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# **ASSESSMENT**

## **BOSNIA AND HERZEGOVINA APRIL 2013**

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## ASSESSMENT PRIORITIES

Bosnia and Herzegovina is a potential candidate for EU membership. The Stabilisation and Association Agreement (SAA) has been ratified but has not yet entered into force. The process of consultation between the main political parties, which began in December 2011 and which produced a shift of focus towards EU integration, has not been maintained. Progress on the EU agenda has stalled.

Following discussions with the European Commission, it was agreed to give priority to those areas that can most influence the country's capacity to manage the EU accession process once the problem of the stalled agenda is resolved. It was also agreed that the focus should be on areas where actual reform is either being implemented or planned.

Against this background, SIGMA's 2013 assessment of Bosnia and Herzegovina focuses on:

- [Civil Service and Administrative Legal Framework](#), where the Commission requested an update of the 2012 assessment report owing to a significant number of legislative changes that were ongoing or planned.
- [Public Internal Financial Control](#), which is an important area for improvement because it is a condition for providing budget support to Bosnia and Herzegovina.

Each assessment area is presented in a separate thematic report, each including a brief description of the state of play and recent developments. An overall assessment is followed by a more detailed analysis and conclusions.

The **civil service and administrative legal framework** assessment is an update of last year's comprehensive assessment in this area, focusing mainly on changes that have taken place since. The assessment analyses how the administrative levels of BiH have progressed in creating and developing a professional, merit-based civil service. It also analyses how the general administrative framework and practices have ensured the principles of legality, predictability and accountability in administrative decision making.

The **Public Internal Financial control** assessment updates last year's assessment. It focuses on the legislative basis for and the actual implementation of internal audit and financial management and control. There is significant focus on the Central Harmonisation Units (CHUs) in the State and the entities and on the Coordination Board for CHUs, on which development of legislation and methodologies is dependent.

Both assessments have been conducted with reference to the SIGMA baseline. However, as it was agreed with the Commission that the 2013 assessments should be tailored according to priorities, not all areas in the PIFC assessment are fully covered by the SIGMA baselines. Thus the PIFC assessment contains no analysis of EU funds management and control, which the Commission does not consider to be a priority for assessment until BiH makes progress in the Decentralised Implementation System.

**CIVIL SERVICE AND  
ADMINISTRATIVE LEGAL  
FRAMEWORK**

**BOSNIA AND HERZEGOVINA  
APRIL 2013**

## **1. State of play and main developments since last assessment**

### **1.1. State of play**

No progress has been made in finding a workable solution to the problems of further fragmentation and politicisation of the civil service in Bosnia and Herzegovina (BiH). Both continue to hamper the establishment of a professional, accountable and efficient civil service based on merit and competence.

Administrative decision making has been impeded by a continuous malfunctioning of administration. This is because principles of legality, equality and predictability of administrative decision making and actions are not applied in practice.

The challenge for 2013 and after is to strengthen political ownership of civil service reform and commitment to the development of a merit based, professional and politically neutral civil service, and to ensure the purposeful implementation of the administrative legal framework.

### **1.2. Main developments since last assessment**

In June 2012, both the State (BiH) and the Federation (FBiH) parliaments adopted laws amending the Law on Salaries of Civil Servants in the Institutions of BiH and Law on Salaries in FBiH. The changes allowed for an average 4.5% reduction in basic civil servant salaries. They also allowed for cutting several allowances (e.g. for accommodation, transport, food, holidays) to adjust the State and FBiH budget to the fiscal situation and comply with the requirements of the International Monetary Fund. The only exception was the judicial sector (i.e. judges and prosecutors), which experienced no adjustments in basic salaries. Despite these cuts, public sector salaries are still notably higher than average private sector salaries. At the State level, the amendments of the Law on Salaries of Civil Servants in the Institutions of BiH were preceded by the adoption of the Salary Policy by the Council of Ministers and negotiations with the trade unions.

Another extensive change will affect the civil service and human resource management (HRM) in FBiH when the Draft Law on Civil Servants and Public Employees in Administrative Bodies (draft CSL) is finally adopted and enforced. The main aim of the draft CSL is to solve the situation created by the Constitutional Court Ruling U-27/09 of 20 April 2010, endowing each canton with constitutional power to regulate and manage its civil service. The draft CSL was submitted to parliamentary proceedings in June 2012 but, by the end of 2012, it had been adopted only by the House of Representatives and not by the House of Peoples of FBiH. In view of the procedures that come after a draft law has passed its first adoption/reading by the both Houses of Parliament (including 90 days of public consultation), the law cannot be enforced before mid-2013 at the earliest.

In November 2012, the Draft Law on Changes and Amendments to the Law on Civil Service in the Institutions of BiH (i.e. at the State level) was prepared by two parties of the ruling coalition. According to the draft law, the following managerial civil servant positions will be changed to political appointments, and for a term not longer than the term of the Presidency or Council of Ministers: secretary generals of the Presidency and Council of Ministers, secretaries of the ministries, assistant ministers, and chiefs of cabinet of ministries.

Republika Srpska did not initiate any large-scale amendments to the civil service and administrative legal framework in 2012. However, minor amendments were adopted in the Law on Administration (Official Gazette, No. 24/12) and Law on Civil Service (Official Gazette, No. 37/12).

In Brčko District, three draft laws were prepared in 2012 by the Legislative Office of Brčko District Government, in consultation with relevant government departments. The Law on Amendments to the Law on the Government was adopted by the District Assembly on 18 July. The changes aim to strengthen the centre of Government by creating two new administrative units – the Government Secretariat and the Office of the Mayor. After receiving comments from SIGMA in September 2012, the draft Law on Public Administration and draft Law on Civil Service of Brčko District of BiH are in the second phase of development. There have not yet been District Assembly proceedings.

Since November 2011, the heads of the Civil Service Agencies of BiH State, FBiH and Republika Srpska and of the Sub-Department for HRM of Brčko District of BiH have met relatively regularly. Their goal is to improve co-operation and co-ordination in the civil service and to achieve objectives in the area of human resource management (HRM) of the Revised Action Plan 1 of the Public Administration Reform Strategy of BiH<sup>1</sup>. The conference held in Sarajevo on 24 October 2012 on the main challenges to HRM in the BiH civil service<sup>2</sup> was one of these opportunities.

## 2. Analysis

### 2.1. Legal status and professionalism of civil servants

#### *Civil service laws (CSLs)*

The Constitutions of BiH State, FBiH and Republika Srpska and the Statute of Brčko District do not institutionalise the civil service. The only direct provision in the three Constitutions that refers to the civil service stipulates that officials appointed to the administration shall reflect the composition of the population of BiH. The Statute of Brčko District establishes, in addition to the requirement of ethnic representativeness, that public employment shall be based on professional merit.<sup>3</sup>

The laws on civil service have been adopted in all administrative levels of BiH: in 2002 in BiH State institutions, in 2003 in FBiH and Republika Srpska, and in 2006 in Brčko District. All of these laws establish the principle of merit, stating that the recruitment and career advancement of civil servants shall be based on professional merit. At the same time, the constitutional requirement for the civil service to reflect the country's ethnic composition (in accordance with the 1991 census) has been echoed in the respective civil service laws.<sup>4</sup>

The Law on Census in 2013 was adopted by the Parliamentary Assembly of BiH on 3 February 2012. It states that the census should be conducted between 1 and 15 April 2013<sup>5</sup>. The census is likely to be postponed to 1-15 October 2013, based on the recommendations of EUROSTAT and the International Monitoring Operation<sup>6</sup>. The impact of the results of the new population census on the BiH civil service will not become clear until after it is completed.

All civil service laws, except for Brčko District's CSL, make distinctions between civil servants, political appointees and staff employed under labour law. At the same time, the CSLs define the scope of the civil service differently. For example, in FBiH, the civil service covers partially the cantonal and municipal level, whereas in Republika Srpska the local level is completely excluded.

The draft Law on Amendments to the Law on Civil Service in the Institutions of BiH of November 2012 (articles 1 and 4) attempts to change the following managerial civil servant positions to political appointments, and for a term not longer than the term of the Presidency or Council of Ministers: secretary generals of the Presidency and Council of Ministers, secretaries of the ministries, assistant ministers and chiefs of cabinet. This will result in a decrease in the number of managerial civil servant positions to the absolute minimum, with only assistant directors and chief inspectors in agencies considered as managerial civil servants. Furthermore,

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<sup>1</sup> Revised Action Plan 1 of the Public Administration Reform Strategy of Bosnia and Herzegovina, <http://parco.gov.ba/eng/?page=453>.

