

Overall Score:

61 - Weak

Legal Framework Score:

92 - Very Strong

Actual Implementation Score:

35 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁷²Anti-Corruption Non-Governmental Organizations

1. Are anti-corruption/good governance NGOs legally protected?

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

References:

Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country.

Law on Associations and Foundations of Bosnia and Herzegovina, Official Gazette of BiH, Nos. 32/01, 42/03.

Yes: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

No: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

References:

Law on Associations and Foundations of Bosnia and Herzegovina, Official Gazette of BiH, Nos. 32/01, 42/03.

Yes: A YES score is earned if anti-corruption/good governance NGOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

No: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

This law contains no such requirement.

References:

Law on Associations and Foundations of Bosnia and Herzegovina, Official Gazette of BiH, Nos. 32/01, 42/03.

Yes: A YES score is earned if anti-corruption/good governance NGOs are required to publicly disclose their sources of funding.

No: A NO score is earned if no such public disclosure requirement exists.

2. Are anti-corruption/good governance NGOs able to operate freely?

58

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

As stated in the U.S. Department of State's 2010 Human Rights Report: Bosnia and Herzegovina, "The law allows NGOs to register freely, but some NGOs and NGO associations experienced difficulties registering, including long delays and inconsistent application of the law. Some NGOs, frustrated by delays at the state level, chose instead to register their organizations at the entity level."

References:

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

European Commission's Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: NGOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: NGOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, NGOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | **25** | 0

Comments:

Civil society organizations are still mostly excluded from the policymaking process. Their participation in decision-making processes at the state level is still sporadic, unsatisfactory and ad hoc.

References:

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.

<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Non-governmental organizations focused on anti-corruption or good governance are an essential component of the political process. NGOs provide widely valued insights and have political power. Those NGOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

References:

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

Yes: A YES score is earned if there were no NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

No: A NO score is earned if any NGO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

References:

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

Yes: A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

No: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

References:

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

Yes: A YES score is earned if there were no documented cases of NGO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

References:

010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

Yes: A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

04a. In law, citizens have a right to organize into trade unions.

Yes | No

References:

Annex VI to the General Framework Agreement for Peace in Bosnia Herzegovina.

Law on Associations and Foundations, Official Gazette of BiH, Nos. 32/01, 42/03.

Yes: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

No: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

As stated in the U.S. Department of State's 2010 Human Rights Report: Bosnia and Herzegovina, "The law allows workers in both entities (including migrant workers, but excluding members of the military) to form and join independent unions without previous authorization or excessive requirements, and workers did so in practice. However, a cumbersome state-level government NGO registration system was a problem. For example, the International Labor Organization has criticized the government for not allowing the Trade Union of Bosnia and Herzegovina, representing approximately 260,000 workers primarily from federation government-owned enterprises, to register as a union at the state level since 2002. Lack of formal recognition blocked the union from engaging in social dialogue on problems pertaining to state-level competencies with partners."

References:

2010 Human Rights Report: Bosnia and Herzegovina

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor

April 8, 2011.

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes

No

References:

Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country.

BiH Law on Communications, Official Gazette BiH No. 33/02.

Yes: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

05b. In law, freedom of speech is guaranteed.

Yes | No

References:

Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country.

Yes: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

69

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

There are no formal or practical barriers. Some delays can occur during the registration process. The number of active print outlets, according to the Media Sustainability Index: 11 daily newspapers, 86 periodicals (weekly and monthly newspapers, periodical magazines).

References:

Media Sustainability Index: Bosnia and Herzegovina – 2011, IREX.
http://www.irex.org/sites/default/files/EE_MSI_2011_Bosnia.pdf

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes

No

Comments:

The Communications Regulatory Agency is authorized to license broadcasters and telecommunications operators pursuant to the provisions of the Law on Communications, and monitor their compliance with license conditions. In deciding upon appeals against decisions of the director general, the Council of the Agency shall act pursuant to the Law on Administrative Procedures of Bosnia and Herzegovina, and shall make a full review of the appealed decision. Appeals against the decisions of the director general shall not suspend the effectiveness thereof. Decisions of the Council of the Agency shall be final and binding in the administrative procedure. Legal review of the decision can be initiated before the State Court of Bosnia and Herzegovina.

References:

Law on Communications, Official Gazette BiH No. 33/02.

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

No: A NO score is earned if there is no appeal process for print media licenses.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100

75

50

25

0

Comments:

There are no formal or practical barriers. Some delays can occur during the registration process.

The number of active print outlets, according to the Media Sustainability Index: 11 daily newspapers, 86 periodicals (weekly and monthly newspapers, periodical magazines).

References:

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Media Sustainability Index: Bosnia and Herzegovina – 2011, IREX.
http://www.irex.org/sites/default/files/EE_MSI_2011_Bosnia.pdf

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

With regard to print, there is no law that directly regulates its operation. Newspapers are registered at the cantonal and entity level.

According to the World Bank Group's Doing Business 2012 report, the costs of starting a business in Bosnia-Herzegovina are 17 percent of income per capita, whereas Central and Eastern Europe's average is 8.3 percent.

References:

Media Sustainability Index: Bosnia and Herzegovina – 2011, IREX.
http://www.irex.org/sites/default/files/EE_MSI_2011_Bosnia.pdf

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

69

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | **75** | 50 | 25 | 0

Comments:

Forming a broadcast media entity can be slowed by government delays and sometimes arbitrary and unexpected additional requests during the process.

References:

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Media Sustainability Index: Bosnia and Herzegovina – 2011, IREX.
http://www.irex.org/sites/default/files/EE_MSI_2011_Bosnia.pdf

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

References:

Law on Communications, Official Gazette BiH, No. 33/02.

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

No: A NO score is earned if there is no appeal process for broadcast media licenses.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

Comments:

The Law on Communications establishes the Communications Regulatory Agency (CRA) as a functionally independent, non-profit agency regulating the radio and television (RTV) sector, public telecommunication networks and licensing, and defines basic conditions of operation of joint and international communications structures. CRA is responsible for planning, coordination, allocation and assignment of the spectrum of radio frequencies. The licensing of RTV broadcasters takes place in a mostly competitive procedure but sometimes the procedure lasts more than two months.

References:

Media Sustainability Index: Bosnia and Herzegovina – 2011, IREX.
http://www.irex.org/sites/default/files/EE_MSI_2011_Bosnia.pdf

2010 Human Rights Report: Bosnia and Herzegovina
 U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
 April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

References:

2010 Human Rights Report: Bosnia and Herzegovina
 U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
 April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

As stated in the U.S. Department of State 2010 Human Rights Report: Bosnia and Herzegovina, "There were no government restrictions on access to the Internet or reports that the government monitored email or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by email. According to International Telecommunication Union statistics for the year, approximately 38 percent of the country's inhabitants used the Internet."

References:

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

50

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

References:

Annex VI to the General Framework Agreement for Peace in BiH.

Law on Protection from Defamation.

Yes: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

No: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

Comments:

As stated in the Nations in Transit 2011: Bosnia and Herzegovina report by Freedom House, “Media remained vulnerable to political influence and attack, alarming international observers. In April, the High Representative and EU Special Representative, Valentin Inzko, publicly warned officials that it was essential for the media ‘to report freely, accurately, and fairly from all parts of the country.’ Likewise, both the OSCE Representative on Freedom of the Media and the European Parliament repeatedly expressed concern over the media climate in BiH. The OSCE Representative on Freedom of the Media, Dunja Mijatović, said that media were increasingly under political attack. She added that “mutual accusations” among the various press outlets in the entities exacerbated the polarization of Bosnian society.”

References:

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

Comments:

As stated in the U.S. Department of State’s 2010 Human Rights Report: Bosnia and Herzegovina, “Political pressures on state-level media institutions continued. Political pressures on the CRA continued, with politicians often alleging a lack of impartiality. Public broadcasters remained vulnerable to political influence as well. Bosnia-Herzegovina Radio Television tried to maintain a neutral editorial policy, but its influence remained limited. Two public broadcasters, Federation Television (FTV) and Radio Television of Republika Srpska (RTRS), remained the largest television broadcasters in the country. RTRS reported predominantly pro-Republika Srpska ruling party views, while there were complaints that FTV continued supporting certain opposition parties.”

References:

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

60

10a. In law, print media companies are required to publicly disclose their ownership.

Yes | No

References:

Framework law on Single Business Registration in Bosnia and Herzegovina, Official Gazette of BiH, No. 42/04.

Law on Enterprises, Official Gazette of Republic Srpska, Nos. 24/98, 62/02, 66/02, 38/03, 97/04.

Law on Registration of Business Entities, Official Gazette of Republic Srpska, No. 42/05

Law on Business Companies, Official Gazette of Federation BiH, No. 23/99, Amendments Nos. 45/00, 2/02, 6/02, 29/03

Yes: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes | No

References:

Framework law on Single Business Registration in Bosnia and Herzegovina, Official Gazette of BiH, No. 42/04.

Law on Enterprises, Official Gazette of Republic Srpska, Nos. 24/98, 62/02, 66/02, 38/03, 97/04.

Law on Registration of Business Entities, Official Gazette of Republic Srpska, No.42/05

Law on Business Companies, Official Gazette of Federation BiH, No. 23/99, Amendments 45/00, 2/02, 6/02, 29/03

Yes: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

As stated in the U.S. Department of State's 2010 Human Rights Report: Bosnia and Herzegovina, "The majority of Republika Srpska media showed a distinct bias in favor of the Republika Srpska government. On July 2, the Republika Srpska government, for the second consecutive year, decided to give five million convertible marks (\$3.4 million) to Republika Srpska-based media, stating that the assistance would be distributed to projects 'of general social interest' that 'improve access to information.' Despite an official 90-day application submission deadline, the Republika Srpska government allocated funds to 14 selected media outlets well before that deadline. Media watchdog organizations and opposition groups described the program as a subsidy to organizations sympathetic to the ruling Republika Srpska party preceding the country's general elections during the year. There were also complaints that federation media outlets exhibited political bias demonstrating support for certain political parties or business interests."

References:

Media Sustainability Index: Bosnia and Herzegovina – 2011, IREX.

http://www.irex.org/sites/default/files/EE_MSI_2011_Bosnia.pdf

2010 Human Rights Report: Bosnia and Herzegovina

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor

April 8, 2011.

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to "sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

As stated in the U.S. Department of State's 2010 Human Rights Report: Bosnia and Herzegovina, "The majority of Republika Srpska media showed a distinct bias in favor of the Republika Srpska government. On July 2, the Republika Srpska government, for the second consecutive year, decided to give five million convertible marks (\$3.4 million) to Republika Srpska-based media, stating that the assistance would be distributed to projects 'of general social interest' that 'improve access to information.' Despite an official 90-day application submission deadline, the Republika Srpska government allocated funds to 14 selected media outlets well before that deadline. Media watchdog organizations and opposition groups described the program as a subsidy to organizations sympathetic to the ruling Republika Srpska party preceding the country's general elections during the year. There were also complaints that federation media outlets exhibited political bias demonstrating support for certain political parties or business interests."

References:

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Media Sustainability Index: Bosnia and Herzegovina – 2011, IREX.
http://www.irex.org/sites/default/files/EE_MSI_2011_Bosnia.pdf

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

As stated in the General Elections 2010 Interim Report No. 2 report by OSCE/ODIHR Election Observation Mission Bosnia and Herzegovina, "Generally, OSCE/ODIHR EOM interlocutors have criticized media's biased approach in covering the election campaign. The OSCE/ODIHR EOM has noted that some candidates in official positions receive preferential media treatment."

References:

OSCE Office for Democratic Institutions and Human Rights Election Observation Mission General Elections Bosnia and Herzegovina, 2010: Interim Report No. 2 14-20 September 2010
Sept. 24, 2010.
<http://www.osce.org/odihr/elections/71402>

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

67

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes

No

Comments:

"Damir Kaletovic, a journalist with the popular FTV program '60 Minutes,' was charged with illegal taping and secret listening after broadcasting a threat made by Vitomir Popovic, the country's human rights ombudsman, against him and FTV news director Bakir Hadziomerovic. The threats were allegedly made after FTV criticized Popovic's reelection as ombudsman, accusing him of corruption and involvement in war crimes. Popovic was recorded as saying that Kaletovic and Hadziomerovic each 'deserved a bullet to the head' for broadcasting the story. On September 20, following numerous requests from Kaletovic, the Banja Luka district prosecutor opened an investigation into the threats allegedly made by Popovic."

— 2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011

References:

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Yes: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

No: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes | **No**

Comments:

During the year, the Free Media Help Line (a part of the Bosnia and Herzegovina Journalists Association) registered 43 cases involving violations of journalists' rights and freedoms or pressure from government and law enforcement officials. During the year, there were nine cases of pressure on and threats to journalists that included one death threat and five physical attacks. Other cases involved assault threats and denial of access to information.

References:

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

Yes: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

No: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes | No

References:

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

2010 Human Rights Report: Bosnia and Herzegovina
U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

Yes: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

No: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

73 1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

12a. In law, citizens have a right to request government information and basic government records.

