



Monitoring Report:

The Principles of Public Administration

BOSNIA and HERZEGOVINA

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS AND ACRONYMS	2
INTRODUCTION.....	3
PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT	5
1. State of play and main developments: May 2015-April 2016.....	5
2. Analysis.....	7
PUBLIC FINANCIAL MANAGEMENT	28
1. State of play and main developments: May 2015-April 2016.....	28
2. Analysis.....	29
PUBLIC FINANCIAL MANAGEMENT - PUBLIC PROCUREMENT	39
1. State of play and main developments: May 2015-April 2016.....	39
2. Analysis.....	40

LIST OF ABBREVIATIONS AND ACRONYMS

BD	Brčko District
BFP	Budget Framework Paper
BiH	Bosnia and Herzegovina
BMIS	Budget Management Information System
CoM	Council of Ministers
CSA	Civil Service Agency
CSL	Civil Service Law
EBF	extra-budgetary funds
ESA	European System of National and Regional Accounts
ERP	Economic Reform Programme
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
GDP	gross domestic product
GFFBP	Global Framework on Fiscal Balance and Policies
GFS	Government Finance Statistics
GIZ	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i>
HR	human resources
HRM	human resource management
HRMIS	Human Resource Management Information System
IMF	International Monetary Fund
IPA	Instrument for Pre-accession Assistance
MoF	Ministry of Finance
MTBF	medium-term budgetary framework
PAR	public administration reform
PARCO	Public Administration Reform Co-ordinator's Office
PFM	public financial management
PIMIS	Public Investment Management Information System
PIP	Public Investment Programme
PPA	Public Procurement Agency
PPL	Public Procurement Law
PRB	Public Review Body
RS	Republika Srpska
SAI	Supreme Audit Institution

INTRODUCTION

Following the comprehensive *Baseline Measurement Reports*¹ prepared by SIGMA in May 2015 for all European Union (EU) Enlargement countries against *The Principles of Public Administration*², SIGMA has continued to monitor the progress of public administration reform in each country. The focus of the specific topics within the Principles for assessment by SIGMA in 2016 was selected in co-operation with the European Commission.

This report covers four Principles for the public service and human resource management area and two Principles for the public financial management area:

- The public service and human resource management chapter analyses the scope of the public service and legal framework and the professionalism of the public service in recruitment and dismissal of personnel, including senior civil servants.
- The public financial management chapter analyses the practices for resource planning in annual budget formulation within the multi-annual fiscal framework and the remedies system in case of alleged breaches of the public procurement rules.

All of these topics are highly relevant for a more focused analysis. An in-depth review of the public service and legal framework is particularly relevant due to recent changes to the Law on Civil Servants in the Federation of Bosnia and Herzegovina (FBiH), which exclude certain senior positions from the civil service, and similar changes now being drafted at the state level. The legal framework for the public service remains fragmented at all levels.

Regarding public financial management (PFM), there is a step forward for 2016. Budgets for the State of Bosnia and Herzegovina (BiH), FBiH and Republika Srpska were adopted on time, after five years of budgets delayed beyond legislative deadlines. Also, BiH has started preparations for a comprehensive PFM reform programme. In public procurement, the legal framework for the remedies system is mainly compliant with the EU *acquis communautaire*. However, due to organisational challenges, the review system, comprised of the Public Review Body of BiH (headquarters and two branch offices), is not working properly.

The report covers the period from May 2015 to April 2016. It highlights the main developments, updates values for the indicators relevant to the Principles analysed and provides both short- and medium-term recommendations for reforms.

¹ SIGMA (2015), [Baseline Measurement Reports](#), OECD Publishing, Paris.

² SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris.

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Public Service and
Human Resource
Management

PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015-APRIL 2016

1.1. State of play

The situation in Bosnia and Herzegovina (BiH) has changed significantly since 2015. There are still separate civil service laws in place for the State institutions³, the Federation of Bosnia and Herzegovina (FBiH)⁴, the Republika Srpska (RS)⁵ and the Brčko District (BD)⁶. The general strategic framework is in place, with the adoption by all levels of government in BiH (including the governments of the cantons) of the Reform Agenda for Bosnia and Herzegovina 2015-2018⁷. It includes important chapters on the civil service, public finances, the labour market, good governance, the rule of law and public administration reform (PAR).

However, amendments to the Civil Service Law (CSL) at the FBiH level⁸ that came into force in December 2015 exclude high-level management posts from the civil service. Conditions and procedures for appointment and dismissal in these high-level management positions are not regulated in the CSL, but rather by Government Decrees. Similar amendments at the State level have been in the drafting phase since November 2015.

The legal establishment of the public service remains fragmented at all levels of the administration. Civil service agencies perform a number of centralised human resource management (HRM) functions for institutions at all levels across the administration. In practice, so-called "personnel administration" prevails. The main task of the HRM (or "personnel") units is to prepare legal documents, ensure conformity to legal requirements in the spheres of labour relations and civil service relations, and perform a variety of administrative functions. This practice does not constitute modern HRM and human resources development. The number of civil servants, as defined by the CSLs, has not changed significantly since 2015.

1.2. Main developments

There has been no progress against the key short-term recommendations of the SIGMA 2015 *Baseline Measurement Report*⁹. The civil service system in BiH remains fragmented. There is no relevant strategic framework for HRM and no policy-making institution clearly recognised as responsible for HRM at State and FBiH levels. Further and deeper fragmentation is reported at the FBiH level, with the exclusion of senior managerial positions from the CSL and unco-ordinated drafting of civil service legislation at the cantonal level. This further diminishes the role of the Federal Civil Service Agency (CSA) within the Federation and the cantonal authorities.

The Reform Agenda for BiH 2015-2018 was adopted in July 2015 to boost economic reforms, improve fiscal sustainability and provide a temporary strategic framework for PAR and civil service reform. The Agenda is supported by action plans, adopted at each level of administration, but these plans are too

³ Official Gazette BiH, Nos. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10 and 40/12.

⁴ Official Gazette of the FBiH, Nos. 29/03, 23/04, 39/04, 54/04, 67/05, 8/06, 4/12 and 99/15.

⁵ Official Gazette of the RS, Nos. 118/08, 117/11 and 37/12.

⁶ Official Gazette of the BD, Nos. 09/14 and 37/15.

⁷ Reform Agenda for BiH 2015-2018, <http://europa.ba/wp-content/uploads/2015/09/Reform-Agenda-BiH.pdf>

⁸ Official Gazette of the FBiH, No. 99/15.

⁹ SIGMA (2015), Baseline Measurement Report: [The Principles of Public Administration, Bosnia and Herzegovina](#), OECD Publishing, Paris.

general. They do not provide the detailed and coherent measures necessary to implement civil service reform and development.

The adoption of the Agenda in July was followed by the rapid preparation and passing of the amendments of the CSL at the FBiH level (in December 2015). There was no time for any public or inter-institutional consultations before Government consideration and approval¹⁰. These amendments exclude senior managerial positions from the civil service system. Similar changes are foreseen in draft amendments at the State level, which had not been adopted by April 2016.

In early 2016, the FBiH Government passed a Decree on the Conditions, Criteria and Procedure of Recruitment and Selection of Persons who are not Civil Servants¹¹, to regulate appointment and dismissal for senior management posts. This Decree does not change the fact that senior managerial posts are excluded from the FBiH civil service system. At the time of drafting, all ministries and other administrative bodies were preparing changes in their Rulebooks on internal organisation to align with this Decree¹².

In early 2016, the FBiH Government also adopted amendments to the Decree on Core Activities within the Competence of the Civil Service which are carried out by Civil Servants, the Conditions for carrying out these Activities and the Exercise of Certain Rights arising from Employment¹³. These amendments introduce the concepts of job analysis and competency frameworks for the first time in the FBiH civil service.

At the level of the RS, the new CSL has been in the preparatory stage, and its principles were approved by the Government of RS in December 2015. Furthermore, amendments to the Law on the Administration of the Republic adopted in early 2016, give the CSA clear authority for training and professional development of civil servants¹⁴.

The CSA has adopted the amendments of the Rulebook on Recruitment and Selection¹⁵. This has simplified the procedure for submission of documents and reduced the costs for prospective civil service candidates.

In the BD, the Assembly adopted CSL amendments which simplify vacancy announcement procedures and, in order to reduce budget costs, restrict remuneration levels for members of different *ad hoc* committees in the civil service.

The Government of the BD adopted the Decision on Categorisation of Working Posts in Public Administration Bodies¹⁶, under which all civil service posts are categorised in accordance with the requirements of the CSL of 2014. The Government has also adopted the Conclusion on the Methodology for Preparation of an Organisational Plan of Public Administration Bodies¹⁷ (which introduces principles of HR planning), the Rulebook on Work of Civil Servants and Employees¹⁸ (which

¹⁰ The Governmental Office of Legislation issued their negative opinion on the proposed amendments (Letter of the Legislative Office of the Government of Federation BiH, No 01-49-6581-2/15 of 8 October 2015) a day after the Government approved them. This also clearly demonstrates that the Government Rules of Procedures were not followed.

¹¹ Official Gazette of the FBiH, No. 9/16.

¹² SIGMA interviews with civil servants of the FBiH, 8 March 2016.

¹³ Official Gazette of the FBiH, No. 9/16.

¹⁴ Law on the Administration of the Republic, Article 11, Official Gazette of the RS, No. 15/2016.

¹⁵ Amendments to the Rulebook on Unique Rules and Procedure of Public Competition for Recruitment and Appointment of Civil Servants. Official Gazette of the RS, No. 24/15.

¹⁶ Decision on Categorisation of Working Posts in Public Administration Bodies, adopted by the Government of BD on 30 April 2015.

¹⁷ Official Gazette of the BD, No. 20/2015.

¹⁸ Rulebook on Employment Conditions of Civil Servants and Employees in Public Administration Bodies of the BD, adopted on 15 June 2015.

regulates details of employment issues, such as leaves of absence) and the Rulebook on Determining the Material Responsibility of Civil Servants¹⁹ (which regulates the damage liability of civil servants).

2. ANALYSIS

This analysis covers four Principles for the public service and human resource management area grouped under two key requirements. It includes a short analysis of the indicators of the Principles and a systematic analysis of the first four Principles of public service and human resource management, covering the scope of the public service and legal framework, as well as the professionalism of the public service in recruitment and dismissal.

Key requirement²⁰: The scope of public service is clearly defined and applied in practice so that the policy and legal framework and institutional set-up for professional public service is in place.

Indicator values

The material scope²¹ of the public service is examined through three qualitative indicators that assess the scope covered by legislation, the coherence and professionalism of the policy and legal framework, and the institutional set-up enabling consistent HRM practices across organisations.

The fragmentation of the public service system and the inadequacies of the horizontal scope²² of public service and institutional set-up have not been overcome during the reporting period. The horizontal scope of the public service is not fully in line with PAR principles at either the State level, as it excludes the Supreme Audit Institution (SAI) and the Ombudsman's Office, or in the RS, as the CSL rules do not cover the administrations of the Parliament and the President and the constitutional bodies reporting to the Parliament. In the BD, the horizontal scope of the public service was reduced in 2015, when the Appellate Court ruled that the Parliament should be exempted from the CSL and have its own HRM system²³. Finally, there is no coherent strategic framework for public service development at all levels.

The vertical scope²⁴ of the civil service has substantively deteriorated at the level of the FBiH. With the adoption by the FBiH of the amendments to the CSL²⁵, the line between civil servants and political appointees has been blurred, with the risk of overt politicisation of top civil service personnel. These amendments were passed in a non-transparent manner, breaching government and parliamentary rules of procedure. The policy goals underpinning these changes remain opaque, as there is no evidence of internal consultations or any substantial inter-institutional or public consultations. Moreover, there is no publicly available supporting analysis and no references to any consideration of potential social or financial impacts.

¹⁹ Rulebook on Determining Material Responsibility, adopted on 26 November 2015.

²⁰ SIGMA (2014), [The Principles of Public Administration](#) OECD Publishing, Paris, p. 44.

²¹ According to the SIGMA Principles of Public Administration, the **material scope of the public service** establishes all general provisions relevant to the employment relations of public servants as well as the management of the public service. SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 44.

²² According to the SIGMA Principles of Public Administration, the **horizontal scope of public service** contains at least the positions with the public authority to exercise powers conferred by public law and with the responsibility for safeguarding the general interests of the state or other public bodies in the institutions listed. SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 44.

²³ Decision of the Appellate Court of the BD, Official Gazette of the BD, No. 17/2015.

²⁴ According to the SIGMA Principles of Public Administration, the **vertical scope of public service** clearly determines the upper and lower division line between political appointees, public servants and support staff. SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 44.

²⁵ Official Gazette of the FBiH, No. 99/15.

Bosnia and Herzegovina
Public Service and Human Resource Management

	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
Qualitative	1	Extent to which the scope of public service is adequate, clearly defined and applied in practice.	2014	2	2015	1
	2	Extent to which the policy and legal framework for professional and coherent public service is established and implemented.	2014	2	2015	2
	2	Extent to which the institutional set-up enables consistent HRM practices across the public service.	2014	2	2015	2

Analysis of Principles

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

The public service system in BiH is rather fragmented, due to Constitutional arrangements and the organisational structure of the country. There are four separate systems (with separate legislation) at the State level, in the FBiH, the RS and the BD. Within the FBiH, in addition to the federal civil service legislation, four of the ten cantons have adopted their own civil service laws, following a decision of the Constitutional Court of the FBiH²⁶ (which allows cantons to pass their own civil service legislation), while the other cantons are still applying the Federal CSL. The lack of consistency in civil service policies between these administrative levels has led to a further fragmentation of civil service systems and hinders mobility of civil servants between different levels.

The horizontal scope of the public service is not fully in line with *The Principles of Public Administration* at most administrative levels. At the State level, the horizontal scope of the civil service does not include independent and constitutional bodies such as the SAI and the Ombudsman's Office²⁷. The Indirect Taxation Authority is also exempted from some CSL provisions, including internal competitions, internal transfers of employees, performance evaluation, training and disciplinary matters²⁸. Special legislation governing these aspects of HRM is generally in line with merit principles. At the level of the RS, the Parliament, the President's administration and the support services of constitutional bodies (such as the SAI) are also outside the scope of the CSL. The staff of the Parliament's administration are recruited on the basis of the Law on Labour Relations in State Bodies²⁹ and Labour Code³⁰, without

²⁶ FBiH Constitutional Court Decision No. U-27/09, of 22 February 2011.

²⁷ Both institutions do provide for open competitions to recruit their staff as set out in the Law on Audit of the BiH Institutions (Official Gazette BiH, No 12/96) and the Law on Ombudsman (Official Gazette BiH, No 19/02, 35/04, 32/06)

²⁸ Law on Indirect Taxation Authority, Official Gazette BiH, No. 89/05 Rulebook on Labour, Rulebook on the Transfer of the Employees of the Indirect Taxation Authority, available at <http://www.new.uino.gov.ba/bs/UIO>

²⁹ Official Gazette of the RS, No. 11/94.

³⁰ Official Gazette of the RS, Nos. 38/00, 40/00, 47/02, 38/03, 66/03 and 20/07.

open competitions, and the situation is the same for the administration of the President of the Republic.

