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Group of States against corruption

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
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Theme I

Third Evaluation Round

ANNEX **Evaluation Report on Bosnia and Herzegovina** **Incriminations (ETS 173 and 191, GPC 2)**

(Theme I)

Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191)
Table of Comparison

BRIBERY IN THE PUBLIC SECTOR

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
Use of terms					
<i>Criminal Law Convention on Corruption (ETS 173)</i>					
1.a	'public official' shall be understood by reference to the definition of 'official', 'public officer', 'mayor', 'minister' or 'judge' in the national law of the State in which the person in question performs that function and as applied in its criminal law;	Article 1 (3) CC <i>Official person means: an elected or appointed officer to legislative, executive and judicial office within Bosnia and Herzegovina and other State and administrative institutions or services which perform particular administrative, expert and other duties, within the rights and liabilities of the authority that has founded them; a person who regularly or occasionally executes official duty in the aforementioned administrative bodies or institutions, an authorised person in a business enterprise or another legal entity that has been entrusted with the execution of public authorities by law or other regulations based on the law, who performs certain duties within the framework of the given authority; and other persons who are performing specific official duties, with or without remuneration, as stipulated by law or other regulations based on the law.</i>	Article 2 (3) CC An official shall be an elected or appointed officer or other official in legislative, executive and judicial bodies and other administrative organs and services of the Federation, cantons, cities and municipalities which carry out specific administrative, professional and other tasks within the rights and duties of the authority which established them; a person who regularly or occasionally executes official duties in these organs and bodies; an authorised person in a business enterprise or other legal entity who under the law or other regulation adopted under the law has been entrusted with the exercise of public powers and who, within those powers, performs a specific function; and a person who performs a specific official function under the authority arising from the law or other regulation adopted under the law.	Article 2 (3) CC An official shall be an elected or appointed officer in legislative, executive and judicial bodies of the Brčko District and in other state and administrative institutions and services which carry out specific administrative, professional and other tasks within the rights and duties of the authority which established them; a person who regularly or occasionally executes official duties in these administrative organs or institutions; an authorised person in a business enterprise or other legal entity who under the law or other regulation adopted under the law has been entrusted with the exercise of public powers and who, within those powers, performs a specific function; and a person who performs a specific official function with or without compensation under the authority arising from the law or other regulation adopted under the law.	Article 147 (3) CC An official shall be an elected or appointed officer in legislative, executive and judicial organs of Republika Srpska and in other state and administrative institutions and services which carry out specific administrative, professional and other tasks within the rights and duties of the authority which established them; a person who regularly or occasionally executes official duties in these administrative organs or institutions; an authorised person in a business enterprise or other legal entity who under the law or other regulation adopted under the law has been entrusted with the exercise of public powers and who, within those powers, performs a specific function; and a person who performs a specific official function under the authority arising from the law or other regulation adopted under the law.
1.b	the term 'judge' referred to in sub-paragraph a above shall include prosecutors and holders of judicial offices;				
	'members of domestic public assemblies' exercising legislative or administrative powers				

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
	'foreign public official'	<p>Article 1 (7) CC <i>Foreign official person means a member of a legislative, executive, administrative or judicial body of a foreign state, a public official of an international organisation or of its bodies, a judge or another official person of an international court, serving in Bosnia and Herzegovina, with or without remuneration.</i></p> <p>Article 1 (8) CC <i>International officer is a civilian employee employed with an international organisation or agency.</i></p>	<p>Article 2 (8) CC A foreign official shall be a member of a legislative, executive, administrative or judicial organ of a foreign state, a public officer of an international organisation or its bodies, a judge or other officer of an international court who is on duty in the Federation and works with or without compensation.</p>	<p>Article 2 (7) CC A foreign official shall be a member of a legislative, executive, administrative or judicial organ of a foreign state, a public officer of an international organisation or its organs, a judge or other officer of an international court who is on duty in the Brčko District and works with or without compensation.</p> <p>Article 2 (8) CC An international official shall be a civilian employee who works for an international organisation or agency.</p>	<p>Article 147 (6) CC A foreign official shall be a member of a legislative, executive, administrative or judicial organ of a foreign state, a public officer of an international organisation or its organs, a judge or other officer of an international court who is on duty in Republika Srpska and works with or without compensation.</p>
	'members of foreign public assemblies' exercising legislative or administrative powers in any other State				
	'officials of international organisations': any official or other contracted employee, within the meaning of the staff regulations, of any public international or supranational organisation or body of which the Party is a member, and any person, whether seconded or not, carrying out functions corresponding to those performed by such officials or agents.				
	'members of international parliamentary assemblies' of international or supranational organisations of which the Party is a member				
	'judges and officials of international courts' whose jurisdiction is accepted by the Party				
<i>Additional Protocol (ETS 191)</i>					
1.1	The term 'arbitrator' shall be understood by reference to the national law of the States Parties to this Protocol, but shall in any case include a person who by virtue of an arbitration agreement is called upon to render a legally binding decision in a dispute submitted to him/her by the parties to the agreement.	<p>Article 1 (3) CC <i>other persons who are performing specific official duties, with or without remuneration, as stipulated by law or other regulations based on the law.</i></p>	<p>Article 2 (3) CC a person who performs a specific official function under the authority arising from the law or other regulation adopted under the law.</p>	<p>Article 2 (3) CC a person who performs a specific official function with or without compensation under the authority arising from the law or other regulation adopted under the law.</p>	<p>Article 147 (3) CC a person who performs a specific official function under the authority arising from the law or other regulation adopted under the law.</p>
	'foreign arbitrator'	[Not covered]	[Not covered]	[Not covered]	[Not covered]
1.3	The term 'juror' shall be understood by reference to the national law of the States Parties to this Protocol but shall in any case include a lay person acting as a member of a collegial body which has the responsibility of deciding on the guilt of an accused person in the framework of a trial.	[Jurors unknown to BiH system]	[Jurors unknown to BiH system]	[Jurors unknown to BiH system]	[Jurors unknown to BiH system]