<sup>2</sup> The conference addressed the main findings and recommendations of SIGMA's "Evaluation of the Human Resource Management in the Civil Service of Bosnia and Herzegovina", August 2012, OECD/SIGMA.

<sup>3</sup> Article 9 paragraph 3 of the Constitution of BiH State, Chapter V article 1 of the Constitution of FBiH, article 97 of the Constitution of Republika Srpska, article 20 paragraph 1 of the Statute of Brčko District.

<sup>4</sup> Article 2 paragraphs 1 and 2 of the CSL of BiH State, article 4 paragraph 1 and article 3 of the CSL of FBiH, article 44 of the CSL of Republika Srpska, article 19 of the CSL of Brčko District.

<sup>5</sup> The Law on Census of Population, Households and Dwellings in Bosnia and Herzegovina in 2013, Published in the Official Gazette on 7 February 2013, <http://www.fzs.ba/Dem/Popis/Zakon%20o%20popisu-en.pdf>.

<sup>6</sup> Assessment reports of the Steering Committee of the International Monitoring Operation on the Population and Housing Censuses in Bosnia and Herzegovina, [http://www.bhas.ba/index.php?option=com\\_content&view=category&layout=blog&id=60&Itemid=105&lang=en](http://www.bhas.ba/index.php?option=com_content&view=category&layout=blog&id=60&Itemid=105&lang=en).

this will increase the layers of political appointees, strongly contradicting the principles for building a sustainable and professional civil service.

The general consensus on the boundaries between the political and administrative arenas amongst EU Member States and OECD countries is that a professional senior civil service, responsible on the one hand for the proper implementation of public policies and legislation, and on the other hand for the coherence, efficiency and appropriateness of government activities, is very much needed in all countries, irrespective of their constitutional and institutional structure. To ensure that the senior civil service is able to bear this dual responsibility, a merit-based process with clear criteria for entry, appraisal, promotion, internal mobility and termination of the employment relationship should be provided by the civil service legislation.<sup>7</sup>

Fixed-terms appointments are not a problem *per se* in stable political environments – a number of EU Member States and OECD countries have introduced limited term appointments of top civil servants in order to encourage efficiency and mobility between administrative bodies or between private and public sector. However, these appointments weaken an already unstable and highly politicised administrative setting by negatively affecting the civil service's impartiality and therefore jeopardising its integrity.

Another proposal of the draft Law on Amendments to the Law on Civil Service in the Institutions of BiH (articles 5 and 7) foresees the performance evaluation of civil servants at least every three months instead of every six months. In comparison, performance appraisals in other administrative levels of BiH are, according to their respective CSLs, conducted on a yearly basis. In addition, the proposed amendments of the draft Law will allow the dismissal of civil servants who have received two consecutive negative appraisals. Considering that performance appraisal at the State level is relatively recent (the new rulebook was adopted in November 2011), both managers and their subordinates are yet to experience this managerial tool. Therefore, to now introduce performance appraisal on a quarterly basis is excessive and places at risk the implementation of an effective system.

The Draft Law on Amendments to the Law on Civil Service in the Institutions of BiH constitutes a drastic step backwards in building a professional, impartial and sustainable civil service at the State level.

The draft CSL of FBiH of June 2012 attempts to solve the legal vacuum in FBiH created by the Constitutional Court Ruling U-27/09 of 20 April 2010 which confirmed that cantons have sole authority in governing administrative matters, thereby opening the door to the development of 10 new civil service laws and systems.

The draft CSL was prepared by the Ministry of Justice of FBiH in co-operation with the Civil Service Agency and cantons. According to article 1 (paragraph 1) of the draft CSL, the law shall apply only to administrative bodies of the federal level. However, article 1 (paragraph 2) provides that the law may be applied to cantons as well, pursuant to the law of the canton. The Ministry of Justice believes that the CSL, when adopted and enforced as drafted, might solve the problem of the impending fragmentation of the civil service in FBiH since the cantons have been involved in its development and have shown a willingness to adapt (or even fully apply) their civil service laws in line with the CSL of FBiH.

In reality, three cantons (West Herzegovina, Una Sana and Posavina) have adopted their own civil service laws and the Sarajevo Canton has decided to apply the CSL of FBiH. In addition, the Association of Municipalities and Cities of FBiH has prepared the draft Law on Recruitment of Employees in Local Self Governments of FBiH and sent it to further proceedings in the Parliament in October 2012.

Other specific questions regarding the draft CSL of FBiH relate to: the scope of the law (e.g. the distinction between public employees and civil servants is unclear and full of uncertainty in legal terms); civil service principles (e.g. the principle of obligation of integrity is missing); cross-referencing to labour legislation (the civil service law shall be self-contained to establish a unitary civil service legal statute); classification - it may be simpler to leave detailed classifications for secondary legislation (e.g. five-year term appointments of senior civil servants); performance appraisal (it only relates to assessing the compliance of civil servants against job

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<sup>7</sup> "The State of the Public Service", 2008, OECD, pp 67–79.

descriptions, not pre-established performance objectives); and systematic law drafting standards (which are not fully followed).

The FBiH Government has been in crisis since May 2012, when the governing coalition broke up. This has hindered proceedings of the draft CSL in the Parliament. By the end of March 2013, three years after the FBiH Constitutional Court Ruling U-27/09, an overall solution was still missing, entailing further swelling of the administration in BiH.

**The fragmentation of BiH's civil service has continued, mainly at the FBiH level. Even if the draft Law on Civil Service of FBiH is adopted, it will not solve the problem of the impending fragmentation of the civil service in the Federation as a whole. The current draft, being excessively detailed, cannot function simultaneously as a framework law acceptable for the cantons and as an instrumental law for managing civil service at the Federation level.**

#### *Central management capacity and recruitment*

Civil Service Agencies (CSAs) have been established as central HRM institutions for the civil service at all administrative levels of BiH. The CSAs (in Brčko District, the central capacity is with a "Sub-Department for HRM") have been created as statutorily independent bodies that answer directly to their respective governments. Their main functions are to plan and implement civil service recruitment and training, to keep a registry of civil servants and to give expert assistance on HRM to administrative bodies. The four central civil service HRM institutions employ 105 staff. This is sufficient to handle the approximately 14 000 civil servants currently employed at all administrative levels of BiH.

At the moment, the CSA of FBiH has five regional branches, including the Sarajevo headquarters. It has the infrastructure and competences to provide services to all administrative bodies at the federal and cantonal level. It also participates in drafting primary and secondary legislation, but the main responsibility for law drafting is with the Ministry of Justice. Considering the developments triggered by the FBiH Constitutional Court Ruling U-27/09, the CSA has initiated talks with cantons. Its objective is to continue to provide them with services to avoid creating up to 10 new CSAs. The cantons have generally reacted positively to this proposal. However, the actual outcome and impact of the adoption and enforcement of the new CSL of FBiH remains to be seen.

The CSAs have strived for transparency and fairness in recruitment and selection procedures. Vacancy notices are widely accessible, as are the supporting materials to help prospective candidates prepare the general examination. All the information relevant to a vacancy can be obtained from the relevant CSA, including the names of the selection panel members.

Nevertheless, the publication of the vacancy announcement does not guarantee *per se* that recruitment is based on merit and that the right to equal access is respected. Politicisation of the civil service through recruitment where political affiliation is often hidden under the criteria of ethnic representativeness makes it easy to override and bypass merit considerations. This makes the issue of politicisation the biggest challenge in BiH's civil service. This finding is supported by the results of the "National Integrity System Assessment of BiH", which evaluates the real capacity of the public administration, including the civil service, to carry out its duties as provided in the laws and without political interference, and the score of 0 from a maximum of 100<sup>8</sup>.

