672 arrived in a timely manner, allowing sufficient time for final checks and preparation.

All levels of the administration communicate government decisions after the sessions, through either press conferences or publication on government websites⁹⁹. The minutes of government sessions are distributed to all participants, and they are formally approved in the next government session. The agendas of government sessions are made available publicly by the relevant bodies at all levels. In the RS, the agenda is actually published before the start of the government session, albeit only a few hours before the meeting¹⁰⁰. However, public availability of details of all government decisions is ensured only at the State level, where a summary of every decision of the Government is provided along with the indication of the next steps based on the decisions of the CoM. Government decisions are also published in the Official Gazettes. However, the Official Gazettes do not provide access to all types of decisions (for example, decisions that are not normative by nature and/or relative to a specific policy or programme).

2019; Law on Publication of Laws and Other Regulations Republika Srpska, Official Gazette of the Republic Srpska Nos. 67/05 and 110/08.

- BD: Rules of Procedure of Government of the Brčko District of Bosnia and Herzegovina, April 2013, Official Gazette of the BD No. 9/13.; Decision on the procedure and methodology of impact assessment during the drafting of regulations, Official Gazette of the Brčko District of BiH No.13/18; Decision on Consultation in Drawing Up Regulations and Other Acts No. 02-000338/14 of 3 March 2017.

⁹⁸ The following draft laws were submitted:

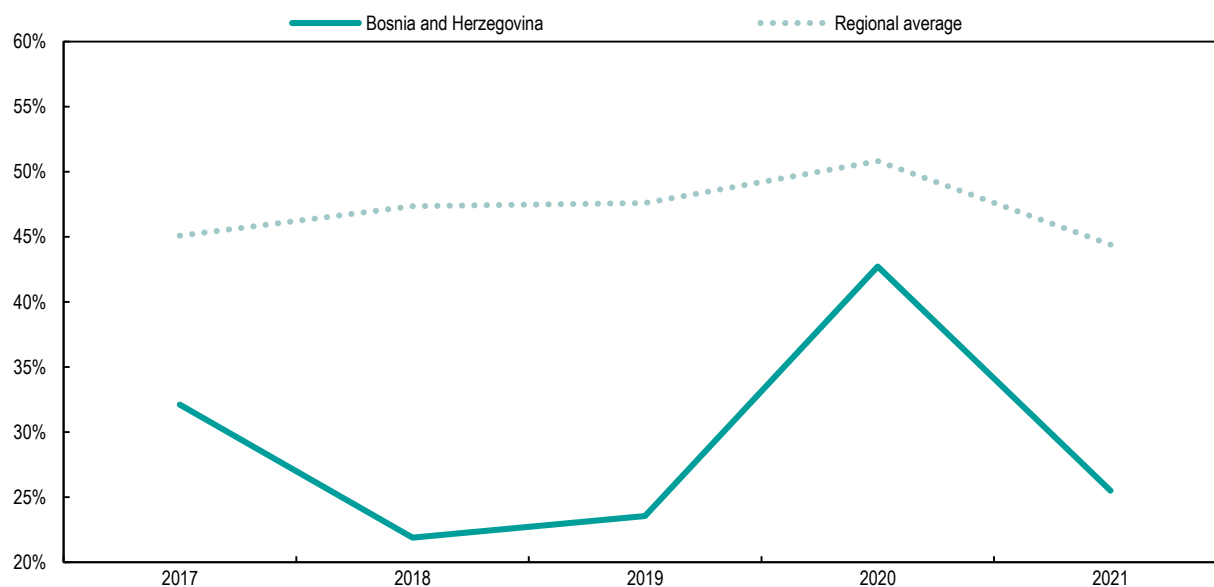
- State level: Draft Law on Amendments to the Law and Court Fees in Proceedings before the Court of Bosnia and Herzegovina; Draft Law on Amendments to the Law on Misdemeanours; Proposal of the Law on Amendments to the Law state aid system in BiH; Proposal of Law on Amendments to the Law on Salaries and Other Remunerations in Judicial and Prosecutorial Institutions of Bosnia and Herzegovina; Proposal of Law on Interim Measures in the Work of Judicial and Other Bodies of BiH during a State of Natural or Other Disaster.
- FBiH: Law on Amendments to the Law on Protection Against Domestic Violence; Proposed Law on Amendments to the Law on Companies; Draft Law on FBiH Entrepreneurial Infrastructure: Law on Implementation of Court Decisions; Bankruptcy Law.
- RS: Law on Anti-hail Protection; Law on Free Zones; Law on Amendments to the Law on Gas: Law on Amendments to the Law on Criminal Procedure of the RS: Law on the Amendments of the Criminal Code of the RS. BD: Law on Protection of the Rights of Members of National Minorities in the Brčko District of BiH; Law on Associations and Foundations of the Brčko District of BiH; Law on Amendments to the Law on Inspections; Law on Protection of the Population from Infectious Diseases of the Brčko District of Bosnia and Herzegovina; Law on Public Events.

⁹⁹ The relevant government websites have been checked.

¹⁰⁰ This information is based on the findings of the assessment interviews with government institutions at all levels, as well as review of government websites before sessions.

Overall, the level of perceived clarity and stability of government decisions in BiH is low. According to the 2021 Balkan Barometer survey, only 25.5% of BiH businesses considered that the laws and regulations affecting them had been clearly written, were not contradictory and did not change frequently.

Figure 1. Perceived clarity and stability of government policy making by businesses, 2017-2021



Notes: Responses refer to the percentage of respondents who replied "strongly agree" or "tend to agree" to the following question: "Laws and regulations affecting my company are clearly written, not contradictory and do not change too frequently."

Source: Regional Cooperation Council, Balkan Barometer Business Opinion database (<https://www.rcc.int/balkanbarometer>).

Conclusion

The legal framework and responsibilities for preparing government sessions and ensuring legal and financial scrutiny are established within the relevant regulatory frameworks at all levels of the administration. However, in practice, legal and financial scrutiny of policy proposals at the final stage of the decision-making process is not carried out fully and consistently. No CoG body in BiH reviews proposals to check their coherence and consistency with government priorities and previously announced policies. Furthermore, no CoG institution has been authorised to send back draft proposals if the content or the package is inadequate. The agendas of meetings of the CoM and the governments of the FBiH, RS and BD are made available publicly.

Principle 7: The parliament scrutinises government policy making.

The overall value for the indicator “Parliamentary scrutiny of government policy making” is 3.

Indicator 2.7.1. Parliamentary scrutiny of government policy making						
This indicator measures the extent to which the parliament is able to scrutinise government policy making. The legal framework is assessed first, followed by an analysis of the functioning of important parliamentary practices and outcomes.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators		Points				
1. Strength of regulatory and procedural framework for parliamentary scrutiny of government policy making	5	5	5	5	5	5/5*
2. Completeness of supporting documentation for draft laws submitted to the parliament	3	3	3	3	3	3/3*
3. Co-ordination of governmental and parliamentary decision making processes	0	1	1	1	1	1/2*
4. Systematic review of parliamentary bills by government	0	0	1	1	1	0/1*
5. Alignment between draft laws planned and submitted by the government (%)	0	1	1	1	1	1/2*
6. Timeliness of parliamentary processing of draft laws from the government (%)	0	2	2	2	0	1/2*
7. Use of extraordinary proceedings for the adoption of government sponsored draft laws (%)	0	0	0	2	2	0/5*
8. Government participation in parliamentary discussions of draft laws	2	2	2	2	2	2/2*
9. Basic parliamentary scrutiny of the implementation of policies	2	0	2	0	0	1/2*
Total ¹⁰¹						14/24

*Average of the State level, FBiH and RS.

There is no single legislative body in BiH with countrywide rights and responsibilities. The relations between the executive and legislative branches (the House of Representatives and the House of Peoples at the State level; the Parliament of the FBiH and the House of Peoples of FBiH; the National Assembly of Republika Srpska; the Brčko District Assembly - jointly referred to as “the Parliaments” for the sake of

¹⁰¹ Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-16=3, 17-20=4, 21-24=5.

report) are regulated through the respective RoPs of the CoM of BiH and the Governments, the Laws on Government and the RoPs of the Parliaments¹⁰².

Overall, the regulatory framework for conducting parliamentary scrutiny of government policy making is in place at all levels of the administration. The RoPs of the parliaments¹⁰³ enable the exercise of the oversight functions of the executive branch, mostly through parliamentary questions (oral or written) and through regular government activity reports as/when requested by the parliaments.

At all levels of the administration, draft laws submitted to the parliament must be accompanied by explanatory memoranda¹⁰⁴. The submitted package should provide information concerning the constitutional basis and rationale for the initiation of the draft law, the principles of the preparation of the draft law, as well as information on estimated costs and financial resource requirements. A review of a sample of five draft laws¹⁰⁵ submitted by the administrations to their respective parliaments showed that the above formal requirements have been fully respected at all levels.

Overall, the rules and requirements for preparing new legislation are largely the same for all of the parliaments and governments¹⁰⁶.

¹⁰² Rules of Procedures of the BiH Parliament House of Peoples, Official Gazette of BiH Nos. 58/14, 88/15, 96/15 and 53/16; Rules of Procedures of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, Official Gazette of BiH Nos. 79/14, 81/15, 97/15, 78/19 and 26/20; Rules of Procedure of the House of Representatives, Official Gazette of the Federation of BiH No. 69/07) and the Rules of Procedure of the House of Peoples, Official Gazette of the Federation of BiH No. 27/03; Rules of Procedure of the National Assembly of the Republic of Srpska No. 02/1-021-643/20 of 2 July 2020; Rules of Procedure of the Assembly of the Brčko District of Bosnia and Herzegovina No. 01.3.-05-1630/18 of 12 December 2018.

¹⁰³ The RoP of the House of Representatives of BiH, Articles 140 and 159; the RoP of the House of Representatives of the FBiH, Articles 116 and 117; the RoP of the National Assembly of the RS, Articles 243-247 and 261-276; the RoP of the Assembly of BD, Articles 106 and 138-140.

¹⁰⁴ *Ibid.*

¹⁰⁵ The following draft laws were submitted:

- State level: Proposal of Law on Amendments to the Law on Salaries and Other Remunerations in Judicial and Prosecutorial Institutions at the level of BiH; Proposal of the Law on Amendments to the Law on Misdemeanours; Proposal of Law on Interim Measures in the Work of Judicial and Other Bodies of BiH during a State of Natural or other Disasters on the territory of BiH; Proposal of Law on Amendments to the Law on Court Fees in Proceedings before the Court of BiH; Proposal of Law on Amendments to the Law on State Aid System in BiH
- FBiH: FBiH Law on Advocacy (law on legal profession); Draft Law on Amendments to the Law on Road Transport; Law on Amendments to the Law on Principles of Local Self-Government; Draft Law on Entrepreneurial Infrastructure in the FBiH; Draft Law on Experts in the FBiH.
- RS: Draft Law on the Acquisition of the Status of an Artist and an Expert in Culture; Draft Law on Free Zones of RS; Draft Law on the City of Derventa; Draft Law on Amendments to the Law on Territorial Organization of the RS; Draft law on hail protection.
- BD: Law on Associations and Foundations; Law on the Protection of the Rights of Persons Belonging to National Minorities; Law on Public Events; Law on Amendments to the Law on Road Transport; Law on Amendments to the Law on Inspections.

¹⁰⁶ The drafting rules and guidelines followed by the parliaments and the governments of BiH are largely the same. At the State level, the requirements for law drafting are established in the RoP of the CoM (Article 66), the Unified Rules for Legislative Drafting in the Institutions of BiH (Article 60), the RoP of the House of Representatives (Article 95), and the RoP of the House of Peoples (Article 105). In the FBiH, the requirements are set out in the RoP of the Government (Article 26), the RoP of the House of Representatives (Article 164) and the RoP of the House of Peoples (Article 156). Also, the Rules and Procedures for Draft Laws and Other Regulations of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH No. 71/14, adopted by both Houses of the Assembly are applicable to both the Government and the Houses of the Assembly. In the RS, the requirements set out in the RoP of the Assembly (Article 188) are identical to those in the Rules for drafting laws and other regulations of the RS, No. 01-330 / 14 of 5 March 2014 (Article 41). Similarly, the Decision on the Procedure for Making Regulations in

The governments at all levels participate in the discussion of new draft laws initiated within the parliaments. These discussions are stipulated by the relevant legislation¹⁰⁷.

The work programmes of the parliaments are planned on the basis of the legislative commitments set out in the respective GAWPs. Planning on this basis is a standard requirement and practice at all levels of the administration, except for the State¹⁰⁸. However, the co-ordination of work between the respective services of the parliaments and the CoM and the governments of the Entities and the BD takes place on an *ad hoc* and informal basis, with no regular formal meetings held between the relevant administrative bodies of the parliaments and the executive branches to co-ordinate, plan and prepare for the legislative work.

Review of a sample of the three most recent laws initiated by MPs in 2020 showed that the Governments of the RS and the BD provided their opinions regarding all three laws, while the FBiH Government provided its opinion for only one of the three sample proposals. No sample was provided for assessment at the State level¹⁰⁹.

Analysis of available data on the alignment of laws planned and submitted to the parliaments by the CoM and the governments of the Entities and the BD show that around 70% of laws submitted by the governments arose from planned commitments from their respective GAWPs¹¹⁰. The only exception is the State level, where none of the four laws submitted by the CoM in 2020 were originally planned. Also, while the FBiH and RS parliaments have the practice of considering all draft laws in a timely manner without

Accordance with the Rules of Procedure on the Work of the Assembly of the Brčko District of BiH No. 01-02-589/12) of 10 July 2012 (Article 3) prescribes the use of the Uniform Rules for Drafting Laws and Other Regulations of the Brčko District of BiH No. 01-02-512 / 12 of 18 January 2012.

¹⁰⁷ The RoP of the House of Representatives of BiH, Article 97; the RoP of the House of Representatives of the FBiH, Articles 160 and 165; the RoP of the National Assembly of the RS, Article 189; the RoP of the Government of BD, Article 37 and the RoP of the BD Assembly, Article 34.

¹⁰⁸ While Article 65 of the RoP of the House of Representatives of BiH and Article 55 of the RoP of the House of Peoples of BiH prescribe this requirement, SIGMA was not able to verify through evidence that this provision was adhered to in 2020 or 2021.

¹⁰⁹ The following sample laws initiated by MPs were provided:

- FBiH: Proposal of Law on Amendments to the Law on Tax Administration of the Federation of Bosnia and Herzegovina No. 02-02-633/20 of 13 March 2020; Proposal of Law on Amendments to the Law on Conflict of Interest in Government Bodies in FBiH No. 02-02- 2052/20 of 9 December 2020; Proposal of Law on Amendments to the Law on Protection of the Population from Infectious Diseases No. 02-02-2080/20 of 15 December 2020.
- RS: Draft Law on Amendment of the Law on Labour Relations in State Authorities (Nedeljko Čubriločić); Draft Law on Amendments to the Law on the Status of Local Government Units (Nedeljko Čubriločić); Draft law on amendments to the Law on Contributions (Jelena Trivic).
- BD: Draft Law on Amendments to the Law on Incentives in the Economy of the Brčko District of BiH, case number 02-000185/20; Law on Amendments to the Law on Holidays of the Brčko District of BiH, case number 02-000149/20; Draft Law on Amendments to the Law on Health Care in the Brčko District of BiH, case number 02-000012/20.

¹¹⁰ In the FBiH, 9 out of the 35 submitted proposals in 2020 did not originate from the GAWP (74.3%). In the RS, 13 out of 55 submissions were not planned ahead (72%). In the BD 6 out of the 20 submitted drafts in 2020 were not identifiable in the corresponding GAWP (70%).

significant delay¹¹¹, this was not the case for the State¹¹². This aspect could not be assessed for the BD due to lack of information¹¹³.

The share of government-sponsored laws adopted in 2020 through the urgent procedure was very high at the State level (100%, as all three laws sponsored by the CoM were adopted in 2020 through extraordinary procedures) and in the FBiH (83.3%, with five out of six government-sponsored laws adopted urgently), high in the RS (30.9%, with 17 out of 55 adopted government-led laws adopted in urgent procedure) and moderately high in the BD (10%, with two out of the 20 laws submitted by the Government processed in extraordinary manner).

At all levels, the RoPs of the parliaments¹¹⁴ require that the governments designate government members to present the government-sponsored draft laws at plenary sessions of the parliaments and during committee meetings. Overall, representatives of the executive branch participate in the discussions of draft laws in the parliaments¹¹⁵.

In 2020, at the State and RS levels, reports on the implementation of several laws were discussed by the relevant parliaments¹¹⁶, but it was not possible to assess this practice in the FBiH and the BD because their administrations did not provide any information on parliamentary discussions on law implementation.

Conclusion

The regulatory framework and the required procedures for scrutiny of the CoM of BiH and governments of both entities and the Brčko District by the parliaments have been adequately defined and established at all levels of the BiH administration. The executive branches mostly adhere to the requirements when submitting their proposals or participate in the work of parliaments. Regular co-ordination between the administrations of the executive level and of the parliaments is ad hoc and mostly informal. The extensive use of the urgent procedure for the approval of laws and the limited discussion on the implementation of laws and policies is a major issue in most levels of the administration.

¹¹¹ In the FBiH, out of 20 proposals submitted to the Assembly by the Government in 2019, only 2 were not processed fully within a year from their date of submission (90% timeliness). In the RS, all 69 drafts proposed in 2019 were processed within a year of their submission (100% timeliness).

¹¹² Of the five laws submitted to the Parliament by the CoM of BiH in 2019, only one was fully processed within a year of their submission.

¹¹³ The required information on laws submitted to the Assembly by the Government in 2019 was not available.

¹¹⁴ The RoP of the House of Representatives of BiH, Article 108; the RoP of the House of Representatives of the FBiH, Article 51; the RoP of the National Assembly of the RS, Article 284; the RoP of the Government of the BD of BiH, Article 34; and the RoP of the Assembly of the BD of BiH, Article 87.

¹¹⁵ The respective parliaments do not have detailed statistics on the participation of government representatives in committee meetings or plenary sessions. However, this practice was confirmed during the assessment interviews with representatives of the parliaments and CoG institutions.

¹¹⁶ Based on review of the website of the BiH Assembly, it has been demonstrated that reports on policy implementation have been adopted (e.g. Report on the implementation of the Strategic Plan for Rural Development of Bosnia and Herzegovina [2018-2021] and the Report on personal data protection in Bosnia and Herzegovina for 2019). As for the RS, the following sample reports demonstrate the practice: Report of the Fiscal Council of the Republika Srpska on the implementation of the Law on Fiscal Responsibility in the Republika Srpska for 2019; Information on the implementation of the Strategy for the Suppression of Domestic Violence of the Republika Srpska; Conclusion on the adoption of the Report on the implementation of the strategy of scientific and technological development of the Republic of Srpska 2017-2021; Knowledge for development for the period 1 October 2017 to 30 June 2019, October 2019; Conclusion on the adoption of the Information on the implementation of the Traffic Safety Strategy on the roads of the Republic of Srpska 2013-2022 in 2018, April 2019; the Conclusion on the adoption of the Information on the implementation of the Strategy for the Suppression of Domestic Violence of the Republika Srpska (2014-2019) for 2018, October 2019.

Principle 8: The organisational structure, procedures and staff allocation of the ministries ensure that developed policies and legislation are implementable and meet government objectives.

The overall value for the indicator “Adequacy of organisation and procedures for supporting the development of implementable policies” is 2.

Indicator 2.8.1. Adequacy of organisation and procedures for supporting the development of implementable policies						
This indicator measures the adequacy of the regulatory framework to promote effective policy making, and whether staffing levels and the basic policy-making process work adequately at the level of ministries.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Adequacy of the regulatory framework for effective policy making	2	1	3	3	2/4*	
2. Staffing of policy development departments (%)	0	0	2	0	1/2*	
3. Adequacy of policy-making processes at ministry level in practice	0	0	0	2	0/6*	
Total ¹¹⁷					3/12	

*Average of the State level, FBiH and RS.

Due to the specificities of the constitutional set-up, the responsibility for policy development in the different BiH jurisdictions and sectors of the economy is designated to various ministries at the different levels, the State, the two Entities and the BD.

The Law on Ministries at the State level establishes the core functions, roles and responsibilities of all ministries. The responsibilities and functions of ministries of the FBiH¹¹⁸ and RS¹¹⁹ are also defined by law.

On the State Level, the Ministry of Justice, in addition to its core responsibilities, has also been designated by legislation as responsible for carrying out other tasks, such as those that “are not within the competence of other ministries”¹²⁰, while the Ministry of Foreign Trade and Economic Relations (MoFTER) and the Ministry of Civil Affairs have been given responsibility for carrying out certain tasks that “relate to defining basic principles, co-ordinating activities and harmonising plans of the Entity authorities and defining a strategy at the international level” in specified fields¹²¹. The existing regulatory framework does not provide further details on how the two ministries should exercise these specific functions in terms of policy development.

¹¹⁷ Point conversion ranges: 0=0, 1-2=1, 3-5=2, 6-8=3, 9-10=4, 11-12=5.

¹¹⁸ Law on Federation Ministries and other Bodies of the Federation Administration, of 21 October 2002, Official Gazette of BiH No. 58/02.

¹¹⁹ Law on the Republic Administration December 2008, Articles 16-31, Official Gazette of the RS No. 118/08.

¹²⁰ Law on Ministries and other Bodies of Administration of BiH, Article 13.

¹²¹ Law on Ministries and other Bodies of Administration of BiH, Articles 9 and 15.

The internal organisation of the State-level, FBiH and RS ministries described in their rulebooks consists of sectors and sub-divisions, each of which is responsible for a specific field¹²². Policy departments lead the policy development process, and departments of legal affairs support the process of drafting regulations. However, a review of a sample of ministerial rulebooks showed that not all tasks and responsibilities have been defined at the FBiH, particularly those related to managing the EI process¹²³.

The structure and organisation of internal departments and units in the BD have been established through the organisational plan of the BD. The inspection organisation is an integral part of the BD administration¹²⁴.

The fact that ministries do not delegate ultimate responsibility to subordinate bodies could only be confirmed for the RS. In the BD, the policy-development function is placed within policy departments.

At the State, FBiH and RS levels, the responsible policy sector/unit in ministries leads the overall policy-development process, while the departments responsible for legal affairs support the process by preparing draft legal texts of regulations. Ministers in the State¹²⁵, the FBiH¹²⁶ and the RS¹²⁷ are responsible for the policy-development process. They also have ultimate responsibility for submitting policy proposals to the relevant government bodies for final approval. However, since no complete samples were submitted by the State level, the FBiH and the RS, the practice of policy development within ministries could not be assessed.

Ministries in the FBiH have additional internal structures, the Collegiums, which are intended to play a central role in policy planning and policy development. However, these structures do not function properly across all ministries¹²⁸.

Ministries at the State level, in the FBiH and the RS do not have established internal rules and procedures for developing policies and drafting legislation. For example, the relevant minister determines the initiation of a public consultation or an interministerial consultation on a case-by-case basis, depending on the advice of the division/department or working group responsible for the development of the policy proposal concerned. Consultation and involvement of all relevant departments within a ministry during policy development are not ensured at any level¹²⁹.

The proportion of staff working on policy development within ministries has been assessed as adequately ensured at the RS¹³⁰ (more than 30% of the total number of staff). This proportion suggests that the RS ministries are oriented in general towards policy development. Information on the number of staff working

¹²² The rulebook of the MoFTER was provided to SIGMA during the assessment.

¹²³ This information is based on an analysis of the rulebooks for the Federal Ministry of Environment, the Federal Ministry of Development, Entrepreneurship and Crafts and Tourism and the Federal Ministry of Agriculture, Water Management and Forestry. For the RS, rulebooks were provided for the Ministry of Agriculture, Forestry and Water Management, the Ministry of Economy and Entrepreneurship, the Ministry of Health and Social Welfare and the Ministry of Spatial Planning, Construction and Ecology.

¹²⁴ Organisational Plan of the Mayor's Office of the BD.

¹²⁵ Law on Ministries and other Bodies of Administration of BiH, Article 20.

¹²⁶ The RoP of the FBiH Government, Article 12.

¹²⁷ The RoP of the RS Government, Article 6.

¹²⁸ This finding is based on the fact that no evidence regarding the functioning of these Collegiums was provided. The 2017 assessment shows that these Collegiums did not function. Since the FBiH administration did not arrange interviews with representatives from line ministries, the issue could not be further analysed.

¹²⁹ This finding is based on the fact that no evidence regarding internal decision-making for policy development and law-making was provided. It was also confirmed during interviews with representatives from line ministries from State Level and RS.

¹³⁰ The percentages of staff working in policy development per ministry in the RS are as follows: Ministry of Special Planning, Construction and Ecology – 52%; Ministry of Agriculture, Forestry and Water Management – 57%; Ministry of Industry, Energy and Mining – 86%; and Ministry of Health and Social Welfare – 62%.

in the State-level and FBiH ministries was not provided to SIGMA, so it was not possible to assess the adequacy of staff resources working on policy development. Incomplete information was provided on the number of staff working in policy departments at the BD level.

Conclusion

The regulatory and procedural framework required for effective policy making within ministries has substantial shortcomings at all levels. Ministries at all levels operate without clear internal rules for policy development. The appropriate ratio of staff in policy-development departments could only be verified for the RS, since the State level, FBiH and BD did not provide the relevant information.

Principle 9: The European integration procedures and institutional set up form an integral part of the policy-development process and ensure systematic and timely transposition of the European Union *acquis*.

The overall value for the indicator “Government capability for aligning national legislation with the European Union *acquis*” is 3.

Indicator 2.9.1. Government capability for aligning national legislation with the European Union *acquis*

This indicator measures the adequacy of the legal framework for the *acquis* alignment process, the government's consistency in using tables of concordance in the *acquis* alignment process and the availability of the *acquis* in the national language. It also assesses the results of the *acquis* alignment process, focusing on the planned *acquis* alignment commitments carried forward from one year to the next and how the government is able to achieve its *acquis* alignment objectives.

Overall 2021 indicator value012345

State levelFBiHRSBDBosnia and Herzegovina

Sub-indicatorsPoints

1. Adequacy of the regulatory framework for the <i>acquis</i> alignment process	5	4	5	5	5/5*
2. Use of tables of concordance in the <i>acquis</i> alignment process (%)	1	0	2	1	1/2*
3. Translation of the <i>acquis</i> into the national language	2	2	2	2	2/2*
4. <i>Acquis</i> alignment commitments carried forward (%)	0	0	2	0	1/4*
5. Implementation rate of legislative commitments for <i>acquis</i> alignment (%)	0	0	0	0	0/4*
Total ¹³¹					9/17

*Average of the State level, FBiH and RS.

The SAA between the EU and BiH has been in force since 2015¹³². Given the obligation to ensure that future legislation is compatible with the *acquis* and to better co-ordinate EI processes between the different

¹³¹ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-17=5.

¹³² The SAA was signed in 2008 and entered into force on 1 June 2015, Official Gazette of BiH No. 23/11.

levels of the administration, in January 2016, the CoM created a new co-ordination structure, the EI Co-ordination System¹³³, which is assessed as not functioning as fully as expected¹³⁴.

At the State level, the DEI is responsible for co-ordinating the required EI activities, including the process of harmonisation with EU legislation¹³⁵. All legislative proposals dealing with legal harmonisation must bear the letters “EI” on the first page. EI-related proposals are submitted to the DEI for its opinion prior to submission to the CoM for final approval¹³⁶. The DEI also has responsibility for overall EI co-ordination across all levels of the administration.

At the FBiH level, the Office for EI is responsible for the overall co-ordination of the EI process¹³⁷, while the OLFBiH is responsible for ensuring the conformity of national legislation with the *acquis* and the quality of the Tables of Concordance¹³⁸. However, the RoP do not stipulate that the Office for EI needs to be involved in the interministerial consultation process. It is thus not able to effectively monitor EI-related work of the FBiH administration.

In the RS, the Ministry of European Integration and International Co-operation is responsible for the overall co-ordination of the EI process, including the legal harmonisation with the *acquis* and the assessment of the Tables of Concordance¹³⁹. The Legislative Secretariat is responsible for ensuring conformity with national legislation¹⁴⁰. In the BD, the EI Office co-ordinates the EI process¹⁴¹. The Legislative Office is tasked with reviewing all new policy proposals and issuing opinions on their conformity with the *acquis*¹⁴².

Since EU legislation is available in Croatian, one of the official languages of BiH¹⁴³, government institutions across all levels of the administration have access not only to the English versions but also to the official Croatian versions of the EU Directives and regulations for transposition¹⁴⁴.

Tables of Concordance are required by regulations at the State¹⁴⁵, FBiH¹⁴⁶, RS¹⁴⁷ and BD¹⁴⁸ levels. Such tables are consistently produced for all EI transposition commitments at the RS level and in most cases at the State level and the BD. However, at the FBiH level, no transposition case was submitted for

¹³³ Decision on the Co-ordination System of the EI process in BiH, adopted by the CoM on 23 August 2016, Official Gazette of BiH No. 72/16.

¹³⁴ The functioning of this system is discussed under Principle 2.

¹³⁵ The Law on the CoM of BiH, Article 23.

¹³⁶ The RoP of the CoM, Article 31.

¹³⁷ The Rulebook on the Internal Organisation of the Office of the Government of the FBiH for EI, March 2016, Article 3, Official Gazette of BiH No. 48/16; Decree on the Office of the Government of the Federation of Bosnia and Herzegovina for Legislation and Compliance with European Union Regulations.

¹³⁸ The RoP of the FBiH Government, Article 27.

¹³⁹ The RoP of the RS Government, Article 17.

¹⁴⁰ *Idem*.

¹⁴¹ Law on Public Administration of the BD, Article 30a.

¹⁴² Uniform Rules for the law-making process of the BD, Article 82.

¹⁴³ The State level Law on Administration and the RoP recognise Croatian as an official language. The Constitutions of the RS and the FBiH recognise it also, as does the Statute of the BD.

¹⁴⁴ The assessment did not verify whether Bosnian and Serbian versions of the *acquis* would be available in time for the transposition process.

¹⁴⁵ DEI Decision on alignment procedures of Bosnia and Herzegovina legislation with EU *acquis*, Article 4.

¹⁴⁶ Decree on the process of the alignment of the FBiH legislation with the EU *acquis*, Article 2 and 4.

¹⁴⁷ RS Decision on the Procedure of Harmonising Legislation of the Republika Srpska with the *acquis*.

¹⁴⁸ The BD Decision on Procedures in the Process of Harmonisation of Legislation of the Brčko District of BiH with the EU Law, Article 7.

assessment. The practice of using Tables of Concordance by the FBiH ministries could therefore not be confirmed.

A countrywide EI plan does not exist, and the Programme of Integration (meant to cover all levels) started to be developed at the end of 2020 but has not yet been adopted.

The RS has adopted its own EI action plan. It shows a high level (about 36%) of EI commitments not completed as planned in 2020 and thus carried forward to 2021. Since no report on implementation of the EI plan was provided for the assessment, the actual implementation rate of EI commitments in 2020 could not be determined.

Since no countrywide EI plan exists, it is not possible to track the implementation of EI commitments across all levels. The percentage of legislative commitments carried forward to the following year and the implementation rate of EI-related measures could not be determined for the whole country.

This lack of EI planning and related reporting means that the EI process is not transparent. This negatively affects the ability of the responsible institutions to co-ordinate the EI process and achieve considerable and evidenced progress in this area. It also reduces the possibilities of the CoMs and governments to steer the process more effectively. Without more up-to-date information, it is not possible to (re)allocate resources and adjust priorities based on practical evidence and recently verified information.

Conclusion

The legal framework for EI co-ordination is defined at all levels, with exception of the FBiH where the Office for EI is not involved in the interministerial consultation process. Tables of Concordance are required by regulation and are generally developed, except at the FBiH level. Since there is no overall EI plan, it is not possible to calculate the percentage of legislative commitments carried forward to the following year and the implementation rate of EI-related measures. It is thus not possible to assess progress regarding implementation of EI commitments.

Principle 10: The policy-making and legal-drafting process is evidence based, and impact assessment is consistently used across ministries.

The overall value for the indicator “Evidence-based policy making” is 2.

Indicator 2.10.1. Evidence-based policy making						
This indicator measures the functioning of evidence-based policy making. It assesses the legal requirements and practice regarding the use of basic consultative processes, budgetary impact assessment and impact assessment. Moreover, it assesses the availability of training and guidance documents for impact assessment, the establishment of the quality control function, and the quality of analysis supporting the approval of draft laws.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Regulation and use of basic analytical tools and techniques to assess the potential impact of draft new laws	2	2	2	2	2/2*	
2. Regulation and use of budgetary impact assessment prior to approval of policies	2	2	2	3	2/3*	
3. Regulation and use of Regulatory Impact Assessments	1	1	1	1	1/3*	
4. Availability of guidance documents on impact assessment	1	0	1	0	1/2*	
5. Quality control of impact assessment	2	2	2	2	2/3*	
6. Quality of analysis in impact assessment	1	3	3	3	2/15*	
Total ¹⁴⁹					10/28	

*Average of the State level, FBiH and RS.

Due to the complex constitutional arrangements, BiH does not have a unified, countrywide approach to policy making. Each level of the administration has its own separate system and procedures.

The requirements for RIA are embedded in the policy-making systems of the State Level¹⁵⁰, FBiH¹⁵¹, the RS¹⁵² and the BD¹⁵³. The State level introduced the requirement in 2017 and the BD in 2018. These mark important improvements compared to the situation in 2017.

¹⁴⁹ Point conversion ranges: 0-2=0, 3-7=1, 8-12=2, 13-18=3, 19-23=4, 24-28=5.

¹⁵⁰ Uniform rules for legislative drafting in the institutions of BiH, Annex 1.

¹⁵¹ Regulation on Regulatory Impact Assessment.

¹⁵² Decision on the implementation of the regulatory impact assessment process in legislative drafting.

¹⁵³ Decision of the Impact Assessment Procedure and methodology when making regulations.

The RIA systems on all levels make a distinction between “comprehensive RIA” and “short RIA”¹⁵⁴. In practice, comprehensive and thus full RIAs are developed only sporadically¹⁵⁵, and the RIA systems thus cannot provide essential information for policy development, law making and, consequently, the EI process.

Quality scrutiny for RIA at the State level falls primarily to the GS of CoM of BiH, but also depends on involvement of the Legislative Office (LO), MoF and other control bodies¹⁵⁶. At the FBiH, the responsibility for RIA scrutiny was transferred from the GS to the Office for Legislation (OL) FBiH in 2020¹⁵⁷. Within the RS, the Ministry of Economy and Entrepreneurship is responsible for RIA quality scrutiny¹⁵⁸. Within the BD, this responsibility falls to the LO BD and various control bodies¹⁵⁹. None of these RIA scrutiny bodies has a formal right to return RIAs of low quality to the originating ministry. Crucially, since comprehensive RIAs are hardly ever developed in practice, the RIA quality scrutiny process and its effectiveness could not be assessed.

The State level and the RS work with formal RIA guidelines that are available online¹⁶⁰ and explain the process and requirements for conducting RIA during the policy-development process. These guidelines, however, are of limited value to apply RIA since they lack practical examples or do not explain relevant RIA tools. While the FBiH did have comprehensive guidelines, these have not been maintained with the transfer of the responsibility for RIA to the OL FBiH. Neither the State level nor BD work with comprehensive RIA guidance that explains how RIAs should be developed and what kind of methodological approaches and tools should be used.

At the State, FBiH, RS and BD levels, regulations require that estimates be developed of the expected costs of new policy proposals on the state budget. At the State level, the MoFT conducts scrutiny with regard to the cost estimates and the demands on the budget¹⁶¹. Both Entities require an assessment of the impacts on the state budget for each proposal¹⁶². The MoF of each Entity is responsible for quality control of the estimates of budget impacts provided by ministries. In the BD, fiscal impact analysis is required by regulations, and the Finance Directorate is responsible for quality control¹⁶³. Analysis of five sample proposals for each level showed that quality scrutiny is not always ensured. Only at the BD did the Finance Directorate provide its opinion on all five samples.

A sample of five law proposals for each administrative level was analysed to assess the quality of *ex-ante* policy analysis through Impact Assessment. Since RIAs were not available, this analysis had to be

¹⁵⁴ Terms such as “preliminary”, “shortened” or “abbreviated” RIAs are used in the BiH administrations to indicate the initial or basic-level analysis that is normally conducted at an early stage of policy development

¹⁵⁵ This finding is based on the fact that no full/comprehensive RIAs were submitted for the assessment. This was also confirmed during interviews with representatives of all four levels.

¹⁵⁶ Uniform rules for legislative drafting in the institutions of Bosnia and Herzegovina, Articles 30 and 31.

¹⁵⁷ Regulation on Regulatory Impact Assessment, Article 11.

¹⁵⁸ Rules of Procedure of the Government of the Republic of Srpska, Article 17.

¹⁵⁹ Decision of the Impact Assessment Procedure and methodology when making regulations, Article 21.

¹⁶⁰ State level:

http://www.undp.org/content/dam/bosnia_and_herzegovina/docs/Research&Publications/Democratic%20Governance/Handbook%20for%20Strategic%20Planning%20and%20a%20Handbook%20for%20Policy%20Development/Policy%20development%20Manual%20For%20Civil%20Servants%20in%20BiH.pdf

RS:

<http://www.regodobrenja.net/admin/files/docs/Metodoloski%20prirucnik%20za%20procjenu%20uticaja%20propisa%20I.pdf>.

¹⁶¹ Rules of Procedure on the work of the Council of Ministers of BiH, Article 31.

¹⁶² FBiH: RoP of the FBiH Government, Article 2 and Law on Budget; Article 8; RS RoP of the RS Government, Article 17.

¹⁶³ Unified Rules and Procedures for Drafting Legal Acts of BD, Article 76.

conducted based on the Explanatory Memoranda that are developed for law proposals by each administration. The quality of analysis supporting the new policy proposals was found to be very limited across all levels. While it was most often clear why a proposal had been developed, the description of the situation lacked practical quantified data, such as presentation of sectors and affected organisations. Alternative options were not considered. The likely impacts on the state budget were not adequately analysed. Similarly, implementation and enforcement arrangements of the new proposals were not presented. Monitoring of implementation and future evaluation were not addressed either.

Conclusion

Despite RIA requirements and availability of relevant methodologies and guidelines at all levels, the overall quality of the analyses supporting policy proposals is very limited across all levels of the administration. The requirement to assess the financial implications of policy proposals has been regulated at all levels of the administration, but it is not always implemented consistently.

Principle 11: Policies and legislation are designed in an inclusive manner that enables the active participation of society and allows for co-ordination of different perspectives within the government.

The overall value for the indicator “Public consultation on public policy” is 1. The overall value for the indicator “Interministerial consultation on public policy” is 3.

Indicator 2.11.1. Public consultation on public policy						
This indicator measures the implementation of public consultation processes in developing policies and legislation. It assesses the regulatory framework, the establishment of the quality control function on public consultation and the consistency in publishing draft laws for written public consultation online, and tests whether minimum standards for public consultations were upheld for approved draft laws.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Adequacy of the regulatory framework for an effective public consultation process	5	5	4	9	5/10*	
2. Quality assurance of the public consultation process	0	1	0	0	0/3*	
3. Consistency in publishing draft laws for written public consultation	0	1	1	1	1/4*	
4. Test of public consultation practices	0	5	0	0	2/24*	
Total ¹⁶⁴					8/41	

*Average of the State level, FBiH and RS.

¹⁶⁴ Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-41=5.

Public consultation is regulated through several laws and regulations at the State¹⁶⁵, FBiH¹⁶⁶, RS¹⁶⁷ and BD¹⁶⁸ levels. The BD is considered to have a nearly complete regulatory framework covering the process, but it lacks the requirement to notify stakeholders in advance about planned consultations. The framework for the other three levels shows shortcomings regarding notification requirements and reporting on the consultation process itself and publication of these reports. Only the State Level¹⁶⁹ and the FBiH¹⁷⁰ have established dedicated online consultation platforms.

Scrutiny of the quality of the public consultation process is not established at any of the levels of the administration. While within the FBiH the GS is expected to perform this role¹⁷¹ but does not implement it, the other three administrations have no organisation mandated to assess whether the requirements for public consultations are implemented and whether the outcomes of the consultation process are properly addressed.

Analysis of the performance of four line ministries¹⁷² regarding the regularity of conducting public consultation shows that the practice is applied inconsistently when developing new legal proposals. This is the case even though the number of developed proposals was very low. For the State level, there was consultation on only one law of the three that had been developed. For BD, there was only one relevant proposal and there was no consultation on it.

The shortcomings identified in the regulatory framework and the lack of quality scrutiny for public consultation are reflected in the practice of conducting public consultation. All administrations show a clear lack of reporting on the consultation process and its outcomes. Information about consultation provided in Explanatory Memoranda is very limited. Consultation appears to be limited to online publication of draft texts. This shows a lack of proactive outreach by the administration to include less represented stakeholders. There is no practice to inform stakeholders about upcoming consultations. The potential of public consultation to inform and improve policy development and law-making is thus not tapped effectively.

¹⁶⁵ Rules for consultations in the process of legal drafting.

¹⁶⁶ Regulation on the Rules for the Participation of the Interested Public in the Preparation Procedure of Federal Legal Regulations and Other Acts.

¹⁶⁷ Rules of Procedure of the Government of the Republic of Srpska, Article 36 and Guidelines for the actions of the administrative bodies on public and consultations in legal drafting.

¹⁶⁸ Unified Rules and Procedures for Drafting Legal Acts of the BD, January 2012, Official Gazette of the BD No. 1/12; the Decision on Public Consultation in Drafting Regulations and Procedures in the BD, March 2017.

¹⁶⁹ www.ekonsultacije.gov.ba

¹⁷⁰ www.javnaraspava.ba.

¹⁷¹ Regulation on the Rules for the Participation of the Interested Public in the Preparation Procedure of Federal Legal Regulations and Other Acts, Article 19.

¹⁷² The practice of conducting public consultation was assessed per level for the four ministries covering specific policy areas: the ministry responsible for agriculture; the ministry responsible for trade/economy; the ministry responsible for the environment; and the ministry responsible for social affairs.

Indicator 2.11.2. Interministerial consultation on public policy

This indicator measures the adequacy of the regulatory framework for the interministerial consultation process and tests the system in practice for five draft laws.

Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators	Points					
1. Adequacy of the regulatory framework for an effective interministerial consultation process	7	6	7	7	7/9*	
2. Test of interministerial consultation practices	5	4	4	9	4/12*	
Total ¹⁷³					11/21	

*Average of the State level, FBiH and RS.

The RoP of the CoM¹⁷⁴ and the RoP of the governments of the FBiH¹⁷⁵, the RS¹⁷⁶ and the BD¹⁷⁷ regulate interministerial consultation. The respective regulations clearly set minimum duration for written interministerial consultation, the obligation to consult all affected government bodies, the obligation to inform the government about the outcomes of the consultation process (except for the FBiH Office for EU integration) and the obligation to inform the government about the outcomes of the consultation process.

While the requirements are generally well defined, analysis of the practice of interministerial consultation shows clear gaps. For example, even though it is a legal obligation at each level, none of the administrations has adopted the practice of developing summary reports about the interministerial consultation process that show how comments made by other administrative bodies were taken forward. With the exception of the BD, it is not always clear whether the deadlines for interministerial consultation were respected, whether consultation of all CoG bodies was always ensured before proposals were adopted, and whether other relevant administrative bodies were involved in the interministerial consultation process. As noted earlier, for the FBiH in particular, the Office for EI is not formally involved in the interministerial consultation process. This hampers its efforts to implement its tasks.

None of the administrations has established an effective mechanism for conflict resolution at the level of senior officials. This means that the political level can be required to address technical aspects of legislation which could be more effectively addressed on administrative and more technical levels.

¹⁷³ Point conversion ranges: 0-2=0, 3-6=1, 7-10=2, 11-14=3, 15-18=4, 19-21=5.

¹⁷⁴ Rules of Procedure on the Work of the Council of Ministers of BiH, Article 31; Uniform rules for legislative drafting in the institutions of BiH, Article 66; the Law on Ministries and other administrative bodies, Article 18.

¹⁷⁵ Rules of Procedure of the Government of FBiH, Article 27; the Law on the organisation of administrative bodies, Article 21.

¹⁷⁶ Rules of Procedure of the Government of the Republic of Srpska, Article 17.

¹⁷⁷ Rules of Procedure of the Government of BD, Article 30; Uniform Rules for the law-making process of the BD, Article 77.

Conclusion

The public consultation requirement is established in the regulatory frameworks for policy making across all levels of the administration. But the actual practice of public consultation on new policies across all levels is of limited quality, and reporting on outcome of public consultations is minimal. The overall oversight and quality control of the public consultation process is not clearly established at any of administrative levels. This means that it is not yet being used as a core element of policy making.

Interministerial consultation is regulated at all levels. Analysis of practice, however, indicates deviation from regulations, especially on the requirement to develop summary reports about the results of interministerial consultation processes.

Principle 12: Legislation is consistent in structure, style and language; legal drafting requirements are applied consistently across ministries; legislation is made publicly available.

The overall value for the indicator “Predictability and consistency of legislation” is 3. The overall value for the indicator “Accessibility of legislation” is 1.

Indicator 2.12.1. Predictability and consistency of legislation						
This indicator measures the predictability and consistency of legislation. It assesses the availability of training and guidance along with the establishment of the quality control function. The consistency of laws is assessed based on the ratio of laws amended one year after adoption, and predictability is assessed through the perceived consistency of interpretation of business regulations.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Availability of guidance documents on legal drafting	2	1	2	1	2/2*	
2. Quality assurance on legal drafting	3	3	3	3	3/3*	
3. Laws amended one year after adoption (%)	3	3	0	3	2/3*	
4. Perceived clarity and stability of government policy making by businesses (%)	0				0/2**	
5. Timeliness of adoption of mandatory bylaws (%)	0	0	0	1	0/3*	
Total ¹⁷⁸					7/13	

*Average of the State level, FBiH and RS. ** Country-wide data.

Separate regulatory frameworks, in place at each level of the administration, establish the rules and procedures for legislative drafting. The Unified Rules for Legislative Drafting in BiH Institutions provide guidance for legal drafting at the State level. In the FBiH, the guidance is included in the Rules and Procedures for the Drafting of Laws and Other Regulations. In the RS, the relevant guidance is included in the Rules for Drafting Laws and Other Regulations. Officials in the BD work on the basis of the Unified Rules and Procedures for Drafting Legal Acts of the BD. For each level individually, these rules define the standards for the structure and style of legislation. They also stipulate the procedural requirements for

¹⁷⁸ Point conversion ranges: 0-2=0, 3-4=1, 5-6=2, 7-8=3, 9-10=4, 11-13=5.

preparing regulations. Only the guidance documents of the State Level¹⁷⁹ and the RS¹⁸⁰ are available to the public on line.

The scrutiny of legal quality is exercised by the LO CoM at State Level, the OL in the FBiH, the Secretariat for Legislation in the RS, and the LO in the BD. Analysis of samples of five draft law proposals per administration shows that the process for scrutinising legal quality is fully established and consistently implemented. Each institution responsible for scrutiny of legal quality issued its opinion on each of the five samples from its own administration.

The frequency at which laws are amended one year after adoption was low at the State level and in the FBiH and the BD. It was significantly higher in the RS. While the low rate of amendments could be a sign of inertia in the law-making process¹⁸¹, a high amendment rate after one year could signal a lack of proper impact assessment and wide public consultation during the preparation of law proposals.

Businesses in BiH do not consider the laws and regulations affecting them to be clearly written and stable. According to the Balkan Barometer Survey in 2021, only 25.5% of businesses had a positive perception of the clarity and stability of government policy making¹⁸². This marks a slight deterioration over time: it was 32% in 2017.