In the BD, in mid-2015, the Appellate Court of the BD ruled that the administration of the Parliament should be exempted from the CSL and have its own HRM system³¹. On the basis of this decision, preparations are being made in the Sub-department for HRM of the Department of General and Administrative Affairs to exclude expert parliamentary staff from their competence for all aspects of HRM (including co-ordination of recruitment and selection, performance appraisal and training) and allow the administration of the Parliament to have its own independent HRM system.

The vertical scope has been defined inconsistently. When it comes to delineation of the civil service positions and supporting services both in the FBiH³² and at the State level, the requirement for a university degree has been used as a demarcation line between civil service positions and support staff³³. At the level of the RS and the BD, the CSL makes a distinction between civil servants who carry out core public administration activities (such as legal drafting, policy implementation and administrative decision-making) and those who carry out technical support activities (such as drivers and maintenance workers). In the RS, financial services staff are also considered to be support staff, which creates problems in terms of equality with other personnel (especially in salary levels).

The demarcation between political appointees and senior civil service staff is generally clear at most administrative levels, with the exception of the FBiH. The CSL of State institutions makes a clear distinction between political posts, which include ministers and deputy ministers, and senior civil service positions, which include: 1) secretaries general and secretaries with specific assignments; and 2) assistant ministers, assistant directors and chief inspectors. Secretaries general and secretaries with specific assignments are appointed on the basis of competition for a mandate of five years, renewable once, in line with performance evaluation, while other management positions are not time constrained³⁴. Similarly, the Law on the Administration of the Republic in the RS³⁵ makes a distinction between political posts (ministers and ministers' advisers) and senior managerial positions (assistant ministers, secretaries general, heads of administrative bodies, and their deputies and assistants, the Chief Inspector of the Republic and the Secretary of the CSA). Senior managerial positions are appointed by the Government on the basis of a competition for a period of five years, with a renewable mandate³⁶. In the BD, the CSL adopted in 2014 also clearly distinguishes between political and senior civil service posts. Senior civil service personnel have the same status as expert-level civil servants, and they are appointed to their positions on the basis of a competition for an indefinite period.

At the level of the FBiH, the latest changes in the CSL have completely removed senior managerial posts from the civil service, blurring the line between politics and administration. All positions that were previously defined as senior managerial positions (heads of government services, assistant ministers, secretaries general) now fall under a new, undefined category, which does not have civil service status. The CSL has introduced this new category of personnel in Article 11a, and hence all secondary legislation refers to it as "officials from Article 11a". The line between political and senior civil service posts is also being blurred at the level of cantons, which are currently preparing their own draft CSLs (in Una-Sana Canton, in West Herzegovina Canton and in Hercegbosna Canton)³⁷, in line with the FBiH CSL amendments. Moreover, a similar exclusion of senior managerial staff from the civil

³¹ Decision of the Appellate Court of the BD, Official Gazette of the BD, No. 17/2015.

³² CSL of the FBiH, Article 25, Official Gazette of the FBiH Nos. 29/03, 23/04, 39/04, 54/04, 67/05, 8/06, 4/12 and 99 /15.

³³ Article 7 of the Amendments to the CSL in the FBiH, Official Gazette 4/12 and Article 22(c) CSL in the BiH institutions, Official Gazette BiH, Nos. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10 and 40/12

³⁴ Official Gazette BiH, Nos. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10 and 40/12.

³⁵ Law on the Administration of the Republic, Official Gazette RS, Nos. 118/2008, 11/2009, 74/2010, 86/2010, 24/2012, 121/2012, 15/2016.

³⁶ CSL of the RS, Article 26, Official Gazette of the RS, Nos. 118/2008, 117/2011, 37/2012.

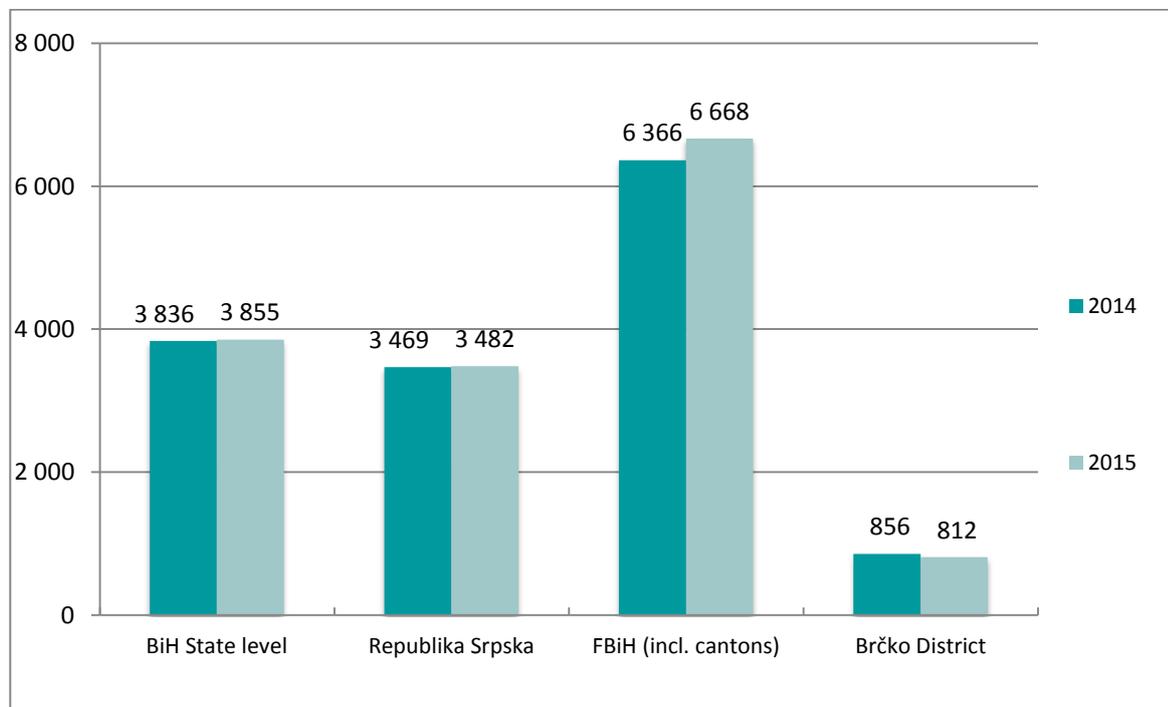
³⁷ Sarajevo Canton is also in the phase of drafting its own CSL but it is not clear what direction it will take regarding the line between political appointees and civil servants.

service system has been foreseen within the draft CSL at the State level. This was withdrawn from the procedure in November 2015, but was on the agenda of the Council of Ministers (CoM) in both March and April 2016, although it was withdrawn in both cases to allow for interministerial consultations. This poses a serious threat of politicisation of senior managerial personnel in the FBiH and the State, as will be discussed in more detail under Principle 4.

The material scope of the civil service has been addressed in a comprehensive way at all levels in primary legislation, as it includes all general provisions relevant to the employment relations and management of civil servants, including scope and principles, recruitment and selection, rights and obligations, classification of posts and remuneration, performance appraisal, training and professional development, disciplinary procedures (including suspension), termination of employment, and management and central co-ordination.

The number of civil servants in BiH in 2015 remained steady at all administrative levels (with only slight variations), in spite of an employment freeze³⁸.

Figure 1. Number of civil servants



Source: Questionnaires and SIGMA interviews with the agencies and ministries responsible for the civil service.

In light of all of the factors outlined and especially the fact that the line between political and civil service posts in FBiH has been blurred by recent changes to the CSL, the value of the qualitative indicator on the scope of the public service is 1.

³⁸ There has been a slight increase at the State level (from 3 836 in 2014 to 3 855 in 2015), at the RS level (from 3 469 in 2014 to 3 482 in 2015), and at the FBiH level including cantons (from 6 366 in 2014 to 6 668 in 2015), and a slight decrease at the BD level (from 856 in 2014 to 812 in 2015).

The public service system in BiH remains fragmented, and there are elements of further fragmentation, especially within the FBiH. The horizontal scope of public service is incomplete, and the vertical scope has deteriorated at the level of the FBiH, due to the blurring of lines between political appointments and the public service.

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

At present there are no comprehensive policies for public service development. After the expiration of the PAR Strategy and revised Action Plan in 2014, reform of the public administration has continued with reference to the same strategic objectives as those identified in the first PAR Strategy (adopted in 2006). The Common Policy Framework of HRM for all administrative levels of BiH, prepared in the course of 2014 to ensure a synchronised approach to HRM standards across the country, has not been endorsed, except in the BD. There have been no indications that this document will be further considered for adoption in the near future. The most recent initiatives on the changes in the CSLs actually show that the principles and orientation of this document have been quietly abandoned.

In July 2015, the CoM of BiH considered the PAR context in light of the Reform Agenda priorities and reviewed the proposal of the Operational Plan for the Development of the PAR Strategy 2016-2020. The PAR Co-ordinator's Office (PARCO) was tasked with initiating the process of preparation for development of the new PAR Strategy, which is still in the early phases of development.

In the absence of a comprehensive and coherent strategic framework for civil service development, the Reform Agenda for BiH 2015-2018 was adopted, requiring all levels of the Government to adopt new CSLs. The aim of the new civil service frameworks, according to the Agenda, was to "facilitate public administration reform and introduce greater flexibility in working arrangements". As of April 2016, only the FBiH level had changed the CSL, introducing the above-mentioned amendments to exclude senior managerial positions from the CSL. The Ministry of Justice (MoJ) of the FBiH considers that this measure of the Reform Agenda has been fully realised³⁹. Clearly, the implementation of the reform agenda's obligations on the flexibility of working arrangements is affecting the civil service.

As for other policy documents, most levels have been working on the preparation of new strategies for professional development. The Government of the RS has adopted the "Framework Training Plan for Civil Servants of the Public Administration Bodies in Republika Srpska for the Period 2015-2018"⁴⁰. The Framework Training Plan includes all the necessary strategic elements. At the State level, the Strategy for Training and Development of the Civil Service expired at the end of 2015, and the new one is in preparation, while the new Training Strategy for the FBiH is already in place⁴¹.

The degree of regulation in the primary and secondary legislation at all levels is generally sufficiently balanced to allow flexibility and ensure stability of the civil service, and there have been no major complaints in this regard. The problem, however, is how the policy and primary and secondary legislation are applied in practice. The latest changes to the CSL in the FBiH are an example of the lack of a strategic approach and consistency towards civil service reform, as the approved solutions do not contribute to the development of a professional civil service. Other problems with regard to implementation of the primary and secondary civil service legislation are explored in more detail under Principles 3 and 4.

The institutional set-up for HRM has been established at the State and FBiH level, although there is a need for more clarity on the division of policy-making responsibilities between different institutions.

³⁹ FBiH MoJ, Annual report 2015, <http://www.fmp.gov.ba>

⁴⁰ Available at: <http://adu.vladars.net/latn/?page=76>

⁴¹ Official Gazette of the FBiH, No. 3/16.

The responsibility of the MoJ concerning the civil service is not sufficiently clear at the State level⁴². At the level of the FBiH, there is a similar situation, except that the Institute for Public Administration (as a part of the MoJ), is responsible for administration⁴³. The CSAs are entitled to ensure recruitment, to assist institutions in implementation of their HR policy, to introduce and maintain a registry and to ensure training and development. Furthermore, the BiH CSL provides that: "Responsible institutions shall establish general guidelines for HRM in BiH institutions and adopt sub-laws that are stemming from this Law"⁴⁴. The secondary legislation indicates that the responsible institution in this case is the CSA. The CSL of the FBiH stipulates that the Government endorses general guidelines for HRM policy and is entitled to approve proper legislation in that respect⁴⁵. CSAs have been established as autonomous administrative organisations, reporting directly to the CoM/the Government⁴⁶.

Civil service areas present a smaller share of the overall responsibilities of the MoJs of BiH and the FBiH⁴⁷. In the Working Programmes of these Ministries, civil service and HRM are addressed mostly through legal interventions, and their capacities are shaped to meet legal functions⁴⁸. Similarly, although the Common Policy Framework for HRM has been agreed on by all CSAs, except for the BD, it has not been endorsed at other administrative levels. No references to this policy document have been evident in the Working Programme of the MoJs of the FBiH and BiH. This tends to confirm the legalistic approach to HRM policy.

Due to the Constitutional set-up of BiH, another institution for overall PAR Strategy co-ordination has been established, PARCO. As part of the efforts to ensure a co-ordinated approach to the PAR Strategy implementation, PARCO has introduced and maintained functioning inter-governmental co-ordinating structures (supervisory teams⁴⁹), including for HRM and civil service. Representatives of the MoJs and CSAs from all administrative levels (not cantons) come together to plan and co-ordinate civil service and HRM measures, as provided by the PAR Strategy.

At the level of the RS, the Ministry of Administration and Local Self-Government has a clear political and policy-making mandate with respect to civil service development. In the BD, the Law on Public Administration provides clear authority for HRM to the Department of Expert and Administrative Affairs.

CSAs perform a number of centralised HRM functions for the institutions across the administration. However, they are not sufficiently empowered to lead, support and monitor the implementation of the civil service policy and legal framework. For example, the CSA of the RS has only fifteen employees, who perform a wide variety of duties (organisation of recruitment, co-ordination of performance appraisal, and preparation and implementation of general training programmes) for all civil service institutions. The CSA is considering introducing a written examination in the recruitment procedure, which would require strengthening its capacities in terms of both the number of employees and their competencies. On a positive note, the responsibilities of the CSA of the RS have been clarified by the

⁴² BiH State level: Law on Ministries and Other State Administration Bodies, Article 13, Official Gazette, Nos. 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, and 103/09.

⁴³ FBiH, Law on Ministries and Other Administrative Bodies, Official Gazette, No. 38/05.

⁴⁴ CSL in BiH institutions, Article 59.

⁴⁵ CSL of the FBiH, Article 61.

⁴⁶ CSLs have not envisaged formal mechanisms of co-operation or information exchange between the agencies and ministries on the common policy areas, such as HRM, so there is no structured, co-ordinated approach among all actors. One example is the process of development and endorsement of the Training and Development Strategy, where MoJs do not play an active role as the CoM/the Government endorse Strategies based on the proposals of the CSA.

⁴⁷ It also includes justice sector policy and legal drafting, justice administration, international legal co-operation, execution of the criminal sanctions and other responsibilities that are not addressed by other ministries. Law on Ministries and Other Administrative Bodies BiH, Official Gazette BiH, No. 5/03.

⁴⁸ Annual Programme of Work 2015, MoJ of BiH, available at: http://www.mpr.gov.ba/default.aspx?langTag=bs-BA&template_id=115&pageIndex=1

⁴⁹ Implementing structures, PARCO, available at: <http://parco.gov.ba/en/>

amendments of the Law on Administration of the Republic, adopted in early 2016, providing it with clear authority with regard to the training and professional development of civil servants⁵⁰. In the BD, the Sub-department for HRM of the Department of General and Administrative Affairs has the role of a central co-ordination unit, but its competences in the area of recruitment are shared with the Recruitment and Selection Commission. This Commission is a permanent body established by the CSL which has three members, one of whom is always a member of *ad hoc* selection committees formed to recruit and select candidates for individual posts⁵¹. The Recruitment and Selection Commission has only one technical secretary and is very dependent on the technical support of the Sub-department for HRM. Permanent Commission members are overburdened with technical work (such as entering application data into the access database), which does not leave them time to adequately prepare for the selection process. The current institutional set-up is neither rational nor efficient, as the roles of the Sub-department and Recruitment Commission are inter-related, and even overlap to some extent, in all stages of the recruitment and selection process (for example, approval and posting of vacancies, and appointment of competition committees and their work).