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
	'foreign juror'	[Not covered]	[Not covered]	[Not covered]	[Not covered]
2	<p>Active bribery</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.</p>	<p>Article 218 CC</p> <p>(1) Whoever gives or promises a gift or any other benefit to an official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person <i>or an international official</i>, in order that s/he performs within the scope of his/her official powers of an act, which ought not to be performed by him/her, or abstains from performing of an act which ought to be performed by him/her, or whoever mediates in such bribing of the official or responsible person, shall be punished by imprisonment for a term between six months and five years.</p> <p>(2) Whoever gives or promises a gift or any other benefit to an official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person <i>or an international official</i>, in order that s/he performs within the scope of his official powers an act, which ought to be performed by him/her, or abstains from performing of an act, which ought not to be performed by him/her, shall be punished by a fine or imprisonment for a term not exceeding three years.</p> <p>(3) The perpetrator of the criminal offence referred to in paragraph 1 and 2 of this Article who had given a bribe on request of the official or responsible</p>	<p>Article 381 CC</p> <p>(1) Whoever gives or promises a gift or other benefit to an official or responsible person in the Federation, including a foreign official, in order for this official or responsible person to do what s/he would not be allowed to do or not to do what s/he would have to do, within his/her authority, or whoever acts as an intermediary in such bribing of an official or responsible person, shall be punished by a term of imprisonment of six months to five years.</p> <p>(2) Whoever gives or promises a gift or other benefit to an official or responsible person in the Federation, including a foreign official, in order for this official or responsible person to do what s/he would have to do or not to do what s/he would not be allowed to do, within his/her authority, or whoever acts as an intermediary in such bribing of an official or responsible person, shall be punished by a fine or a term of imprisonment not exceeding three years.</p> <p>(3) The perpetrator of a crime referred to in paragraphs 1 and 2 of this Article who gives a bribe at the solicitation of an official or responsible person in the Federation, including a foreign official, but reports the crime before it is</p>	<p>Article 375 CC</p> <p>(1) Whoever gives or promises a gift or other benefit to an official or responsible person in the Brčko District of Bosnia and Herzegovina, including a foreign official, in order for this official or responsible person to do what s/he would not be allowed to do or not to do what s/he would have to do, within his/her authority, or whoever acts as an intermediary in such bribing of an official or responsible person, shall be punished by a term of imprisonment of six months to five years.</p> <p>(2) Whoever gives or promises to give a gift or other benefit to an official or responsible person in the Brčko District of Bosnia and Herzegovina, including a foreign official, in order for this official or responsible person to do what s/he would have to do or not to do what s/he would not be allowed to do, within his/her authority, or whoever acts as an intermediary in such bribing of an official or responsible person, shall be punished by a fine or a term of imprisonment not exceeding three years.</p> <p>(3) The perpetrator of a crime referred to in paragraphs 1 and 2 of this Article who gives a bribe at the solicitation of an official or responsible person in the</p>	<p>Article 352 CC</p> <p>(1) Whoever attempts to give or promises a gift or other benefit to an official or responsible person in order for this official or responsible person to perform an act s/he would not be allowed to perform or not to perform an act s/he would have to or be able to perform, within his/her authority, or whoever acts as an intermediary in such bribing of an official, shall be punished by a term of imprisonment of six months to five years.</p> <p>(2) Whoever gives or promises to give a gift or other benefit to an official or responsible person in order for this official or responsible person to perform an act s/he would have to or be able to perform or not to perform an act s/he would not be allowed to perform, within his/her authority, or whoever acts as an intermediary in such bribing of an official, shall be punished by a term of imprisonment of not exceeding three years.</p> <p>(3) The perpetrator of a crime referred to in paragraphs 1 and 2 of this Article who gives a bribe at the solicitation of an official or responsible person, but reports the crime before it is discovered or before learning that it has been discovered, may be acquitted.</p>