Yes

No

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH, No. 28/00.

Yes: A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

No: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes

No

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH, No. 28/00.

Law on Administrative Procedure of BiH, Official Gazette of BiH, No. 29/02, 12/04.

Yes: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

No: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes | No

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH, No. 28/00.

Law on Administrative Procedure of BiH, Official Gazette of BiH, Nos. 29/02, 12/04.

Yes: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

No: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right to information requests effective?

38

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Practice shows that the implementation of the Law on Free Access to Information is still unsatisfactory. Additionally, the provisions of the law referring to exemptions to the law are still causing significant problems, since this category is most commonly abused and still allows nontransparent behavior on the part of senior governmental bodies.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2010.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Pursuant to the law, when the information is more than 10 pages, previous payment of costs (0.50 BAM per page) of duplication is necessary.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2010.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | **50** | 25 | 0

Comments:

The law is applied selectively and mostly in cases in which relatively harmless information is concerned. Meanwhile, major investment and privatization projects are still carried out without information being available for scrutiny by the public and civil society. A large number of public bodies, such as educational and health care institutions, still do not recognize themselves as being subject to this law. The application of the law in these institutions is minimal or nonexistent. As far as other bodies are concerned, the law is either observed entirely or most of the time, including deadlines and procedures, or else not observed at all (administrative silence).

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2010.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Considering the tardiness and political pressures exerted on judiciary bodies, the huge amount of backlogged cases and the undemocratic climate in the country, especially in RS, it is not surprising that the number of charges filed by citizens and NGOs with relevant judicial bodies when public bodies fail to act in accordance with the Freedom of Information Law lies in single digits. This is further aggravated by the legislation in RS, where public bodies who deny access to information notify the applicants with an official letter instead of the decision, as is the case with other Freedom of Information laws. An official letter is not considered an administrative act upon which a complaint can be filed with competent authorities.

Furthermore, an amendment that the RS government made to the Freedom of Information Law by virtue of its own decision, in contravention of the law and avoiding the parliamentary procedure, which makes the minutes of governmental meetings exempt from the law, is still in effect in RS.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2010.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Judicial protection of this right requires lawyer engagement, which very often is not an affordable option for middle-class citizens.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2010.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

A particular problem is the access to information regarding the privatization process, development banks, financing of political parties, public procurement, public companies' operations, and financial aspects of state institutions' functioning. Most often it is practically impossible to get appropriate information or a reason for a request being denied.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2010.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category 2. Elections

2.1. ⁷⁵Voting and Party Formation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes

No

References:

Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country.

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No.25/02.

Yes: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

No: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes | No

References:

Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country.

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No. 25/02.

Yes: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

No: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

83

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

"Despite some reports of electoral fraud, international observers judged the October general elections as free and fair. However, BiH's electoral rules continued to violate Protocol 12 of the European Convention of Human Rights. The European Court of Human Rights ruled in December 2009 that ethnicity-based limitations on political representation and suffrage in BiH violate the convention, but authorities have not addressed the problem."

— Nations in Transit 2011: Bosnia and Herzegovina, Freedom House

References:

Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), Bosnia and Herzegovina, General Elections, 3 October 2010, OSCE/ODIHR Election Observation Mission Final Report (Warsaw: OSCE/ODIHR, 17 December 2010): 17.

<http://www.osce.org/odihr/74612>

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House

<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

After the last election several investigations were initiated against members of local elections commission due to irregularities in the elections procedure.

References:

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.

<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), Bosnia and Herzegovina, General Elections, 3 October 2010: Statement of Preliminary Findings and Conclusions (Sarajevo: OSCE/ODIHR, 3 October 2010): 3.

<http://www.osce.org/odihr/elections/71633>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), Bosnia and Herzegovina, General Elections, 3 October 2010: Statement of Preliminary Findings and Conclusions (Sarajevo: OSCE/ODIHR, 4 October 2010): 3.

<http://www.osce.org/odihr/elections/71633>

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

90

16a. In law, all citizens have a right to form political parties.

Yes

No

References:

Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country.

Law on Political Organizations of BiH, Official Gazette of BiH, No. 27/91.

Yes: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

No: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

Yes

No

References:

Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country.

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

No: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

The last general elections took place on Oct. 3, 2010, and according to the CEC report, 32 political parties, 10 coalitions and seven independent candidates contested the general elections (excluding at cantonal level). Such a huge number of political parties for a country of 3.8 million shows that it is relatively easy to form a political party.

References:

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), Bosnia and Herzegovina, General Elections, 3 October 2010: Statement of Preliminary Findings and Conclusions (Sarajevo: OSCE/ODIHR, 4 October 2010): 3.
<http://www.osce.org/odihr/elections/71633>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

A total of 3,900 candidates contested the general elections (excluding cantonal), according to the official CEC report.

References:

Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), Bosnia and Herzegovina, General Elections, 3 October 2010: Statement of Preliminary Findings and Conclusions (Sarajevo: OSCE/ODIHR, 4 October 2010): 3.

<http://www.osce.org/odihr/elections/71633>

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House

<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

References:

Official report of the Central Election Commission – General Election 2010.

<http://izbori.ba/Finalni2010/Finalni/PredsjednistvoBiH/Default.aspx>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

2.2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes

No

Comments:

The Central Election Commission is an independent regulatory agency created to administer and enforce the statutes that govern elections, conflict of interests and financing political parties.

References:

Election Law of BiH, Official Gazette of BiH No.23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No. 25/02.

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

60

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes | No

References:

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No. 25/02.

Yes: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, appointments to the Central Election Commission (CEC) should be based on professional qualifications, but the majority of CEC members have clear party loyalties. Some of the members were highly positioned members of ruling political parties. The latest example of this bias was from the 2010 election when the PDP (oppositon political party) contested the election result for the Serb member of the presidency, citing an unrealistically high turnout with few spoiled ballots — or ballots that election officials deemed invalid for being incorrectly filled in, among other reasons — at some stations. The CEC did not annul the results, giving the explanation that it “could not affect the election outcome.”

References:

Interview with a former member of the Central Election Commission, August 2011.

Interview with journalists, August 2011.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The BiH Central Election Commission (CEC) still lacks the capacity to properly implement the Laws.

References:

Audit report of Central Election Commission 2010.

http://www.revizija.gov.ba/revizioni_izvjestaji/izvj_2010/?id=2089

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission issues regular reports, publicly available on a relatively predictable schedule. Some delays can occur.

References:

Official website of the Central Election Commission.

www.izbori.ba

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The integrity of the CIK (abbreviation for Central Election Commission in local languages – Centralna Izborna Komisija) was compromised very often by delays, a selective approach in the application of the law, and refusal to implement court decisions. This only confirmed that the CIK had been under huge political pressure.

The latest example of the biased Central Election Commission (CEC) role was from the 2010 election, when the PDP (opposition political party) contested the election result for the Serb member of the presidency, citing an unrealistically high turnout with few spoiled ballots — or ballots that election officials deem invalid for being incorrectly filled in, among other reasons — at some stations. The CEC did not annul the results, explaining that it “could not affect the election outcome.”

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

Interview with journalist, August 2011.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

92

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

References:

Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), Bosnia and Herzegovina, General Elections, 3 October 2010: Statement of Preliminary Findings and Conclusions (Sarajevo: OSCE/ODIHR, 4 October 2010): 3. <http://www.osce.org/odihr/elections/71633>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and “ghost” voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

Yes | No

References:

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No. 25/02.

Yes: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

No: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

According to the Central Election Commission, 57 complaints were lodged during the most recent election. For all of the complaints, seven appeals were lodged with the Appellate Division of the Court of BiH and all were rejected.

References:

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), Bosnia and Herzegovina, General Elections, 3 October 2010: Statement of Preliminary Findings and Conclusions (Sarajevo: OSCE/ODIHR, 4 October 2010): 3.
<http://www.osce.org/odihr/elections/71633>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), Bosnia and Herzegovina, General Elections, 3 October 2010: Statement of Preliminary Findings and Conclusions (Sarajevo: OSCE/ODIHR, 4 October 2010): 3.
<http://www.osce.org/odihr/elections/71633>

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.
<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

References:

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No. 25/02.

Yes: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

No: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

During the last elections several opposition parties made complaints that their observers were prevented from effectively monitoring elections.

References:

Nations in Transit 2011: Bosnia and Herzegovina, Freedom House.

<http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>

Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), Bosnia and Herzegovina, General Elections, 3 October 2010: Statement of Preliminary Findings and Conclusions (Sarajevo: OSCE/ODIHR, 4 October 2010): 3.

<http://www.osce.org/odihr/elections/71633>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

84
2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

100

20a. In law, there are limits on individual donations to political parties.

Yes | No

References:

Law on Party Financing, Official Gazette of BiH, No. 49/00.

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | No

References:

Law on Party Financing, Official Gazette of BiH, No. 49/00.

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

Yes | No

References:

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No. 25/02 .

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | No

References:

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No. 25/02.

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

References:

Law on Party Financing, Official Gazette of BiH, No. 49/00.

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | No

References:

Law on Party Financing, Official Gazette of BiH, No. 49/00.

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are limits on individual donations to political candidates.

Yes | No

References:

Law on Party Financing, Official Gazette of BiH, No. 49/00.

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | No

References:

Law on Party Financing, Official Gazette of BiH, No. 49/00.

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | No

References:

Law on Party Financing, Official Gazette of BiH, No. 49/00.

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes

No

References:

Law on Party Financing, Official Gazette of BiH, No. 49/00.

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes

No

Comments:

The Law on Political Party Financing stipulates that the Central Election Commission of Bosnia and Herzegovina (CEC BiH), i.e. its Department for Audit of Financial Transactions, has the exclusive authority to control political party financing both during election and during the period when there is no election. Hence, CEC BiH and its Audit Department have the authority to control annual as well as pre-election and post-election reports.

The Election Law of Bosnia and Herzegovina spells out the responsibilities of the Central Election Commission of BiH as well as the responsibilities of municipal election commissions. The operation of CEC BiH is also regulated in implementing regulations such as the Rules on Conducting Procedures, the Rules on Administrative Procedures of Inspection, Control and Audit of Financial Reports of Political Parties, which are the new rules of procedure adopted after the 2008 local election, the Rules on Annual Financial Reports of Political Parties, the Rules on Pre-election and Post-election Financial Reports of Political Subjects and various types of forms which facilitate reporting in connection with political party financing.

References:

Law on Party Financing, Official Gazette of BiH, No. 49/00.

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

25

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The requirement to report any contribution of more than 100 KM leaves a large space for manipulation since the total amount of contributions can be "split" into a number of individual contributions, of which none exceeds the limit. This violates the principle of transparent financing of political parties and threatens to exercise great influence by larger donors on the work of a political party. What is even more dangerous, this situation will remain unrevealed and can be contrary to the public interest, especially in the case of the ruling parties.

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH,
Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

Comments:

The requirement to report any contribution of more than 100 KM leaves a large space for manipulation since the total amount of contributions can be “split” into a number of individual contributions, of which none exceeds the limit. This violates the principle of transparent financing of political parties and threatens to exercise great influence by larger donors on the work of a political party. What is even more dangerous, this situation will remain unrevealed and can be contrary to the public interest, especially in the case of the ruling parties.

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH,
Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party’s ability to fund campaigns or politically-related activities.

Comments:

Political parties rarely reveal all campaign costs in their reports, which was also noted in the audit reports. Hence it is reasonable to assume that the allowable limit is exceeded more often than it is admitted in the reports, especially given the fact that election campaigns and advertising in the media are becoming ever more expensive, with the price of one second of advertising steadily increasing every year (e.g., one second of advertising on national TV broadcasters in BiH costs more than 100 KM). In addition, during election campaigns the media are simply too saturated with political parties’ promotional messages.

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH,
Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

The very issue of investigating political party finances by the Central Election Commission (CEC) is not legally and institutionally solved in a quality way. Competency of the staff in the CEC Audit Department is questionable, as is its integrity, and there is no institutionalized cooperation with SAIs (State Audit Institutions – there are 4 of them, one at state level and two at entities level and one at level of district Brčko), which are far more experienced and better equipped for this job and who state that most illegal transfers to political parties remain undetected. Careful scrutiny of the contracts that governments enter into with public or private companies and much stricter control of political party financing remain major challenges for BiH.

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH, Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The only situation in which a person is barred from standing for election is when a political party or an independent candidate fails to file with the Central Election Commission the pre-election financial report for the period beginning three months prior to the date of submission of the application for certification to participate in the election.

Neither the Election Law nor the Law on Political Party Financing provide for the suspension of budget appropriations to political parties for failure to comply with the financing and reporting rules.

The approach to the penalization of political parties differs from case to case. Political parties are not called to account because the problem of transparency and political party financing is viewed too narrowly, without taking into account long-term consequences. Such an approach has become standard practice in BiH, which results in violations of the law becoming a rule rather than an exception, and political parties being considered the most corrupt segment of society whose leaders are very often involved in the most corrupt financial dealings.