**Although the right to equal access to public employment at all administrative levels is guaranteed to all citizens by law, and the main civil service human resource management tools, including recruitment based on merit, are regulated in primary and secondary legislation, the insistence on ethnic representation favours the three main ethnic groups at the expense of minorities and impedes on the development of an effective merit system in civil service recruitment.**

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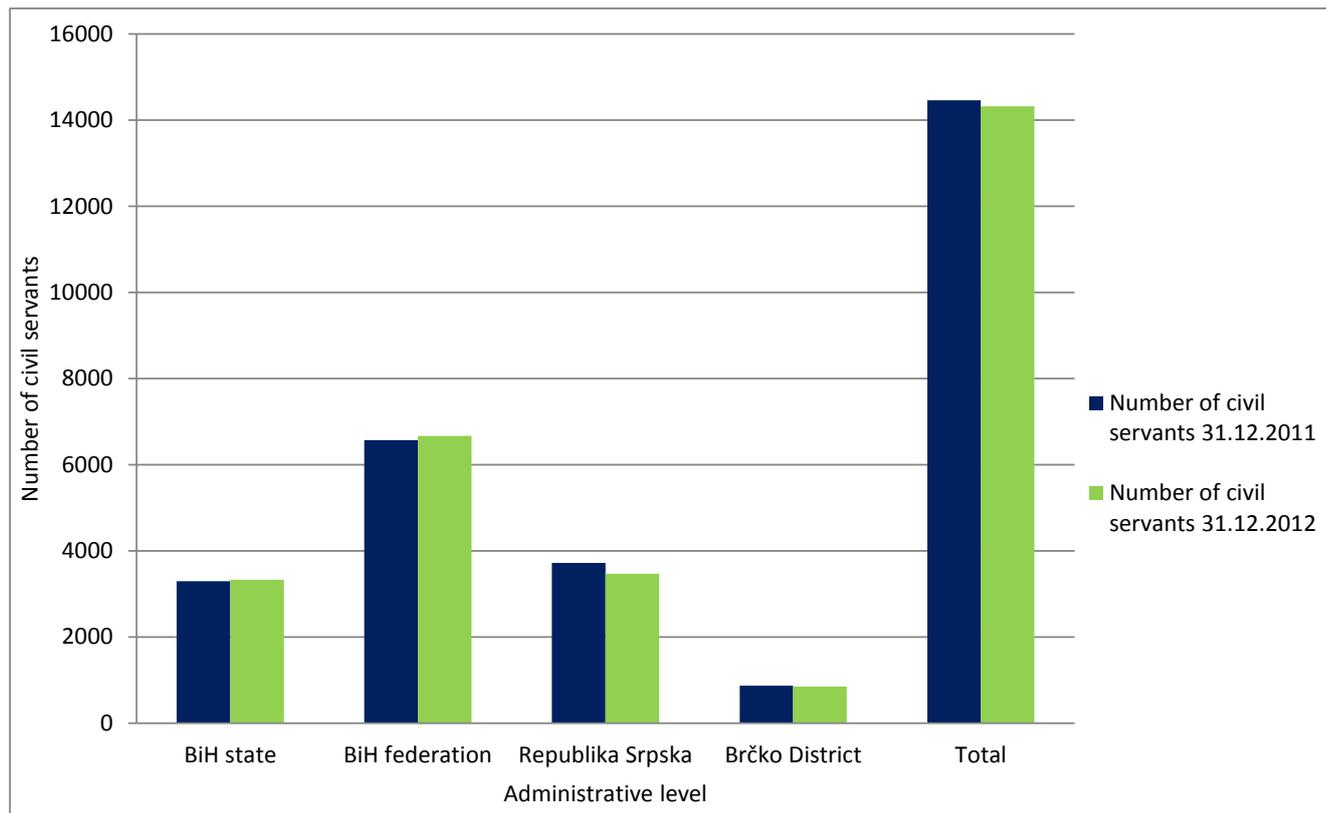
<sup>8</sup> "National Integrity System Assessment of Bosnia and Herzegovina", 2013, Transparency International, <http://ti-bih.org/wp-content/uploads/2012/12/National-Integrity-System-Assessment-BiH-2013-en.pdf>.

*Number of civil servants*

In 2012, the total number of civil servants (14 323<sup>9</sup>) in BiH represented 1.75% of all persons in paid employment. This illustrates the narrow scope of the civil service in general. At the same time, the number of persons working in the public sector as a whole (including defence, police, education, social welfare and health) represented 26.5% of the total workforce.<sup>10</sup>

Figure 1 below shows the distribution of civil servants employed by all administrative levels of BiH in 2011 and 2012. The total number decreased by just 1% between 2011 and 2012.

**Figure 1. Number of civil servants employed by different administrative levels of Bosnia and Herzegovina**



Source: Responses of the Civil Service Agencies and Public Administration Reform Coordinator’s Office of Bosnia and Herzegovina to Support for Improvement in Governance and Management assessment questionnaire

*Salaries*

The salaries in BiH public sector, including the civil service, are still much higher (nearly 40%) than in the private sector. According to the Agency for Statistics of BiH, the average gross monthly salary in the second half year of 2012 was BAM (Bosnian Convertible Marka) 1290 (about EUR 659) in relation to BAM 1809 (about EUR 925) in the public administration<sup>11</sup>. It means that the general salary level creates good conditions to attract and retain qualified and competent staff to the civil service. However, a transparent and objective job evaluation and classification system related to the salary regulations remains to be implemented in order to motivate staff through different career paths in the civil service in BiH.

<sup>9</sup> The number of civil servants in Brčko District in 2012, i.e. 850, is provisional.

<sup>10</sup> “Persons in Paid Employment by Activity in November 2012”, Agency for Statistics of Bosnia and Herzegovina, [http://www.bhas.ba/saopstenja/2012/ZAP\\_2012M11\\_001\\_01\\_HR.pdf](http://www.bhas.ba/saopstenja/2012/ZAP_2012M11_001_01_HR.pdf).

<sup>11</sup> “Average Monthly Gross Earnings of Persons in Employment, II half-year of 2012”, Agency for Statistics of BiH, [http://www.bhas.ba/saopstenja/2013/BPL\\_2012H2\\_001\\_01\\_Bos.pdf](http://www.bhas.ba/saopstenja/2013/BPL_2012H2_001_01_Bos.pdf).

### *Training and performance appraisal*

The training and development of civil servants at all administrative levels of BiH is largely funded by foreign donors, and the already modest allocations for trainings from the BiH budget has decreased to a minimum during recent years. To illustrate the situation, the 2012 training budget allocated to the CSA at the State level was BAM 70 000 (about EUR 35 000) – equivalent to BAM 21 (about EUR 10) for each civil servant.

The main concern regarding the performance appraisal of civil servants is its formal application throughout the civil service of BiH, although all administrative levels, except Brčko District, have amended their rulebooks on performance appraisal in 2010–2011. The lack of practice of formal, routine implementation has put the credibility of performance appraisal as a proper tool of HRM under question<sup>12</sup>.

The initiative at the State level of introducing performance appraisal on a quarterly basis and allowing the dismissal of civil servants with two consecutive or two negative appraisals during one year, adds a risk that this tool is going to be used also for politically or personally targeted dismissals.

### *Integrity*

The integrity of the civil service is relatively well protected from a legal standpoint, in terms of the adoption of anti-corruption policies and action plans, codes of conduct for civil servants, regulation of incompatibilities and establishing the Agency for the Prevention of Corruption and Coordination of the Fight of Corruption in BiH. In practice, however, bribery, abuse of office and malpractice by civil servants are difficult to prevent, punish and eradicate, since the area is not backed by explicit local political will and sufficient prosecution of corruption. This in turn contributes to the growing lack of public confidence in BiH institutions and civil servants. According to the latest Corruption Perception Index for 2012, BiH is ranked to 72<sup>nd</sup> position among 174 countries<sup>13</sup>.

## **2.2. Legality and accountability**

### *Administrative laws and practices*

The administrative legal framework in BiH is meant to ensure the principles of legality, equality and predictability of administrative decision making and monitoring. All four constitutions recognise the rule of law as the fundamental principle underlying the organisation and functioning of public institutions.

The main laws governing the competences of public administration are the Law on Administration and Law on Ministries and Other Administrative Bodies of BiH, the Law on the Organisation of Administrative Bodies in FBiH, the Law on Republic Administration in Republika Srpska and the Law on Public Administration in Brčko District.

The Draft Law on Public Administration of Brčko District of May 2012 aims at replacing the 2007 Law on Public Administration of Brčko District and has two main objectives – to clarify gaps in the previous law and introduce agencification of administration.