Analysis for the indicator “Timeliness of adoption of mandatory bylaws” shows that, for the State Level and the FBiH, none of the bylaws that were expected to be developed were adopted within the legally set deadline. For the RS, 9 out of 42 bylaws (21.4%) were adopted on time. For the BD, it was 5 out of 8 bylaws (62.5%). This indicates significant challenges across all levels in ensuring that all legal requirements and procedures are established and clear before a law is fully implemented.

¹⁷⁹ <http://www.mpr.gov.ba/biblioteka/zakoni/?id=9155> and http://www.mpr.gov.ba/web_dokumenti/Prirucnik%20za%20izradu%20pravnih%20propisa.pdf

¹⁸⁰ https://www.vladars.net/sr-SP-Cyrl/Vlada/Documents/Правила%20за%20израду%20закона%20и%20других%20прописа%20Републике%20Српске_592694496.pdf.

¹⁸¹ At the State level, the Parliament adopted only one fully new law in the period 2018-2020.

¹⁸² Respondents were asked to what extent they agree with the following statement: “Laws and regulations affecting my company are clearly written, not contradictory and do not change too frequently.” Of the respondents, 22% answered “tend to agree” and 3.5% answered “strongly agree”.

Indicator 2.12.2. Accessibility of legislation

This indicator measures both the regulatory framework for making legislation publicly available and the accessibility of legislation in practice, based on the review of the availability of legislation through the central registry and as perceived by businesses.

Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators	Points					
1. Adequacy of the regulatory framework for public accessibility of legislation	2	2	2	2	2	2/6*
2. Accessibility of primary and secondary legislation in practice	2	2	2	2	3	2/8*
3. Perceived availability of laws and regulations affecting businesses (%)	0					0/2**
Total¹⁸³						4/16

*Average of the State level, FBiH and RS. ** Country-wide data.

The regulatory framework for publishing legislation is weak at all levels. Only the types of legislation that need to be published and the medium for publication are regulated at the State Level¹⁸⁴, the FBiH¹⁸⁵, the RS¹⁸⁶ and the BD¹⁸⁷. The requirements do not cover key issues such as the procedures that need to be followed before legislation can be published, the deadlines for publication after submission of the documents and the responsibilities of the bodies submitting legislation for publication.

All four levels have established the practice of publishing legislation in their respective Official Gazettes. All primary and secondary legislation is available in a central registry at the State, FBiH,¹⁸⁸ RS¹⁸⁹ and BD levels¹⁹⁰. However, for the State and the FBiH, which share the Official Gazette website, only the legislation adopted since 2009 is available in electronic form. Legislation adopted before 2009 is effectively unavailable to the public, as it can only be obtained for a fee¹⁹¹. The Official Gazettes of the RS¹⁹² and the

¹⁸³ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

¹⁸⁴ Law on the Official Gazette of Bosnia and Herzegovina.

¹⁸⁵ Law on the Official Gazette of FBiH and Rules and Procedures drafting laws and other legislation of FBiH.

¹⁸⁶ Law on publication of laws and other regulations and Rules for drafting laws and other regulations.

¹⁸⁷ Statute of the Brčko District; Law on the Official Gazette of BD; Uniform Rules for the law-making process of the BD; Rules of Procedure of the Government of BD.

¹⁸⁸ For both State level and FBiH: <http://sluzbenilist.ba>.

¹⁸⁹ <https://www.slglasnik.org>.

¹⁹⁰ <https://skupstinabd.ba/ba/zakon.html>.

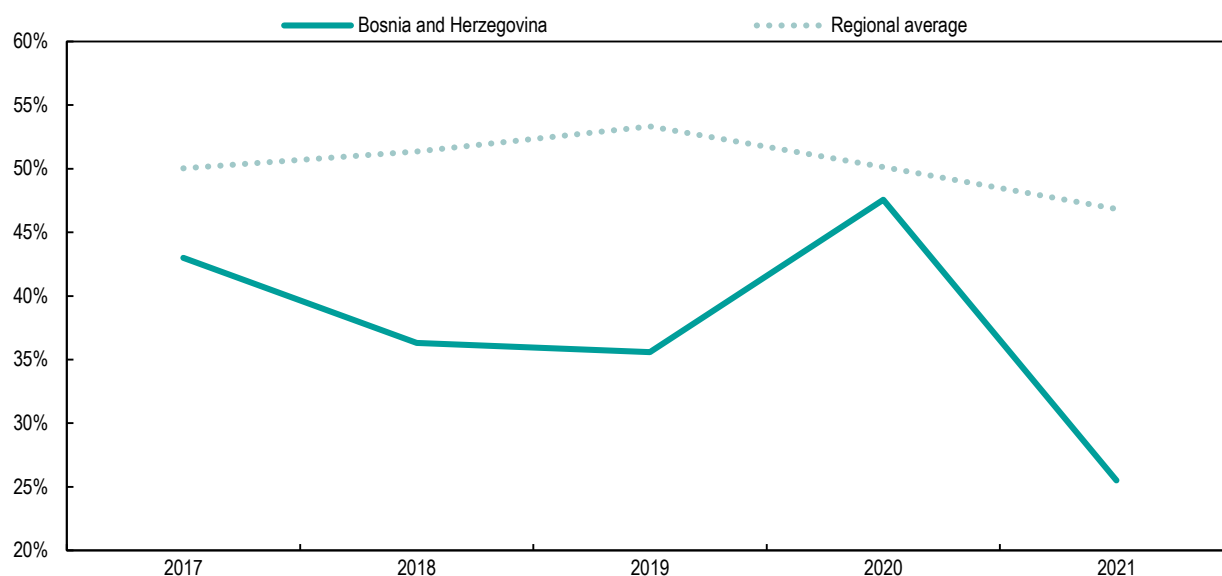
¹⁹¹ <http://sluzbenilist.ba/page/s/pretplata>.

¹⁹² <https://www.slglasnik.org/cyr/stranice/cjenovnik>.

BD¹⁹³ are also only accessible for a fee¹⁹⁴ for that period. Moreover, none of the four administrations ensures publication of consolidated versions of legislation, since no standardised procedures for consolidation have been established.

Based on the results of the 2021 Balkan Barometer Survey, the perceived availability of laws and regulations affecting businesses is 25.5%. This marks a significant deterioration over time compared to 2017 when the percentage was 43%.

Figure 2. Perceived availability of laws and regulations affecting businesses, 2017-2021



Notes: Responses refer to the percentage of respondents who replied "strongly agree" or "tend to agree" to the following question: "Information on laws and regulations affecting my firm is easy to obtain." Of the respondents, 20.5% answered "tend to agree" and 5% answered "strongly agree".

Source: Regional Cooperation Council, Balkan Barometer Business Opinion database (<https://www.rcc.int/balkanbarometer>).

Conclusion

The process of scrutiny of the quality of legislative proposals is defined in regulations at all levels of the administration and is applied consistently in practice. Bylaws are generally not adopted within the legally set deadline.

The regulatory framework for the publication of legislation lacks essential clarity and requirements. Legislation is published in different Official Gazettes and is not fully accessible to the public free of charge. Consolidated versions of legislation are not being prepared. The stability of government policy making and the availability of laws and regulations, as perceived by businesses, are low.

¹⁹³ <https://skupstinabd.ba/ba/87-obavjestenje-glasnik.html>

¹⁹⁴ The BD publishes laws for free on line: <https://skupstinabd.ba/ba/zakon.html>. However, these versions of the laws do not have formal status, since only the Official Gazette is the official source of adopted legislation.



Public Service and Human Resource Management

The Principles of Public Administration

Public Service and Human Resource Management

Principle 1	The scope of public service is adequate, clearly defined and applied in practice.
Principle 2	The policy and legal frameworks for a professional and coherent public service are established and applied in practice; the institutional set up enables consistent and effective human resource management practices across the public service.
Principle 3	The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit.
Principle 4	Direct or indirect political influence on senior managerial positions in the public service is prevented.
Principle 5	The remuneration system of public servants is based on job classifications; it is fair and transparent.
Principle 6	The professional development of public servants is ensured; this includes regular training, fair performance appraisal, and mobility and promotion based on objective and transparent criteria and merit.
Principle 7	Measures for promoting integrity, preventing corruption and ensuring discipline in the public service are in place.

Public Service and Human Resource Management

Summary and recommendations

Bosnia and Herzegovina (BiH) made moderate progress in all relevant areas of public service and human resource management from 2017, except regarding disciplinary procedures and, particularly, integrity in the public service, where results are poor.

The legislation regulates clearly the horizontal and material scope for the civil service in the Institutions of Bosnia and Herzegovina (State level), the Federation of Bosnia and Herzegovina (FBiH) – considering only the Federation level, without the cantons – the Republika Srpska (RS) and the Brčko District (BD). Nevertheless, some regulatory agencies are out of the civil service system and apply only the labour law. The special legislation of the Ombudsman Institution does not fully ensure merit-based human resource management (HRM). This is also the case for legislation that applies to the administrative services of the Assembly and the Presidency in the RS. The lower division line of the civil service is blurred in the four systems.

The respective portfolio ministries at the State level, the FBiH and the RS exercise political responsibility for the civil service, but it is not always explicitly included in their scope of competence by legislation. **Know-how and capacities for professional HRM are weak.** There has been a significant advancement in the development of HRM information systems (HRMIS), except at the State level due to legal constraints, but the databases do not interoperate with payroll systems and other relevant registers. HR data is still scarce, and comprehensive reports on the civil service, with relevant indicators, do not exist. The Public Administration Reform (PAR) Strategy provides a sound policy framework for civil service reform. However, the lack of monitoring makes it impossible to conclude to what extent the reform is progressing.

The legislation envisages merit-based recruitment of civil servants at the State level and, to a lesser extent, in the FBiH. It has serious deficiencies in the RS and the BD. In particular, legislation in the RS does not foresee written tests on specific requirements of the positions. There is no obligation to appoint the highest-ranked candidate in FBiH and RS. The members of the selection commissions are vulnerable to political influence except at the State level, and those coming from the recruiting bodies usually do not receive sufficient training. The recruitment procedures at the State level are unnecessarily burdensome due to the compulsory approval of each announcement by the Council of Ministers (CoM), even if funds are earmarked. Moreover, they are exceptionally long in the FBiH due to considerable backlogs in appeal procedures. Overall, the legal framework provides for merit-based dismissal, although clear criteria and procedures to manage redundancy in reorganisation procedures do not exist at the State level and the FBiH.

The upper end of the civil service vertical scope is correctly defined in the FBiH and the RS, but it is blurred at the State level due to positions of “secretaries with a special assignment”, who can be either senior civil servants or political appointees. It is also unclear in the BD. HRM decision making is concentrated under the aegis of heads of public bodies, which may be political authorities (i.e. ministers in ministries). Selection methods are not adapted to senior positions in legislation, except at the State level to a limited extent and only in legislation. No accurate data is available on the stability in senior civil service positions. Gender balance in the top civil service is far from being achieved in the RS, with only 19% of women in these positions.

The legislation establishes a salary structure based on the job classification. Nevertheless, proper methodologies and procedures for job evaluation are not in place, which challenges the internal fairness of the salary system. The existing systems do not pay sufficient attention to horizontal salary progression and competitiveness of civil service salaries. The salary compression ratio is low, particularly in the FBiH. The criteria to award some salary supplements are unclear (i.e. special work conditions at the State level

and FBiH, special award for work results in the RS). General information and statistics on salaries in the civil service, beyond legislation, are scarce.

The civil service agencies (CSAs) manage centralised training using adequate training needs analysis, training planning, and evaluation methods. Nevertheless, budget resources for training are scarce, especially in the RS and the BD. Data on performance appraisal is not comprehensive and shows a disproportionate share of results in the higher rating categories, which invalidates their use for administrative and professional development purposes.

Legislation upholds basic principles related to disciplinary procedures, but it presents important shortcomings. Only the RS has adopted an integrity policy framework for the public service. However, there is no evidence of implementing integrity measures in any of the four systems. The obligation to submit asset declarations does not consider the jobs' integrity risks and applies exclusively to newly appointed civil servants. Illicit enrichment is not explicitly regulated in the Criminal Code. Businesses' and citizens' perception of integrity in the public sector is seriously negative and well below average in the Western Balkans.

Short-term recommendations (1-2 years)

- 1) The Ministry of Justice of BiH should prepare amendments to the Civil Service Law (CSL) to empower the CSAs to collect and manage data of civil servants.
- 2) The CSAs and finance ministries should ensure interoperability of HRMIS with salary databases and other relevant registers. CSAs and responsible ministries should prepare fully-fledged, periodical reports on the civil service and use data to monitor and improve HRM.
- 3) The Government of FBiH should urgently undertake measures to accelerate the processing of appeals by the Appeals Board in order to protect the rights of civil servants and expedite recruitment. For the same purpose, the CoM of BiH should reconsider the obligation to ask for its approval for each vacancy announcement.
- 4) The CSAs from the four administrations should develop capacities for professional job analysis, job descriptions, evaluation and classification as well as monitor implementation.
- 5) The CoM of BiH, both entities' Governments and the Government of the BD should increase resources for the training of civil servants, especially in the RS and the BD.

Medium-term recommendations (3-5 years)

- 6) The Parliaments of BiH and the BD should adopt amendments to the CSL to enlarge the horizontal scope of the civil service and ensure merit-based HRM in the core central administration, including regulatory agencies. The same applies to the administrations of the Assembly in the FBiH and the BD, and the Prime Minister's office of the FBiH.
- 7) Parliaments at all levels should adopt amendments to legislation related to the recruitment of civil servants to guarantee professional composition of selection panels free from undue political influence, the appointment of first-ranked candidates to fill non-senior civil service vacancies, and clear rules for positive discrimination when it applies.
- 8) The CSAs from the four administrations should gradually build competency frameworks based on a sound job analysis and prepare job competency profiles to ensure the correct use of competencies in the selection and other HRM procedures.
- 9) The ministries responsible for finance at all levels, in co-operation with the portfolio ministries responsible for the civil service and CSAs, should undertake efforts to analyse the competitiveness of salaries in the civil service and make decisions accordingly. They should also publicly disclose information about civil service salaries.
- 10) The Parliaments of the Institutions of BiH, the FBiH, the RS and the BD should adopt amendments to legislation to establish the obligation to periodically declare assets for civil servants who occupy positions with high integrity risks, ensure verification of asset declarations and undertake follow-up actions in cases of discrepancies between the incomes and the assets.

Analysis

Policy, legal and institutional frameworks for public service

Principle 1: The scope of public service is adequate, clearly defined and applied in practice.

Overall, the value for the indicator 'Adequacy of the scope of public service' is 3.

Indicator 3.1.1. Adequacy of the scope of public service						
This indicator measures the extent to which there is a legal framework establishing an adequate horizontal, vertical and material scope for the public service and whether it is consistently applied across the public sector.						
Overall 2022 indicator value	0	1	2	3	4	5
Sub-indicators			Points			
	State level	FBIH	RS	BD	Average	
1. Clarity in the legislative framework of the scope of the civil service	2	2	2	2	2/2*	
2. Adequacy of the horizontal scope of the public service	3	3	2	2	3/6*	
3. Comprehensiveness of the material scope of civil service legislation	2	2	2	2	2/2*	
4. Exclusion of politically appointed positions from the scope of the civil service	0	2	2	0	1/2*	
5. Clarity of the lower division line of the civil service	0	0	0	0	0/1*	
Total ¹⁹⁵					8/13	

*Average of the State level, FBiH and RS.

No new laws on the civil service were adopted since the last SIGMA monitoring in 2017. However, some significant amendments were introduced to existing legislation from 2017, especially in the case of the FBiH (as a result of the Decision of the Constitutional Court of 2016¹⁹⁶) and in the BD (amendments related, among others, to the classification of positions¹⁹⁷).

¹⁹⁵ Point conversion ranges: 0-3=0, 4-5=1, 6-7=2, 8-9=3, 10-11=4, 12-13=5.

¹⁹⁶ The FBiH Constitutional Court Decision No. U-13/16 of 28 June 2016 annulled amendments to the Civil Service Law (CSL) by which the senior management level was excluded from the civil service. It is explained in more details in OECD (2017), Monitoring Report: Bosnia and Herzegovina, November 2017, Paris, pp. 88 and 78, <https://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf>.

¹⁹⁷ The Law on Civil Service in the Public Administration bodies of the Brčko District of Bosnia and Herzegovina, Official Gazette of Brčko District BiH, 9/14 with amendments (later called CSL BD); The Law on Civil Service in the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of BiH No. 29/2003 with amendments (including the decision of the Constitutional Court from 9/2017) – later called CSL FBiH; the Law on Civil Servants, Official Gazette of Republika Srpska No. 118/2008 with amendments – later called CSL RS; The Law on Civil Service

The civil service legislation at the State level, the FBiH, the RS and the BD regulates all essential areas related to the functioning of the civil service except salaries, which are established by separate laws. The existence of different civil service laws and institutional civil service management structures at the State level, the RS, the BD, and the FBiH results in four civil service systems, besides the cantons in the FBiH¹⁹⁸. This institutional setting is the result of constitutional arrangements and is not a problem in itself. However, the lack of institutionalised communication and co-ordination mechanisms among the four systems hinders the exchange of information and voluntary harmonisation. Mobility of civil servants across the systems is practically inexistent (except in the case of transfer of competences between them), thus limiting career opportunities and professional development. The assessment analyses the four civil service systems separately. In the case of the FBiH, it focuses only on the Federal level and does not encompass the cantons.

The legal provisions on the horizontal scope of the civil service are clear, but the horizontal scope they define has significant room for improvement. Some institutions that fall into the core public service scope¹⁹⁹ do not apply civil service legislation and are regulated by either general labour legislation or special laws that either do not ensure merit and professionalism or establish less demanding standards than civil service laws. This is the case, for example, of regulatory agencies that exist only at the State level, like the Communications Regulatory Agency and the State Electricity Agency, but also the Energy Regulatory Commission of the RS. The staff of some constitutionally independent bodies such as the Supreme Audit Institutions (SAI), except for BD, and the Ombudsman Institution, are also regulated by special laws that establish less demanding standards except in the case of the SAI at the State level. The same situation applies to the Administration of the Assembly of the BD. The Law on Labour Relations in State Bodies that applies, among others, to the administration of the Parliament and the Prime Minister in the RS does not ensure merit-based recruitment, promotion or dismissal of civil servants. In addition, in the BD, several public bodies are excluded from the CSL and the Law on Public Administration without clear grounds, as they are classical administrative bodies²⁰⁰. Finally, for some groups of civil servants, both the CSL and special legislation apply. This is the case, for example, of the Foreign Service or the Customs Administration at the State level, but regulations fulfil merit criteria.

The upper end of the vertical scope of civil service in BiH is also problematic. The legislation in the RS and FBiH clearly excludes political appointees from the civil service. The situation is less clear at the State level regarding secretaries with a special assignment. Some of them have the status of civil servants, and the CSL provides, overall, merit-based and competitive recruitment procedures. In contrast, others are political functionaries appointed based on special legislation. The latter category constitutes almost half of all incumbents of the positions of secretaries with a special assignment. The most confusing situation is in the BD, where similar posts have the status of civil servants (the Director of Finance Directorate) or political appointees (the Directors of the Government's departments). In addition, the CSL in the BD is unclear and contains inconsistencies, which further decreases the clarity of the upper line of the civil service²⁰¹.

in the Institutions of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina No. 19/02 with amendments, later called CSL State Level.

¹⁹⁸ Compared to the 2017 monitoring, the fragmentation of civil service legislation in the FBiH worsened due to the increasing number of cantons having their own civil service laws. Currently, seven out of ten cantons apply their civil service legislation and one more canton is considering doing so, while in 2017 only six cantons had adopted civil service laws.

¹⁹⁹ OECD (2017), *The Principles of Public Administration*, Paris, p. 41, <https://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

²⁰⁰ See Accountability chapter, p. 104.

²⁰¹ An example is seen in Articles 23.5 and 23.6 of the CSL BD, according to which the so-called mandated managerial positions should not have the status of civil servants, which is not the case in practice given that they are senior civil servants.

The problematic amendments to the FBiH CSL that came into force in December 2015²⁰², which aimed at blurring the line between senior civil servants and politicians and enabled non-merit appointments, were described in detail in the previous SIGMA monitoring reports²⁰³. The amendments excluded the senior management positions from the civil service²⁰⁴ between the end of 2015 and December 2016, when the FBiH Constitutional Court annulled them. Conditions and procedures for appointment and dismissal in these high-level management positions were not regulated in the CSL but rather by a Government Decree²⁰⁵, and legal provisions did not ensure merit²⁰⁶. The Director of the FBiH CSA, who was initially appointed based on these provisions, was re-appointed following the public announcement procedure in 2019.

The regulations do not ensure a clear differentiation regarding the lower division line between the civil service and other public employees. The legislation in the BD allows employing both civil servants and employees at all hierarchical levels. The legislation in the RS creates a relatively narrow civil service. It excludes some critical positions – for example, related to public procurement – which is questionable. The distinction between civil service positions and positions of other public employees is only the educational level, instead of functional criteria at the State level. The legislation in the FBiH related to the bottom line of the civil service is very detailed but fails to distinguish the positions and functions of civil servants and non-civil servants clearly.

Conclusion

The legislation in force provides for comprehensive regulation of civil service matters in terms of material scope. The horizontal scope of the civil service does not ensure merit and professionalism in all central administration bodies at the four levels, including several regulatory agencies. A clear distinction between political and senior civil service positions is missing at the State level and in the BD. The bottom line of the civil service is blurred in all cases.

²⁰² Official Gazette of the FBiH, No. 99/15.

²⁰³ OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, Paris, pp. 5-6, 9, 23-24 <https://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>. OECD (2017), *Monitoring Report: Bosnia and Herzegovina*, November 2017, pp. 88 and 78, <https://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf>.

²⁰⁴ The senior managerial positions excluded from the civil service were heads of independent federal administration bodies reporting to ministries, heads of bodies within ministries, heads of Government services, secretaries general of ministries, heads of departments (assistant ministers) and the Chief Federal Inspector.

²⁰⁵ Decree on the Conditions, Criteria and Procedure of Recruitment and Selection of Persons who are not Civil Servants, Official Gazette of the FBiH, No. 9/16.

²⁰⁶ OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, Paris, p. 24, <https://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

Principle 2: The policy and legal frameworks for a professional and coherent public service are established and applied in practice; the institutional set up enables consistent and effective human resource management practices across the public service.

The value for the indicator ‘Adequacy of the policy, legal framework and institutional set up for professional human resource management in public service’ is 2.

Indicator 3.2.1. Adequacy of the policy, legal framework and institutional set up for professional human resource management in public service						
This indicator measures the extent to which the policy, legal framework and institutional capacities are in place and enable consistent human resource management (HRM) practices across the public service, and assesses whether policies and laws are implemented to ensure proper management of the civil service, for example a functioning civil service database, availability and use of data, etc.						
Overall 2022 indicator value	0	1	2	3	4	5

Sub-indicators	Points				
	State level	FBiH	RS	BD	Average
1. Establishment of political responsibility for the civil service	2	2	2	2	2/2*
2. Quality of public service policy documents	3.5	3.5	3.5	3.5	3.5/4*
3. Implementation and monitoring of public service policy	0	0	0	0	0/4*
4. Right balance between primary and secondary legislation	2	0	2	0	1/2*
5. Existence of a central, capable co-ordination body	1.5	3	1	1	2/4*
6. Professionalism of HRM units in civil service bodies	0	1	0	0	0/2*
7. Existence of a functional HR database with data on the civil service	0.5	2	1.5	0.5	1.5/4*
8. Availability and use of data on the civil service	2	2	0	0	1/5*
Total²⁰⁷					11/27

*Average of the State level, FBiH and RS.

Political responsibility for the civil service is established at all levels in BiH and is assigned to the relevant ministries, although the provisions are not always clear²⁰⁸. The authorities in charge are the Ministry of

²⁰⁷ Point conversion ranges: 0-3=0, 4-8=1, 9-13=2, 14-18=3, 19-23=4, 24-27=5.

²⁰⁸ At the State level, Article 13 of the Law on Ministries and Other Administrative Bodies of Bosnia and Herzegovina (Official Gazette of BiH No. 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09, 103/09) does not clearly mention civil service in the remit of competences of the Minister of Justice. A similar lack of clarity is found in the FBiH (Article 7 of the Law on Federal Ministries and other Bodies of the Federal Administration, Official Gazette of the Federation of BiH No. 58/02, 19/03, 38/05, 2/06 and 8/06, 61/06). Article 16 of the Law on the Republic Administration of RS, Official Gazette of RS No. 115/2018 with amendments, is also not precise as regards political responsibility for civil service. The CSL BD is clearer in this regard, directly attributing the most important competences to the Mayor.

Justice at the State level and in the FBiH, the Ministry for Administration and Local Self-Government in the RS and the Mayor in the BD.

Significant progress was made in establishing the strategic framework for civil service reform. The main strategic document is the PAR Strategy 2018-2022, which contains a specific section related to civil service reform. The PAR Strategy is a fully-fledged strategic document that formulates objectives and targets. The PAR Strategy Action Plan lists specific activities together with time frames and costs. Nevertheless, the assessment of the current situation in the PAR Strategy regarding the civil service and HRM is relatively general. It is not supported by a thorough analysis of quantitative and qualitative data. Another shortcoming of the Strategy is the choice of targets and how they are measured, which are not fully consistent²⁰⁹. Furthermore, unfortunately the Strategy's implementation is not being monitored.

The balance between the primary and secondary legislation is ensured at the State level and in the RS. This is not the case for the FBiH, in which secondary legislation fails to regulate some critical issues like internal competitions and transfers, or the adoption of human resources (HR) policy guidelines²¹⁰. The most problematic situation is in the BD, where some secondary legislation and organisational plans were not amended after the modifications of the CSL²¹¹.

Civil service central co-ordination bodies exist in the four civil service systems. They are CSAs at the State level, the FBiH and the RS. In the BD, the co-ordination is in the hands of the HRM Sub-division within the Department of Technical and Administrative Affairs (DTAA). Specific HRM processes are centralised, i.e., managed directly by the CSAs, notably recruitment and training. The CSAs and HRM Sub-division make efforts to upgrade institutional capacities for HRM. For example, the CSA at the State level has introduced the Common Assessment Framework (CAF) to enhance the quality of HRM. However, there is still room for improvement related to their performance. Namely, only the CSA of the FBiH offers a broad range of guidebooks and manuals about HRM on its website. It is the only CSA that organises regular networking with HR units, including the cantonal level. Some CSAs face problems collecting complete information from the ministries and other bodies; for example, related to performance appraisals and decentralised training courses. The HRM Sub-division in the BD does not fulfil all its statutory tasks regarding the organisation of central training courses and monitoring of training that departments organise. However, this is due mainly to a lack of resources.

There is room for improvement regarding the capacities for HRM in public bodies at all levels. HRM units, or even a single position responsible exclusively for HRM, do not exist in all public bodies²¹². This should not be a problem in itself, as some essential HR processes are centralised (recruitments, most of the training), and the small size of many public bodies would make it inefficient to establish separate HRM units in all cases. The issue is rather the still-weak capacities for HRM at all levels. While the staff of most analysed HRM units received training on modern HRM tools, they rarely participated in HR-related

²⁰⁹ The targets at the level of objectives make reference to SIGMA Principles 1 and 2, related to institutional elements of the civil service system, namely the scope, legal framework, policy framework and institutional set-up. At the level of the actions, the reference is made to HRM – implementation of the HRM function in public bodies, recruitment procedures in legislation and in practice, establishment and implementation of HR plans and training plans, HRMIS, fairness and transparency of the salary system. As a result, the indicators measuring actions are not fully relevant to the indicators at the level of objectives.

²¹⁰ In the FBiH, the right to appeal recruitment decisions is not clearly stated in the CSL, but only in secondary legislation. HR policy guidelines were not issued, despite the obligation to do so contained in Article 61 of the CSL FBiH. Besides, there is no secondary legislation that would regulate procedural details related to internal competitions and transfers.

²¹¹ In particular it concerns the implementation of amendments to Article 24 CSL BD related to the classification of positions. The secondary and tertiary legislation was not amended even though the amendments to the CSL were introduced in 2018 and 2020 (Law on Amendments to the Law on Civil Service in Public Administration Bodies of the Brčko District of Bosnia and Herzegovina, Official Gazette of Brčko District BiH 24/20 and 50/18).

²¹² In the BD, all HR is centralised and managed by the HRM Sub-division – the departments do not have any responsibility for HR.

networking and other professional development opportunities (with the exception of the FBiH). HRM units rarely assume a strategic role and produce strategic HR documents or evidence-based advice on HR for the institution's management, although there are some outstanding exceptions²¹³.

An essential precondition for effective management of the civil service is data availability. Significant progress has been made in developing HRMIS at all levels. The databases were created and are operational except at the State level, where legal constraints related to the protection of personal data did not allow any substantial progress²¹⁴. While admitting there has been considerable advancement in this regard, the main shortcoming – common to all levels – is the lack of integration of HRMIS with other relevant information systems, in particular with the payroll system.

The existing databases do not contain comprehensive and complete data in all cases, and data is updated in real time only in the RS and BD. In the same way, the use of data on the civil service and HRM by CSAs and relevant ministries is still limited. Only the CSAs at the State level and in the FBiH produce annual reports, but they are mainly activity reports of the agencies themselves, with some data on the civil service but without a comprehensive set of relevant indicators.

Conclusion

The adoption of the civil service reform policy in the framework of the PAR Strategy, and the development of HRMIS in the FBiH, the RS and the BD, constitute the main steps forward in this area from 2017. However, the implementation of the civil service policy is not monitored. Unfortunately, the capacities for modern HRM remain low. Despite the establishment of HRMIS, governments and CSAs make limited use of the available data for supporting evidence-informed decisions on the civil service and HRM procedures.

²¹³ A positive example is the Tax Administration in the RS that adopted an HR Strategy (being a part of the Tax Strategy). The assessment revealed that a number of HRM units provide managers with reports containing qualitative or quantitative data and forecasts. Namely, the Administration for Geodetics and Property-Legal Affairs of the RS has prepared a workforce plan supported by the analysis of the current staff, the Tax Administration of the FBiH regularly forecast future retirements as a basis for the recruitment plan, and the Federal Administration for Inspection Issues in the FBiH provided some analytical documents to SIGMA.

²¹⁴ In 2010 a Decision of the Agency for Personal Data Protection (Decision of the Agency for Personal Data Protection in Bosnia and Herzegovina, No. 03-37-11-403-5/10, of 30 December 2010) prohibited the CSA from processing the personal data of employees in the Institutions of BiH through the HRMIS, due to a lack of legal competence. So far, no definite action has been taken to address this situation, and the CSA manages only some basic data through spreadsheet software.

Human resource management

Principle 3: The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit.

Overall, the value for the indicator 'Meritocracy and effectiveness of recruitment of civil servants' is 3.

Overall, the value for the indicator 'Merit-based termination of employment and demotion of civil servants' is 5.

Indicator 3.3.1. Meritocracy and effectiveness of recruitment of civil servants						
<p>This indicator measures the extent to which the legal framework and the organisation of civil service recruitment support merit-based and effective selection of candidates wishing to join the civil service and whether this ensures the desired results in terms of competitive, fair and non-discretionary appointments that enhance the attractiveness for job seekers and performance of the public sector.</p> <p>This indicator measures only external recruitment. The indicator on merit based recruitment and dismissal of senior civil servants covers recruitment and promotion to senior managerial positions, and the indicator on professional development covers promotions to other positions.</p>						
Overall 2022 indicator value	0	1	2	3	4	5
Sub-indicators			Points			
	State level	FBiH	RS	BD	Average	
Legal framework and organisation of recruitment						
1. Adequacy of the legislative framework for merit based recruitment for civil service positions	15	11	6	6	11/18*	
2. Application in practice of recruitment procedures for civil service positions	10	13	10	2	11/18*	
Performance of recruitment practices						
3. Time required to hire a civil servant	0	0	2	0	1/2*	
4. Average number of eligible candidates per vacancy	3	2	2	0	2/4*	
5. Effectiveness of recruitment for civil service positions (%)	0	0	0	0	0/4*	
6. Retention rate of newly hired civil servants (%)	4	4	4	4	4/4*	
Total ²¹⁵					29/50	

*Average of the State level, FBiH and RS.

Staff planning practices vary among levels. When they exist, HR plans are not strategic but are short-term-oriented and deal with recruitments only. There is no obligation to prepare a centrally co-ordinated staffing plan at the State level and the BD. Such an obligation exists and is fulfilled in the FBiH and the RS. However, in the FBiH, the staffing plan for 2022 was approved only in March 2022, compromising its usefulness in enhancing recruitment implementation.

²¹⁵ Point conversion ranges: 0-7=0, 8-16=1, 17-25=2, 26-35=3, 36-43=4, 44-50=5.

The legislation provides for a competitive selection process to join the civil service in the four civil service systems, with adequate appeal rights²¹⁶, but the merit principle is not sufficiently guaranteed. Some critical shortcomings exist, especially in the FBiH, RS and BD. In the FBiH, there is no obligation to select the highest-ranked candidate²¹⁷. In the RS, the principle of appointment of the highest-ranked is ensured in some provisions²¹⁸, but others could lead to the non-implementation of this principle. In particular, the appointing authority is not obligated to appoint the winning candidate²¹⁹. Also, the winner of the selection is deemed to have withdrawn if she/he cannot start working within 15 days from the selection decision²²⁰. This provision seems excessively rigid, particularly for high-quality candidates. The possibility of annulling the recruitment and not appointing the highest-ranked candidate also exists in the BD²²¹. Other significant shortcomings are the lack of anonymity in written testing at all levels and the lack of appropriate written testing²²² and structured interviews at the RS level. A significant challenge is also the influence of political appointees on the appointment of the members of the selection commissions for non-senior positions at all levels, with the exception of the State level, where it is the head of the CSA who nominates the competition commission²²³. In addition, in the BD, the deadlines for submitting applications are set at only eight days²²⁴. One of the few improvements since the 2017 monitoring is the introduction of the obligation to conduct structured interviews during the selection process at the State level²²⁵.

The analysis of recruitment procedures reveals that the provisions are respected in practice²²⁶. The exception is setting a shorter than allowed deadline for submitting applications in some cases at the State level²²⁷. In the FBiH, despite not having the legal obligation of conducting structured interviews, the analysis of ten cases of recruitments showed that the interviews were structured in practice. Unfortunately, the same analysis showed that the possibility of non-appointment of the highest-ranked candidate was widely used – in six out of ten analysed procedures. The highest-ranked candidate was not appointed in one case (out of eight analysed files) in the RS. In two recruitment cases from RS, there was an inconsistency in formulating job requirements²²⁸. The competencies are still used to a limited extent in the

²¹⁶ With the exception of the BD, where appeal rights are not contemplated if the competition is annulled due to a duration exceeding 90 days (Article 42.8 CSL BD).

²¹⁷ Article 31 CSL FBiH.

²¹⁸ Articles 21.1 and 21.2 of the Rulebook No. 23/01/120-81/09 (with further amendments) on the rules and procedure of open competition for employing and appointing civil servants.

²¹⁹ Article 40.1.d) of the CSL RS.

²²⁰ Article 39 and 40.1d of the CSL RS.

²²¹ Article 43, CSL BD.

²²² At the RS level, there is only a general entry exam that allows entering competitions for specific positions in the future (Article 61 CSL RS). The participation in the entry exam costs Bosnian marks (BAM) 250 for persons with higher education. In competitions for specific positions, interviews are the sole assessment method used.

²²³ In the FBiH, the CSA appoints the selection committee members, too (Article 27 CSL). However, the Head of the CSA must act on the proposal of the Head of the body. The CSA can refuse to appoint a proposed member (and does so in practice) but cannot propose an alternative. Regarding the selection panel members coming from the list of experts, SIGMA was assured that, in practice, they are never political appointees. However, solid legal guarantees in this regard do not exist.

²²⁴ Article 35 CSL BD.

²²⁵ Article 30.2 of the rulebook on the character and contents of public advertisements, manner of conducting interviews and forms for conducting interviews.

²²⁶ Provided files were sufficient to assess the implementation at the State level, the FBiH and RS. The BD did not provide enough files to assess the implementation.

²²⁷ In three out of seven files analysed, the deadline to submit applications was seven work days.

²²⁸ The required education profile was either in economics or in mechanical engineering, and the latter was not fully consistent with the job description.

recruitment process. They were introduced at the State level but not in the FBiH and the RS. There are detailed guidelines defining the competencies that apply to different categories at the State level. However, competencies have not been adequately introduced in job descriptions, and a uniform approach to using competencies in selection is not ensured.

There have been some noteworthy advancements to make the application processes more candidate-friendly. The website where job announcements are disclosed is user-friendly at the State level and in the FBiH, i.e., it allows candidates to sort vacancies and subscribe to new announcements. The secondary legislation amendments in RS allowed candidates to submit copies of documents instead of originals in the first stages of the recruitment process. The FBiH and the BD allow candidates to present evidence only if they are short-listed²²⁹.

The ultimate goal of recruitment is to ensure that the organisation has the right people at the right time. The length of recruitment varies among the civil service systems. It is between 60 and 70 days in the 10 recruitment files analysed from the RS, while it is overly long in the FBiH and at the State level. In the Federation, the analysis of recruitment files shows that the procedure can last for more than five months. According to interviews held, it sometimes exceeds six months. The main reason is the huge backlog in the management of appeals by the FBiH Appeals Board, which receives appeals from civil servants, other employees and external candidates in the Federation and the cantons. At the State level, recruitments may take several months or even exceed one year. This is because, in December 2020, the CoM of BiH introduced the obligation to seek its consent for each recruitment, even if the budget is earmarked²³⁰.

Recruitment procedures for non-senior level positions were reasonably competitive at the State level in 2021, with a ratio of seven eligible candidates per vacancy, and also, to a lesser extent, in the RS (five) at the FBiH (four). Nevertheless, the share of vacancies filled as a result of the competitions was low (43%) in the FBiH and could not be measured in other levels due to data inconsistencies. The retention rate of newly employed staff, according to provided data, is very high at all levels.

²²⁹ Regulation on conditions, manner and program for taking the general knowledge examination and the professional examination for civil servant candidates in the Federation of Bosnia and Herzegovina (Official Gazette of the FBiH No. 10/2018), Articles 32.2 and 33.1. Rulebook on employment of civil servants and employees in the BD (Official Gazette of the BD of BiH No. 33/2014, 47/2014), Chapter V.

²³⁰ Conclusion from the 23rd Session of the Council of Ministers of Bosnia and Herzegovina held on 29 December 2020.

Indicator 3.3.2. Merit-based termination of employment and demotion of civil servants

This indicator measures the extent to which the legal framework and the HRM practices support fair termination of employment in the civil service and fair demotion of civil servants wherever it is envisioned in the legislation. The indicator does not deal with the termination of employment and demotion of senior civil servants.

Overall 2022 indicator value 0 1 2 3 4 **5**

Sub-indicators	Points				
	State level	FBiH	RS	BD	Average
Legal framework and organisation of dismissals and demotions					
1. Objectivity of criteria for termination of employment in civil service legislation	4	3	6	4	4/6*
2. Objectivity of criteria for demotion of civil servants in the legislative framework	2	2	1	2	2/2*
3. Right to appeal dismissal and demotion decisions to the courts	2	2	2	2	2/2*
Fairness and results of dismissal practices					
4. Dismissal decisions confirmed by the courts (%)	4	4	4	0	4/4*
5. Implementation of court decisions favourable to dismissed civil servants (%)	4	4	4	0	4/4*
Total²³¹					16/18

*Average of the State level, FBiH and RS.

The legislative framework related to the termination of employment and demotion of civil servants is well-established. The criteria for termination of employment are objective, and the right to appeal is ensured. The most critical shortcoming is provisions related to re-organisation and restructuring that usually do not contain concrete criteria for making individual redundancy decisions, except in the RS, where the Government Decision on Redundancy includes a detailed list of these criteria and a point-based method for assessing their fulfilment²³². It is possible to terminate the employment of civil servants in the event of two negative, consecutive performance appraisal results at all levels. In the FBiH, the provisions related to the periods of appraisals ensure flexibility but at the same time create some risk of abuse, because the periods of assessment are not precisely set²³³. Nevertheless, the possibility of terminating employment due to negative appraisal results seems to be theoretical; in 2021 and 2020, BiH reported no such dismissals.

²³¹ Point conversion ranges: 0-2=0, 3-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

²³² The Decision on criteria of declaring the staff in administrative bodies of the RS redundant, Official Gazette No. 107 of December 2009.

²³³ According to Article 33.3 CSL, performance appraisals should take place at least every 12 months.

Demotions of civil servants are well-regulated and are possible only due to disciplinary sanction or re-organisation. The only shortcoming is the provisions at the RS level that allow transfers to lower positions in case of “unforeseen circumstances” without setting time limits for such demotions²³⁴.

The practice of dismissals is rarely contested in the courts. In 2021, there were very few court rulings related to civil servants' dismissals and, in all the cases reported, the courts upheld the decisions of the public bodies²³⁵.

Conclusion

The legislation ensures the basics of merit-based recruitment of civil servants but has still some significant deficiencies, especially in the FBiH, RS and BD. Nevertheless, the real challenge is the application of recruitments in practice. Lengthy procedures of approval for announcements at the State level and ineffective appeals procedures in the FBiH call into question the ability of these administrations to effectively fill vacancies.

The provisions related to the termination of employment and demotion of civil servants ensure merit. Employers rarely dismiss civil servants; the prevailing reason for termination of employment is the attainment of retirement age.

²³⁴ Article 49, paragraph 2 CSL RS.

²³⁵ Data for the BD was not available.

Principle 4: Direct or indirect political influence on senior managerial positions in the public service is prevented.

Overall, the value for the indicator 'Merit-based recruitment and dismissal of senior civil servants' is 3.

Indicator 3.4.1. Merit-based recruitment and dismissal of senior civil servants

This indicator measures the extent to which the legal framework and the organisation of recruitment and tenure conditions of the senior civil service support a professional senior management, free from undue political influence in access or termination of employment in senior civil service positions. This indicator relates to all competitions for senior positions, both external and internal.

Recruitment and dismissal in senior positions is treated under a separate indicator due to the importance of the role of this group of civil servants and the increased risk of politicisation and favouritism. High priority accorded to merit and competitiveness in the recruitment process reduces the possibility of political influence in appointments to such positions.

Overall 2022 indicator value 0 1 2 **3** 4 5

Sub-indicators

Points

	State level	FBiH	RS	BD	Average
Legal framework and organisation of recruitment and dismissal of senior civil servants					
1. Appropriateness of the scope for the senior civil service in legislation	1	1	1	0	1/3*
2. Adequacy of the legislative framework for merit-based recruitment for senior civil service positions	12	11	8	6	10/15*
3. Objectivity of criteria for the termination of employment of senior civil servants in the legislative framework	0	0	4	0	1/4*
4. Legislative protection of the rights of senior civil servants during demotion	2	2	2	2	2/2*
Merit based recruitment and termination of employment in senior civil service positions in practice					
5. Application in practice of recruitment procedures for the senior civil service	3.5	5.5	3.5	2.5	4/9*
6. Ratio of eligible candidates per senior-level vacancy	0	0	0	0	0/4*
7. Effectiveness of recruitment for senior civil service positions (%)	0	1	0	0	0/4*
8. Women in senior civil service positions (%)	4	4	0	0	3/4*
9. Stability in senior civil service positions (%)	0	0	0	0	0/4*
10. Dismissal decisions confirmed by the courts (%)	4	4	4	0	4/4*
11. Implementation of final court decisions favourable to dismissed senior civil servants (%)	4	4	4	0	4/4*
Total²³⁶					30/57

*Average of the State level, FBiH and RS.

²³⁶ Point conversion ranges: 0-10=0, 11-19=1, 20-28=2, 29-37=3, 38-46=4, 47-57=5.

The upper end of the vertical scope of the civil service is appropriately defined in the RS and FBiH. This is not the case in the BD, where the provisions are unclear. At the State level, regulations on secretaries with a special assignment do not ensure a clear-cut line between political appointees and senior civil servants²³⁷. Another problematic issue is the lack of responsibilities of senior managers regarding HRM, given that political appointees make the decisions on recruitment, promotion and dismissal of non-senior civil servants.

Senior civil servants are usually established as a distinct category of civil servants in legislation, with the exception of the BD, where the regulations lack clarity. While regulations contain some specificities for this group, the selection methods to fill senior civil service vacancies remain almost the same as for other civil service categories. The exception is the State level, where, according to legislation, senior civil servants must be assessed against a separate set of competencies²³⁸. However, as in the case of non-senior civil service positions, competency profiles for senior civil service jobs are not developed, which does not provide a sufficient basis for implementing competency-based HRM and hinders a uniform approach.

The essential features of merit-based recruitments are ensured at all levels in legislation, which means a competitive, merit-based selection process exists to access senior positions with adequate appeals rights²³⁹. Nevertheless, there are some important shortcomings. At the State level and in the FBiH, the appointing entity can pick any candidate from the list of successful candidates²⁴⁰, and there is no limit regarding the length of the list²⁴¹. This is particularly problematic in the absence of adequate competency-based selection processes. In the RS, the appointment of the highest-ranked candidate is formally ensured²⁴², but other disputable provisions could lead to the non-implementation of this principle²⁴³. The possibility of annulling the recruitment and not appointing the highest-ranked candidate also exists in the BD if the recruitment process exceeds 90 days²⁴⁴. Other important shortcomings are the lack of anonymity in written testing at all levels and the lack of proper written testing and structured interviews in the RS²⁴⁵. A significant challenge is the professionalism of selection commissions: the protection of their members from undue political influence is ensured in legislation only at the State level, where there are safeguards

²³⁷ Details are described in the assessment of Principle 3.1.1. – Adequacy of the scope of public service.

²³⁸ According to the Rulebook on the character and content of the competition, manner of conducting interviews and forms for conducting interviews (Official Gazette of BiH, No. 63/16, 21/17, 28/21).

²³⁹ With the exception of the BD, where appeal rights are excluded if the recruitment is annulled, because its duration exceeded 90 days – Article 42.8 CSL BD.

²⁴⁰ Article 28.2 CSL State level, and Article 31 CSL FBiH. However, at the State level, a court ruling of 2013 (Judgment of the Court of BiH number: S1 3 U 005066 11 U, dated 4 July 2013) established the obligation of the appointing authority to justify the decision if the first-ranked candidate was not appointed, based on the Law on Administrative Procedure, Article 200, paragraph 3.

²⁴¹ At the State level, the Decision on the manner of taking the public and professional exam (Official Gazette of BiH, No. 96/07, 43/10, 103/12 and 56/19) establishes a short-list of three successful candidates in Article 28.3. However, Article 28.7 regulates separately the submission of a list of candidates by the CSA to the appointing authority in recruitments for senior civil service positions, without establishing any maximum number of candidates. The same provision refers to the appointment of candidates based on the CSL, Article 28, paragraphs 2 and 3, which does not establish the obligation to appoint the first-ranked candidate.

²⁴² Articles 21.1 and 21.2 of the Rulebook No. 23/01/120-81/09 (with further amendments) on the rules and procedure of open competition for employing and appointing civil servants.

²⁴³ In particular, the lack of obligation to appoint the winner of the selection and the rule that the selected candidate must start working within 15 days from the selection decision; if it is not the case, he/she is deemed to have withdrawn (Article 40.1d and Article 39 of the CSL RS, respectively).

²⁴⁴ Article 43 CSL BD, which applies to all civil service positions.

²⁴⁵ In the RS, it is a general entry exam that allows entering competitions for specific positions in the future (Article 61 CSL RS). The participation in the entry exam costs BAM 250 for persons with higher education.

that political appointees cannot participate²⁴⁶. In the FBiH and the RS, there are no solid provisions to back this practice. The interviewees from the BD confirmed that sometimes directors of the Government's departments (equivalent to Ministers) are members of the selection commissions.

The provisions related to acting senior civil servants fulfil the requirements, i.e., they set maximum time limits no longer than six months, with the exception of the BD, where legislation does not establish a time limit²⁴⁷. In the FBiH, there are no provisions regarding acting senior civil servants, but provisions related to fixed-term appointments may apply²⁴⁸.