Even when these shady dealings are publicly disclosed, the leaders of political parties are not called to account and continue performing their function and representing their political parties without obstruction.

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH, Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

A significant shortcoming is the Central Election Commission audit department's focus on the income of political parties, which is the consequence of the legislation, as it deals significantly more with the income side than the expenditure side of the financial operation of political parties. Of course, monitoring of the revenues of political parties is very important in order to prevent illegal donations and inappropriate donor influence on the operation of political parties and their decisions.

However, given the fact that the vast majority of the income of political parties comes from the budget, it is necessary to pay more attention to the ways in which parties distribute these funds and the purposes for which they are used in order to prevent misuse and spending of funds for purposes other than those designated.

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH, Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

25

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | **25** | 0

Comments:

"During the on-site visits, it was explained to the GRECO (Group of States against Corruption) Evaluation Team that some non-governmental organizations are linked with political parties and that some of them are headed by politicians or high-ranking officials. The GET (GRECO Evaluation Team) is concerned that little information is publicly available about these organizations and that there is a risk of them serving to shoulder expenditure by the political parties or being indirectly involved in election campaigns, for example, by organizing conferences or producing materials to draw the attention of the public to the party's program and ideas or by carrying out activities, such as paid political advertisements, which are forbidden to political parties and election candidates outside the official election campaign period. Moreover, the GET has misgivings about the possible effects of Article 3 (4) LPPF (Local Planning Policy Framework), which foresees that income from the property and business activities of a political party may not exceed 20 percent of that party's annual income and that excess sums are to be donated to charitable organizations. Even though this provision is well meant, it could be used to channel money back to organizations linked to political parties or performing services for them. Such possibilities for circumventing the rules would go unsanctioned as the relevant texts do not address the possible involvement of third parties in election campaigns."

— Third Round Evaluation Report, the Council of Europe's Group of States against Corruption (GRECO) on Bosnia and Herzegovina (Strasbourg, Aug. 17, 2011)
<http://www.coe.int/t/dghl/monitoring/greco/>

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH,
Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | **25** | 0

Comments:

"During the on-site visits, it was explained to the GRECO (Group of States against Corruption) Evaluation Team that some non-governmental organizations are linked with political parties and that some of them are headed by politicians or high ranking officials. The GET (GRECO Evaluation Team) is concerned that little information is publicly available about these organizations and that there is a risk of them serving to shoulder expenditure by the political parties or being indirectly involved in election campaigns, for example, by organizing conferences or producing materials to draw the attention of the public to the party's program and ideas or by carrying out activities, such as paid political advertisements, which are forbidden to political parties and election candidates outside the official election campaign period. Moreover, the GET has misgivings about the possible effects of Article 3 (4) LPPF (Local Planning Policy Framework), which foresees that income from the property and business activities of a political party may not exceed 20 percent of that party's annual income and that excess sums are to be donated to charitable organizations. Even though this provision is well meant, it could be used to channel money back to organizations linked to political parties or performing services for them. Such possibilities for circumventing the rules would go unsanctioned as the relevant texts do not address the possible involvement of third parties in election campaigns. "

— Third Round Evaluation Report, the Council of Europe's Group of States against Corruption (GRECO) on Bosnia and Herzegovina
(Strasbourg, Aug. 17, 2011)
<http://www.coe.int/t/dghl/monitoring/greco/>

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH,
Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

Third Round Evaluation Report, the Council of Europe's Group of States against Corruption (GRECO) on Bosnia and Herzegovina.
[Strasbourg, 17/08/2011]<http://www.coe.int/t/dghl/monitoring/greco/>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

"The enforcement of the legislation on political financing is also affected by the lack of co-operation between the CEC (Central Election Commission) and law enforcement authorities. Although the LPPF (Local Planning Policy Framework) and the EL (Election Law) empower the CEC ... to request information and documents from anyone – including other state authorities – and to take the administrative measures deemed necessary for the enforcement of the provisions under its jurisdiction, they do not contain any explicit provisions requiring the CEC or its Audit Department to report to the competent authorities suspicions of criminal offenses that it may come across in the course of its supervision. In turn, these bodies are not required to provide any feedback to the CEC on cases that it might – and sometimes does – report."

— Third Round Evaluation Report, the Council of Europe's Group of States against Corruption (GRECO) on Bosnia and Herzegovina
(Strasbourg, Aug. 17, 2011)
<http://www.coe.int/t/dghl/monitoring/greco/>

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH,
Transparency International Bosnia and Herzegovina.
<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

"Lack of specificity has led the CEC (Central Election Commission) to make a very liberal interpretation of the existing law provisions when imposing sanctions on political parties and candidates. ... The GRECO (Group of States against Corruption) Evaluation Team heard in this connection allegations according to which the CEC would sometimes apply double standards and be more severe toward opposition parties. Some of the discussions held on site also revealed an additional element of difficulty stemming from the multi-ethnic character of Bosnia and Herzegovina: According to some of the GET's (GRECO Evaluation Team's) interlocutors, whenever a party was sanctioned, a concern for ethnic balance would lead the CEC to seek similar infringements committed by parties related to other ethnic groups."

— Third Round Evaluation Report, the Council of Europe's Group of States against Corruption (GRECO) on Bosnia and Herzegovina (Strasbourg, Aug. 17, 2011)
<http://www.coe.int/t/dghl/monitoring/greco/>

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH, Transparency International Bosnia and Herzegovina.
<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

Third Round Evaluation Report, the Council of Europe's Group of States against Corruption (GRECO) on Bosnia and Herzegovina. (Strasbourg, Aug. 17, 2011)
<http://www.coe.int/t/dghl/monitoring/greco/>

<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

Comments:

“The CEC’s (Central Election Commission’s) and its Audit Department’s action however is hampered by a number of factors. First, the CEC has a very wide mandate that covers not only supervision of the financing of political parties and election campaigns, but also of the provisions on conflicts of interest and the conduct of elections. The budgetary and human resources at its disposal are clearly not sufficient, however, to allow it to carry out all of its tasks in a sufficiently effective manner. In particular, its Audit Department, composed of only seven employees to certify the accounts of over 100 political parties, is severely understaffed and the low salaries induce difficulties in hiring and keeping qualified staff. As a result, the CEC’s review is mostly of a formal nature, seeking only to verify that the income and expenditure reported in the documents submitted by the political parties and candidates correspond to their books and records. The CEC does seem to possess adequate powers of investigation; it is entitled to request access to the political parties’ headquarters to conduct inspections and it may order individuals to testify or provide documentary and other evidence. However, its workload prevents it from using these powers to their full extent in order to uncover potentially sophisticated improper funding practices by the political parties and election candidates. Moreover, the lack of staff and material resources also induces an excessive slowness in the supervision process. The publication of audit reports by the CEC happens too late – sometimes up to two years after the election or the submission of parties’ annual reports relating to routine activities – to be of real significance and interest to the public and the media. Considered alongside the scant information available in the political parties’ and election candidates’ summary financial reports published earlier in the process, it is clear that the current provisions and material arrangements are insufficient to ensure transparency in this field.”

– Third Round Evaluation Report, the Council of Europe’s Group of States against Corruption (GRECO) on Bosnia and Herzegovina (Strasbourg, Aug. 17, 2011)]<http://www.coe.int/t/dghl/monitoring/greco/>

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH, Transparency International Bosnia and Herzegovina.
<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: The finances of individual candidates’ campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates’ campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates’ campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

25

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

Comments:

Political parties do not have an obligation to make their annual, pre-election and post-election financial reports publicly available, but as has been mentioned earlier, they submit them to the Central Election Commission (CEC), which reveals on its website which parties submitted reports and publishes aggregate reports for individual parties.

Thus, available on the CEC BiH website are only the data on aggregate revenues (Form 3) and they reveal only aggregate amounts: paid membership fees, donations from individuals and members, donations from legal entities, income generated by the party's property, income generated by companies owned by the party, income from the gifts or services that the party did not have to pay for, appropriations from the budget, and the total income of the party. However, the data on donors' identities, individual amounts, types of individual amounts, etc., are not available. This is regulated in the Rules on Annual Financial Reports of Political Parties, in the section dealing with public availability of data contained in the report in connection with audit and financial reports of political parties.

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH, Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Political parties do not have an obligation to make their annual, pre-election and post-election financial reports publicly available, but as has been mentioned earlier, they submit them to the Central Election Commission (CEC), which reveals on its website which parties submitted reports and publishes aggregate reports for individual parties.

Thus, available on the CEC BiH website are only the data on aggregate revenues (Form 3) and they reveal only aggregate amounts: paid membership fees, donations from individuals and members, donations from legal entities, income generated by the party's property, income generated by companies owned by the party, income from the gifts or services that the party did not have to pay for, appropriations from the budget, and the total income of the party. However, the data on donors' identities, individual amounts, types of individual amounts, etc., are not available. This is regulated in the Rules on Annual Financial Reports of Political Parties, in the section dealing with public availability of data contained in the report in connection with audit and financial reports of political parties.

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH, Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

The Central Election Commission (CEC) website only makes available the data on aggregate revenues, which reveal only aggregate amounts: paid membership fees, donations from individuals and members, donations from legal entities, income generated by the party's property, income generated by companies owned by the party, income from the gifts or services that the party did not have to pay for, appropriations from the budget, and the total income of the party. However, the data on donors' identities, individual amounts, types of individual amounts, etc., are not available. This is regulated in the Rules on Annual Financial Reports of Political Parties, in the section dealing with public availability of data contained in the report in connection with audit and financial reports of political parties.

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH,
Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | **25** | 0

Comments:

“Even though the relevant laws contain some positive elements, such as a list of permitted sources of private funding, detailed rules on in-kind donations and their valuation, more transparency and accountability are required as regards the routine expenditure of political parties, as well as of entities related, directly or indirectly, to political parties or otherwise under their control. Current publication arrangements also need to be revisited to ensure meaningful and more timely access by the public to information on the finances of political parties, notably as regards private donations above a certain threshold and the identity of donors, as well as about the results of the supervision carried out by the Central Electoral Commission.”

— Third Round Evaluation Report, the Council of Europe’s Group of States against Corruption (GRECO) on Bosnia and Herzegovina (Strasbourg, Aug. 17, 2011)
<http://www.coe.int/t/dghl/monitoring/greco/>

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH, Transparency International Bosnia and Herzegovina.
<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Publicly available records of political parties’ finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties’ finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties’ finances, when available, are so incomplete or overly general as to render them useless in understanding a party’s sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates’ campaigns?

25

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Political parties and candidates do not have an obligation to make their annual, pre-election and post-election financial reports publicly available, but submit them to Central Election Commission.

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH, Transparency International Bosnia and Herzegovina.
<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

The Central Election Commission (CEC) website offers only the data on aggregate revenues (Form 3), which reveal only aggregate amounts: paid membership fees, donations from individuals and members, donations from legal entities, income generated by the party's property, income generated by companies owned by the party, income from the gifts or services that the party did not have to pay for, appropriations from the budget, and the total income of the party. However, the data on donors' identities, individual amounts, types of individual amounts, etc., are not available. This is regulated in the Rules on Annual Financial Reports of Political Parties, in the section dealing with public availability of data contained in the report in connection with audit and financial reports of political parties.

References:

CRINIS 2010: Study of the Transparency of Political Party Financing in BiH,
Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

Comments:

The Central Election Commission (CEC) website offers only the data on aggregate revenues (Form 3), which reveal only aggregate amounts: paid membership fees, donations from individuals and members, donations from legal entities, income generated by the party's property, income generated by companies owned by the party, income from the gifts or services that the party did not have to pay for, appropriations from the budget, and the total income of the party. However, the data on donors' identities, individual amounts, types of individual amounts, etc., are not available. This is regulated in the Rules on Annual Financial Reports of Political Parties, in the section dealing with public availability of data contained in the report in connection with audit and financial reports of political parties.

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CRINIS 2010: Study of the Transparency of Political Party Financing in BiH,
Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

Comments:

The Central Election Commission website offers only the data on aggregate revenues (Form 3), which reveal only aggregate amounts: paid membership fees, donations from individuals and members, donations from legal entities, income generated by the party's property, income generated by companies owned by the party, income from the gifts or services that the party did not have to pay for, appropriations from the budget, and the total income of the party. However, the data on donors' identities, individual amounts, types of individual amounts, etc., are not available. This is regulated in the Rules on Annual Financial Reports of Political Parties, in the section dealing with public availability of data contained in the report in connection with audit and financial reports of political parties.

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CRINIS 2010: Study of the Transparency of Political Party Financing in BiH,
Transparency International Bosnia and Herzegovina.

<http://ti-bih.org/en/3798/crinis-studija-2010-istrazivanje-transparentnosti-finansiranja-politickih-stranaka-u-bih/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁵⁰Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

26. In law, can citizens sue the government for infringement of their civil rights?

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes | No

References:

Law on Civil Procedure before the Court of BiH, Official Gazette of BiH, No. 36/04.

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

No: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

27. Can the chief executive be held accountable for his/her actions?

56

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The chief executive (chair of Council of Ministers) has only formal power to influence policy decisions because of the complexity of constitutional and state structures. His power is heavily influenced by the leaders of ethnic political parties.

