

**Enhancing institutional capacities on freedom of expression and information in
Bosnia and Herzegovina (EFEx)**

REPORT

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**Mapping and Gap Analysis Report on Freedom of Expression in Bosnia and
Herzegovina**

The role and responsibility of the Council of Europe in protecting freedom of expression has been underlined in the "Reykjavik Principles for Democracy", the [Reykjavík Declaration – United around our values](#).

Funded through the voluntary contribution of the Swedish International Development Cooperation Agency (Sida), the Project ["Enhancing Institutional Capacities on Freedom of Expression and Information in Bosnia and Herzegovina" \(EFEx\)](#) aims to enhance the protection of Freedom of Expression (FoE) and Freedom of Access to Information (FoI) in BiH by making a contribution towards human-rights based legal framework and practices, through enhancing the capacities of key duty bearers (the Ministry of Human Rights and Refugees - MHRR - and other institutions with responsibilities in this area) and right-holder representatives (media actors and CSOs), to integrate a human rights-based approach in their work.

The action builds on past and current Council of Europe (CoE) activities in the area of Freedom of Access to Information/Media and Freedom of Expression in BiH, including a pilot project funded by SIDA and implemented in 2019/2020.

The objective of this project will be achieved through three inter-connected components focusing on:

- (1) freedom of expression;
- (2) freedom of access to information and
- (3) capacity building of Ministry of Human Rights and Refugees

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Prepared within the Project Enhancing Institutional Capacities on Freedom of Expression and Information in Bosnia and Herzegovina (EFEx) by Henry Lovat, Council of Europe Consultant.

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I. Executive summary

This document presents a gap analysis of freedom of expression (FoE) in Bosnia and Herzegovina (BiH), based on observations and recommendations from international human rights and other oversight mechanisms. It identifies three categories of issues, focusing respectively on media regulation and freedom, protection of journalists, and hate speech.

Within these categories, the analysis then identifies distinct sets of issues highlighted in international oversight, namely:

1. Media Regulation and Freedom:

- i. Strengthening public broadcasting institutions, both in terms of funding and against political influence;
- ii. Strengthening transparency of media ownership;
- iii. Strengthening the Communications Regulatory Agency (CRA).

2. Protection of Journalists:

- i. Ensuring effective investigation and judicial follow-up of alleged criminal acts against journalists;
- ii. Shortcomings in legal frameworks, especially in respect of Strategic Lawsuits Against Public Participation (SLAPPS) and defamation.

3. Hate speech:

- i. Hate speech by public figures;
- ii. Hate speech online, and
- iii. Effective investigation, prevention, and prosecution of hate speech.

For each of these areas and sets of issues, the document sets out particular issues raised in international oversight documentation along with an overview of relevant domestic law and practice, and associated recommendations.

The latter focus particularly on potential contributions by the Cross-Sectoral Working Group on Monitoring and Reporting on Freedom of Expression and Freedom of Information in Bosnia and Herzegovina (the Working Group) created under the Council of Europe project on “Enhancing Institutional Capacities on Freedom of Expression and Information in Bosnia and Herzegovina” (EFEx).

These recommendations also reflect the group’s establishment as a standing body as well as the terms of reference under which it operates. The proposals set out in this document for consideration by and for the Working Group are, rather, tailored to the context of this group and its distinct cross-sectoral composition.

II. Introduction

The paper provides a gap analysis in respect of issues, legislation, and practices in FoE in BiH, relative to international standards. The analysis is informed by observations by (and recommendations from) international oversight bodies, which are used to identify key areas of concern and principal gaps. The paper also draws upon previous analyses and technical papers prepared in the context of the current project. These include a paper mapping BiH's international monitoring and reporting obligations in these fields,¹ and further related unpublished technical papers submitted to the Council of Europe for the purposes of the EEx project.

The document is designed to serve two functions: firstly, to highlight central areas for focus of future work during and beyond the EEx project, including identifying areas of particular concern to international oversight mechanisms and potential contributions to enhancing FoE by the EEx Working Group. Secondly, the document is designed to serve as an introductory contribution to the preparation of a pilot report by the Working Group.

The overall aim of these activities is to contribute to the enhancement of the protection of freedom of expression and freedom of information in Bosnia and Herzegovina by contributing towards a human rights-based legal framework and practices, which is the main objective of the EEx project.

The analysis presented in this document is framed around three principal sets of issues:

1. media regulation and freedom;
2. protection of journalists; and
3. hate speech.

A fourth category of issues identified, focusing on access to information, is addressed in a separate project gap analysis. For present purposes, generic and highly specific but isolated points falling outside these three categories are also excluded from the analysis: the former are stated in terms that are too non-specific to allow identification of specific gaps, whereas the latter are isolated or idiosyncratic in the broader context of international oversight, and as such are not considered as sufficiently material to be considered specifically in the present analysis. Indeed, even within the three categories a range of generic or specific further issues are also highlighted in oversight processes. Where relevant, such interventions are noted in the introductory discussion of gaps identified in respect of each category.