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
		<p>person in the institutions of Bosnia and Herzegovina including also a foreign official person or an international official, but reported the deed before it being discovered or before knowing that the deed has been discovered, may be released from punishment.</p> <p>(4) The gifts or any other benefits shall be forfeited, while in case referred to in paragraph 3 of this Article, they can be returned to the giver.</p>	<p>discovered or before learning that it has been discovered, may be acquitted.</p> <p>(4) The received gift or other benefit shall be seized, and in cases referred to in paragraph 3 of this Article it may be returned to the person who gave the bribe.</p>	<p>Brčko District of Bosnia and Herzegovina, including a foreign official, but reports the crime before it is discovered or before learning that it has been discovered, may be acquitted.</p> <p>(4) The received gift or other benefit shall be seized, and in cases referred to in paragraph 3 of this Article it may be returned to the person who gave the bribe.</p>	<p>(4) The received gift or other benefit shall be seized, and in cases referred to in paragraph 3 of this Article it may be returned to the person who gave the bribe.</p>
Elements of the offence: active bribery					
	when committed intentionally,				
	the promising, offering or giving by any person,	Whoever gives or promises	Whoever gives or promises	Whoever gives or promises	Whoever attempts to give or promises
	directly or indirectly,	or whoever mediates in such bribing of the official or responsible person	or whoever acts as an intermediary in such bribing	or whoever acts as an intermediary in such bribing	or whoever acts as an intermediary
	of any undue advantage	a gift or any other benefit	a gift or other benefit	a gift or other benefit	a gift or other benefit
	to any of its public officials,	to an official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person or an international official	to an official or responsible person in the Federation, including a foreign official	to an official or responsible person in the Brčko District of Bosnia and Herzegovina, including a foreign official	to an official or responsible person [no foreign official explicit coverage]
	for himself or herself or for anyone else,	[Not explicitly covered]	[Not explicitly covered]	[Not explicitly covered]	[Not explicitly covered]
	for him or her to act or refrain from acting in the exercise of his or her functions.	<p>Article 218 (1) CC – Unlawful acts</p> <p>in order that s/he performs within the scope of his/her official powers of an act, which ought not to be performed by him/her, or abstains from performing of an act which ought to be performed by him/her</p> <p>Article 218(2) CC – Lawful acts</p>	<p>Article 381 (1) CC – Unlawful acts</p> <p>in order for this official or responsible person to do what s/he would not be allowed to do or not to do what s/he would have to do, within his/her authority</p> <p>Article 381 (2) CC – Lawful acts</p> <p>in order for this official or responsible</p>	<p>Article 375 (1) – Unlawful acts</p> <p>in order for this official or responsible person to do what s/he would not be allowed to do or not to do what s/he would have to do, within his/her authority.</p> <p>Article 375 (2) – Lawful acts</p> <p>in order for this official or responsible</p>	<p>Article 352 (1) – Unlawful acts</p> <p>in order for this official or responsible person to perform an act s/he would not be allowed to perform or not to perform an act s/he would have to or be able to perform, within his/her authority.</p> <p>Article 352 (2) – Lawful acts</p> <p>in order for this official or responsible</p>

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
		in order that s/he performs within the scope of his official powers an act, which ought to be performed by him/her, or abstains from performing of an act, which ought not to be performed by him/her [restrictive breach duties]	person to do what s/he would have to do or not to do what s/he would not be allowed to do, within his/her authority [restrictive breach duties]	person to do what s/he would have to do or not to do what s/he would not be allowed to do, within his/her authority [restrictive breach duties]	person to perform an act s/he would have to or be able to perform or not to perform an act s/he would not be allowed to perform, within his/her authority, [restrictive breach duties]
3	<p>Passive bribery</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.</p>	<p>Article 217 CC</p> <p>(1) An official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person or an international official, who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit, for himself/herself or another person, in order to perform within the scope of his/her official powers an act, which ought not to be performed by him/her, or for the omission of an act, which ought to be performed by him/her, shall be punished by imprisonment for a term between one and ten years.</p> <p>(2) An official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person or an international official, who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit, for himself/herself or another person, in order to perform within the scope of his/her official powers an act, which ought to be performed by him/her, or for the omission of an act, which ought not to be performed by him/her, shall be</p>	<p>Article 380 CC</p> <p>(1) An official or responsible person in the Federation, including a foreign official, who solicits or accepts a gift or other benefit for himself/herself or another person, or who accepts the promise of a gift or benefit for himself/herself or another person, in order to do something s/he would not be allowed to do or in order not to do something s/he would have to do, within his/her authority, shall be punished by a term of imprisonment of one to ten years.</p> <p>(2) An official or responsible person in the Federation, including a foreign official, who solicits or accepts a gift or benefit for himself/herself or another person, or who accepts the promise of a gift or benefit for himself/herself or another person in order to do something s/he would have to do or in order not to do something s/he would not be allowed to do, within his/her authority, shall be punished by a term of imprisonment of six months to five years.</p>	<p>Article 374 CC</p> <p>(1) An official or responsible person in the Brčko District of Bosnia and Herzegovina, including a foreign official, who solicits or accepts a gift or other benefit or who accepts the promise of a gift or benefit in order to do something s/he would not be allowed to do or in order not to do something s/he would have to do, within his/her authority, shall be punished by a term of imprisonment of one to ten years.</p> <p>(2) An official or responsible person in the Brčko District of Bosnia and Herzegovina, including a foreign official, who solicits or accepts a gift or other benefit or who accepts the promise of a gift or any benefit in order to do something s/he would have to do or in order not to do something s/he would not be allowed to do, within his/her authority, shall be punished by a term of imprisonment of six months to five years.</p> <p>(3) The punishment referred to in paragraph 2 of this Article shall be</p>	<p>Article 351 CC</p> <p>(1) An official or responsible person who solicits or accepts a gift or other benefit or who accepts the promise of a gift or other benefit in order to perform an act s/he would not be allowed to perform or in order not to perform an act s/he would have to or be able perform, within his/her authority, shall be punished by a term of imprisonment of <u>one to eight years</u>.</p> <p>(2) An official or responsible person who solicits or accepts a gift or other benefit or who accepts the promise of a gift or other benefit in order to perform an act s/he would have to or be able to perform or in order not to perform an act s/he would not be allowed to perform, within his/her authority, shall be punished by a term of imprisonment of <u>one to five years</u>.</p> <p>(3) An official or responsible person who after an act of commission or omission referred to in paragraphs 1 to 3 of this Article solicits or accepts a gift or other benefit in relation to that act shall be</p>