Also, the High Representative has supreme executive power, according to the Dayton Agreement. Formally, the chief executive often provides reasons for policy decisions through press conferences or press releases.

References:

Bertelsmann Stiftung, BTI 2010 — Bosnia and Herzegovina Country Report. Gütersloh: Bertelsmann Stiftung.

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

Comments:

According to the Law on Administrative Disputes (at the level of BiH, Entities and Brčko District), it is possible to initiate an administrative dispute against a final administrative act issued in an administrative procedure.

References:

Law on Administrative Procedure of BiH, Official Gazette of BiH, No. 19/02

Law on the Court of BiH arts. 14, 19, Official Gazette of BiH, No. 29/00.

Yes: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

Political pressures on the work of the judiciary continue to be present and also are exerted by the media appearances and statements of highly positioned government representatives. Pressures on the judiciary also can be exerted through the financing of courts, since they are financed from 14 different budgets, with capacities and financial resources being unreliable and unevenly distributed. An additional problem of the BiH judiciary is the huge number of backlogged cases. According to the official high judicial and prosecutor office report for 2010, the courts in BiH have a total of 12,687 unresolved administrative disputes.

On the other hand, there is an acute problem of noncompliance with court decisions issued in administrative disputes. It is common for administration bodies to fail to act on court decisions or refuse to accept them, even though the law provides that court decisions are binding for the relevant administration bodies.

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2010.
<http://www.hjpc.ba/intro/gjzvjestaj/pdf/VSTVBiHGI2010web.pdf>

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Comments:

The chief executive (chair of Council of Ministers) has a very limited role and, according to the constitution, cannot issue executive orders. Real power lies with the leaders of political parties.

References:

Bertelsmann Stiftung, BTI 2010 – Bosnia and Herzegovina Country Report. Gütersloh.
<http://www.bertelsmann-transformation-index.de/177.0.html?L=1>

European Commission Bosnia and Herzegovina 2010 Progress Report,
 Nov. 9, 2010, Brussels.
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

References:

Law on Immunity of BiH, Official Gazette of BiH, No. 32/02.

Yes: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

References:

Law on Immunity of BiH, Official Gazette of BiH, No. 32/02.

Yes: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

No: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

41

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

References:

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No. 25/02.

Yes: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

References:

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No. 25/02.

Yes: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

References:

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH, Nos. 16/02, 12/04.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

Yes | No

Comments:

There are no such legal or regulatory requirements.

References:

There are no such legal or regulatory requirements, based on desk research and an interview (interviewee insist to remain

anonymous – conducted in September/October 2011).

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | **No**

Comments:

There are no such legal or regulatory restrictions.

References:

There are no such legal or regulatory restrictions, according to desk research.

Yes: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no such legal or regulatory restrictions.

References:

Response is based on desk research and interview as well.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | **25** | 0

Comments:

Prevalent cases of conflict of interest continue to pose a problem regarding the integrity of public officials. Asymmetric legal solutions on state and entity levels, as well as different institutions that implement these laws, lead to different applications of the laws and overlapping jurisdictions.

An additional blow to the sanctioning of conflicts of interest is the inefficiency of the Central Election Commission and the Republika Srpska Commission for determining conflict of interest, which is obviously highly exposed to political pressures by the governing structures and which exists only formally, while doing nothing regarding the eradication of conflict of interest among public officials.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

2010 Human Rights Report: Bosnia and Herzegovina

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor

April 8, 2011.

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

Comments:

The accuracy of asset declarations remains in question since none of the existing institutions is authorized to verify or audit them.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

25

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | No

References:

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No. 25/02.

Yes: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

"Transparency International BiH (TI BiH) strongly condemns the decision of the Agency for the Protection of Personal Data in BiH, which prohibits public disclosure of information about the property status of elected and appointed officials, regarding it as a totally unacceptable, as a way to directly threaten the public interest. Given the fact that, according to the positive legal regulations, the content of the assets declarations was not a subject to inspection state institutions, the decision to ban the publication of the assets declarations would be virtually impossible for the public, media and NGOs to continue the practice of monitoring the veracity of the assets declarations. In this way, the purpose of existence of such institutions of assets declarations would be completely stultified.

"Such a move should be viewed in a wider context, as continuous attempts to undermine the existing legal solutions that promote the principles of accountability and transparency in the functioning of public institutions.

"TI BiH invites all relevant institutions, in particular the Central Election Commission and the Parliamentary Assembly, to take appropriate measures to ensure the protection of public interest, which is threatened by this decision. For its part, TI BiH will continue to monitor the further proceedings of relevant institutions and accordingly take all available measures to ensure the protection of institution disclosure of assets declarations as generally accepted in democratic countries and as very important to control and promote the principle of accountability of public officials."

— Press release of Transparency International Bosnia and Herzegovina: Unacceptable secrecy of assets declarations, July 2011, Sarajevo

References:

Press release of Transparency International Bosnia and Herzegovina: Unacceptable secrecy of assets declarations, July 2011, Sarajevo.

<http://ti-bih.org/en/4287/neprihvatljiva-tajnost-imovinskih-kartona/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The decision of the Agency for the Protection of Personal Data in BiH from July 2011 prohibits public disclosure of information about the property status of elected and appointed officials.

References:

Press release of Transparency International Bosnia and Herzegovina: Unacceptable secrecy of assets declarations, July 2011, Sarajevo.

<http://ti-bih.org/en/4287/neprihvatljiva-tajnost-imovinskih-kartona/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The decision of the Agency for the Protection of Personal Data in BiH from July 2011 prohibits public disclosure of information about the property status of elected and appointed officials.

References:

Press release of Transparency International Bosnia and Herzegovina: Unacceptable secrecy of assets declarations, July 2011, Sarajevo.

<http://ti-bih.org/en/4287/neprihvatljiva-tajnost-imovinskih-kartona/>

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Government institutions are under efficient control of political parties. Pre-election campaigns are financed directly from the state budget and the budgets of public companies.

References:

Third Round Evaluation Report, the Council of Europe's Group of States Against Corruption (GRECO) on Bosnia and Herzegovina.

(Strasbourg, Aug. 17, 2011)

<http://www.coe.int/t/dghl/monitoring/greco/>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

50

32a. In law, the judiciary can review laws passed by the legislature.

Yes | No

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country.

Yes: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | **50** | 25 | 0

Comments:

It is possible, under certain conditions, to initiate a procedure before the Constitutional Court of BiH or the Constitutional Courts of the Entities to determine whether a general act passed by the legislature (i.e. law) is consistent with the Constitution of BiH or the Constitutions of the Entities. The Constitutional Courts have the power to declare a law, a part of a law or an article of a law unconstitutional. In this case, the parliaments have the obligation to pass, acting on instruction from the Constitutional Court, a new law or change an existing one in accordance with the recommendations from the Constitutional Courts.

References:

Website of the Constitutional Court of Bosnia and Herzegovina.
<http://www.ccbh.ba/eng/article.php?pid=1179&kat=503&pkat=509>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | **No**

Comments:

The Constitution of BiH and the Entity Constitutions guarantee immunity to the members of Parliament (MPs)/delegates. In general, this immunity refers to their conduct in exercise of their duties in their respective parliaments as well as outside the

parliaments. MPs/delegates may not be held criminally responsible, detained or punished in any other way for the opinions they have expressed in parliamentary sessions or because of their voting in parliament.

Additionally, MPs/delegates may not be detained without the prior approval of their respective parliament, unless they are arrested at the scene of a crime punishable by a term of imprisonment of at least five years (or where detention pending trial is compulsory under the Criminal Procedure Code). Furthermore, if an MP/delegate invokes immunity, no criminal proceedings may be instituted against him/her until this immunity is lifted by the legislature. When the conditions are met for taking the MP/delegate into custody or bringing criminal prosecution against him/her, the relevant public prosecutor must seek prior approval of the parliament in which the suspect serves his/her term of office.

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country.

Yes: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

No: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

32

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes

No

References:

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No. 25/02.

Yes: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | **No**

Comments:

There are no such requirements.

References:

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH, Nos. 16/02, 12/04.

Yes: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

References:

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH, Nos. 16/02, 12/04.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | **No**

Comments:

There are no such legal or regulatory requirements.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no such legal or regulatory requirements.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Institutions in charge of the implementation of conflict of interests laws — the Central Election Commission BiH and the Republika Srpska commission for determining conflict of interests — obviously are highly exposed to political pressures by the governing structures and exist only formally, doing nothing in regard to the eradication of conflict of interest among public officials.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

Transparency International Advocacy and Legal Advice Center annual report 2010.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

There are no such legal requirements.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

25

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | No

References:

Election Law of BiH, Official Gazette of BiH, No. 23/01.

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, Nos. 7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH, No. 25/02.

Yes: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, non-governmental groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The decision by the Agency for the Protection of Personal Data in BiH from July 2011 prohibits public disclosure of information about the property status of elected and appointed officials.

References:

Press release of Transparency International Bosnia and Herzegovina: Unacceptable secrecy of assets declarations, July 2011, Sarajevo.

<http://ti-bih.org/en/4287/neprihvatljiva-tajnost-imovinskih-kartona/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The decision by the Agency for the Protection of Personal Data in BiH from July 2011 prohibits public disclosure of information about the property status of elected and appointed officials.

References:

Press release of Transparency International Bosnia and Herzegovina: Unacceptable secrecy of assets declarations, July 2011, Sarajevo.

<http://ti-bih.org/en/4287/neprihvatljiva-tajnost-imovinskih-kartona/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission does not have the authority to monitor the data contained in the signed statement on assets.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

75

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH, No. 28/00.

Yes: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

No: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Some of the reports are easy accessible, but to get “sensitive documents” — those related to financial issues and spending budgets — sometimes is next to impossible.

References:

Official website of the Parliament Assembly Bosnia and Herzegovina. www.parlament.ba

Transparency International Advocacy and Legal Advice Center annual report 2010.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

References:

Official website of the Parliament Assembly Bosnia and Herzegovina. www.parlament.ba

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

46

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

75

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes

No

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH, No. 25/04.

Yes: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

No: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are

nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

“Political pressure on the judiciary continued. The authority of the HJPC (High Judicial and Prosecutorial Council), the State Court and the Prosecutor’s Office have often been questioned by political leaders. The role of the HJPC in appointing new judges was also challenged when the president of the federation delayed three appointments to the Entity Constitutional Court, thus undermining the proper functioning of the court. The state-level prosecutor’s office faced cases of internal corruption and frequent leaks of information. The impartiality of courts is not always guaranteed.”

— European Commission Bosnia and Herzegovina 2010 Progress Report, Nov. 9, 2010, Brussels

References:

European Commission Bosnia and Herzegovina 2010 Progress Report, Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2010.

<http://www.hjpc.ba/intro/gjzvjestaj/pdf/VSTVBiHGI2010web.pdf>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | No

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH, No. 25/04.

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

No: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

75

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

References:

Criminal Procedure Code of BiH, Official Gazette of BiH, Nos. 36/03, 26/04.

Civil Procedure Code of BiH, Official Gazette of BiH, No. 36/04.

Yes: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

No: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary always gives reasons for decisions, but sometimes the reasoning is contradictory and arbitrary.

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2010.
<http://www.hjpc.ba/intro/gizyjestaj/pdf/VSTVBiHG12010web.pdf>

Bertelsmann Stiftung, BTI 2010 — Bosnia and Herzegovina Country Report. Gütersloh.
<http://www.bertelsmann-transformation-index.de/177.0.html?L=1>

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes

No

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH, No. 25/04.

Yes: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

No: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes

No

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH, No. 25/04.

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

No: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

Comments:

According to the European Commission progress report: “As regards to accountability, the work of the Office of the Disciplinary Council for judges and prosecutors improved, and the number of outstanding cases was further reduced. In June, the Chief Prosecutor of Bosnia and Herzegovina was suspended and, in the meantime, an interim prosecutor appointed. In Republika Srpska, the chief prosecutor was appointed following a two-year delay. The Federation Constitutional Court remains short of three judges out of nine.”

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2010.

<http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHGI2010web.pdf>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies’ investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

Comments:

According to Annual report of the High judicial and prosecutorial council, “at year-end 2010, there were 1,024 unresolved complaints for which verification and investigation processes were under way. During 2010, there were 12 disciplinary measures pronounced, i.e. four written warnings, four public reprimands and four salary reductions. Of the 12 measures, three are not final.” The key problem is lack of capacities of the office of disciplinary counsel (ODC). According to the annual report ODC “was faced with major staffing changes due to resignations by both the chief and deputy of the disciplinary counsel, while two disciplinary positions remained unfilled.”

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2010.

<http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHGI2010web.pdf>

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

29

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH, No. 25/04.

Yes: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

References:

Code of Judicial Ethics.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | **No**

Comments:

There are no such legal or regulatory requirements.

References:

There are no such legal or regulatory requirements, according to desk research and an interview (interviewee requested anonymity, interview conducted in September/October 2011).