The institutional set-up for HRM is most critical at the level of the FBiH. After the Decision of the Constitutional Court of 2011⁵² and adoption of the cantonal CSL, the FBiH CSA has lost its competencies regarding the recruitment and selection of civil servants for four cantons (West Herzegovina Canton⁵³, Hercegbosna Canton⁵⁴, Una-Sana Canton⁵⁵ and Posavina Canton⁵⁶). There was further reduction of the CSA competencies at the end of 2015 with the adoption of the amendments to the CSL,⁵⁷ which envisage no role for the CSA in the recruitment and selection of senior personnel. Moreover, amendments to the CSL in 2015 have removed its competencies with regard to providing opinions on the most suitable candidates to individual institutions following selection processes. All these developments are of great concern for further civil service development in the FBiH.

HRM units have been established in only a small number of institutions at all levels. Even when they are in place, they rarely carry out modern HR practices (e.g. strategic HRM planning, competency-based recruitment and career development)⁵⁸. Recent analysis of the functionality of the HRM units in the line ministries shows that only around 12% of them are using modern HRM practices, nearly 38% are using traditional HRM practices with some modern aspects, and 50% are using traditional practice in labour-related affairs⁵⁹.

⁵⁰ Law on Administration of the Republic, Article 11, Official Gazette of the RS, No. 15/2016.

⁵¹ The Recruitment and Selection Commission is also in charge of the technical processing of applications, the organisation of written tests and interviewing of candidates and, after a short list of candidates is finalised, the provision of a proposal on the selection of a candidate from the list. Cf. Article 32 of the CSL of BD.

⁵² FBiH Constitutional Court Decision No. U-27/09 of 22 February 2011.

⁵³ Official Gazette Zapadno-Hercegovačka Županija, Nos. 16/08, 7/09, 8/12 and 8/13.

⁵⁴ Official Gazette Hercegbosanska županija, No. 1/14.

⁵⁵ Official Gazette Unsko-Sanski Kanton, No. 5/12.

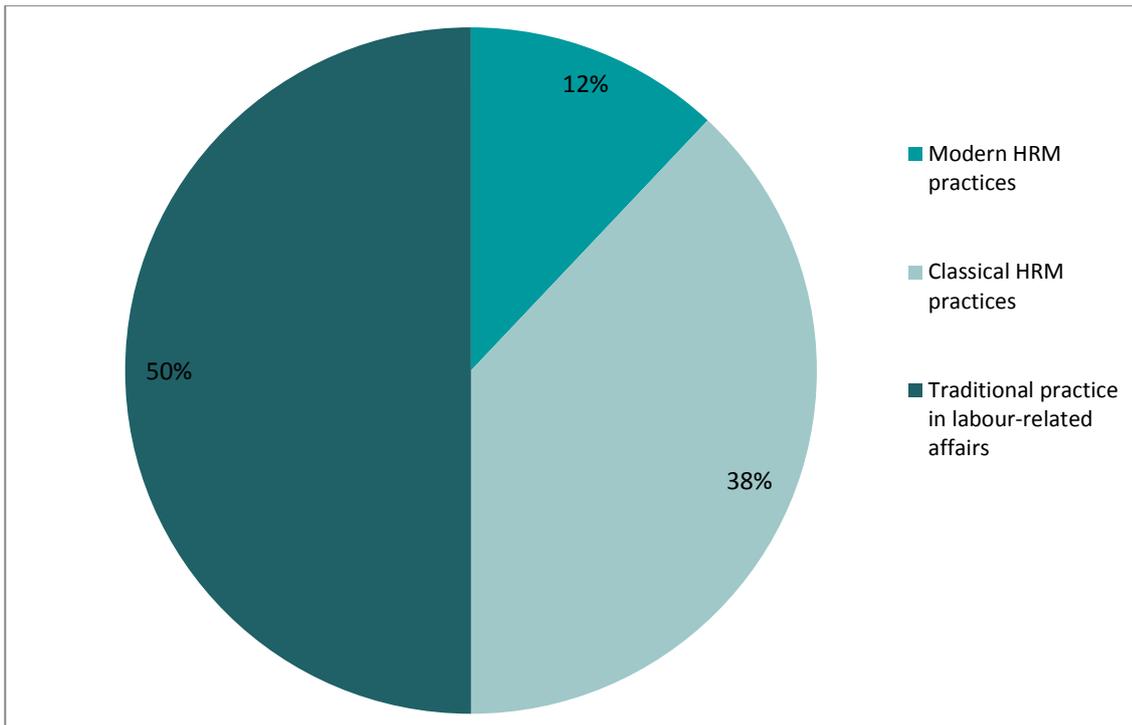
⁵⁶ Official Gazette Županija Posavska, No. 9/13.

⁵⁷ Official Gazette of the FBiH, No. 99/15.

⁵⁸ Transparency International, "Praćenje reforme javne uprave u BiH: Analiza rezultata u oblasti upravljanja ljudskim potencijalima (HRM) u periodu 2013–2014" [Monitoring of the Public Administration Reform in BiH: Analysis of the Results in the Area of HRM in the period of 2013-2014], March 2015, p. 7.

⁵⁹ Modernisation of HR systems in the Civil Service, European Union (EU)-funded project, 2015.

Figure 2. Analysis of the functionality of the HRM units in the line ministries



Source: Organisation of the HRM units in the administration at all levels of government in BiH, Modernisation of HR systems in the Civil Service, European Union (EU)-funded project, 2015.

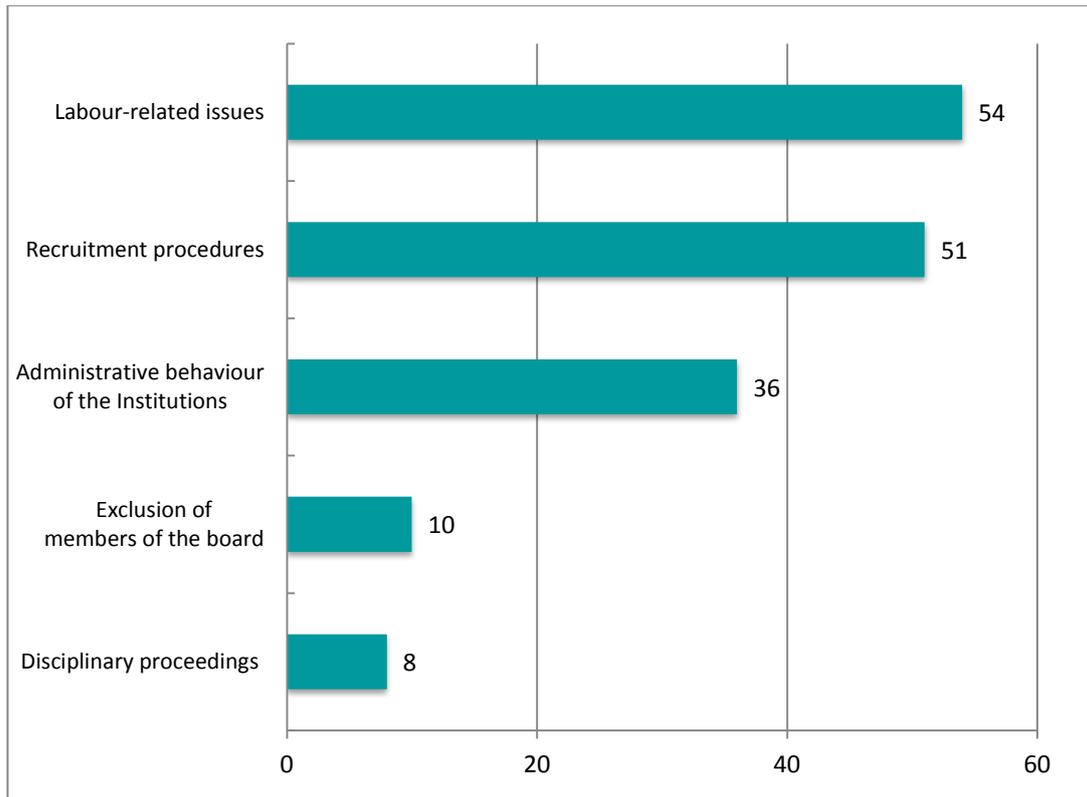
The data collected also shows that close to 50% of civil servants in the CSA are lawyers. In practice, so-called “personnel administration” prevails, and the predominant view is that the main tasks of the HRM (or “personnel” units) are to prepare legal documents, ensure conformity with legal requirements in the spheres of labour relations and civil service relations, and perform a variety of administrative functions. This attitude, however, is gradually changing with the organisation of training courses for HRM personnel, which took place in 2015 under the EU-funded project aimed at modernisation of the HRM function in the civil service.

No workable solution has been found to remove the barriers to making the Human Resource Management Information System (HRMIS) operational as a tool for civil service strategic planning and decision-making. Furthermore, at the BD level, the only level which had an operational HRMIS in recent years, the HRMIS stopped functioning in 2015, due to an unsuccessful public procurement process. This has resulted in a return to the old practice of filing data manually in hard-copy files.

The Civil Service Appeal Board of the CoM of BiH faced difficulties in its functioning in 2015, which caused some delays in the deadlines for proceeding with appeals. Due to the resignation of one of its members, the Board was not fully operational from June to December 2015. In the course of 2015, the Board considered 159 appeals: 54 on labour-related issues, 51 on recruitment procedures, 36 on different aspects of administrative behaviour of the Institutions, 10 on exclusion of members of the board and 8 on disciplinary proceedings⁶⁰.

⁶⁰ Annual Report of the Civil Service Appeal Board of the CoM of BiH No. 01-1-07-4-16-1/16 of 27 January 2016.

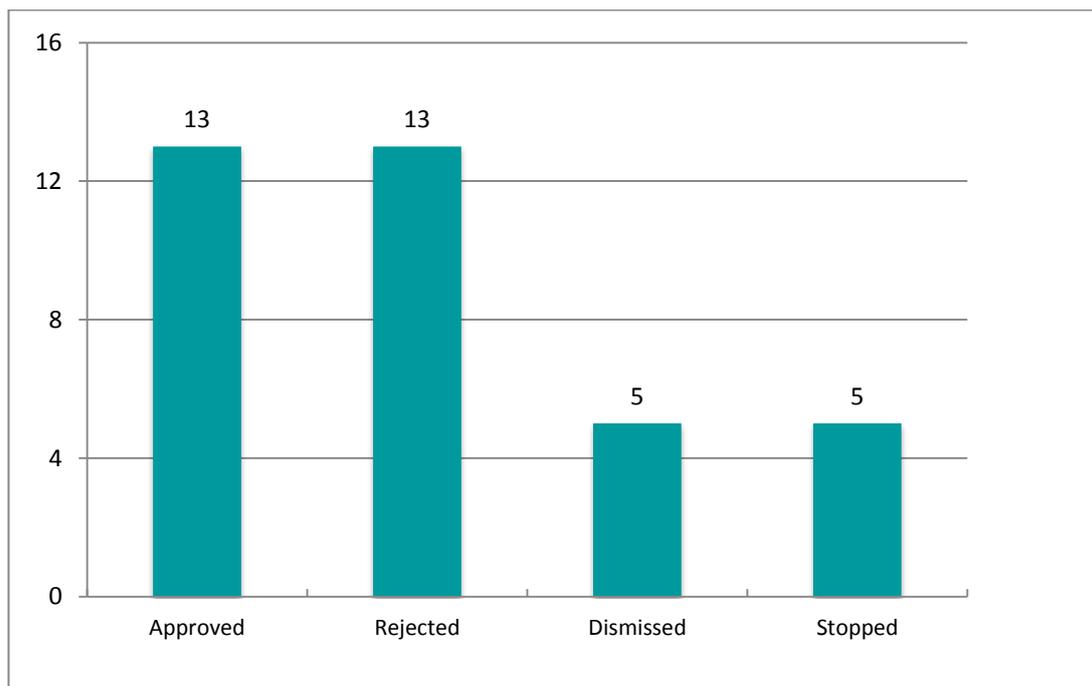
Figure 3. Overview of the appeals



Source: Annual Report of the Civil Service Appeal board of the CoM of BiH No. 01-1-07-4-16-1/16 of 27 January 2016 and SIGMA interview with the Chair of the BiH Civil Service Appeal Board.

A State Court review was carried out for 36 cases (13 rejected, 13 approved, 5 dismissed and 5 stopped).

Figure 4. Judicial review of the appeals



Source: Annual Report of the Civil Service Appeal Board of the CoM of BiH No. 01-1-07-4-16-1/16 of 27 January 2016 and SIGMA interview with the Chair of the BiH Civil Service Appeal Board.

To improve recruitment, the Civil Service Appeal Board has recommended simplifying the selection and recruitment procedures, reducing the number of sub-regulations endorsed by the CSA and increasing their quality control. Neither State nor FBiH level Appeal Boards have an online presence, not even for their annual plans and reports.

The Ombudsman's office of BiH also carries out independent oversight of the civil service. In the view of the Ombudsman's personnel, complaints regarding the implementation of civil service legislation are not frequent and the Ombudsman's recommendations are usually well implemented⁶¹. Independent supervision of the implementation of the CSL is entrusted to administrative inspections in the FBiH and the RS⁶². At the State level and in the BD, the administrative inspections are established based on their respective Laws on Administration.

Considering the factors noted above, the values for the qualitative indicators on the policy and legal framework and the institutional set-up are both 2.

There is a lack of strategic documents on public service at all levels of government. The practical application of the existing legal framework is not harmonised. There is a need for greater clarity in the roles and responsibilities of each institution and a more collaborative approach to formulation and implementation of HRM policy.

Key requirement⁶³: Professionalism of public service is ensured by good managerial standards and human resource management practices.

Indicator values

Professionalism is examined through three qualitative indicators and eight quantitative indicators. The qualitative indicators deal with merit-based recruitment and termination of employment at all levels in the public service and the protection of senior civil service management from political influence. The quantitative indicators deal with the annual turnover of civil servants (including managerial), the number of candidates per vacant position, and gender and national representation.

For the qualitative indicators, the main challenges identified in the 2014 baseline values remain unchanged or have grown. The 2015 values reflect a number of factors: the overly formalistic application procedure at some levels; the inadequate capacities of competition commissions; exceptions from merit-based recruitment in the case of temporary personnel; ensuring ethnic representation without harming the merit-based principle; and the politicisation of senior personnel, especially at the level of the FBiH.

⁶¹ The number of complaints about public administration increased by 6% from 2013 to 2014. Most of the complaints refer to the local and cantonal administration. There is also a slight increase in the number of complaints regarding political appointments to managerial positions in public companies and other bodies with reference to the proper application of the Laws on ministerial and other appointments at all administrative levels. Annual Report of the Ombudsman BiH, 2014, available at: <http://www.ombudsmen.gov.ba/Dokumenti.aspx?id=27&tip=1&lang=BS>

⁶² CSL of the RS, Articles 19–28; CSL of the FBiH, Articles 11 and 13.