It should also be underlined that the tripartite analytic division presented here is an analytic artifact rather than given ex ante. It is adopted as a pragmatic, inductively developed means of organising a wide range of data in a manner particularly relevant to the EEx project and

¹ Lovat H. (2023), *Mapping of International Standards and Monitoring and Reporting Obligations of Bosnia and Herzegovina on Freedom of Expression and Information*, available at: <https://rm.coe.int/mapping-of-obligations-eng-web-/1680ad536a> accessed 19 November 2024.

associated workplans and objectives, rather than reflecting any intrinsic taxonomy of FoE issues in BiH, let alone generally.²

Last, in developing recommendations for the EFEx Working Group, the present study is also informed closely by the terms of reference of that group, which provide that its activities will comprise:³

1. Monitoring and reporting

The Working Group will support the Ministry of Human Rights and Refugees of Bosnia and Herzegovina and other relevant ministries and public bodies in performing their monitoring and reporting functions in respect of freedom of expression and freedom of access to information. More specifically, the Working Group is tasked with considering and supporting the adoption, operation, testing, and enhancement of monitoring and reporting methodologies, models, and tools in respect of freedom of expression and freedom of information.

2. Capacity building

The Working Group will support the identification and planning of training and capacity-development needs and priorities across Bosnia and Herzegovina public institutions and civil society regarding freedom of expression and freedom of information substantively and in respect of monitoring and reporting.

3. Communication and cooperation

The Working Group will participate in and assist in the development of an effective network of state, public and civil society/private sector stakeholders regarding freedom of expression and freedom of information monitoring, reporting, protection, and promotion, including

- a. identification of and liaison with key focal points, and
- b. strengthening communication and coordination across this network (including but not limited to Working Group members) of related initiatives and activities.

4. Sustainability

The Working Group will support and promote the development of a sustainable, permanent hub for wider government-civil society cooperation across Bosnia and Herzegovina regarding freedom of expression and freedom of information monitoring, reporting, protection, and promotion.

III. Media regulation and freedom

Before turning to individual issues, it is important to note that concerns in these fields are themselves also set in the context of broader, more general calls for effective guaranteeing of media freedom. Such calls are manifest, for example, in the most recent Universal Period Review (UPR) round (Third Cycle, 2019), where – for example – Sweden recommended that BiH

² A note on sources: citations following are set out principally in English (including in translation). Local language is on occasion used, however, where more readily available to the author.

³ The Working Group does, at least theoretically, have discretion to engage in other activities should its members and chair (designated by the Ministry of Human Rights and Refugees of Bosnia and Herzegovina (MHRR) agree. Reflecting the composition and careful calibration of its agreed activities, however, for the purposes of the present report it is not presumed that any further activities will necessarily be capable of being agreed.

[g]uarantee free and independent media and promote an open democratic media landscape in respect of freedom of opinion and expression and the right to access information.”⁴ In similar fashion, in its 2017 Concluding Observations the Human Rights Committee noted that “[t]he State party should fully guarantee freedom of expression and freedom of the press and the media.”⁵

It is also worth highlighting broader international standards in respect of freedom of expression and the media. These include Human Rights Committee General Comment 34 (2011),⁶ which sets out standards in respect of the independence of public broadcasting services, as well as more broadly on the reasonableness of regulatory and licencing conditions for mass, especially broadcast, media.

Similarly, Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors underlines the need for states to

ensure independence of the media and safeguard media pluralism, including the independence and sustainability of public-service media and community media, which are crucial elements of a favourable environment for freedom of expression.⁷

Turning to the above issues in more detail as reflected in reporting from these bodies and other sources, the following points emerge:

i. Public broadcasting governance and funding

Concerns related to strengthening public broadcasting institutions in terms of funding and against political influence have been raised in the course of the UPR,⁸ by the Human Rights Committee (2017),⁹ and in various European Union documents, including the European

⁴ ‘UPR of Bosnia and Herzegovina (3rd Cycle - 34th Session): Thematic List of Recommendations’ 18 available at: <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session34/BA/MatriceRecommendationsBosniaHezergovina.docx>, accessed 19 November 2024.

⁵ Human Rights Committee, ‘CCPR/C/BIH/CO/3: Concluding Observations on the Third Periodic Report of Bosnia and Herzegovina’ para 38, available at: <https://documents.un.org/doc/undoc/gen/g17/092/37/pdf/g1709237.pdf?> accessed 19 November 2024.

⁶ Human Rights Committee, ‘CCPR/C/GC/34: General Comment No.34 on Article 19: Freedoms of Opinion and Expression’, available at: <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CCPR/C/GC/34&Lang=E>, accessed 19 November 2024.