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

Comments:

There are no such restrictions.

References:

There are no such restrictions, according to desk research and an interview (interviewee requested anonymity for an interview conducted in September/October 2011).

Yes: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no such restrictions.

References:

Based on desk research.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

According to a public statement by the Deputy High Representative in Bosnia and Herzegovina, Roderick Moore, “Corruption in the judiciary is an enormous problem.”

http://infobrcko.com/v3/index.php?option=com_content&view=article&id=2834:moor-korupcija-je-veliki-problem-pravosua-bih&catid=1:vijesti-iz-brkog&Itemid=20

References:

Interview with a former prosecutor, August 2011.

The Center for Investigative Reporting: Extra Profit for Court Appointed Attorneys, July 2011.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with a former prosecutor, August 2011 (Interviewee insists on remaining anonymous).

The Center for Investigative Reporting: Extra Profit for Court Appointed Attorneys, July 2011.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

25

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH, No. 28/00.

Yes: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

During the latest Freedom of Information survey carried out by Transparency International BiH, all requests for asset disclosure were rejected without explanation.

References:

Interview with a former prosecutor, August 2011.

The Center for Investigative Reporting: Extra Profit for Court Appointed Attorneys, July 2011.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

During the latest Freedom of Information survey carried out by Transparency International BiH, all requests for asset disclosure were rejected without explanation.

References:

Interview with a former prosecutor, August 2011.

The Center for Investigative Reporting: Extra Profit for Court Appointed Attorneys, July 2011.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

During the latest Freedom of Information survey carried out by Transparency International BiH, all requests for asset disclosure were rejected without explanation.

References:

Interview with a former prosecutor, August 2011.

The Center for Investigative Reporting: Extra Profit for Court Appointed Attorneys, July 2011.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

42

40a. In law, the legislature can amend the budget.

Yes | No

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country.

Yes: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

No: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

According to the Supreme Audit Institutions, there are significant amounts of expenditures not approved by the legislature but directly by the executive (various subsidies, allocations, etc.).

References:

Reports of the Supreme Audit Institutions 2010.

<http://www.revizija.gov.ba/Home.aspx?langTag=bs-BA>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

“The legislative work of parliament, including the various parliamentary committees, proceeded slowly and was characterized by inter-ethnic divergences. As regards external audits, the four supreme audit institutions (SAIs) (State, Entities and Brčko District) are performing well, but have no impact on public financial management.”

— European Commission Bosnia and Herzegovina 2010 Progress Report, Nov. 9, 2010, Brussels

References:

European Commission Bosnia and Herzegovina 2010 Progress Report, Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

25

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | **25** | 0

Comments:

“The draft budget does not provide some information that can help explain the relationship between the government’s revenue and expenditure plans and its policy and macroeconomic goals. This information includes the impact of different macroeconomic assumptions (i.e., sensitivity analysis) on the budget and how the proposed budget is linked to government’s stated policy goals for a multi-year period. Such information is important if the executive wishes to facilitate a broader debate about planned expenditures. In addition, the budget proposal does not present information on certain fiscal activities that can have a major impact on the government’s ability to meet its fiscal and policy goals, including information on quasi-fiscal activities, tax expenditures, contingent and future liabilities, and financial and other assets. Without this information, the public does not know the government’s true fiscal position.”

— Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership

References:

European Commission Bosnia and Herzegovina 2010 Progress Report, Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | **25** | 0

Comments:

"Beyond improving the availability and comprehensiveness of key budget documents, there are other ways in which Bosnia and Herzegovina's budget process can be made more open. These include ensuring the existence of a strong legislature that provides effective budget oversight, as well as providing greater opportunities for public engagement in the budget process. Though the public is allowed to attend legislative hearings at which the executive testifies on its proposed budget, the legislature has not yet decided to conduct discussions on the proposed budget at which the public could testify."

— Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership
<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

References:

Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership.
<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: Citizens, usually acting through NGOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

“A Citizens Budget is a nontechnical presentation of a government’s budget that is intended to enable the public — including those who are not familiar with public finance — to understand a government’s plans. Bosnia and Herzegovina does not produce a Citizens Budget.”

— Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership

References:

Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership.
<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

References:

Article 40 of the Rules of the Procedure, Parliamentary Assembly-House of Representatives.

Yes: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

No: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

43. Is the legislative committee overseeing the expenditure of public funds effective?

17

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

“A year-end report compares the actual budget execution to the enacted budget. A year-end report can inform policymakers on tax policies, debt requirements, and major expenditure priorities, facilitating adjustments for upcoming budget years. Bosnia and Herzegovina publishes a year-end report (Report on Execution of the 2008 Budget of BiH Institutions and International Obligations), but it is not sufficiently comprehensive. It does not, for example, explain the difference between the original macroeconomic forecast for the fiscal year and the actual outcome for that year. Similarly, it does not explain the difference between the original estimates of nonfinancial data and the original performance indicators and the actual outcomes.”

— Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership

References:

Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership.
<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

According to the Open Budget Survey, budget oversight provided by Bosnia and Herzegovina's legislature is weak because it does not have full powers to approve any changes made to the budget over the course of the fiscal year, nor does it hold open budget discussions at which the public can testify.

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership.

<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

"As regards external audits, the four supreme audit institutions (SAIs) (State, Entities and Brčko District) are performing well, but have no impact on public financial management. In the Entities SAIs are not subject to administrative and civil service laws. The State-level SAI is not entirely independent from the Council of Ministers."

— European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels

References:

Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership.

<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category 4. Public Administration and Professionalism

4.1. ⁴²Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes

No

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH, Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06.

Yes: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

No: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes

No

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH, Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06.

Yes: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

No: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

According to the law there are three types of redress:

1. Control of legality of administrative acts by means of lodging an appeal through an administrative procedure or through court control of final administrative acts; i.e., administrative court proceedings (provided for in the laws on general administrative procedure and laws on administrative court proceedings).
2. Inspection oversight of the application of relevant laws through administrative inspections. These inspections oversee the application of the Law on General Administrative Procedure when administrative bodies regulate rights and obligations of citizens and legal entities.
3. Administrative oversight of a public authority, which is carried out by the heads of administrative bodies. This oversight takes place through application of rules regarding the observance of work discipline and, in particular, through application of the Codes of Conduct for civil servants.

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH, Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06.

Yes: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | No

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH, Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06.

Yes: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

No: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

19

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

According to the European Commission progress report on Bosnia and Herzegovina: “No progress has been made toward the development of a professional and de-politicized civil service. State-level institutions have stopped using a single human resources management information system. The strengthening of the civil service has been hampered by the enactment of separate laws on civil service in the federation, some of them providing for the establishment of civil service agencies at cantonal level. These developments pose the risk of further fragmentation of the civil service system across the country.”

References:

“Pardoning for Officeholders” by the Center for Investigative Reporting, Jan. 16, 2011.
http://cin.ba/Stories/P27_Justice/?cid=993,1,1

Transparency International Advocacy and Legal Advice Center annual report 2010.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

Comments:

Although the institution of open competition for vacancies in civil service was introduced, the selection commission often receives instructions in advance from their superiors on how to score candidates, i.e. which candidate to offer the job through the agency. Widespread clientelism and nepotism are the most obvious in the area of recruitment of civil servants.

References:

"Pardoning for Officeholders" by the Center for Investigative Reporting, Jan. 16, 2011.

http://cin.ba/Stories/P27_Justice/?cid=993,1,1

Transparency International Advocacy and Legal Advice Center annual report 2010.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

Comments:

According to the the European Commission progress report on Bosnia and Herzegovina: "No progress has been made toward the development of a professional and de-politicized civil service. State-level institutions have stopped using a single human resources management information system. The strengthening of the civil service has been hampered by the enactment of separate laws on civil service in the federation, some of them providing for the establishment of civil service agencies at cantonal level. These developments pose the risk of further fragmentation of the civil service system across the country."

References:

"Pardoning for Officeholders" by the Center for Investigative Reporting, Jan. 16, 2011.

http://cin.ba/Stories/P27_Justice/?cid=993,1,1

Transparency International Advocacy and Legal Advice Center annual report 2010.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants (even mid- and junior-level officials) formally have clear job descriptions. In practice, very often a job description depends on informal relations with the heads of institutions. Membership in political parties also is a very important criterion.

References:

“Pardoning for Officeholders” by the Center for Investigative Reporting, Jan. 16, 2011.

http://cin.ba/Stories/P27_Justice/?cid=993,1,1

Transparency International Advocacy and Legal Advice Center annual report 2010.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person’s authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position’s responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

According to the Supreme Audit Institution, a common practice within a government institution is to provide civil servants various types of bonuses (for mobile phone bills, for rent of apartments, as a per diem, etc.). Sometimes such bonuses can constitute more than 30 percent of total pay.

References:

Supreme audit reports.
www.revizija.gov.ba

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | **50** | 25 | 0

Comments:

The conclusion of the European Commission progress report on Bosnia and Herzegovina regarding public administration says: "Overall, limited progress was made in the area of public administration. The implementation of the public administration strategy has continued, but the coordinating structures at entity and cantonal levels remain insufficient. The public administration reform process lacks the necessary political support. Continued fragmentation and politicization of the civil service system remain issues of concern. The establishment of a professional, accountable, transparent and efficient civil service based on merit and competence requires further attention."

References:

Civil Service Agency official website.
www.ads.gov.ba

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | **25** | 0

Comments:

According to the European Commission Progress Report on Bosnia and Herzegovina: "No progress has been made toward the development of a professional and de-politicized civil service. State-level institutions have stopped using a single human resources management information system. The strengthening of the civil service has been hampered by the enactment of separate laws on civil service in the federation, some of them providing for the establishment of civil service agencies at cantonal level. These developments pose the risk of further fragmentation of the civil service system across the country."

References:

Transparency International Advocacy and Legal Advice Center annual report 2010.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Report on Realization of the Budget, Ministry of Finance and Treasury, Bosnia and Herzegovina.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

Comments:

There is no legal ground.

References:

“Pardoning for Officeholders” by the Center for Investigative Reporting, Jan. 16, 2011.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

44

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH, Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06.

Yes: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH, Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06.

Yes: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

No: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | No

Comments:

There are no broadly applied cooling-off periods for civil servants. Article 16 of the Law on Civil Service defines very specific situations in which civil servants cannot join companies if they exercised regular supervision over such a company while in their public sector role. This is not a general provision and there are no such general provisions.

In practice there was no single case in which someone was penalized for violations of this provision.

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH, Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06.

Yes: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH, Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06.

Yes: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

No: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | **No**

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH, Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There is no such legal provision.

References:

Interview with former government officials, August 2011.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

According to the European Commission progress report on Bosnia and Herzegovina: “No progress has been made toward the development of a professional and de-politicized civil service. State-level institutions have stopped using a single human resources management information system. The strengthening of the civil service has been hampered by the enactment of separate laws on civil service in the federation, some of them providing for the establishment of civil service agencies at cantonal level. These developments pose the risk of further fragmentation of the civil service system across the country.”

References:

Transparency International Advocacy and Legal Advice Center annual report 2010.

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

According to the European Commission progress report on Bosnia and Herzegovina: “No progress has been made toward the development of a professional and de-politicized civil service. State-level institutions have stopped using a single human resources management information system. The strengthening of the civil service has been hampered by the enactment of separate laws on civil service in the federation, some of them providing for the establishment of civil service agencies at cantonal level. These developments pose the risk of further fragmentation of the civil service system across the country.”

References:

Transparency International Advocacy and Legal Advice Center annual report 2010.

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Civil service asset disclosures are not audited; there is no such legal provision.

References:

Transparency International Advocacy and Legal Advice Center annual report 2010.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

25

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

References:

Second Evaluation Round Compliance Report on Bosnia and Herzegovina, Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)
[LINK](2008)7_Bosnia-Herzegovina_EN.pdf

Yes: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

No: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure records of senior-level civil servants are required but are not available to the public.

References:

Second Evaluation Round Compliance Report on Bosnia and Herzegovina, adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)
[LINK](2008)7_Bosnia-Herzegovina_EN.pdf

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The problem is not the cost of the access but rather the systematic obstruction of the access to the records.

References:

Second Evaluation Round Compliance Report on Bosnia and Herzegovina, adopted by GRECO at its 41st Plenary Meeting

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records' costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to conclude whether records are of high quality if it is almost impossible to access them.

References:

Second Evaluation Round Compliance Report on Bosnia and Herzegovina, adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)
[LINK](2008)7_Bosnia-Herzegovina_EN.pdf

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | **No**

Comments:

No law exists.

References:

"Protection of Whistle-blowers in Bosnia and Herzegovina," Srdjan Blagovčanin i Nebojša Milanović, Transparency International 2010.

Yes: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

Comments:

There have been reports of people suffering severe pressure and threats after reporting cases of corruption in state institutions. Therefore, it is not surprising that very few people dare to report cases of corruption or be witnesses in trials.

References:

"Protection of Whistle-blowers in Bosnia and Herzegovina," Srdjan Blagovčanin i Nebojša Milanović, Transparency International 2010.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | **No**

Comments:

No law exists.