⁶³ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 48.

Bosnia and Herzegovina
Public Service and Human Resource Management

	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
Qualitative	3	Extent to which recruitment of public servants is based on the merit principle in all its phases.	2014	3	2015	3
	3	Extent to which the termination of employment of public servants is based on merit.	2014	3	2015	3
	4	Extent to which political influence on the recruitment and dismissal of senior managerial positions in the public service is prevented.	2014	2	2015	1
Quantitative	3	Annual turnover of civil servants at the level of the central administration.	2014	Not available ⁶⁴	2015	No country-wide statistics available ⁶⁵
	3	Number of candidates per vacancy at the level of central administration	2014	Not available	2015	No country-wide statistics available ⁶⁶
	4	Number of candidates per senior civil service vacancy at the level of central administration	2014	Not available	2015	No country-wide statistics available ⁶⁷

⁶⁴ Here and hereafter, "Not available" means that the data requested by SIGMA was not provided by the administration. Under this particular indicator, data was provided on dismissed civil servants only (69 in 2014).

⁶⁵ There are no country-wide statistics for this indicator. The available data indicates that the annual turnover of civil servants at the level of central administration in 2015 was 2.1% at the BiH State level, 3.59 % in the FBiH, 4% at the level of the RS and 5.4 % at the level of the BD.

⁶⁶ There are no country-wide statistics for this indicator. The available data indicate that the number of candidates per vacancy at the level of central administration in 2015 was at 6.2 at the BiH State level and 39.9 in the FBiH, 46 at the level of RS. No data are available for the BD.

⁶⁷ There are no country-wide statistics for this indicator. The available data indicate that the number of candidates per senior civil service vacancy at the level of central administration in 2015 was 15 at the BiH State level, and 6 at the level of RS. No data are available at the level of the FBiH. In the BD this data is not applicable as no competition procedure for senior civil service posts was carried out in 2015.

Bosnia and Herzegovina
Public Service and Human Resource Management

	3	Percentage of women and men in the civil service at the level of central administration.	2014	Not available	2015	No country-wide statistics available ⁶⁸
	3	Percentage of women and men in senior managerial positions in the civil service at the level of central administration.	2013	Not available	2015	No country-wide statistics available ⁶⁹
	3	Percentage of civil servants at the level of central administration by different ethnic origin in relation to the general ethnic division in the country based on the latest census.	2014	Not available	2015	No country-wide statistics available ⁷⁰
	4	Annual turnover of senior managerial civil servants at the level of the central administration.	2014	Not available	2015	No country-wide statistic available ⁷¹
	4	Turnover of senior managerial civil servants at the level of central administration within six months of a change of government.	2014	Not available	2015	No country-wide statistics available ⁷²

⁶⁸ There are no country-wide statistics for this indicator. The available data indicate that the percentage of women and men in the civil service at the level of central administration in 2015 was 47.4% men and 52.6% women at the State level, 53% women and 47% men in the FBiH, 55% women and 45% men at the level of RS, and 56% women and 44% men at the level of the BD.

⁶⁹ There are no country-wide statistics for this indicator. The available data indicate that the percentage of women in senior managerial positions at the level of central administration in 2015 was 44% at the State level, 38% at the level of RS, and 29% at the level of BD. No data is available for the FBiH level.

⁷⁰ There are no country-wide statistics for this indicator. The available data indicates the following: 1) BiH level: Bosniaks 44.6%; Serbs 33.7%; Croats 18.9%; others 2.3%; and remaining 0.7%; 2) the FBiH level: no data available; 3) RS: Serbs 91.7%; Croats 1%; Bosniaks 0.6%; others 0.1%; the remaining 6.6% are persons who exercised their right not to state their ethnic origin; 4) BD: Bosniaks 38.23%, Serbs 42.24%, Croats 17.47%; and others 2.06%.

⁷¹ There are no country-wide statistics for this indicator. The available data indicates that the annual turnover of senior managerial civil servants at the level of central administration was 4% at the level of RS and 0% at the level of the BD. No data is available for BiH or the FBiH level.

⁷² There are no country-wide statistics for this indicator. The available data indicates that the turnover of senior managerial civil servants at the level of central administration within six months of a change of government was 5.11% at the level of the RS and 0% at the level of the BD. No data is available for BiH or the FBiH level.

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.

All BiH administrative levels have a solid legal framework governing recruitment and selection in the public service. Primary and secondary legislation concerning recruitment for the civil service in general establish coherent and fair, merit-based recruitment systems, but there are certain deficiencies.

The key issue at the early stage of the recruitment process at the State and the FBiH level is an overly formalistic and costly application procedure. At the level of the State, public announcements for civil service positions list general and specific requirements for the positions (such as citizenship, university degree, work experience, and knowledge of IT or foreign languages), and all applicants are required to submit all listed evidence within the application period (except for the health certificate)⁷³. The BiH CSA has developed comprehensive guidelines on the required evidence and conditions for the validity of the documents submitted (for example, a copy of the evidence must be certified by a notary or public authorities, which increases the costs for applicants). These guidelines are useful for potential applicants but they are time-consuming. Instead of facilitating the process, the guidelines provide a detailed prescription of acceptable proof for each requirement⁷⁴. The CSA in the FBiH has also developed some examples of the form and type of evidence of work experience required⁷⁵. The processing of applications and supporting documents is clearly given significant attention, but it is not evident how these formalities support and enable merit-based selection.

The level of the RS has recently simplified the application process. Only successful candidates need to submit original documents at the end of the selection process, while all candidates can submit photocopies, which makes the application process cheaper and less formalised. The situation is similar in the BD, where only successful candidates are required to submit all the documentation and to enter the selection process, only a signed application confirming that all formal requirements are met is required.

The recruitment and selection procedure at all levels is carried out by recruitment and selection committees, which are composed on an *ad hoc* basis for each competition procedure. The committees are comprised of representatives of hiring institutions and independent experts, with slight variations between levels⁷⁶. At the State level, the procedure is conducted by a five-member selection committee (two members proposed by the hiring institution and three members appointed by the Agency from its list of experts)⁷⁷. The situation is similar in the FBiH, where the selection procedure is conducted by a committee consisting of at least three members (one representative of the administrative body which is filling the post, one union representative and one independent expert from the list of experts). In practice, the selection committee often also includes two additional members from the list of experts. In the RS, the selection committee consists of three civil servants from the body which is conducting the open competition and two experts added to the list after completion of the competitive procedure. In the BD, the competitive procedure is conducted by a committee consisting of one member of the Recruitment and Selection Commission and two civil servants from the public administration bodies. At all levels, one of the members of the selection committee is usually a superior of the post being filled.

⁷³ Vacancy announcements clearly indicate that incomplete applications shall be disregarded, i.e. <http://www.adsfbih.gov.ba/index.php?lang=ba&sel=84&view=8369>

⁷⁴ According to the interpretation of the BiH CSA on the website, citizenship can be only proved with a certificate issued within last six months, indicating that an application supported only by a copy of the ID will be rejected as incomplete: http://www.ads.gov.ba/v2/index.php?option=com_content&view=article&id=149&Itemid=65&lang=bs#PO

⁷⁵ Examples available at: <http://www.adsfbih.gov.ba/index.php?lang=ba&sel=546>

⁷⁶ Members of each competition committee are appointed by the Civil Service Agencies or the Mayor in the case of the BD, following the proposals of institutions announcing the vacancy and, in the case of BiH State level, the FBiH and the RS, by selecting independent experts from the list of experts. Lists of experts are formed on the basis of public announcements.

⁷⁷ CSL of the BiH Institutions, Article 26, Paragraph 2, Official Gazette, Nos. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10, 40/12.

Members of the committees, whether they are from the institutions or from the list of experts, are often insufficiently prepared or trained to effectively participate in the selection process⁷⁸. Given that members of selection committees are appointed on an *ad hoc* basis, there is a fairly high rate of fluctuation of selection committee members. This has an adverse effect on the level of professionalism in the selection process. It also undermines the efforts of the CSAs, which are responsible for appointing members of selection committees, to establish groups of experienced experts.

In the course of 2015, considerable efforts have been invested in training members of recruitment and selection committees at BiH and BD level. Around 150 members of selection committees from State level and around 200 members of competition commissions from the BD have been trained on selection procedures⁷⁹, with special emphasis on how to use competencies during selection interviews.

During the testing process, all civil service candidates are initially required to pass an exam which tests their general knowledge about public administration. Although the purpose of this exam is the same for all levels (to determine whether candidates possess a sufficient degree of knowledge in the field of public administration to carry out the duties of a civil servant), the nature of this exam and the method of testing general administrative knowledge vary from one level to another. At the level of State institutions, general knowledge about public administration is tested via a so-called “public exam” (based on a multiple-choice test). This is the first, eliminatory step in the selection process and must be taken each time a candidate applies for a civil service vacancy. At the level of the FBiH, candidates are required to pass a “test of general knowledge”, and at the level of the BD, candidates take an “exam for work in administrative bodies” (also a multiple-choice test)⁸⁰. At the level of the RS, passing the test of general knowledge of public administration (known as the “professional exam”) is a precondition for applying for a civil service post, which means that candidates have to take it before they apply for a vacancy. The test is taken before a special commission for professional exams, which tests the knowledge of candidates by interview and practical written exercises. At the level of the FBiH, the RS and in the BD, if a candidate passes the exam but later fails to be admitted to the civil service, the exam remains valid and he/she is not obliged to resit it. Candidates who have passed the bar exam, usually taken in the MoJ, are not obliged to sit this exam at any level.

Additional testing and selection of candidates at State and FBiH level are based on written tests and an interview. Although the concept of having both a written test and an interview is in line with best HRM practices, too much emphasis is placed on testing knowledge, without testing other competencies. At the level of BiH, written tests are usually of an essay type, while in the FBiH, the written test is in the form of a multiple-choice test, checking knowledge of sector-specific issues. Interview questions follow the same logic of testing the candidate’s knowledge and not his/her skills⁸¹. This approach, however, is expected to change with the adoption of draft secondary and tertiary legislation prepared by the BiH and FBiH CSAs in 2015, which envisages testing candidates’ behavioural competencies and provides more detailed guidelines on conducting a structured interview⁸².

⁷⁸ Meyer-Sahling, J.H. et al. (2016), *Improving the Implementation of Merit Recruitment Procedures in the Western Balkans: Analysis and Recommendations*, ReSPA Publications, Danilovgrad.

⁷⁹ The training was conducted with the support of the EU-funded project “Modernisation of HRM Systems in the Civil Service”.

⁸⁰ In BD, all questions for the “exam for work in administrative bodies” must be published before the exam. For civil servants with tertiary education, there are 363 published questions is 363. For those with secondary education, there are 306 questions.

⁸¹ Samples of the Vacancy Announcements of the Ministry of Finance and Treasury of BiH, March 2015.

⁸² In 2015, the CSA of BiH developed draft *Guidelines on Carrying out Recruitment and Selection Processes in BiH Institutions*. These Guidelines introduce the newly developed Competency Framework as a basis for selection of candidates for the civil service and a list of questions for testing the competencies during a structured interview. At the level of the FBiH, the CSA prepared amendments to the *Government Decree on the Conditions, Manner and Programme for Passing the General and Expert Exam for Civil Service Candidates*, which aims to improve merit-based recruitment and strengthen the role of the CSA in the selection process. The draft amendments also envisage conducting selection interviews based on a competency framework, in order to test not only knowledge but also behavioural competencies of the candidates.

In the RS, although candidates have to pass a professional exam before applying for a vacancy, interviewing is the only selection method used. Having an interview as the only selection tool does not sufficiently ensure merit-based recruitment. Furthermore, in cases when a public competition is announced for a larger number of posts and/or a high number of candidates apply, it is very difficult, if not impossible, for the competition committee to adequately conduct the interview process, which usually lasts around 15 minutes or less.

In the BD, additional testing of candidates includes both a written exam and an interview, but this still fails to provide a good basis for merit-based recruitment. All possible written test questions have to be published before the selection process. This is, in principle, a good practice as it ensures the transparency of the process. However, given that the minimum number of questions is only 30 and that they are based on multiple-choice answers, publication of such a low number of questions makes it overly easy for candidates to prepare for the exam and does not ensure merit-based recruitment. During the interview, selection committee members can test from 1 to 11 criteria that they can select (e.g. average mark at university, technical knowledge, previous work experience, as well as some competencies, such as communication). As there are no legal guidelines or restrictions on how to choose selection criteria, members of the competition committees usually select around five criteria, although it is possible that only one criterion is selected. Each member usually poses only one question to test all selected criteria, which is not sufficient for an objective assessment of the candidate.

According to the research of one non-governmental organisation (NGO) research, “public confidence in ‘open and fair competition’ and equal treatment in the selection procedures is rather low, as the process is considered as non-transparent and subject to personal rather than objective assessment”⁸³.

A particular issue that arises at almost all levels of government in BiH is the advantage given during testing (especially during the interview) to candidates who have previously been employed for a fixed term. Although the regulations on fixed-term employment are quite clear at all levels (it is usually permitted in cases of increased workload or urgent need for some staff), this type of employment can be abused in order to employ certain persons in the administration and also to support and favour them during the testing process. There is a valid concern that candidates who performed duties of the specific job for a fixed term would be able to give better answers concerning work in that particular workplace than candidates who had not had such an opportunity⁸⁴. It is therefore important to limit and continuously monitor the practice of fixed-term employment.

One of the key problems in recruitment in the civil service structures in the whole of BiH is respecting the constitutional principle of ethnic representation. All CSLs contain provisions on the need to observe ethnic representation, but do not explain how this should be done. The only criterion is that the civil service structure should broadly reflect the ethnic composition of the population in accordance with the currently applicable Census (from 1991)⁸⁵. It is, however, not clear whether this principle should be observed generally across the civil service, within each individual body, or perhaps within narrower organisational units. In order to respect this principle, some bodies have developed their own detailed, almost mathematical calculations on the ethnicity of persons to be recruited to the civil service, following a certain order. These plans are most easily achieved if there is a list of candidates from which managers can choose (for example, at the level of the FBiH, as well as in the case of managerial civil servants at the State level). Furthermore, candidates have no information about the general or detailed plans of administrative bodies on the recruitment of particular ethnic groups. Therefore, what very often happens in practice is that candidates complain of violations of the principle of ethnic representation, resulting in revocation of open competitions by a second-instance body. Without criteria to clearly define what is meant by taking into account ethnic representation on the basis of the

⁸³ Centre of Civil Initiatives: Policies, Procedures and Appointment Practice in Public Administration BiH, August 2014, available at: <http://www.cci.ba/pubs/1/21/1.html>

⁸⁴ Meyer-Sahling, J.H. at al. (2016), *Improving the Implementation of Merit Recruitment Procedures in the Western Balkans: Analysis and Recommendations*, ReSPA Publications, Danilovgrad.

⁸⁵ The results of the first official census in the State of BiH, conducted in October 2013, have not yet been published.

Census, implementation of competitive procedures can be complicated. Administrative bodies are afraid that open competitions may be revoked, and candidates cannot be sure if their success or failure in open competitions should be attributed to ethnicity or other factors.