The recruitment practice is difficult to examine because of the limited number of files received for the analysis (only two from the State level, the FBiH and the RS)²⁴⁹. Therefore, the results must be interpreted with caution. This limited analysis confirms that legal provisions were applied. It also showed that, at the State level, the RS and FBiH, political appointees were not members of selection commissions, despite the lack of solid guarantees in legislation in the two entities.

The analysis of recruitment files confirmed that the selection process is not well-aligned to the specificity of senior positions. The requirements contained in job announcements were not aligned with the responsibilities expected for top management jobs. Even at the State level, where senior civil servants must be assessed against a separate set of competencies, job announcements examined did not contain any reference to them. There is no evidence of the systematic implementation of written examinations and structured interviews at the State level²⁵⁰ and the RS. In the FBiH, there is evidence of written tests with most questions relating to knowledge, and therefore inadequate for senior positions. Moreover, as is the case in competitions to fill non-senior vacancies, the selection panel members from appointing entities rarely receive training on selection.

While most web portals with job announcements of non-senior positions are user-friendly, this is not the case for senior positions. Namely, web portals do not allow candidates to sort senior vacancies by different criteria or to subscribe to new vacancies related exclusively to senior positions.

The assessment of the ratio of eligible candidates per senior-level vacancy was possible only in the FBiH and the RS, due to data inconsistencies. In the FBiH and the RS, it was only 1.6 and 2.1 respectively. The effectiveness of competitions, measured as the share of senior-level vacancies open for competition that

²⁴⁶ Two members nominated from hiring institutions are civil servants (Article 24.2 CSL State Level), the Instruction on the list of experts of the Civil Service Agency of Bosnia and Herzegovina, No. 01-02-2-1298/17, 29 December 2017, in Article 8, lists persons who cannot be enrolled on the list: among others, members of legislative and executives bodies (political appointees), members who hold functions in political parties, persons with conflicts of interest and convicted persons.

²⁴⁷ In 2017, the State level introduced the amendment to the Law on State Administration to regulate the issue of acting heads (Article 55a of the Law on Administration, Official Gazette of BiH No. 32/02, 102/09).

²⁴⁸ The CSL of the FBiH, Article 37a, regulates fixed-term appointments in case of absence of a civil servant. This article applies to all civil service positions and does not set a definitive time limit for such a fixed-term appointment. However, only civil servants from the redundancy list can be appointed in this way. Otherwise, the vacancy must be filled through open competition. According to interviews, the most frequent practice is authorising civil servants to perform only certain tasks of the absent senior civil servant.

²⁴⁹ Two recruitment files were analysed at the State level, due to absence of recruitments in two institutions and absence of files from the Ministry of Foreign Trade. Two recruitment files were analysed in the FBiH due to lack of recruitments in three institutions. Two files were analysed from the RS due to lack of recruitments in two institutions and an absence of files from the Ministry of Health and Social Welfare. SIGMA has received only one, incomplete file from BD, so the analysis of relevant criteria was not performed for the BD.

²⁵⁰ In the two recruitment files examined at the State level, there was no proof of interview questions. Regarding the written examination (professional exam), in one case (recruitment procedure in the Ministry of Civil Affairs) there was no evidence in the documents submitted that a written examination was held. In the other case (Agency for Statistics), there was proof that a written examination was held, but the questions were not included and therefore it is not possible to conclude that the same questions were asked to all candidates.

were filled, could be analysed only in the FBiH for the same reasons, and it was only slightly more than half (56%).

The provisions relating to the termination of employment in senior positions are similar to those for non-senior jobs (Principle 3), with the difference that in some cases, the appointments of senior civil servants are made for a fixed term, which allows for termination after the fixed period is over²⁵¹. The legislation ensures the protection of the rights of senior civil servants during demotions. The staff employed in senior positions for a fixed term who were civil servants before their appointment have a right to return to their previous or similar positions.

There were no court cases related to dismissals from senior civil service positions in 2021, which translates automatically to maximum points awarded.

There is no data available on the turnover in senior civil service positions in the RS and the BD, and existing data at the State level and the FBiH is insufficient for analysis²⁵².

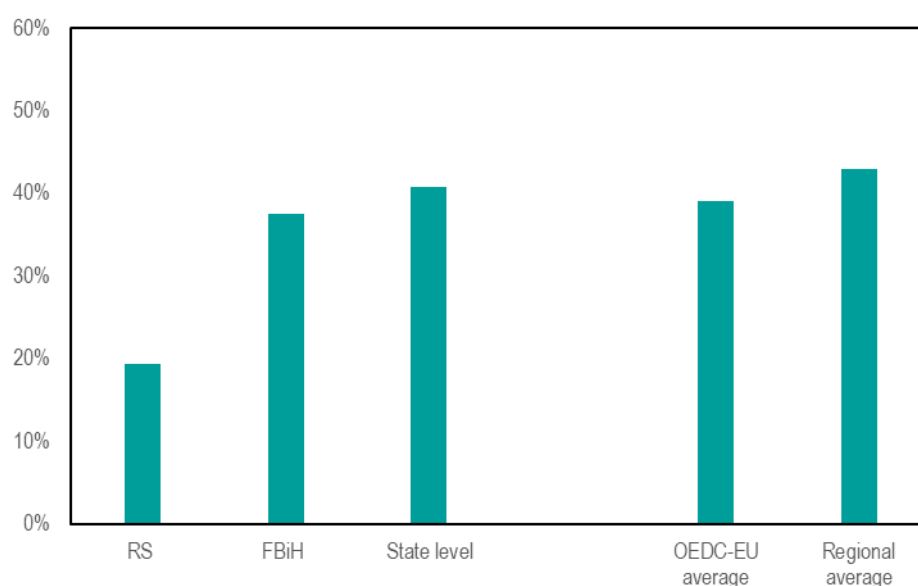
Gender balance in top management positions is far from being achieved in the RS, with women occupying only 19% of such posts (Figure 1). The situation is better in the FBiH and at the State level. In the latter, the share of women in senior civil service positions is higher than the average in OECD-EU countries, although it remains below the regional average²⁵³.

²⁵¹ This is the case for State level – in relation to secretaries with special assignment – the RS and BD as regards the so-called mandated managerial positions.

²⁵² At the State level, data available refers only to the annual turnover in 2021 (5.8%). But data on the turnover during the year in which the government was last formed, the year after the latest formation of the government, and within six months from the date of the formation of the current government were not provided. In the FBiH, data provided refers only to the annual turnover in senior civil service positions during the year in which the government was last formed (3.6%), and in the year after the latest formation of the government (2.7%).

²⁵³ Data for the Brčko District is not available. In the FBiH, data for the Federal level only is not available.

Figure 1. Women in senior civil service positions (%), 2021 or latest available year



Notes: The data for Western Balkans refers to the number of women in senior civil service positions divided by the total number civil servants in senior level positions in the latest full calendar year, expressed as a percentage. Data for the OECD countries refers to gender equality in senior management positions in central governments. Data relates to central government administration only. The Brčko District did not provide data.

Source: Civil Service Agency of the Institutions of Bosnia and Herzegovina 2021; Civil Service Agency of the Federation of Bosnia and Herzegovina; Civil Service Agency of the Republika Srpska 2021; OECD (2021), *Government at a Glance 2021*, OECD Publishing, Paris, p. 107, <https://doi.org/10.1787/1c258f55-en>.

Conclusion

Senior civil servants are not empowered to lead the HRM processes in BiH. Although they are considered a distinct category of civil servants, the recruitment procedures are not adapted to their specificities. At the State level, there is a specific set of competencies applying to senior positions, but its practical application is only at an initial stage. The recruitment provisions allow political appointees to influence the recruitment process for these positions. Legislation ensures the protection of rights of senior civil servants in termination of service and demotion.

Principle 5: The remuneration system of public servants is based on job classifications; it is fair and transparent.

Overall, the value for the indicator 'Fairness and competitiveness of the remuneration system for civil servants' is 2.

Indicator 3.5.1. Fairness and competitiveness of the remuneration system for civil servants						
This indicator measures the extent to which the legal framework and the organisation of the civil service salary system support fair and transparent remuneration of civil servants, in terms of both the legislative and organisational preconditions and the performance and fairness of the system in practice.						
Overall 2022 indicator value	0	1	2	3	4	5
Sub-indicators		Points				
	State level	FBiH	RS	BD	Average	
Legal framework and organisation of the remuneration system						
1. Legal obligation to base salaries on job classifications	2	2	2	2	2/2*	
2. Comprehensiveness, clarity and transparency in legal definitions of salary, criteria and procedures for allocation	0	0	0	0	0/2*	
3. Availability of salary information	1	1	0	3	1/3*	
Performance and fairness of the remuneration system in practice						
4. Fairness in the allocation of base salaries in the job classification system	1	0	1	1	1/4*	
5. Base salary compression ratio	2	0	2	2	1/2*	
6. Managerial discretion in the allocation of bonuses	2	2	0	1	1/2*	
7. Motivational character of bonuses (%)	2	1	0	2	1/2*	
8. Competitiveness of civil service salaries (%)	0	0	3	0	1/3*	
Total ²⁵⁴					8/20	

*Average of the State level, FBiH and RS.

Special salary laws regulate salaries of civil servants at all levels. In the case of the RS and the BD, Parliaments adopted new legislation from 2017²⁵⁵. There are some main common features of the salary system at all levels. First, the legislation clearly establishes that basic salaries are based on job

²⁵⁴ Point conversion ranges: 0-3=0, 4-7=1, 8-10=2, 11-13=3, 14-16=4, 17-20=5.

²⁵⁵ The Law on Salaries and Remuneration in the Institutions of Bosnia and Herzegovina, Official Gazette of BiH, No. 50/08 with subsequent amendments; The Law on salaries and fees in the authorities of the Federation of BiH, Official Gazette of FBiH, No. 45 of July 29, 2010 with amendments; The Law number 02/1-021-729/18 from 4 July 2018 on salaries of employees in the administrative bodies of the RS with subsequent amendments; Law on Salaries and Compensations in Public Administration Bodies and Institutions of the Brčko District of Bosnia and Herzegovina (Official Gazette of the Brčko District of BiH, Nos. 10/19, 12/19, 39/20, 41/20 and 13/21).

classification. However, well-elaborated methodology and procedure for job evaluation are not in place, which undermines the fairness of the job classification and the allocation of basic salaries²⁵⁶. Second, the competitiveness of civil service salaries in the labour market does not receive sufficient attention; external salary benchmarks are not considered to define the salary scales. No data is available in this regard except in the RS, where average salaries of civil servants are similar to those of tertiary-educated workers in the economy at large²⁵⁷. Second, many salary supplements and allowances make the system less transparent and less manageable. Criteria for making individual decisions regarding allowances for the work in special conditions are not explicitly regulated in salary laws²⁵⁸.

Overall, the compression ratio of base salaries²⁵⁹ of civil servants is low in BiH, particularly in the FBiH, where it reaches only 1.76. This offers minimal perspectives and opportunities for salary progression in the FBiH and, together with the absence of any kind of one-off bonuses, deprives the salary system of motivational elements.

One-off bonuses for civil servants exist at the State level, the RS and the BD, but the salary laws do not provide criteria for awarding them. At the State level, the general criteria are set in a decision of the CoM²⁶⁰. The detailed criteria are allegedly set in internal regulations at the State level and the RS, but the assessment did not provide examples of these regulations. The same applies to the BD. Data on one-off bonuses paid in 2021 is available only at the State level and shows that their share of the total wage budget was below 15%. On average, less than one-quarter of civil servants in a sample of institutions analysed at the State level received one-off bonuses. This aggregated data, however, masks wide variations that prevent any positive conclusion on the motivational character of such payments²⁶¹.

Salaries in the civil service lack transparency. At the State level, the FBiH and the BD, job announcements include information on the salary. Nevertheless, publicly available salary reports and information on salaries of civil servants are not easily available online. There are no publicly available government reports with salary statistics, including disaggregation by gender. The fact that salaries of civil servants fall entirely out of the remit of competence of the CSAs (they are the exclusive domain of the ministries responsible for public finance) and that the HRMIS do not contain salary data contributes to this situation. A positive exemption related to transparency of salary data is the BD, where the register of civil servants contains information on individual salaries and is publicly available online²⁶².

²⁵⁶ At the State level, a more elaborate job classification method was developed. The legal basis is the Decision on job classification and criteria for job description in the institutions of Bosnia and Herzegovina (Official Gazette of BiH No. 30/13). Nevertheless, SIGMA has learned that not all internal systematisation rulebooks are up to date. At the State level, the Appeals Board does not have competences to consider appeals related to salaries – civil servants need to go directly to the courts, which could take a long time.

²⁵⁷ According to data that the Ministry of Finance provided, in 2020 the average monthly salary in the civil service (BAM 2 086) represented 101% of the average monthly salary of tertiary-educated workers in the economy at large (BAM 2 060).

²⁵⁸ In RS more detailed criteria are set in the Collective Agreement.

²⁵⁹ Ratio between the base salary of the highest position and the base salary of the lowest position in the government's civil service salary scale (e.g. the base salary of a secretary general or equivalent position and the base salary of a junior expert or equivalent position).

²⁶⁰ The Decision on Framework Criteria for Awarding Money Awards to Employees in the Institutions of Bosnia and Herzegovina (Official Gazette of BiH No. 31/10).

²⁶¹ Data from the Ministry of Foreign Trade and Economic Relations, the Ministry of Civil Affairs, the Service for Foreigners' Affairs, the Agency for Statistics. The Indirect Taxation Authority is excluded from calculations, as the data was not available. The share of civil servants who received bonuses in the four analysed institutions in 2021 was 22%. However, it was 0% in the Ministry of Foreign Trade and Economic Relations and in the Service for Foreigners' Affairs, while it was 43% in the Agency for Statistics (47 employees received them from a total staff of 110) and 83% in the Ministry of Civil Affairs (79 employees received bonuses from a total staff of 95). The share of bonuses from the total wage budget was 14.7% in 2021.

²⁶² <https://eprim.bdcentral.net/rzl/>.

Conclusion

Salary systems have complex structures with many supplements and allowances that make them less transparent. Internal fairness is not ensured due to a lack of well-developed job evaluation systems. Market competitiveness of salaries is not taken into consideration, and the award of one-off bonuses is insufficiently regulated and unevenly applied. General information and statistics on salaries in the civil service, beyond legislation, are scarce. A positive exception is BD, where individual salaries of civil servants are publicly disclosed.

Principle 6: The professional development of public servants is ensured; this includes regular training, fair performance appraisal, and mobility and promotion based on objective and transparent criteria and merit.

Overall, the value for the indicator 'Professional development and training for civil servants' is 3.

Indicator 3.6.1. Professional development and training for civil servants						
This indicator measures the extent to which the legal framework and the organisation of training, performance appraisal, mobility and promotion support fair professional development in the civil service.						
Overall 2022 indicator value	0	1	2	3	4	5
Sub-indicators		Points				
	State level	FBiH	RS	BD	Average	
Legal framework and organisation of professional development						
1. Recognition of training as a right and a duty of civil servants	2	2	2	2	2/2*	
2. Co-ordination of the civil service training policy	3	3	3	1	3/3*	
3. Development, implementation and monitoring of training plans	3	3	2	0	3/3*	
4. Evaluation of training courses	2	2	2	0	2/2*	
5. Professionalism of performance assessments	2	3	3	3	3/4*	
6. Linkage between performance appraisals and measures designed to enhance professional achievement	0	4	4	4	3/4*	
7. Clarity of criteria for and encouragement of mobility	2	2	2	2	2/2*	
8. Adequacy of legislative framework for merit-based vertical promotion	2	0	0	1	1/2*	
9. Absence of political interference in vertical promotions	2	0	0	0	1/2*	
10. Right of civil servants to appeal against performance appraisal decisions	2	2	2	2	2/2*	
11. Right of civil servants to appeal mobility decisions	2	2	2	2	2/2*	
Performance of professional development practices						
12. Training expenditures in proportion to the annual salary budget (%)	0	0	0	0	0/4*	
13. Participation of civil servants in training (%)	4	5	0	0	3/5*	
14. Perceived level of meritocracy in the public sector (%)	2				2/5**	
Total ²⁶³					28/42	

*Average of the State level, FBiH and RS. ** Country-wide data.

The legislation establishes training as the right and duty of civil servants at the State level, the FBiH, the RS and the BD and provides for centralised training management. The CSAs not only play an essential

²⁶³ Point conversion ranges: 0-6=0, 7-13=1, 14-21=2, 22-29=3, 30-36=4, 37-42=5.

role in the co-ordination of training, they also organise and implement central training courses. Centrally managed training is the primary tool for professional development for many, especially smaller, public organisations. Yet it is difficult to have a complete picture of training activities because there is no obligation or practice to collect data on decentralised training, i.e., sector-specific training that individual public bodies organise.

The legal framework and tools in place ensure appropriate planning, implementation and evaluation of training, with the exception of the BD. Training plans that the CSAs prepare are based on training needs analysis (TNA) at the State level and the FBiH, in the legislation and in practice. In the RS, the training plan did not fully follow the requirements set in the regulations²⁶⁴. Training plans are monitored at the State level, the RS and the FBiH, and the training courses are evaluated. At the State level, the training plan for 2021 was broadly implemented (62.5%), and in the FBiH the implementation rate was slightly more than half (52%). It is impossible to know about the RS due to inconsistencies in the data provided²⁶⁵. In the BD, centralised training courses were not planned due to budget shortages, but public servants frequently attended training courses that the CSA organised at the State level²⁶⁶.

Data on training expenditures in proportion to the annual wage budget is available only for centralised training at the State level, where it was only 0.05%, and the BD, where it was 0%²⁶⁷.

Participation of civil servants in training courses financed by public funds is much higher at the State level and the FBiH than in the RS and the BD. However, the data available is not fully reliable²⁶⁸. The CSA at the State level was particularly agile in adapting to the new COVID-19 pandemic situation. It has introduced e-learning courses and was one of the 2020 SIGMA/Regional School of Public Administration (ReSPA) award winners for the project "Training during the coronavirus (COVID-19) pandemic"²⁶⁹.

The provisions related to performance appraisals meet the basic standards at all levels. According to the legislation, performance appraisals provide feedback to civil servants and are linked to professional development measures. The right of civil servants to appeal performance appraisal decisions is ensured.

Civil servants are regularly assessed. However, the practical implementation of performance appraisals creates numerous challenges at all levels, although comparison among them is somewhat difficult due to the use of different rating scales (Table 1). Almost all the assessed civil servants (99%) at the State level and in the RS received results above the average level of performance. The percentage was 83% in the BD and 66% in the FBiH. The cases of negative performance appraisal results were sporadic: 40 cases

²⁶⁴ Chapter III of the Instruction on the Manner of Conducting Training in the Republican Administrative Bodies, brought by the director of the State Administration Agency, No. 23.04 / 020-4561 / 19 on 30 December 2019, explains in detail the TNA methodology. The analysis of the provided example of the training plan showed that the methodology was not followed. This was confirmed during interviews. The main reason was the lack of resources for training.

²⁶⁵ According to the information provided in the assessment questionnaire, in 2021, 12 training courses were planned and 26 of them were implemented. A comparative analysis of the training plan for 2021 and the training report for the same year to verify these data is unusable due to a lack of specification of the number of training courses in the training plan. Namely, the training plan for 2021 included 12 priority topics without detailing the number of training courses. According to the training report, seven topics were implemented by related training courses.

²⁶⁶ Information provided by the Head of the HRM Sub-division of the BD.

²⁶⁷ In the RS, due to budget shortages, the CSA did not pay trainers' fees. They bore other costs related to facilities, but such costs are not counted as training expenses. The FBiH provided data on the training budget but not on the total wage budget; therefore, it was not possible to calculate the proportion.

²⁶⁸ Data available on the number of participants in training courses refers only to centralised training, i.e. courses organised by the CSAs. It is not clear whether this includes the total number of participants in training or the number of individual civil servants who participated in training. Besides, data for the RS do not seem complete. In any case, data provided show the following shares of civil servants who participated in training in 2021: 67.8% at the State level, 95% in the FBiH, and only 8.5% in the RS. Data for the BD is not available.

²⁶⁹ <https://www.respaweb.eu/105/news/371/meet-the-winners-of-the-first-western-balkans-public-administration-award-contest>

in 2021 at all levels in total. This greatly skewed distribution of performance results towards the higher rating categories makes the system unusable to distinguish between good and bad performers or identify development needs, and it calls into question linking monetary awards and career advancement with performance appraisal results. At the State level, the CSA does not receive the data on performance appraisals from a large part of public bodies, which translates to lower points awarded²⁷⁰.

²⁷⁰ Individual performance appraisals are conducted every six months at the State level. According to the provided information, in the second half of 2021, 2 291 out of 2 533 civil servants were appraised, whereas the total number of civil servants was 3 852 at the end of 2021. Therefore, data on performance appraisals is incomplete.

Table 1. Results of the individual performance appraisal of civil servants.

State level ¹			Federation BiH ²				Republika Srpska ³			Brčko District					
Appraisal scale	Results		% Above average	Appraisal scale	Results		% Above average	Appraisal scale	Results		% Above average	Appraisal scale	Results		% Above average
Very successful	1 895	83%	99	Exceeds expectations	1 300	66%	66	Especially excelled	2 284	45%	99	Beyond expectations	727	83%	83
Successful	378	16%						Excelled	2 710	54%					
Satisfactory	18	1%		Meets expectations	631	32%		Satisfactory	57	1%		Meets expectations	151	17%	
				Partially meets expectations	36	2%									
Unsatisfactory	0	0%		Does not meet expectations	2	0%		Not satisfactory	2	0%		Does not meet expectations	0	0%	
TOTAL	2 291	100%		TOTAL	1 969	100%		TOTAL	5 053	100%		TOTAL	878	100 %	

Notes: 1. Data relates to the second half of 2021 (appraisals are conducted every six months), 2. Data for 2020, 3. Data related to the RS includes civil servants and employees. Data relates to the first half of 2021, as the assessments take place every six months.

Source: Civil Service Agencies at the State level, the FBiH, the RS, and the HRM Division of the BD.

A recent ReSPA study based on self-assessment of performance appraisal systems in Western Balkans administrations shows that civil servants in BiH do not perceive performance as a valuable tool²⁷¹. One of the main challenges in implementing performance appraisals (including in BiH) that the study identified is the insufficient link and harmonisation with organisational objectives; another critical challenge is the corporate culture and low commitment of both managers and appraised civil servants to the process of performance appraisals. On the positive side, the F BiH has managed to develop an IT solution that facilitates the process of performance appraisals. However, IT solutions alone cannot solve the implementation issues identified.

The legal framework foresees various forms of internal mobility of civil servants (transfers, internal competitions, promotions) within each of the four civil service systems. In contrast, the mobility of civil servants among the systems is not promoted and is in fact hindered, among other issues, by the lack of harmonisation and mutual recognition of entry requirements, job descriptions and classification. An example of positive action to promote internal mobility is the CSA's launching at the State level in 2022 of the electronic application for internal announcements²⁷².

The procedures related to vertical promotion fully ensure merit and professionalism only at the State level. In the F BiH, the legal provisions are unclear²⁷³. They seem to establish positive performance appraisal results as the only criterion for promotions in non-managerial categories, which does not seem sufficient for ensuring merit-based promotions considering the inflation of performance appraisal grades. The provisions in the RS also allow promoting civil servants to higher positions based solely on performance appraisal results and seniority. Moreover, provisions related to reassignments for an indefinite term allow promoting civil servants to higher positions if they meet criteria related to education, which is insufficient²⁷⁴. Similar shortcomings are contained in the legislation of the BD²⁷⁵.

Political appointees are involved in the process of promotion of civil servants in the four civil service systems. Appropriate safeguards to limit their interference are in place only at the State level²⁷⁶.

Consistently with the observed shortcomings, the public perception of career possibilities in the civil service and to what extent they depend on merit reached only 5 points on a scale from 1 to 10 in 2021, similar to 2017 (Figure 2) and lower than the average in the Western Balkans.

²⁷¹ Regional School of Public Administration (ReSPA) (2021), The self-assessment report on performance appraisals in the Western Balkans, available: <https://www.respaweb.eu/download/doc/Self-assessment+report+on+performance+appraisal+in+the+WBS+.pdf/4291fc77ac64ec4d3a35c043c01cb4f6.pdf>

²⁷² Instruction on the manner and procedure of submitting an electronic application of candidates in the procedure of employment of civil servants in the Institutions of BiH, No. 05-02-2-1104-22/20 from 15 March 2022.

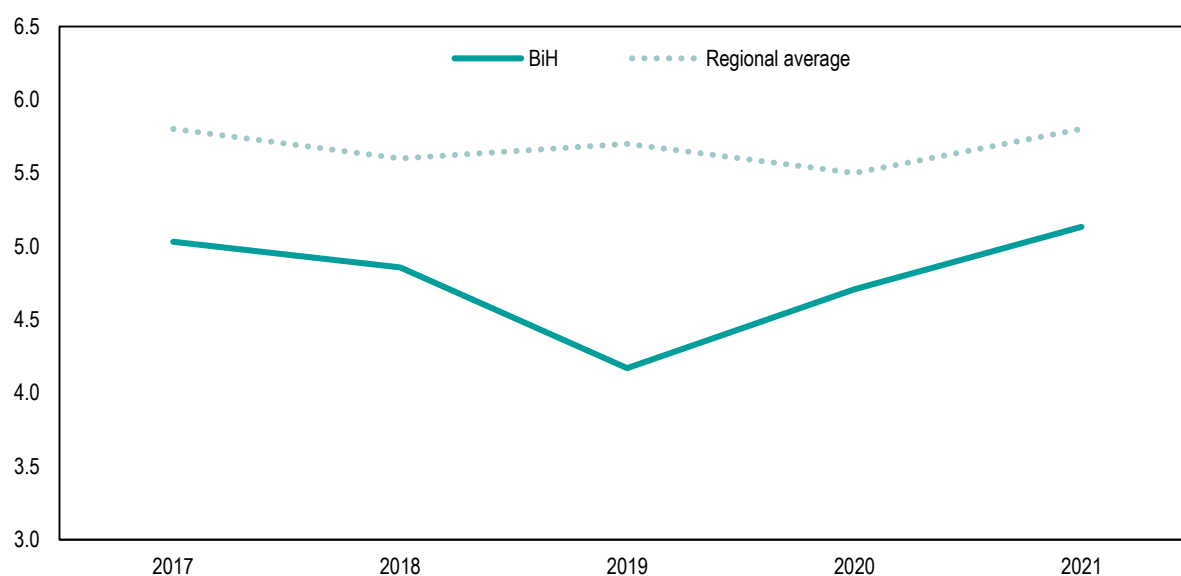
²⁷³ There is a lack of consistency of the regulation of promotions by Articles 34 and 35 of the CSL F BiH, which results in unclear criteria for vertical promotion in non-managerial civil service categories.

²⁷⁴ Article 48 CSL RS. The provision refers to the need of the civil servant to meet the general and special conditions prescribed for that position. However, the by-laws on job categories and job systematisation establish only general requirements, and some of them are common across positions at different levels.

²⁷⁵ Promotions are possible only through competitions; nevertheless, temporary transfers are possible if civil servant meets the requirements (the regulations do not specify how the fulfilment of requirements is checked and do not contain any time limitations for such transfers – Article 47 CSL BD).

²⁷⁶ The head of institution appoints the members of commissions for internal competitions but he/she must seek prior consent from the CSA, and the CSA may decide to appoint an independent expert as the member of the commission (Article 10 of the Rulebook on the conditions and manner of conducting internal competitions, internal and external transfers of civil servants in the institutions of BiH, No. 01-02-520-20/10 from 16 July 2010).

Figure 2. Perceived level of meritocracy in the public sector in Bosnia and Herzegovina, 2017-2021



Notes: Proportion of respondents to the question "To what extent do you agree or not agree with the following statement? 'In the public sector, most people can succeed if they are willing to work hard'." Only responses from those currently working in the public service were analysed. Scale from 1 (completely disagree) to 10 (strongly agree).

Source: Regional Cooperation Council, Balkan Barometer Public Opinion database (<https://www.rcc.int/balkanbarometer>).

Conclusion

Training is centralised at all levels of government in BiH and is well-regulated, but very few training courses are provided in the BD and the RS due to insufficient resources. Performance appraisals are well-established in legislation but result in extremely high percentages of positive grades, which invalidate them as a useful HRM tool. The legislation provides for various forms of internal mobility, but merit-based promotions are ensured only at the state level. The perceived level of meritocracy in the public sector is low and has not improved since 2017.

Principle 7: Measures for promoting integrity, preventing corruption and ensuring discipline in the public service are in place.

Overall, the value for the indicator 'Quality of disciplinary procedures for civil servants' is 2.

The value for the indicator 'Integrity of public servants' is 0.

Indicator 3.7.1. Quality of disciplinary procedures for civil servants						
This indicator measures the extent to which the legal framework and the organisation of disciplinary procedures support individual accountability, professionalism and integrity of civil servants and safeguard civil servants against unfair and arbitrary disciplinary cases.						
Overall 2022 indicator value	0	1	2	3	4	5
Sub-indicators			Points			
	State level	FBiH	RS	BD	Average	
Legal framework and organisation of disciplinary system						
1. The adequacy of civil service legislation to uphold basic principles related to disciplinary procedures	2	2	4	2	3/4*	
2. Compliance between disciplinary procedures and essential procedural principles	0	0	0	0	0/6*	
3. Time limits for the administration to initiate disciplinary action and/or punish misbehaviour	1.5	1	1.5	2	1/2*	
4. Legislative safeguards for suspension of civil servants from duty	1	2	1	2	1/2*	
Performance of the disciplinary procedures						
5. Disciplinary decisions confirmed by the courts (%)	4	4	4	4	4/4*	
Total ²⁷⁷					9/18	

*Average of the State level, FBiH and RS.

The legislation upholds basic principles related to disciplinary procedures, but it presents significant shortcomings. In the FBiH and the BD, the circumstances that aggravate or extenuate disciplinary sanctions are not explicitly listed in the civil service legislation, and there is no clear reference made to other provisions (e.g. criminal codes). The procedural principles are regulated at all levels, with the important exception of the right of civil servants to be heard during appeal procedures. In addition, in the RS, the presumption of innocence is not explicitly stated in the provisions.

The time limits to start disciplinary action are regulated at all levels except in the FBiH. In the case of serious violations, they are too short at the State level and the RS²⁷⁸. All levels regulate the suspension of civil servants and its financial implications. Nevertheless, at the State level and the RS, the grounds for

²⁷⁷ Point conversion ranges: 0-3=0, 4-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

²⁷⁸ At the State level it is six months from the date of the breach (Article 25, paragraph 1 of the Rulebook on Disciplinary Responsibility of Civil Servants in the Institutions of Bosnia and Herzegovina; Official Gazette of BiH, No. 20/03, 94/10, 44/16). In the RS, it is one year from the date of committing the wrongdoing (CSL, Article 78.1).

potential suspension are not specific enough. There were few court rulings related to disciplinary sanctions at the State level and the FBiH. There were no such cases in the RS and BD in 2021. All court rulings confirmed the disciplinary decisions.

Indicator 3.7.2. Integrity of public servants

This indicator measures the extent to which legislation, policies and organisational structures promote public sector integrity, whether these measures are applied in practice and how the public perceives the level of corruption in the public service.

The indicator does not address the internal administrative proceedings related to integrity, as that is covered by a separate indicator on disciplinary procedures.

Overall 2022 indicator value **0** 1 2 3 4 5

Sub-indicators

Points

	State level	FBiH	RS	BD	Average
Legal framework and organisation of public sector integrity					
1. Completeness of the legal framework for public sector integrity	1	0	0	0	0/5*
2. Existence of a comprehensive public sector integrity policy and action plan	0	0	3	0	1/4*
3. Implementation of public sector integrity policy	0	0	0	0	0/3*
Public sector integrity in practice and public perceptions					
4. Use of investigations in practice	0	0	0	0	0/4*
5. Perceived level of bribery in the public sector by businesses (%)	1				1/4**
6. Bribery in the public sector experienced by the population (%)	0				0/4**
Total²⁷⁹					2/24

*Average of the State level, FBiH and RS. ** Country-wide data.

The policy framework related to public sector integrity is weak in BiH. The Strategy of Fight Against Corruption 2018-2022 and its Action Plan were approved only in the RS, but there is no evidence of implementation²⁸⁰. A draft anti-corruption strategy for 2020-2024 was prepared at the State level, but not adopted by the CoM. Integrity plans are elaborated in the public bodies at the State level and in the RS. However, evidence of implementation – for example, in the form of monitoring reports – was not provided.

Institutions responsible for the co-ordination of anti-corruption and integrity in the public service exist at the State level (the Agency for the Prevention of Corruption and the Fight Against Corruption) and in the RS (the Ministry of Justice). In addition, a significant development is the establishment of the Office for

²⁷⁹ Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-24=5.

²⁸⁰ The monitoring report was not provided for analysis.

the Prevention of Corruption and Coordination of Anti-Corruption Activities in the BD in 2021. SIGMA could not identify any unit that would co-ordinate anti-corruption issues in the FBiH.

At all levels, conflicts of interest of public officials is regulated through special laws, but none of them applies to civil servants²⁸¹. The laws on the civil service regulate conflicts of interest for civil servants, but they are not sufficiently detailed in the FBiH and at the State level. While regulating secondary employment for civil servants and adopting codes of conduct is common at all levels, legislation to minimise “revolving doors” exists only in the FBiH and at the State level. The regulations on civil servants’ receipt of gifts are too broad to ensure proper implementation.

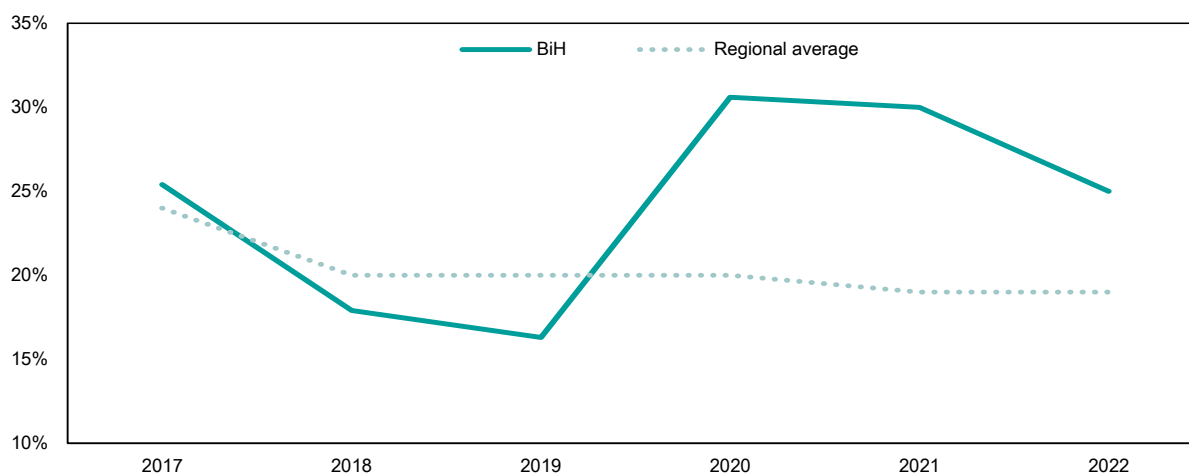
The CSLs include the obligation to disclose assets for civil servants at the State level in the FBiH and BD, although this obligation concerns only newly employed staff. Civil servants are not obligated to declare their assets on a regular basis on other appropriate grounds; for example, positions involving high integrity risks.

Whistleblower protection was enacted at all levels, except for the FBiH²⁸². The State level and the RS have a system allowing people to report corruption cases online. The penal codes contain comprehensive regulations concerning fraud, deception and corruption offences perpetrated by public officials, but none of the codes explicitly regulates illicit enrichment.

SIGMA monitoring aims to analyse the use in the practice of integrity tools by identifying cases of investigations related to conflicts of interest, secondary employment, post-employment, gifts and benefits, disclosure of assets and whistleblowing. No such cases were identified, except at the cantonal/communal level, which falls out of the scope of this analysis.

Businesses perceive bribery as widespread in BiH, and this perception is higher than the average in the Western Balkans in the last three years (Figure 3). Citizens’ perceptions yield even more problematic results. The percentage of citizens who declare having paid a bribe in any form related to public services (themselves or other persons in their household) more than tripled between 2017 (5%) and 2021 (17%), while it registered a decreasing trend in the region in the same period (Figure 4).

Figure 3. Perceived level of bribery in the public sector by businesses (%)



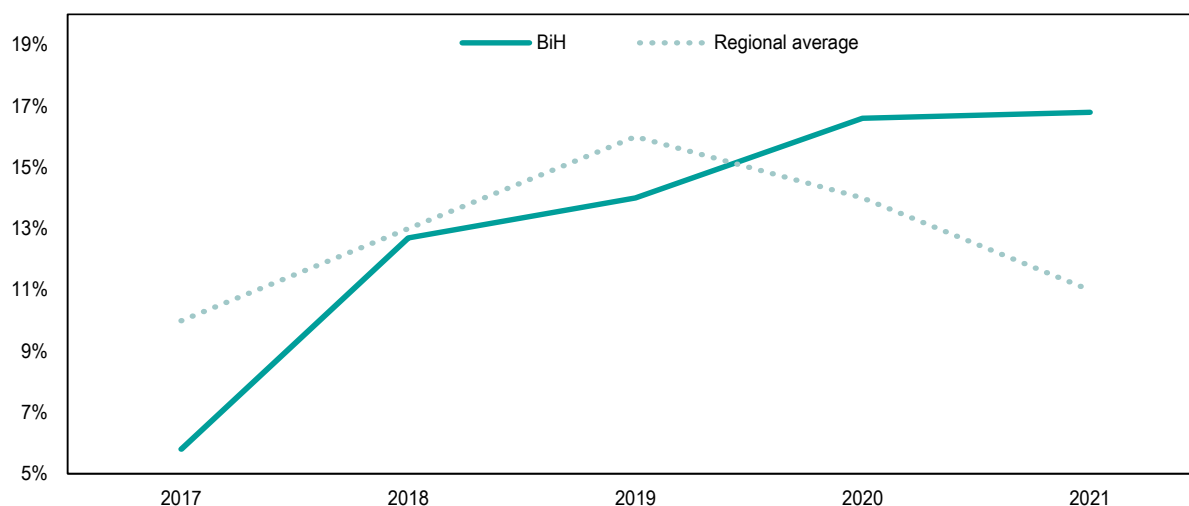
²⁸¹ Article 1 of the Conflict of Interest Law in the Institutions of the Government of BiH, Official Gazette of BiH No. 16/02 with amendments; Article 1 of the Law on Conflict of Interest in the Authorities of the FBiH, Official Gazette of the FBiH, No. 70/08; Article 1 of the Law on Prevention of Conflict of Interest in the Authorities of the RS, No. 01-1226/08; Article 1 of the Law on Prevention of Conflict of Interest in the Institutions of the Brčko District of Bosnia and Herzegovina (Official Gazette of the Brčko District of BiH No. 4/2021).

²⁸² The adoption of the Law on the Protection of Persons Reporting Corruption (Official Gazette of the Brčko District of BiH No. 25/2018). In the RS, the Law on Protection of Persons Reporting Corruption (Official Gazette of the Republika Srpska, No. 62/2017). At the State level, the Law on Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina (Official Gazette of BiH 100/13).

Note: The percentage of respondents who answered “totally agree” or “tend to agree” to the question: “Thinking about officials, to what extent would you agree with the following statement? It is common for firms in my line of business to have to pay some irregular ‘additional payments/gifts’ to ‘get things done’”.

Source: Regional Cooperation Council, Balkan Barometer Business Opinion database (<https://www.rcc.int/balkanbarometer>).

Figure 4. Bribery in the public sector experienced by citizens (%)



Note: The percentage of respondents who answered “yes” to the question: “In your contact or contacts with the institutions, have you or anyone living in your household paid a bribe in any form in the past 12 months?” in relation to any of the following institutions: police, registry and permit services, utilities, tax revenues, land services or any government agency.

Source: Regional Cooperation Council, Balkan Barometer Public Opinion database (<https://www.rcc.int/balkanbarometer>)

Conclusion

Legislation upholds basic principles related to disciplinary procedures, but it presents important shortcomings such as insufficient regulation of the statute of limitations in serious offences (at the State level, FBiH and RS) or the non-inclusion of the right to be heard in appeal procedures at all levels. An integrity policy framework for the public sector was adopted only in the RS. The legislation on public sector integrity is incomplete, and there are no cases of the use of integrity mechanisms in practice except at the municipal or cantonal level. The perception of integrity in the public sector has worsened considerably among citizens since 2017 and is in fact the worst in the region.

Accountability

The Principles of Public Administration Accountability

Principle 1	The overall organisation of central government is rational, follows adequate policies and regulations and provides for appropriate internal, political, judicial, social and independent accountability.
Principle 2	The right to access public information is enacted in legislation and consistently applied in practice.
Principle 3	Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest.
Principle 4	Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews.
Principle 5	The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation.

Accountability

[This part of the report is from November 2021]

Summary and recommendations

Laws on public administration at the State level, in the Federation of BiH (FBiH), the Republika Srpska (RS) and the Brčko District (BD) establish the organisational set-up of the administrative apparatus. However, **official typologies of administrative bodies determined in legislation lack clear definitions and criteria to apply them to different government functions**. The exclusion of regulatory bodies and other institutions with executive powers from government administration contributes to an unclear organisational set-up and a weak accountability system.

Within government administrations, accountability mechanisms exist in legislation at all levels, but implementation is of a purely formal nature. It consists of activity reports forwarded to ministries by subordinated bodies as a prerequisite for approval by governments. Ministries and government departments do not carry out activities to effectively steer subordinated bodies, such as setting objectives, monitoring performance and providing guidance and feedback. In contrast, **internal management in ministries is heavily centralised, with the minister's approval required for all decisions, including those of minor technical relevance**. This distracts ministers from their essential role of strategic direction, undermines the role of professional managers in ministries and allows for undue political influence in ordinary administrative procedures.

Legislation grants access to public information to all interested applicants without discrimination and with no requirement to justify requests. It defines public information broadly, and a catalogue of legitimate restrictions of the right to information is compatible with international standards in this field. Despite these legal guarantees, effective implementation of the right to information is not secured. One of the main reasons is the absence of a specialised body responsible for overseeing and enforcing the compliance of public bodies with transparency requirements. Another is the **lack of political leadership at government level to promote proactive disclosure of information**. A catalogue of information to be disclosed proactively by public bodies exists only at the State level, and it is not binding. Perceptions of both citizens and businesses on government transparency show a deteriorating situation in this area.

Overall, the legislation provides for effective executive oversight in other fields, in line with international standards, through the Ombudsman Institution, the State Audit Institutions (SAIs) operating at all levels and the courts. However, the Ombudsman Institution has no mandate to launch a constitutional review of legislation before the Constitutional Court, and its budget proposal must be approved by the Ministry of Finance. This opens the door to undue intervention of the executive power in the Ombudsman Institution's capacities. The relatively good legislative framework contrasts with poor performance in practice. **Insufficient implementation by public authorities of the recommendations of the Ombudsman Institution and the SAIs** contributes to this situation and hampers the growth of public trust in both institutions. Trust in the judiciary is hindered by concerns on the functioning and transparency of the High Judicial and Prosecutorial Council (HJPC).

Legislation uniformly safeguards the right to challenge both administrative acts and inaction of administrative bodies across the country through different and harmonised laws regulating administrative disputes at the different levels. However, **access to administrative justice is expensive, and the efficiency of courts in handling administrative cases varies sharply by entity**. The situation in the Cantonal Court of Sarajevo (the biggest court in the country) is particularly worrying, with a disposition time exceeding twenty-eight months at the end of 2020 and a high backlog of cases. A positive development is that special laws establishing procedures for citizens to seek compensation for excessive length of proceedings were passed in the RS and BD.

Uniform regulation of public liability secures the right of citizens to seek compensation for damage caused by unlawful acts of public authorities. Unfortunately, **due to the absence of monitoring mechanisms of the administrative and judicial practice in public liability cases, it is not possible to analyse the most common causes** of maladministration resulting in damage to citizens and assess the actual implementation of the right to compensation.

Short-term recommendations (1-2 years)

- 1) Governments at all levels should further develop the legislation on the organisation of public administration, by establishing a clear link between the types of public bodies and the functions they perform and their degree of autonomy.
- 2) Governments at all levels should promote managerial responsibility and accountability by introducing the principle of delegation of decision-making powers within ministries.
- 3) Parliaments at all levels should amend legislation on access to public information to establish comprehensive catalogues of information to be proactively disclosed, as well as institutions and procedures, to ensure adequate supervision of public bodies' compliance with transparency obligations.
- 4) The Law on the Ombudsman should be amended to eliminate direct intervention of the executive in the approval of the Ombudsman Institution's budget and to establish its competence to launch a review of legislation before the Constitutional Court.
- 5) Governments at all levels should implement the SAI's, and particularly the Ombudsman Institution's, recommendations or should formally justify non-implementation. Parliaments at all levels should monitor government implementation of the recommendations and request regular reporting on the topic.
- 6) In co-operation with the respective Entities' authorities, the HJPC should develop and implement an action plan to reduce the backlog of administrative cases across the country.

Medium-term recommendations (3-5 years)

- 7) Governments at all levels should: 1) enhance the accountability of public bodies subordinated to them, by establishing the obligation for portfolio ministries to set clear objectives, targets and timelines in collaboration with subordinated bodies; 2) ensure the resources necessary to achieve them; and 3) conduct regular performance monitoring reviews.
- 8) Ministries of Justice at all levels should develop mechanisms to monitor public liability cases (both court cases and amicable settlements) to more effectively detect and eliminate cases of maladministration resulting in liability of public bodies.

Analysis

Principle 1: The overall organisation of central government is rational, follows adequate policies and regulations and provides for appropriate internal, political, judicial, social and independent accountability.

The overall value for the indicator 'Accountability and organisation of central government' is 2.

Indicator 4.1.1. Accountability and organisation of central government						
This indicator measures the extent to which the governance model of central government upholds lines of accountability and contributes to increasing the state's capacity, which is defined as the ability of the administrative apparatus of the state to implement policies, deliver services to citizens and support decision makers with policy advice. This includes assessing the legal and institutional framework for overall organisation of central government, as well as its implementation in practice.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
Policy and legal framework for central government organisation						
1. Clarity and comprehensiveness of official typology of central government bodies	4	4	4	1	4/5*	
2. Adequacy of the policy and regulatory framework to manage central government institutions	2	2	2	2	2/5*	
3. Strength of basic accountability mechanisms between ministries and subordinated bodies	0	3	3		2/5*	
4. Managerial accountability mechanisms in the regulatory framework	5	4	5		5/5*	
Central government's organisation and accountability mechanisms in practice						
5. Consistency between practice and policy in government reorganisation			0		0/4***	
6. Number of public bodies subordinated to the parliament	3	4	2	4	3/4*	
7. Accountability in reporting between central government bodies and parent ministry	0	0	0		0/4*	
8. Effectiveness of basic managerial accountability mechanisms for central government bodies	0	0	0		0/4*	
9. Delegation of decision-making authority within ministries	0	0	0		0/4*	
Total ²⁸³					16/40	

* Average of the State level, FBiH and RS. *** Based on the assessment of RS, as there were not enough recent cases of reorganisation in other levels.

²⁸³ Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-40=5.

At all levels, the organisational setup of the administrative apparatus is determined by framework laws on public administration²⁸⁴. They establish official typologies of administrative bodies (except for the BD), specify their legal status and set formal organisational hierarchies. The relevant framework laws on public administration combined with legislation on public financial management and civil service also provide general rules on organisational autonomy and accountability of public bodies.