References:

"Protection of Whistle-blowers in Bosnia and Herzegovina," Srdjan Blagovčanin i Nebojša Milanović, Transparency International 2010.

Yes: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

References:

"Protection of Whistle-blowers in Bosnia and Herzegovina," Srdjan Blagovčanin i Nebojša Milanović, Transparency International 2010.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes | **No**

Comments:

No law exists.

References:

"Protection of Whistle-blowers in Bosnia and Herzegovina," Srdjan Blagovčanin i Nebojša Milanović, Transparency International 2010.

Yes: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

No: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | **0**

Comments:

A non-existing culture of whistle-blowing is just one dimension of the problem. The real problem is fact that Bosnia has not adopted appropriate a legal framework and inefficiency of the institutions to protect whistle-blowers. All this has resulted in extremely widespread retaliation toward whistle-blowers.

References:

"Protection of Whistle-blowers in Bosnia and Herzegovina," Srdjan Blagovčanin i Nebojša Milanović, Transparency International 2010.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

There are no such mechanisms.

References:

Interview with a former civil servant (interviewee requested anonymity for an interview conducted in September/October 2011).

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are no such mechanisms.

References:

Interviews with a civil servant (interviewee requested anonymity for an interview conducted in September/October 2011).

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Interview with a former civil servant (interviewee insist to remain anonymous – interview conducted in September/October 2011).

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

0 4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

60

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

References:

Law on Public Procurement of BiH, Official Gazette of BiH, No. 49/04.

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH, Nos. 19/05, 52/05, 92/05, 24/06, 70/06.

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH, No. 16/02, 12/04.

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06.

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

No: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

Yes | No

References:

Law on Public Procurement of BiH, Official Gazette of BiH, No. 49/04.

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH, Nos. 19/05, 52/05, 92/05, 24/06, 70/06.

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH, No. 16/02, 12/04.

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH, Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06.

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

Comments:

The reasons for extremely weak implementation are the lack of oversight of the regulations and a non-existent mechanism of institutional supervision.

References:

European Commission Bosnia and Herzegovina 2010 Progress Report, Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | **No**

Comments:

There is no such mechanism.

References:

There is no such mechanism (based on desk research).

Yes: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

No: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

Yes | No

References:

Law on Public Procurement of BiH, Official Gazette of BiH, No. 49/04.

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH, Nos. 19/05, 52/05, 92/05, 24/06, 70/06 .

Yes: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

No: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

References:

Law on Public Procurement of BiH, Official Gazette of BiH, No. 49/04.

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH, Nos. 19/05, 52/05, 92/05, 24/06, 70/06.

Yes: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

No: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

References:

Law on Public Procurement of BiH, Official Gazette of BiH, No. 49/04.

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH, Nos. 19/05, 52/05, 92/05, 24/06, 70/06.

Yes: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

No: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

References:

Law on Public Procurement of BiH, Official Gazette of BiH, No. 49/04.

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH, Nos. 19/05, 52/05, 92/05, 24/06, 70/06.

Yes: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

No: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

Comments:

No legal ground.

References:

Desk research.

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Comments:

There is no such legal requirement.

References:

“Prosecutor’s Inquiry Includes Contracts with Engineering Firm,” Centre for Investigative Journalism.
http://www.cin.ba/Stories/P18_PublicAdmin/?cid=862,1,1

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

75

52a. In law, citizens can access public procurement regulations.

Yes | No

References:

Law on Public Procurement of BiH, Official Gazette of BiH, No. 49/04.

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH, Nos. 19/05, 52/05, 92/05, 24/06, 70/06.

Yes: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

References:

Law on Public Procurement of BiH, Official Gazette of BiH, No. 49/04.

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH, Nos. 19/05, 52/05, 92/05, 24/06, 70/06.

Yes: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All regulations, procurement notices, contract award notices and cancellation notices are published in the official gazette. But the problem lies with contracts and annexes on contracts. Even when a public procurement procedure is formally conducted by means of open bidding, it is next to impossible to access contracts and annexes.

References:

Official website of the Public Procurement Agency.

<http://javnenabavke.ba/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Official website of the Public Procurement Agency.

<http://javnenabavke.ba/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Official Gazette of Bosnia and Herzegovina.

Official website of the Public Procurement Agency.

<http://javnenabavke.ba/>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

Comments:

"Neither the Public Procurement Agency nor the Procurement Review Body are sufficiently proactive in disseminating information on the public procurement system and providing contracting authorities and economic operators with practical assistance. Monitoring of public procurement procedures across the country requires further strengthening, along with the capacity of contracting authorities to apply the law. The professional ability of procurement officers to implement public procurement procedures properly is unsatisfactory. The cost of publishing contract notices in the Official Gazette remains disproportionately high for contracting authorities."

— European Commission Bosnia and Herzegovina 2010 Progress Report, Nov. 9, 2010, Brussels

References:

European Commission Bosnia and Herzegovina 2010 Progress Report, Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

67

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

References:

Law on Privatization of the State-Owned Capital in Enterprises, Official Gazette of BiH.

Yes: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

No: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | No

References:

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH, Nos. 16/02, 12/04.

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

The key positions in privatization agencies/directorates as well as in managing boards and other managing functions in public companies are held by people whose most important qualification for carrying out such duties is the fact that they belong to a specific political party.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

Transparency International Advocacy and Legal Advice Center annual report 2010.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

50

54a. In law, citizens can access privatization regulations.

Yes | No

References:

Law on Privatization of the State-Owned Capital in Enterprises, Official Gazette of BiH.

Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina, Official Gazette of BiH, No. 14/98.

Yes: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

No: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The most common practices in privatization processes include avoiding transparent and open-bidding procedures, introducing legal changes that allow the government to privatize virtually every public company, etc. In some cases, managers of state-owned enterprises were in clear conflict-of-interest situations, providing the documentation needed for the privatization — including estimates of the worth of the company — and at the same time being entitled to participate in the bidding process.

References:

Transparency International Advocacy and Legal Advice Center annual report 2010.

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

References:

Law on Privatization of the State-Owned Capital in Enterprises, Official Gazette of BiH.

Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina, Official Gazette of BiH, No. 14/98.

Yes: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the Advocacy and Legal Advice Centre of Transparency International, access to information regarding the privatization process is practically impossible to get most of the time.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to the Advocacy and Legal Advice Centre of Transparency International, access to information regarding the privatization process is practically impossible to get most of the time.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁶⁵National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

References:

Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH, Nos. 19/02, 32/06.

Yes: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

No: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

56. Is the national ombudsman effective?

45

56a. In law, the ombudsman is protected from political interference.

Yes | No

References:

Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH, Nos. 19/02, 32/06.

Yes: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Serious objections may be raised in relation to the actual level of independence of the ombudsman, given the manner of planning and approving the institution's annual budget. Experience has shown that the ombudsmen have almost no say in the determination of their budget. When the Ministry of Finance receives the proposed budget containing the required written justification of specific budget items, the ministry's departments analyze it without the ombudsman's knowledge and determine the amount they find sufficient and adequate for this institution's operation, whereupon they include it in the proposed budget that is to be finally determined by the relevant parliament.

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

2010 Human Rights Report: Bosnia and Herzegovina

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

Comments:

There have been no cases of termination of an ombudsman's mandate for reasons other than resignation or expiration of term of office. Problems might arise in practice in connection with the provisions governing removal of an ombudsman from office and the manifested inability to perform his duties.

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

2010 Human Rights Report: Bosnia and Herzegovina

US Department of State, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
April 8, 2011

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | **25** | 0

Comments:

The conclusion of the European Commission progress report is that “financial and staffing resources for the functioning of the Ombudsman institution need to be further increased.”

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | **0**

Comments:

The current ombudsman, before the appointment, was a member of the presidency of the ruling political party, SNSD.

References:

“Populari: Are we ticking the right boxes? The BiH Ombudsman institutions reform saga,” Sarajevo, May 13, 2009.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Annual report of the ombudsman of Bosnia and Herzegovina.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available on a website and are free.

References:

Annual report of the ombudsman of Bosnia and Herzegovina 2010: <http://www.ombudsmen.gov.ba/PublikacijeEn.aspx?category=Annual%20Reports>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

According to the European Commission progress report on Bosnia and Herzegovina, most of the recommendations issued by the ombudsman have not been implemented by the relevant authorities at state, entity and cantonal levels, due to weak enforcement capacity and insufficient political will. Only a limited number of cases were lodged regarding anti-discrimination issues. Financial and staffing resources for the functioning of the ombudsman institution need to be further increased.

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

2010 Human Rights Report: Bosnia and Herzegovina

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | **0**

Comments:

The official website of the Ombudsman contains reports which very often conclude that previous recommendations of the Ombudsman were not enforced.

References:

Ombudsman, <http://www.ombudsmen.gov.ba/DefaultEn.aspx?URL=1>

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | **25** | 0

Comments:

According to the European Commission progress report on Bosnia and Herzegovina, most of the recommendations issued by ombudsman have not been implemented by the relevant authorities at state, entity and cantonal levels, due to weak enforcement capacity and insufficient political will. Only a limited number of cases were lodged regarding anti-discrimination issues. Financial and staffing resources for the functioning of the ombudsman institution need to be further increased.

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

2010 Human Rights Report: Bosnia and Herzegovina

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April 8, 2011.

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

Comments:

The ombudsman agency is very slow to respond to complaints from citizens. Again, the problem is a lack of capacities and also the fact that the agency is in the process of transformation to one state institution merged from entity agencies, etc.

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

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April 8, 2011.

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

75

57a. In law, citizens can access reports of the ombudsman(s).

Yes

No

References:

Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH, Nos.19/02, 32/06.

Yes: A YES score is earned if all ombudsman reports are publicly available.

No: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman reports are accessible via the website of the ombudsman, but sometimes with significant delay or incompletely.

References:

Official website of the ombudsman.

<http://www.ombudsmen.gov.ba/Preporuke.aspx>

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman reports are accessible via the ombudsman website.

References:

Official website of the ombudsman.

<http://www.ombudsmen.gov.ba/Preporuke.aspx>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes

No

Comments:

Supreme Audit Institutions (SAIs) exist in parallel: one at the state level, which is the Audit General Office of the Joint Institutions of BiH, and two at the entity level, which are the Audit General Office of the Federation of BiH (responsible for the 10 federal cantons) and the Audit General Office of the Serbian Republic (RS — Republika Srpska).

References:

Law on the Auditing of the Financial Operations of the Institutions of BiH, Official Gazette of BiH, Nos. 17/99, 12/06.

Yes: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

59. Is the supreme audit institution effective?

47

59a. In law, the supreme audit institution is protected from political interference.

Yes

No

Comments:

Supreme Audit Institutions (SAIs) exist in parallel: one at the state level, which is the Audit General Office of the Joint Institutions

of BiH, and two at the entity level, which are the Audit General Office of the Federation of BiH (responsible for the 10 federal cantons) and the Audit General Office of the Serbian Republic (RS — Republika Srpska).

References:

Law on the Auditing of the Financial Operations of the Institutions of BiH, Official Gazette of BiH, Nos. 17/99, 12/06.

Yes: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

Comments:

The head of the audit agency has not been removed in the study period but these institutions are under constant political pressure. As was already explained, during the reporting period independence of SAI at the state level was abolished by an amendment to the existing law.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

All three SAIs are composed of two departments: the general administration and audit department, with the latter broken further down by sectors in accordance with the type of clients they audit. Their staffing differs according to the scope of institutions they cover. Each of the sections has a head, at least one senior auditor and a number of junior ones. On average they have between 30 and 50 employees, with approximately a quarter of them being administrative staff and the rest in the audit department.

References:

Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership.
<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | **50** | 25 | 0

Comments:

According to the European Commission progress report on Bosnia and Herzegovina, there was no progress on ensuring the independence of the Supreme Audit Institutions from the executive.

References:

Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership.
<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

There has been no evidence of suspension of the budget for the Supreme Audit Institution, but according to recent amendments of the legislation, the SAI is more dependent on the executive and it is possible for the executive to have inappropriate influence on the budget of SAI.

References:

Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership.
<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Reports are made public annually.

References:

Official website of the Supreme Audit Institution.
www.revizija.gov.ba

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Audit institutions in BiH still face political pressures, disregard of their reports and lack of implementation of their recommendations. Additionally, there are still constant attempts by the RS government to interfere with the audit process and negotiate its way into acquiring positive audit reports, sometimes even through direct pressure on the auditors. Measures are not taken to determine responsibility in cases of violations of the law and provisions disclosed by auditors and provided in their reports.

References:

Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership.
<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Audit institutions in BiH still face political pressures, disregard of their reports and lack of implementation of their recommendations. Additionally, there are still constant attempts by the RS government to interfere with the audit process and negotiate its way into acquiring positive audit reports, sometimes even through direct pressure on the auditors. Measures are not taken to determine responsibility in cases of violations of the law and provisions disclosed by auditors and provided in their reports.