Another problem is that it is fairly difficult to determine the ethnicity of candidates, because they have the right to freely declare their ethnicity.

Objective criteria for termination of employment are explicitly established in the legislation at all levels. The termination criteria include voluntary resignation from service, retirement, permanent incapacity to work, losing BiH citizenship, unsatisfactory probation period, two consecutive negative performance appraisals, a criminal sentence of imprisonment for more than six months, and termination of employment as a result of a disciplinary procedure. The main reason for the termination of service at all levels is retirement⁸⁶. Termination of employment may also result from reorganisation, although the number of such dismissals is low⁸⁷.

There are no rules for the demotion of civil servants at any administrative level.

Civil servants have the right to appeal recruitment and termination decisions⁸⁸. The Appeals Board is regulated in the legislation at all administrative levels. The CSL of State institutions gives the right of appeal on recruitment, appointment, and decisions on transfer to another post or dismissal. The Civil Service Appeal Board has been established as an autonomous authority. The Appeal Board is entitled to annul decisions on appointments if they are not legally grounded (Article 53 of the BiH CSL). Final decisions of the Appeal Board can be challenged in court. Similar provisions are contained in the CSL at the level of the FBiH, the RS and the BD, where appeal authorities have been established and are operational. At the level of the FBiH, of 186 appeals on recruitment and appointment decisions, 46 were successful in the course of 2015⁸⁹. At the level of the RS, there were 63 appeals of recruitment decisions in 2015, a sharp decline from 2014, when there were 134 such appeals⁹⁰.

Disciplinary proceedings are addressed comprehensively at all administrative levels⁹¹, but there is insufficient data on the application of these provisions in practice⁹².

Considering the factors analysed above, the values of the qualitative indicators on both the recruitment of public servants and the termination of employment of public servants remain at 3.

In spite of a solid legal basis, merit-based recruitment is not sufficiently safeguarded. The application procedures are overly formalistic at some levels, and the capacities of selection/competition committees are inadequate. Exceptions from merit-based recruitment in the case of temporary personnel and ensuring ethnic representation are harming the merit principle.

⁸⁶ CSL of BiH Institutions, Articles 50 and 51 and CSL of the FBiH, Articles 51 and 52.

⁸⁷ See Figure 3 for an overview of the appeals

⁸⁸ In the course of 2015, the Civil Service Appeal Board of BiH considered 159 appeals: 54 on labour related issues, 51 on recruitment procedures, 36 on different aspects of administrative behaviour of the institutions, and 8 on disciplinary proceedings.

⁸⁹ Information provided by the CSA of the FBiH.

⁹⁰ Information provided by the Appeal Board of the RS.

⁹¹ CSL of BiH Institutions, Articles 54–56. CSL of FBiH, Articles 55–57.

⁹² One of the BiH Institutions that has probably the highest number of disciplinary proceedings is the Indirect Taxation Authority. According to its Annual Report, 59 disciplinary measures were undertaken in 2015. The number of disciplinary measures of civil servants was 24.

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

The category of senior managerial positions in the civil service, at the interface of politics and administration, is included in the scope of civil service at all levels, except at the level of the FBiH. As pointed out earlier, the CSL of State institutions prescribes that senior managerial positions include 1) secretaries general and secretaries with specific assignments and 2) assistant ministers, assistant directors and chief inspectors. Secretaries general and secretaries with specific assignments are appointed on the basis of a competition, for a mandate of five years, renewable once in line with performance evaluation, while other management positions are not time constrained⁹³. Similarly, the CSL of the RS states that senior managerial positions are as follows: assistant ministers, secretaries general, heads of administrative bodies and their deputies and assistants, the Chief Inspector of the Republic and the Secretary of the CSA⁹⁴. Senior managerial positions are appointed by the Government on the basis of a competition for a period of five years, and their mandate is renewable⁹⁵. In the BD, the CSL adopted in 2014 also clearly distinguishes between political and senior civil service posts. Senior civil service personnel have the same status as expert-level civil servants, appointment to their positions on the basis of competition for an indefinite period of time.

At the level of the State, the criteria for recruitment to senior managerial positions are clearly established, and candidates are required to undertake a public competition procedure similar to that for expert-level staff. A competition committee is formed by the CSA, and candidates are required to undergo the testing process, which is even more demanding than for expert-level civil servants (there are twice as many questions in the written test than for lower-ranking civil servants⁹⁶). In selection procedures for lower-ranking civil servants, the CSA automatically selects the best-ranking candidates, but for recruitment of top civil servants, the committee proposes to the hiring authority the list of all candidates who have successfully passed the tests, which only has to be approved by the CSA. The management of the competent authority has the right to select any of the shortlisted applicants⁹⁷. This gives the management of the public authority some degree of discretion in the selection process, which is not unusual for this type of position. If the appointment is not confirmed in this way within 30 days of receipt of the Agency's opinions and the shortlist of successful applicants, the Agency appoints the most successful applicant *ex officio*⁹⁸.

At the level of the FBiH, the 2015 amendments have excluded senior managerial positions from the scope of the CSL. The senior managerial positions excluded are as follows: 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 Inspector⁹⁹. The new Article 11a prescribes that the Government is responsible for appointments to these positions, at the proposal of a competent minister¹⁰⁰. The CSL clearly states that these positions are no longer civil service positions, but it does not determine their legal status, making their position in the system quite unclear. This has created a new category of "officials from Article 11a", and it is referred to as such in the secondary legislation. The CSL further requires that these posts

⁹³ Official Gazette BiH, Nos. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10 and 40/12.

⁹⁴ CSL, Article 26.

⁹⁵ Official Gazette of the RS, Nos. 118/2008, 117/2011 and 37/2012), Article 26.

⁹⁶ Article 15, Paragraph 4 of Rulebook on Recruitment and Selection Procedures, Transfers and Appointments of Civil Servants, Official Gazette BiH Nos. 27/08, 56/09 and 54/10.

⁹⁷ CSL BiH Institutions, Article 28, Paragraph 2. This procedure differs from the procedure used for other civil servants positions, in which the CSA appoints a civil servant based on his/her results in the selection process. See Article 28, Paragraph 1, of the CSL in the BiH Institutions.

⁹⁸ CSL BiH Institutions, Article 28, Paragraph 3, Official Gazette of BiH, Nos. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10 and 40/12.

⁹⁹ CSL of the FBiH, Article 5, Official Gazette of the FBiH, Nos. 29/03, 23/04, 39/04, 54/04, 67/05, 8/06, 4/12 and 99 /15.

¹⁰⁰ CSL of the FBiH, Article 11a, Official Gazette of the FBiH, Nos. 29/03, 23/04, 39/04, 54/04, 67/05, 8/06,4/12 and 99 /15.

be filled by competition¹⁰¹. There is no evidence of the policy goals underpinning this change. The practical implications for the civil service system of the FBiH are yet to be evaluated, and that will be only be possible after implementation of these new provisions.

In order to protect current senior managerial staff who have permanent employment contracts in the FBiH, the CSL amendments prescribe that they cannot be dismissed, but should be transferred to other posts¹⁰². Although this provision has a protective effect, it will result in downgrading current senior managerial personnel to lower managerial or even expert-level posts if they decide to remain in the civil service.

Following the adoption of the CSL amendments, the FBiH Government adopted a Decree which regulates the recruitment process for senior level posts in a more detailed fashion¹⁰³. The Decree provides that senior-level posts from Article 11a will be filled through public competition and competency assessment. An *ad hoc* recruitment and selection/competition committee will be established to evaluate competencies of the candidates through interviews and prepare the shortlist of successful candidates. The head of the institution will make an appointment from this list. Although there are references to merit/competency-based recruitment in the Decree, the current provisions do not guarantee merit-based selection, as the interview is the only selection method. Hence there is a risk of arbitrary appointments and political interference.

Several cantons at the level of the FBiH have prepared draft amendments to the CSL that also exclude senior managerial staff from the civil service system. The draft CSL amendments prepared in Hercegbosna and Una-Sana Cantons are identical to amendments at the level of the FBiH. This demonstrates a tendency at the Federation level towards increasing political influence on appointments to senior managerial positions. A similar approach has been applied with the draft amendments at the State level in 2015. For the moment, changes to the CSL of State Institutions are still subject to interministerial consultations.

In the RS, the criteria for recruitment to senior managerial positions are clearly established. Candidates are required to go through a public competition and undergo the same selection process as other, expert-level civil servants. Passing a professional exam is a precondition for applying for a senior managerial post. As in the case of expert-level staff, the selection process is based on an interview taken before an *ad hoc* selection committee appointed by the CSA. It is, however, difficult to assess to what extent the selection of senior managerial personnel in the RS is based on merit. As the interview is the only selection method, committee members have quite a lot of discretion in making decisions.

The most visible problem with regard to senior managerial staff in the RS is delay in announcing a new competition procedure before their five-year mandate expires. The CSL requires that a new competition procedure be announced 60 days before expiration of the mandate of senior staff to allow sufficient time for a new competition to be completed, but this deadline is not always respected. In order to temporarily solve this problem, the CSL allows for the appointment of acting senior management staff for a period of 90 days. There are, however, cases of acting managers occupying senior managing positions for longer than 90 days¹⁰⁴. As there are no sanctions in the CSL for this type of breach, and given the political sensitivity of the issue, it is difficult for the Administrative Inspection to ensure compliance with the CSL rules in this case.

In the BD, although the CSL makes a distinction between expert-level staff and senior managerial positions, there is no difference in their legal status (they are appointed for an indefinite period and

¹⁰¹ CSL of the FBiH, Article 11.b, Official Gazette of the FBiH, Nos. 29/03, 23/04, 39/04, 54/04, 67/05, 8/06, 4/12 and 99/15.

¹⁰² CSL of the FBiH, Article 75b, Official Gazette of the FBiH, Nos. 29/03, 23/04, 39/04, 54/04, 67/05, 8/06, 4/12 and 99/15.

¹⁰³ Decree on Conditions and Procedures of Recruitment and Selection and Dismissal of Persons that are not Civil Servants in the Public Administration Bodies and Administrative Service of the FBiH, Official Gazette of the FBiH, No. 9/16.

¹⁰⁴ Interviews during the SIGMA mission, March 2016.

undergo the same competition procedure as other civil servants). The new CSL has a very restrictive definition of senior civil servants, which includes only seven positions. None of the people in those seven positions has left the civil service since the establishment of the new Government in spring 2014.

The rules for termination of employment for senior managerial staff are clearly established in the CSLs of all levels (except the FBiH). They generally do not differ from those of expert-level staff, except in cases of senior managerial staff appointed for a fixed term (a period of five years, for some positions at BiH level and in the RS), where expiry of their mandate is an additional reason for termination of employment.

New amendments to the FBiH CSL provide that persons in senior-level posts can be dismissed at any time without the need to provide any grounds for termination of employment¹⁰⁵. The subsequently adopted Decree on Conditions and Procedures of Recruitment and Selection and Dismissal of Persons who are not Civil Servants in the Public Administration Bodies and Administrative Service of the FBiH¹⁰⁶ tries to remedy this situation by providing clear grounds for termination of employment similar to those of expert-level civil service staff. This is a positive step, as it should protect senior-level staff from arbitrary dismissals, but its effect is yet to be seen in practice.

In light of the factors analysed above, especially the exclusion of senior managerial posts from the civil service system in the FBiH, the value of the indicator on direct or indirect political influence on senior managerial positions in the public service is reduced to 1.

Exclusion of senior managerial positions from the civil service system in the FBiH constitutes a significant setback with regard to preventing political influence on senior posts, as it opens the door to widespread politicisation of senior posts at the FBiH level. Indirect political influence on appointments of senior managerial posts has not been prevented.

Key recommendations

Short-term (1-2 years)

- 1) PARCO, the ministries responsible for PAR and the CSAs at all levels should lead and co-ordinate preparation of the new PAR strategy, which should clearly identify leadership of the reforms (including political leadership), and the CoM and the Governments should adopt it.
- 2) The CoM of BiH and the Government of the FBiH should clarify among the different administrative bodies the roles and responsibilities for civil service and HRM policy development, implementation and monitoring.
- 3) Once the CoM of the BiH, the Government of the FBiH and the Government of the RS have approved the Common Policy Framework, the CSAs of the State institutions, the FBiH and the RS, and the Sub-department for HRM of the BD should continue regular co-operation to develop and implement an action plan for the Common Policy Framework of HRM in all administrative levels of BiH.
- 4) The CoM of BiH, the Government of the FBiH and the Government of the RS should propose new CSLs and secondary legislation to ensure merit-based recruitment of senior management and expert-level civil servants according to the Reform Agenda.
- 5) The Parliaments at all levels, the Presidency on a State level, Presidents in FBiH and in RS, Mayor in BD and constitutional bodies reporting to the Parliaments at all levels should develop specific regulations to provide for merit-based recruitments and dismissals for their administrative staff.
- 6) The Government of the FBiH should reconsider the amendments to the CSL passed in November 2015 to re-establish a clear distinction between the political and professional level and introduce alternative and proportionate instruments to address the remaining challenges.

¹⁰⁵ CSL of the FBiH, Article 13, Official Gazette of the FBiH, Nos. 29/03, 23/04, 39/04, 54/04, 67/05, 8/06, 4/12 and 99/15.

¹⁰⁶ Official Gazette of the FBiH, No. 16/2016.

Bosnia and Herzegovina
Public Service and Human Resource Management

- 7) The CoM of BiH and the Government of the FBiH should amend the regulations to make the process of submitting applications less formalistic and less expensive for prospective candidates.
- 8) The responsible institution at the level of the RS (Ministry of Public Administration and Local Government) should prepare amendments to the CSL to add written tests to the recruitment and selection process in order to support merit-based selection.
- 9) The CoM and the Governments at other levels should adopt regulations that introduce a clear competency framework for both expert-level staff and senior managerial staff, which would serve as a solid foundation for the merit-based recruitment and professional development of a strong and sustainable civil service of BiH.

Medium-term (3-5 years)

- 10) The CoM of BiH and the Governments at all administrative levels should amend the legislation to ensure that the recruitment and selection of temporary staff is based on the same principles as for permanent staff, in order to ensure merit in the whole system.
- 11) The CoM and the Governments at all administrative levels should assure the resources needed to achieve functional registers of civil servants that would enable strategic HRM and the exchange of data between the registers. Registers should be interoperable with financial software on salaries and other compensation.

A teal-colored folder icon with a light blue tab on the left side. The folder is tilted slightly to the right. The text "Public Financial Management" is centered on the front of the folder in white.

Public Financial Management

PUBLIC FINANCIAL MANAGEMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015-APRIL 2016

1.1. State of play

After a period where three of the previous five Budgets (including that of 2015), had not been adopted on time, the 2016 Budgets for the State, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS) were adopted on time. This represents a major step forward in the orderliness of budget preparation.

In terms of budgetary outcomes, Bosnia and Herzegovina (BiH) has continued the downward trend in reducing the overall budget deficit from its peak of 6% of gross domestic product (GDP) in 2009 to just under 1.5 % of GDP in 2015¹⁰⁷, “mainly by strictly containing current spending”¹⁰⁸.