However, the official typologies of public administration bodies lack clarity in terms of criteria distinguishing the various types of institutions and mechanisms for selecting the most suitable type to perform specific government functions. For example, in the RS, the Law on the Republic Administration adopted in 2018 recognises two kinds of sub-ministerial bodies: administrative bodies within ministries and administrative organisations. The only criterion established by law to distinguish between them is the “greater independence” required for the tasks to be performed by administrative organisations. This absence of detailed guidance on selecting the organisational type makes the decisions largely discretionary. Similar shortcomings affect the quality of the typologies established in the framework laws of the State-level and FBiH administrations.

In the BD, there is no official typology, only a list of bodies constituting the District administration. The major problem is the exclusion of some administrative bodies from this general legal framework²⁸⁵. They operate outside the public administration regime, enjoying special legal status and extended autonomy regarding employment and financial management while implementing public administration functions.

Several other executive bodies operate outside the government administration in the BD and at other levels, remaining subordinate to the legislatures. The legislation grants this special status to some regulatory bodies:

- State level: State Electricity Regulatory Commission and Communications Regulatory Agency
- FBiH: Securities Commission and Energy Regulatory Commission
- RS: Regulatory Commission for Energy, Commission for Concessions, Securities Commission, Banking Agency and Insurance Agency
- BD: Securities Commission.

These bodies should enjoy extensive functional autonomy and remain free from undue political influence and pressures on regulatory decision-making. However, transferring them under parliamentary oversight is not required by international standards, particularly the EU legislation. These bodies should still contribute to the implementation of policies shaped by the governments, and be accountable to them.

Across all levels, the relationship between ministries and agencies follows a similar pattern. Agencies are autonomous in planning their objectives, targets and activities, according to the horizontal legal framework for planning and reporting. Plans and reports generally follow the format established by the legislation at each level. However, they are more activity-based than results-oriented, focusing more on delivering specific outputs than achieving policy outcomes. The portfolio ministries are only informed about the planned activities and receive reports on their implementation. Formal approval of annual plans and reports is done by the respective governments (councils of ministers). Still, governments do not provide any guidance, instructions or feedback to the agencies. This practice leads to a what might be termed a “steering vacuum”, in which the portfolio ministries abstain from performing any steering activities, such as setting or negotiating objectives and targets, monitoring the performance of subordinated agencies or providing structured feedback on performance.

Heavily centralised internal management in the ministries is another common characteristic of public administration across all levels. The tradition persists of having ministers approve all decisions, including

²⁸⁴ Law on Ministries and Other Administrative Bodies of BiH, Official Gazette of BiH Nos. 5/03, 2/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09, 103/09, 87/12, 6/13 and 19/16; Law on Federal Ministries and Other Federal Administration Bodies, Official Gazette of the FBiH Nos. 58/02, 19/03, 38/05, 2/06, 8/06, 61/06, 61/06, 80/10 and 48/11; RS Law on Republic Administration, Official Gazette of RS, No. 115/2018; BD Law on Public Administration, Official Gazette of the BD Nos. 19/07, 2/08 and 43/08.

²⁸⁵ E.g. Health Insurance Fund, Employment Service, Development Guarantee Fund, Institute for Planning, Projecting and Development of BD and Commission for Financial Instruments.

those of minor technical relevance (such as business trips and annual leave for staff). This is detrimental to the strategic role of ministers, as it leaves them less time to handle core policy-related issues. It also undermines the role of professional managers in ministries and allows for undue political influence in administrative procedures and human resource management.

Conclusion

Official typologies of administrative bodies are established at all levels (except for the BD), but they lack clear criteria for distinguishing diverse types of institutions and their degree of autonomy. There are no mechanisms ensuring control over the creation of new institutions, but very few new institutions were created in 2020. Ministerial steering of subordinated bodies is rather weak, while subordinated bodies enjoy extensive autonomy. Decision-making in ministries is highly centralised, which is detrimental to managerial empowerment and the strategic role of ministers.

Principle 2: The right to access public information is enacted in legislation and consistently applied in practice.

The overall value for the indicator ‘Accessibility of public information’ is 2.

Indicator 4.2.1. Accessibility of public information						
This indicator measures the extent to which the legal and institutional framework regarding access to public information is established, promoting timely responses to public information requests free of charge or at a reasonable cost. It also covers the practical application of these legal requirements, with particular focus on proactive disclosure of public information and perceptions of availability of public information.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
Legal and institutional framework for access to public information						
1. Adequacy of legislation on access to public information	8	8	7	8	8/10*	
2. Coverage of basic functions for implementing access to public information	1	0	0	0	0/5*	
Citizens' level of access to public information						
3. Proactivity in disclosure of information by state administration bodies on websites (%)	3	2	1	1	2/5*	
4. Proactivity in disclosure of datasets by the central government (%)	1	0	1	0	1/5*	
5. Perceived accessibility of public information by the population (%)	1				1/2.5**	
6. Perceived accessibility of public information by businesses (%)	0				0/2.5**	
Total ²⁸⁶					12/30	

*Average of the State level, FBiH and RS. ** Country-wide data.

The legislative framework for the right to access public information remains similar across the levels. The respective laws formally guarantee access to information to all interested applicants without discrimination and with no requirement to justify public information requests²⁸⁷. Public information is defined broadly, and a catalogue of legitimate restrictions of the right to information is compatible with the essential international standards in this field, primarily the Council of Europe Convention on Access to Official Documents (Tromsø Convention), signed and ratified by Bosnia and Herzegovina (BiH)²⁸⁸. However, in practice, these

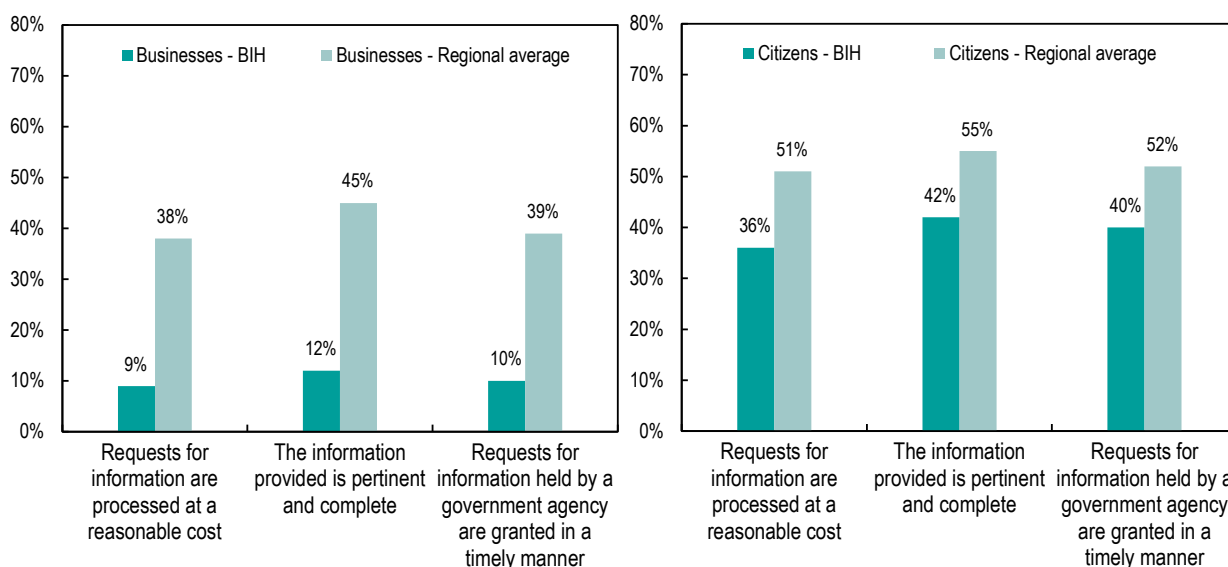
²⁸⁶ Point conversion ranges: 0-5=0, 6-10=1, 11-15=2, 16-20=3, 21-25=4, 26-30=5.

²⁸⁷ Freedom of Access to Information Act of BiH, Official Gazette of BiH Nos. 28/2000, 45/06, 102/09, 62/11 and 100/13; FBiH Freedom of Access to Information Act, Official Gazette of the FBiH No. 32/2000, 48/11; RS Freedom of Access to Information Act, Official Gazette of the RS, No. 20/2001; Instruction on implementation of the Freedom of Access to Information Act of BiH in Brčko District, Official Gazette of the BD, No. 26/2004.

²⁸⁸ Council of Europe Convention on Access to Official Documents of 18 June 2009, available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205>.

formal guarantees do not secure effective implementation of the right to information. According to the 2021 Balkan Barometer survey, citizens and businesses perceive a low level of performance of public institutions across BiH in processing public information requests. The perception of transparency among businesses is particularly alarming. Only a tenth of the respondents who were in contact with public bodies reported experiencing good quality of services relating to access to information.

Figure 1. Perception of transparency, 2021



Note: Percentage of citizens and businesses who 'totally agree' or 'tend to agree' with the statements.
 Source: Regional Cooperation Council, Balkan Barometer Public and Business Opinion databases (<https://www.rcc.int/balkanbarometer>).

One of the reasons for this situation is the lack of a strong institutional framework to oversee the implementation of laws enshrining the right to information. In contrast to all other countries in the region, Bosnia and Herzegovina has not established a specialised body (commission or commissioner) responsible for overseeing the compliance of public institutions with the transparency requirements. Therefore, no single institution is in charge of considering appeals of refusal of access to information, conducting inspections, imposing sanctions and collecting statistical data illustrating the state of play in this area. Some functions are allocated to the Ombudsman Institution. Its special mandate concerning the right to information comprises creating and disseminating guidelines and general non-binding recommendations on implementation of the laws on access to information, describing activities in the sphere of public information in a special section of the Ombudsman's annual report and proposing instructions on application of the freedom of information laws to competent ministries at each level. Moreover, all public bodies must report to the Ombudsman Institution with statistical data on, for example, the number of public information requests received, the types of information requested and decisions made upon requests²⁸⁹. In addition to this, the Ombudsman Institution considers individual complaints, within its core capacity to investigate violations of all human rights and freedoms.

However, the Ombudsman Institution has neither the power nor the organisational capacities to effectively perform the role of oversight body in the area of access to public information. As a body of broad mandate involved in numerous areas, it cannot dedicate sufficient capacities and resources to effectively deal with access to public information. While considering the continuously increasing number of individual complaints about the right to information, it can only address public authorities with non-binding recommendations. Furthermore, it cannot impose sanctions for any violations by public bodies of the right

²⁸⁹ Articles 20-22 of the Freedom of Information Act of Bosnia and Herzegovina; Articles 20-22 of the Freedom of Information Act of the FBiH; Articles 20-22 of the Freedom of Access to Information of the RS.

to information. Finally, even its task of collecting statistical data cannot be effectively performed. Most public bodies fail to submit their statistical reports, and there is no mechanism for sanctioning such acts. The situation is most problematic in the RS, as only 10 institutions (out of at least 100-120 bodies) provided data for 2020. Among those that did, there were no ministries²⁹⁰.

At the State level, the Administrative Inspectorate has a special mandate to inspect public bodies' compliance with the legislation on public information. However, in 2020 it conducted only four inspections, resulting in no sanctions for violations of the right to information. In the FBiH, the RS and the BD, there are no institutions with inspection records in this area. Respective administrative inspectorates did not report any inspection activities focusing on monitoring compliance of public institutions with transparency legislation.

Voluntary efforts of information holders do not compensate for deficits of external supervision. According to SIGMA's review of the websites of selected institutions across all levels, public bodies fail to share even basic organisational documents (e.g. annual plans, reports and budgets). The low level of proactive transparency could be attributed partially to the lack of a catalogue of information to be disclosed proactively. Only at the State level, have Standards of Proactive Transparency in Public Administration in BiH²⁹¹ been adopted by the Council of Ministers. This document provides an extensive catalogue of information to be disclosed proactively on the websites of State-level bodies. However, it has a status of soft law, not constituting binding standards for all information holders that could be subject to review and sanctions.

Conclusion

Legislative frameworks on access to information lack focus on promoting proactive transparency, which results in low perceived accessibility to public information, particularly by businesses. The major problem at all levels is the lack of adequate supervision of public authorities' observance of the right to information. There are no bodies performing oversight functions, such as collecting reliable statistics, providing effective remedies against refusal of access to information and sanctioning violations of the right to information.

²⁹⁰ Annual Report of the Ombudsman Institution for 2020, Banja Luka 2021, p. 247.

²⁹¹ Available at: http://www.vijeceministara.gov.ba/home_right_docs/info/default.aspx?id=29703&langTag=hr-HR.

Principle 3: Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest.

The overall value for the indicator ‘Effectiveness of scrutiny of public authorities by independent oversight institutions’ is 3.

Indicator 4.3.1. Effectiveness of scrutiny of public authorities by independent oversight institutions						
This indicator measures the extent to which there is a functioning system of oversight institutions providing independent and effective supervision over all state administration bodies. The strength of the legislative framework is assessed, as well as the effectiveness of oversight institutions in changing practices in the state administration and building trust among the population.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators				Points		
Legal and institutional framework for oversight institutions						
1. Legislative safeguards for the independence and adequate mandate of the ombudsman institution	7				7/10**	
2. Legislative safeguards for the independence and adequate mandate of the SAI	9	8	9	9	9/10*	
3. Legislative safeguards for the independence of courts and judges	10				10/10**	
Effectiveness of and public trust in oversight institutions						
4. Implementation of ombudsman recommendations (%)	2				2/8**	
5. Implementation of SAI recommendations (%)	4	0	0	0	1/8*	
6. Perceived independence of oversight institutions by the population (%)	1				1/5**	
7. Trust in oversight institutions by the population (%)	1				1/5**	
8. Perceived ability of oversight institutions and citizens to effectively hold the government accountable (%)	3				3/5**	
Total ²⁹²					34/61	

* Average of the State level, FBiH and RS. ** Country-wide data.

The Ombudsman Institution is the only oversight body covering the whole country. There are separate SAIs at the State level and in the FBiH, the RS and the BD. The judicial system is also organised separately at each level, but the single HJPC performs the main governance functions for all courts in the country, including decisions on judicial appointments, promotion and disciplinary matters. It is also responsible for setting performance targets for all judges and monitoring judicial performance. The formal status of the HJPC meets minimum international standards, but its functioning and transparency are

²⁹² Point conversion ranges: 0-10=0, 11-20=1, 21-30=2, 31-40=3, 41-50=4, 51-61=5.

subject to some concerns. While, in line with international standards, it is composed predominantly of judges, a complex appointment procedure excessively restricts the pool of eligible candidates. Members are not elected by the whole judicial community, but by peers from the same level of courts in the respective entities. Furthermore, the practice of disciplinary proceedings is heavily criticised, especially in cases where allegations relate to the members of the HJPC themselves²⁹³.

The legal status of the Ombudsman Institution²⁹⁴, the SAIs and the courts largely corresponds with international standards. However, in the case of the Ombudsman Institution, some shortcomings of the legislative framework have not yet been addressed, despite attempts to amend legislation. First, the Bosnian Ombudsman Institution is the only ombudsman institution in the region with no mandate to launch a constitutional review of the legislation before the Constitutional Court. Second, the financial independence of the institution is hampered by the arrangement requiring the Ombudsman Institution to forward a budgetary proposal to the Ministry of Finance for approval, not directly to the Parliamentary Assembly of BiH. On the other hand, the Ombudsman Institution stands out among European Ombudsman Institution due to its extensive mandate and instruments to pursue its mission. For example, it may launch judicial proceedings and join pending proceedings. Its remit also covers investigating “poor functioning of the judicial system or the poor administration of an individual case”²⁹⁵, which provides a broad mandate to oversee the efficiency of the judiciary.

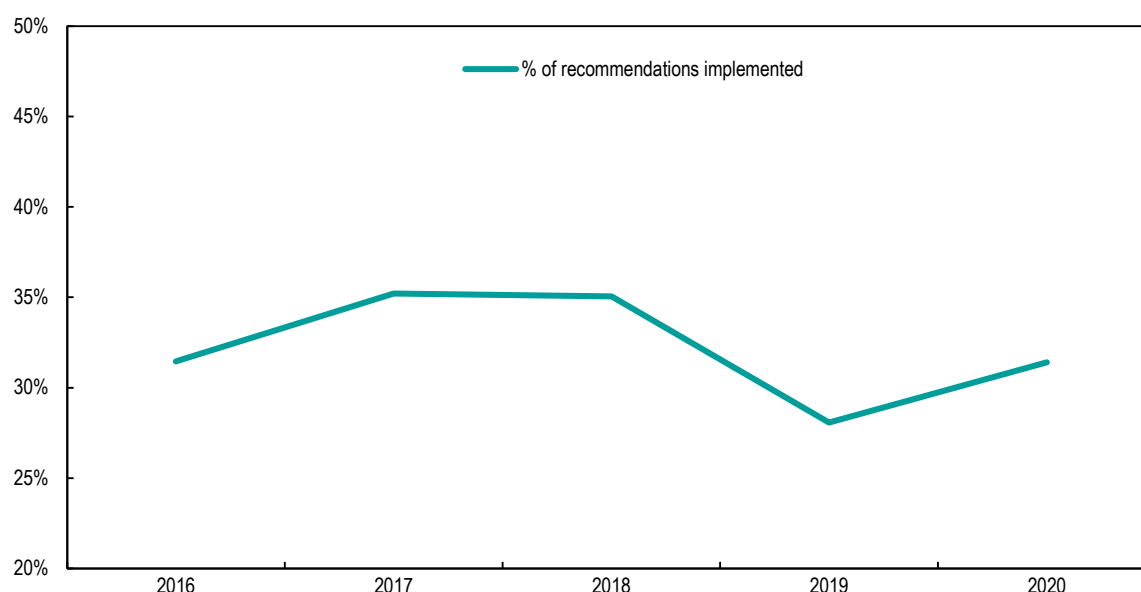
Despite a relatively good legislative framework, the overall performance of the oversight system is not adequate. The level of implementation by public authorities of the recommendations of the Ombudsman Institution and the SAIs is low. Only 31% of the recommendations issued by the Ombudsman Institution in 2020 were fully implemented, the same percentage as in 2016 (Figure 2). The high number of recommendations unanswered by state institutions is particularly worrying (over one-fourth of the recommendations issued in 2020), despite the clear legal obligation to inform the Ombudsman Institution about the measures undertaken following the Ombudsman Institution’s investigation. However, none of the legislatures issued any statements or resolutions urging public bodies to improve their implementation of the Ombudsman’s recommendations or to ensure proper communication with this institution.

²⁹³ See e.g.: Expert Report on Rule of Law issues in Bosnia and Herzegovina, Brussels, 5 December 2019, available at: <http://europa.ba/wp-content/uploads/2019/12/ExpertReportonRuleofLawissuesinBosniaandHerzegovina.pdf>; OECD (2021), *Multi-dimensional Review of the Western Balkans: Assessing Opportunities and Constraints*, OECD Development Pathways, OECD Publishing, Paris, <https://doi.org/10.1787/4d5cbc2a-en>.

²⁹⁴ Law on Ombudsman of BiH, Official Gazette of BiH, Nos. 32/00, 19/02, 35/04 and 32/06.

²⁹⁵ Law on the Human Rights Ombudsman of Bosnia and Herzegovina, Article 4.

Figure 2. Implementation rate of the Ombudsman Institution's recommendations, 2016-2020



Source: Annual reports of the Ombudsman Institution. Data refer only to fully implemented recommendations.

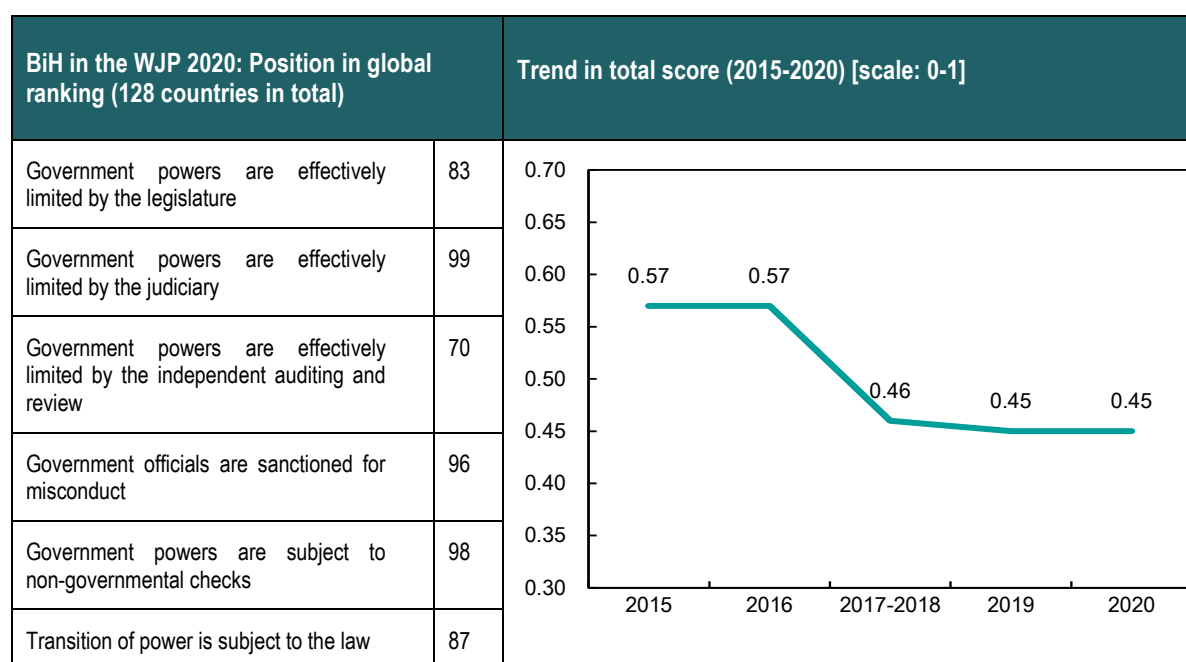
Responsiveness to the SAIs' audits differs across levels. While in the FBiH and the RS, public authorities implemented less than one-fifth of the SAI's recommendations, at the State level, implementation reached 54%, a similar level to that of the previous assessment. In the RS, the low implementation rate is linked to some extent with the process for verifying implementation of recommendations, which was issued in 2019, but has not yet been completed.

Consistent with this situation, the most recent Balkan Barometer shows a low level of trust in public institutions' scrutiny of the executive. Courts (along with parliaments) are the least trusted institutions. Over 70% of citizens believe that judicial bodies are prone to political influence. The assessment of the effectiveness of the Ombudsman Institution and the SAIs is only slightly better. They are trusted by one-third of the population, and over 40% of citizens recognise their capacity to oversee the executive effectively.

Data from the Rule of Law Index of the World Justice Project (WJP), which combines a general population poll with a questionnaire distributed among experts, reaffirms this picture. The functioning of the judicial system and mechanisms for sanctioning misconduct of public officials are subject to particular criticism. In terms of the effectiveness of the whole oversight system, Bosnia and Herzegovina scores significantly lower than the global average, and the situation has deteriorated since the first assessment in 2015²⁹⁶.

²⁹⁶ <https://worldjusticeproject.org/rule-of-law/index/country/2020/Bosnia%20and%20Herzegovina/Constraints%20on%20Government%20Powers/>

Figure 3. Bosnia and Herzegovina's performance in the World Justice Project Rule of Law Index; criterion: Constraints of Government powers



Source: Data available online at:

<https://worldjusticeproject.org/rule-of-law-index/country/2020/Bosnia%20and%20Herzegovina/Constraints%20on%20Government%20Powers/>.

Conclusion

Legislative and institutional preconditions for independent oversight of the executive are safeguarded, with some shortcomings concerning the Ombudsman Institution. But the effectiveness of this system suffers from low responsiveness of public bodies to recommendations of the Ombudsman Institution and the SAIs (except for the State level). The legal status of courts and judges is regulated in line with international standards, but citizens' confidence in the judicial system remains low.

Principle 4: Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews.

The overall the value for the indicator 'Fairness in handling of administrative judicial disputes' is 3.

Indicator 4.4.1. Fairness in handling of administrative judicial disputes						
This indicator measures the extent to which the legal framework and the organisation of courts support fair treatment in administrative judicial disputes and the administrative judiciary is characterised by efficiency, quality (including accessibility) and independence. Outcomes in terms of case flow and public perceptions of independence are also measured.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
Legal framework and organisation of judiciary						
1. Adequacy of the legislative framework for administrative justice	6	6	6	6	6/6*	
2. Accessibility of administrative justice	3	3	3	3	3/4*	
3. Effectiveness of remedies against excessive length of proceedings in administrative cases	1	1	1	1	1/2*	
4. Use of an electronic case-management system	1	1	1	1	1/1*	
5. Public availability of court rulings	1	1	1	1	1/2*	
6. Organisation of judges handling administrative justice cases	4	4	4	4	4/5*	
Performance of the administrative justice system						
7. Perceived independence of judicial system by the population (%)	1				1/5**	
8. Calculated disposition time of first-instance administrative cases	2				2/5**	
9. Clearance rate in first-instance administrative courts (%)	3				3/5**	
10. Cases returned for retrial by a higher court (%)	3				3/5**	
Total ²⁹⁷					25/40	

*Average of the State level, FBiH and RS. ** Countrywide data.

Judicial review of administrative acts is guaranteed countrywide, although each level has separate laws regulating administrative disputes²⁹⁸. There are no major discrepancies between these laws in terms of the basic procedural principles. They uniformly safeguard the right to challenge both administrative acts

²⁹⁷ Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-40=5.

²⁹⁸ State Law on Administrative Disputes (LAD), Official Gazette of BiH Nos. 19/02, 88/07, 83/08 and 74/10; FBiH LAD, Official Gazette of the FBiH, No. 11/05; RS LAD, Official Gazette of the RS Nos.109/05 and 63/11; BD LAD, Official Gazette of the BD No. 4/00.

and inaction of administrative bodies. A relatively high court fee (approximately 7% of the average gross monthly salary) hampers access to administrative justice for initiating administrative disputes. However, this is compensated to some extent by the free legal aid (including representation in the court) available to low-income citizens at all levels.

The courts considering cases are formally empowered to make not only cassatory decisions (i.e. repealing administrative acts and returning the case for reconsideration by the respective administrative authority). They may also issue reformatory rulings resolving the case on the substance, but the decision to apply this power is largely discretionary to the court. There are safeguards provided in case of failure to implement judicial decisions, including the power to impose financial sanctions on responsible officials.

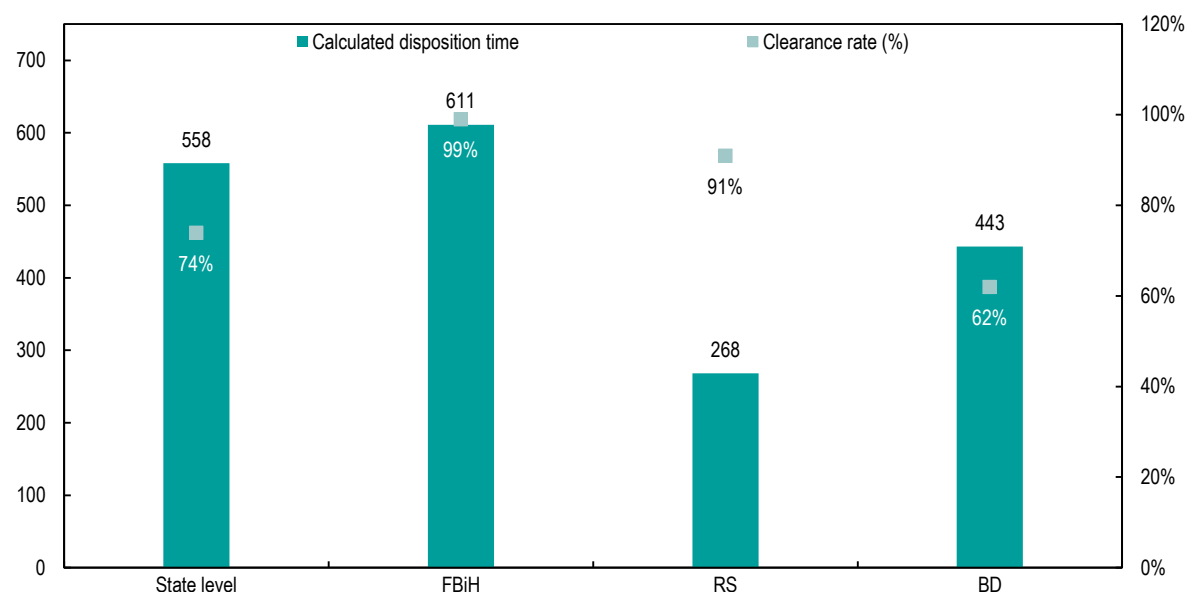
The courts of general jurisdiction handle administrative cases, but in most of the courts internal specialisation of the judges in administrative matters is ensured. These judges handle other types of cases only if they do not have sufficient administrative cases to meet the performance targets set by the HJPC. Courts and judges have access to modern information technology infrastructure, particularly the advanced electronic case management system, enabling random allocation of cases to judges, recording all events of the cases and monitoring the workload of judges and courts.

However, there is not sufficient support from judicial assistants. In the FBiH and the RS, one judicial assistant serves six judges on average. In the State level's Court of BiH, three legal assistants support nine judges. In the BD, the single judge dealing with administrative matters does not have access to this kind of assistance.

Assessment of the efficiency of courts in handling administrative cases shows a mixed picture. In the RS, the average time needed by the courts to dispose of a case (268 days) is only slightly longer than the European average²⁹⁹. However, at the State level and in the FBiH, it exceeds 1.5 years (558 days at the State level and 661 in the FBiH); in the BD it is more than one year (443 days). On the other hand, in 2020, amid the pandemic, the courts in the FBiH and the RS managed to reach relatively good clearance rates, at least avoiding significant backlog increases. The State level's Court of BiH was not as successful, closing the year 2020 with a backlog of unresolved cases more than 50% higher than the cases it resolved in 2020.

²⁹⁹ Council of Europe (2020), European judicial systems: CEPEJ Evaluation Report 2020. Evaluation cycle (2018 data), Strasbourg, p. 108. The average calculated disposition time in administrative matters for the Council of Europe's member states was 241 days in 2018.

Figure 3. Basic parameters of the efficiency of courts in administrative matters, 2020



Source: Data provided by the HJPC.

The situation in the Cantonal Court of Sarajevo, the biggest court in the country, is particularly concerning. Calculated disposition time in this court reached 28 months at the end of 2020. Nearly one thousand cases (half of the annual influx) are pending for more than two years. Considering the number of judges, the number of old cases to be resolved reached nearly 500 per judge.

Table 1. Statistical data on the performance of the Cantonal Court in Sarajevo in administrative matters, 2020

Parameters	Data for 2020
Calculated disposition time	837 days
Clearance rate	119%
Cases pending for more than 1 year	935
Cases pending for more than 2 years	842
Cases pending for more than 3 years	104

Source: Data provided by the HJPC.

The above-illustrated level of efficiency shows the need to develop mechanisms for citizens to be able to pursue their right to trial within a reasonable time. As of 2020, citizens obtained new legal instruments in this matter. Special laws regulating the procedure for seeking compensation for excessive length of proceedings were passed in the RS³⁰⁰ and the BD³⁰¹, and are under development at the State level and in the FBiH. Until their adoption, the parties could submit complaints to the Constitutional Court of BiH that resolved them by directly applying the European Convention on Human Rights. When accepting a complaint, the Constitutional Court sets the deadline for the relevant court to dispose the case and grants financial compensation to the party. However, this procedure was not fully effective and efficient. The Constitutional Court does not have the capacity to handle all complaints from the whole country efficiently,

³⁰⁰ Law of 20 September 2020 on Protection of the Right to Trial within a Reasonable Time, RS Official Gazette, No. 99/2020.

³⁰¹ Law of 24 February 2021 on Protection of the Right to Trial within a Reasonable Time, BD Official Gazette No. 2/2021.

and handling this type of cases is not the core mission of a body responsible primarily for constitutional review of legislation. Hence the need to adopt special laws enabling the parties to protect their right to trial within a reasonable time before the entity-level courts.

Conclusion

Judicial review of administrative acts operates under a well-harmonised legal regime across all levels, ensuring extensive rights to challenge administrative actions and omissions. The efficiency of courts in administrative matters differs across the country, with major problems concentrated in the country's largest court, the Cantonal Court of Sarajevo, and to a lesser extent at the State level. The average duration of administrative judicial disputes is significantly shorter in the RS, due to recent legislative changes.

Principle 5: The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation.

The overall value for the indicator 'Functionality of public liability regime' is 2.

Indicator 4.5.1. Functionality of public liability regime						
The indicator measures the extent to which there is a functioning system guaranteeing redress or compensation for unlawful acts and omissions of public authorities. It examines the strength of the legislative framework for public liability and whether it is applied in practice. Wrongful acts of the state against civil servants are excluded.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
Legal framework for public liability						
1. Comprehensiveness of the scope of public liability	1			1/1**		
2. Coverage of the public liability regime to all bodies exercising public authority	1			1/1**		
3. Non-discrimination in seeking the right to compensation	1			1/1**		
4. Efficiency and fairness of the procedure for seeking compensation	3			3/3**		
Practical implementation of the right to seek compensation						
5. Application of the public liability mechanism in the courts in practice	0			0/3**		
6. Payments made to entitled applicants (%)	0			0/3**		
Total ³⁰²					6/12	

** Country-wide data.

³⁰² Point conversion ranges: 0-2=0, 3-4=1, 5-6=2, 7-8=3, 9-10=4, 11-12=5.

Uniform regulation of public liability, based on the Yugoslav Law on Obligations³⁰³, secures the right of everyone, regardless of legal status or nationality, to seek compensation for damage caused by unlawful acts of public authorities. For this purpose, the provision relating to the liability of a legal person for damage caused by its organs applies. Furthermore, the principle of public liability is also articulated in the respective laws regulating the organisation of public administration at the State level³⁰⁴, the RS³⁰⁵ and in the BD³⁰⁶.

The right to compensation comprises both direct loss and lost profits. Applicants may file the case with the courts of general jurisdiction, and their claims are processed according to the respective civil procedure codes. The court decides on both the substance of the claim and the amount of compensation if the claim is accepted. The general time limit for launching a public liability case is three years.

Unfortunately, there is no mechanism for monitoring administrative and judicial practice in public liability cases at any level. As a result, it is impossible to assess the actual application of the legal guarantees of the right to compensation. The absence of monitoring mechanisms also hampers identification and mitigation of the most common cases of maladministration resulting in damage caused to citizens.

Conclusion

The Law on Obligations provides formal guarantees for seeking compensation for maladministration leading to damage to citizens and other parties. However it is not possible to assess these procedures, due to the lack of monitoring of administrative and judicial practice in these matters and hence of reliable statistics.

³⁰³ Official Gazette of the FBiH No. 29/03; Official Gazette of BiH No. 2/92; Official Gazette of the RS Nos. 17/93 and 74/04.

³⁰⁴ State Law on Administration, Article 8.

³⁰⁵ RS Law on Republic Administration, Article 10.

³⁰⁶ Law on Public Administration of BD, Article 6.

Service Delivery

The Principles of Public Administration Service Delivery

Principle 1	Policy for citizen oriented state administration is in place and applied.
Principle 2	Good administration is a key policy objective underpinning the delivery of public service, enacted in legislation and applied consistently in practice.
Principle 3	Mechanisms for ensuring the quality of public service are in place.
Principle 4	The accessibility of public services is ensured.

Service Delivery

Summary and recommendations

Little progress has been made in Bosnia and Herzegovina (BiH) on the overall level of improving service delivery compared with the 2017 SIGMA monitoring report. Despite some limited progress made in the mechanism ensuring the quality of public service and accessibility to administrative services, these areas remain at a low level.

The Action Plan of the Public Administration Reform (PAR) Strategy 2018-2022 remains mostly unimplemented, and there is no dedicated unit at any of the levels dealing with service delivery policy or digital service delivery. Only Republika Srpska (RS) has developed a digital service delivery strategy. Enhancement of user-friendliness of administrative services for citizens or business comes at the initiative of individual service providers, not as a centrally promoted or supported policy line. This leaves several services as cumbersome and complex. **The only area in which digitalisation has slowly picked up is taxes and customs**, but inefficient interoperability and burdensome internal procedures hinder their implementation.

All four Laws on General Administrative Procedure (LGAP) in BiH – the State level, the Federation of Bosnia and Herzegovina (FBiH), RS and the Brčko District (BD) – **recognize (as they did in 2017) the conventional principles of good administrative behaviour**, such as the principle of legality, the right to be heard, the form and content of administrative acts, and the right to appeal. However, there is **no evidence of any progress in harmonising special laws** with the LGAP. Nor is there evidence of a clear and centralised policy of harmonising special laws with the LGAP or an inventory of laws regulating administrative procedures at any level.

In general, the dynamics of digitising existing registers and records, which is the main prerequisite for the implementation of E-services and digital transformation, **is very unsatisfactory**. Interoperability technical infrastructure suffers from a lack of enforceability and support, and most data exchanges still take place outside the framework of the Government Service Bus (GSB). **Quality management has improved, but not considerably** (only a few more public authorities have implemented the Common Assessment Framework [CAF] since 2017). Although non-qualified electronic signature³⁰⁷ is available for businesses to deal with tax authorities at the State, FBiH and RS levels, its application since 2017 has not expanded.

Accessibility to administrative services slightly improved, but it is still at a low level. There is no attempt to improve accessibility for people with special needs or accessibility to services either digitally or over-the-counter. No system is in place to monitor service delivery performance, in terms of either quality or accessibility. The perceived quality of public services by both citizens and business is amongst the lowest in the region. **Satisfaction with digital services is by far the lowest in the region.**

³⁰⁷ The EU eIDAS Regulation defines three levels of electronic signature: simple, advanced, and qualified. A qualified electronic signature requires that it be based on a qualified certificate for electronic signatures issued by a qualified trust service provider; they are granted the right to deliver one or more qualified trust services after undergoing a strict assessment procedure by a national competent authority. In BiH, there is currently no such competent authority: <https://ec.europa.eu/digital-building-blocks/wikis/display/DIGITAL/eSignature+FAQ>.

Short-term recommendations (1-2 years)

- 1) Assign clearly articulated responsibility for service delivery policy at each level and establish service delivery units to lead improvement (including digitalisation) and establish a functional co-ordination mechanism between the different levels of government.
- 2) Consolidate and strengthen the central ICT units, at State level (within the Council of Ministers [CoM] General Secretariat [GS] and Ministry of Transport and Communication [MTC]), at RS level (Sector for IT at the General Secretariat and Ministry of Scientific and Technological Development, Higher Education and Information Society of Republika Srpska [MSTDHEIS]) and at FBiH level (General Secretariat [GS] Sector for IT and Ministry of Transport and Communication [MTC]), and create the position of Government Chief Information Officer to lead the digital transformation in public administration and establish a functional coordination mechanism between the different levels of government.
- 3) Finalise the e-Government Strategies at the State, FBiH and BD levels, setting clear goals for digitalisation in public administration, establishing clear monitoring and continuous improvement mechanisms.
- 4) Develop catalogues of services (PAR Co-ordinator's Office [PARCO] in co-operation with relevant bodies at the State level, FBiH Ministry of Justice [MoJ], RS Ministry of Administration and Local Self-Government [MALSG] and BD Mayor's Office) to support the mapping of services; their simplification, optimisation, and standardisation; monitoring of service delivery performance; and harmonisation of special administrative procedures with the LGAP.
- 5) PARCO, in co-operation with relevant bodies at the State level, FBiH MoJ, RS MALSG and BD Mayor's Office, should develop a plan to harmonise special laws with the LGAP and assign clear responsibilities at each level of government focussing not just on legal harmonisation, but also on the elimination of clauses in legislation that stem from analogue procedures that need to be amended to enable digital processing.

Medium-term recommendations (3-5 years)

- 6) The responsible ministries or services at the different levels should co-ordinate their investments upon strategic guidance from the Commission for Co-ordination for Interoperability at the BiH CoM to upgrade and enforce the use of the GSB as the data exchange mechanism between registers and government institutions, or decide to replace it with a more affordable solution.
- 7) The BiH CoM should propose a legal framework in line with eIDAS Regulation and provide strategic guidance for all levels of government to develop an electronic signature infrastructure that works across the levels of government, is simple for the user and economical (limit the number of certification bodies and various technical solutions).
- 8) The BiH CoM should aim to establish an interministerial commission composed of all levels of government to work on harmonising requirements in order to reduce burdens and costs for starting and operating a business within and across BiH jurisdictions.

Analysis

Principle 1: Policy for citizen oriented state administration is in place and applied.

Overall, the value for the indicator 'Citizen-oriented service delivery' is 1.

Indicator 5.1.1. Citizen-oriented service delivery						
This indicator measures the extent to which citizen-oriented service delivery is defined as a policy objective in legislation or official government plans and strategies. It furthermore measures the progress of implementation and evaluates the results achieved, focusing on citizens and businesses in the design and delivery of public services. Implementation and results are evaluated using a combination of quantitative and perception based metrics.						
Overall 2022 indicator value	0	1	2	3	4	5
	State level	FBiH	RS	BD	Bosnia and Herzegovina	
Sub-indicators		Points				
	State level	FBiH	RS	BD	Average	
Policy framework for citizen-oriented service delivery						
1. Existence and extent of application of policy on service delivery	4	6	6	6	5/8*	
2. Existence and extent of application of policy on digital service delivery	0	0	2	0	1/8*	
3. Central co-ordination for digital government projects	0	0	2	2	1/4*	
4. Established policy on administrative simplification	6	6	8	4	7/12*	
Performance of citizen-oriented service delivery						
5. Perceived quality of public service delivery by the population (%)	0				0/6**	
6. Renewing a personal identification document	--	1.5	0	1.5	1/6***	
7. Registering a personal vehicle	--	0	0	0	0/6***	
8. Declaring and paying personal income taxes	--	0	1.5	0	1/6***	
9. Perceived quality of public service delivery and administrative burdens by businesses (%)	1				1/6**	
10. Starting a business	--	0			0/6**	
11. Obtaining a commercial construction permit	--	2			2/6**	
12. Declaring and paying corporate income taxes	--	2	2	0	2/6**	
13. Declaring and paying value-added taxes	0	--	--	--	0/6	
Total ³⁰⁸					21/86	

*Average of the State level, FBiH and RS, ** Country-wide data, ***Average of the FBiH and RS,

--The respective level has no competency in this area. The calculation of the average is adjusted to include only those levels with competence.

³⁰⁸ Point conversion ranges: 0-14=0, 15-28=1, 29-42=2, 43-56=3, 57-70=4, 71-86=5.

A policy framework for citizen-oriented service delivery has been established with the Strategic Framework for Public Administration Reform in Bosnia and Herzegovina 2018-2022, adopted in 2018³⁰⁹, and its Action Plan³¹⁰, adopted in 2020, is applicable for the entire country. The Action Plan enumerates a list of activities under one specific goal and three measures: 1) identification of instruments for high-quality services provided by public administration and targeting service users, 2) improving the availability of services through various communication channels, and 3) harmonising the improvement of the administrative and legal framework. There are no implementation reports of the Strategic Framework for PAR in BiH or its Action Plan as the monitoring mechanism through supervisory boards at each government level has yet to be established, and there is very little evidence to demonstrate that the work carried out has led to significant results for citizens or businesses.

The Strategic Framework for PAR in BiH and its Action Plan cover digital service delivery to some extent, enlisting a range of activities to support digitalisation of government (e.g. 4.2.1.5. Upgrade Semantic Interoperability Repository, by May 2022) but not setting clear quantifiable objectives in this area, nor providing a roadmap on how to accomplish digital service delivery. The intention was for all levels of administration to develop their own eGovernment strategies, but only RS has accomplished this so far. At the local level, there is a keen interest in drafting strategic documents for digital transformation. For example, the City Council of Mostar adopted the Digital Transformation Strategy and its accompanying Action Plan for 2022-2044.

A major deficiency is that there is no visible leadership for the service delivery reforms as no designated institutions are responsible for this area at any level of government. Instead, the responsibility for various aspects of service delivery is fragmented. At the State level, the overall co-ordinator of PAR is PARCO. While PARCO has driven some service delivery initiatives, such as promoting quality management and measuring user satisfaction of services – and is in charge for some digital government aspects, such as the GSB, an interoperability technical solution – the PAR Action Plan assigns the largest share of activities to the MTC at the State level. In the area of digital government, the GS of the CoM plays a role in maintaining the CoM technical infrastructure while the MTC develops strategies, policies and action plans related to information society. The MTC is also behind creating the infrastructure for electronic signature, but it is the Indirect Tax Authority that issues qualified electronic signature for businesses. Finally, another agency, the Agency for Identification Documents Registers and Data Exchange of BiH (IDDEEA), is responsible for registries country-wide and issues electronic certificates on ID cards for citizens. This is an illustration of the complexity inherent to BiH, requiring both horizontal and vertical co-ordination, but it also demonstrates a lack of vision on the functioning governance model of reforms.

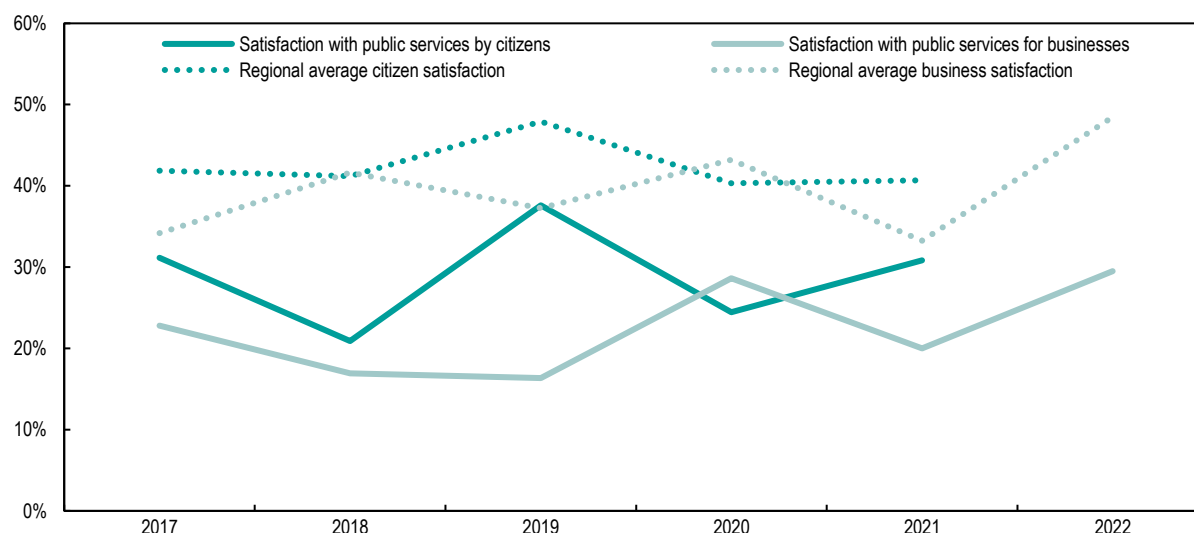
Responsibility for administrative service provision mostly stays at the level of the Entities and BD, and varies to a large extent between them. This makes life complicated for the people living or working across the country because they must initiate a service procedure, such as applying for the ID card or exchanging the ownership of a vehicle, at their place of residence and obtain information specifically about how the service procedure works in that place. This information is not easily available.

Since 2017, the satisfaction of citizens and business with the perceived quality of public service delivery has shown some fluctuation, ending in 2021 slightly lower than in 2017. Compared to the regional average, citizens' and businesses' satisfaction are respectively 10 and 13 percentage points lower.

³⁰⁹ Adopted by the Council of Ministers of BiH on 25 September 2018.

³¹⁰ Adopted by the Council of Ministers of BiH on 16 December 2020.

Figure 1. Satisfaction with public services shows no improvement since 2017



Note: The respondents were asked, “Could you please tell how satisfied you are with each of the following in your place of living?” The percentage shows the share of citizens and businesses that “strongly agree” or “tend to agree” in relation to the following statements: “Administrative services from central government (such as passports and personal identification [ID])” and “Public services for businesses”. The Balkan Barometer does not include the questions related to satisfaction by citizens in 2022.

Source: Regional Cooperation Council, Balkan Barometer Public and Business Opinion databases (<https://www.rcc.int/balkanbarometer>).