SIGMA, in its analysis of this draft law in September 2012<sup>14</sup>, explained that the agencification of administration, i.e. the functional de-concentration of administrative responsibilities from ministries/departments to separate bodies contains various weaknesses. The main weakness is the danger of fragmentation that blurs clear accountability lines, undermines the coherence of the state administrative

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<sup>12</sup> "Evaluation of the Human Resource Management in the Civil Service of Bosnia and Herzegovina", August 2012, OECD/SIGMA.

<sup>13</sup> "National Integrity System Assessment of Bosnia and Herzegovina", 2013, Transparency International, <http://ti-bih.org/wp-content/uploads/2012/12/National-Integrity-System-Assessment-BiH-2013-en.pdf>;  
"Countering Corruption in Bosnia and Herzegovina: 2001–2011", Center for the Study of Democracy, 2012, <http://www.csd.bg/files/Full.pdf>;

"Corruption Perceptions Index 2012", Transparency International, 2012, <http://cpi.transparency.org/cpi2012/results/>.

<sup>14</sup> For detailed analysis of the draft law, please see "Comments on the Draft Law on Public Administration of Brčko District of BiH", 12 September 2012, OECD/SIGMA.

system and might foster politicisation of the administrative level. Another flaw of the draft law is that it contains no homogeneous standards for the hierarchical and vertical structure of administrative bodies, i.e. the core elements of any law on state administration, leaving the specifics of internal organisation more or less to discretion. In addition, the draft law does not provide standards for organising horizontal services for the departments, e.g. legal affairs, HRM, financial management, audit.

As Brčko is a single administrative unit of local self governance with the size of 493 km<sup>2</sup> and population of less than 90 000, the organisational units set up should be of appropriate size, with few hierarchical levels, and their responsibilities should be decided in the light of the scope and severity of duties involved.

All administrative levels of BiH have adopted almost identical laws on administrative procedures. In FBiH, article 1 paragraph 1 of the Law on Administrative Procedures stipulates that the law shall be mandatory to be acted upon by administrative bodies at the federal, cantonal and municipal levels, but paragraph 2 of the same article stipulates that competent bodies of the cantons shall be allowed to enact additional rules of administrative procedure in accordance with this law. The practice in implementing the laws demonstrate, however, that administrative procedures between and within different administrative levels of BiH are often unaligned, thus impinging on the rights of citizens, legal certainty and – ultimately – the rule of law.

To ensure administrative transparency, the right of access to administrative documents is regulated both by the laws on administrative procedures and laws on free access to information that are adopted at all administrative levels of BiH. The subjection of this right to a double form of regulation may result in a lack of clarity on the applicable normative framework.

In practice, according to periodic World Bank studies, for example, BiH ranks among the worst countries in terms of ease of doing business due to inefficient administration<sup>15</sup>. Both the Institution of Human Rights Ombudsman of BiH (Ombudsman) and non-governmental institutions (e.g. Transparency International, Centre for Policy and Governance in BiH, Centre of Civil Initiatives in BiH) have outlined that disharmony of legislation, differently defined levels of competence and differing practices in the various administrative levels of BiH, in addition to economic and social factors such as poverty and unemployment in a transitional post-conflict country, are the causes of poor functioning of the administration.

More than 50% of all cases registered by the Ombudsman in 2012 comprised of civil and political rights violations, including administration, whilst the level of implementation of recommendations remained well below 40%. In total, 1 737 complaints related to civil and political rights violations were received in 2012, in comparison to 1815 and 1877 complaints in 2011 and 2010 respectively. The greatest number of registered complaints was related to work on courts (637) regarding mainly excessively lengthy court procedures and non-effective execution of court decisions. The main number of complaints registered against administrative procedures (381) was related to lengthiness of procedures, silence of administration, non-effective responses by inspections and non-handling of cases within legally prescribed deadlines for taking decisions.<sup>16</sup>

In order to raise citizens' awareness of the right to free access to information, as well as the rights a claimant is entitled to (yearly, there are over 200 complaints related to access to information), the Ombudsman's Institution adopted Guidelines for Exercise of the Right to Access to Information to support the implementation of the Law on Freedom of Access to Information in BiH.

Figure 2 below shows complaints in total and complaints against civil and political rights, including the administration, registered by the Ombudsman in 2010–2012<sup>17</sup>.

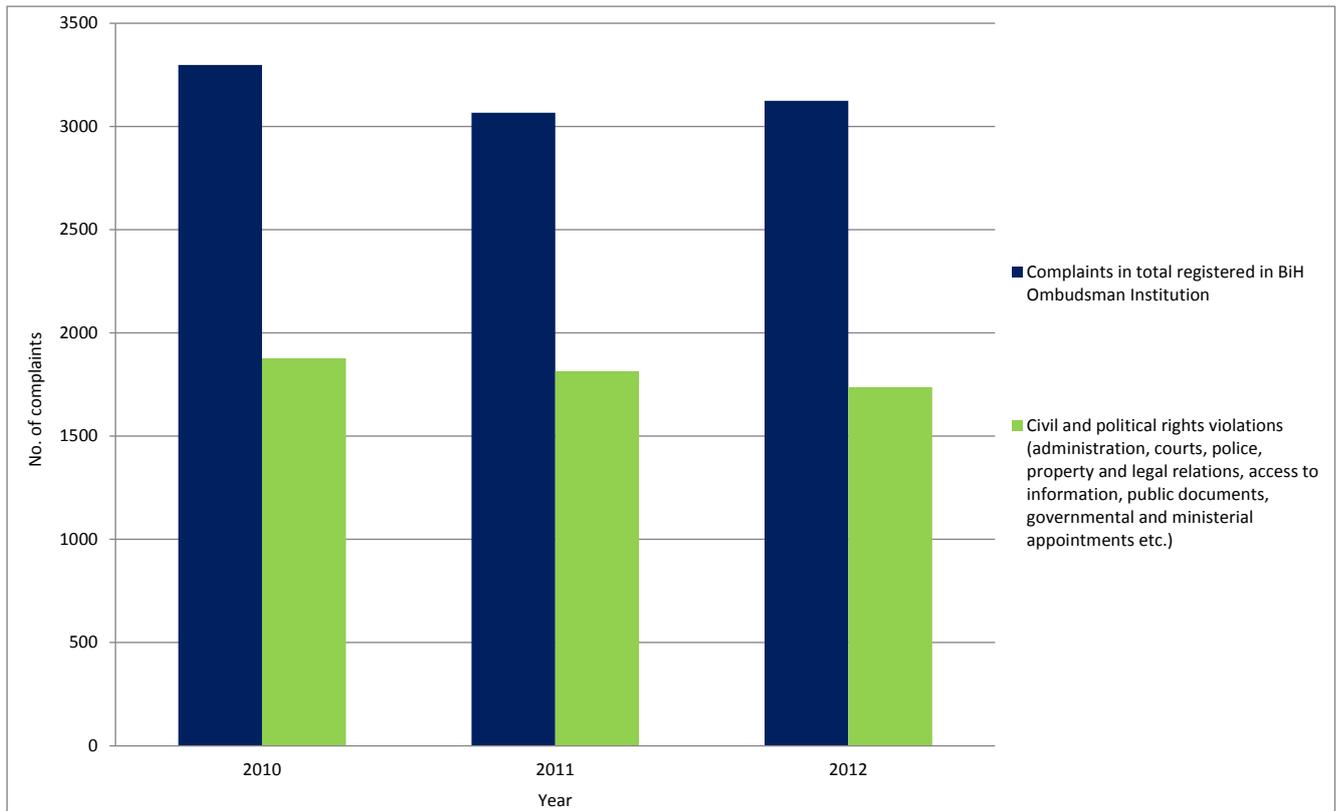
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<sup>15</sup> "Ease of Doing Business in Bosnia and Herzegovina", 2013, World Bank, <http://www.doingbusiness.org/data/exploreconomies/bosnia-and-herzegovina/>.

<sup>16</sup> Press release of the Institution of Human Rights Ombudsman of BiH, 14 February 2013, <http://www.ombudsmen.gov.ba/AktuelnostiEn.aspx?aktuelnost=183>.

<sup>17</sup> <http://www.ombudsmen.gov.ba/PublikacijeEn.aspx?category=Annual%20Reports>.