The authorities’ gradual fiscal consolidation over the past several years has stabilised the public debt-to-GDP ratio and “would have supported a decline in 2015 if not for the floods”¹⁰⁹. Although the debt ratio rose marginally, from 40.8% of GDP at the end of 2014 to 41.3% at the end of 2015, a fall in the debt ratio is forecast by the end of 2017¹¹⁰.

1.2. Main developments

In July 2015, the authorities of all the levels of government adopted a comprehensive Reform Agenda 2015-2018¹¹¹, aiming to accelerate reforms and to make progress on European Union (EU) accession. The Reform Agenda sets out intentions to pursue sustainable fiscal policies that will reduce debt in the medium term. In 2015, debt management has advanced at all government levels, as reflected in the preparation of medium-term debt strategies. The Reform Agenda also announces efforts to develop legislation that will reduce the size of the grey economy, in order to realise more tax revenue to expand scope for expenditure on services¹¹².

Furthermore, in line with the Reform Agenda, the RS enacted the Law on Fiscal Responsibility¹¹³ in October 2015. The Law contains provisions to strengthen accountability for efficient and effective use of budget resources and establishes a Fiscal Council of the RS. In addition, the State Council of Ministers (CoM) has adopted a law regulating the preparation of a medium-term work plan to strengthen the policy basis of the medium-term budgetary framework (MTBF)¹¹⁴.

¹⁰⁷ Economic Reform Programme (ERP) 2016-2018, p. 18.

¹⁰⁸ International Monetary Fund (IMF) Staff Report for the 2015 Article IV Consultation, October 2015, p. 12.

¹⁰⁹ *Ibid.*

¹¹⁰ The ERP 2016-18, which does not reflect the debt ratio on an European System of National and Regional Accounts (ESA) basis, puts the debt-to-GDP ratio at 41.3% in 2015, 41.7% in 2016 and 38.3% in 2017. There are, however, limitations in the quality of the data. For example, the time series has been revised upwards between the National Economic Reform Programme (NERP) 2015-17 and the ERP 2016-18, without explanation. Also, the data for the RS continues to include debt of state-owned enterprises, even though the NERP 2015-2017 stated that a priority for the RS would be to produce financial data that complies with internationally acknowledged statistical standards, such as the ESA 2010 and Government Finance Statistics. Nevertheless, the IMF Article IV Report also projects a decline in the debt ratio from 45.5% in 2015 to 45.0% in 2016.

¹¹¹ A working translation of the reform agenda is available on the website of the EU Delegation of Bosnia and Herzegovina, <http://europa.ba/wp-content/uploads/2015/09/Reform-Agenda-BiH.pdf>

¹¹² Reform Agenda, p.2.

¹¹³ RS Fiscal Responsibility Law, RS Official Gazette No. 94/15.

¹¹⁴ Law on Amendments to the Law on Ministries and Other Administrative Bodies of BiH, BiH Official Gazette No. 19/16.

2. ANALYSIS

This analysis covers two Principles for the public financial management area under one key requirement. It includes a short analysis of the indicators of the Principles and a systematic analysis of the framework for the development of the medium-term budget and how it fits with the overall development strategy of the CoM of BiH, the Government of the FBiH, the Government of the RS and the Government of the BD, as well as its impact on the annual budget process and the development of the annual Budget.

Key requirement¹¹⁵: The Budget is formulated in compliance with transparent legal provisions and within an overall multi-annual framework, ensuring that the general government budget balance and debt-to-gross domestic product are on a sustainable path.

The key requirement is examined through three qualitative and five quantitative indicators, as defined in *The Principles of Public Administration*. Although the qualitative indicators show no progress from 2014 to 2015, certain improvements in budget planning have been realised. In addition, revenue and expenditure data for the MTBF from two years previously, which was not available for the *Baseline Measurement Report*, is available for this year's assessment, making it possible to calculate the indicator value.

	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
Qualitative	1	MTBF strength index.	2014	2	2015	2
	1	Fiscal rules strength index.	2014	1	2015	1
	2	Extent to which the annual Budget proposal includes full information at the time of presentation to the Parliament.	2014	2	2015	2
Quantitative	1	Percentage differences between the planned budget revenues in the MTBF (as approved two years before the latest available year) and the outturn of the latest available year.	2014	Not available ¹¹⁶	2015	4.2% ¹¹⁷

¹¹⁵ SIGMA (2014), *The Principles of Public Administration*, OECD Publishing, Paris, p. 78.

¹¹⁶ The 2014 data was not available.

¹¹⁷ There is no consolidated MTBF or annual budget law for BiH as a whole. This indicator has been calculated by adding the figures for the State level, the FBiH, the RS and the BD. The figures are not consolidated, which means that there is no adjustment to exclude transactions between the State and the Entities or the BD.

Bosnia and Herzegovina
Public Financial Management

	1	Percentage differences between the planned budget expenditure in the MTBF (as approved two years before the latest available year) and the outturn of the latest available year.	2014	Not available ¹¹⁸	2015	-1.7% ¹¹⁹
	2	General government budget balance.	2014	-1.9%	2015	-1.4% ¹²⁰
	2	Percentage differences between the planned budget revenues (as approved in the Budget) compared to the outturn of the latest available year.	2013	-5.6% ¹²¹	2015	9.3% ¹²²
	2	Percentage differences between the planned budget expenditure (as approved in the Budget) compared to the outturn of the latest available year.	2013	-6.4% ¹²³	2015	-4.8% ¹²⁴

Analysis of Principles

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 time horizon of three years; all budget organisations operate within it.

At all government levels in BiH, there are legal provisions to prepare a multi-annual budget framework¹²⁵. The key document for the multi-annual budget framework is the Budget Framework

¹¹⁸ The 2014 data was not available.

¹¹⁹ There is no consolidated MTBF or annual budget law for BiH as a whole. This indicator has been calculated by adding the figures for the State level, the FBiH, the RS and the BD. The figures are not consolidated, which means that there is no adjustment to exclude transactions between the State and the Entities or the BD.

¹²⁰ NERP 2016-2018, Section 3.1.

¹²¹ This indicator has been calculated by adding the 2013 figures for the State level, the FBiH, the RS and the BD. The figures are not consolidated, which means that there is no adjustment to exclude transactions between the State and the Entities or the BD.

¹²² This indicator has been calculated by adding the figures for the State level, the FBiH, the RS and the BD. The figures are not consolidated, which means that there is no adjustment to exclude transactions between the State and the Entities or the BD.

¹²³ This indicator has been calculated by adding the 2013 figures for the State level, the FBiH, the RS and the BD. The figures are not consolidated, which means that there is no adjustment to exclude transactions between the State and the Entities or the BD.

¹²⁴ This indicator has been calculated by adding the 2015 figures for the State level, the FBiH, the RS and the BD. The figures are not consolidated, which means that there is no adjustment to exclude transactions between the State and the Entities or the BD.

Bosnia and Herzegovina
Public Financial Management

Paper (BFP). The preparation of the BFP is governed by the separate budget laws for the State, the FBiH, the RS and the BD, but the planning procedures and calendars for the BFP are broadly similar at each level of government. Each BFP is prepared separately by the respective Ministries of Finance (MoFs)¹²⁶ for approval by the CoM and the Governments of the FBiH, the RS and the BD before the end of June¹²⁷. Several key elements, which underpin the 2016-2018 BFPs, are set out hereunder.

Following a circular, "Instruction No. 1", issued by the MoF in January/February, the budget users submit their expenditure projections (including new budget requests) to the MoF in April.

A consolidated macro-fiscal framework for the State, the two Entities and the BD is laid down in the Global Framework on Fiscal Balance and Policies (GFFBP). The approval of the GFFBP is the responsibility of the Fiscal Council at country level¹²⁸. An advisory group, comprising seven members appointed by the CoM and the Governments of the FBiH, the RS and the BD, prepares the draft of the GFFBP¹²⁹. The advisory group includes experts from the three MoFs and the Finance Directorate of the BD. The GFFBP covers the macroeconomic projections for the three-year period ahead and summarises in composite tables the proposed fiscal projections for the State, the Entities and the BD. Furthermore, the GFFBP includes a forecast for indirect taxes (direct taxes are a matter for the Entities and BD) and agrees on how these receipts should be divided across the State, the Entities and the BD. The GFFBP should also cover targeted levels of expenditures and indebtedness of the State, the Entities and the BD,¹³⁰ but these figures have not been included in the framework¹³¹. The GFFBP does not contain any sensitivity analysis and does not present the fiscal strategy in the context of a macroeconomic framework, so there is no discussion of the interrelations between fiscal strategy and macroeconomic indicators, such as unemployment and private investment.

Except for the BD, fiscal rules are incorporated in the legislations of the Entities and the State. In the RS, the fiscal rule has been incorporated in the new Law on Borrowing, Debt and Guarantees of the RS¹³², which prescribes that the total debt of the RS cannot exceed the level of 60% of GDP, while the public debt cannot exceed 55% of GDP¹³³. The Law on Budgets in the FBiH stipulates a fiscal rule that the planned current budget must be balanced and, if a current deficit is executed, the Government must plan for a current surplus in the next five years¹³⁴. In addition, the Law on Borrowing, Debt and Guarantees of the FBiH¹³⁵ stipulates that future servicing of FBiH public debt cannot exceed 18% of current revenues, while future servicing of the public debt of cantonal and local self-government units in the FBiH cannot exceed 10% of current revenues. For BiH institutions, the cap on total expenditures

¹²⁵ Law on the Financing of the Institutions of BiH, Official Gazette Nos. 61/04, 49/09 and 42/12; Law on the Budget in the FBiH, Official Gazette Nos. 102/13 and 102/14; Law No. 121 on the Budget System of RS, 25 December 2012; and Law on the Budget of BD of BiH, Official Gazette of BD of BiH No. 17/08.

¹²⁶ The Ministry of Finance and Treasury of BiH, the MoF of the FBiH, the MoF of the RS and the Finance Directorate of the BD.

¹²⁷ Law on the Financing of the Institutions of BiH, Article 5; Law on the Budget in the FBiH, Article 15; Law No. 121 on the Budget System of RS, Article 13; and Law on the Budget of BD of BiH, Article 13.

¹²⁸ BiH Law on the Fiscal Council, Article 6. Article 3 provides for the composition of the Fiscal Council including the Chairman of the BiH CoM, the Prime Ministers of the RS and the FBiH, and the respective Ministers of Finance. The Governor of the Central Bank and the Mayor of the BD each have observer status.

¹²⁹ BiH Law on the Fiscal Council, Article 9, Official Gazette No. 63/08.

¹³⁰ BiH Law on the Fiscal Council, Article 5.

¹³¹ GFFBP 2016-2018.

¹³² RS Law on Borrowing, Debt and Guarantees, Article 15, Official Gazette No. 71/12.

¹³³ The public debt covers the debt of the RS, debt of units of local self-governance and the debt of the extra budgetary funds for social insurance. The total debt covers the public debt of the RS, the debt of public enterprises, the debt of the RS Investment Development Bank and the debt of other public sector institutions.

¹³⁴ The FBiH Budget Law adopted in December 2013 originally stipulated a term of three years. The term was extended to five years by amendment of the Law in 2015, Article 7, Official Gazette No. 91/15.

¹³⁵ FBiH Law on Borrowing, Debt and Guarantees, Article 7, Official Gazette No. 86/07.

Bosnia and Herzegovina
Public Financial Management

of BAM 950 million also has some characteristics of a fiscal rule¹³⁶. There are no fiscal rules for the BD¹³⁷.

In 2015, the State and the two Entities have prepared a medium-term debt management strategy for the first time. The CoM and the Governments of the Entities have approved the strategy together with the BFP 2016-2018¹³⁸.

Compliance with the June deadline for the BFP preparation requires timely submission of the bottom-up medium-term expenditure forecasts and timely approval of the GFFBP by the Fiscal Council. In 2015, the medium-term expenditure projections by budget users were submitted on time. Similarly, medium-term debt plans were drafted in a timely manner. However, although the budget calendars foresee the approval of the GFFBP for May¹³⁹, in 2015 (as in 2014) it was only approved on 20 July. This in turn delayed the approval of the BFPs for the State, the two Entities and the BD¹⁴⁰.

The BFPs reflect a number of common features¹⁴¹. They set out the macroeconomic projections and provide three-year fiscal projections of the budgetary aggregates, including the general government balance and the debt-to-GDP ratio, although they do not contain a sensitivity analysis of the major variables.

Furthermore, the BFP provides three-year budget projections for each of the budget users. The budget projection for the first year is used as a ceiling for the preparation of the annual Budget for each budget user. The table below shows the difference between the overall expenditure ceiling in the BFP and the planned overall ceiling in the next annual Budget. The variation in each year indicates that the reliability of the BFP ceiling, and the extent to which it acts as an anchor for formulating the Budget, is open to improvement.

Table 1: Difference between annual expenditure budget ceiling compared with the BFP projection of the same year

2013 ¹⁴²	2014 ¹⁴³	2015 ¹⁴⁴	2016 ¹⁴⁵
-2%	3%	-6%	3%

Source: Budget framework papers and annual Budget laws.

¹³⁶ The capping of the expenditures at State Institutions is not laid down in law, but has resulted from the agreement among the different governments and is set annually in the GFFBP.

¹³⁷ Article 4.2 of the Budget Law of the BD stipulates that “budget must be balanced so that total revenues and receipts cover total expenditures and expenses”. However, this fiscal rule is void in practice as the application of this rule includes also financing of the budget deficit as a receipt.

¹³⁸ World Bank technical assistance has trained the relevant staff in the IMF debt sustainability methodology, and capacity to prepare a medium-term debt management strategy has been developed for the State, the RS and the FBiH.

¹³⁹ The BiH Law on the Fiscal Council does not include a deadline for the GFFBP, but refers instead to the need to align the release with the budget calendar. The Law on the Budget System of RS does not include the GFFBP in the defined budget calendar but Instruction No. 1 includes its preparation as part of the budget preparation process.

¹⁴⁰ If no agreement can be reached on the GFFBP, there are provisions in the Budget Laws of the various governments to rely on the previous GFFBP in order not to block the budget preparation process.

¹⁴¹ Budget Framework Paper of the Institutions of BiH; Budget Framework Document of the FBiH; Budget Framework Paper of the RS; and Budget Framework Paper of the BD.

¹⁴² Calculated using non-consolidated data from the BFPs 2013-2015 and the annual Budget Laws 2013 of the BiH, FBiH, RS and BD.

¹⁴³ Calculated using non-consolidated data from the BFPs 2014-2016 and the annual Budget Laws 2014 of the BiH, FBiH, RS and BD.

¹⁴⁴ Calculated using non-consolidated data from the BFPs 2015-2017 and the annual Budget Laws 2015 of the BiH, FBiH, RS and BD.

¹⁴⁵ Calculated using non-consolidated data from the BFPs 2016-2018 and the annual Budget Laws 2016 of the BiH, FBiH, RS and BD.

The rolling character of the BFP is not clearly established, as there is no guaranteed linkage between the second and third-year projections in the BFP and the ceilings in the eventual annual Budgets of those years. Instruction No. 1 directs budget users to prepare their BFP submissions on the basis of the previous annual Budget ceiling, rather than to take the second-year projection in the previous BFP as the starting balance. Table 2 shows that there are differences between the expenditure ceiling in the annual Budget and the second-year projections from the previous BFP. This demonstrates that the projections in the BFP are indicative only.