Starting a business is still very burdensome, ranking 184th globally on the Doing Business Index³¹¹. It takes 80 days and 13 procedures to get the business registered, which is one procedure and 15 days more than in 2017. The World Bank Doing Business methodology takes as a sample case the procedure applied in the BiH capital city, Sarajevo. In 2017 SIGMA reported a significantly simpler and shorter process to register a business in the RS (5 procedures taking 5 days in Banja Luka).³¹² In 2022, no proof was found of a functioning one-stop shop at the entity level for starting a business. The one-stop shop for business registration at the RS level was established, but is not fully functional due to problems with a slow uptake of e-signature and inability to deploy e-payment. Equally difficult is dealing with construction permits (ranking 173rd), which takes 17 procedures and 180 days to complete.

Paying taxes is rather burdensome, too, ranking the country 141st globally on the Doing Business Index. Tax authorities nevertheless stand out as providers of some digital services. The State level Indirect Tax Authority introduced the application of VAT electronically in 2021 and worked on the application of VAT return electronically. Certain customs declarations are also filed electronically. The FBiH Direct Taxation Authority (DTA) also provides some e-services, such as the filing of tax reports for companies and small businesses. The profit reports, together with balance sheets, are in the third year of being filed online. However, the law still requires employers to submit a paper-based copy of employee registration forms. The RS DTA enables tax returns for income tax through a digital portal, and for certain categories (e.g., legal entities and craftspeople) the digital upload is mandatory. For about 10% of tax declarations, the DTA pre-fills the declaration forms with data it already possesses. This is the case, for example, for farmers³¹³. The FBiH DTA also piloted (2019 and 2020) pre-filled personal income tax declarations in one

³¹¹ Doing Business 2020. Economy Profile, Bosnia and Herzegovina, <https://www.doingbusiness.org/content/dam/doingBusiness/country/b/bosnia-and-herzegovina/BIH.pdf>.

³¹² OECD (2017), *SIGMA Monitoring Report of Bosnia and Herzegovina*, Paris, p. 125, <https://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf>.

³¹³ Interview with RS Direct Taxation Authority, 17 March 2022.

canton, extending it to over 70 000 individual taxpayers, but since the DTA offices vary in capacity, the process cannot yet be fully automated in all branch offices³¹⁴.

The Ministry of Business Development, Entrepreneurship and Crafts (MBDEC) of FBiH, by launching a subsidy scheme to craftspeople and businesses through a digital platform, is a rare example of an innovator. Over 25 000 eligible businesses were disbursed a total of EUR 30 million of COVID-19 relief assistance paper-free by the MBDEC's collecting data from administrative sources only, checking the eligibility of beneficiaries and creating payment orders for automated disbursement of grants³¹⁵.

Services for citizens are still very much rooted in the analogue world and have not made much progress in terms of either simplification or digitalisation. A positive example is the service called E-baby that the RS Ministry of Scientific and Technological Development, Higher Education and Information Society successfully implemented in 2019, which enables parents to register a newborn at the hospital, replacing eight previously required contacts and reducing the time of completing the documents significantly. Although the Action Plan of the Strategic Framework for PAR in BiH 2018-2022 includes a series of activities on administrative simplification, the process is slow to bring real benefits to users. Enhancement of user-friendliness of administrative services for citizens comes at the initiative of individual service providers (or a minister in case of the MBDEC), not as a centrally promoted or supported policy line. Part of the problem is a lack of digital infrastructure and the law's being considered a barrier rather than a facilitating factor.

Obtaining ID cards and exchanging the ownership of a private vehicle are still cumbersome and have not changed since 2017, except that ID cards can now be obtained by mail for an additional fee, saving one contact with the administration.

Conclusion

The Strategic Framework for PAR in BiH 2018-2022 and its Action Plan guide all levels in their service delivery policy, but only RS has in place a digital service delivery strategy. A major deficiency is the lack of institutional set-up and ownership that would clearly designate a government body in charge of service delivery policy and e-government, and proper co-ordination mechanisms to support the transformation of service delivery across the administration. Currently, individual agencies initiate a few improvements in service delivery, but in general administrative service delivery is cumbersome and the potential for digitalisation of services has been greatly underused. This is also reflected in the satisfaction of citizens and businesses, which has receded slightly below the 2017 level and lags behind the regional average.

³¹⁴ Interview with the FBiH Direct Taxation Authority (DTA), 16 March 2022.

³¹⁵ More information is available at: <https://www.fmrpo.gov.ba/obrtncima-i-samostalnim-djelatnicima-u-fbih-uplaceno-60-milijuna-km/>.

Principle 2: Good administration is a key policy objective underpinning the delivery of public service, enacted in legislation and applied consistently in practice.

Overall, the value for the indicator 'Fairness and efficiency of administrative procedures' is 3.

Indicator 5.2.1. Fairness and efficiency of administrative procedures						
The indicator measures the extent to which the regulation of administrative procedure is compatible with international standards of good administration and good administrative behaviour. This includes both the legal framework for administrative procedure and its practical applications.						
Overall 2022 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
	State level	FBiH	RS	BD	Average	
Legal framework for administrative procedure						
1. Existence of legislation on administrative procedures of general application	3	3	3	3	3/3*	
2. Adequacy of law(s) on administrative procedures to ensure good administration	7	7	7	7	7/7*	
Fairness and efficiency of administrative procedures						
3. Perceived efficiency of administrative procedures in public institutions by the population (%)	2				2/4**	
4. Repeals of, or changes to, decisions of administrative bodies made by the administrative courts (%)	0	0	0	0	0/4*	
Total ³¹⁶					12/18	

*Average of the State level, FBiH and RS.

** Country-wide data

Separate LGAPs exist at the State level³¹⁷ as well as in both entities (the FBiH³¹⁸ and the RS³¹⁹) and in the BD³²⁰. All LGAPs are largely harmonised with each other due to a common origin, which was the former Yugoslav legislation on general administrative procedures. The conventional principles of good administrative behaviour are embedded in all LGAPs, such as the principle of legality, the right of the parties to be heard and to access all files in the procedure and the form of administrative acts, including the necessary legal grounds and justification for administrative acts. The LGAPs further foresee legal

³¹⁶ Point conversion ranges: 0-3=0, 4-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

³¹⁷ The Official Gazette of BiH Nos. 29/2002, 12/2004, 88/2007, 93/2009, 41/2013 and 53/2016.

³¹⁸ The FBiH Official Gazette Nos. 2/1998 and 48/1999.

³¹⁹ The RS Official Gazette Nos. 13/2002, 87/2007, 50/2010 and 66/2018.

³²⁰ The BD Official Gazette No. 48/2011, consolidated text 21/2018 and 23/2019.

remedies such as appeal (including specific provisions allowing the parties to appeal when the first-instance body fails to issue a decision), reinstatement, and annulment of procedures.³²¹

LGAPs at all administrative levels establish the ‘once only’ principle, regulating mandatory *ex officio* obtaining of evidence on facts on which official records are kept. These provisions have had little practical relevance so far, however, due to the lack of capacities and infrastructure required and to special laws that still require users to provide paper documents certifying data held in official registers (see Principle 3 on mechanisms to ensure the quality of public services below). Hence, the citizens and businesses still act as courier between different administrative bodies for most administrative procedures.

The State level, RS and BD LGAPs allow for electronic documents and electronic communications, as they were amended in the period 2016-2019³²². The FBiH LGAP has not been amended yet. Its current version dating from 1999 does not allow for electronic communications, and several articles require handwritten signatures in documents³²³. The FBiH Government is currently drafting amendments to the LGAP incorporating provisions to allow for digitation of documents and communications, in order to align these with the 2013 FBiH Law on Electronic Documents.

As noted in the SIGMA 2017 monitoring report, the harmonisation of special procedures with the LGAPs at all levels constitutes a major challenge.³²⁴ There is no evidence of a clear and comprehensive action plan for harmonising all special laws with their respective LGAP, nor a complete inventory of laws regulating administrative procedures at any level. The PAR Strategy Action Plan 2018-2022 did not include specific action in this regard; however, the foreseen work on the catalogue of services might serve as a necessary enabler for the harmonisation process.

Harmonisation is important, as all administrative-level LGAPs include the principle of subsidiarity application. Thus, the provisions of LGAPs shall be applied only in all those matters that are not regulated separately by a special law. All LGAPs include a provision establishing that special laws cannot contain regulations contrary to the principles of LGAP. However, the principles of all BiH LGAPs are regulated quite vaguely. Summing up, LGAPs do not have direct or priority application regarding all aspects of administrative procedures, which might result in lower procedural rights for the parties or more cumbersome procedures if any special law contains more restrictive procedural regulations than the LGAP.

Regarding territorial harmonisation or co-ordination of LGAPs, there is also no evidence of co-ordination between entities. Currently, all four LGAPs are still very similar in structure and content. However, current amendments are not being co-ordinated between entities. As LGAPs naturally will evolve in the following years, in order to fully allow for meaningful digital government, there is a risk of increasing discrepancies between administrative levels. Therefore, citizens and businesses continue to be subject to heavy burdens on knowing their administrative rights and complying with their administrative obligations, as some administrative procedures are regulated at State level and some at the entity level. In FBiH, the burden is even greater due to the strong autonomy of the cantons. Finally, if citizens or businesses conduct activities spanning two different levels of government, the burden of knowing and complying with administrative regulations increases.

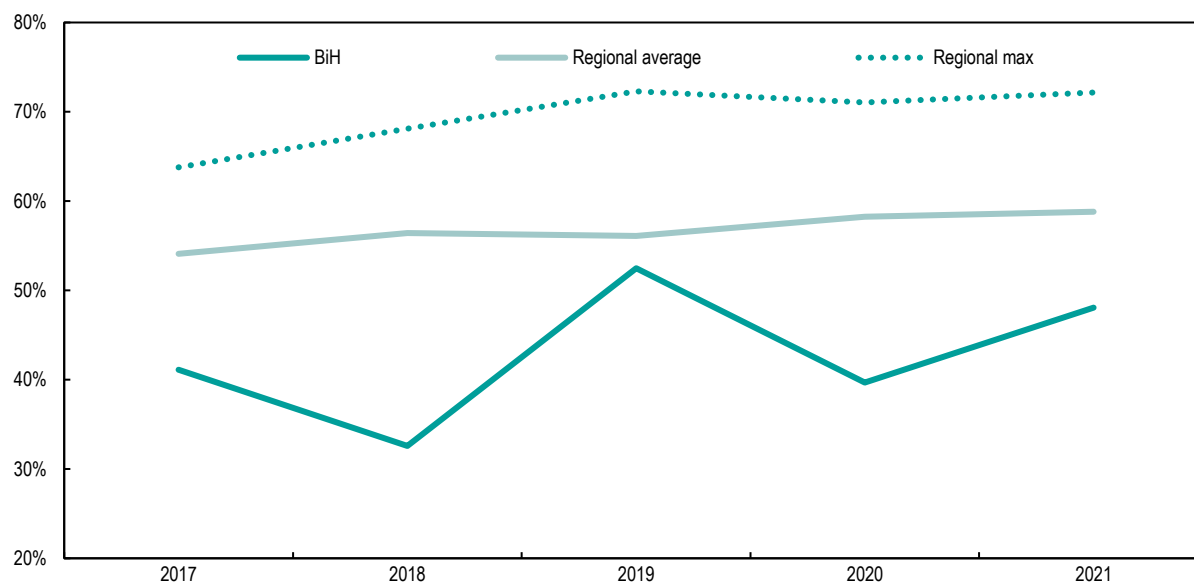
³²¹ Regional School of Public Administration – ReSPA (2016), *Legal Remedies in Administrative Procedures in the Western Balkans*, ReSPA, Danilovgrad, Montenegro.

³²² The Official Gazette of BiH No. 53/2016, The RS Official Gazette No. 66/2018 and The BD Official Gazette Nos. 21/2018 and 23/2019.

³²³ See, e.g. Article 66 (2) for parties’ signatures in submissions or Art. 76 (4) for minutes of meetings.

³²⁴ OECD (2017), *Monitoring Report of Bosnia and Herzegovina*, Paris, p. 128, <https://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf>.

Figure 2. Perceived efficiency of administrative procedures remains below the regional average



Note: The respondents were asked, “Do you agree that the administrative procedures in public institutions are efficient?” The percentage shows the share of citizens and businesses that “strongly agree” or “tend to agree” in relation to the following statements: “Administrative services from central government (such as passports and personal identification [ID])” and “Public services for businesses”. Source: Regional Cooperation Council, Balkan Barometer Public and Business Opinion databases (<https://www.rcc.int/balkanbarometer>).

As shown in Figure 2, the percentage of citizens in BiH who agreed with the statement that the administrative procedures were efficient improved slightly in 2017-2021 but still is 10 percentage points lower than the regional average, showing that there is room for improvement on administrative procedures in BiH.

Conclusion

All LGAPs (State-level, FBiH, RS and BD) recognise the conventional principles of good administrative behaviour. At all levels (except in FBiH) LGAPs recognise the legal value of electronic documents and electronic communications between the public institutions, as well as between the public administration and the parties. The FBiH is currently drafting amendments to its LGAP to include such provisions. As further analysed in Principle 3 below, however, the legal provisions allowing for digital services are not universally applied in all administrative procedures. There is no evidence of a clear and comprehensive plan to harmonise special procedural laws with their respective LGAPs at any of the four administrative levels, and there is no evidence of harmonisation of LGAPs between levels. Thus, citizens and businesses face the burden of having to be aware of several legislative frameworks in order to operate at more than one level.

Principle 3: Mechanisms for ensuring the quality of public service are in place.

Overall, the value for the indicator 'Existence of enablers for public service delivery' is 1.

Indicator 5.3.1. Existence of enablers for public service delivery						
This indicator measures the extent to which citizen-oriented service delivery is facilitated by enabling tools and technologies, such as public service inventories, interoperability frameworks, digital signatures and user feedback mechanisms. It evaluates how effective the central government is in establishing and using these tools and technologies to improve the design and delivery of public services.						
Overall 2022 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators		Points				
	State level	FBiH	RS	BD	Average	
Central and shared mechanisms to better enable public service provision are in place						
1. Central monitoring of service delivery performance	0	0	0	0	0/3*	
2. Adequacy of interoperability infrastructure	1.5	1.5	1.5	1	1.5/3*	
3. Existence of common standards for public service delivery	0	0	0	0	0/3*	
4. Legal recognition and affordability of electronic signatures	1	0	1	1	1/3*	
Performance of central and shared mechanisms for public service delivery						
5. Use of quality-management tools and techniques	1	0	1	0	1/4*	
6. Adoption of user engagement tools and techniques	1	1	1	1	1/4*	
7. Interoperability of basic registers	1.5	1.5	1.5	1.5	1.5/4*	
Total ³²⁵					6/24	

*Average of the State level, FBiH and RS.

Since there are no designated service delivery policy units in place at any government level, no systematic monitoring of service delivery performance is carried out. Moreover, no information is collected about the number of enquiries or data exchanges over the GSB. It would be useful to assemble catalogues of services through service mapping to support performance monitoring, but currently comprehensive catalogues do not exist at any level of government.

Quality management has progressed slightly. The Civil Service Offices at the State, RS and FBiH levels are in charge of promoting, mentoring and supporting the implementation of the CAF model. Several

³²⁵ Point conversion ranges: 0-4=0, 5-8=1, 9-12=2, 13-16=3, 17-20=4, 21-24=5.

institutions have used CAF³²⁶, and a few have applied ISO 9001³²⁷. Several institutions (such as the State-level Indirect Taxation Authority, National Statistics Office, and Tax Administration of RS) have used conventional user-feedback mechanisms, such as surveys, to collect feedback on their service. The E-baby service requests feedback from parents by e-mail and receives consistently high scores³²⁸. Tax authorities also collect feedback from their users on a regular basis.

As noted in Principle 2 above, all LGAPs require the administration to request information about parties from other parts of the administration *ex officio*, so parties do not need to provide information that the administration already has. There are cases where this provision is applicable in practice; for example, when citizens apply for an ID document, the ministries of the interior may request the birth certificate and citizenship certificate through IDDEEA registers, which are not centralised and stored at the municipal level. However, several experiences have shown that it is advisable for users to bring the documents themselves as it would be much quicker than using the official channels: the official has to address the public institution in possession of the information in writing and receive a response in writing³²⁹. Administrative Inspection has the authority to oversee the application of the LGAPs.

Data exchanges between agencies are hindered by legal provisions related to the protection of personal data. However, as indicated in the paragraph above, the problem is as much related to the paper-based logic of regulations that do not apply well to the digital realm. To verify the rights and conditions of an individual, all it takes is to run data queries, but the legislation has not been reviewed to enable such procedures. For example, in BD the documents – stamped and signed – accompanying the application of a construction permit are scans of originals in the Department of Public Safety. The FBiH Financial Intelligence Agency (FIA), which collects financial statements of all legal entities, currently allows for electronic submissions so that templates can be downloaded from the website, completed on the user's computer, written on a Compact Disk and brought to one of its 46 offices, but no direct upload is possible. To make things more complicated, the Civil Service Agency requests citizenship certificates not to be more than three months old: a new certificate must be obtained to submit the documentation for a recruitment procedure beyond that date³³⁰.

In BiH, the exchange of data between levels of government has been well-organised through the IDDEEA, which manages several registries such as the ones on vehicles, driver's licenses, ID cards, passports, residence cards, personal identification number, and central voters' register. The data owners are institutions at various government levels, not the IDDEEA. Quite clearly, there is a room for merging some of these registers that in essence serve the same purpose. However, the exchange of data between business registers, which is the competence of other than the State level governments, is not well-organised. Consequently, for example, instead of being able to check whether the name of a legal entity to be established has already been taken, a citizen must provide a written statement that no other legal entity has been registered under the proposed name. If the court finds later that the name had already been taken, the citizen must change the name of the more recently established legal entity³³¹. In BD, the Finance Directorate has an obsolete information system that cannot communicate with any other

³²⁶ State level Labour and Employment Agency, Gender Office, Public Administration Reform (PAR) Co-ordinator's Office, Agency of Statistics, Civil Service Agency, Agency for Identification Documents Registers and Data Exchange (IDDEEA), RS Statistical Office, and others.

³²⁷ State-level Institute of Standardisation, Institute of Metrology, Agency for Pre-School, Primary and Secondary Education.

³²⁸ Interview with the Ministry of Scientific and Technological Development, Higher Education and Information Society of Republika Srpska (MSTDHEIS), 17 March 2022.

³²⁹ Interview with BD Administrative Inspectorate, 21 March 2022.

³³⁰ Interview with State-level Ministry of Justice (MoJ), 15 March 2022.

³³¹ Interview with FBiH MoJ, 16 March 2022.

information system. The clerks enter citizens' and craftspeople's annual declarations into the system manually.

Most of the data exchanges between registers do not take place over the interoperability framework, but through bilateral agreements between institutions, technically managed through web applications or web services³³². According to the IDDEEA, hundreds of users have been registered with the agency and the system has functioned since 2009. When the GSB, the interoperability solution, was introduced in 2017, it started as a joint project of all the levels of government. Due to a lack of technical and administrative capacities and shortage in funding, however, after the initial launch the GSB has not been developed further. The E-baby project at the RS level, bundling 10 e-services together, was launched without using the GSB.

The IDDEEA is envisaged to become the certification authority for individuals. When in 2003 the ID card with a chip was introduced across the territory of BiH, it was intended also to carry the certificates for electronic signature. However, the infrastructure has not been developed to make it work. Instead, due to the need for electronic signature for businesses being greater than for citizens, tax authorities have each (except in BD, where corporate income tax declarations are filed on paper³³³) developed their own systems, not relying on the ID card but devising their own technical solutions. In RS, since 2021 this means an obligation for legal entities to submit all tax declarations electronically through the web portal, using an electronic signature based on certificates installed on the computer, available free of charge. The tax authorities have thus become certification authorities. RS also did not put the certificates for electronic signature on the ID card but developed its own solution. There is a need for co-ordination between entities and adopting single solutions for common aspects like log-ins and e-signatures in order to save costs and improve the citizens' experience with e-services. Moreover, the different levels each tend to design and develop their own solution, which is expensive and cumbersome. In circumstances where resources (both human and financial) are limited, there is a lot of inventing-a-wheel and little sharing of experience.

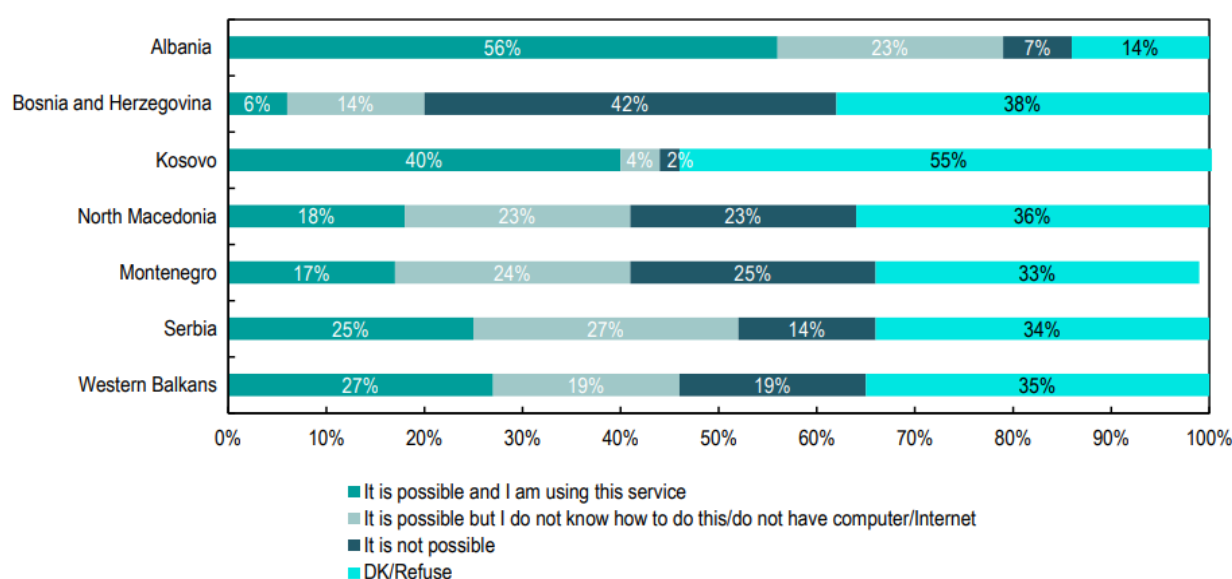
The EU eIDAS Regulation defines three levels of electronic signature: simple, advanced, and qualified. A qualified electronic signature requires that it be based on a qualified certificate for electronic signatures issued by a qualified trust service provider, who is granted the right to deliver one or more qualified trust services after undergoing a strict assessment procedure by a national competent authority. In BiH there is currently no such competent authority, and which body could become one has yet to be determined.

According to Balkan Barometer, BiH has the lowest number of users of digital services in the Western Balkan region. To the question, '*It is possible to get personnel documents (birth certificate, citizenship, etc.) online?*', 6% of the respondents replied positively and are already using the system, whereas 42% of respondents said it was not possible.

³³² The difference between a web application and web service is that the former is meant for humans to read, while the latter is meant for computers to read.

³³³ Interview with BD Finance Directorate, 18 March 2022.

Figure 3. BiH has the lowest online availability and uptake of e-services in the region



Notes: Data refers to the question, “Is it possible to get your personal documents (birth certificate, citizenship, etc.) or any other personal document online?”

Kosovo* This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo’s declaration of independence.”

Source: Regional Cooperation Council, Balkan Barometer Public Opinion Survey 2021 (<https://www.rcc.int/balkanbarometer>).

A good practice from RS is that MSTDHEIS promotes the Guidelines on Developing ICT projects and monitors these prior to their launch, such as by reviewing tender documents. The Ministry also keeps a register of ICT projects to assist in monitoring them. Regrettably, the opinion of the Ministry is not binding, and the ICT project initiators often overlook the aspect of total cost of ownership³³⁴.

RS has recognised the need to address many of the e-government-related issues through the Law on Electronic Administration, which it has drafted. The law will cover areas such as personal data, e-services, cybersecurity, and critical infrastructure.

Electronic payments at the point of service are not available. Payment has to be effected at the post office or bank and proof of payment presented to the service desk of a public service provider, adding a step in the array of procedures. In 2018, the GS at the State level developed a Proof of Concept of both e-payment and single sign-on solutions, but this has not moved further since then.

Conclusion

Minor improvements have taken place in the areas of interoperability infrastructure and deployment of quality management, and user engagement tools and techniques. The interoperability infrastructure based on the GSB does not function properly, however, and most data exchanges take place through bilateral agreements. There is still no electronic signature infrastructure for citizens, although businesses in FBiH and RS can obtain a digital certificate for e-signature from their respective tax authorities to deal with tax affairs, but nothing else. A major issue is the lack of co-ordination between entities and adopting single solutions, instead of the different levels’ designing and developing their own solution for common aspects like logins and e-signatures in order to save costs and improve the citizens’ experience with e-services.

³³⁴ Interview with the MSTDHEIS on 17 March 2022.

Principle 4: The accessibility of public services is ensured.

Overall, the value for the indicator 'Accessibility of public services' is 2.

Indicator 5.4.1. Accessibility of public services						
This indicator measures the extent to which the access to public services is promoted in policy formulation and implementation. It evaluates whether this policy framework leads to measurably easier access for citizens, measures citizens’ perceptions of accessibility to public services and tests the actual accessibility of government websites. Dimensions covered are territorial access, access for people with disabilities and access to digital services.						
Overall 2022 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
	State level	FBiH	RS	BD	Average	
Policy framework for accessibility						
1. Existence of policy for the accessibility of public services	1	1	1	0	1/3*	
2. Availability of statistical data on accessibility to public services	1	2	2	1	2/3*	
3. Adequacy of policy framework for public service users with special needs	0	0	2	1	1/4*	
4. Existence of common guidelines for government websites	1	0	1	1	1/2*	
Government performance on accessibility						
5. Compliance of government websites with Web Content Accessibility Guidelines (WCAG)	2	1	2	3	2/3*	
6. Perceived satisfaction with public services across the territory by the population (%)	0				0/3**	
7. Perceived accessibility of digital public services by the population (%)	1				1/3**	
8. Perceived time and cost of accessing public services by the population (%)	1				1/3**	
Total ³³⁵						9/24

*Average of the State level, FBiH and RS.

**Country-wide data.

Although the Strategic Framework for PAR in BiH 2018-2022 sets a goal of 'improving accessibility of services through different channels of communication' and promises to adapt services to various groups of users, including to people with special needs³³⁶, there is little evidence that improvements have taken place. There is no clarity about the way the objectives will be accomplished: for example, should

³³⁵ Point conversion ranges: 0-4=0, 5-8=1, 9-12=2, 13-16=3, 17-20=4, 21-24=5.

³³⁶ Strategic Framework for PAR in BiH 2018-2022, pp. 48-49.

government portals (central websites) become installed as the only channel to apply for digital services? Is there a need to review and update the network of existing service providing organisations when collecting certain services into one-stop shops? No analyses or papers exist beyond a short section in the SF PAR document and its Action Plan to shed light on any of these issues.

The establishment of one-stop shops for businesses is an area where actions have been taken. In RS, the Agency for Intermediary, IT and Financial Services (APIF), the agency dealing with new business registration, managed to streamline the process in 2013 and the number of procedures was reduced from 10 to 5³³⁷. However, the founder(s) still must first visit a notary, open a bank account, and apply separately for a VAT number (within the competence of the BiH Indirect Taxation Authority, FIA). No part of this process is electronic³³⁸ and, since 2013, no further advancements have been made. At the FBiH level, the FIA has proposed to the Government that the Agency could advise on the establishment of one-stop shops for the registration of businesses³³⁹. It would require FIA itself to become more interoperable with other government institutions. Since it deals with the collection of annual financial statements from businesses, it has a good potential to become the 'one window' for businesses throughout their life cycle – although this would require changes to several pieces of legislation, not considered easy to accomplish. In BD, a new law was passed in 2021 that makes registration of businesses faster. Also, it allows users to send the application documents electronically and once the application is filed, there is no need to visit the Tax Authority. This is due to the instalment of new application that makes possible the transfer of data electronically: the court registering a business receives a tax number from the Tax Authority automatically³⁴⁰.

Regarding citizens and services provided to them, there is no visible progress in making services more accessible. First, only at the RS level is there a central website, albeit outdated, where citizens can obtain information about the services. In FBiH and BD, there is no one central source of information where a citizen could learn about the requirements related to application for a service.

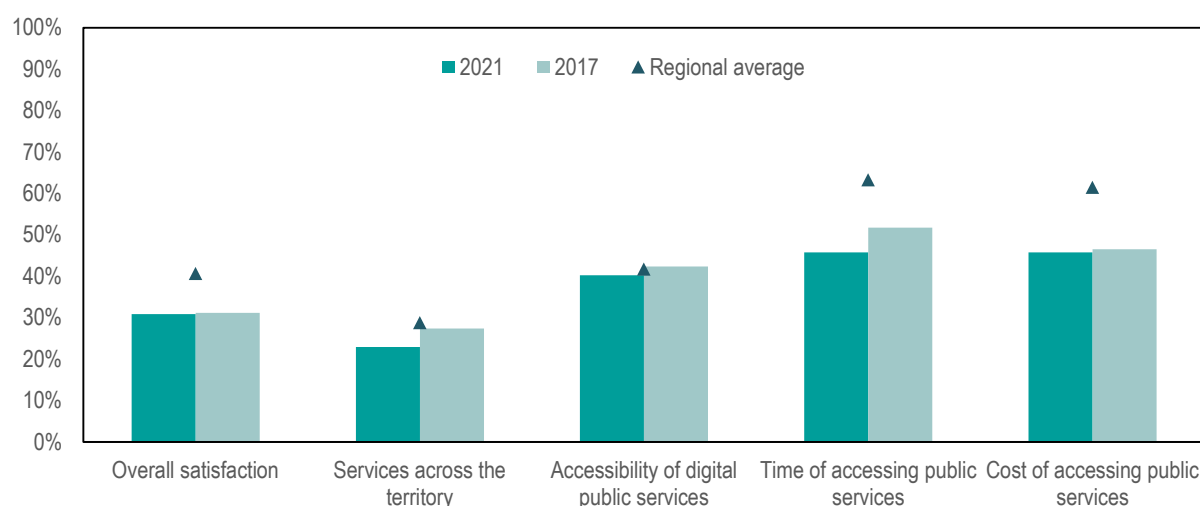
³³⁷ OECD (2017) *Monitoring Report of Bosnia and Herzegovina*, Paris, p. 125, <https://www.sigmaweb.org/publications/Monitoring-Report-2017-Bosnia-and-Herzegovina.pdf>.

³³⁸ Interview with the Agency for Intermediary, IT and Financial Services (APIF) on 17 March 2022.

³³⁹ Interview with FBiH Financial Intelligence Agency (FIA) on 16 March 2022.

³⁴⁰ Interview with BD Basic Court on 18 March 2022.

Figure 4. Citizen satisfaction with accessibility to public services



Source: Regional Cooperation Council, Balkan Barometer Public Opinion Survey 2021 (<https://www.rcc.int/balkanbarometer>).

There are no specific plans to improve access to government premises and thus services for people with disabilities except in RS, where the Strategy for Improving the Social Position of Persons with Disabilities (SISPPD) 2017-2026 sets out the policy framework. The Strategy sees accessibility as one of the core principles and delineates the goals of access to full information and accessibility to physical environment for people with disabilities. Throughout other areas, such as education, the Strategy prioritises inclusiveness of people with disabilities. The Disability Policy of BiH is a very broad document and does not contain a specific goal of accessibility. The Council for Persons with Disabilities has been in place since 2017, consisting of 22 members, 11 of them from outside the government. Although the legislation governing the accessibility to public buildings is in place (RS and State level Law on Construction), it has not been properly followed in practice³⁴¹.

For the first time since 2017, there is statistical information collected on various aspects of accessibility to public services, such as education (State and RS) and health (RS). Statistical agencies do not collect any data on people with disabilities, but the RS Ministry of Health and Social Protection gives a good account of children with disabilities in the education system in the SISPPD.

Responsibility for government websites is vested in the GS at the State level, the Ministry of Digitalisation in RS and the Mayor's Office in BD. There is no responsible body at the FBiH level. At the State level, there is no supporting legislation on the content and quality of websites. Consequently, only a few websites at the State level have a Secure Sockets Layer (SSL) certificate.³⁴² The same problem applies to the BD Government website. The RS MSTDEIS has drafted the Guidelines on the Development of Websites, including the aspects related to accommodating these to the needs of people with disabilities. The E-Srpska website³⁴³ is technologically outdated and will be re-designed³⁴⁴. There is a Decision on Official Web Portals of the Government of the BD, which is currently being updated. The BD Government promotes the use of plain language.

³⁴¹ Interview with BiH Ministry of Human Rights, 15 March 2022.

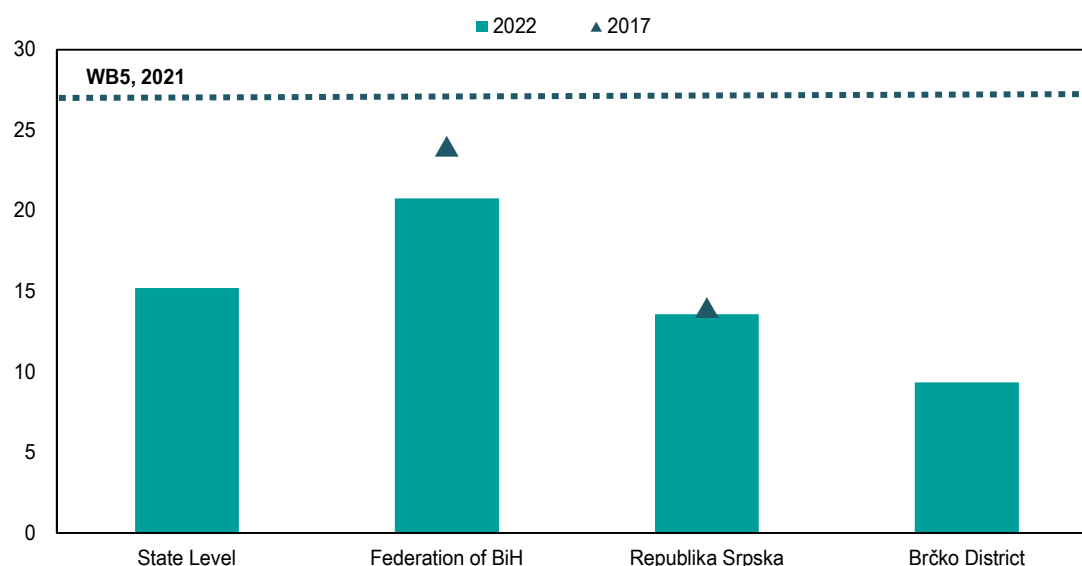
³⁴² A Secure Sockets Layer (SSL) certificate signals a secure (encrypted) connection between the user and the server.

³⁴³ E-Srpska website address: www.esrpska.com.

³⁴⁴ Interview with the MSTDEIS, 17 March 2022.

In general, BiH government websites comply well with the WCAG 2.0 standard³⁴⁵, meaning they are well-accessible for people with special needs. On average, the government websites checked in FBiH and RS have fewer errors compared to 2017. In general, the BiH government websites have fewer errors compared to the regional average. BD websites fare particularly well among the four levels of government.

Figure 5. Number of content-accessibility problems on selected government websites, 2021



Note: Lower bar represents a better result (fewer errors). Brčko District was not assessed in 2017.

Source: SIGMA test of compliance with Web Content Accessibility Guidelines (WCAG) of selected government websites, May 2022.

Conclusion

Although accessibility of public services is a declared policy objective in the SF PAR 2018-2022 and its Action Plan describes some activities, there is little clarity on what needs to be accomplished and how. One-stop shops for businesses have slightly improved, especially in BD, where the number of necessary contacts has been reduced. However, there is little evidence that services for citizens have become more accessible. Only in RS is there a specific strategy that comprehensively tackles the issues, including accessibility, that people with disabilities face. Government websites present information well, including for people with disabilities.

³⁴⁵ WCAG are set of recommendations for making Web content more accessible, primarily for people with disabilities but also for all users, including on very limited devices such as mobile phones.

Public Financial Management

The Principles of Public Administration

Public Financial Management

Budget management

Principle 1	The government publishes a medium term budgetary framework on a general government basis that is founded on credible forecasts and covers a minimum period of three years; all budget organisations operate within it.
Principle 2	The budget is formulated in line with the national legal framework, with comprehensive spending appropriations that are consistent with the medium term budgetary framework and are observed.
Principle 3	The ministry of finance (or authorised central treasury authority) centrally controls disbursement of funds from the treasury single account and ensures cash liquidity.
Principle 4	There is a clear debt management strategy in place and implemented so that the country's overall debt target is respected and debt servicing costs are kept under control.
Principle 5	Transparent budget reporting and scrutiny are ensured.

Internal audit and control

Principle 6	The operational framework for internal control defines responsibilities and powers, and its application by the budget organisations is consistent with the legislation governing public financial management and the public administration in general.
Principle 7	Each public organisation implements internal control in line with the overall internal control policy.
Principle 8	The operational framework for internal audit reflects international standards, and its application by the budget organisations is consistent with the legislation governing public administration and public financial management in general.
Principle 9	Each public organisation implements internal audit in line with the overall internal audit policy documents, as appropriate to the organisation.

Public procurement

Principle 10	Public procurement regulations (including public private partnerships and concessions) are aligned with the European Union acquis, include additional areas not covered by the acquis, are harmonised with corresponding regulations in other fields, and are duly enforced.
Principle 11	There is central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.
Principle 12	The remedies system is aligned with the European Union acquis standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.
Principle 13	Public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring the most efficient use of public funds and making best use of modern procurement techniques and methods.
Principle 14	Contracting authorities and entities have the appropriate capacities and practical guidelines and tools to ensure professional management of the full procurement cycle.

External audit

Principle 15	The independence, mandate and organisation of the supreme audit institution are established, protected by the constitutional and legal frameworks and respected in practice.
Principle 16	The supreme audit institution applies standards in a neutral and objective manner to ensure high quality audits, which positively impact on the functioning of the public sector.

Public Financial Management

Summary and recommendations

Bosnia and Herzegovina (BiH) has a unique and complex public finance system. It comprises the State level, the two Entities (the Federation of Bosnia and Herzegovina [FBiH] and the Republika Srpska [RS]) and the Brčko District [BD]). In terms of funding, direct taxes are collected and distributed within the FBiH, the RS and the BD, while indirect taxes are determined at the State level and the revenue is then divided between the State level, the Entities and the BD. Given this structure, there is no single framework for public financial management (PFM). Rather, four different PFM systems exist, and there is no centralised domestic organisation that publishes centralised consolidated data on public finances.

The quality of the medium-term budgetary framework (MTBF) in BiH is impacted by its complexity, which has contributed to delays in, or the non-publication of, Budget Framework Papers at the State level and in the FBiH. This is compounded by limited parliamentary scrutiny.

There has been some limited improvement in the quality of the annual budget process and budget credibility, due to better alignment between the planned revenue and expenditure and the outturn. However, budgetary discipline and respect for the budgetary laws has been undermined, due to repeated failures to observe the budget calendar, extensive use of temporary financing measures and limited time for parliamentary scrutiny.

There is no consistent approach to fiscal rules. At State level and in the FBiH, there are no fiscal rules concerning both debt and deficit limits. However, in 2018 the RS established fiscal rules: the deficit is to be no more than 3% and the debt no more than 55% of GDP. While there was a temporary deviation from the rules in 2020 due to the emergency situation related to the Covid-19 pandemic, the National Assembly adopted a decision approving the temporary deviation from the fiscal rule of the consolidated budget deficit. The RS has also established a fiscal council. But at the State level and in the FBiH, independent authorities to support the rigor of the budgeting process (such as a fiscal council) have still not been established. Large capital investment decisions generally lack independent and transparent appraisal of the costs and benefits, which could put a strain on the budget in the future.

There has been limited progress in the reliability of budget execution and accounting practices and the quality of public debt management. Cash flow forecasting continues to be an area where improvements are required, and general government arrears is still an area where there is little clarity or information. **While the level of public debt to GDP is relatively low (35%), there is limited coverage of state-owned enterprises (SOEs) and FBiH local government debt and the risks that they pose.**

There has been **some progress in the transparency and comprehensiveness of budget reporting and scrutiny**, but there are still weaknesses in the quality of in-year and annual reporting. Parliamentary scrutiny of in-year budget execution and annual financial statements continues to be limited.

The regulatory and operational framework for internal control at the State level and in the FBiH and the RS is largely in place, with strategies to guide its further development until at least 2025. However, the effective level of implementation of internal control (IC) systems and managerial accountability within the budget organisations and between ministries and their subordinate organisations is limited. The FBiH and the RS face greater implementation challenges due to the numbers of institutions required to implement IC systems and the lack of capacity to manage and monitor progress. For the BD, the framework itself is less developed, so institutional arrangements are only at a formative stage.

The regulatory and operational framework for internal audit (IA) is largely complete and broadly in line with the requirements of international standards. However, while the establishment of IA units in the State level, the FBiH and the RS institutions has improved, it is still far from complete, with a significant number not meeting the regulatory requirements or able to substantively comply with international standards. There has been **an improvement in the proportion of IA units implementing internal audit**

in line with the internal audit operational policies, with audits being planned, conducted and reported in line with international standards. But there are still some significant areas for improvement, and the impact of the work continues to be low. The BD is in the formative stages of establishing the operational framework for internal audit, and an IA unit has yet to be established.

The Public Procurement Law (PPL) has remained unchanged since 2014. The aim of the PPL is to ensure compliance with the principles of non-discrimination, competition, transparency and equal treatment. It reflects some of the key elements of the 2014 EU Public Procurement Directives. However, while the application of domestic preferences was supposed to be phased out on 1 June 2020, the Council of Ministers of BiH (CoM) decided to temporarily extend the application of preferential domestic treatment of 30% until 1 June 2021 in response to the COVID-19 pandemic. The application of domestic preferences is not in line with the fundamental principle of equal treatment and leads to discrimination against EU companies in BiH.

In February 2021, the CoM adopted the Proposal on the Law on Amendments to the Public Procurement Law and submitted it to the parliamentary procedure.

Implementation of the Public Procurement Strategy, which expired in 2020, has not been successful. No annual action plans have been adopted since 2017, and there have been no reports on implementation of the Strategy. Very few activities have been actually put into practice.

The institutional set-up remains the same.

Understaffing of the Public Procurement Agency (PPA) is a source of serious concern, given the volume, variety and importance of the functions the PPA is called upon to undertake. This is particularly the case for the PPA's monitoring function and advisory and operations support. The PPA has been inactive in preparation of manuals, guidelines and other accompanying materials for professional development. It is regarded as very responsive and co-operative, but the lack of consistency in interpretation of procurement legislation between key institutions, in particular between the PPA and the Procurement Review Body (PRB), is consistently noted as a problem by stakeholders.

The PRB, with headquarters in Sarajevo and branch offices in Mostar and Banja Luka, acts as an independent and autonomous institution responsible for the review of appeals. In 2020, the PRB upgraded its internal information system. This was supposed to enable the three offices to co-ordinate their operations and ensure consistent decision-making and legal certainty, but the inconsistency of its decisions is the most frequently criticised aspect of the work of the PRB. The rising trend in the number of appeals submitted to the PRB demonstrates the need to strengthen its capacity. Almost 10% of the PRB's decisions were challenged before the Court of Bosnia and Herzegovina in 2020, but the length of administrative disputes is excessive, from one to three years. Poor transparency in the PRB's decision-making remains an unresolved issue. Not all PRB decisions are published on the Public Procurement Portal.

There is a continued positive trend in the PPA's management and development of the centralised electronic Public Procurement Portal, which is a very strong element of the system. However, full e-communication including e-submission of tenders and requests to participate has not yet been introduced.

Stakeholders report that implementation of the PPL is very formalistic and fails to achieve some of its main objectives. For example, the PPL introduced mandatory self-declaration of economic operators to replace documentary evidence as the condition for participation in procurement procedures, but this in effect imposes greater burden and costs to participants.

There has been no significant change to the independence of the supreme audit institutions (SAIs) since 2017. **The independence, mandate and organisation of the SAIs are well-defined in the SAI laws and are generally well-respected; however, they are still not anchored in the Constitutions.** Appreciation of the SAIs' independence among the public remains low, although it has increased since 2017.

With respect to the effectiveness of the external audit system, the implementation of the International Standards of Supreme Audit Institutions (ISSAIs) is well-advanced in the SAIs but there is still room for

improvement, particularly in quality assurance arrangements. While the parliaments have used the reports of the SAs to scrutinise the Executive, this has not been consistent across the levels of government. The implementation rate of the SAs' recommendations remains low, limiting the impact of their work.

Short-term recommendations (1-2 years)

- 1) The CoM of BiH and the Entity Governments should recommit themselves to observing the budget calendar as set out in the respective budget laws, as the delays in finalising and adopting the annual budgets undermine the budgetary system.
- 2) The ministries of finance (MoFs) should draft proposals to amend the organic budget laws to require that the Budget Framework Papers (BFPs) be sent to the parliaments for approval prior to the annual budget being adopted and allow more time for parliamentary consideration of the annual budget.
- 3) The MoFs of the FBiH and the RS, and the Finance Directorate (FD) of the BD should propose legislative changes to their respective governments to bring all extra-budgetary funds (EBFs) and all proposed capital expenditure fully into the budget process.
- 4) The MoFs of the FBiH and the RS should publish a monthly forecast of budget execution at the beginning of the year and monthly budget execution reports throughout the year and should improve cash-flow forecasting by performing monthly updates.
- 5) The MoFs of the FBiH and the RS should develop a system for establishing the level of arrears at all levels of government and in SOEs, publish comprehensive quarterly reports on arrears and include a section on arrears in the annual financial statements.
- 6) The MoFs of the FBiH and the RS should expand their debt strategies to include greater analysis of the debt risk posed by SOEs and for FBiH local government.
- 7) The Central Harmonisation Units (CHUs) of the State level and all the Entities should be helped to develop the skills necessary to move to the next stage of IC development so they can provide more practical help to institutions, such as advising on appropriate levels of control that balance cost and complexity with risk or the necessary monitoring and feedback mechanisms for different levels of delegation.
- 8) The CHUs should finalise and implement arrangements for external quality assessment of the work of IA units, in accordance with the requirements of the International Professional Practice Framework for Internal Auditing (IPPF)³⁴⁶. The FBiH CHU should finalise plans for a programme of continuing professional development for internal auditors and implement it.
- 9) The BD should establish an operational framework for IA, with the CHU developing the guidance needed, including a manual, standards, code of ethics and charter. It should consider co-operating with the IA units and CHUs of the State level and the Entities to learn from their experience.
- 10) The CHU Co-ordination Board should look again for ways to reduce the numbers of single-person IA units, exploring the scope for more combined units to provide a critical mass of staff to enable effective internal quality control and allow for career progression. The CHUs should also encourage institutions to reconsider the levels of IA staffing required to meet their audit obligations and to recruit staff to fill IA vacancies to enhance the effectiveness of IA.
- 11) To improve implementation rates, the CHUs should develop further guidance for IA units on the development and wording of recommendations and their follow up.
- 12) The PPA in co-operation with the competent authorities should prepare and adopt the new Public Procurement Strategy and the Action Plan for implementation of the Strategy. The strategic documents should include objectives, indicators, targets, responsible institutions and the source of financing.
- 13) The PPA should undertake the process of alignment of the legislation with the 2014 Directives. Secondary legislation and other implementing instruments that supplement and detail the provisions of the primary law should be updated in a timely manner and aligned with the primary law.

³⁴⁶ IPPF developed by the Institute of Internal Auditors and updated in 2017.