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
		<p>punished by imprisonment for a term between six months and five years.</p> <p>(3) The punishment referred to in paragraph 1 of this Article shall be imposed on an official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person <i>or an international official</i>, who demands or accepts a gift or any other benefit, <i>for himself/herself or another person</i>, following the performance or omission of an official act referred to in paragraphs 1 and 2 of this Article and in relation to it.</p> <p>(4) The gifts or any other benefits shall be forfeited.</p>	<p>(3) The punishment referred to in paragraph 2 of this Article shall be imposed on an official or responsible person in the Federation, including a foreign official, who after an act of commission or omission referred to in paragraphs 1 and 2 of this Article solicits or accepts a gift or other benefit for himself/herself or another person in relation to that act.</p> <p>(4) The received gift or other benefit shall be seized.</p>	<p>imposed on an official or responsible person in the Brčko District of Bosnia and Herzegovina, including a foreign official, who after an act of commission or omission referred to in paragraphs 1 and 2 of this Article solicits or accepts a gift or other benefit in relation to that act.</p> <p>(4) The received gift or other benefit shall be seized.</p>	<p>punished by a term of <u>imprisonment not exceeding three years</u>.</p> <p>(4) The received gift or other benefit shall be seized.</p>
Elements of the offence: passive bribery					
	when committed intentionally				
	the request or receipt	who demands or accepts	who solicits or accepts	who solicits or accepts	who solicits or accepts
	by any of its public officials,	an official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person <i>or an international official</i>	an official or responsible person in the Federation, including a foreign official	an official or responsible person in the Brčko District of Bosnia and Herzegovina, including a foreign official	an official or responsible person [no foreign official explicit coverage]
	directly or indirectly	[Not explicitly covered]	[Not explicitly covered]	[Not explicitly covered]	[Not explicitly covered]
	of any undue advantage	a gift or any other benefit	a gift or other benefit	a gift or other benefit	a gift or other benefit
	for himself or herself or for anyone else	<i>for himself/herself or another person</i> ,	for himself/herself or another person,	[Not explicitly covered]	[Not explicitly covered]
	or the acceptance of an offer or a promise of such an advantage	or who accepts a promise of a gift or a benefit	or who accepts the promise of a gift or benefit	or who accepts the promise of a gift or benefit	or who accepts the promise of a gift or other benefit
	to act or refrain from acting in the exercise of his or her functions.	Article 217 (1) CC – Unlawful acts in order to perform within the scope of	Article 380 (1) CC – Unlawful acts in order to do something s/he would not	Article 374 (1) CC – Unlawful acts in order to do something he would not	Article 351 CC – Unlawful acts in order to perform an act s/he would not

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
		<p>his/her official powers an act, which ought not to be performed by him/her, or for the omission of an act, which ought to be performed by him/her.</p> <p>Article 217 (2) CC – Lawful acts in order to perform within the scope of his/her official powers an act, which ought to be performed by him/her, or for the omission of an act, which ought not to be performed by him/her.</p>	<p>be allowed to do or in order not to do something s/he would have to do, within his/her authority.</p> <p>Article 380 (2) CC – Lawful acts in order to do something s/he would have to do or in order not to do something s/he would not be allowed to do, within his/her authority.</p>	<p>be allowed to do or in order not to do something he would have to do, within his/her authority.</p> <p>Article 374 (2) CC – Lawful acts in order to do something s/he would have to do or in order not to do something s/he would not be allowed to do, within his/her authority.</p>	<p>be allowed to perform or in order not to perform an act s/he would have to or be able perform, within his/her authority.</p> <p>Article 351 (2) CC – Lawful acts in order to perform an act s/he would have to or be able to perform or in order not to perform an act s/he would not be allowed to perform, within his/her authority.</p>