Table 2: Difference between expenditure ceiling in annual budget compared with the BFP projection of the previous year

2014 ¹⁴⁶	2015 ¹⁴⁷	2016 ¹⁴⁸
3%	4%	6%

Source: Budget framework papers and annual Budget laws.

The BFP contains information on priorities and new policy proposals that are reflected in the expenditure projections. Both the RS and the FBiH have prepared Economic Policy Papers that guide the selection of priorities¹⁴⁹. However, there is not an established practice of preparing medium-term strategic documents at sectoral level which are costed and incorporated in the medium-term budget projections. Proposals for new expenditures are identified on an annual basis as a response to Instruction No 1.

Since 2015, the State and the FBiH have adopted a new practice to develop a medium-term work programme that is defined on a programme basis, separating objectives, activities and outcomes and output indicators. The medium-term work programmes are consolidated in the three-year work programmes that are approved at the same time as the BFPs. In the 2015 Budget, the structure of the work programmes was not yet aligned with the programmes in the BFP and the budget management information system (BMIS), but this issue is to be addressed in 2016.

As many of the extra budgetary funds (EBFs) for the FBiH¹⁵⁰ are excluded from the BFPs, a significant share of public expenditures is excluded from the documents.

The BFP does not note long-term capital investment costs, since most capital investment is financed from external sources and not included in the budgetary arithmetic for any of the levels of government. They are included separately in the Public Investment Programme (PIP), which is prepared on a rolling basis separately from current expenditures.

Recurrent cost implications of investments are not included in the BFPs. The conditions to capture these costs are not yet well-established, because there is no requirement in the applicable template to specify the future recurrent costs of capital investment projects¹⁵¹.

¹⁴⁶ Calculated using non-consolidated data from the BFPs 2013-2015 and the annual Budget Laws 2014 of the BiH, FBiH, RS and BD.

¹⁴⁷ Calculated using non-consolidated data from the BFPs 2014-2016 and the annual Budget Laws 2015 of the BiH, FBiH, RS and BD.

¹⁴⁸ Calculated using non-consolidated data from the BFPs 2015-2017 and the annual Budget Laws 2016 of the BiH, FBiH, RS and BD.

¹⁴⁹ The Economic Policy Papers are very much linked to the BiH ERP, as submitted to the European Commission. The RS economic policy paper is published as *Economic Policy Republika Srpska for 2016*, but the FBiH economic policy paper is not published.

¹⁵⁰ In the FBiH, the main EBFs are the Pension and Disability Insurance Fund, the Health Insurance Fund and the Employment Fund. In the RS, the main EBFs are the Pension and Invalid Insurance Fund, the Health Insurance Fund, the Public Child Care Fund and the Employment Bureau. In December 2015, the RS incorporated these Funds into the Budget. Accordingly, it updated the BFP 2016-2018.

¹⁵¹ Approval for new investment projects is requested via a standard template, the form IP-4.

Bosnia and Herzegovina
Public Financial Management

The CoM, and the Governments of the FBiH, the RS and the BD approve the respective BFPs. They are not presented for approval to the Parliamentary Assembly at the State level, the Parliament of the FBiH, the Assembly of the RS or the Assembly of the BD. However, the legislatures are aware of the BFP, and the documents are made public after their approval by government. Furthermore, the BFPs are sent to the legislatures by the end of the year for information purposes, as part of the documentation accompanying the Annual Budget Law (draft) proposal.

There is no consolidated BFP, but an examination of the data for the individual levels of government in the Economic Reform Programme (ERP) 2016-18 suggests that there is coherence between the BFPs and the ERP. Also, taking account of the fiscal consolidation in recent years and the stabilised debt-to-GDP ratio, it is clear that the targets for the budgetary aggregates in recent years have been sustainable, which suggests that the targets in the ERP 2016-18 are also sustainable.

The data on the budgetary aggregates are not fully in line with the European System of National and Regional Accounts (ESA 2010) and the Government Finance Statistics (GFS2001) and their quality is disputed. For the BD, revenue includes borrowing, thereby understating the deficit. The data for the RS continues to include debt of state-owned enterprises even though the National Economic Reform Programme (NERP) 2015-2017 stated that a priority for the RS would be to produce financial data that complies with internationally acknowledged statistical standards, and the ERP 2016-2018 shows revisions to time series without any explanation as to why these occurred.

The value of the indicator for the MTBF strength index indicator is 2 because, while there is a medium-term framework at all four levels of government, it is not a rolling framework covering all expenditures and the Parliaments are not involved in its preparation.

The value of 1 for the indicator on fiscal rule strength reflects the lack of fiscal rules at country level. Although both entities, the RS and the FBiH, have adopted fiscal rules, and the RS is establishing an independent Fiscal Council that is expected to be operational by the end of 2016, there is no independent fiscal council at BiH level to monitor them, and there are no defined actions if the targets are not met.

The BFPs serve as a preliminary draft of the next annual budget, but not yet as a true multi-annual framework. This would require a stronger role for the GFFBP in setting the overall framework for budget formulation, inclusion of expenditures by EBFs, recognition of total capital costs of investment and recurrent costs of investments, and the use of the second- and third-year projections as the starting balance of the budget process. Progress has been made on linking budget projections to work programmes with non-financial performance information, but the high number of first-line budget users inhibits a strong impact on the strategic reallocation of resources.

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.

The preparation of the annual Budget is on the basis of a calendar prescribed in legislation. Budget users are expected to submit a draft budget in early August so that budget hearings can take place in August and September. Based on the overall framework and budget requests made by budget users, the CoM, and the Governments of the FBiH, the RS and the BD each prepare budgets that are submitted to their respective parliamentary bodies on different dates in October and November¹⁵². Final approval of each budget should be before the beginning of the new budget year¹⁵³. In both 2014 and 2015, the late release of the GFFBP delayed the approval of the BFPs for the State, the two Entities and the BD¹⁵⁴. In 2015, this lost time was regained during the second half of the year as the annual Budgets of the State and Entities were all prepared before the end of the year.

Instruction No. 2, issued by the respective MoFs, is the basis for the preparation of the annual Budget in the State, the two entities and the BD. This instruction is issued directly after the BFP is approved by the CoM and the Governments of the FBiH, the RS and the BD. It contains the required budget tables and applicable ceilings that must underpin the estimates of each budget user, in line with the BFP. Instruction No. 2 also provides a top-down expenditure ceiling within which the budget for each budget user must be framed.

The budget submissions in the State and the Entities are done electronically via their separate BMIS applications, and they include economic, organisational and programme classifications. However, budget appropriations and budget execution of the annual Budget use only the economic and organisational classifications, as the programme classification is currently lacking in the Treasury system.

The number of budget users that submit projections directly to the respective MoFs is so high that it makes it difficult for the budget directorates in the MoFs to analyse the budget requests. There are 75 direct budget users at State level, 60 for the FBiH, 115 for the RS, and 20 for the BD. Neither the State nor the Entities have developed a structure that differentiates between first- and second-level budget users. For example, in the RS, primary and secondary schools are each included as a single budget user, although their budget requests are co-ordinated by the Ministry of Education, which sends them to the MoF.

Except for the BD, the Budgets for 2016 have been adopted by the legislatures before the end of 2015¹⁵⁵. Given the delays in budget approval in previous years, this must be regarded positively. However, the timely adoption of the Budget does not indicate that the budget calendar has fully been respected. Generally, there have been delays, and the timely adoption of the Budget has been achieved at the cost of the time available for review by the parliamentary bodies. The formal calendar would allow two weeks in November for the legislature to consider and comment on the draft Budget proposal. The government would then submit a final Budget proposal in the first week of December, giving the legislature another two to four weeks before voting¹⁵⁶. In practice, in 2015, the time for the legislature was cut back by applying a shortened procedure at State level as well as in the two Entities.

¹⁵² State level: submitted on 1 November for adoption by 31 December. FBiH: submitted on 15 November for adoption by 31 December. RS: submitted by 5 November for adoption by 15 December. BD: submitted on 1 October for adoption by 1 December. For the State level only, the COM also submits the draft Budget first to the Presidency on 15 October, before the draft is submitted to the Assembly.

¹⁵³ *Ditto.*

¹⁵⁴ If no agreement can be reached on the GFFBP, there are provisions in the Budget Laws of the various governments to rely on the previous GFFBP in order not to block the budget preparation process.

¹⁵⁵ At State level, the 2016 Budget was adopted on 30 December, in the RS on 15 December, and in the FBiH on 28 December.

¹⁵⁶ Adherence to the budget calendar would allow two months for the various Parliaments in BiH; OECD best practices for budget transparency recommend a three-month timeframe. OECD (2002), [OECD Best Practices for Budget Transparency](#), Article 1.1, OECD Publishing, Paris.

Rather than allowing the Parliaments to consider and comment in two phases (draft and proposal), only the final proposal was submitted for scrutiny.

In the BD, the timeliness of budget approval is a systematic problem. The 2015 Budget was approved only in November 2015. At the end of April 2016, the Budget 2016 had still not been approved by the BD Assembly. One issue that delays the adoption process is the huge number of amendments that the Assembly is permitted to propose. For the 2015 draft budget, 1 400 amendments were proposed. Temporary financing used to be legally permitted until 31 March of the budget year, but a recent amendment allowed for temporary financing at any time until the budget is adopted.

The limited time available to the legislatures for considering the Budget is exacerbated by the lack of technical support available to the respective committees with responsibility for considering the Budget in the first instance. With the exception of the BD, which has one technical advisor to support its committee, there are no specialist advisors to the committees in the State or the Entities.

The Budget Laws of each level of government prescribe the explanatory information and documentation supporting the respective Budgets when they are submitted to the Parliamentary Assembly at State level, the Parliament of the FBiH, the Assembly of the RS and the Assembly of the BD¹⁵⁷. These include macroeconomic projections, the list of appropriations, policy objectives for the coming year, information on new policies, debt projections and the last year's outturns.

However, the Budgets are not comprehensive as they do not include Instrument for Pre-Accession Assistance (IPA) funds and other donations. In terms of the IPA, only the domestic co-financing element of the projects is shown.

Nor do the Budgets include the large sums of public money that are spent by EBFs. However, the inclusion in the RS Budget of the EBFs Fund for 2016 is an improvement in this regard. Furthermore, with the exception of the RS, these budgets are not approved by the Parliaments. In the FBiH, the budgets are submitted to the Parliament of the FBiH for information¹⁵⁸, and in the BD, the budgets are submitted to the Assembly of the BD for information¹⁵⁹.

Due to the high share of current expenditure (especially on wages and salaries), the different government levels have limited fiscal room for capital investments. The capital expenditures funded from their own revenues amount to less than 5% of total expenditures and are included in the Budget. However, most capital investment is financed from external revenue sources (grants and project loans), which are not included in the Budget but in the PIP. The PIP is prepared on a rolling basis separately from current expenditures, but follows more or less the same calendar. It makes use of separate software, Public Investment Management Information System (PIMIS), which is accessible and used by the CoM and the Governments of the RS, the FBiH and the BD. The CoM and each Government approves the PIP, including projects related to its mandate in parallel with the BFP¹⁶⁰.

If the project requires co-funding from the public sector, the existing investment costs are taken into account in the course of preparation of the BFP and the Budget¹⁶¹. However, owing to technical limitations and staffing constraints, the staff in the MoFs are unable to review the project proposals by budget users and to carry out an appraisal of capital projects¹⁶². Furthermore, there is little interest in

¹⁵⁷ Law on the Financing of the Institutions of BiH, Article 8; Law on the Budget in the FBiH Article 26; and Law on the Budget of BD of BiH, Article 17.

¹⁵⁸ Law on the Budget in the FBiH, Article 19.

¹⁵⁹ Law on the Budget of BD of BiH, Article 19.3.

¹⁶⁰ In addition, the Sector for Coordination of International Economic Assistance in the BiH Ministry of Finance and Treasury maintains the system and also prepares a consolidated country PIP. The Sector also maintains a donor-mapping database covering donor-funded projects in BiH.

¹⁶¹ Approval of new investment projects included in PIMIS needs to be requested via the form IP-4. Among the requirements of IP-4 is the preparation of a feasibility study.

¹⁶² For this purpose, only in FBiH, a Committee for the Monitoring of Investment Projects has been established.

monitoring and controlling investment expenditure on the basis that it is mainly funded by sources other than budget expenditure.

The omission of most capital investment expenditure from the Budgets, along with the lack of resources in the MoFs, shows that there is little emphasis on appropriate analysis and prioritisation according to overall costs and benefits. There are a number of other shortcomings: the budget documentation does not provide long-term projections (of more than five years); it does not include a list of contingent liabilities or fiscal risks; and there is no estimate for the likely outturn of revenue and expenditure for the current year to act as a comparison for the forthcoming year. Non-financial performance information is also absent from budget documentation.

The Budgets can be said to be transparent in that they include basic information and are published on the MoFs' websites. However, owing to the various shortcomings noted, the value of the indicator for the extent to which the annual Budget proposals include full information at the time of presentation to the Parliament is 2, the same as in the baseline year, 2014¹⁶³.

The annual Budget preparation is set down in law. The 2016 Budgets for the State, the FBiH and the RS were adopted on time, although the budget calendar was not fully respected during the year. After a period in which Budgets had not been adopted on time in three of the previous five years, (including 2015), this represents a step forward in the orderliness of Budget preparation. The Budgets do not cover all public expenditure (such as EBFs and capital investment). There is further room for improvement in the completeness of the information provided to the Parliaments as background to their deliberations on the Budgets, the time available to the Parliaments for considering the draft Budgets and the involvement of the Parliaments in approving the spending of the EBFs.

Key recommendations

Short-term (1-2 years)

- 1) The CoM and the Governments of the FBiH, the RS and the BD should ensure that the key steps of the Budget, including the dates of submission to the legislatures, are respected. The timely completion of the GFFBP would facilitate this.
- 2) The CoM and the Governments of the FBiH, the RS and the BD should each amend their Budget Law to enhance parliamentary consideration, including providing for parliamentary approval of the BFPs in June.
- 3) The Ministry of Finance and Treasury at the State level, the MoF of the FBiH, the MoF of the RS and the Finance Directorate of the BD should each ensure that information given in their annual Budget includes an end-of-year estimate of each budget user's spending for the current year.
- 4) The MoF of the FBiH, the MoF of the RS and the Finance Directorate of the BD should each ensure that EBFs are brought fully into the budgetary approval process in the Entities and the BD.
- 5) To promote greater public awareness, the draft and adopted Budget and all the background documents (not just the adopted budget) should be published on the websites of the MoFs once they are adopted at the Government level.
- 6) The MoFs should strengthen the rolling nature of the BFP by including a ceiling in Instruction No. 1, using the second-year projections from the previous year's BFP.

¹⁶³ The NGO International Budget Partnership has downgraded BiH in the 2015 measurement of the Open Budget Index, as compared to 2014. However, the downgrade is not due to a slide in actual transparency, but is fully explained by a change of the Open Budget Index methodology. The inclusion of the Pension and Invalid Insurance Fund by the RS should even be considered an improvement.