- 14) While acknowledging the need for institutional independence, the PPA and the PRB should establish formal or informal mechanisms to co-ordinate interpretation of procurement legislation between key institutions on a regular basis.
- 15) The CoM should strengthen the staff and technical capacity of the PPA and the PRB to enable them to fully carry out their tasks under the Public Procurement Law.
- 16) The PRB, in conjunction with the PPA as necessary, should create a free text-search facility to allow stakeholders to browse both current and archived PRB decisions by subject matter, keyword or legal provision, and should also publish all decisions and conclusions without delay on the Public Procurement Portal.
- 17) Republika Srpska (RS), the Parliament of the Federation of Bosnia and Herzegovina (FBiH), the Assembly of the Brčko District (BD) and the auditees to organise awareness-raising events to improve the auditees' implementation rate of audit recommendations.
- 18) The SAIs should systematically record the audit recommendations made, accepted and implemented and subsequently analyse the reasons for non-acceptance and non-implementation of the recommendations.
- 19) The SAIs should adopt the audit guidance that reflects developments in the International Organisation of Supreme Audit Institutions (INTOSAI) Framework of Professional Pronouncements (IFPP) and ensure that procedures are developed for its implementation.
- 20) The SAIs should reconsider their quality-management arrangements and strive to organise them to meet international standards, taking into account the limited resources available for these activities.

Medium-term recommendations (3-5 years)

- 21) The Council of Ministers at the State level and the FBiH Government should introduce fiscal rules on debt and deficit limits and establish an independent fiscal monitoring body.
- 22) The Ministry of Finance and Treasury (MoFT) at the State level, the MoFs in the FBiH and the RS, and the BD FD should ensure that coding within budget structures enables alignment with management structures to facilitate delegation of budgets and that Treasury financial management information systems can provide information at the level of delegated budget holders to support monitoring and accountability.
- 23) The MoFT at the State level, the MoFs in the FBiH and the RS, and the BD FD should consider moving from centralised control to a more decentralised management of resources as institutions strengthen their IC processes and demonstrate effective management of their resources.
- 24) The CHU Co-ordination Board should consider ways of enhancing IA capability in more specialised technical areas, such as IT Audit, performance audit and audit of major capital projects.
- 25) The PPA should proactively promote the use of award criteria other than acquisition price. It should also develop, publish and disseminate tools for implementing public procurement provisions such as manuals, guidelines and instructions on subjects including preliminary market analysis, procurement planning and contract management. It should furthermore move quickly to post solutions to the most common practical problems on its website.
- 26) The PPA and other competent authorities should implement full e-communication in public procurement, including e-submission of tenders and requests to participate.
- 27) The PPA and other competent authorities should further encourage of introduction of centralised public procurement at various levels, where appropriate.
- 28) The SAIs should engage with the Council of Ministers or other pertinent authorities to ensure that all relevant institutions and in particular the Indirect Taxation Authority are subject to independent external audits.
- 29) The FBiH SAI and the RS SAI should continue to examine how they can increase the coverage of their mandate, while taking into account their limited resources.

Analysis

Budget management

[This part of the report is from November 2021]

Principle 1: The government publishes a medium-term budgetary framework on a general government basis that is founded on credible forecasts and covers a minimum period of three years; all budget organisations operate within it.

Overall, the value for the indicator 'Quality of the medium-term budgetary framework' is 3.

Indicator 6.1.1. Quality of the medium-term budgetary framework						
This indicator measures how well the medium-term budgetary framework (MTBF) is established as a fiscal plan of the government, focusing on the process of budget preparation and four areas that influence the quality of the budget documents. A good MTBF should increase transparency in budget planning, contribute more credible forecasts and ultimately lead to a better general government budget balance.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Strength of the medium-term budgetary framework	8	5	7	5	7/12*	
2. Strength of the fiscal rules	0	0	5	0	2/5*	
3. Credibility of medium-term revenue plans (%)	3	4	3	4	3/4 ^{347*}	
4. Credibility of medium-term expenditure plans (%)	3	3	3	4	3/4 ^{348*}	
Total ³⁴⁹					15/25	

*Average of the State level, FBiH and RS.

At the State and Entity levels, multi-annual budget plans are produced under the respective legislation³⁵⁰. These Budget Framework Papers (BFPs) seek to establish the broad outline of the budget and fiscal parameters for the next three-year period. These forecasts/papers are based on a Global Framework for Fiscal Balance and Policies (GFFBP) that is developed centrally with inputs from all the Entities and sets out the agreed countrywide macro-economic framework within which the individual BFPs are developed. The GFFBP would normally be developed early in the year to be followed by the BFPs in mid-year. Besides being the framework for the BFPs, the GFFBP also determines the income from indirect taxes,

³⁴⁷ The sub-indicator was determined on the basis of 2019 data due to the Covid-19 Pandemic in 2020.

³⁴⁸ *Idem*.

³⁴⁹ Point conversion ranges: 0-3=0, 4-8=1, 9-13=2, 14-18=3, 19-22=4, 23-25=5.

³⁵⁰ Law on the Financing of the BiH Institutions, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12; Law on the Budget of the FBiH, Official Gazette of the FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15; Correct footnote: Law on Budget System of RS, Official Gazette of RS No. 121/12, 52/14, 103/15 and 15/16; Law on the Budget of the BD, Official Gazette of the BD No. 17/08.

which is a State-level responsibility. It determines allocation of the share of indirect tax to each Entity after first allocating revenue to the State level for the support of its institutions and payment of debt obligations of BiH. The co-ordination of the GFFBP is a mandate of the Fiscal Council³⁵¹, a co-ordinating body supported by an advisory body made up of representatives from the various MoFs and the Central Bank.

However, the system is cumbersome and does not always run as smoothly as it should. This in turn is tied up with the complex budgetary system in BiH, reflecting the political and constitutional system within which it has to function. In 2019, the GFFBP was only adopted on 27 December 2018, and this impacted adversely on the development of BFPs. This meant that the BFPs were developed on an *ad hoc* basis for the 2020-2022 period. In the RS, the BFPs were published in mid-year in 2018, 2019 and 2020. But in the FBiH, while a BFP was published in June 2018, no BFP was published in 2019 and the BFP in 2020 was only published in September. At the State level, while a BFP was published in July 2018, there was no BFP in 2019, and in 2020 it was adopted in December (rather than in July as specified in the Law³⁵²). In 2020, the GFFBP was only adopted in September 2020, which again had an impact on the development of the various BFPs.

In general, the BFPs set out the expected revenue and expenditure for the three-year period they cover and set the scene for the annual budget for the following year. The BFPs generally set the parameters for the coming budget year, but only looser targets for the last two years.

The BFPs in the RS and the FBiH consolidate non-central government sectors such as local authorities and extra budgetary funds (EBFs) (there are no local authorities at the State level). In the FBiH, local authorities level (cantons and municipalities) enjoy certain constitutional independence, and sharing of information with the FBiH government is not always complete. Therefore, the MoF uses historical data for some projections. This means that the accuracy of the consolidated figures is questionable.

In relation to fiscal rules, there is no common approach. At the State level and in the FBiH, there are no fiscal rules concerning either debt or deficit limits. In the FBiH, the Budget Law³⁵³ requires that the budget be balanced or, if a deficit occurs, that it must be addressed in the coming five years, but there is no fixed debt rule. The FBiH may borrow subject to a limit of the debt servicing costs not exceeding 18% of the revenues of the previous year³⁵⁴. A similar but lower restriction applies to cantons (5%). At the State level, there is no debt or deficit restriction. In the FBiH and at the State level, there is no independent budgetary monitoring body, such as a Fiscal Council.

In 2018, the RS introduced a revised law³⁵⁵ that set fiscal rules: the deficit is to be no more than 3% of GDP and the debt no more than 55% of GDP. In addition, a Fiscal Council was appointed³⁵⁶, and it has begun to issue reports. Under the law, the Fiscal Council, which reports to the National Assembly, is required to independently assess the credibility of the fiscal policy of the Government's proposals and compliance with the fiscal rules. It may also provide advice on fiscal policy and public finance management to the National Assembly on its own initiative. It also provides an opinion on the annual budget and the budget execution report. To help develop its role, it has signed Memoranda of Understanding with the Fiscal Councils in Serbia and Bulgaria. The establishment of the Fiscal Council is a significant change to the budgetary landscape in BiH.

³⁵¹ The Fiscal Council is not an independent watchdog, as is the case in some EU member countries. It is a co-ordinating body that establishes the basis for the State, the FBiH, the RS and the BD to frame their individual Budgets.

³⁵² Law on the Financing of the Institutions of BiH, Article 4.

³⁵³ Law on the Budget of the FBiH, Article 43.

³⁵⁴ FBiH Law on Debt 2007, Article 7.

³⁵⁵ Law on Fiscal Responsibility "Official Gazette of RS", No. 62/18.

³⁵⁶ The RS Fiscal Council members were appointed by a Decision of the RS National Assembly at the 20th Session on 20 July 2017.

At the State and Entity levels, the BFPs are generally sent to the respective parliaments for information only, although in the RS the only obligation is to publish the BFP. The BFPs do not require parliamentary approval.

Another feature of the BFPs is that they do not contain any non-financial information or discussion on policy initiatives for the period covered, linking the BFP to the respective wider policy agendas. Most of such detail is contained in the Economic Reform Programme (ERP) that is submitted each year to the European authorities, but the BFPs lack this element.

In recent years, the RS has revised the BFP tables in line with new information late in the year, prior to the annual budget being submitted for parliamentary approval. This is not done at the State level or in the FBiH.

The Covid-19 Pandemic affected outturns in 2020 and the credibility of the medium term plans. However, the medium-term forecasts for revenue and expenditure in 2019 were reasonably accurate. In 2019 the revenue outturn deviated by 3% in FBiH and RS and 4.5% at the State level from the forecasts in the BFPs two years previous, while the expenditure outturn deviated by 4% at the State level and in RS, and by 0.3% in FBiH³⁵⁷.

Conclusion

The compilation of the BFPs is cumbersome and complex, requiring consultations between the various constituent elements at the State and Entity levels to devise the GFFBP, which informs the individual BFPs. In 2019, the GFFBP was only agreed in December, which meant that the BFPs were either not published or were prepared on an ad hoc basis. The BFPs are also not subject to parliamentary scrutiny. Fiscal rules and a fiscal council have been established in the RS, but are still not in place at the State level and in the FBiH. In the FBiH, the BFP still suffers from a lack of full integration of data from the sub-central government level to give a comprehensive picture.

³⁵⁷ The 2019 outturns were compared with the planned figures in the BFPs for 2018-2020.

Principle 2: The budget is formulated in line with the national legal framework, with comprehensive spending appropriations that are consistent with the medium-term budgetary framework and are observed.

Overall, the value for the indicator 'Quality of the annual budget process and budget credibility is 2.

Indicator 6.2.1. Quality of the annual budget process and budget credibility						
This indicator analyses the process of budget preparation and the level of transparency and quality of the budget documents. Quality parameters include the link between the multi annual and annual budget, the budget preparation process, selection of priorities for new expenditures, comprehensiveness and transparency of budget documentation, scrutiny and oversight of the budget proposal and rules for in year budget adjustment.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Operational alignment between the MTBF and the annual budget process	3	2	2	2	2/4*	
2. Reliability of the budget calendar	1	1	2	1	1/4*	
3. Transparency of the budget proposal before its adoption in parliament	2	3	2	1	2/8*	
4. Quality in the budgeting of capital investment projects	2	2	0	1	1/5*	
5. Parliamentary scrutiny of the annual budget	0	0	1	1	1/5*	
6. Transparency and predictability of procedures for in year budget adjustments	2	1	3	0	2/4*	
7. Credibility of revenue plans in the annual budget (%)	3	3	3	1	3/4*	
8. Credibility of expenditure plans in the annual budget (%)	3	1	3	1	2/4*	
Total ³⁵⁸						14/38

*Average of the State level, FBiH and RS.

Across the State and entity levels the budget procedures are similar in that they require the Council of Ministers or the respective government to adopt a three-year multi-annual plan at mid-year followed by an annual budget in November, with the respective parliaments required to adopt it in December³⁵⁹.

In recent years, however, the budget timetable has not been adhered to in all cases. While this is partially understandable for 2020 due to the pandemic, there have been several missed budget deadlines in other years. In the RS, the budget for 2020 was only submitted to the Parliament in December 2019, under an urgent procedure, and passed that month. For 2021, the budget was only submitted to the Parliament on 17 December 2020 and adopted the same day. In the FBiH, the budget is required to be submitted to the

³⁵⁸ Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-26=3, 27-32=4, 33-38=5.

³⁵⁹ The State Law on the Financing of the BiH Institutions, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12; the FBiH Law on the Budget, Official Gazette of the FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15; the RS Law on the Budget System Official Gazette of the RS Nos. 121/12, 52/14 and 103/15; the BD Budget Law, Official Gazette of the BD No. 17/08.

Government in October, but the budget for 2019 was only submitted to the Government on 12 December 2018, and the budget for 2020 was only finalised by the Government at end of November 2019. The budget for 2021 was submitted to the Parliament on 15 December 2020 and adopted in January 2021. At the State level, the Budget for 2019 was only adopted by the Parliament in December 2019, so for that year BiH depended on temporary financing. The 2020 budget was only adopted in July 2020, and temporary financing was required to bridge the gap. Again, for 2021, the BiH budget law had not been adopted by July 2021. In the BD, the budget for 2021 was only adopted in March 2021.

Even without these late submissions, the amount of time available to parliaments to scrutinise the budget is very short and not in line with best practice³⁶⁰, which recommends three months for the budget to be appraised.

The budgets at the State and Entity levels generally are confined to the central-government sector and exclude EBFs. However, a notable change in the FBiH in 2020 was the inclusion of the Pension and Disability Fund in the budgetary system, which was already the case in the RS. The change in the FBiH should help make the budget more transparent and comprehensive. However, there are still a number of significant EBFs outside the budget system in the RS and the FBiH. This is further complicated in the FBiH by the position of cantons and municipalities, which are also outside the budget system. For example, only about 50% of general government current expenditure in the FBiH is at the central-government level, and before integration of the Pension and Disability Fund, the percentage was much lower (approximately 20%). Unfortunately, inclusion of the Pension and Disability Fund in the budget system makes it difficult to compare budgets from 2020 with those before 2020 unless a revised-time series is published. In the RS, a number of institutions have their own resources which they control, and these are not included in the annual budget published and submitted to the Parliament. These are mainly educational institutions, prisons and the traffic agency.

The budget documentation contains macro-economic forecasts and details of the allocation of funds to budget users. In both the RS and the FBiH, the budget law is accompanied by an explanation of the budget, and in the RS the latest ERP is also included. However, items not included are an estimate of the budget outturn for the current year, information about long-term (greater than five years) revenue and expenditure, information on contingent liabilities and any debt target set for the coming year.

Another common issue is the lack of integration of capital budgets into the annual budgets. Capital expenditure is contained in the Public Investment Programme in the RS and the FBiH. In the RS, the Public Investment Plan is adopted by the Government, not by the Parliament, and the budget does not contain all capital spending (only BAM 44 million was included) or multi-annual commitments.

Cost benefit analysis on capital investment projects is not systematically conducted, and the selection of projects is not based on clear priorities or identification of benefits. In many cases, preparation of the cost benefit analysis is left to the external financing institution, rather than having a clear domestic imperative to require such analysis to compile priority projects. In the RS, a new framework on capital investment was adopted in 2019³⁶¹. Among other things, this requires that a pipeline of priority projects be established and that project proposers have feasibility studies at the outset. The new system has not been in operation for long enough to judge if this will lead to better appraisal or prioritisation of schemes.

³⁶⁰ OECD (2002), "OECD Best Practices for Budget Transparency", *OECD Journal on Budgeting*, vol. 1/3, p.3, OECD Publishing, Paris, <http://dx.doi.org/10.1787/budget-v1-art14-en>.

³⁶¹ Regulation on the rules for the selection, evaluation and determination of priorities of public investment projects - OG 66/16 and RS Instruction on implementation of projects OG 102/19.

Conclusion

The organic budget laws specify the budget procedures, timetable and content. However, there have been significant failures to observe the budget calendar, thereby weakening budgetary discipline and respect for the budgetary law. Sufficient time is still not provided for parliamentary consideration of the budgets, and there are still gaps in the budget documentation provided. There are also several large EBFs still outside the budgetary parliamentary process in the FBiH and the RS.

Principle 3: The ministry of finance (or authorised central treasury authority) centrally controls disbursement of funds from the treasury single account and ensures cash liquidity.

Overall, the value for the indicator 'Reliability of budget execution and accounting practices' is 3.

Indicator 6.3.1. Reliability of budget execution and accounting practices						
<p>This indicator measures the quality of cash and commitment management, controls in budget execution and accounting practices. These aspects ensure reliable information on government spending and thus a foundation for management decisions on government funds.</p> <p>Effective cash flow and planning, monitoring, and management of commitments by the treasury facilitate predictability of the availability of funds for budgetary units. Reliable accounting practices that include constant checking and verification of the recording practices of accountants are important to ensure good information for management.</p>						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Presence of a treasury single account (TSA)	2	2	2	2	2/2*	
2. Frequency of revenue transfer to the TSA	1	1	1	1	1/1*	
3. Frequency of cash consolidation	1	1	1	1	1/1*	
4. Credibility of cash flow planning	1	0.5	0.5	0.5	1/2*	
5. Budget classification and chart of accounts	1	1	1	1	1/2*	
6. Frequency of bank account reconciliation for all central government bank accounts	2	2	2	2	2/2*	
7. Availability of data on the stock of expenditure arrears	0	0	0	0	0/2*	
8. Expenditure arrears (%)	2	1	0	2	1/3*	
Total ³⁶²						9/15

*Average of the State level, FBiH and RS.

³⁶² Point conversion ranges: 0-1=0, 2-4=1, 5-7=2, 8-10=3, 11-13=4, 14-15=5.

The State Level, the Entities and the BD have Treasury Single Accounts (TSAs) which are specified under the respective laws³⁶³, and the respective MoFs act as the treasury management agencies. In terms of coverage in the FBiH and the RS, a number of EBFs remain outside the TSA. In the FBiH, the Pension and Disability Fund was integrated into the TSA when the Fund was brought within the budget system in 2020, which was a significant change. However, this change still leaves funds such as the Health Insurance Fund and Employment Funds in the FBiH outside the budget system. In the RS, there are a number of bodies with their own resources that are not encompassed within the budget system and are not fully integrated into the TSA. These bodies operate their own accounts, although they are supervised by the Treasury Management Department which also retains ownership of the accounts.

The respective treasury management departments are required to compile cash-flow forecasts for the year, and this is normally done after the budget is adopted. However, cash-flow forecasting continues to be weak. Inputs from budget users are limited, and the forecasts are done centrally by the treasury departments. In many ways, they act as cash-rationing systems rather than cash-flow forecasts. The forecasts are not broken down into broad categories such as pay and non-pay expenditure, capital and own resources. There is no common approach to updating the cash flows, with BiH updating cash flows monthly, and the FBiH and the BD updating them quarterly. In the RS, there is also no monthly updating, and the bodies with their own resources are not included in the cash-flow forecasts.

With respect to arrears, the information is inconsistent. At the State level, there are no arrears, and that is also the case at the central government level in the FBiH. In the RS, it is not clear what arrears information is available. In the data collected for this assessment, the authorities gave an arrears figure of 1.3% of the budget, but on closer examination this appears to include normal liabilities yet to be paid and amounts that have not been paid on the due date. General government data on arrears is not readily available in the FBiH and the RS. A complication in the case of the FBiH is that information from cantons is not readily available. Arrears at other levels of general government have been estimated to be substantial³⁶⁴ with estimates of 4% of GDP in 2018 in both the FBiH and the RS.

There is an acknowledgment that arrears in different sectors of the general government is an issue, and both the FBiH and RS Governments have committed to gathering greater information and addressing the arrears position under the International Monetary Fund (IMF) programmes of support.

For a number of years, at the State level, the FBiH and the RS, coding has been based on administrative, economic (at least “Group” level of the Government Finance Statistics standards), and functional (but not sub-functional) classifications, using Classifications of the Functions of Government (COFOG) standards or a classification that can produce consistent documentation comparable with COFOG standards.

Cash consolidation is done on a daily basis, and bank accounts are also reconciled regularly, daily in the FBiH and monthly in the RS and the State level.

Conclusion

A TSA system is established at the State level, in the Entities and the BD, with cash consolidation and bank-account reconciliation performed regularly. However, cash-flow projections are made on a quarterly basis only and are generated at the central level, with little input from budget users. The measurement of arrears and reporting remains problematic, particularly for the wider public sector, with little data available.

³⁶³ Law on the Financing of the Institutions of BiH, Article 27; FBiH Treasury law 2016 (OG06/16), Article 17; RS Law on Treasury (OG 16/05); and, BD Law on the Budget, Article 23.

³⁶⁴ IMF Article IV Report February 2021, p49, <https://www.imf.org/en/Publications/CR/Issues/2021/02/26/Bosnia-and-Herzegovina-2020-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-50127>.

Principle 4: There is a clear debt management strategy in place and implemented so that the country's overall debt target is respected and debt servicing costs are kept under control.

Overall, the value for the indicator 'Quality of public debt management' is 2.

Indicator 6.4.1. Quality of public debt management						
This indicator measures the procedures and organisation established for the management of public debt and the outcomes achieved, in terms of debt risk mitigation practices, the share of public debt to gross domestic product (GDP), and the difference between public sector debt outturn and target.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBIH	RS	BD	Bosnia and Herzegovina
Sub-indicators		Points				
1. Existence of requirements and limitations for borrowing in the legal framework	2	2	1	0	2/3*	
2. Existence and minimum content of a public debt management strategy	3	1	2	1	2/4*	
3. Clarity of reporting on public debt	1	2	2	1	2/4*	
4. Risk mitigation in the stock of public debt	2	1	2	2	2/6*	
5. Difference between public sector debt outturn from target (%)	3	3	0	3	2/3*	
6. Public debt as a share of GDP (%)	2	2	2	2	2/2*	
Total ³⁶⁵					12/22	

*Average of the State level, FBiH and RS.

The responsibility for the foreign debt management function is a competence of the MoFT at the State level³⁶⁶. The MoFs in the FBiH and the RS and the FD in the BD carry out domestic borrowing, and at sub-Entity level, cantons and public enterprises can also borrow. There have been no significant changes to the debt laws at the State or Entity levels.

The general government sector debt (State and Entity levels) is estimated to be BAM 12.2 billion (2020) or 35% of GDP. Of this 71.7% (BAM 8.8 billion) is foreign debt, with 28.3% (BAM 3.5 billion) domestic debt³⁶⁷. Of the foreign debt, 56% is attributable to the FBiH and 42% is attributable to the RS. However, for domestic debt, the FBiH share is smaller, at 32%, while the RS is responsible for 67%. Within the Entities, the level of debt as a percentage of GDP is not high. For 2019 it was 26% in the FBiH and 49% in the RS³⁶⁸. Figure 1 shows the level of foreign and domestic debt between 2015 and 2020.

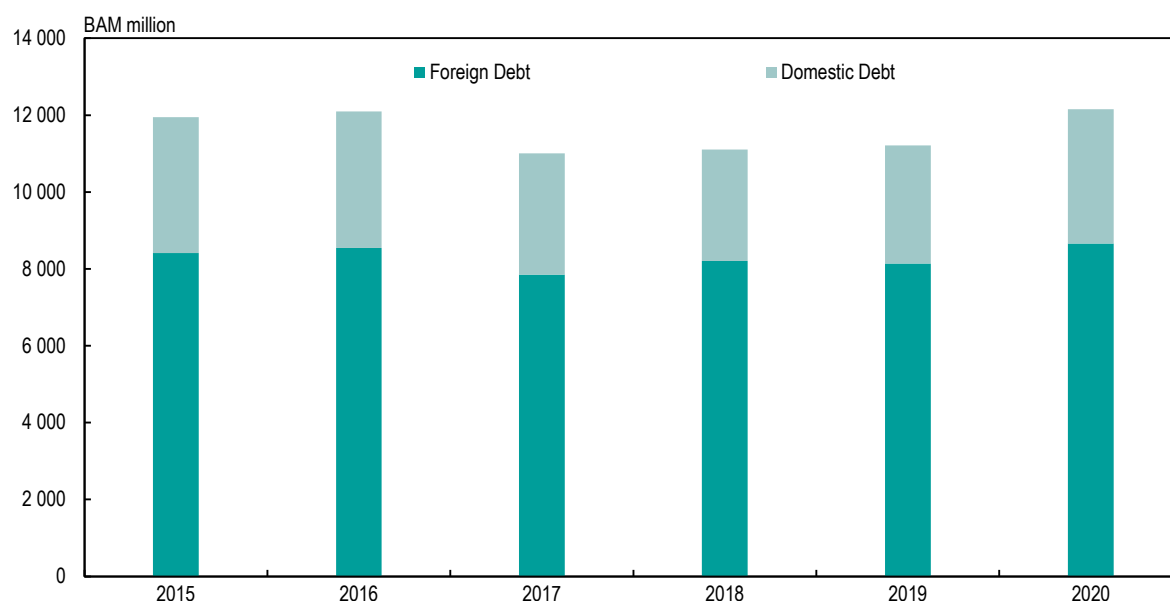
³⁶⁵ Point conversion ranges: 0-2=0, 3-7=1, 8-12=2, 13-16=3, 17-19=4, 20-22=5.

³⁶⁶ Law on Debt, Borrowing and Guarantees of BiH, 2005, OG Nos. 52/05 and 103/09, Article 4.

³⁶⁷ Economic Reform Programme 2021-2023.

³⁶⁸ RS Annual Debt reports 2019 <https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mf/PPP/ud/Pages/default.aspx#collapsible1> and FBiH for 2019 <https://www.mft.gov.ba/Content/Read/informacije-o-javnom-dugu>

Figure 1. Breakdown of public debt by foreign and domestic borrowing, 2015-2020



Source: BiH Ministry of Finance and Transfer Quarterly Overview of Public Debt of Bosnia and Herzegovina Fourth Quarter 2020, March 2021.

Foreign debt is almost wholly owed to multilateral organisations (approx. 80% in 2020) and comprises mainly debt denominated in EUR, USD and SDRs³⁶⁹.

The State level and the Entities all publish three-year Debt Management Strategies³⁷⁰ which detail the debt portfolio with a breakdown of the debt structure, the internal and external debt, the currencies in which debt is owed and interest rate details. However, it is noted that the State-level Debt Strategy was only published in June 2020, although the period covered by the document was 2019-2022. Each of the strategies gives a broad outline of the overall main principles to be followed in the period covered, including aims such as extending the Average Weighted Maturity (FBiH), reducing external debt for domestic debt (RS) or extending the debt maturity profile (State level). They also give details of debt maturity, refer back to the previous strategy and give some details on development of the debt over recent years.

A number of sub-central government bodies are not covered within the FBiH and RS Strategies. Moreover, they are not based on European System of Accounts standards, and thus the ERP is the only document that sets out estimates of the overall general government sector figures in relation to debt. No targets are set for debt levels in the annual budget, which makes it more difficult to judge the success of the State level and Entities policy on debt.

At the State level and the RS the Strategies covers four years, while in the FBiH it covers just three years. There is also a difference in the time of publication. In the RS the Strategy covers 2020 to 2023 and in FBiH the strategy covers 2021 to 2023, and they were published in February 2021. At the State level, the current Strategy covers 2019-2022, and it was published in June 2020, but has not yet been updated.

In terms of borrowing, there are restrictions on guarantees being given to SOEs. However, the SOEs can borrow, and given the size of the SOEs in the countrywide economy, any prospect of non-payment of debt may have an impact at the State or Entity levels. There is not enough data or monitoring of this risk, and the IMF has highlighted the issue in its latest survey³⁷¹. In addition, in the FBiH there is an acknowledgment that borrowing by sub-central government levels, while not a direct obligation on the central government,

³⁶⁹ Special Drawing Rights.

³⁷⁰ FBiH Debt Management Strategy 2021-2023, February 2021; RS Debt Management Strategy 2020-2023, February 2021; State-level Debt Management Strategy 2019-2023, June 2020.

³⁷¹ IMF Article IV Report, February 2021.

could adversely impact the FBiH³⁷² if a default were to occur. However, the amounts possibly involved are not quantified in the Strategy. In the RS Strategy, there are some details on unguaranteed borrowing by local authorities and EBFs³⁷³, but there is no acknowledgment that any default may adversely impact the central authorities. This aspect of unguaranteed debt at non-central government levels has a heightened importance in the aftermath of the current pandemic and its likely economic impact.

Annual reports on debt are published. In the Entities, this is done in May or June of the following year, and at the State level it is in the first quarter³⁷⁴. These give details of the debt portfolio, including details on guarantees outstanding and the normal details of currency and interest rates being charged, as well as debt-maturity profiles and details of treasury auctions during the year. They are audited by the relevant Supreme Audit Institutions (SAIs).

The lower sub-indicator values for debt-risk mitigation arise from the fact that the portfolios at the State and Entity levels have unhedged exposure to foreign debt, with more than 10% of debt maturing in the coming year and a large exposure to floating-rate debt³⁷⁵.

The giving of guarantees is regulated by legislation at the State and Entity levels. In both the RS and the FBiH, there is a limit placed on borrowing by local authorities³⁷⁶. These laws restrict borrowing by requiring that borrowing cannot exceed a percentage of revenue at a local level. Cantons can borrow no more than 5% of the previous year's revenues in the FBiH, while in the RS local authorities are limited to 18% of the previous year's revenue.

Conclusion

Debt is actively managed at the State level and in the Entities. Annual updates on multi-annual strategies are published, with analysis of the debt obligations, although there are still a number of gaps. However, risk mitigation is weak, and data on a government-wide basis is limited.

³⁷² FBiH Debt Management Strategy 2021-2023 para. 4.5.2.

³⁷³ RS Debt Management Strategy 2021-2023 Annex 1 p. 18.

³⁷⁴ RS Report on Debt 2019; FBiH Information on Debt 2020, March 2021.

³⁷⁵ The floating-rate debt is close to 20% in the RS and 40% in the FBiH. Over 80% of foreign currency debt is unhedged in the FBiH and 24% the in RS.

³⁷⁶ RS Debt Law, Articles 17, 46 and 47; FBiH Law on Borrowing and Guarantees 2007, Article 7.

Principle 5: Transparent budget reporting and scrutiny are ensured.

Overall, the value for the indicator 'Transparency and comprehensiveness of budget reporting and scrutiny' is 2.

Indicator 6.5.1. Transparency and comprehensiveness of budget reporting and scrutiny						
This indicator measures the extent to which the government facilitates external monitoring of the execution of the budget through the publication of relevant information, as well as the credibility of that information and whether it is used effectively to ensure accountability. The degree of budget scrutiny on the basis of the published information is also assessed.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
Comprehensiveness of published information						
1. Quality of in-year reports of government revenue, expenditure and borrowing	3.5	1	3.5	2.5	3/7*	
2. Quality of the annual financial report of the government	5	3	1	3	3/7*	
3. Quality of annual reports of state owned enterprises, extra-budgetary funds and local government	-- ³⁷⁷	1	1	3	1/5*	
4. Clarity of national accounting standards and consistency with international standards	2	2	3	1	2/4*	
5. Existence of reporting on fiscal risks identified in the budget	0	0	0	0	0/1*	
Scrutiny and oversight using published information						
6. Quality of the annual financial reporting on the use of public finances	1	1	1	1	1/3*	
7. Timeliness of submission of the SAI report to parliament	1	1	1	0	1/2*	
8. Timeliness of parliamentary discussion on the report of the SAI	3	2	3	1	3/3*	
Total ³⁷⁸					14/32	

*Average of the State level, FBiH and RS.

In-year budget execution reports are prepared quarterly in the BD, at State level and in the FBiH but are not published, while in the RS monthly reports are published (although not within four weeks of the month end). The reports do not show data by ministry or by other budget users, and there is little, if any, explanation or commentary on budget execution. There is no forecast for the expected implementation of

³⁷⁷ There are no state-owned enterprises, extra-budgetary funds and local government at the State level.

³⁷⁸ Point conversion ranges: 0-7=0, 8-12=1, 13-17=2, 18-22=3, 23-27=4, 28-32=5.

the main budget aggregates prepared at the beginning of the year against which budget execution during the year can be measured. Half-yearly reports are compiled at both the State level and in the Entities.

With respect to local authorities, in the FBiH data is included in the quarterly reports, but no separate consolidated reports are prepared for the local authorities. In the RS, quarterly reports for local authorities are compiled, but they are not published. The State level and the BD have no local administrations.

In relation to SOEs, none of the MoFs publish financial information on the SOEs individually or on a consolidated basis. In the RS, the SOEs are required to submit financial information to the appropriate line ministry, but no such requirement exists in the FBiH. At the State level, reports from the SOEs are submitted to the Parliament, not the MoF.

EBFs are not subject to reporting to MoFs. In the RS, these funds are partly included in the quarterly reports published by the MoF, but not all funds are included (health funds are excluded). In the FBiH, the quarterly reports include EBFs.

Annual financial statements are prepared and published at the State and Entity levels and are subject to audit by the relevant SAI. With the exception of the RS, annual financial statements are published within six months of the end of the year. All the financial statements mirror the budget format, but none include all Instrument for Pre-accession Assistance (IPA) funding or any non-financial performance information. The RS statement has a review of assets, but this is not the case for the FBiH or at the State level. Capital expenditure is recorded in the statements, except for the FBiH, where capital spending is the subject of a separate report. Explanations of variations are not comprehensive or indeed extensive and, in some cases, such as the RS, the outturn is compared to the rebalanced budget rather than the original budget³⁷⁹. In the FBiH and at the State level, there is a lack of explanation of the variation from the planned budget.

While all the reports are submitted to their respective parliaments there is little evidence of parliamentary consideration of them. In the FBiH, there are no published minutes of parliamentary consideration of the report, although the execution report and the audit report were both submitted to the Parliament. Usually, at the State and Entity levels, the financial statement is submitted first, before the annual report, but in the BD the 2019 budget execution report still had not been published by April 2021.

Fiscal risk is also an area where there is no coverage in the budget documentation. In the RS, a Fiscal Risk department has been established, but it is too early to assess its effectiveness or its contribution to better budgetary processes.

There has been no change in the accounting standards that are used in the public sector. Accounting standards are defined in the various laws. At the State level, modified accrual accounting is specified³⁸⁰, while in the FBiH and the RS, International Public Sector Accounting Standards are specified³⁸¹.

Conclusion

In-year reporting of budget execution is mainly quarterly and not comprehensive. No estimate is made at the beginning of the year of the budget execution profile against which progress can be measured on a monthly basis. Monitoring and reporting on fiscal risks is also not in place. Annual reports contain some information but are not expansive, and parliamentary scrutiny of in-year budget execution and the annual financial statements is limited.

³⁷⁹ RS rebalanced the budget in 2019 and 2020.

³⁸⁰ The Law on the Financing of the Institutions of BiH, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12, Articles 2 and 19.

³⁸¹ The FBiH Law on the Treasury, Official Gazettes Nos. 58/02, 19/03, 79/07 and 26/16, Article 11.2; The RS Law on accounting and auditing, Official Gazettes No. 94/15 and 78/20; Rulebook on applying international accounting standards for public sector, Official Gazettes No. 128/11.

Internal control and audit

[This part of the report is from November 2021]

Principle 6: The operational framework for internal control defines responsibilities and powers, and its application by the budget organisations is consistent with the legislation governing public financial management and the public administration in general.

Overall, the value for the indicator 'Adequacy of the operational framework for internal control' is 3.

Indicator 6.6.1. Adequacy of the operational framework for internal control						
The indicator measures the extent to which there is a functioning system guaranteeing redress or compensation for unlawful acts and omissions of public authorities. It examines the strength of the legislative framework for public liability and whether it is applied in practice. Wrongful acts of the state against civil servants are excluded.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Existence of policy for the development of internal control	4	4	5	3	4/6*	
2. Completeness of the regulatory framework for internal control	4	4	4	2	4/5*	
3. Comprehensiveness and regularity of the annual review and reporting on internal control	4	4	2	0	3/5*	
Total ³⁸²					11/16	

*Average of the State level, FBiH and RS.

In the 2017 monitoring report, the State level and the Entities were at different stages of development with internal control (IC), but were moving along similar paths with slight variations. The State level, the FBiH and the RS are now at a similar stage for their operational frameworks for IC. Their legislative bases³⁸³ for IC are supported by rulebooks including internal control standards and guidance on risk management among others. For the BD, development lags behind the others, but existing legislation³⁸⁴ covers elements of the required framework for IC³⁸⁵.

There is a legislative basis for the establishment of CHUs at the State level and in the Entities to oversee development, including monitoring and reporting on progress with implementation. However, while the others are well established, the CHU in the BD was only set up in 2020 and hence did not have work plans

³⁸² Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

³⁸³ Law on Financing of Institutions of BiH 2004; Law on Financial Management and Control in the Public Sector of the FBiH, 2016; and, Law on Internal Financial Control in the Public Sector of the RS, 2016.

³⁸⁴ The Law on the Budget Law of the Brčko District of BiH of 2019 Official Gazette No. 2/10.

³⁸⁵ BD Budget Law refers to the international framework for internal control published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

in place. The BD has begun to issue guidance and rulebooks on the implementation of IC³⁸⁶ but has not yet developed the full range that is in place at the State level and in the Entities.

Current strategies for further development of IC now exist at the State level, FBiH, RS and BD³⁸⁷, covering differing periods up to 2027. Previously, the RS still relied on an out-of-date strategy from 2010³⁸⁸. The detailed actions and precise timings in the strategies vary, but the priorities and objectives have common threads running through them, including managerial accountability and risk management³⁸⁹.

While most of the actions in relation to IC involve the relevant CHU, responsibility for many of the actions also involves budget users. This is essential to achieve effective managerial accountability, as it requires the active involvement of budget users and is not something that can easily be imposed from outside.

The State level and the Entities have been supported in the development of the strategies and their implementation of IC by a Technical Assistance project, Improving Public Internal Financial Control³⁹⁰, which is due to end in October 2021.

More detailed annual work plans were in place for the CHUs at the State level, the FBiH and the RS for 2020, and they also issued reports on their achievements for the year. SIGMA's review of these showed differing levels of work-plan completion, with the State level at 38% and the FBiH at 88%. The CHU in the BD was set up during 2020 and hence did not have a work plan for the year against which to measure the achievements set out in their annual report.

The concepts involved in the strategies, managerial accountability and risk management are broadly based and usually require legislative support beyond that provided directly for IC. A detailed and up-to-date analysis of the coherence of IC legislation with other horizontal legislation can identify problems that need to be resolved. Neither the State nor the Entities had such a document. It was explained that the issue of coherence was considered when developing legislative changes and strategies for public internal financial control (PIFC) or PFM, but this does not provide the assurance of a separate analysis. In practice only the PIFC Strategy for the State level mentions the wide range of legislation that can impact on IC³⁹¹, but it does not confirm that their provisions support it.

The State level, the FBiH and the RS have established processes for the CHUs to monitor IC implementation and report on it each year. Each CHU submits its report to the Council of Ministers or the respective Entity Government, and the conclusions issued include instructions for institutions to continue IC implementation and for the CHU to continue its support³⁹². BD has plans for a similar process³⁹³.

³⁸⁶ As an example: Rulebook on the form, content, manner of compilation, deadlines for submission of the statement of fiscal responsibility and reporting deadlines, December 2020.

³⁸⁷ Strategy for development of internal financial control in institutions of Bosnia and Herzegovina for the period 2020-2025, February 2020; Strategy for the development of the internal financial control system in the public sector of the Federation of Bosnia and Herzegovina for the period 2021-2027, April 2021; Strategy for development of the system of internal financial control in the public sector of the Republika Srpska for the period 2021-2025, March 2021; Strategy for development of the internal financial control system in the public sector of the Brčko District of BiH for the period 2021-2025, October 2020.

³⁸⁸ Strategy for the establishment and development of internal finance control in the public sector in Republika Srpska, April 2010.

³⁸⁹ For example, RS Strategy 2021-2025, Section 6 Action Plan, Area 1 FMC, Strategic objective: financial management and control (FMC) focussed on the most significant risks in PFM.

³⁹⁰ Technical Assistance project under the EU IPA programme: Improving Public Internal Financial Control in Bosnia and Herzegovina (2018 – 2021), Reference EuropeAid/138327/DH/SER/BA, Contract 2018/400-558.

³⁹¹ BiH Strategy for development of internal financial control 2020-2025, Section 3.2.1. Legal Framework.

³⁹² State Council of Ministers Conclusion No. 05-16-1-9069/20, May 2020; FBiH Government Conclusion No. 1021/2020, July 2020; and, RS Government Conclusion No. 04/1-012-2-1324/20, May 2020.

³⁹³ Based on Fiscal Responsibility Statements required by the Rulebook on the form, content, manner of compilation, deadlines for submission of the statement of fiscal responsibility and reporting deadlines of December 2020.

Table 1. Completeness of IC reporting in central-government sector

	State level	FBiH	RS	Total
Central-government institutions required to report on IC development	75	116	116	307
Central-government institutions reporting on IC development in 2020	61	100	75	236
Percentage reporting 2020	81%	86%	65%	77%
Percentage reporting 2016	93%	N/A	N/A	93%

Sources: Ministry of Finance and Treasury at the State level, Ministry of Finance of the Federation of Bosnia and Herzegovina, Ministry of Finance of the Republika Srpska. There is no comparative information for the BD as collection of the data has not commenced. Similarly, comparative data from 2017 was not collected in the FBiH or the RS.

Newly introduced monitoring processes in the FBiH and the RS are the principal reason for the improved value for sub-indicator 6.6.1.3. These show that, of the institutions required to report on progress with the implementation in central government sector, 86% (FBiH) and 65% (RS) actually provided data in 2020. The equivalent figure for the State level has dropped from 92% to 81% since the 2017 monitoring report. Overall, this shows that, in the central-government sector, there is an incomplete picture of progress being reported on implementation of IC.

In addition, the FBiH and the RS report that legislation requires over 1 000 institutions outside the central government sector to implement IC. For the RS, the CHU 2020 Annual Report shows that only 320 of those have appointed a person responsible for implementing IC and financial management and control (FMC), and 227 of those have submitted data to the CHU. For the FBiH, the CHU 2020 Annual Report shows that 568 institutions have submitted data and 436 have appointed a co-ordinator for FMC. This is further evidence that an incomplete picture of IC implementation is being reported to the Council of Ministers or the respective Entity Governments.

Conclusion

The regulatory framework for IC at the State, FBiH and RS levels has been enhanced by recent changes and is largely complete. The BD has made progress with the establishment of a CHU and some supporting rulebooks. The State level, the FBiH and the RS monitor and report on progress with IC implementation, but monitoring and reporting are not comprehensive, as information is not provided by all relevant institutions. Plans for monitoring in the BD are in place for 2021. For the State level and all Entities, there are strategies in place to guide further development of IC until at least 2025.

Principle 7: Each public organisation implements internal control in line with the overall internal control policy.

Overall, the value for the indicator 'Functioning of internal control' is 0.

Indicator 6.7.1. Functioning of internal control						
This indicator measures the extent to which internal control systems are implemented in practice within the budget organisations and between ministries and their subordinate organisations, and the immediate results in terms of improved managerial accountability and governance arrangements between ministries and subordinated bodies.						
Overall 2021 indicator value	0	1	2	3	4	5
	State level	FBiH	RS	BD	Bosnia and Herzegovina	
Sub-indicators		Points				
1. Number of first level budget organisations that are neither ministries nor constitutional bodies	0	0	0	2	0/3*	
2. Alignment between management and budget structures (%)	0	0	0	0	0/3*	
3. Credibility of controls for avoiding commitments above the expenditure ceilings	2	2	2	2	2/2*	
4. Availability of reporting of total cost and physical progress of major investment projects	0	0	0	0	0/2*	
5. Effectiveness of basic managerial accountability mechanisms for central government bodies	0	0	0	0	0/4*	
6. Delegation of decision making authority within ministries	0	0	0	0	0/4*	
7. Regularity and completeness of risk management practices	0	0	0	0	0/3*	
8. Existence of reporting on irregularities	0	0	0	0	0/2*	
Total ³⁹⁴					2/23	

*Average of the State level, FBiH and RS.

Institutions have been required to implement IC at the State level since 2012, and in the FBiH and the RS since 2016. Arrangements are not yet at that stage in the BD.

Legislation at the State level and the Entities seeks to introduce IC based on the Principles of the Committee of Sponsoring Organizations (COSO) ³⁹⁵. This structure is reflected in the extensive self-assessment questionnaires that the State level, the FBiH and the RS require each institution to submit and the structure of the subsequent CHU reports to the Council of Ministers or the respective Entity Government each year. While the basis of the information is the same, there are slight variations in the specific questions asked and the way that the information is presented. This limits the ability to make direct

³⁹⁴ Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-23=5.

³⁹⁵ Includes the definitions for the five components of the IC framework: control environment; risk assessment; control activities; information and communication; and monitoring activities.

comparisons, although there are common themes. There are currently no arrangements for verification of the information submitted in these self-assessment returns.

The introduction of managerial accountability is one of the key objectives for all the development strategies. The ability within the budget structure to identify budgets for senior managers and the availability of information on performance are among the preconditions for implementation of managerial accountability. The extent to which authority for decision-making within institutions has been delegated in practice is an indicator of implementation.

Budget alignment with management structures enables managerial accountability by supporting the delegation of budgets and programme activities to the relevant sectors and senior managers within budget users. The percentage of first-level budget users with alignment was requested from all the Entities and, while information was provided by the State, the FBiH and the BD, none included the required supporting analysis. The RS reported that there was no alignment and therefore offered no analysis. For the State, the FBiH and the RS, ministries develop plans and activities on a programme basis, but the legislatures approve the related budgets on a line-item basis, which does not facilitate alignment.

With respect to major investment projects, the State level and the Entities report monthly or quarterly on financial progress with projects using versions of the Project Information Management Information System. The BD relies on its ledger system. However, reporting on the physical progress of major investment projects was not included in any of the documents submitted.

SIGMA examined a sample of five institutions in each of the State, the FBiH and the RS³⁹⁶ against seven criteria covering the extent to which authority to approve administrative and financial procedures was in practice delegated below the level of minister or secretary general. Delegation or transfer of authority is permitted within the framework for IC for each level of governance, with the head of institution still retaining the ultimate responsibility in law. The State had the highest level of delegations, with four out of five institutions delegating a small number of areas, but the overall level of delegation was low. For the FBiH and the RS, this exercise found very low levels of delegation. Overall, the exercise revealed that there was no financial delegation.

The CHUs' annual monitoring of the level of delegation asked more broadly whether delegation had been established. For the State level³⁹⁷, 79% of institutions that returned data to the CHU indicated that this was the case, while for the FBiH³⁹⁸ the share was 39%. The RS³⁹⁹ provided a more granular analysis across 11 categories of institutions, with 5 of these categories reporting that 90% or more have established delegation, with ministries reporting 77% and other central-government-level institutions 60%⁴⁰⁰.

A significant number of first-level budget users at the State, FBiH and RS levels are not ministries, constitutional bodies or required by the Office of the High Representative for Bosnia and Herzegovina. For the BD, with fewer organisational units, this is not the case.

The relationship between parent ministries and their subordinate bodies is important, as ministries will set overall policies, some of which will be delivered by the subordinate bodies. However, the ministry, and the minister specifically, will retain overall responsibility, so arrangements need to be in place to ensure accountability. The relationship between a sample of ministries at each of the State level, the FBiH and the RS⁴⁰¹ and a total of eight of their subordinate bodies was assessed against criteria covering three

³⁹⁶ The different scale and structure of the BD meant that this exercise was not relevant for them.

³⁹⁷ State-level Questionnaire Section Organisational structure, powers and responsibilities, reporting system Question 38.

³⁹⁸ FBiH Questionnaire Section Organisational structure, delegation of authorisations and responsibilities, reporting system Question 10.

³⁹⁹ RS Questionnaire Section Organisational structure, powers and responsibilities, reporting system Question 14.

⁴⁰⁰ All data derived from respective CHU Annual Reports for 2020.