References:

Open Budget Index 2010 Bosnia and Herzegovina, International Budget Partnership.
<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=ba>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

83

60a. In law, citizens can access reports of the audit agency.

Yes | No

References:

Law on the Auditing of the Financial Operations of the Institutions of BiH, Official Gazette of BiH, Nos.17/99, 12/06.

Yes: A YES score is earned if all supreme auditor reports are available to the general public.

No: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Official website of the Supreme Audit Institution.
www.revizija.gov.ba

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | **75** | 50 | 25 | 0

References:

Official website of the Supreme Audit Institution.
www.revizija.gov.ba

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

77

5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

References:

Law on Indirect Taxation System in Bosnia and Herzegovina, Official Gazette of BiH, Nos. 44/03, 52/04.

Yes: A YES score is earned if there is a national agency formally mandated to collect taxes.

No: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

62. Is the tax collection agency effective?

63

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

“State-level institutions have adopted a uniform human resources management information system. Several appointments that had been delayed for political reasons were finally decided. However, further key appointments to state-level bodies, such as to the Indirect Taxation Authority, the Communications Regulatory Agency, the electricity transmission company TRANSCO and the State Electricity Regulatory Commission are still pending. Overall, the civil service remains highly politicized. It is in need of transparent recruitment procedures based on merit, a system of modern career development and professionalization. No progress has been made toward limiting the role played by political affiliation in public administration.”

— European Commission Bosnia and Herzegovina 2010 Progress Report

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | **75** | 50 | 25 | 0

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

0

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

"As regards administrative and operational capacity, the ITA's (Indirect Taxation Authority's) organizational structure needs strengthening to address present and future challenges. Some progress was made on enforcing legislation, but further steps are essential."

— European Commission Bosnia and Herzegovina 2010 Progress Report

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes

No

References:

Law on Customs Policy of BiH, Official Gazette of BiH, No. 57/04.

Yes: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

No: A NO score is earned if that function is spread over several agencies, or does not exist.

65. Is the customs and excise agency effective?

63

65a. In practice, the customs and excise agency has a professional, full-time staff.

100

75

50

25

0

Comments:

“Overall, preparations in the areas of customs and taxation are not very advanced. Substantial efforts are required to further align customs legislation with the acquis (the accumulated legislation and legal acts, and court decisions which constitute the body of European Union law) and to ensure effective implementation of legislation and the Interim Agreement. Positive developments are the improved knowledge and the use of rules of origin, the implementation of the TIR Convention (the International Road Transport Convention) and the accession to the ATA Convention (the Customs Convention on the ATA Carnet for the Temporary Admission of Goods). However, the regime on free zones needs to be aligned with the acquis. The effectiveness of customs controls has to be improved.”

— European Commission Bosnia and Herzegovina 2010 Progress Report

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The customs and excise agency receives funding regularly, but some delays are possible due to the general instability of budget. (For example, the state budget for 2011 has not been adopted.)

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

“Cooperation and coordination within the ITA (Indirect Taxation Authority) and with other authorities remain weak. The ITA is not sharing data with the Agency for Statistics of Bosnia and Herzegovina. The effectiveness of border crossing checks needs to be improved. The functionalities of customs laboratories remain limited. The IT (Indirection Taxation) system cannot cope with the necessary changes in customs and tax administration, such as simplification, risk analysis, integrated enforcement, local clearance, the guarantee procedure and e-government.”

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes

No

Comments:

Internal audit committees do not truly “oversee” state-owned companies. Rather, each company is under the control of a governing board. The governing boards are appointed largely by political parties and the control of state enterprises is divided among the parties in the ruling coalition.

References:

Law on Public Companies of the Serbian Republic (RS Republic Srpska) 75/04.

Law on Public Companies of Federation of Bosnia and Herzegovina.

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several

government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

25

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes

No

References:

Law on Public Companies of the Serbian Republic (RS Republic Srpska) 75/04.

Law on Public Companies of Federation of Bosnia and Herzegovina.

Yes: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100

75

50

25

0

Comments:

The European Commission progress report on Bosnia and Herzegovina concluded that overall, Bosnia and Herzegovina's preparations in the area of financial control are progressing, albeit slowly. The lack of skilled staff is an impediment to further development of PIFC (Public Internal Financial Control). Financial management and control systems need to be further developed. The issue of independence of the state-level SAI (Supreme Audit Institution) remains to be addressed.

A former director of a state-owned enterprise pointed out the dominant role of political parties in the state-owned enterprise; oversight mechanisms exist formally but without implementation in practice.

References:

Interview with a former director of a state-owned enterprise (interviewee insists on remaining anonymous – interview conducted September/October 2011).

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | **25** | 0

Comments:

The European Commission progress report on Bosnia and Herzegovina concluded that overall, Bosnia and Herzegovina's preparations in the area of financial control are progressing, albeit slowly. The lack of skilled staff is an impediment to further development of PIFC (Public Internal Financial Control). Financial management and control systems need to be further developed. The issue of independence of the state-level SAI (Supreme Audit Institution) remains to be addressed.

The former director of a state-owned enterprise pointed out the dominant role of political parties in the state-owned enterprise; overseeing mechanisms exist formally but without implementation in practice.

References:

Interview with a former director of a state-owned enterprise (interviewee insists on remaining anonymous – interview conducted in September/October 2011).

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Over the past five years, there have been numerous scandals in BiH in connection with the operation of state-owned companies, including appointing the management of state-owned companies on the basis of party membership, and making illegal gains from a privileged and untouchable position.

References:

Interview with a former director of a state-owned enterprise.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

No such legal possibilities.

References:

Interview with a former director of a state-owned enterprise (interviewee requested anonymity for an interview conducted in September/October 2011).

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

55

69a. In law, citizens can access the financial records of state-owned companies.

Yes

No

References:

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH, No. 23/99, Amendments 45/00, 2/02, 6/02, 29/03.

Law on Enterprises, Official Gazette of the Republika Srpska, Nos. 24/98, 62/02, 66/02, 38/03, 97/04.

Yes: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100

75

50

25

0

Comments:

According to Transparency International BiH surveys, a particular problem centers on access to information regarding the public companies' operations and financial aspects of their functioning. Most often it is practically impossible to get appropriate information.

References:

Transparency International Advocacy and Legal Advice Centre annual report 2010.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | **50** | 25 | 0

Comments:

State-owned enterprises (SOEs) are subject to oversight by Supreme Audit Institutions (SAIs). Existing findings of the audit reports in the sector of SOEs are soft, as the auditors don't want to arouse the anger of the political leadership. Even a fleeting glance at some media reports will provide much more information on such embezzlement than the SAIs have ever managed to provide in their official reports.

References:

"Federacija BiH: Troši se nemilice, niko ne odgovara"
("Federation BiH: spent relentlessly, no one responsible")
Radio Free Europe.

http://www.slobodnaevropa.org/content/federacija_bih_revizori_izvjestaj/24287097.html

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

There are probably several reasons for this situation. Objective reasons are the fact that SOEs are completely non-efficient and non-professional. Very often the reason for obstruction is an attempt to hide illegal activities.

References:

Official website of the Supreme Audit Institution.
www.revizija.gov.ba

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

According to Transparency International BiH surveys, a particular problem centers on access to information regarding the public companies' operations and financial aspects of their functioning. Often it is practically impossible to get appropriate information.

References:

Official website of the Supreme Audit Institution.
www.revizija.gov.ba

Transparency International Bosnia and Herzegovina: Analysis on the Implementation of FOI Laws, 2010, Sarajevo.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

60
5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

70a. In law, anyone may apply for a business license.

Yes | No

References:

Framework Law on Single Business Registration in Bosnia and Herzegovina, Official Gazette of BiH, No. 42/04.

Law on Enterprises, Official Gazette of the Serbian Republic (RS — Republika Srpska), Nos. 24/98, 62/02, 66/02, 38/03, 97/04.

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS — Republika Srpska), No. 42/05.

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH, No. 23/99, Amendments 45/00, 2/02, 6/02, 29/03.

Yes: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

No: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

References:

Framework Law on Single Business Registration in Bosnia and Herzegovina, Official Gazette of BiH, No. 42/04.

Law on Enterprises, Official Gazette of the Serbian Republic (RS — Republika Srpska), Nos. 24/98, 62/02, 66/02, 38/03, 97/04.

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS — Republika Srpska), No. 42/05.

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH, No. 23/99, Amendments 45/00, 2/02, 6/02, 29/03 .

Yes: A YES score is earned if there is a formal process for appealing a rejected license.

No: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the Doing Business Bosnia and Herzegovina 2011 report, there are 12 steps to getting a business license: Stipulate a founding act and have it notarized in the municipality office (seven days); obtain a statement from commercial bank that full amount of the capital has been paid in; pay the registration fee to the budget account of the cantonal court (one day); obtain the statement of tax authorities that the founders have no tax debts (one day); register with municipal courts (10 days); buy a company stamp (one day); request and obtain municipal approval on intended activities (10 days); apply for a utilization permit to the canton Ministry of Commerce the competent tax office (five days); open a company account with a commercial bank (one day); enroll the employees in pension insurance (one day); enroll the employees in health insurance with the Health Insurance Institute (Zavod za zdravstveno osiguranje) (one day); and adopt and publish a rule book on matters of salary, work organization, discipline, and other employee regulations (one day).

References:

Doing Business Bosnia and Herzegovina 2011.

<http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina/#starting-a-business>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to the Doing Business Bosnia and Herzegovina 2011 report, in 2011 the cost for starting a business was 17 percent of income per capita, whereas the average for Eastern Europe and Central Asia was 8.3 percent.

References:

Doing Business Bosnia and Herzegovina 2011.

<http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina/#starting-a-business>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes

No

References:

Law on Enterprises, Official Gazette of the Serbian Republic (RS — Republika Srpska, Nos. 24/98, 62/02, 66/02, 38/03, 97/04.

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS — Republika Srpska), No. 42/05.

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH, No. 23/99, Amendments 45/00, 2/02, 6/02, 29/03.

Yes: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes

No

References:

Law on Enterprises, Official Gazette of the Serbian Republic (RS — Republika Srpska, Nos. 24/98, 62/02, 66/02, 38/03, 97/04.

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS — Republika Srpska), No. 42/05.

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH, No. 23/99, Amendments 45/00, 2/02, 6/02, 29/03.

Yes: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes

No

References:

Law on Enterprises, Official Gazette of the Serbian Republic (RS — Republika Srpska, Nos. 24/98, 62/02, 66/02, 38/03, 97/04.

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS — Republika Srpska), No. 42/05.

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH, No. 23/99, Amendments 45/00, 2/02, 6/02, 29/03.

Yes: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

0

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100

75

50

25

0

Comments:

According to the Transparency International Advocacy and Legal Advice Centre report, the majority of citizen complaints against local administration authorities referred to inspectorates, in particular building, market and labor inspectorates. These reports mainly contained accusations of failure to act in accordance with legal authority, abuse of power or failure to follow procedure when breach of law or other regulations has been found. These account for 40 percent of all reports.

According to the Doing Business Bosnia and Herzegovina 2011 report, starting a business (including inspection approval) required 12 procedures and 50 days. According to Transparency International's Advocacy and Legal Advice Centre, very often bribery of inspection officials is involved in order to speed up the procedure.

References:

Doing Business Bosnia and Herzegovina 2011.

<http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina/>

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

According to the Transparency International Advocacy and Legal Advice Centre report, the majority of citizen complaints against local administration authorities referred to inspectorates, in particular building, market and labor inspectorates. These reports mainly contained accusations of failure to act in accordance with legal authority, abuse of power or failure to follow procedure when breach of law or other regulations has been found. These account for 40 percent of all reports.

According to the Doing Business Bosnia and Herzegovina 2011 report, starting a business (including inspection approval) required 12 procedures and 50 days. According to Transparency International's Advocacy and Legal Advice Centre, very often bribery of inspection officials is involved in order to speed up the procedure.

References:

Doing Business Bosnia and Herzegovina 2011.

<http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina/>

Annual Transparency International Bosnia and Herzegovina Advocacy and Legal Advice Centre report 2010.

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

According to the Transparency International Advocacy and Legal Advice Centre report, the majority of citizen complaints against local administration authorities referred to inspectorates, in particular building, market and labor inspectorates. These reports mainly contained accusations of failure to act in accordance with legal authority, abuse of power or failure to follow procedure when breach of law or other regulations has been found. These account for 40 percent of all reports.

References:

Doing Business Bosnia and Herzegovina 2011.

<http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina/>

Annual Transparency International Bosnia and Herzegovina Advocacy and Legal Advice Centre 2010.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁶³Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes | No

References:

Criminal Code of BiH, Official Gazette, No. 3/03.

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes | No

References:

Criminal Code of BiH, Official Gazette, No. 3/03.

Yes: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

No: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

References:

Criminal Code of BiH, Official Gazette, No. 3/03.

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

References:

Criminal Code of BiH, Official Gazette, No. 3/03.

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

References:

Criminal Code of BiH, Official Gazette, No. 3/03.

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

References:

Criminal Code of BiH, Official Gazette, No. 3/03.