Bosnia and Herzegovina
Public Financial Management

- 7) The MoFs should enhance the strategic role of the BFP. This could be done by distinguishing first-level budget users (with a sectoral role) from second-level budget users. The MoFs should each further develop their roles regarding the overall fiscal framework, setting ceilings for first-line budget users, and enhancing the budget responsibility of the first-line budget users so they can allocate projected spending among the second-level budget users within the overall sector ceilings.

Medium-term (3-5 years)

- 8) The Ministry of Finance and Treasury at the State level, the MoF of the FBiH, the MoF of the RS and the Finance Directorate of the BD should each ensure that the full costs of IPA projects are recorded in both the MTBFs and the annual Budgets.
- 9) The Fiscal Council should ensure that the reports of the respective Budgets (including the State, the Entities and the BD) are consolidated into an annual report based on Eurostat standards, and this should be presented to the Parliamentary Assembly for consideration at the time of the annual Budget discussions.
- 10) The CoM and the Government of the FBiH should examine the feasibility of establishing independent fiscal councils.

PUBLIC FINANCIAL MANAGEMENT - PUBLIC PROCUREMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015-APRIL 2016

1.1. State of play

The legal framework for the remedies system in Bosnia and Herzegovina (BiH) is mainly compliant with the European Union (EU) Remedies Directives, except that service and works concessions, as defined in EU Directive 23/2014, are not covered. However, due to organisational problems, the complaints review system is not working properly.

The institution responsible for the review of complaints is the Public Review Body (PRB) of BiH, which has its headquarters in Sarajevo and branch offices in Mostar and Banja Luka. The branch offices were created by an amendment to the Public Procurement Law (PPL) in November 2013¹⁶⁴. The central PRB office in Sarajevo has seven staff members and seven legal advisors, while the branch offices in Mostar and Banja Luka have five members each but do not employ any legal advisors at present. The branches have almost no support staff and lack equipment. The implementation of the public procurement legislative framework has been increasingly problematic following the establishment of the PRB branches, as there is no co-ordination between the work of the central office and the branches. The PRB has a document management system, but it is not used¹⁶⁵.

1.2. Main developments

There have been no improvements in the area of legal protection in public procurement.

Appointment of members of the PRB branch offices was made by the Parliamentary Assembly of BiH in 2015. They started their work in November 2015, two years after the creation of the branch offices.

Despite the higher fees, the total number of complaints has increased, with 2 011 complaints in 2015 compared to 1 132 in 2014. In early 2016, the rise in the number of complaints has continued: during the first two months of the year, the Sarajevo office received 160 complaints, the Banja Luka office 133 and the Mostar office 230, for a total of 523¹⁶⁶.

¹⁶⁴ BiH State Gazette, No. 87/13.

¹⁶⁵ As reported to SIGMA by *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ), who developed and installed the system, and as observed by SIGMA during visits to the PRB.

¹⁶⁶ Statistical information regarding the number of complaints was provided during interviews with the PRB members.

2. ANALYSIS

This analysis covers one Principle for public procurement under one key requirement. It includes a short analysis of the indicators and a systematic analysis of Principle 12.

Key requirement¹⁶⁷: In case of alleged breaches of procurement rules, aggrieved parties have access to justice through an independent, transparent, effective and efficient remedies system.

Indicator values

The key requirement for the establishment of an independent, transparent, effective and efficient remedies system is examined through two qualitative indications and four quantitative indicators. They describe the timeliness of the review procedure, the accessibility of the review system for economic operators and the performance of the review body. Not all relevant statistical information about the PRB's work in 2015 has been received, as the central office does not use its document management system, collecting and collating all statistical information manually, in hard copy only.

	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
Qualitative	12	Presence of procurement review and appeal bodies covering the functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources, including the integrity of their work.	2014	1	2015	1
	12	Presence of user-friendly procurement review website, including timely publication of decisions and statistics, with adequate research functions.	2014	2	2015	1

¹⁶⁷ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 100.

Bosnia and Herzegovina
Public Financial Management

Quantitative	12	Actual processing time of complaints related to procurement compared with the maximum legal requirements.	2014	50% ¹⁶⁸	2015	100% ¹⁶⁹
	12	Number of cases in which the procurement review body exceeded the legal maximum processing time in relation to the total number of complaints.	2014	0%	2015	1.9% ¹⁷⁰
	12	Number of complaints in relation to the number of tender notices published.	2014	10.8%	2015	10.0% ¹⁷¹
	12	Share of complaints in procurement that are challenged at the next judicial level.	2014	0.4%	2015	9.2% ¹⁷²

Analysis of the Principle

Principle 12: The remedies system is aligned with the *acquis* standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.

The legal framework of the remedies system is mainly compliant with the EU Remedies Directives, except that works and service concessions are not covered. The *acquis* mechanisms for dealing with the ineffectiveness of a contract and the imposition of penalties have been transposed into the national legislation¹⁷³. The PPL also has provisions on the establishment of the PRB, the roles and responsibilities of the parties in the complaint procedure, time limits, stand-still periods and other provisions from the EU Remedies Directives. However, in practice, the system does not work.

As unanimously reported at meetings with contracting authorities and economic operators, and confirmed by the PRB and the Public Procurement Agency (PPA), the review provisions of the PPL are interpreted as meaning that any complaint leads to the immediate suspension of the procurement procedure. This process can then be repeated, with the effect that contracting authorities have often been unable to spend their budgets, or could do so only after delays of several years.

According to Article 101, Paragraph 1a of the PPL, a complaint in relation to the information in the tender notice (this is taken to include the tender documents) must be filed no later than seven days before the deadline for submission. At the same time, Paragraph 1b allows such complaints to be

¹⁶⁸ As stated by the PRB, the actual average processing time was 15 days, while the legal requirement stipulates a maximum of 30 days. The 50% value does not include the 400 complaints that were not taken up in early 2014, as discussed later in this analysis.

¹⁶⁹ Regarding the timeliness of decisions, some information received from the PRB by correspondence in advance of meetings held on 7-15 March 2016 was not confirmed during interviews with contracting authorities and economic operators. These all stated that the PRB does not decide on time and is often late with its decisions, by as much as several months. The actual processing time of complaints is evidently longer than the legal time limits prescribed by the PPL. The backlog of unresolved cases from 2014 also means that the statement that all cases are resolved in time must be qualified.

¹⁷⁰ Based on statements made by the PRB. See also the preceding footnote.

¹⁷¹ According to the PPA, there were 20 152 procurement procedures in 2015 for which complaints could be submitted.

¹⁷² In 2015, the PRB in 2015 received 2 011 complaints and 184 appeals of PRB decisions were made to the Court of BiH.

¹⁷³ PPL, Article 111, Paragraphs 2, 4, and 8.

lodged until ten days from the day that the tender documentation is obtained. E-publication of tender documents is not obligatory¹⁷⁴ and, in many cases, tender documents are only made available in hard copy. If they are obtained late, Paragraph 1b is interpreted as meaning that a complaint against them can be lodged immediately before (or even after) the deadline for submission, with the effect of suspending the procedure and thus, for example, delaying the tender opening.

Neither contracting authorities nor economic operators can therefore be certain that the official date for the opening of tenders will be observed, and they risk incurring additional costs in the case of postponement. It becomes difficult for contracting authorities to foresee if and when the procedure will finish and to make plans on how to spend public money to meet the needs of the citizens as end-users. This also makes it difficult, if not impossible, to impose any kind of managerial responsibility on senior officials regarding budgeting or its execution.

It is possible to file several complaints about the same tender documents, not only after more than ten days have passed since publication of the tender notice in the Official Gazette, but even after the deadline for submission of tenders. This is not allowed for procedures that are published on the e-platform, but as a high number of tender notices are published in hard copy, this provision causes delays, and public procurement procedures can last more than ten months or even a year.

The PPL, which came into effect at the end of 2014, introduced higher fees for complaints about public procurement procedures, ranging from BAM 500 (EUR 256) to BAM 10 000 (about EUR 5 120), depending on the value of the procurement. One of the reasons for the introduction of the fees was the high number of complaints in 2013¹⁷⁵. The reported number of complaints actually decreased considerably in 2014¹⁷⁶. However, this may largely have been because the branch offices were not operational, so complaints in procedures with an estimated value below BAM 800 000 could not be handled. Despite the increased fees for complaints, a high number of complaints was received in the first two months of 2016. The Sarajevo office received 160 complaints, the Banja Luka office 133 and the Mostar office 230¹⁷⁷. The total number of complaints in 2016 so far is 523. No single explanation has been found for this increase in the numbers compared to 2015. Several possible reasons were mentioned by those concerned in meetings with SIGMA:

- The poor quality of tender documentation, creating the need for clarification or re-drafting, but also opening the opportunity to frivolous complaints;
- The administrative approach to public procurement, with a focus on procedural detail, leading to cancellation of tenders for minor, formal reasons and thereby also making frivolous complaints successful on such grounds;
- The difficult economic situation in the private sector with public contracts the main business of many companies, leading to an inclination to use any possible means for securing a contract or at least preventing others from obtaining one;
- The failure to publish the PRB's decisions, meaning that the case law established by the PRB is not accessible, so contracting authorities risk repeating errors that lead to complaints and economic operators are also lodging complaints that they should have known would be rejected;
- The inconsistency of decisions by the PRB, which is difficult to prevent in the absence of a good database of past decisions.

One of the preconditions for the success of public procurement is that the data on the functioning of the remedies system and all decisions of the PRB, along with their rationale, are published in a timely manner on a user-friendly website, with adequate search functions. This kind of user-friendly

¹⁷⁴ PPL, Article 55.

¹⁷⁵ In 2013, the PRB received 2 052 complaints.

¹⁷⁶ According to the PRB Annual Report published on the official website of the Parliament of BiH, the PRB received 1 132 complaints in 2014.

¹⁷⁷ Statistical information regarding the number of complaints was provided during interviews with the PRB officials.

procurement review website does not exist in BiH. Decisions of the central office in Sarajevo and the branch offices in Mostar and Banja Luka have not been published in 2016. In 2015, after another hiatus in the publication of decisions, the texts of some 500¹⁷⁸ PRB decisions were published online with assistance from *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ). However, the form of publication did not allow them to be found easily by interested outside parties. A user-friendly procurement review website that includes timely publication of decisions and statistics with adequate research functions has been set up, with foreign assistance, but it is still empty.

Mainly because decisions are no longer being published, the value of the indicator on the presence of a user-friendly procurement review website, including timely publication of decisions and statistics, with adequate research functions is 1, down from 2 in 2014.

The PRB itself does not have a database of past decisions. Consequently, even the PRB members cannot systematically review and refer to earlier decisions, and neither they nor contracting authorities or economic operators have access to the PRB's case law. The case law is all the more important as the PRB also has *ex-officio* jurisdiction, and the decision-making process goes beyond the demands of the complainants¹⁷⁹. Without the publication of the PRB's decisions, the contracting authorities and economic operators are not aware of the PRB's case law, and thus an important element of legal protection is missing from the system.

A document management system for the PRB, tailored to its needs, has been set up with assistance from GIZ but it is not being used¹⁸⁰. This limits the capacity of the central office of the PRB and the branch offices to handle the rising number of complaints. The PRB is further limited by the lack of legal advisors and administrative support staff in its branch offices.

There are no established, regular communication channels between the central office of the PRB and its branches¹⁸¹. Regulatory meetings between the central office and the branches have not been organised by April 2016, and they do not systematically exchange their decisions. It is not possible, therefore, for them to be sure that they have consistent legal views on similar cases, and hence consistency in their decisions is not ensured.

In light of these issues, the value of the indicator for the presence of procurement review and appeal bodies covering the functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources, including the integrity of their work, is 1.

Amendments to the PPL that were made in November 2013 placed the responsibility for disputes on high-value contracts (above BAM 800 000) and for all procurement by the State institutions of BiH and by the BD on the PRB office in Sarajevo, while the branch offices in Banja Luka and Mostar were assigned responsibility for lower-value cases and for other contracting authorities. Consequently, even though the branch offices were not established at that time, the PRB lost the authority to handle lower-value cases. There is a backlog of several hundred cases dating from the period from November 2013 (the formal creation of the branch offices) until late 2015. These cases remain unresolved, and the delay for the decisions in these cases has been more than a year.

An additional difficulty for the economic operators¹⁸² is that there are delays for the reimbursement of complaint fees to successful appellants. The MoF is responsible¹⁸³ for reimbursing the complaint fees to successful economic operators, and there have been delays of several months before the successful appellants receive their reimbursement. The reimbursement of fees by the MoF negates the effect that reimbursements should have on contracting authorities. In a number of countries, contracting

¹⁷⁸ Information provided by the PRB.

¹⁷⁹ Articles 103 and 104 of the PPL.

¹⁸⁰ As reported to SIGMA by GIZ and as observed by SIGMA during visits to the PRB.

¹⁸¹ As confirmed by PRB members in meetings with SIGMA.

¹⁸² As reported to SIGMA in all meetings held with representatives of the business community.

¹⁸³ PPL, Article 108 (6) and (7).

authorities are responsible for reimbursing fees to successful appellants, as this is a corrective measure intended to penalise the contracting authorities.

The central office and the branches of the PRB do not hold hearings¹⁸⁴, nor do they use¹⁸⁵ external experts when deciding on complaints with highly technical questions. The purpose of using external experts is to determine the technical facts of the case. Only when the facts are clear is it possible to reach a valid decision based on the principles of the PPL. As neither the central office nor the branches have the financial resources to use external technical experts, technical cases must be resolved using only internal knowledge.

It was noted¹⁸⁶ that without this access to technical expertise, solely an administrative approach is present in the PRB, with emphasis on administrative procedures rather than on technical facts and principles. Consequently, the administrative approach is also widespread among all stakeholders (contracting authorities and economic operators). It appears that attention is focused on formal details and the provisions of the Administrative Law rather than provisions of the PPL, with consequent neglect of the value for money principle.

The legal framework for public procurement remedies in BiH is mainly compliant with the EU Remedies Directives, except that concessions are not covered. The PRB is not yet working properly, due to weak administrative resources and the absence of key staff in the branch offices. PRB decisions are no longer being published.

Key recommendations

Short-term (1-2 years)

- 1) The PRB should systematically publish all decisions on a user-friendly procurement review website that includes timely publication of decisions and statistics and has adequate research functions.
- 2) The PRB office in Sarajevo and the branch offices in Mostar and Banja Luka should increase institutional capacity by making full use of document management systems and by ensuring that board members in the branches have adequate support from legal and technical advisers.
- 3) The PRB should clearly codify its internal procedures, in particular for establishing regular consultation and communication channels and regulating the systematic exchange of decisions between the central office in Sarajevo and the branches in Mostar and Banja Luka, so that the case law can become clear and consistent.
- 4) The CoM of BiH should review the level of complaint fees and revise the system for reimbursement of fees to successful complainants.

Medium-term (3-5 years)

- 5) The CoM of BiH should establish a review system in the field of PPPs and concessions.
- 6) The PRB should orient the implementation of the legislative framework through the review and remedies system.

¹⁸⁴ The PPL has no such requirement.

¹⁸⁵ As reported to SIGMA in meetings with PRB members.

¹⁸⁶ In SIGMA's meetings with PRB members and representatives of the business community, and as observed by SIGMA when reviewing selected PRB decisions.

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