Text *in italics*– latest amendments in CC BiH (2010)

Criminal Law Convention on Corruption (ETS 173)
Table of Comparison

BRIBERY IN THE PRIVATE SECTOR

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
Definition bribery in private sector					
7	<p>Active bribery</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.</p>	<p>PROVISIONS OF BRIBERY IN PUBLIC SECTOR APPLY</p>			
8	<p>Passive bribery</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.</p>	<p>PROVISIONS OF BRIBERY IN PUBLIC SECTOR APPLY</p>			

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
Scope of perpetrators					
<i>Specific elements in Arts. 7 & 8 ETS 173</i>		<i>Definition of “responsible person” in BiH CCs [identical provisions in all CCs]</i>			
		Article 1 (5) CC <i>Responsible person is a person in a business enterprise or another legal entity who, in the line of duty or on the basis of specific authorisation, has been entrusted with a portfolio related to the implementation of law or regulations based on law or general act of a business enterprise or other legal entities in managing and administering the property, or is related to managing a productive or some other business process or supervision of such processes.</i>	Article 2 (6) CC A responsible person shall be a person in a business enterprise or other legal entity who, in consideration of his duties or on the basis of specific authority, has been entrusted with a range of tasks relating to the application of laws or regulations adopted pursuant to laws or a general act of a business enterprise or other legal entity which regulate the managing and handling of property or the management of production or some other economic activity or control over them.	Article 2 (5) CC A responsible person shall be a person in a business enterprise or other legal entity who, in consideration of his function or on the basis of specific authority, has been entrusted with a range of tasks relating to the application of laws or regulations adopted pursuant to laws or a general act of a business enterprise or other legal entity which regulate the managing and handling of property or the management of a production or some other economic process or control over it.	Article 147 (4) CC A responsible person shall be a person in a business enterprise or other legal entity who, in consideration of his function or on the basis of specific authority, has been entrusted with a range of tasks relating to the application of laws, regulations adopted pursuant to laws or general acts of a business enterprise or other legal entity which regulate the managing and handling of property or the management of production or some other economic activity or control over them.
7 & 8	In the course of business activity	<i>in a business enterprise or another legal entity.</i>	in a business enterprise or other legal entity.	in a business enterprise or other legal entity.	in a business enterprise or other legal entity.
7 & 8	to any persons who direct or work for, in any capacity, private sector entities	<i>who, in the line of duty or on the basis of specific authorisation, has been entrusted with a portfolio related to the implementation of law or regulations based on law or general act of a business enterprise or other legal entities in managing and administering the property, or is related to managing a productive or some other business process or supervision of such processes.</i>	who, in consideration of his/her duties or on the basis of specific authority, has been entrusted with a range of tasks relating to the application of laws or regulations adopted pursuant to laws or a general act of a business enterprise or other legal entity which regulate the managing and handling of property or the management of production or some other economic activity or control over them.	who, in consideration of his/her function or on the basis of specific authority, has been entrusted with a range of tasks relating to the application of laws or regulations adopted pursuant to laws or a general act of a business enterprise or other legal entity which regulate the managing and handling of property or the management of a production or some other economic process or control over it.	who, in consideration of his/her function or on the basis of specific authority, has been entrusted with a range of tasks relating to the application of laws, regulations adopted pursuant to laws or general acts of a business enterprise or other legal entity which regulate the managing and handling of property or the management of production or some other economic activity or control over them

Text *in italics*– latest amendments in CC BiH (2010)