Figure 2. **Complaints in total and complaints against civil and political rights, including administration, 2010-2012**



Source: Annual reports on results of the activities of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina

**As there has been little change in the last three years of the absolute number of complaints received against the administration and non-implementation of recommendations by the Ombudsman, the principles of legality, predictability and accountability in administrative decision making are still not ensured in practice in BiH.**

#### *Institutional set-up*

The main accountability institutions (Ombudsman, Supreme Audit Institutions, Prosecutor General and the judiciary) have been established in BiH.

The Ombudsman is an independent body, established in 1996. Its mission is to promote good governance and the rule of law, and to protect the rights and freedoms of natural persons and legal entities. From 1996 to 2004 the ombudsman function was fulfilled by an international citizen. In 2004 ownership of the institution was transferred to BiH nationals and the number of ombudspersons grew from one to three. The Law on the Human Rights Ombudsman of BiH was adopted in 2000, and amended in 2002 and 2006.

Every administrative level of BiH applies the traditional accountability method of administrative inspection. The legislation on inspection awards fairly similar competences and functions to administrative inspectors at the different administrative levels of BiH. Various laws regulate the inspectorates: the Law on Ministries and Other Bodies of Administration in State Institutions of BiH, the Law on the Organisation of Administrative Bodies and Law on Administrative Procedures of FBiH, the Law on Administrative Inspection, the Law on Ministries and the Law on Administrative Procedures of Republika Srpska.

In Brčko District, the inspectorates are somewhat overregulated by the Law on Public Administration, the Law on Inspections and the Law on Administrative Procedures. The May 2012 Draft Law on Public Administration

attempts to systematise different forms and areas of administrative inspections, unfortunately with inherent contradictions<sup>18</sup>.

**At present, the system of administrative inspectorates in BiH is non-independent (inspectorates are subordinated to different ministries in different administrative levels of BiH) and bureaucratic, aimed at ensuring formal compliance with legal requirements. In practice, when the co-ordination mechanisms of inspectorates and joint training programmes for inspectors are missing, the harmonised implementation of laws cannot be reached.**

#### *Administrative justice*

Judicial control of administrative acts is provided for by the Law on Administrative Disputes at the State level, by the Law on Administrative Disputes in FBiH, by the Law on Administrative Disputes in Republika Srpska and by the Law on the Procedure for the Assessment of Conformity in Brčko District. In FBiH, where administrative disputes are decided by the cantonal courts, judgements on similar cases may and have become very divergent. Predictability and legal certainty have suffered as a result of these divergences. At the same time, the ordinary remedy – an appeal to the Supreme Court – has been abolished.

From the perspective of the legal framework, courts are independent from the legislative and executive branches of governance, both in terms of appointment and dismissal of judges, and in terms of the financing of courts. However, in practice the judiciary is perceived as ineffective (e.g. over 600 complaints per year to the Ombudsman) in achieving its statutory purpose – judicial review of administrative acts. In addition, the existing legal mechanisms cannot, in principle, force the Government to comply with judicial decisions made in an administrative dispute. For example, although the court decisions annulling final administrative acts are binding on the administrative bodies, in reality these often go to great lengths in their efforts not to act on the court orders and continue issuing the same decisions. The National Integrity System Assessment of BiH also stresses that the judiciary is inert in the fight against corruption and unsuccessful in proceedings taken with the aim of sanctioning those who committed corruption offenses.<sup>19</sup>

**Although a relevant legal framework for administrative justice exists in BiH, the courts are ineffective in judicial review of administrative acts. Furthermore, there is no effective legal mechanism for courts to ensure that the administrative bodies comply with their rulings.**

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<sup>18</sup> For detailed analysis of the draft law, see “Comments on the Draft Law on Public Administration and Draft Law on Civil Service in Public Administrative Bodies of Brčko District of BiH”, 12 September 2012, OECD/SIGMA.

<sup>19</sup> “National Integrity System Assessment of Bosnia and Herzegovina”, 2013, Transparency International.  
<http://ti-bih.org/wp-content/uploads/2012/12/National-Integrity-System-Assessment-BiH-2013-en.pdf>.

**PUBLIC INTERNAL  
FINANCIAL CONTROL**

**BOSNIA AND HERZEGOVINA**

**APRIL 2013**

## **1. State of play and main developments since last assessment**

### **1.1. State of play**

Public Internal Financial Control (PIFC) in Bosnia and Herzegovina (BiH) is still being developed. The State (BiH State), the Federation (FBiH) and Republika Srpska (RS) are basically at the same stage. They co-ordinate technical development of legislation and methodologies through the Coordination Board (CB) for Central Harmonisation Units (CHUs), even though each has also established separate legislative and organisational arrangements. Brčko District still has not established a CHU; the current legal framework does not allow for a CHU and no legislation has been drafted to change this. In addition, no internal audit (IA) function exists in Brčko District and no action has been taken in the last 12 months to establish such a function.

Political and budgetary issues continue to affect public administration reform, including PIFC. Owing to perceived procedural issues, the monthly CB meetings ceased in November 2011. The State and FBiH have arranged for the required budget contributions towards the cost of the CB, but RS has not agreed on the funding for 2013. CHU staffing continues to be below systematisation, i.e. the allocated number of staff, in all the State and entity CHUs. It is critically low in FBiH, where there is only a Head of Unit. FBiH arguably has the most challenging environment, which requires developments to be negotiated through government at the entity, canton and municipality levels.

### **1.2. Main developments since last assessment**

#### **Internal Audit (IA)**

BiH State has approved a rulebook for the systematisation of IA within ministries and other institutions. Similar guidance has been drafted in FBiH and RS, but has not yet been approved. There has been little change in the number of IA units or internal auditors in post.

#### **Financial Management and Control (FMC)**

Specific FMC legislation for BiH State was passed in 2012 as an amendment to the Law on Financing Institutions in BiH (Official Gazette (OG) 42/12). Another amendment to the same Law on Financing Institutions in BiH (OG 96/12) requires each budget user to sign an annual statement of responsibility confirming budget objectives have been achieved. There has been no amendment to FMC related legislation in the entities.

New budget management information systems have been implemented in BiH and the two entities. These will require more detailed input from budget users. Further changes that will enable recording of commitments have also been made to the treasury systems in BiH and the two entities.

## **2. Analysis**

### **2.1. Policy and legislative framework for PIFC**

*A coherent and comprehensive statutory base defining the systems, principles and functioning of PIFC is established.*

Brčko District does not have a drafted strategy for PIFC implementation, nor does it have pending laws to establish it. Brčko District currently bases PIFC activities on its 2008 Budget Law, which vaguely states that budget users should introduce internal control in accordance with international standards<sup>20</sup>. While internal control and IA are defined, neither their concept nor implementation process are further defined. Several unsuccessful attempts have been made since 2006 to introduce effective guidelines and rulebooks for

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<sup>20</sup> Law on Budget of Brčko District, articles 43 (internal control) and 44 (internal audit).

implementing internal control. The two most recent rulebooks were withdrawn in 2013 as inconsistencies with the Budget Law were preventing their implementation.

BiH State and each of the two entities have two pieces of PIFC legislation: the established Budget Law and (since 2008) the Law on IA. These laws were followed by separate PIFC policy papers for BiH State and the entities in 2009-10. However, these strategy papers have not been updated to reflect progress made. While specific FMC legislation was drafted in 2011, it has only been enacted in BiH State. The policy and legislative framework is complex. This is due to the harmonised but separate approach of the BiH State and entities and the fact that extensive secondary legislation is needed to implement primary legislation. Primary legislation is dealt with here and secondary legislation is referred to in the more detailed sections on FMC and IA below.

### *Budget laws*

The budget laws<sup>21</sup> deal with a number of basic PIFC issues. Review of the legislation shows that they overall deal consistently with PIFC issues although some variations do exist.

### *IA laws*

BiH State and the entities have IA laws<sup>22</sup> dating back to 2008. The laws follow a similar structure, provide a satisfactory legal framework for IA and set out the legal framework for the CHU. They apply broadly across the activities funded by BiH State, FBiH and RS. Both the BiH State and RS IA laws allow for the creation of audit boards (comparable to audit committees) by each budget user that has an IA unit. The FBiH Law on IA contains no similar provision. So far, no such boards have been established.

### *FMC laws*

In 2011, draft legislation on FMC was prepared with the help of the PIFC technical assistance (TA) project<sup>23</sup> and agreed by the CB for adoption in BiH State and the two entities. This standard text was tailored by BiH State and the entities to meet their own requirements, subject to comments from the EC/DG-Budget. This legislation has been approved in BiH State<sup>24</sup> but not in FBiH or RS. There is currently no supporting subsidiary legislation in BiH State.