⁴⁰¹ The different scale and structure of BD meant that this exercise was not relevant for them.

stages: the inclusion of agreed objectives and measurable targets in the annual plan of the subordinated body; monitoring of progress towards objectives; and the inclusion of outcomes against targets in the subordinated body's annual report with feedback from the ministry. The assessment was based on a review of documents requested by SIGMA, with 75% of them provided by the State and the RS, but only 33% by the FBiH. Overall, the State, the FBiH and the RS met none of the criteria for any of the subordinated bodies.

Risk management is a core COSO principle⁴⁰² and is the basis for developments included in the new strategies. The State issued risk management guidelines in 2015⁴⁰³, with the Entities following later when IC legislation had been enacted. Detailed guidance is also included in the IC implementation manuals. The risk registers for 2020 from a sample of 15 institutions⁴⁰⁴ were examined to ensure that risks were assessed each year and were based on organisational objectives, that there were risk mitigation measures and that risks had owners. Two institutions in the FBiH had not introduced risk management in 2020, and one at both the State level and the RS did not provide documents for assessment.

SIGMA sought additional information on risk management, including evidence that risks and risk-mitigation activities had been reported throughout organisations during 2020. Few organisations provided such information, and some referred only to gathering risks for the annual return to the CHU. An exception was the State-level Ministry of Justice, which includes its risk register on its website, sharing risk information with both staff and public. Overall, these findings support the view that risk management is still an annual exercise rather than a management activity that is regularly monitored and updated during the year as risks evolve. In addition, some risk registers submitted had been produced by IA for the organisation. It is important that risk registers reflect management's views on the risks that the organisation faces in achieving its objectives.

The CHUs' annual monitoring through self-assessment questionnaires indicated that 87% of institutions at the State level⁴⁰⁵ and 31% in the FBiH⁴⁰⁶ had established risk registers. The RS⁴⁰⁷ again provided a more granular analysis across 11 categories of institution, with 5 of these categories reporting that 60% or more had established risk registers, with the ministries reporting 54% and other central-government-level institutions 60%⁴⁰⁸.

One indicator of the effectiveness of the system of IC is the ability to incur financial commitments beyond the funding available and the existence of arrears. Sound accounting and treasury controls should restrict the ability to incur arrears. From meetings with the State level, in the FBiH and the RS, it was ascertained that appropriate controls remained in place in the central-government sector during 2020. No arrears were recorded in the in the State level, the FBiH and the RS accounts, and data on arrears was not published. However, arrears are believed to exist at lower levels of government within the Entities, as well as in the SOEs. On a general government sector basis, data on arrears is normally not recorded or published centrally, making it impossible to assess the effectiveness of commitment controls in practice outside central government sector in the FBiH and the RS.

⁴⁰² International framework for internal control published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

⁴⁰³ Guidelines for the Implementation of Risk Management in BiH Institutions, Official Gazette of BiH No. 29/15, March 2015.

⁴⁰⁴ Five institutions from each of the State level, the FBiH and the RS.

⁴⁰⁵ State-level Questionnaire, Section Risk management, Question 59.

⁴⁰⁶ FBiH Questionnaire, Section Risk management, Question 5.

⁴⁰⁷ RS Questionnaire, Section Risk management, Question 3 (c).

⁴⁰⁸ All data derived from the respective CHU Annual Reports for 2020.

One benefit of an effective system of IC is that it should enable institutions to detect, investigate and report irregularities. Legislation establishing the framework for IC at both the State level⁴⁰⁹ and in the FBiH⁴¹⁰ includes a definition of irregularity and requires heads of institutions to minimise the risks concerned. The RS⁴¹¹ does not define the term irregularity but includes it in the structure of FMC and tasks the heads of institutions and the heads of internal audit with understanding and managing the related risks. There are no similar legal provisions for the BD. We examined the procedures for irregularities and the number of cases that were reported in 2020 for a sample of 15 institutions. Only three of the sample institutions were able to provide detailed internal guidance for staff⁴¹², and three again provided data on the irregularities identified in 2020⁴¹³. Two of the three rulebooks provided focussed primarily on corruption, rather than the wider concept of irregularity.

Conclusion

At the State, FBiH and RS levels, institutions are at a broadly similar level of development. The implementation of internal control lags behind the development of the overall framework. There is little evidence of delegation being used in practice, and not all institutions have introduced risk management. Where risk management arrangements are in place, it appears to be an annual exercise rather than a management activity. For the BD, the framework itself is less developed, so institutional arrangements are only at a formative stage.

⁴⁰⁹ State Law on Financing of Institutions of 2004 as amended at Articles 2(1)(ff) and 33d “Taking action against irregularity and fraud”.

⁴¹⁰ FBiH Law on Financial Management and Control, 2016, Articles 3(14) and 17.

⁴¹¹ RS Law on Internal Financial Control of 2016, Article 39.

⁴¹² State-level MoFT and Tax Administration and RS Tax Administration.

⁴¹³ State-level MoFT and Tax Administration and FBiH Tax Administration.

Principle 8: The operational framework for internal audit reflects international standards, and its application by the budget organisations is consistent with the legislation governing public administration and public financial management in general.

Overall, the value for the indicator 'Adequacy of the operational framework for internal audit' is 3.

Indicator 6.8.1. Adequacy of the operational framework for internal audit						
This indicator measures the extent to which the operational framework for internal audit (IA) has been established, assessing the adequacy of the regulatory framework, the institutional set-up, and co-ordination and quality assurance mechanisms.						
A separate indicator measures the implementation of the framework and the results achieved.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators	Points					
1. Adequacy of the regulatory framework for internal audit	4	5	5	2	5/5*	
2. Organisational capacity for internal audit	4	2	1	0	2/5*	
3. Co-ordination, development and guidance of the internal audit system	3	2	4	1	3/5*	
4. Existence of a system for quality assurance for internal audit	0	0	0	0	0/3*	
Total ⁴¹⁴					10/18	

*Average of the State level, FBiH and RS.

The BD is only in the initial stages of setting up IA, with legislation passed in 2019⁴¹⁵, the CHU set up in 2020 and IA staff still to be recruited. The plan is to have a centralised unit for the whole of the BD. Given the size of the BD, this is an appropriate plan enabling the single unit to have a critical mass of staff and suitable status. This stage of development means that many of the elements required are not yet in place.

A regulatory framework is in place for IA at the State level⁴¹⁶, in the FBiH⁴¹⁷ and the RS⁴¹⁸ that applies broadly to ministries, agencies, funds, cantons and municipalities (subject to rulebooks on the criteria for establishing IA units⁴¹⁹). The IA laws establish the role, independence and method of working of IA in line with the IPPF⁴²⁰. In terms of independence, the laws require direct reporting to the head of the institution, access to information and premises, and the consent of the CHU for appointment and dismissal of the

⁴¹⁴ Point conversion ranges: 0-2=0, 3-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

⁴¹⁵ BD Law on the Budget, 2019, Articles 17 and 18.

⁴¹⁶ Law on Internal Audit in BiH Institutions of 2008 as amended.

⁴¹⁷ FBiH Law on Internal Audit in the Public Sector of 2008 as amended.

⁴¹⁸ RS Law on Internal Control in the Public Sector of 2016.

⁴¹⁹ Included in the RS Law on Internal Control in the Public Sector of 2016 at Article 19.

⁴²⁰ IPPF developed by the Institute of Internal Auditors and updated in 2017.

heads of IA units. Regarding methods of working, the laws require strategic and annual planning, professional conduct of IA assignments and reporting. These are all as required by the IPPF.

The more recent regulatory framework for IA in the BD includes the obligation to set up IA and the need for its functional independence. There is also provision for the drafting of a rulebook of criteria for determining which organisations need to set up IA units, although this may not be required if the plan for a single centralised unit is implemented. However, there is currently no legal backing for IA staff access to information and premises, the appointment and dismissal of the head of the IA unit, or the working methods of IA in comparison with the other Entities.

As with IC, there is a legislative basis for the establishment of CHUs covering IA at the State Level and in the Entities. At the State level, the FBiH and the RS this involves oversight of development as well as monitoring and reporting on progress with implementation. The CHU in the BD was only set up in 2020, and its legal obligations in relation to IA are limited to promotion and application of international standards and training⁴²¹.

Staffing of the CHUs in the FBiH and the RS remains low, hampering development for IA and IC. The FBiH now has 13 systematised positions, of which 5 are staffed, while the RS has 10 systematised positions, of which 4 are staffed. At the State level, the CHU has 11 systematised positions, of which 10 are staffed

Strategies for further development of IA exist at the State level, the FBiH, the RS and BD⁴²², covering varying periods up to 2027. The strategies vary, but common themes for the State level, the FBiH and the RS are updating risk-based methodologies, with a focus on adding value in areas of strategic importance to auditees and filling vacant posts. However, only the RS includes external quality assessment, which is required under the IPPF. While most of the actions in relation to IA involve the relevant CHU, responsibility for some actions, such as staffing issues, also involves budget users. Given the limited state of development of IA in the BD, their Strategy concentrates on establishing the IA function and providing the rulebooks for its operation.

Development of the Strategies and the implementation of IA have been supported by a Technical Assistance project, Improving Public Internal Financial Control⁴²³, which is due to end in October 2021.

At the State level, FBiH and RS, each of the CHUs had a detailed annual work plan for 2020 and also issued a report on their achievements for the year. Our review of these showed differing levels of work plan completion, with the State level at 50% and the RS at 85%. The CHU in the BD was only formed during 2020, so it did not have work plans for the year, but it did prepare a report on the year's achievements.

With the exception of the BD, the legal requirements are supported by IA standards, manuals, codes of ethics and charters developed by the CHUs, while the BD has plans for such documents. The IA manuals are broadly compliant with the IA Laws and the IPPF standards, but they do not cover external quality

⁴²¹ BD Law on the Budget, 2019, Articles 20(d) and 20(i).

⁴²² Strategy for development of internal financial control in institutions of Bosnia and Herzegovina for the period 2020-2025, February 2020; Strategy for the development of the internal financial control system in the public sector of the Federation of Bosnia and Herzegovina for the period 2021-2027, April 2020; Strategy for development of the system of internal financial control in the public sector of the Republika Srpska for the period 2021-2025, March 2021; and, Strategy for development of the internal financial control system in the public sector of the Brčko District of BiH for the period 2021-2025, October 2020.

⁴²³ Technical Assistance project under the EU IPA programme: Improving Public Internal Financial Control in Bosnia and Herzegovina (2018 – 2021), EuropeAid/138327/DH/SER/BA, Contract 2018/400-558.

assurance⁴²⁴. This gap has been recognised, and the CHUs are working with the Technical Assistance project to develop a Framework Quality Control methodology for IA for publication in 2021.

A Continuing Professional Development programme to update internal auditors' professional knowledge and skills is a mandatory requirement of the IPPF, and these are now in place at the State level and in the RS. Due to the pandemic, a number of the activities were held on line in 2020. For the FBiH, such a programme is described as being "in preparation"⁴²⁵.

Previously, meetings were held regularly between the CHUs and the heads of IA units (HIAs) as a group to discuss common issues about implementing the methodology or improvements that could be made to it. For 2020, evidence has been provided of a variety of training events that included HIAs, meetings between the State-level CHU and individual IA units or round-table discussions organised by the Technical Assistance project⁴²⁶. While these will have been useful in their own right, they do not fulfil the same purpose as the HIA meetings to discuss specific State-level or Entity-wide issues.

Table 2. Current state of play on internal audit in the central-government sector

	State level	FBiH	RS	Total	Percentage 2021	Percentage 2017
Institutions required to establish IA	19	19	25	63	-	-
Units established	18	13 ¹	19	50	79%	72%
Units meeting staffing requirements	14	4	8	26	52%	20%
Systematised audit posts	48	71	42	161	-	-
Internal auditors employed	43	24	28	95	-	-

Notes: 1. For the FBiH, five units had no staff so were excluded here.

Sources: Ministry of Finance and Treasury at the State level, the Ministry of Finance of the Federation of Bosnia and Herzegovina, the Ministry of Finance of the Republika Srpska.

The CHU reports each year are mainly based on the self-assessed annual reports which the CHUs receive from the IA units. Across the BiH as a whole, 79% of the central-government sector organisations required to establish IA functions have now done so, which is a small improvement on 2017. Staffing levels have improved, with 52% now meeting the minimum requirement, in comparison with 20% in 2017. Despite the progress, this shows that, while the framework for IA remains largely complete, IA units have still not been established in all institutions required to have them and, even where they have been established, 48% do not meet the staffing levels required. Overall, just 26 of the 63 institutions (41%) required to set up IA units have done so and recruited staff to at least the minimum required level. Staffing levels are particularly weak in the FBiH, where 24 of the 71 posts (28%) were filled in 2020.

Both the FBiH and the RS still have single-person audit units in the central-government sector, either established with only a single post or with only a single auditor in post due to budget constraints or

⁴²⁴ Law on Internal Audit of the Institutions in BiH, Article 21; FBiH Law on Internal Audit in the Public Sector, Article 20; RS Law on the Internal Control System in the Public Sector, Article 35; and, ISPPA Standard 1313 – External Assessments.

⁴²⁵ Ministry of Finance of the Federation of Bosnia and Herzegovina CHU.

⁴²⁶ Round table on "Development of quality control methodology (quality review) for Internal Auditors" with representatives of the CHUs held 26-27 February 2020.

recruitment issues. This means that the IA units have no internal monitoring and review capability and thus are unable to comply with the approved methodology and the IPPF standards.

In the FBiH and the RS, there are many other agencies, cantons, municipalities and SOEs that are required to have their own IA arrangements. While there are also significant numbers of single-person units at these levels, overall staffing levels are better than in the central-government sector. For the FBiH, among these institutions there is a requirement for 223 IA staff with 119 posts filled (53%). For the RS, there is a requirement for 145 IA staff with 115 posts filled (79%).

The CHUs at the State level⁴²⁷ and in the FBiH and the RS have implemented rulebooks controlling the process for training, testing and certification of candidates to be employed as internal auditors. In 2020, each of the CHUs had two cycles of training and, by year end, the State had issued certificates to 39 internal auditors in total. The FBiH issued certificates to 30 new internal auditors in 2020 and the RS to 60. By the end of 2020, the FBiH had 438 internal auditors with certificates, and the RS had 260, far more than the number of IA staff currently employed.

Conclusion

The legal framework for IA is largely complete. Continuous professional development is now in place at the State level and in the RS, and quality assurance is planned to be introduced in 2021. The establishment of IA in institutions at the central-government level has improved, but it is still far from complete. A number of single-person IA units are operating, which are unable to effectively apply the specified methodologies and meet international standards.

⁴²⁷ Programme of Training and Certification of Internal Auditors in BiH Institutions, Official Gazette, Nos.7/15 and 89/18.

Principle 9: Each public organisation implements internal audit in line with the overall internal audit policy documents, as appropriate to the organisation.

Overall, the value for the indicator 'Functioning of internal audit' is 2.

Indicator 6.9.1 - Functioning of internal audit						
This indicator measures the extent to which internal audit is implemented and whether activities effectively contribute to improved management of public finances within the budget organisations.						
Overall 2021 indicator value	0	1	2	3	4	5
		State level	FBiH	RS	BD	Bosnia and Herzegovina
Sub-indicators			Points			
1. Strength of planning of internal audit in budget organisations	2	5	2	0	3/7*	
2. Quality of audit reports	0	0	5	0	2/6*	
3. Follow-up and implementation of audit recommendations (%)	2	1	2	0	2/3*	
Total ⁴²⁸					7/16	

*Average of the State level, FBiH and RS.

The BD is only in the initial stages of setting up IA, with staff still to be recruited, so none of the elements required for Principle are yet in place.

The requirements for IA are set out in the IA manuals and other guidance materials prepared at the State level, the FBiH and the RS. These prescribe the approach for each stage of internal audit work from establishing the IA unit, through planning to carrying out assignments and reporting. While not identical, the sets of guidance are generally consistent with each other, as they follow IPPF standards and have been prepared with support from a series of Technical Assistance projects⁴²⁹.

Part of the process for establishing an IA unit in an institution is the approval of an audit charter which enforces legal requirements at a local level for a range of issues including independence, access to information and reporting. The CHUs at the State level and in the FBiH and the RS keep registers of the charters that have been approved. For units that have been established, there is a high level of compliance with this requirement. At the State level, 100% of the institutions have charters in place, as do 89% of the institutions in the FBiH and 82% in the RS⁴³⁰. These findings were supported by the sample institutions reviewed.

IA manuals require strategic and annual plans to be developed each year and provide templates. To meet the IPPF standards, strategic plans should include a risk assessment and demonstrate how IA resources are used to cover a range of high-risk areas over a three-year period. The separate annual plans should be developed from, and be consistent with, the relevant strategic plan but show more detail about the planned audit coverage and the resources to be deployed.

⁴²⁸ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

⁴²⁹ Most recently Technical Assistance project under the EU IPA programme: Improving Public Internal Financial Control in Bosnia and Herzegovina (2018 – 2021), EuropeAid/138327/DH/SER/BA, Contract 2018/400-558.

⁴³⁰ Based on data from Ministry of Finance and Treasury of the State of Bosnia and Herzegovina, Ministry of Finance of the Federation of Bosnia and Herzegovina, and Ministry of Finance of the Republika Srpska.

Table 3. Strategic and annual plans on internal audit

	Institutions	Strategic plans	Percentage	Annual plans	Percentage
State level	40	39	98%	39	98%
FBiH	78	71	91%	74	95%
RS	72	56	77%	61	85%
Total	190	166	87%	174	92%

Sources: Ministry of Finance and Treasury of Bosnia and Herzegovina, Ministry of Finance of the Federation of Bosnia and Herzegovina, and Ministry of Finance of the Republika Srpska and based on data from all units required to report to the CHU.

The CHU 2020 annual reports show that progress has been made with audit planning, as 87% of institutions now meet the requirements for preparation of strategic audit plans (compared to 70% in 2017) and 92% for annual audit plans (compared to 54% in 2017). However, review of a sample of strategic and annual audit plans⁴³¹ indicated that there were some gaps in the information provided, particularly related to risk analysis⁴³². Nearly all of the strategic plans reviewed met the requirements in terms of setting out the role and objectives of IA together with coverage over a three-year period. An analysis of the annual plans showed a focus on systems and compliance, but the plans did not generally include performance audit and audits of activities related to a variety of funding sources.

One matter that was apparent from the strategic plans of the central IA units based in the ministries of finance of the FBiH and the RS is the range of coverage they are required to provide with limited resources. Regulations require these units to provide IA services to those organisations that fail to meet the criteria for establishing their own units or have yet to establish them. The FBiH unit covers 30 separate institutions with a systematisation of four staff but only three in post. By comparison, the State-level unit covers five institutions with a systematisation of four staff⁴³³.

The established methodology requires a report to be issued at the conclusion of each audit assignment. A sample of reports⁴³⁴ was requested from institutions, although some were not provided⁴³⁵. All those received defined the objective and scope of the assignment undertaken, addressed systematic weaknesses in internal control and included recommendations for improvement where appropriate⁴³⁶. Only a few of the reports addressed weaknesses in achieving value for money. The reports submitted compared well with the relevant criteria, but the missing reports had an impact on the sub-indicator values.

⁴³¹ Sample of 15 institutions, but only 14 reports were received. The BiH Ministry of Justice declined to provide audit plans on the grounds of confidentiality.

⁴³² Of the 14 strategic plans provided, 8 contained sufficient evidence that they were based on an assessment of risks to the achievement of institutional objectives. Two documents provided were frameworks for risk assessment, and no documents were submitted for four institutions.

⁴³³ The RS central IA unit has a systematisation of three staff with only one in post, but information was not provided on the number of separate institutions they are required to cover.

⁴³⁴ The request was for the last IA assignment report issued during 2020.

⁴³⁵ The BiH Ministry of Justice declined to provide an assignment report on the grounds of confidentiality. The BiH Ministry of Foreign Affairs had only appointed the HIA in 2020, and no reports were issued that year. The FBiH Ministry of Education's IA is undertaken by the MoF Central Unit, and no work was planned for 2020. The FBiH Ministry of Transport and Communications did not provide an assignment report.

⁴³⁶ One report found that the system was sound and no further recommendations were needed.

An action plan for implementation of recommendations is a requirement for all reports, with deadlines agreed with management. Follow-up action is required from IA units in the next year, and it was indicated that this is done by follow-up audit, email or phone call depending on the recommendation.

Table 4. Implementation of IA recommendations

	State level	FBiH	RS	Total	Percentage 2017
Issued 2019	308	1 595	1 384	3 277	-
Implemented 2020	173	587	684	1 444	-
Percentage	56%	37%	49%	44%	Below 50% ⁴³⁷

Sources: Ministry of Finance and Treasury of Bosnia and Herzegovina, Ministry of Finance of the Federation of Bosnia and Herzegovina, and Ministry of Finance of the Republika Srpska and based on data from all units required to report to the CHU.

The CHU Annual Reports show how many recommendations are made each year and how many are implemented, with year-on-year comparisons. The overall number of recommendations (3 277) has increased since the 2017 assessment (2 625), but there is no apparent increase in the rate of implementation. The CHU reports do not include specific information on the speed or frequency of follow-up action by IA units.

Conclusion

IA units are generally preparing strategic and annual audit plans that are in line with national legal requirements and based on a risk assessment. Audit reports are broadly prepared in line with the IA manuals, but there is still limited focus on value-for-money issues. Also, the implementation rate of IA recommendations remains low, limiting the impact of IA.

⁴³⁷ For the 2017 assessment, the annual report of the RS CHU did not include information on the implementation rate of recommendations, so an overall estimate was made on the basis of the annual reports of the State and the FBiH.

Public procurement

[This part of the report is from November 2021]

Principle 10: Public procurement regulations (including public-private partnerships and concessions) are aligned with the European Union *acquis*, include additional areas not covered by the *acquis*, are harmonised with corresponding regulations in other fields, and are duly enforced.

Overall, the value for the indicator ‘Quality of legislative framework for public procurement and PPPs/concessions’ is 3.

Indicator 6.10.1 - Quality of legislative framework for public procurement and PPPs/concessions					
This indicator measures the quality of the legislative framework for public procurement and public-private partnerships (PPPs)/concessions, above and below EU thresholds. Opportunities for participation of small and medium-sized enterprises (SMEs) in public procurement are assessed, as well as whether practical measures are taken to allow proper implementation of the legislation. The other indicators in the public procurement area analyse the actual implementation of laws and regulations and the results thereof.					
Overall 2021 indicator value	0	1	2	3	4 5
					Points 2021
Compliance of public procurement legislation with the <i>acquis</i> above EU thresholds					
1. Level of alignment of public procurement legislation with the EU Directives	3/6				
2. Scope of public procurement legislation	3/6				
3. Public procurement procedures	1/4				
4. Publication and transparency	5/5				
5. Choice of participants and award of contracts	2/5				
6. Availability of procedural options	3/4				
Public procurement procedures below EU thresholds					
7. Advertising of public procurement procedures	3/3				
8. Contract award procedures	5/7				
Opportunities for participation of SMEs in public procurement					
9. Opportunities for participation of SMEs in public procurement	2/5				
Availability of measures for the practical application of the legislative framework					
10. Availability of measures for the practical application of the legislative framework	1/5				
Quality of legislation concerning PPPs/concessions					
11. Coverage of legislation on PPPs/concessions	Not assessed				
12. Value for money, free competition, transparency, equal treatment, mutual recognition and proportionality for PPPs/concessions	Not assessed				
Total ⁴³⁸	28/50				

Note: The 2021 assessment does not include sub-indicators 11 and 12 and criteria in other sub-indicators relating to public-private partnerships (PPPs) and concessions. These will be finalised in 2022. For the purposes of the 2021 reports, an interim point conversion range has been established to calculate the overall indicator value that removes the points relating to PPPs/concessions from the total and redistributes the point conversion ranges proportionally. The total amount of points is therefore 50 instead of 60.

⁴³⁸ Point conversion ranges: 0-8=0, 9-17=1, 18-26=2, 27-34=3, 35-42=4, 43-50=5.

The PPL⁴³⁹ has remained unchanged. While the adoption of the PPL in 2014 represented an important step forward on the path of approximation of the legislation of BiH with the EU *acquis*, the process of further alignment, namely with the 2014 Directives⁴⁴⁰, has not yet begun. The Strategy and Action Plan for the development of the public procurement system in BiH for the period 2016-2020 had foreseen a gradual harmonisation with the new EU Directives. However, the adoption of the scheduled measures did not take place.

The current PPL is already largely aligned with the basic public procurement principles and objectives of the European Union. It reflects some of the key elements of the 2014 EU Public Procurement Directives, for instance with regard to their personal scope, the main characteristics of available public procurement procedures and the fundamental principles underlying the selection and award criteria. The PPL covers the classic and utilities sectors and regulates the award of contracts both above and below the EU thresholds. The PPL also incorporates the relevant provisions of the EU review and remedies regimes. The relevant by-laws in support of the PPL have been completed, including adoption of the delayed Rulebook on Training of Public Procurement Officers⁴⁴¹.

However, a number of problematic provisions of the PPL need to be addressed.

First, the mandatory application of domestic preferences remains incompatible with the *acquis*⁴⁴². The application of domestic preferences was supposed to be phased out on 1 June 2020, but in response to the COVID-19 pandemic the CoM of BiH decided to temporarily extend preferential domestic treatment of 30% until 1 June 2021⁴⁴³. Preferential treatment is not applied for tenders submitted by bidders from Central European Free Trade Agreement countries, while there is no such exemption for economic operators from the EU⁴⁴⁴. The application of domestic preferences is not in line with the fundamental principle of equal treatment, and it leads to discrimination against EU companies in BiH.

Second, with regard to the material scope of the 2014 Directives, particular attention should be paid to the exemptions from the scope of the PPL. Contracts which are exempted include contracts “for natural and legal monopolies that may include procurement of water, electricity, gas, heating and other services, until the relevant market is open for competition”⁴⁴⁵. Undoubtedly, it would be impractical to require the application of competitive procedures in these situations (when for technical reasons there is only one economic operator capable of fulfilling a particular contract). However, the EU legislation, instead of exempting such contracts, offers another solution, application of the negotiated procedure without prior publication.

The 2014 EU Public Procurement Directives provide for a number of new procurement techniques, procedures and concepts (such as innovation partnership, electronic catalogues, best price-quality ratio and life-cycle costing), which are currently not transposed into the PPL.

⁴³⁹ Public Procurement Law, Official Gazette of BiH No. 39/2014, adopted on 29 April 2014, entered into force 19 May 2014 and become effective on 27 November 2014.

⁴⁴⁰ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

⁴⁴¹ Rulebook on training of public procurement officers, Official Gazette of BiH No. 8/2018 of 10 February 2018.

⁴⁴² PPL, Article 67, Decision on Obligatory Application of Domestic Preferences of 11 November 2016, Official Gazette of BiH No. 83/2016 and Decision on amendments to the Decision on Obligatory Application of Domestic Preferences of 10 June 2019, Official Gazette of BiH No. 54/2019.

⁴⁴³ Decision on Obligatory Application of Domestic Preferences of 29 May 2020, Official Gazette of BiH No. 34/2020.

⁴⁴⁴ *Ibid*, Article 2.

⁴⁴⁵ PPL, Article 10.

Moreover, the grounds for exclusion of economic operators from public procurement procedures are not fully aligned with the 2014 Directives, and there is no right to demonstrate “self-cleaning” prior to their exclusion.

In addition, the new EU Directives are intended to make it easier for small and medium-sized enterprises (SMEs) to participate in public tenders, for example by requiring contracting authorities to provide justification for a decision not to divide contracts into lots or by rendering division into lots obligatory under certain conditions. No such focus on SMEs is present in the PPL.

The PPL places insufficient emphasis on the promotion of social, environmental and innovation/sustainability considerations. The contracting authorities do not have the opportunity to use a light regime for social and other specific services in accordance with Directives.

Communication and exchange of information are not fully conducted by electronic means, which is a standard under the 2014 EU Directives. The PPL does not foresee electronic submission of requests to participate and tenders, which are still handled in the traditional paper manner.

Finally, the PPL lacks clear conditions under which modifications to a contract during its performance require a new procurement procedure and under which modifications are permitted without the need to carry out a new procurement procedure.

The provisions of the EU Defence Procurement Directive are only partially transposed in the secondary legislation⁴⁴⁶. The scope of application of the Rulebook is not fully aligned with the Directive: the rules on security of supply and security of information and specific rules on subcontracting are not transposed.

On 18 February 2021, the CoM adopted the Proposal on the Law on Amendments to the Public Procurement Law⁴⁴⁷ and submitted it to the parliamentary procedure⁴⁴⁸. The draft Law on Amendments to the PPL was prepared by the Working Group established in 2017 by the CoM. The proposal provides improvements with regard to transparency in various phases of the procurement process, introduces more strict provisions on conflict of interest and removes the exclusion for natural and legal monopolies. As regards further harmonisation with the 2014 EU Public Procurement Directives, new provisions have been introduced in the draft, for example concerning labels, life-cycle, preliminary market consultations and indication of the main reasons when a contract is not subdivided into lots.

Conclusion

The current legal framework for public procurement remains unchanged and is largely aligned with the basic EU principles, but it requires further alignment with the 2014 Directives. Secondary legislation is in place. The CoM adopted the new Decision on preferential domestic treatment of 30% that was valid until 1 June 2021, which contravenes the fundamental principle of non-discrimination. The proposal for Amendments to the Public Procurement Law is in parliamentary procedure.

⁴⁴⁶ Rulebook on contract award procedure in the field of defence and security of 17 June 2015, Official Gazette of BiH No. 60/2015.

⁴⁴⁷ [http://static.parlament.ba/doc/144512_Prijedlog%20zakona%20korigovani%20\(B\)-za%20PD.pdf](http://static.parlament.ba/doc/144512_Prijedlog%20zakona%20korigovani%20(B)-za%20PD.pdf).

⁴⁴⁸ <https://www.parlament.ba/session/OSessionDetails?id=2224&ConvernerId=2>.

Principle 11: There is central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.

Overall, the value for the indicator 'Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently' is 3. The value has not changed since the last assessment in 2017.

Indicator 6.11.1 - Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently						
This indicator measures to what extent public procurement policy is systematically developed, implemented and monitored, how central public procurement functions are distributed and regulated, and to what extent the preparation and implementation of policies is open and transparent.						
Overall 2021 indicator value	0	1	2	3	4	5
						Points 2021
Quality of the policy framework for public procurement						
1. Quality of the strategy for development of public procurement and PPPs/concessions						0/5
2. Quality of the operational action plan						0/5
3. Implementation of the strategy and the action plan (%)						0/5
4. Monitoring of strategy implementation						0/5
Capability of central procurement institutions and their performance						
5. Adequacy of the legal framework to ensure capable institutions						8/10
6. Clarity in definition and distribution of central procurement functions in the legislation						8/10
7. Performance of the institutions involved, their capacity and resources						10/20
Comprehensiveness and efficiency of systems for monitoring and reporting on public procurement						
8. Presence and quality of monitoring and data collection						8/10
9. Accessibility of public procurement data						6/10
Total ⁴⁴⁹						40/69

Note: The 2021 assessment does not include criteria relating to PPPs and concessions. These will be finalised in 2022. For the purposes of the 2021 reports, an interim point conversion range has been established to calculate the overall indicator value that removes the points relating to PPPs/concessions from the total and redistributes the point conversion ranges proportionally. The total amount of points is therefore 69 instead of 80.

The PPA is an independent administrative body responsible for policy making, preparing draft legislation, monitoring, advising, training activities in the field of public procurement and managing and developing the Public Procurement Portal. The PPA's main office is in Sarajevo, with branch offices in Banja Luka and Mostar. The PPA is managed by the director, and its work is steered by the Board of five members. In accordance with the PPL, the Board is competent to consider issues related to the functioning and improvement of the public procurement system. In practice, the Board limits itself to administering prior consents to enactments prepared by the PPA⁴⁵⁰.

At the time of this assessment⁴⁵¹, the PPA employed 22 staff members, rather than the planned complement of 32⁴⁵². The draft new Rulebook on Internal Systematisation prepared by the PPA envisages

⁴⁴⁹ Point conversion ranges: 0-10=0, 11-21=1, 22-33=2, 34-45=3, 46-57=4, 58-69=5.

⁴⁵⁰ Interview with the Board, April 2021.

⁴⁵¹ Data submitted by the PPA in March 2021

⁴⁵² The Rulebook in Internal Systematisation of the Public Procurement Agency of 24 April 2008, with later amendments (of 11 February 2010, 17 August 2015, 26 September 2018).

45 employees⁴⁵³. Understaffing is a source of serious concern, given the volume, variety and importance of the functions the PPA is called upon to undertake under the provisions of the PPL. Its staff capacity needs to be reinforced to enable it to deal with all assigned tasks effectively and efficiently.

The PPA carries out monitoring of public procurement procedures⁴⁵⁴. The monitoring proceedings may be initiated *ex officio* and on the request of an exhaustive list of authorised institutions or interested parties, but not anonymously. *Ex officio* monitoring is limited to checking compliance of published procurement notices, contract award notices or notices of cancellation of public procurement. If, upon assessment, the PPA comes to the conclusion that a violation of the PPL has occurred, and if the contracting authority fails to rectify its behaviour accordingly, the PPA is obliged to bring an action before the courts of BiH⁴⁵⁵. In 2020, the PPA processed 521 cases of monitoring (out of which 71 requests were submitted by NGOs) and checked compliance of some 30 000 procurement notices, procurement plans and other sources of monitoring⁴⁵⁶. The PPA initiated 27 misdemeanour procedures before the competent courts of BiH, while 11 cases were forwarded to the competent public prosecutor's offices. Given the number of requests and sources of monitoring, as well as the fact that only five employees⁴⁵⁷ are assigned to this task, the PPA is under severe pressure to properly conduct its monitoring function.

Another source of concern regarding the activities of the PPA is advisory and operational support for contracting authorities and economic operators. The PPA does offer a range of professional advice and support activities to all interested parties, such as *ad hoc* advice on legal as well as technical issues (through a hotline and in writing). During 2020, the PPA received 2 354 questions through a hotline and 7 507 in writing⁴⁵⁸. Since June 2020, however, the provision of advisory support by the PPA through the hotline has been reduced to only one day per week for three hours and of technical support to twice a week for two hours⁴⁵⁹. The PPA is regarded as very responsive and co-operative, but stakeholders note a lack of consistency in interpretation of procurement legislation between key institutions, particularly between the PPA and PRB⁴⁶⁰. Among the main strategic objectives, the previous Strategy⁴⁶¹ highlighted better co-ordination within the public procurement system. However a mechanism to regularly and systematically co-ordinate interpretation of public procurement legislation between the key institutions involved has not been put in place.

The PPA has not made available any manuals, guidelines or other practical tools for implementation of the PPL, with the exception of the manual for the use of the e-Procurement information system⁴⁶². Moreover, the collection of the PPA's opinions and solutions to the most common practical problems faced by practitioners is not regularly updated⁴⁶³.

The training and examination of public procurement staff within the contracting authorities, which had previously come to a halt, intensified as of 2019 and continued in 2020, following the delayed adoption of

⁴⁵³ Data received from the PPA.

⁴⁵⁴ PPL, Article 92 and the Rulebook on Monitoring of 5 October 2016, Official Gazette of BiH No. 72/2016.

⁴⁵⁵ PPL, Article 116.

⁴⁵⁶ Draft Report on Monitoring of Public Procurement Procedures in 2020, p. 4.

⁴⁵⁷ *Ibid.*

⁴⁵⁸ <https://www.javnenabavke.gov.ba/hr/news/296/agencija-za-javne-nabavke-bih-u-2020-godini>.

⁴⁵⁹ <https://www.javnenabavke.gov.ba/hr/news/278/obavjestenje-vezano-za-savjetodavnu-i-tehnicku-pomoc-agencije-za-javne-nabavke-bih>.

⁴⁶⁰ SIGMA interviews, April 2021.

⁴⁶¹ The Strategy for the Development of the Public Procurement System in BiH for the Period 2016-2020.

⁴⁶² Available at: https://www.ejn.gov.ba/content/manual/Pomoc%20e-Nabavke_bs.pdf

⁴⁶³ Only four opinions were published in 2020, available at <https://www.javnenabavke.gov.ba/hr/practical-application>.

the Rulebook on training of public procurement officers⁴⁶⁴. This enabled the PPA to provide regular and systematic professional support to contracting authorities, which it is mandated to provide under the PPL. The 30-hour training sessions are organised with the support of the Instrument for Pre-accession Assistance (IPA) II Project, Strengthening the Public Procurement system in BiH. In November 2019, the PPA launched an information system for the management of training in the field of public procurement (TMIS)⁴⁶⁵.

The Public Procurement Strategy⁴⁶⁶, adopted by the CoM on 13 October 2016, expired in 2020. The Strategy, together with Action Plan for 2016-2017, provided an outline for the development, implementation and monitoring of procurement policy. The implementation of the Strategy has not been successful. Since 2017, no annual action plans have been adopted, and there have been no reports on the implementation of the Strategy. Very few activities have actually been implemented. The only two activities that were implemented in accordance with planned deadlines were the e-auction module and the publication of the PRB's decisions on the Public Procurement Portal. Some other activities were implemented, but later than planned. The PPA announced⁴⁶⁷ that it has initiated activities on preparation of the Strategy for 2021-2025, but no new Strategy has been adopted for the period from 2021 onwards.

Conclusion

Understaffing of the PPA is a serious concern, particularly with regard to monitoring and advisory and operations support functions. The 2016-2020 Strategy has expired, with very few activities implemented and no new Strategy prepared. The PPA has been inactive in the preparation of manuals and guidelines. Mechanisms to regularly and systematically co-ordinate the interpretation of public procurement legislation between the key institutions are not in place. The adoption of the Rulebook on Training⁴⁶⁸ was crucial to enable the PPA to start delivering training.

⁴⁶⁴ Rulebook on training of public procurement officers, Official Gazette of BiH No. 8/2018 of 10 February 2018.

⁴⁶⁵ www.obuke.javnenabavke.gov.ba.

⁴⁶⁶ The Strategy and Action Plan for the Development of the Public Procurement System in BiH for the Period 2016-2020.

⁴⁶⁷ The Work Programme of the Public Procurement Agency of Bosnia and Herzegovina for the period 1 January to 31 December 2021, p. 1.

⁴⁶⁸ Rulebook on training of public procurement officers, Official Gazette of BiH No. 8/2018 of 10 February 2018.

Principle 12. The remedies system is aligned with the European Union acquis standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.

Overall, the value for the indicator 'Independence, timeliness and competence of the complaints handling system' is 3. The value has not changed since the last assessment in 2017.

Indicator 6.12.1 - Independence, timeliness and competence of the complaints handling system					
This indicator measures the effectiveness of the system for handling complaints on public procurement. First, the quality of the legislative and regulatory framework is assessed, specifically in terms of compliance with EU Directives. Then, the strength of the institutional set-up for handling complaints is analysed. Next, the actual performance of the review system is measured. Finally, the performance of the remedies system for PPPs/concessions is evaluated.					
Overall 2021 indicator value	0	1	2	3	4 5
					Points 2021
Legislative mechanisms for handling complaints in compliance with EU Directives					
1. Right to challenge public procurement decisions	5/5				
2. Time limit for challenging decisions taken by contracting authorities/entities	0/2				
3. Transposition of mechanisms to avoid ineffectiveness of contracts and impose penalties	3/3				
4. Mechanisms to ensure implementation of the review body's resolutions	2/2				
5. Right to challenge decisions of the review body	3/3				
Institutional set-up for handling complaints					
6. Legal provisions ensure the independence of the review body and its members	7/7				
7. Adequacy of the organisational set-up and procedures of the review body	2/4				
8. Public availability and timeliness of data on the review system	1/4				
Performance of the review system					
9. Fairness of fee rates for initiating review procedures	0.5/3				
10. Actual processing time of complaints	0/3				
11. Complaint submission in practice	2/4				
12. Quality of decision making by the review body	3/4				
13. Cases changed or returned after verification by the court (%)	1/2				
Performance of the remedies system in PPPs/concessions					
14. Right to challenge lawfulness of actions/omissions in PPP/concessions procedures	Not assessed				
15. Legal provisions ensure independence of the review body for PPPs/concessions and its members	Not assessed				
16. Timeliness and effectiveness of complaints handling system for PPPs/concessions	Not assessed				
Total ⁴⁶⁹	29.5/46				

Note: The 2021 assessment does not include sub-indicators 14 to 16 and criteria in other sub-indicators relating to PPPs and concessions. These will be finalised in 2022. For the purposes of the 2021 reports, an interim point conversion range has been established to calculate the overall indicator value that removes the points relating to PPPs/concessions from the total and redistributes the point conversion ranges proportionally. The total amount of points is therefore 46 instead of 61.

The regulatory and institutional framework in the system of legal review and remedies remains fundamentally unchanged since the adoption of the PPL in 2014.

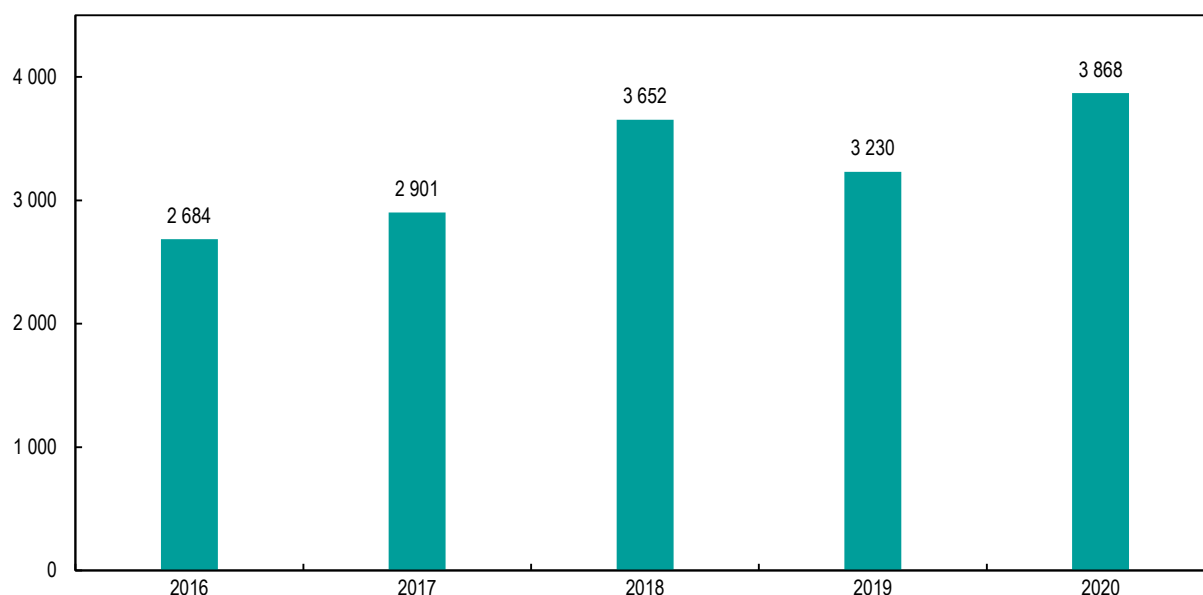
⁴⁶⁹ Point conversion ranges: 0-6=0, 7-14=1, 15-22=2, 23-30=3, 31-38=4, 39-46=5.

The PPL is mainly compliant with the EU Remedies Directive⁴⁷⁰, but two issues require further alignment. First, the time limits for bringing appeals before the PRB (five days⁴⁷¹) are manifestly too short and do not comply with the requirements of the Remedies Directive. Second, the deadline for rectifying the deficiencies in the appeal (three days, followed by a possible dismissal of the appeal⁴⁷²) also appear excessively short and might lead to the dismissal of appeals on the basis of purely formal irregularities. As a result of these requirements, prospective applicants may be discouraged from challenging the decisions of contracting authorities before the PRB.

In terms of the institutional framework, the PRB, with headquarters in Sarajevo and branch offices in Mostar and Banja Luka, acts as an independent and autonomous institution responsible for the review of appeals. This process comprises two stages, as prior to an appeal being submitted to the PRB, it is examined by the contracting authority in question⁴⁷³.

The number of appeals has been increasing continuously since 2016, with the exception of 2019 when a slight decline was recorded. In 2020⁴⁷⁴, 3 868 appeals were received, compared to 3 230 appeals in 2019⁴⁷⁵. In 2020, the headquarters in Sarajevo received 907 appeals, the office in Banja Luka 887, and the office in Mostar 2 074⁴⁷⁶.

Figure 2. Number of appeals submitted to the PRB, 2016-2020



Source: Work Report of the Procurement Review Body for 2020.

The PRB's actual staff (at both headquarters and the branch offices) is comprised of only 33 people (17 members and 16 supporting staff), rather than the 55 required by the official staff regulations⁴⁷⁷. The

⁴⁷⁰ Council Directive 89/665/EEC of 21 December 1989 on the co-ordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

⁴⁷¹ PPL, Article 100.

⁴⁷² *Ibid*, Article 106.

⁴⁷³ *Ibid*, Part III "Legal protection".

⁴⁷⁴ Work Report of the Procurement Review Body for 2020, p. 3.

⁴⁷⁵ *Ibid*, p. 3.

⁴⁷⁶ *Ibid*, p. 6.

⁴⁷⁷ Rulebook on Internal Organisation of the PRB, No. 01-02-3-221/13, 15 December 2015.

headquarters in Sarajevo has five support staff, the branch office in Mostar two and in Banja Luka only one. Such a significant shortage of staff is likely to have negative repercussions on the efficiency and quality of the overall functioning of the institution, especially in light of the continuously increasing flow of appeals.

There are cases where the PRB does not respect the statutory time limits for deciding on complaints, although this has improved compared to previous periods⁴⁷⁸. But the PRB does not have mechanisms in place to enable it to measure the actual time spent on resolving appeals between the lodging of an appeal to completion of documentation and reaching a decision. Moreover, in exceptionally complex cases, where prescribed time limits⁴⁷⁹ are exceeded, the PRB does not regularly issue and deliver to the parties in the procedure a conclusion that the time limit is extended. The reviewed samples of PRB decisions refer to applicable law and principles and generally demonstrate a clear rationale. The rationale is, however, very repetitive (for example the appeal allegations are repeated three times)⁴⁸⁰. In most cases, the decisions focus on formal errors, as do the appeal allegations. The PRB merely decides on allegations, which tend to focus on formalities. However, when the formal errors do not impact the outcome of the procedure, this is clearly stated in the decision.

In 2020, the PRB upgraded its internal information system (OWIS) which is supposed to enable co-ordination of documentation and ensure a consistent, comprehensive and standardised approach to documents at all PRB locations. Nonetheless, the inconsistency of the PRB decisions⁴⁸¹ is the most frequently criticised aspect of the work of the PRB. The PRB still relies on informal mechanisms, such as e-mail exchanges of past decisions and individual members' recollection of the body of PRB case law⁴⁸². In order to ensure coherent output of the PRB as a whole, it is therefore vital to use the common sharing system effectively to ensure co-ordination in handling of appeals and decision-making

After years of relying on the PPA's website for publication of relevant information, the PRB launched its own website in 2018.

In accordance with the PPL⁴⁸³, all conclusions and decisions of the PRB must be publicly disclosed on the Public Procurement Portal. However, due to the lack of technical and human resources, the PRB struggles with this task. In 2019, the PRB made 3 025 decisions (out of 3 230 appeals received)⁴⁸⁴, but only 1 779⁴⁸⁵ were published. In 2020, the PRB made 3 512 decisions (out of 3 868 appeals received)⁴⁸⁶, with 3147⁴⁸⁷ published on the Portal.

The manner in which this publication is presented has one major deficiency. The system allows browsing of the PRB's decisions using a number of criteria (such as the procedure or decision number, the contracting authority involved, the name of economic operator and the date), but it does not offer a basic text-search option that would allow prospective or actual parties to the proceedings before the PRB (or even the PRB itself) to find information on how earlier case law dealt with a specific situation or legal

⁴⁷⁸ Work Report of the Procurement Review Body for 2020, p. 6 and interviews with stakeholders in April 2021.