Criminal Law Convention on Corruption (ETS 173)
Table of Comparison

TRADING IN INFLUENCE

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
Trading in influence					
12	<p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.</p>	<p>Article 219 CC</p> <p>(1) Whoever accepts a reward or any other benefit for interceding that an official act be or not be performed, taking advantage of his/her official or influential position in the institutions of Bosnia and Herzegovina, shall be punished by a fine or imprisonment for a term not exceeding three years.</p> <p>(2) Whoever by taking advantage of his/her official or influential position in the institutions of Bosnia and Herzegovina, intercedes that an official act be performed, which ought not to be performed, or that an official act be not performed, which ought to be performed, shall be punished by imprisonment for a term between six months and five years.</p> <p>(3) If a reward or any other benefit has been received in return for the criminal offence referred to in paragraph 2 of this Article, the perpetrator shall be punished by imprisonment for a term between one and ten years.</p> <p>(4) <i>A reward accepted or any other gain shall be forfeited.</i></p>	<p>Article 382 CC</p> <p>(1) Whoever accepts a reward or other benefit for acting as an intermediary by using his/her official or influential position in the Federation in order for some official act to be performed or not to be performed shall be punished by a fine or a term of imprisonment not exceeding three years.</p> <p>(2) Whoever acts as an intermediary by using his/her official or influential position in the institutions of the Federation in order to achieve the performance of an official act that would not be allowed to be performed or the non-performance of an official act that would have to be performed, shall be punished by a term of imprisonment of six months to five years.</p> <p>(3) If a reward or any other benefit is received for a crime referred to in paragraph 2 of this Article, the perpetrator shall be punished by a term of imprisonment of one to ten years.</p> <p>(4) The received reward or any other benefit shall be seized.</p>	<p>Article 376 CC</p> <p>(1) Whoever accepts a reward or other benefit for acting as an intermediary by using his/her official or influential position in the Brčko District of Bosnia and Herzegovina in order for some official act to be performed or not to be performed shall be punished by a fine or a term of imprisonment not exceeding three years.</p> <p>(2) Whoever acts as an intermediary by using his/her official or influential position in the institutions of the Brčko District of Bosnia and Herzegovina in order to achieve the performance of an official act that would not be allowed to be performed or the non-performance of an official act that would have to be performed, shall be punished by a term of imprisonment of six months to five years.</p> <p>(3) If a reward or any other benefit is received for a crime referred to in paragraph 2 of this Article, the perpetrator shall be punished by a term of imprisonment of one to ten years.</p>	<p>Article 353 CC</p> <p>(1) Whoever accepts a reward or other benefit for acting as an intermediary by using his/her official or social position or influence in order for some official act to be performed or not to be performed shall be punished by a term of imprisonment not exceeding three years.</p> <p>(2) Whoever acts as an intermediary by using his/her official or social position or influence in order to achieve the performance of an official act that would not be allowed to be performed or the non-performance of an official act that would have to be performed shall be punished by a term of imprisonment of six months to five years.</p> <p>(3) If the crime referred to in paragraph 2 is committed in connection with the initiation or conducting of criminal proceedings against a certain person, the perpetrator shall be punished by a term of imprisonment of <u>one to five years</u>.</p> <p>(4) If a reward or any other benefit is received for intermediary activities referred to in paragraphs 2 and 3 of this Article, the perpetrator shall be punished by a term of imprisonment of <u>two to ten</u></p>

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
					years. (5) The received gift or other benefit shall be seized.
	Elements of offence: passive trading in influence				
	when committed intentionally				
	the request,	[Request not explicitly covered]	[Request not explicitly covered]	[Request not explicitly covered]	[Request not explicitly covered]
	receipt	[Receipt not explicitly covered]	[Receipt not explicitly covered]	[Receipt not explicitly covered]	[Receipt not explicitly covered]
	or the acceptance	accepts	accepts	accepts	accepts
	of the offer	[Offer not explicitly covered]	[Offer not explicitly covered]	[Offer not explicitly covered]	[Offer not explicitly covered]
	or the promise	[Promise not explicitly covered]	[Promise not explicitly covered]	[Promise not explicitly covered]	[Promise not explicitly covered]
	directly or indirectly	[Direct/indirect not explicitly covered]	[Direct/indirect not explicitly covered]	[Direct/indirect not explicitly covered]	[Direct/indirect not explicitly covered]
	of any undue advantage	a reward or any other benefit	a reward or other benefit	a reward or other benefit	a reward or other benefit
	in consideration of that influence	for interceding that an official act be or not be performed	for acting as an intermediary	for acting as an intermediary	for acting as an intermediary
	whether the undue advantage is for himself or herself or for anyone else	[Third parties not explicitly covered]	[Third parties not explicitly covered]	[Third parties not explicitly covered]	[Third parties not explicitly covered]
	whether or not the influence is exerted or whether or not the supposed influence leads to the intended result	taking advantage of his/her official or influential position in the institutions of Bosnia and Herzegovina	by using his/her official or influential position in the Federation in order for some official act to be performed or not to be performed	by using his/her official or influential position in the Brčko District of Bosnia and Herzegovina in order for some official act to be performed or not to be performed	by using his/her official or social position or influence in order for some official act to be performed or not to be performed
	Elements of offence: active trading in influence				
	when committed intentionally	NOT COVERED			
	the promising, giving or offering	NOT COVERED			
	directly or indirectly	NOT COVERED			
	of any undue advantage	NOT COVERED			

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
	to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof	NOT COVERED			
	whether the undue advantage is for himself or herself or for anyone else				
	whether or not the influence is exerted or whether or not the supposed influence leads to the intended result				