**The formal legal framework for PIFC is being established in BiH State and the two entities, but is not yet complete. Thanks to the FMC law passed in BiH State, the framework there is more complete than in FBiH and RS, where FMC laws have been in draft since 2011. Although this framework largely started from the same origins, the tailoring has resulted in inconsistencies, such as the lack of FBiH legislation supporting the use of audit boards. A general lack of clarity regarding management and executive roles prevails.**

**A clear policy or strategy is in place and implemented for developing PIFC within the overall public administration reform (PAR) efforts.**

The 2006 PAR Strategy adopted by the BiH State Council of Ministers and endorsed by the entities committed "to improve the structure, capacity and performance of the centres of government and thus strengthen the policy making systems on all government levels". In 2007, this reform led to the four governments adopting a blueprint outlining development along a common model and engaging in increased co-operation and co-ordination. This co-ordinated approach is reflected, for example, in the parallel developments of IA and

<sup>21</sup> BiH State – Law on Financing the Institutions of BiH; FBiH – Law on Budgets; RS – Law on the Budget System; and Brčko District - Law on Budget of Brčko District.

<sup>22</sup> BiH State Law on IA Institutions in BiH; RS Law on IA in the Public Sector; and FBiH Law on IA in the Public Sector.

<sup>23</sup> The European Union's "IPA Programme for Bosnia and Herzegovina – Support to the Introduction of Public Internal Financial Control in Bosnia and Herzegovina", which ended in May 2012.

<sup>24</sup> Included as an amendment to the Law on Financing Institutions in BiH, Official Gazette 42/12.

FMC laws and the separate PIFC policy papers<sup>25</sup> for BiH State and the entities that were drafted in 2009-10. While these papers refer to the PAR Strategy, they do not refer to the implementation of PIFC in a manner that underpins the PAR or vice versa.

Two of the six reform areas, public finance (PF) and information technologies (IT), have direct relevance to PIFC. Each is supported by a working group comprising technical representatives from the State, entities and Brčko District. The IT area includes a five-year programme to introduce the budget management information system (BMIS), referenced below. The PF working group includes the head of the CHU from BiH State, but not from FBiH or RS. The PAR Strategy 2011 Revised Action Plan outlines eight key strands of activity in PF. One of them (introducing PIFC in full compliance with EU requirements) is directly relevant here. Others (such as budget management and treasury systems) help set the building blocks for effective PIFC. Yet the action plan is not detailed enough to be an effective tool for PIFC implementation. For example, one of the measurable indicators is whether “PIFC has been introduced at all levels of government in BiH by the end of 2014”<sup>26</sup>. However, there is no supporting information as to the steps to be implemented or milestones to be reached before then.

**Development of PIFC is a clear element of the 2006 PAR Strategy. However, its implementation is managed through the PIFC strategies of BiH State and the entities, which make only brief references to the overall PAR process.**

## 2.2. Conditions and capacity for financial management and control

*The relevant management and control systems and procedures are operational and functional.*

### *Budgetary arrangements*

Current budgetary arrangements in BiH State and both entities are based primarily on traditional input budgets, although broad operational targets do exist (e.g. in budget user work plans in BiH). PIFC arrangements tend to be focused on cash control against the budget. The process is now supported by a new Budget Management Information System (BMIS) developed through the Public Administration Reform process. While it may have been developed primarily as a PEMS or budgetary tool, the BMIS can certainly be an important step towards improved FMC practices if it requires more detailed information from budget users and if it contains performance target data that can be linked to budget allocations.

Budgets are held at the budget user level (called the programme level) rather than being allocated to individual line managers. Thus there is accountability for the budgets, but the high level at which they are held and the lack of related operational targets do not support the development of managerial accountability. Rules on the reallocation of budgets are prescribed by the Budget laws<sup>27</sup> and vary between the BiH State and entities [but always require the approval of the Ministry of Finance (MoF) or, in Brčko District, the Finance Directorate, which is the equivalent of a MoF].

Current arrangements for the management of public expenditure do not allow for the delegation of responsibilities and budgets to below the most senior levels of management within public organisations. FMC legislation (whether adopted or drafted) is silent on this issue. The draft legislation for RS refers to delegation, but for the “establishment, development and implementation of financial management and control”<sup>28</sup> only. In Brčko District, the budget is planned at the level of individual sectors within the institutions, which should in theory require delegation to heads of sectors. However, there is no formal structure to ensure that it is

<sup>25</sup> BiH - Policy Paper for Implementation of Public Internal Financial Control in the Public Sector; RS - Strategy for the establishment and development of public internal financial control in the public sector; FBiH – Strategy for Development of Public Internal Financial Control.

<sup>26</sup> Activity 4.1.1, page 45 of the Revised Action Plan.

<sup>27</sup> Article 16 of the Law on Financing the Institutions of BiH; Article 33 of the FBiH Law on Budget; Article 36 of the Law on Budget System of RS; Article 29 of Law on Budget of Brčko District.

<sup>28</sup> Article 9 of the draft Law on FMC in the Public Sector in RS.

practiced and the head of institution is still the responsible person for all decision making and signing of documentation with regard to budget implementation.

Furthermore, the practical recognition of the need for managers to be responsible for obtaining value-for-money does not exist. Financial management and control arrangements currently depend on the controls exercised through the various treasury systems referred to below.

#### *Treasury controls*

The principal instruments of PIFC for BiH State and the entities are their real time electronic treasury systems. Each system has two functions. One is that of a cash management system, which among other things provides daily bank reconciliations. The other is that of a cash control system, which ensures that budget users do not exceed cash expenditure allocations. In the latter respect the systems appear to be working well in controlling expenditure and in ensuring effective cash flow management. Once budgets and monthly profiles have been uploaded (manually at present though an interface with the BIMS system is to be developed at some future stage), the systems will not permit payments or commitments that breach monthly limits, thus providing *ex ante* control. The systems can produce standard or bespoke reports for managers to control their budgets.

However, each component of BiH is pursuing its own development of the common system. The charts of accounts in BiH and RS are more detailed and support cost centre management if requested by budget users. FBiH and RS have provided direct access to more cantons (FBiH) and municipalities (both), while RS has also provided access for schools via the Ministry of Education.

The accounts payable module within the treasury systems records commitments for purchase orders (POs). POs will be raised after tendering, not earlier when a budget requirement is foreseen. The commitments recorded are taken into account in determining available budget. Subsequent invoices should be matched with POs, with the amount committed being replaced by the actual payment. This means that the systems go beyond pure cash and are more effective in terms of financial control. However, some ministries maintain separate records off the main system to record financial commitments at an earlier stage. Invoices for which there were no POs (and thus no recorded commitments) are sometimes presented. There is a year-end process for capturing all outstanding commitments regardless of available budget. In these cases some payments will be delayed until the next year and count against that year's budget. No estimates of the extent of this practice were available.

While Brčko District has a single treasury account, it is totally a manual process and there is no integrated IT system in place that would allow managers to have an oversight of their finances. Although the Treasury has engaged with the Public Administration Reform Coordinator's Office (PARCO) to try to establish an IT system that would link the budget users to the Treasury department, there has been no implementation up to now owing to objections from unsuccessful bidders. Both PARCO and the Brčko District Treasury confirmed that the successful objection had a spurious basis and, though another tender has recently been opened, there remains a concern that the same thing will happen again.

In Brčko District there is a requirement that no acquisition nor tender can be entered into without first verifying the budget line item for that purpose, and the moment a contract is signed reservations are made in the Treasury to ensure availability of funds for invoices on the signed contract.

#### *Budget user controls*

The budget laws for BiH State, both entities and Brčko District require budget users to set up control systems, but their approaches differ. At state level, the Law on Financing of the Institutions of BiH requires the budget user to appoint at least one finance officer responsible for management systems and accounting control<sup>29</sup>. FBiH, RS and Brčko District place responsibility on the budget user or budget beneficiary to set up internal control systems (article 62 of the FBiH law, article 69 of the RS law and article 43 of the Brčko District law).

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<sup>29</sup> Law on Financing of the Institutions of BiH, article 4.

FBiH and Brčko District also require budget users to apply international internal control standards, although those standards are not defined.