⁴⁷⁹ PPL, Article 111.

⁴⁸⁰ First, the allegations from the appeal are presented; second, the allegations are repeated when the statement of the contracting authority is presented; and third, they are repeated when the PRB elaborates its decision.

⁴⁸¹ Interviews with stakeholders in April 2021 and two PRB cases No. JN2-03-07-1-396-8/21 of 18 March 2021 and No. JN2-03-07-1-675-1/21 of 1 April 2021.

⁴⁸² Interview with the PRB on 22 April 2021.

⁴⁸³ PPL, Article 113.

⁴⁸⁴ Work Report of the Procurement Review Body for 2019, p. 5.

⁴⁸⁵ <https://www.ejn.gov.ba/Resolution/ResolutionSearch>.

⁴⁸⁶ Work Report of the Procurement Review Body for 2020, p. 5.

⁴⁸⁷ <https://www.ejn.gov.ba/Resolution/ResolutionSearch>.

problem. As a result, the published information is of limited value and relevance. Ensuring wider access to the PRB's case law through a comprehensive search engine would significantly enhance legal continuity in decision-making, legal certainty and transparency.

Decisions of the PRB may be appealed to the Court of BiH. In 2020, 343 administrative disputes were initiated against PRB decisions (9.76% of all cases in 2020). Also in 2020, the Court reached 472 decisions related to administrative disputes initiated against PRB decisions adopted in the period 2016-2020, of which in 131 cases the Court accepted the appeal and returned the case to the PRB. The Court should adopt its decisions according to the emergency procedure⁴⁸⁸. However, the length of administrative disputes is excessive, from one to three years⁴⁸⁹. Such long time frames for the Court to reach a final decision brings into question the practical relevance of the ruling to the procurement procedure in question and manifestly discourages parties from seeking judicial protection. The length of judicial procedures is one of the mostly criticised aspects of the public procurement system in BiH⁴⁹⁰.

Conclusion

The functioning of the PRB continues to be the weak element, primarily due to its insufficient staffing and technical capacity. The number of appeal cases is increasing continuously. Inconsistency of PRB decisions remains the main issue. The PRB does not publish all its decisions, and the manner in which decisions are published does not allow efficient access to the case law. The length of administrative disputes against PRB decisions in the Court of BiH is excessive.

⁴⁸⁸ PPL, Article 115.

⁴⁸⁹ Work Report of the Procurement Review Body for 2020, p. 10.

⁴⁹⁰ Interviews with stakeholders in April 2021.

Principle 13: Public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring the most efficient use of public funds and making best use of modern procurement techniques and methods.

Overall, the value for the indicator 'Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations' is 1. There has been a positive trend since 2017, when the overall value was 0.

Indicator 6.13.1 - Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations						
This indicator measures the extent to which public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring most efficient use of public funds. It measures performance in the planning and preparation of public procurement, the transparency and competitiveness of the procedures used, the extent to which modern approaches and tools are applied, and how the contracts are managed once they have been concluded.						
Overall 2021 indicator value	0	1	2	3	4	5
						Points 2021
Planning and preparation of the public procurement procedure						
1. Due attention is given to the planning process						0/5
2. Presence and use of cost estimation methods and budgeting						1/2
3. Perceived quality of tender documentation by contracting authorities and economic operators (%)						1/4
Competitiveness and transparency of conducted procedures						
4. Perceived fairness of procedures by businesses (%)						4/4
5. Contracts awarded by competitive procedures (%)						4/5
6. Contracts awarded based on acquisition price only (%)						1/5
7. Average number of tenders submitted per competitive procedure						1/3
8. Contracts awarded when one tenderer submitted a tender (%)						0/2
Use of modern procurement methods						
9. Adequacy of regulatory framework for and use of framework agreements						3/5
10. Adequacy of regulatory and institutional framework and use of centralised purchasing						1/5
11. Penetration of e procurement within the procurement system						4/5
Contract management and performance monitoring						
12. Presence of mechanisms requiring and enabling contract management						0/6
13. Contracts amended after award (%)						0/4
14. Use of <i>ex post</i> evaluation of the procurement process and of contract performance						0/6
Risk management for preserving the integrity of the public procurement system						
15. Existence of basic integrity tools						2/4
Total ⁴⁹¹						22/65

The PPL foresees publication of procurement plans on the contracting authority's website⁴⁹². In 2018, the Public Procurement Portal was upgraded, enabling publication of procurement plans. However, the contracting authorities are still required to publish procurement plans on their websites, and the new option is not widely used. Monitoring activities, carried out by the PPA as well as the State Audit Institution (SAI)⁴⁹³, detected a recurring problem of late adoption of procurement plans due to late adoption of

⁴⁹¹ Point conversion ranges: 0-12=0, 13-23=1, 24-34=2, 35-45=3, 46-56=4, 57-65=5.

⁴⁹² PPL, Article 17.

⁴⁹³ Draft Report on Monitoring of Public Procurement Procedures in 2020, p. 5.

budgets/financial plans and, as a consequence, late realisation of procurement procedures. This diminishes the efficiency of the planning process and undermines the efficient use of public funds.

Contract management is still considered a weak segment of the procurement process. There is no evidence of systematic *ex post* evaluation of the procurement process, proactive contract management, evaluation of concluded contracts or a common, standard approach to reviewing and learning from problems that arise during contract execution. Contracting authorities' only obligation is to report on the procedure to the PPA⁴⁹⁴. The only relevant piece of implementing regulation concerns the publication of contract modifications on the contracting authority's website⁴⁹⁵. Substantive aspects of the contract implementation procedure are not addressed, and no guidelines are issued on this matter. Moreover, the PPA does not hold any data on the number and value of contracts modified after award.

Shifting the publication of procurement plans and contract modifications from the individual websites of contracting authorities to the Public Procurement Portal could fill these gaps and greatly increase the transparency of procurement planning and contract implementation. The new Proposal for the Amendments to the PPL is supposed to remedy these issues by introducing mandatory publication of procurement plans and contract modifications on the Portal and a concept of temporary plans during the temporary financing period.

Concerning the preparatory phase of procurement, no guidelines are issued on the subject of preliminary market analysis or consultations to enable contracting authorities to better define their needs. The absence of market analysis prior to initiation of procedure is confirmed by SAI's findings⁴⁹⁶.

While the use of centralised procurement is covered by the legislation currently in force⁴⁹⁷, in practice very little such centralised purchasing is taking place⁴⁹⁸. The PPA does not maintain detailed information related to central purchasing bodies and their activities. Upgrades of the Portal with regard to centralised purchasing operations are planned⁴⁹⁹.

Of the contracts awarded in 2020, more than 92% were awarded through competitive procedures⁵⁰⁰.

⁴⁹⁴ PPL, Article 75.

⁴⁹⁵ Instructions on the Publication of Basic Contract Elements and the Contract Modification, Official Gazette of BiH No. 56/2015, August 2015.

⁴⁹⁶ Draft Report on Monitoring of Public Procurement Procedures in 2020, p. 6.

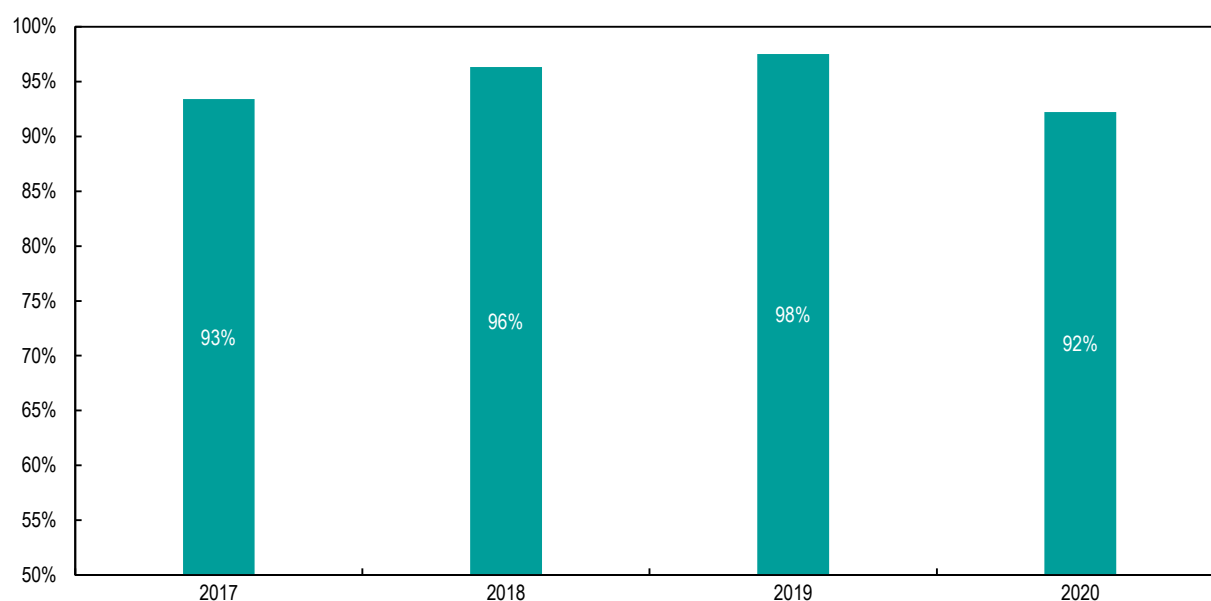
⁴⁹⁷ PPL, Article 4, Rulebook on Joint Procurement and Central Purchasing Body, Official Gazette of BiH No. 55/2015, July 2015.

⁴⁹⁸ Information from the PPA, July 2021.

⁴⁹⁹ <https://www.javnenabavke.gov.ba/hr/news/300/saradnja-izme-u-usaid-a-i-agencije-za-javne-nabavke-bih-znacajan-pomak-ka-efikasnijim-i-transparentnijim-postupcima-u-javnim-nabavkama>.

⁵⁰⁰ Data received from the PPA.

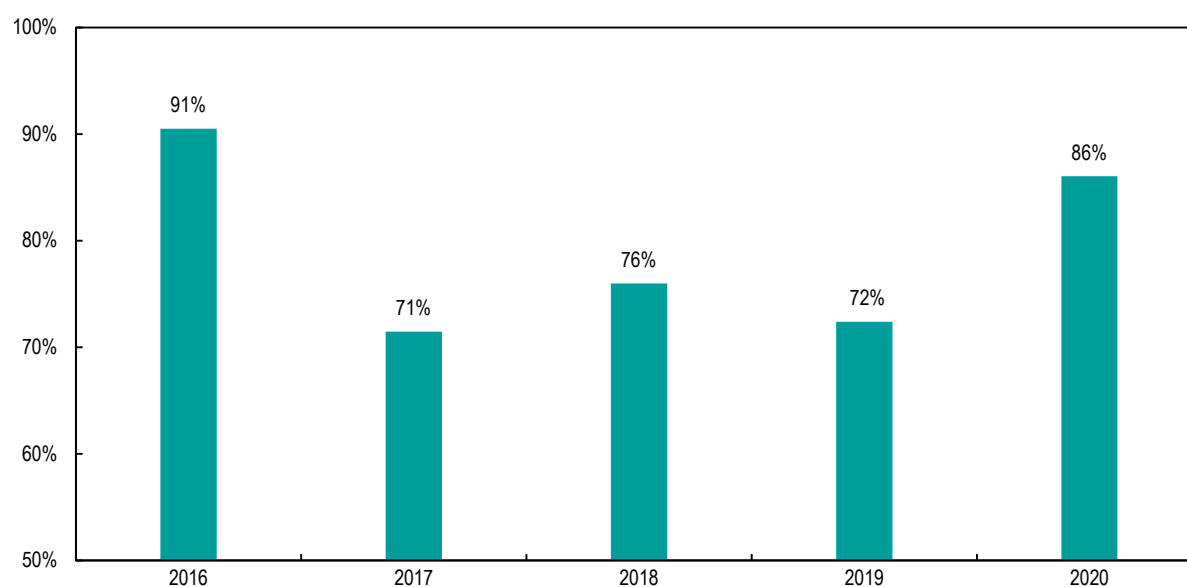
Figure 3. Contracts awarded by competitive procedures (%), 2017-2020



Source: Data provided by the PPA.

However, the use of acquisition price as the only award criteria remains high (86%⁵⁰¹), to the detriment of quality.

Figure 4. Contracts awarded based on acquisition price only (%), 2016-2020



Source: Data provided by the PPA.

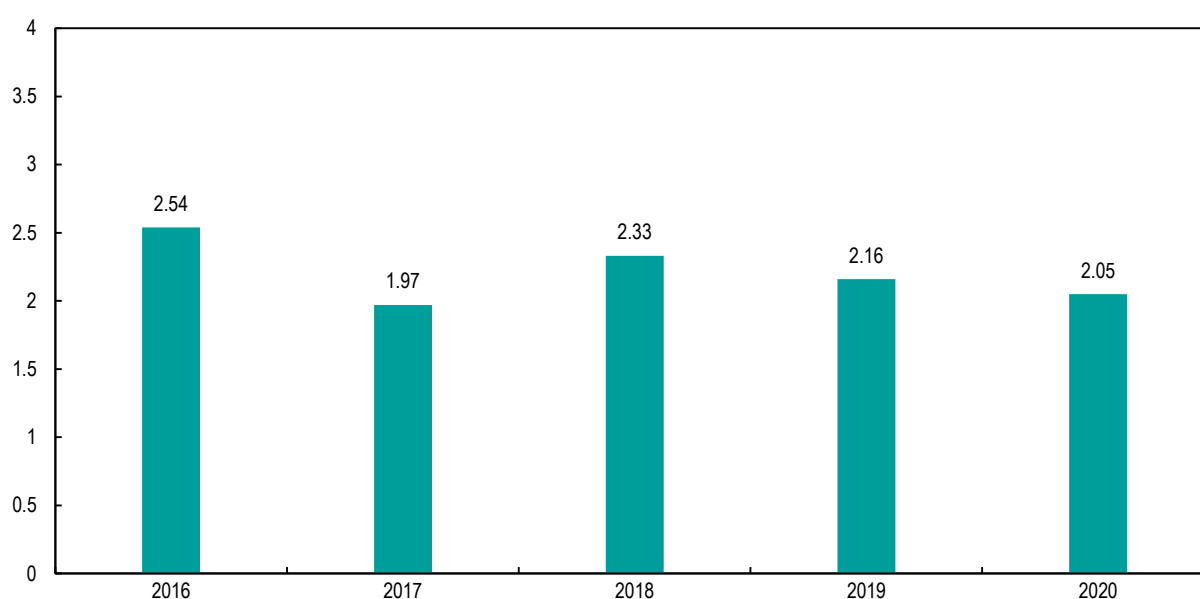
The average number of tenders submitted per competitive procedure is only 2.05⁵⁰², a decrease from 2019 when it was 2.16⁵⁰³.

⁵⁰¹ Data received from the PPA.

⁵⁰² Annual report on contracts awarded in public procurement procedures in 2020, p. 53.

⁵⁰³ Annual report on contracts awarded in public procurement procedures in 2019, p. 56.

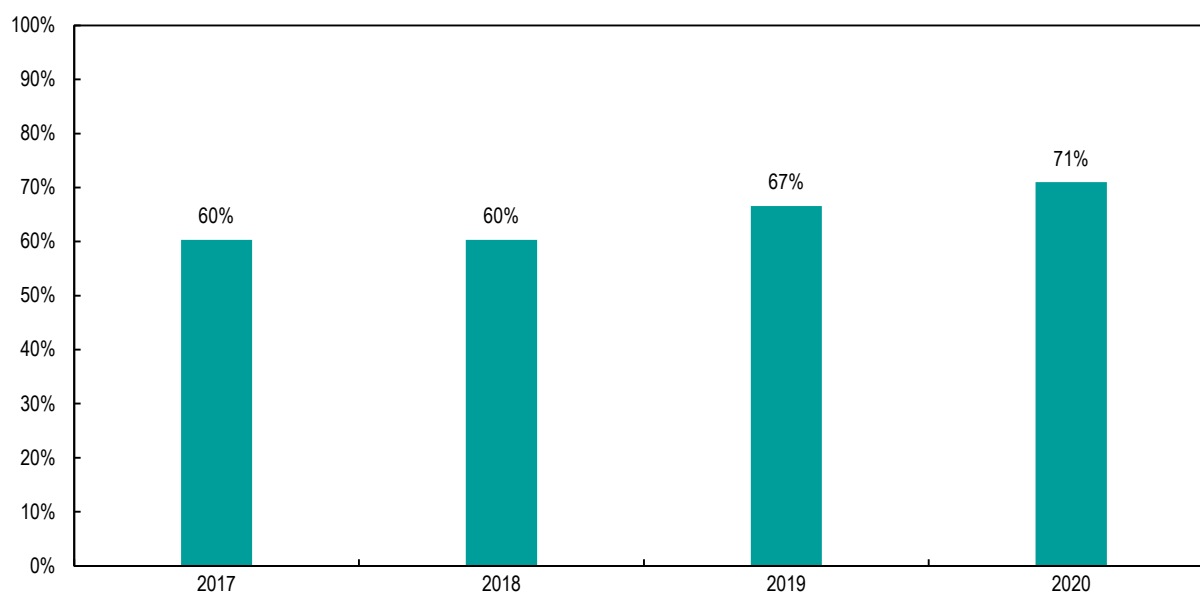
Figure 5. Average number of tenders submitted, 2016-2020



Source: Data provided by the PPA.

In 71% of the cases⁵⁰⁴, only one tender was received, which is higher than in 2019.

Figure 6. Contracts awarded when only one tenderer submitted a tender (%), 2017-2020



Source: Data provided by the PPA.

There is a continued positive trend in the PPA's management and development of the centralised Public Procurement Portal⁵⁰⁵, which is a very strong element of the system. The PPA's efforts in maintaining and upgrading the Portal are beneficial for the overall transparency of public procurement operations and wider

⁵⁰⁴ Data received from the PPA in June 2021.

⁵⁰⁵ <https://www.ejn.gov.ba/>.

availability of information. The system allows free access to all published notices, and no registration is required for browsing which can be done using many search criteria⁵⁰⁶.

In 2018, the upload of tender documents on the Portal became mandatory for all procedures in which a contract notice is published⁵⁰⁷. Although this is a much welcomed improvement, it was not preceded by adequate changes of the PPL⁵⁰⁸ which, as written, equally allows other methods for obtaining tender documents.

Full e-communication, including e-submission of tenders and requests to participate, has not yet been introduced.

Use of the e-auction module has gradually increased since it was introduced in 2016. As of 2020, e-auction become mandatory in all applicable procurement procedures⁵⁰⁹ where the chosen award criteria is the lowest price. In 2020, e-auction was used in almost 83%⁵¹⁰ of all procedures. Mandatory use of e-auction revealed some weaknesses to be considered in evaluating the effects of the dominant use of this method. Frequently, winners of the e-auction offering very low prices withdraw from further proceedings without any consequences, which forces contracting authorities to award the contract to the second-ranked tenderer at a higher price⁵¹¹. This calls into question the integrity of the procedure. Moreover, mandatory use of e-auctions in combination with prevalent use of the lowest price is unlikely to ensure the most efficient spending of public funds, as required under the PPL⁵¹².

Stakeholders report that implementation of the PPL is very formalistic and fails to achieve some of its main objectives^{513,514}. For example, the PPL introduced mandatory self-declaration⁵¹⁵ by economic operators to replace documentary evidence as the condition for participation in procurement procedures, but this in effect imposes greater burden and costs to participants. First, self-declaration must be certified by the competent authority⁵¹⁶ (municipality or public notary). Second, when contracts are awarded, contracting authorities can accept only originals or certified copies of documentary evidence dated no more than three months before the date of submission of the tender⁵¹⁷. The effect of this is that, along with their tenders,

⁵⁰⁶ Search criteria include: notice number; title of procurement; name of contracting authority/entity; type of contracting authority/entity; level of contracting authority/entity; city/municipality of contracting authority/entity; ID of contracting authority/entity; CPV; notice type; contract type; procedure type; contract award criteria; time period; and status of the procedure.

⁵⁰⁷ Instructions on conditions and method of publishing notices and submitting reports in public procurement procedures under the e-procurement information system "e-Nabavke", Official Gazette of BiH No. 90/2014 of 11 November 2014, with later amendments from 2015, Article 9.

⁵⁰⁸ PPL, Article 55.

⁵⁰⁹ Open procedure, restricted procedure, negotiated procedure with publication of contract notice and competitive request.

⁵¹⁰ Data received from the PPA.

⁵¹¹ Interviews with stakeholders in April 2021.

⁵¹² PPL, Article 3.

⁵¹³ Interviews with stakeholders in April 2021.

⁵¹⁴ A different opinion can be deduced from the Balkan Business Opinion Barometer, conducted February-March 2021, question 6.13.1.3: 68 out of the 200 companies in the sample had decided not to take part in a public tender or procurement procedure. Of the 200, only 4 provided the reason that "The procedure seemed too bureaucratic or burdensome" (2%).

⁵¹⁵ PPL, Article 45.

⁵¹⁶ *Ibid*, Article 45.

⁵¹⁷ *Ibid*, Article 73.

many economic operators⁵¹⁸ submit documentary evidence and self-declaration (which is obligatory in any case), completely devaluing the concept of self-declarations. Moreover, economic operators are forced to regularly obtain up-to-date original documents from institutions and have the copies certified in order to have them readily available in case they are called upon to deliver them to contracting authorities.

No changes to the PPL were introduced related to the COVID-19 pandemic. All tools and procedures for emergency procedures were readily available in the PPL. The PPA issued instructions⁵¹⁹ to contracting authorities in a timely manner related to the possibility of using negotiated procedures without prior notice, based on grounds of urgency, as well as exemption from the scope of the PPL for contracts which required special security measures. As a temporary measure to mitigate the consequences of the COVID-19 pandemic, the CoM adopted the new Decision⁵²⁰ on preferential domestic treatment of 30% that was valid until 1 June 2021.

No restrictions on carrying out procurement procedures were imposed. The level of procurement activities appears to have decreased only slightly during the pandemic (Bosnian Mark [BAM] 2 771 billion in 2020 compared to BAM 2 844 in 2019).

During 2020, the PPA focused its monitoring activities on detecting and eliminating breaches of the PPL during the COVID-19 pandemic. In particular, it monitored health and medical institutions at all levels of government. The PPA processed a number of cases⁵²¹ and detected misuse of exceptional procedures for procurements which could not in any way be related to the pandemic (for both negotiated procedures on grounds of urgency⁵²² and security-measures exemptions). The PPA forwarded 11 cases to competent public prosecutors' offices.

The media proactively covered procurement cases during the COVID-19 pandemic. The most prominent of these was the case related to an allegedly suspect direct purchase of 100 defective ventilators from China for EUR 5.3 million from a company dealing with agricultural production, which resulted in the arrest of the Prime Minister of the FBiH⁵²³.

Other irregularities identified by the PPA⁵²⁴ concern late adoption of procurement plans, dividing the subject matter of procurement to circumvent the PPL or applicable procedures, discriminatory qualification criteria and criteria favouring certain products. The latter was confirmed by 20% of companies participating in the Balkan Barometer Survey⁵²⁵. The PPA also notes⁵²⁶ some persistent weaknesses, such as appointment of members of public procurement commissions purely to satisfy formal requirements with no regard to the substantive needs of the procurement in question, absence of internal monitoring and lack of expert knowledge in definition of technical specifications which should enable equal treatment of all potential tenderers.

⁵¹⁸ Interviews with stakeholders in April 2021.

⁵¹⁹ <https://cms-ajn.azureedge.net/news/bbdaf454-ac58-4f13-9438-25f83043b825.pdf>.

⁵²⁰ Decision on Obligatory Application of Domestic Preferences, Official Gazette of BiH No. 34/2020 of 29 May 2020.

⁵²¹ Draft Report on Monitoring of Public Procurement Procedures in 2020, Annex I.

⁵²² In 2020, 800 contracts were awarded through negotiated procedure without publication on grounds of urgency (PPL, Article 21, paragraph 1, point d), which is a 318% increase compared to 276 contracts in 2019. Draft Report on Monitoring of Public Procurement Procedures in 2020, p. 11.

⁵²³ <https://www.aa.com.tr/ba/balkan/ro%C4%8Di%C5%A1te-u-sudu-bih-optu%C5%BEeni-u-predmetu-respiratori-negirali-krivicu/2127065>.

⁵²⁴ Draft Report on Monitoring of Public Procurement Procedures in 2020, p. 5.

⁵²⁵ Balkan Business Opinion Barometer, conducted February-March 2021. Question 6.13.1.3: 68 out of the 200 companies in the sample had decided not to take part in a public tender or procurement procedure. Of the 200, 39 provided the reason that "The criteria seemed to be tailor-made for certain participants" (20%).

⁵²⁶ Draft Report on Monitoring of Public Procurement Procedures in 2020, p. 5.

The system of training for public procurement officers envisaged by the PPL has been implemented, following the delayed adoption of the Rulebook on Training of Public Procurement Officers⁵²⁹. As a result, the training intensified as of 2019 and continued in 2020.

Contracting authorities with budgets exceeding BAM 5 million may nominate two candidates for training, while contracting authorities with budgets below this threshold may nominate one candidate⁵³⁰. The training of 30-hours duration is organised within one working week and follows the programme prescribed by the Rulebook⁵³¹. After the training is completed, the PPA organises examinations which are carried out electronically. A person attending at least 75% of the envisaged training is eligible to take the exam. It consists of 50 questions worth two points each, and candidates must achieve at least 70% in order to successfully finalise the training⁵³².

To support the organisation and management of training activities, in November 2019, the PPA launched its information system for training in the field of public procurement (TMIS)⁵³³. On TMIS, users can: 1) view the calendar of training sessions, as well as news and notices; 2) manage the application for training; download/upload training materials; 3) fill in evaluation forms after the training; participate in surveys; 4) download the training certificate; and 5) view statistical data on completed training.

In 2020, the training sessions continued to be organised with the support of the IPA II Project, Strengthening the Public Procurement System in BiH. In total, 35 training sessions were organised, of which 14 were held on site in eight cities. Due to the COVID-19 pandemic, the PPA reorganised delivery of the training, and 21 training sessions were conducted through distance learning. Out of 748 participants in total, 711 participants successfully concluded the training, 487 participants took the exam and 427 passed it⁵³⁴.

In 2020, the Civil Service Agencies of the State and the FBiH also organised some training in the field of public procurement (19 training sessions with 526 participants)⁵³⁵.

Training of economic operators relies fully on the initiative of private organisations.

The ability of the PPA to deliver training in accordance with its obligations under the PPL is a step forward in the area of public procurement training and professional support to contracting authorities in BiH. It is commonly acknowledged that there is a high demand for such training, given the fact that public procurement is an area which requires a thorough knowledge and understanding of domestic legislation, as well as EU practice and the case law of the EU Court of Justice. The training delivered by the PPA is regarded as useful (79.3% of contracting authorities scored the training as “useful” or “very useful”⁵³⁶).

However, some shortcomings persist. First, the PPA offers no systematic and coherent approach to the content of training material. It relies on training material prepared individually by certified public procurement trainers called upon to deliver the training which is not publicly available⁵³⁷. Second, the educational level of public procurement officers is not monitored. Moreover, the PPL does not require mandatory professional training and development. Consistent with these concerns, in its monitoring

⁵²⁹ Rulebook on training of public procurement officers, Official Gazette of BiH No. 8/2018 of 10 February 2018.

⁵³⁰ *Ibid*, Article 5.

⁵³¹ *Ibid*, Annex.

⁵³² Rulebook on training of public procurement officers, Article 8.

⁵³³ www.obuke.javnenabavke.gov.ba.

⁵³⁴ PPA, Information on training in the field of public procurement conducted in 2020, p. 5.

⁵³⁵ *Ibid*, p. 8.

⁵³⁶ SIGMA procurement survey of contracting authorities, conducted February-March 2021.

⁵³⁷ Obligations, certification and training of certified public procurement trainers are regulated by the Rulebook on the Training of Certified Trainers, Official Gazette of BiH No. 62/15 of 8 July 2015.

activities⁵³⁸, the PPA noted issues in the internal organisation of contracting authorities. For example, public procurement is still regarded as an additional job not systematised in internal regulations, particularly those of contracting authorities with small budgets, and there is a lack of regulations defining internal procedures within contracting authorities.

The PPA has also been inactive in the preparation of manuals, guidelines and other accompanying materials for professional development in the field of public procurement required under the PPL⁵³⁹, with the exception of the manual for the use of the e-Procurement information system⁵⁴⁰. The 2021 Public Procurement Survey shows that, compared to 2017, there is a decline in satisfaction with the quality of guidelines and manuals⁵⁴¹.

Models of tender documents, standard tender forms and offered price forms⁵⁴² date from 2014 and have not been updated. They are detailed, referring to specific key types of procurement (supplies, services, works), but they do not contain practical examples. Standard tender documents (five sets for different procedures) produced by the IPA II Project have not been made publicly available. There are standard forms of notices available⁵⁴³ and built into the e-Procurement platform. Also available are the standard self-declaration forms⁵⁴⁴ on not falling within the scope of any of the exclusion grounds⁵⁴⁵, on some of the requirements of financial standing and technical and professional ability of the economic operator⁵⁴⁶, and on conflict of interest⁵⁴⁷. Based on the 2021 Public Procurement Survey, satisfaction with the standard forms available declined compared to 2017⁵⁴⁸.

The PPA does offer a range of professional advice and support activities to all interested parties, such as *ad hoc* advice on legal as well as technical issues (through a hotline and in writing), as well as a compilation of frequently asked questions and problematic issues. The provision of advisory support through the hotline has been reduced to only one day per week (Wednesday) for three hours⁵⁴⁹ and the compilation of problematic issues is not regularly updated⁵⁵⁰. The PPA is indeed regarded as very responsive by contracting authorities, although according to the 2021 Public Procurement Survey, the

⁵³⁸ Draft Report on Monitoring of Public Procurement Procedures in 2020, p. 5.

⁵³⁹ PPL, Article 92.

⁵⁴⁰ Available at https://www.ejn.gov.ba/content/manual/Pomoc%20e-Nabavke_bs.pdf.

⁵⁴¹ 2021 SIGMA Public Procurement Survey of contracting authorities, conducted February-March 2021, Question 6.14.1.1: 60.7% of contracting authorities and 18.2% of businesses found the guidelines "useful" or "very useful". The average is 39.5%, while in 2017 it was 50%.

⁵⁴² Instructions for the preparation of model tender documents and tenders, Official Gazette of BiH No. 90/2014 of 3 November 2014 with later amendments from 2015, Annexes.

⁵⁴³ Prescribed by Instructions on conditions and method of publishing notices and submitting reports in public procurement procedures under the e-procurement information system "e-Nabavke", Official Gazette of BiH No. 90/2014 of 11 November 2014, with later amendments from 2015, Article 9.

⁵⁴⁴ Instructions for the preparation of model tender documents and tenders, Official Gazette of BiH No. 90/2014 of 3 November 2014 with later amendments from 2015, Annexes.

⁵⁴⁵ PPL, Article 45.

⁵⁴⁶ *Ibid*, Articles 47, 50 and 51.

⁵⁴⁷ *Ibid*, Article 52.

⁵⁴⁸ 2021 SIGMA Public Procurement Survey of contracting authorities and Balkan Business Barometer, conducted February-March 2021, Question 6.14.1.2.: 78.3% of contracting authorities and 19.4% of businesses found the standard forms and/or models "useful" or "very useful". The average is 48.9%, while in 2017 it was 66%.

⁵⁴⁹ <https://www.javnenabavke.gov.ba/hr/news/278/obavjestenje-vezano-za-savjetodavnu-i-tehnicku-pomoc-agencije-za-javne-nabavke-bih>.

⁵⁵⁰ Only four opinions were published in 2020, available at: <https://www.javnenabavke.gov.ba/hr/practical-application>.

level of satisfaction of end users has declined compared to 2017⁵⁵¹. However, stakeholders report that inconsistent interpretation of procurement legislation between the key institutions involved is a persisting issue⁵⁵². There is no active formal or informal mechanism in place to co-ordinate interpretation of the legislation.

Conclusion

The PPA implements training of public procurement officers in accordance with the Rulebook on Training, which was adopted in 2018 after a long delay. No practical guidance, manuals or other accompanying materials are available to contracting authorities and economic operators. Publication on the PPA's website of the updated collection of solutions to the most common practical problems has stagnated. The PPA provides regular, *ad hoc* advisory and technical support.

⁵⁵¹ 2021 SIGMA Public Procurement Survey of contracting authorities and Balkan Business Barometer, conducted February-March 2021, Question 6.14.1.4: 65.9% of contracting authorities and 14.8% of businesses answered "Yes" that the answers provided were generally helpful. The average is 40.3%, while in 2017 it was 57%.

⁵⁵² SIGMA interviews, April 2021.

External audit

Principle 15: The independence, mandate and organisation of the supreme audit institution are established, protected by the constitutional and legal frameworks and respected in practice.

Overall, the value for the indicator 'Independence of the supreme audit institution' is 3.

Indicator 6.15.1. Independence of the supreme audit institution						
This indicator measures the extent to which external audit by the supreme audit institution (SAI) is conducted independently, and the internationally recognised conditions for the effective functioning of the SAI are found in law and practice.						
Overall 2022 indicator value	0	1	2	3	4	5
Sub-indicators		Points				
	State level	FBiH	RS	BD	Average	
1. Constitutional and legal independence of the SAI	1	1	1	1	1/4*	
2. Organisational and managerial independence of the SAI	5	5	5	4	5/5*	
3. Adequacy of the SAI mandate and alignment with International Standards of Supreme Audit Institutions (ISSAIs)	3	3	3	3	3/3*	
4. Access to information and premises	1	1	1	1	1/1*	
5. Perceived independence of the SAI by the population (%)	0				0/3	
Total ⁵⁵³					10/16	

*Average of the State level, FBiH and RS.

The respective Constitutions do not include the requirement for independent SAIs. The functional, operational and financial independence, mandate and organisation of the SAIs are regulated only in the Law on Auditing the Institutions of BiH (2006), the Law on Public Sector Auditing of the RS (2005 and 2014), the Law on Auditing the Institutions of the FBiH (2006) and the Law on the Audit of Public Administration and Institutions in the BD of BiH (2008, 2014 and 2016). Neither the SAI Laws nor any other laws provide the institutions with protection by a Supreme Court against interference in their independence or mandate.

The Auditors General (AGs) and deputies of the four SAIs are appointed for a term of seven years, without the possibility of re-appointment⁵⁵⁴. None of these officials has been forcibly removed from office in the past three years.

Except for the SAI Law of BD, the SAI Laws ensure the financial independence of the SAIs⁵⁵⁵. The SAIs of RS, BiH and FBiH submit their draft budget to the responsible Commission of the respective legislature

⁵⁵³ Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

⁵⁵⁴ SAI Laws, Articles 23-25 (BiH SAI), Articles 23-25 (FBiH SAI), Articles 9-10 (RS SAI) and Articles 25-28 (BD SAI).

⁵⁵⁵ SAI Laws: Articles 5 (the State and the FBiH) and Article 25 (the RS); the BD SAI (Article 5) will have to submit its draft budget to the competent parliamentary body.

and, after approval, to the relevant Ministry of Finance (MoF) to be incorporated into the respective budgets. During the past few years, the relevant MoF has incorporated the budget request approved by the responsible Commissions of legislature into the annual budget law. The executive has no control or direction over how the SAIs use their financial resources and execute their budgets after their respective parliaments approve these⁵⁵⁶, although for the BiH SAI any adjustments to its approved budget during the year -- even a transfer from one budget line to another -- requires approval of the MoF, potentially undermining its autonomy. The laws give the AGs the power to define the internal organisation, systematisation of staff posts and all internal regulations without interference or approval of the government⁵⁵⁷.

The SAIs are empowered to carry out financial, compliance and performance audits⁵⁵⁸. The Laws on SAIs give them legal authority to carry out audits on all public bodies and institutions, as well as on companies in which the state level or entity government has a majority stake⁵⁵⁹. The mandates of the BD SAI, RS SAI and FBiH SAI also include the local government at the entity level.

While the mandates of SAIs are broad, a small number of institutions fall between the Audit Offices and are effectively not covered. For example, the indirect taxation collected by the Indirect Taxation Authority (ITA) is not subject to an effective audit. While a review is conducted of the percentage of the revenues distributed to the state level and entities, there is no audit of the collection and completeness of the revenues. The audit of indirect taxation collection is governed by the Law on Indirect Taxation System⁵⁶⁰, which leaves the decision on audit of collection and allocation of indirect tax revenues to the ITA Governing Board.

All SAIs are required to submit the reports from their audits to parliament and make them public after they have been submitted⁵⁶¹. In 2021, the SAIs submitted a total of 317 audit reports⁵⁶² to the parliaments and published them on their websites.

All SAIs have free and unfettered access to documents, information and premises⁵⁶³. There were no restrictions noted in the past two years.

⁵⁵⁶ SAI Laws, Article 5 (BiH SAI), Article 5 (FBiH SAI) and Article 25 (RS SAI), BD SAI information obtained in interview.

⁵⁵⁷ SAI Laws, Article 22 (BiH SAI), Article 22 (FBiH SAI), Article 7 (RS SAI) and Article 24 (BD SAI).

⁵⁵⁸ SAI Laws, Article 13, 14 (BiH SAI), Article 13, 14 (FBiH SAI), Article 18, 19 (RS SAI), Article 13, 14 (BD SAI).

⁵⁵⁹ SAI Laws, Article 11 (BiH SAI), Article 11 (FBiH SAI), Article 16 (RS SAI) and Article 11 (BD SAI).

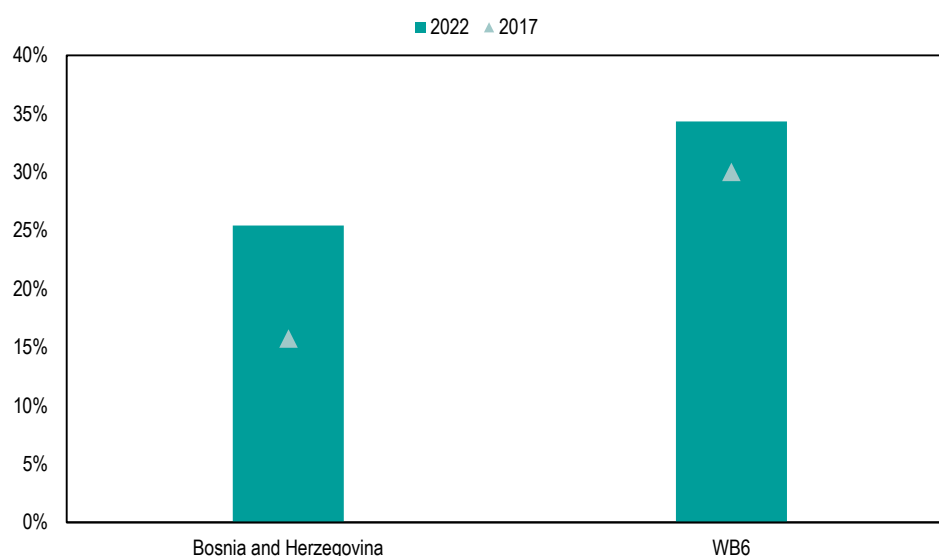
⁵⁶⁰ Law on the Indirect Taxation System, Article 35.

⁵⁶¹ SAI Laws, Article 16 (BiH SAI), Article 16 (FBiH SAI), Article 21 (RS SAI) and Article 20 (BD SAI).

⁵⁶² The State SAI 81, the FBiH SAI 107, the RS SAI 99 and the BD SAI 30.

⁵⁶³ SAI Laws, Articles 39 to 44 (BiH SAI), Article 11 (FBiH SAI), Article 16 (RS SAI) and Article 11 (BD SAI).

Figure 7. Perceived level of independence of Supreme Audit Institution has increased since 2017



Note: Perceived independence is expressed as the share answering 'tend to agree' or 'strongly agree' to the question: 'Do you agree that the following institutions are independent of political influence?'

Source: Regional Cooperation Council Balkan Barometer Public and Business Opinion databases (<https://www.rcc.int/balkanbarometer>).

The 2022 Balkan Barometer survey shows that only 25% of the population agree the SAIs are independent of political influence. While it is an increase from 16% in 2017, it is below the regional average of 34% and indicates BiH citizens still do not have much trust in the political independence of the SAIs.

Conclusion

The SAIs are well-established. While their independence, mandate and organisation are not anchored in the Constitutions, they are well-defined in SAI Laws. The independence of the SAIs has been proven in practice, but the perceived independence of the SAIs by the population remains low, even though it has improved since 2017.

Principle 16: The supreme audit institution applies standards in a neutral and objective manner to ensure high quality audits, which positively impact on the functioning of the public sector.

Overall, the value for the indicator 'Effectiveness of the external audit system' is 4.

Indicator 6.16.1. Effectiveness of the external audit system						
This indicator measures the extent to which external audits contribute to improved management of public finances and how the supreme audit institution applies standards to ensure high-quality audits (e.g. through its manuals and quality assurance system).						
Overall 2022 indicator value	0	1	2	3	4	5
Sub-indicators	Points					
	State level	FBiH	RS	BD	Average	
1. Coverage of mandate by external audit	6				6/6	
2. Compliance of audit methodology with ISSAIs	6	6	6	6	6/6*	
3. Quality control and quality assurance of audits	4	4	5	6	5/6*	
4. Implementation of SAI recommendations (%)	3	2	4	0	3/6*	
5. Use of SAI reports by the legislature	3	6	2	5	4/6*	
Total ⁵⁶⁴					24/30	

*Average of the State level, FBiH and RS.

On the basis of their respective SAI Laws, the SAIs co-operate through a Co-ordination Board. The Law on Auditing the Institutions of BiH sets out the establishment and responsibilities of the Board. These are to establish audit guides and instructions, to exchange professional experiences, and to organise and co-ordinate developmental activities. The Co-ordination Board has been an important vehicle for the joint development of audit standards and guidelines.

The SAIs carry out all types of audit: financial, compliance and performance. In 2021, the SAIs carried out 317 audits, as shown in Table 5.

Table 5. Number of audits in 2021

	Bosnia and Herzegovina	Federation of Bosnia and Herzegovina	Republika Srpska	Brčko District	Total
Mandatory financial/compliance audits	75	20	26	29	150
Non-mandatory financial/compliance audits	0	81	46	0	127
Performance audits	4	2	8	1	15
Follow-up audits	2	4	19	0	25
Total number of audits	81	107	99	30	317

The SAI Laws oblige the SAIs to carry out annual mandatory financial/compliance audits of the Government's annual financial statements on the execution of the budget and the annual financial statements of all budget organisations that are funded directly from annual Budget Law. During 2021, the

⁵⁶⁴ Point conversion ranges: 0-6=0, 7-11=1, 12-16=2, 17-21=3, 22-26=4, 27-30=5.

SAIs fulfilled this audit task and performed all mandatory audits for the financial year ended 31 December 2020.

In total the SAIs performed and reported on 150 mandatory financial/compliance audits in 2021 for the financial year ended 31 December 2020, including the audits of the Annual Financial Statement on the execution of the budget⁵⁶⁵ and 127 non-mandatory financial/compliance audits. However, the FBiH SAI and the RS SAI have very wide remits of approximately 2 000 auditees in the FBiH and around 950 in the RS, and while the SAIs have increased the number auditees subject to audit since the 2017 monitoring report, they were able to audit only 101 and 72 auditees in the FBiH and RS respectively.

Mainly due to the limited resources, the development of performance audits is slow and the number of performance audits is in range from one in BD SAI, four in BiH SAI, two in FBiH SAI to ten in RS SAI. Additionally the BiH SAI, FBiH SAI and RS SAI delivered two, four and three follow-up performance audit reports respectively. In 2021, performance audits had a wide coverage of policy areas, including public administration, the environment, economic development, education, infrastructure, social security and justice. All audit reports were published on the SAI website.

All four laws stipulate that the Audit Offices have to apply ISSAIs and adopt and publish those standards⁵⁶⁶. The Co-ordination Board carries out the adoption of ISSAIs collegially.

The SAIs have developed one manual for financial and compliance audits and one for performance audit. The Public Sector Financial Audit Guide that the Co-ordination Board approved in 2016 is broadly ISSAI-compliant. It was modified in 2018 for further developments in the ISSAIs, including for Key Audit Matters and scrutiny of reporting practices. However, the Co-ordination Board has not approved the updated Guide as there was no consensus. RS SAI has developed its own financial audit manual, which was updated in 2020 to account for the new IFPP. In 2013 the Coordination Board adopted the Performance Audit Guide. It elaborates on the INTOSAI performance audit pronouncements (ISSAI 300, ISSAI 3000, GUID 3910, and GUID 3920) and offers practical examples. While it is broadly compliant with the ISSAIs, it is has not been updated since 2013. All SAIs, except the BD SAI, have established units for methodology and quality control.

The Co-ordination Board adopted Audit Quality Control Guidance (for financial audits) in 2009 and the Performance Audit Quality Assurance Guidance in 2013. The guidance includes a checklist for conducting quality control activities. The Audit Quality Control Guidance was updated in 2016, but the Co-ordination Board has not adopted it. Quality control is conducted at the team level for individual audits, and the SAIs' Methodology and Quality Control departments carry out internal independent quality control of audits for all audit plans and draft audit reports. However, the checklists are not always used. The SAIs have not all been able to undertake quality assurance activities; only BD SAI and RS SAI conduct quality assurance reviews for each fiscal year, with results reported to AG and Deputy Auditor General. Resource constraints have affected the ability of BiH SAI and FBiH SAI in undertaking the appropriate activities during the past two years.

Formal mechanisms for handling SAI reports in the parliaments are in place. The Finance and Budget Committee of the Parliamentary Assembly of BiH, the Joint Committee in charge of Audit for the Parliamentary Assembly of the Federation, the Audit Board of the National Assembly of the RS and the Committee for monitoring work of government institutions of district and citizens petitions of the Assembly of the BD have internal regulations on handling SAI reports. The Committees discuss the SAIs' audit reports in hearings with auditees and produce reports containing recommendations that are based on the work of the SAIs. The parliamentary committees of the Parliamentary Assembly of BiH and the National Assembly of the RS did not hold hearings in 2021. The Joint Committee in charge of Audit for the Parliamentary Assembly of the Federation has held 19 sessions, including 14 hearings with auditees and FBiH SAI staff in 2021, and made independent decisions and recommendations for follow-up⁵⁶⁷. In the Committee for monitoring work of government institutions of the district and citizens' petitions of the

⁵⁶⁵ The BiH SAI 75, the FBiH SAI 20, the RS SAI 26 and the BD SAI 29.

⁵⁶⁶ SAI Laws, Article 10 (BiH SAI), Article 10 (FBiH SAI), Article 15 (RS SAI) and Article 10 (BD SAI).

⁵⁶⁷ Information obtained in an interview with Attorney General (AG) of FBiH SAI.

Assembly of BD, all audit reports were discussed before the Plenary meeting. The Committee and Parliament discuss and acknowledge reports, but do not make recommendations to follow up⁵⁶⁸.

The implementation rate of the SAIs' recommendations remains low and needs to be improved, especially in the BD SAI and FBiH SAI, where only 24% and 40% of the audit recommendations respectively were reported to have been implemented in 2021. The BiH SAI (58%) and the RS SAI (61%) indicate in their annual reports that they are unsatisfied with the implementation of recommendations by audited institutions. According to the SAIs, the unwillingness of managers is the main factor for the low implementation.

Conclusion

Although the SAIs have limited resources, they all carry out their mandatory audits in line with ISSAIs. The implementation of ISSAIs is well-advanced, but there is still some room for improvement, particularly in relation to audit quality assurance. The use of SAIs' audit reports by the Parliamentary Committee to scrutinise the Executive is inconsistent, with limited follow-up mechanisms, and the implementation rate of recommendation

⁵⁶⁸ Information obtained in interview with AG of BD SAI.

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