Criminal Law Convention on Corruption (ETS 173)
Table of Comparison

JURISDICTION

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
17 (1)	Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with Articles 2 to 14 of this Convention where:				
	Offence committed in national territory				
a.	the offence is committed in whole or in part in its territory;	<p>Article 8 CC</p> <p>(1) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who commits a crime in the territory of Bosnia and Herzegovina.</p> <p>(2) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who commits a crime aboard a domestic vessel regardless of where the vessel was located at the time the crime was committed.</p> <p>(3) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who commits a crime aboard a domestic civilian aircraft while in flight or aboard a domestic military aircraft regardless of where the aircraft was located at the time the crime was committed.</p>	<p>Article 12 CC</p> <p>(1) The criminal legislation of the Federation shall apply to anyone who commits a crime in the territory of the Federation.</p> <p>(2) The criminal legislation of the Federation shall apply to anyone who commits a crime aboard a domestic vessel regardless of where the vessel was located at the time the crime was committed.</p> <p>(3) The criminal legislation of the Federation shall apply to anyone who commits a crime aboard a domestic civilian aircraft while in flight or aboard a domestic military aircraft regardless of where the aircraft was located at the time the crime was committed.</p>	<p>Article 12 CC</p> <p>(1) The criminal legislation of the Brčko District shall apply to anyone who commits a crime in the territory of the Brčko District.</p> <p>(2) The criminal legislation of the Brčko District shall apply to anyone who commits a crime aboard a domestic vessel regardless of where the vessel was located at the time the crime was committed.</p> <p>(3) The criminal legislation of the Brčko District shall apply to anyone who commits a crime aboard a domestic aircraft while in flight regardless of where the aircraft was located at the time the crime was committed.</p>	<p>Article 119 CC</p> <p>(1) The criminal legislation of Republika Srpska shall apply to anyone who commits a crime in the territory of Republika Srpska.</p> <p>(2) The criminal legislation of Republika Srpska shall apply to anyone who commits a crime aboard a domestic vessel regardless of where the vessel was located at the time the crime was committed.</p> <p>(3) The criminal legislation of Republika Srpska shall apply to anyone who commits a crime aboard a domestic civilian aircraft while in flight or aboard a domestic military aircraft regardless of where the aircraft was located at the time the crime was committed.</p>

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
	Offence committed abroad				
b.	the offender is one of its nationals, the offender is one of its public officials, or a member of one of its domestic public assemblies;	<p>Article 9 CC</p> <p>(1) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who while outside its territory commits:</p> <ul style="list-style-type: none"> - any crime against the integrity of Bosnia and Herzegovina referred to in Chapter XVI (Crimes Against the Integrity of Bosnia and Herzegovina) of this Code; - the crime of counterfeiting or forging securities of Bosnia and Herzegovina, the crime of counterfeiting value signs or counterfeiting trademarks, measures and weights issued under the regulations of the institutions of Bosnia and Herzegovina referred to in Articles 205 to 208 of this Code; - a crime which Bosnia and Herzegovina is bound to punish according to the provisions of international law and international or intergovernmental agreements; - crimes against an official or responsible person in the institutions of Bosnia and Herzegovina in relation to his office. <p>(2) The criminal legislation of Bosnia and Herzegovina shall apply to a citizen of Bosnia and Herzegovina who commits any crime outside the territory of Bosnia and Herzegovina.</p> <p>(3) The criminal legislation of Bosnia and Herzegovina shall apply to a foreign national who while outside the territory of Bosnia and Herzegovina commits any</p>	<p>Article 13 CC</p> <p>(1) The criminal legislation of the Federation shall apply to anyone who:</p> <ul style="list-style-type: none"> a) commits any crime in the territory of Bosnia and Herzegovina against the constitutional order of the Federation referred to in Chapter XV (Crimes Against Constitutional Order) of this Law; b) commits a crime in the territory of Bosnia and Herzegovina against an official or responsible person in connection with his duties. <p>(2) The criminal legislation of the Federation shall apply to a citizen of Bosnia and Herzegovina who outside the territory of the Federation commits any crime other than those specified in paragraph 1 of this Article.</p> <p>(3) The criminal legislation of the Federation shall apply to a foreign national who outside the territory of the Federation commits any crime against Bosnia and Herzegovina or any of its citizens or against the Federation or any of its citizens which is not specified in paragraph 1 of this Article.</p> <p>(4) The criminal legislation of the Federation shall apply to a foreign national who outside the territory of the Federation commits a crime against a foreign state or a foreign national for which a term of imprisonment of five years or more may be imposed under</p>	<p>Article 13 CC</p> <p>(1) The criminal legislation of the Brčko District shall apply to an inhabitant of the Brčko District who commits a crime abroad, if he is caught in the territory of the Brčko District or if he is extradited.</p> <p>(2) The criminal legislation of the Brčko District shall also apply to a foreign national who outside the territory of the Brčko District commits a crime against it or any of its citizens, if he is caught in the territory of the Brčko District or if he is extradited.</p> <p>(3) The criminal legislation of the Brčko District shall also apply to a foreign national who commits a crime against a foreign state or against a foreign national abroad for which a term of imprisonment of five years or more may be imposed under the laws of that state when he is caught in the territory of the Brčko District. Unless otherwise stipulated by law, the court in this case may not impose punishment more severe than that prescribed by the law of the state in which the crime was committed.</p> <p>(4) If in cases referred to in Article 12 of this Law criminal proceedings have been instituted but not completed by a final court decision in another state, the prosecutor of the Brčko District shall decide whether to institute prosecution.</p> <p>(5) In cases referred to in Article 13 of</p>	<p>Article 120 CC</p> <p>The criminal legislation of Republika Srpska shall apply to anyone who commits a crime referred to in paragraphs 293 to 311 of this Code outside its territory or abroad.</p> <p>Article 121 CC</p> <p>The criminal legislation of Republika Srpska shall apply to a citizen of Republika Srpska who while abroad commits a crime other than crimes listed in Article 120 of this Code, if he is caught in the territory of Republika Srpska or if he is extradited to Republika Srpska.</p> <p>Article 122 CC</p> <p>The criminal legislation of Republika Srpska shall also apply to a foreign national who while outside the territory of Republika Srpska commits a crime other than crimes listed in Article 120 of this Code, if he is caught in the territory of Republika Srpska or if he is extradited to Republika Srpska.</p> <p>(2) The criminal legislation of Republika Srpska shall also apply to a foreign national who commits a crime against a foreign state or against a foreign national abroad for which a term of imprisonment of five or more years may be imposed under these laws when he is caught in</p>
c.	the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in Articles 9 to 11 who is at the same time one of its nationals.				