Across the BiH State and entities, budget users are responsible for ensuring transactions are legal and properly authorised before entering them into the treasury system. Even in cases where budget users do not have direct access to the treasury system, they have this responsibility. In these cases, Treasury staff are responsible for accurately inputting information rather than checking it has been properly authorised. At budget user level, the double signature and segregation of duties principles are implemented and supported by treasury systems. The signature requirements are, however, excessive: payments procedures need several authorisation levels (including from the minister) regardless of the amount. This results in a lack of accountability and control, with an absence of specific *ex post* control procedures within the administration.

In Brčko District, a single individual prepares financial documentation and then conducts the first level check on it. The second control is performed by the manager of the institution, whereupon the payment request is forwarded to the treasury department control office. Thus, while the principles of double signature are in place, segregation of duties is not.

None of the systems records forecasts of likely outturns, which would show whether the likely outturn figures are on target to remain within the budget allocations or whether they are deviating from budget. This emphasises the day-to-day cash control nature of budget management as opposed to planning in advance. BiH has introduced a requirement that the head of the budget user sign a statement of responsibility at year's end to confirm completion of the relevant work plan<sup>30</sup>. This requirement affects the 2012 budget year. Signed statements were not available at the time of assessment. This specific initiative is not replicated in the entities, which do, however, produce annual reports.

Evidence of the actual application and effectiveness of controls within budget users is limited and IA does not provide the required assurance. The MoF of RS does have a budget control unit that performs inspection – and thus provides further *ex post* control – but the differences between IA, internal control and inspection are not yet fully understood and formulated.

**FMC focuses on “control” (with the budget as the target) rather than “financial management”. While the legislative frameworks feature broad descriptions of managerial accountability, they contain neither a clear definition of the operational targets each manager must achieve nor do they feature flexibility in the use of resources to achieve those targets.**

**BiH State and the two entities use treasury systems for cash control, thus exercising budgetary control subject to certain commitment issues. Access to and the functionality of these systems are being extended, but they continue to diverge.**

**The BMIS system is still at an early stage, but if it eventually requires budget users to link targets to funding requests it will fulfil a basic requirement of financial management. Although this information does not guarantee that managers in budget users will think about improving, or accepting responsibility for, it is a prerequisite for eventually establishing this type of management culture.**

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<sup>30</sup> Law on Financing of Institutions, article 22a.

### 2.3. Existence of functionally independent IA function

*Functionally independent IA arrangements with relevant functions, remit and scope are operational and functional.*

IA is the most advanced element of PIFC and ahead of FMC in its development. It is supported by a methodology to international standards featuring a code of ethics, IA charter and IA manual. However, this applies to the State and the entities only; there is no IA function in Brčko District where there is only external audit carried out by the Audit Institution.

#### *Subsidiary legislation*

Codes of ethics, IA charters and audit manuals were drafted in co-ordination with the TA project supporting the three CHUs. They were agreed by the CB and approved in BiH State and the two entities. The CB, however, still has not approved the training and certification scheme for internal auditors as the board has not met for over a year. In addition to implementing the technical changes, BiH State and the entities require rulebooks on criteria for creating IA units and salary coefficients. These rulebooks have only been approved for BiH State, together with related amendments to the IA law. Even in this case, however, resource constraints are delaying implementation.

**Table 1. Internal audit resourcing**

	BiH State *		FBiH ** (incl. cantons)		RS ***		Brčko District	
	2012	2013	2012	2013	2012	2013	2012	2013
Current actual units	6	5	33	33	18	22	0	0
Current actual staffing	10	12	63	63	25	36	0	0
Planned/approved systematisation units	N/A	17	40	40	N/A	73	0	0
Planned/approved systematisation staffing	N/A	40/50	70	70	Not defined	Not defined	0	0

\* Source: Bosnia and Herzegovina State Central Harmonisation Unit

\*\* Source: Federation of Bosnia and Herzegovina Central Harmonisation Unit

\*\*\* Source: Republika Srpska Central Harmonisation Unit

The number of IA staff in BiH State and in RS has grown slightly. In FBiH there has been no change. In all three, the actual number of units and staff are below the systematisation level.<sup>31</sup> Even in the ministries of finance, individual IA units are below the staffing levels expected in the systematisation. For instance, BiH State MoF has filled four posts, compared to a current systematisation of 10 posts, while RS MoF has filled only three IA posts. Looking across BiH State and the entities, several reasons explain the limited staff:

- Financial constraints prohibiting external recruitment;
- A lack of staff with the education to qualify as certified auditors;
- Concerns about the competitiveness of salary coefficients for internal auditors, which limit the ability to recruit and retain staff.

Given the inability to recruit at current systematisation levels, reaching the proposed staffing levels for qualified auditors will be difficult in the foreseeable future.

<sup>31</sup> FBiH is close to the agreed systematisation levels of 70 staff and 40 units but these are well below the systematisation numbers of 488 staff in 123 units originally planned by 2013.

A number of IA units will continue to operate for the time being with just one internal auditor. While the approved methodology envisages various layers of IA supervision and management, this would be impossible in such small units. Furthermore, a single internal auditor is unlikely to have a senior grade, accentuating the above-mentioned issue of influence. So support for such staff is a key issue.

#### *IA independence*

IA legislation, the framework IA Charter and the organisational structure should all provide sufficient independence for IA to operate effectively. However, some IA plans were changed during the year at the request of senior management; there was also a variable degree of follow-up on recommendations. In the RS MoF, the head of the central IA unit also heads the budget control unit (a sub-unit with an inspectorate function). This is another anomaly – IA staff and inspectors should have fundamentally different relationships with management. Combining the two roles runs the risk of compromising the independence of IA.

#### *Standards and methodology*

Documents supporting the PIFC methodology have been based either on the standards set by the Institute of Internal Auditors or on established practice in other countries. However, IA staff still need to become more familiar with the methodology. The former TA project held several training sessions until May 2012, but not all current IA staff were able to take part in the “hands-on” pilot audits, which focused on the planning and reporting aspects of the new methodology. Audit findings still tend to be compliance-based rather than system-based. This trend emphasises the need for further pilot audits embracing the new methodology as a whole – not only to train new internal auditors, but also to retrain all internal auditors. As no PIFC project training has taken place since May 2012, locally available alternative training has sometimes been evaluated (e.g. by the RS CHU and BiH MoF IA), but cost has prevented this from being used.

As a result, IA activity still varies in terms of both the methodology used and its effectiveness. Yet these two issues are not necessarily related. Assessing the main stages of IA work comprises:

- **Planning:** Some units (e.g. the IA unit in the FBiH MoF) have both strategic and annual operational plans, both based on risk assessments. In FBiH and RS this planning is hampered by a lack of guidance as to which organisations need their own IA units rather than relying on the central MoF unit.
- **Execution:** Most findings are related to compliance, i.e. whether rulebook requirements have been met. However, in some instances IA work has led to system improvements. For example, the IA Unit at the BiH MoF undertook a systems-based review of the budget planning systems covering all the budget users with which it dealt.
- **Reporting:** The key issue here is whether IA work leads to concrete action. For instance, the BiH MoF estimates that around 80% of recommendations have been implemented within the required six-month period, although the relative importance of the recommendations not implemented is not known.

#### *Liaison between IA and supreme audit institutions and inspectorates*

The IA charter sets the framework for co-operation between internal auditors and external auditors of the supreme audit institutions (SAIs). At budget user level, IA and external audit tend to meet at least once annually and read each other’s reports. Their level of co-operation varies beyond that point. While the BiH State CHU and SAI met formally in 2012, no such meetings occurred in FBiH or RS, although in the case of FBiH the CHU regularly consults the SAI.

**The origins of IA date back to 2004 but it still requires substantial development. In the last year some progress has been made on technical issues, such as approving the systematisation of IA in BiH. However, further delays have occurred elsewhere and very limited training has been provided since the end of the TA project. Moreover, the number of actual staff is growing only slowly. While there are pockets of initiative and good practice (beyond just dealing with compliance issues), the real benefits that accrue from effective IA cannot be achieved without effective FMC.**

## 2.4. Irregularities and recovery of funds

*Systems are in place to prevent and act on mistakes and irregularities and recover amounts lost as a result of irregularity or negligence.*

BiH adopted an anti-corruption strategy in 2009<sup>32</sup>. In RS and FBiH, draft FMC legislation tasks the MoF with setting up a body to deal with fraud and irregularity. One of the responsibilities of IA is to report suspected cases to the head of the budget user. In turn, the head should report the matter to the prosecutor, who should take the case further and deal with issues of recovery.