Yes: A YES score is earned if using public resources for private gain is illegal.

No: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

References:

Criminal Code of BiH, Official Gazette, No. 3/03.

Yes: A YES score is earned if using confidential state information for private gain is illegal.

No: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

Yes | No

References:

Criminal Code of BiH, Official Gazette, No. 3/03.

Yes: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

No: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

References:

Criminal Code of BiH, Official Gazette, No. 3/03.

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes

No

Comments:

The Law on the Agency for Corruption Prevention and Coordination of the Fight Against Corruption was adopted by decisions of the upper chamber of the BiH Parliament at the 69th session and at the 40th session of the lower chamber (Dec. 30, 2009), and published in the BiH Official Gazette, No. 103/09.

Also, there is a specialized department of the state prosecutor's office for the fight against corruption and organized crime.

References:

Law on the Agency for Corruption Prevention and Coordination of the Fight Against Corruption BiH, Official Gazette, No. 103/09.

Law on the Prosecutor's Office BiH, Official Gazette. Nos. 24/02, 42/03.

Amendment, Official Gazette, Nos. 03/03, 37/03, 42/03, 09/04, 35/04, 61/04.

Law on the State Investigation and Protection Agency, Official Gazette, No. 27/04.

Yes: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

No: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

75. Is the anti-corruption agency effective?

14

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes

No

Comments:

The Law on the Agency clearly defines the procedure for the appointment of the director by the Parliamentary Assembly of BiH and stipulates that he is responsible to the supervisory board consisting of Members of Parliament, a civil society representative and an academic community representative. Furthermore, Article 14 of the law says that the director can neither belong to a political party nor work in the public administration.

References:

Law on the Agency for Corruption Prevention and Coordination of the Fight Against Corruption, BiH Official Gazette, No. 103/09.

Yes: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The House of Representatives of the Parliamentary Assembly of BiH appointed the candidates for the director of the Agency for the Prevention and Combat against Corruption and his deputies by political lines, while there was no discussion about the ones proposed by the commission for the selection and monitoring work of the agency.

Namely, the commission has submitted a list of 15 candidates and put forward three candidates with the highest score of votes: Ramiz Huremagic, Milan Krulja and Blanka Benkovic. However, members of the parliament were not even asked about this proposal, but according to the agreement among political parties, they appointed Sead Liska as the director and Dragan Slipac and Sreto Pekic as his deputies. It is necessary to mention that Sead Liska was only third in the ranking, which was compiled by the commission; Dragan Slipac was sixth, while Sreto Pekic was the last on the list of 15 candidates.

References:

Press release: Transparency International BiH: The Administration Agency for the Prevention of Corruption, appointed by political lines; July 15, 2011.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Since appointments were made based on political criteria, it can be concluded that removal also would be based on similar criteria.

References:

Interview with Members of Parliament, August 2011 (Interviewee requested anonymity).

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

At its last meeting, the House of Representatives of the Parliamentary Assembly of BiH appointed the candidates for the director of the Agency for the Prevention and Combat against Corruption and his deputies by political lines, while there was no discussion about the ones proposed by the commission for the selection and monitoring work of the agency.

Namely, the commission submitted a list of 15 candidates and put forward three candidates with the highest score of votes. However, members of the parliament, according to the agreement among political parties, appointed the director and two deputies. It is necessary to mention that the appointed director was only third in ranking, which was compiled by the commission; one deputy was sixth, while the other was the last on the list of 15 candidates.

References:

Press release: Transparency International BiH: The Administration Agency for the Prevention of Corruption, appointed by political lines; July 15, 2011.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency director was appointed in July 2011 after a two-year delay. The agency still has no budget or staff.

References:

Press release: Transparency International BiH: The Administration Agency for the Prevention of Corruption, appointed by political lines; July 15, 2011.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agency director was appointed in July 2011 after a two-year delay. The agency still has no budget or staff.

References:

Interview with Ministry of Finance representative, August 2011

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agency director was appointed in July 2011, after a two-year delay. The agency still has no budget or staff.

References:

Press release: Transparency International BiH: The Administration Agency for the Prevention of Corruption, appointed by political lines; July 15, 2011.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The law covering the anti-corruption agency has been adopted, but the agency is still not functional due to a lack of human and financial resources.

References:

Press release: Transparency International BiH: The Administration Agency for the Prevention of Corruption, appointed by political lines; July 15, 2011.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agency director was appointed in July 2011 after a two-year delay. The agency has not yet started any activities.

References:

Press release: Transparency International BiH: The Administration Agency for the Prevention of Corruption, appointed by political lines; July 15, 2011.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

13

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law establishing the anti-corruption agency has been adopted, but agency is still not functional due to a lack of human and financial resources.

References:

Press release: Transparency International BIH: The Administration Agency for the Prevention of Corruption, appointed by political lines; July 15, 2011.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | **25** | 0

Comments:

The law covering the anti-corruption agency has been adopted, but the agency is still not functional due to a lack of human and financial resources.

References:

Transparency International Advocacy and Legal Advice Centre annual report 2010.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

Yes | No

References:

Criminal Procedure Code, Official Gazette Nos. 36/03, 26/04.

Yes: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

No: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

“The backlog of cases remained one of the most acute problems facing the judiciary, and court proceedings are generally lengthy. The HJPC (High Judicial and Prosecutorial Council) took several measures to reduce the backlog, including quarterly reporting by all courts, a new quota system for judges, more judges in critical courts, new specialized software and training for bailiffs. Despite these reforms, the backlog still stands at over 2.1 million cases country-wide. Many of these are claims for unpaid utility bills.”

— European Commission Bosnia and Herzegovina 2010 Progress Report

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

2010 Human Rights Report: Bosnia and Herzegovina

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Prices of legal counsel services are extremely high and in some circumstances that can be barrier to use the appeals mechanism.

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2010.
<http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHGI2010web.pdf>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

75

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Yes, judgments in the criminal system follow written law. But the problem is the rather arbitrary approach in initiation of the criminal proceeding or the length of procedure.

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2010.
<http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHGI2010web.pdf>

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

25

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | **25** | 0

Comments:

Judicial decisions are very often ignored, even decisions of the European Court of Human Rights. This was the case with the European Court of Human Rights' (ECHR) decision regarding discrimination against citizens on the grounds of ethnicity (Sejdić-Finci Case).

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

Transparency International Advocacy and Legal Advice Centre annual report 2010.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

75

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

References:

Law on High Judicial and Prosecutorial Council (HJPC) of BiH, Official Gazette BiH, Nos. 25/04, 93/05.

Yes: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

No: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

"Political pressure on the judiciary continued. The authority of the HJPC (High Judicial and Prosecutorial Council), the State Court and the Prosecutor's Office have often been questioned by political leaders. The role of the HJPC in appointing new judges was also challenged when the president of the federation delayed three appointments to the Entity Constitutional Court, thus undermining the proper functioning of the court. The state-level prosecutor's office faced cases of internal corruption and frequent leaks of information. The impartiality of courts is not always guaranteed."

— European Commission Bosnia and Herzegovina 2010 Progress Report

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

2010 Human Rights Report: Bosnia and Herzegovina

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor
April 8, 2011.

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised

or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | No

Comments:

Pursuant to Article 22, Item 2b, of the court of Bosnia and Herzegovina (Official Gazette BiH, no. 29/00) and Item 4 of the Decision on the Appointment of Judges and the Establishment of the court of Bosnia and Herzegovina, (Official Gazette BiH, no. 10/02), the court of BiH, at the plenary session held on June 20, 2002, adopted the book of rules for the operation of the court.

References:

Book of rules for the operation of the court.

Yes: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

No: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

References:

Law on High Judicial and Prosecutorial Council (HJPC), Official Gazette of BiH, Nos. 25/04, 93/05.

Yes: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

No: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes

No

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2010.

<http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHGI2010web.pdf>

Yes: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes

No

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2010.

<http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHGI2010web.pdf>

Yes: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

No: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

75

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

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<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

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<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect

specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

References:

Criminal Procedure Code, Official Gazette, Nos. 36/03, 26/04.

Yes: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

No: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, representation of citizens by legal counsel is obligatory (paid by states) in certain cases (particularly in criminal procedures). The problem is that such representation provided by the state is rather formal. Without real interests of state-paid legal counsel to undertake all necessary procedural steps in order to provide quality defense to clients.

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

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<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

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April 8, 2011.

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

According to the Doing Business Survey 2011 for Bosnia and Herzegovina, costs are 40 percent of the claim, while the Eastern Europe and Central Asia average is 27 percent.

References:

Doing Business Survey 2011 — Bosnia and Herzegovina.

<http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina/>

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | **50** | 25 | 0

Comments:

According to the High Judicial and Prosecutorial Council criteria, a new court can be established if the distance from the existing court is more than 45 kilometers.

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2010.
<http://www.hjpc.ba/intro/gizvjestaj/pdf/VSTVBiHGI2010web.pdf>

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The widespread nepotism, clientelism and politicization of the police has been a legacy of the war, when appointments were made by political allegiance. For example, according to the prime minister of Bosnia and Herzegovina, the director of the key law enforcement agency, the State Investigation and Protection Agency, was appointed as result of an agreement among political leaders.

References:

"Bosnia's Federation Rulers Face Nepotism Charge," July 2011, Balkan Insight.
<http://www.balkaninsight.com/en/article/bosnia-s-federation-rulers-face-nepotism-charge>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2011, May 2011.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Police officers protested the failure of their canton governments to honor a 2010 law on police salary increases in the Federation of Bosnia and Herzegovina (FBiH), demanding that policemen wages be harmonized throughout BiH.

References:

"BiH police protest low wages," Southeast European Times, April 26, 2011.
http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/04/26/feature-02

Interview with European police mission representative, September 2011.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

According to the European Commission Progress Report on Bosnia and Herzegovina: "Effective investigation, prosecution and conviction of corruption cases remained low. Some law enforcement operations led to the arrest of a number of civil servants suspected of various forms of corruption including favoring smuggling and customs fraud. However, the prosecution of corruption focused too often on minor cases, while a number of high level corruption cases have ended in the dropping of the charges, acquittals, or suspended sentences."

References:

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

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<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154416.htm>

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

54

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes

No

Comments:

The mechanism is called the Units for Professional Standards.

References:

Law on the State Investigation and Protection Agency, Official Gazette of BiH, No. 27/04.

Yes: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

No: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100

75

50

25

0

Comments:

According to the European Commission Bosnia and Herzegovina 2010 Progress Report: "Out of 200 cases received by the Public Complaints Board, none resulted in disciplinary sanctions."

From the information the Center for Investigative Reporting in Sarajevo (CIN) did receive (this is information for all law enforcement agencies in the country), it appears that every year some 2,000 to 2,700 complaints are filed by citizens and fellow policemen against officers, but again, few complaints led to discipline. All were investigated but only 14 were found to have any basis, with two more cases pending.

References:

Center for Investigative Reporting: "Internal affairs system rarely curbs bad officers".

Transparency International Advocacy and Legal Advice Centre annual report 2010.

European Commission Bosnia and Herzegovina 2010 Progress Report,
Nov. 9, 2010, Brussels.

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

References:

Law on the State Investigation and Protection Agency, Official Gazette of BiH, No. 27/04.

Yes: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

No: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

According to the European Commission Bosnia and Herzegovina 2010 Progress Report: "Effective investigation, prosecution and conviction of corruption cases remained low. Some law enforcement operations led to the arrest of a number of civil servants suspected of various forms of corruption including favoring smuggling and customs fraud. However, the prosecution of corruption focused too often on minor cases, while a number of high-level corruption cases have ended in the dropping of the charges, acquittals, or suspended sentences."

From the information the Center for Investigative Reporting in Sarajevo did receive, it appears that every year some 2,000 to 2,700 complaints are filed by citizens and fellow policemen against officers, but again, few complaints led to discipline. All were investigated but only 14 were found to have any basis, with two more cases pending.

References:

Transparency International Advocacy and Legal Advice Centre annual report 2010.

The Center for Investigative Reporting: Internal affairs system rarely curbs bad officers: http://cin.ba/Stories/P14_Police/?cid=722,1,1.

European Commission Bosnia and Herzegovina 2010 Progress Report, Nov. 9, 2010, Brussels
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

References:

Law on the State Investigation and Protection Agency, Official Gazette of BiH, No. 27/04.

Yes: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

No: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

According to the European Commission Bosnia and Herzegovina 2010 Progress Report: "Effective investigation, prosecution and conviction of corruption cases remained low. Some law enforcement operations led to the arrest of a number of civil servants suspected of various forms of corruption including favoring smuggling and customs fraud. However, the prosecution of corruption focused too often on minor cases, while a number of high-level corruption cases have ended in the dropping of the charges, acquittals, or suspended sentences."

References:

"Bosnia Arrests Police, Politicians in Anti-Corruption Operation," Balkan Insight, December 2010.

<http://www.balkaninsight.com/en/article/bosnia-police-officials-politicians-arrested-in-a-major-corruption-crackdown>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