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
		<p>crime against Bosnia and Herzegovina or any of its citizens which is not covered by the provision of paragraph 1 of this Article.</p> <p>(4) The criminal legislation of Bosnia and Herzegovina shall apply to a foreign national who while outside the territory of Bosnia and Herzegovina commits a crime against a foreign state or a foreign national for which a term of imprisonment of five or more years may be imposed under this legislation.</p> <p>(5) In cases referred to in paragraphs 2 and 3 of this Article, the criminal legislation of Bosnia and Herzegovina shall apply only if the perpetrator of the crime is caught in the territory of Bosnia and Herzegovina or is extradited to it, and in cases referred to in paragraph 4 of this Article only if the perpetrator is caught in the territory of Bosnia and Herzegovina and is not extradited to another state.</p> <p>OK – because of blanket, catch-all provision if BiH is bound to international agreement.</p>	<p>this legislation. Unless otherwise stipulated by law, the court in this case may not impose punishment more severe than that prescribed by the laws of the state in which the crime was committed.</p> <p>(5) In cases referred to in paragraphs 2 and 3 of this Article, the criminal legislation of the Federation shall apply only if the perpetrator of the crime is caught in the territory of the Federation or if he is extradited, and in cases referred to in paragraph 4 of this Article only if the perpetrator is caught in the territory of the Federation and is not extradited to another state.</p>	<p>this Law, prosecution shall be instituted only when the crime is also punishable under the laws of the state in which the crime was committed. Prosecution shall not be instituted in such cases either if under the laws of that state prosecution is instituted at the request of the injured party, and no such request has been submitted.</p> <p>(6) The prosecutor may institute prosecution referred to in Article 13 (3) of this Law, regardless of the laws of the state in which the crime was committed if the act committed was considered a crime under the rules of international law at the time it was committed.</p> <p>(7) In cases referred to in Article 12 of this Law, the prosecution of foreign nationals may be ceded to a foreign state under conditions of reciprocity.</p>	<p>the territory of Republika Srpska and is not extradited to a foreign state. Unless otherwise stipulated by law, the court in this case may not impose punishment more severe than that prescribed by the law of the state in which the crime was committed.</p> <p>Article 123 CC</p> <p>(1) If in cases referred to in Article 119 of this Code criminal proceedings have been instituted or completed in a foreign state, prosecution in Republika Srpska shall only be instituted with the approval of the chief state prosecutor.</p> <p>(2) In cases referred to in Articles 121 and 122 of this Code, prosecution shall not be instituted:</p> <ol style="list-style-type: none"> 1) if the perpetrator has served the full sentence which was imposed on him abroad, 2) if the perpetrator has been acquitted abroad by a final judicial decision, 3) if the crime prosecuted under a foreign law is prosecuted at the request of the injured party, and no such request has been submitted. <p>(3) In cases referred to in Articles 121 and 122 of this Code, prosecution shall be instituted only when the crime is also punishable under the laws of the state in which the crime was committed. Where in cases referred to in Article 121 and</p>

Article	Criminal Convention provisions	BiH	FBiH	BD	RS
					<p>Article 122 (1) of this Code a crime is not punishable under the laws of the state in which the crime was committed, prosecution may only be instituted with the approval of the chief state prosecutor.</p> <p>(4) Only with the approval of the chief state prosecutor may criminal prosecution be instituted in Republika Srpska in cases referred to in Article 122 (2) of this Code, regardless of the laws of the state in which the crime was committed, if the act in question was considered a crime under the general legal principles recognised by the international community at the time it was committed.</p> <p>(5) In cases referred to in Article 119 of this Code the prosecution of a foreign national may be ceded to a foreign state under conditions of reciprocity.</p>