In RS, the MoF is responsible for establishing regulations on the proper management of fraud and corruption cases. Direct action to prevent and detect irregularities and fraud in budget users is limited to the financial inspection unit of the RS MoF. This is part of the Ministry's above-mentioned budget control unit, which exerts some control over fraud and corruption factors.

A proposed amendment to the FBiH Law on Budgets will introduce budget inspection at each level of FBiH. The FBiH MoF has concerns about the effectiveness of IA and the SAI due to their limited impact, resources and coverage (not all organisations are subject to external audit each year). The MoF position is that a budget inspection unit, with the power to impose sanctions and to require a return of public funds, would ensure better management of public funds. Budget inspection units exist in countries within the region as well as within the European Community.

In Brčko District, the control office carries out *ex ante* control before any payment is made by the Treasury. If it finds irregularities, it returns the request to the budget user with requirements to remove them and provide the necessary information for payment approval. Further, the public defender must provide a separate opinion on all transactions over KM15 000. If irregularities are discovered *ex post*, the finance department has the right to request that funds be returned. This right is recognised and included in all contracts signed with suppliers.

**Legislation for dealing with irregularities is in place but the degree to which this is implemented is not clear. The above-mentioned weaknesses in IA are a concern as regards the effectiveness of dealing with financial irregularities. The proposed introduction of a budget inspectorate in FBiH is a direct result of weaknesses in IA.**

## 2.5. CHUs

*Adequately resourced and competent central harmonisation arrangements for FMC and IA are operational and functional.*

*CHUs*

No CHU function exists in Brčko District, where there is no legal basis for its establishment, but CHUs have been established in BiH State and the entities. All the CHUs cover FMC and IA, and their heads have the appropriate seniority within the MoFs. The CHUs have primarily worked in IA and less focus on FMC, apart from draft legislation and some awareness raising in early 2012. Preparation of a manual on managerial accountability, which already had been deferred to late 2012, still has not been completed.

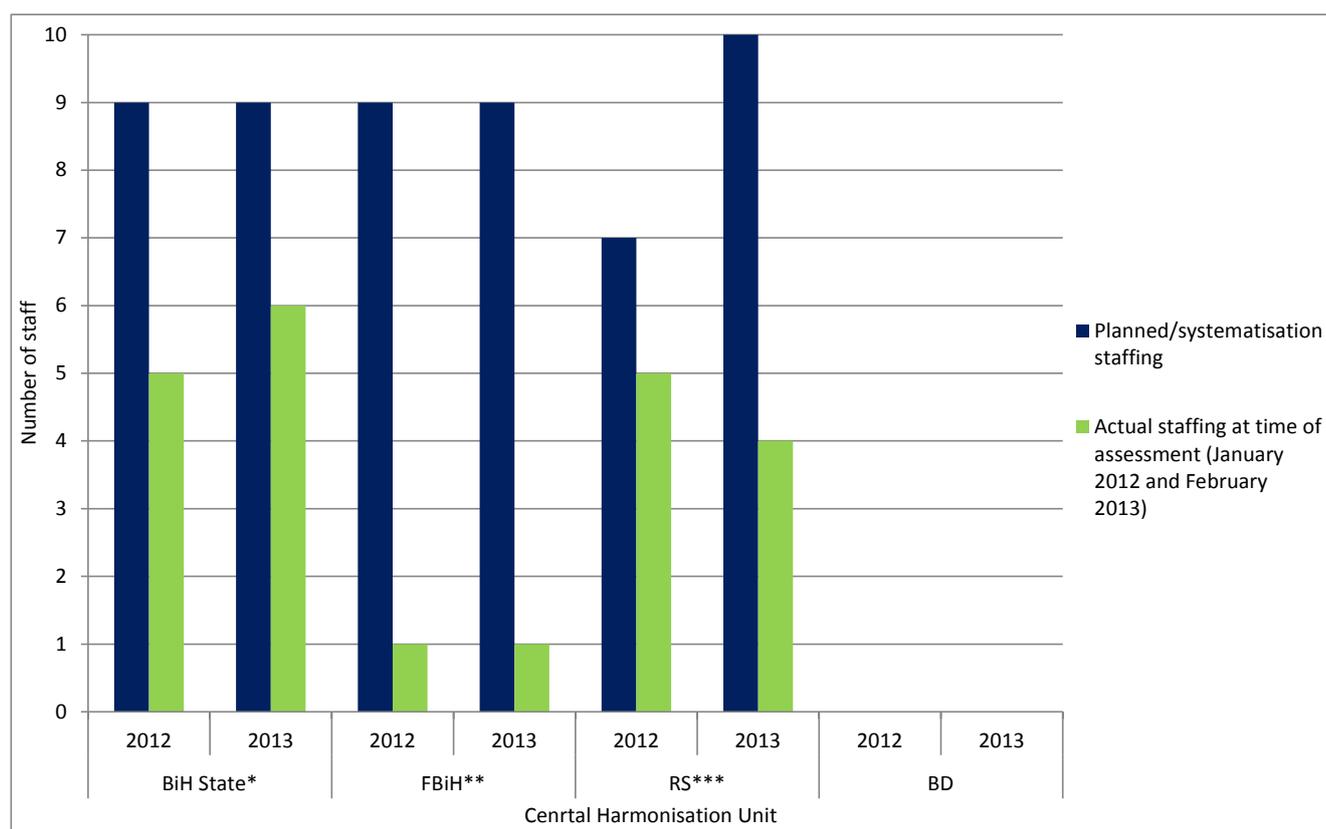
*CHU resourcing*

Below in Figure 3 are the planned and actual staffing levels of all the CHUs:

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<sup>32</sup> 2009-2014 Strategy for the Fight Against Corruption.

Figure 3. CHU Resourcing



\* Source: Bosnia and Herzegovina State Central Harmonisation Unit

\*\* Source: Federation of Bosnia and Herzegovina Central Harmonisation Unit

\*\*\* Source: Republika Srpska Central Harmonisation Unit

Each of the CHUs is well below the planned staffing level, but the position in FBiH in particular remains critical with only the Head of Unit having been appointed. While attempts were made to appoint two additional civil service staff members, their current managers refused to release them for transfer to the CHU. Despite this obstacle, the CHU has drawn up a rulebook for systematising IA across the Federation, the cantons and municipalities. This rulebook has not been approved yet. The RS CHU has one staff member in charge of information and communications, who has been gathering information in anticipation of an FMC roll-out, and an unstaffed training unit. Overall, the lack of progress on resources for CHUs sends a negative message about the perceived importance of PIFC to the BiH State and entities.

#### *CHU planning*

As indicated, the PAR 2011 revised action plan deals only with PIFC at a high level and leaves the detailed planning to the BiH State and entities. Three harmonised PIFC policy papers were adopted, in 2009 by BiH State and in 2010 by the two Entities. The individual CHUs have their own strategies for PIFC development, including an outline work programme. The strategies cover different periods: BiH State expects almost everything required for IA and FMC to be in place by the end of 2012, while the entities extend the plans to 2015 and beyond. Moreover, the plans tackle similar tasks at different times, which is improbable given the key role of the PIFC TA project that intends to work with all three CHUs at the same time. The key issue is that the CHUs have not updated these plans to show what has been achieved and what can be expected in the future based on experience. Some progress was made earlier in 2012 with the support of the PIFC TA project, but not since then.

*CHU CB*

The CHU CB was created by IA legislation to harmonise draft legislation and methodology. Each CHU head is a member of the CB, with rotating leadership and shared costs. Its role is to harmonise PIFC policies, procedures and activities and also to approve some key documents such as training and certification for IA staff. However, due to procedural disputes over leadership, minutes and budgets, monthly meetings ceased in November 2011 and have not resumed. A recent attempt to call a meeting in February 2013 failed. A framework programme for qualifications and ongoing IA staff training, developed by the PIFC TA project that ended in May 2012, has not yet been finalised or approved.

**Actual staffing is below the planned allocation of staff for each of the CHUs, particularly so in FBiH. The activities of the CHUs have mainly centred on IA with FMC lagging behind. Harmonised PIFC policy papers have been adopted but not updated in recent years. The failure of the CB to meet since November 2011 is a significant impediment to progress.**