⁷ Committee of Ministers, Council of Europe, ‘Recommendation CM/Rec(2016)4 of the Committee of Ministers to Member States on the Protection of Journalism and Safety of Journalists and Other Media Actors’, available at: <https://search.coe.int/cm?i=09000016806415d9>, accessed 19 November 2024, at Appendix, Section I, Para. 1. See also generally: Committee of Ministers, Council of Europe, ‘Recommendation CM/Rec(2022)16 of the Committee of Ministers to Member States on Combating Hate Speech’, available at: [https://search.coe.int/cm#\[%22CoEIdentifier%22:\[%220900001680a67955%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]\]](https://search.coe.int/cm#[%22CoEIdentifier%22:[%220900001680a67955%22],%22sort%22:[%22CoEValidationDate%20Descending%22]]), accessed 20 November 2024.

⁸ See generally documentation available in respect of BiH’s Third Cycle at: <https://www.ohchr.org/en/hr-bodies/upr/ba-index>. Specific references noted below.

⁹ See specific references below.

Commission's 2019 Opinion on Bosnia and Herzegovina's application for membership of the European Union.¹⁰ The European Parliament's resolution on the 2022 Commission Report on Bosnia and Herzegovina,¹¹ and the European Commission 2023 and 2024 reports for Bosnia and Herzegovina also highlight related issues.¹²

Various specific issues are highlighted in these documents and processes. Multiple sources, for example, refer to shortcomings in the funding of public broadcasters, with the 2023 European Commission report, for example, flagging that:

[t]he state-level public service broadcaster Radiotelevizija Bosne i Hercegovine (BHRT) remains in serious danger of shutting down, following years of deprivation of stable funding as a result of the non-enforcement of the 2003 Law on the public broadcasting system and of lengthy litigation in entity courts over the substantial debts of Radio Televizija Republike Srpske (RT RS) to BHRT (over EUR 31.5 million). These issues pose a serious threat to the financial independence and sustainability of the public broadcasting system. Bosnia and Herzegovina risks become the only country in Europe without a state-level public service broadcaster.¹³

The Commission's March 2024 report observes that:

[a]s a first step to urgently address the financial situation of the state-level public broadcaster, in February 2024 the Council of Ministers granted it funds from the revenues

¹⁰ 'European Commission: Communication from the Commission to the European Parliament, the Council: Commission Opinion on Bosnia and Herzegovina's Application for Membership of the European Union - COM(2019) 261 Final' (European Commission 2019), available at : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0261>, accessed 24 August 2024.

¹¹ 'C/2024/4004: European Parliament Resolution of 12 July 2023 on the 2022 Commission Report on Bosnia and Herzegovina' (European Parliament 2023), available at: <https://dorie.ec.europa.eu/en/details/-/card/8005713>, accessed 21 November 2024.

¹² See specific references below. Documents principally referenced are: European Commission, 'SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy' (European Commission 2023), available at : https://neighbourhood-enlargement.ec.europa.eu/document/download/e3045ec9-f2fc-45c8-a97f-58a2d9b9945a_en?filename=SWD_2023_691%20Bosnia%20and%20Herzegovina%20report.pdf, accessed 21 November 2024; European Commission, 'SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy' (European Commission 2024) <https://neighbourhood-enlargement.ec.europa.eu/document/download/451db011-6779-40ea-b34b-a0eeda451746_en?filename=Bosnia%20and%20Herzegovina%20Report%202024.pdf> accessed 21 November 2024. For general background see also: 'BHRT Warns It's on the Brink of Collapse' (Public Media Alliance, 1 February 2024), available at: <https://www.publicmediaalliance.org/bhrt-warns-its-on-the-brink-of-collapse/>, accessed 21 November 2024.

¹³ European Commission, 'SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy' (n 12) 41.

of the Communication Regulatory Agency” adding that “[a] working group is being established to draft a new law on the public broadcasting system.”¹⁴

Underlining that this measure is not a long-term solution to this challenge, however, the Commission’s October 2024 report again reiterates that:

Bosnia and Herzegovina failed to introduce a suitable model to collect broadcasting fees that would ensure the public broadcasting system’s financial sustainability and political independence. The country should establish the Public Services Broadcasting Corporation as prescribed by law to ensure compliance. Additionally, it should revise the financing model for local public broadcasters in order to reduce opportunities for political pressure and influence.¹⁵

As the latter indicates, shortcomings in public funding are also reflected in greater susceptibility on the part of public broadcasters to political influence. This may manifest, for example, in reliance on public/government or political party advertising, a concern noted, again, by the European Commission in its 2023 report. In that document the Commission specifically observes that: “[t]he advertising practices of publicly owned businesses, such as telecom companies, and of advertising agencies linked to political parties continue to harm media integrity”, adding that “[l]ocal broadcasters that receive funding from local authorities remain subject to political pressure and influence.”¹⁶

Political influence on public broadcasting has also been noted by the Human Rights Committee, observing in its 2017 Concluding Observations in respect of BiH that:

the media continues to be subjected to excessive influence from governments, political parties and private interest groups” as well as “the political and financial pressures faced by public broadcasters from the Government, which leads to self-censorship and subjective reporting.”¹⁷

The composition of public broadcaster steering boards is a particular concern. The 2023 European Commission report observes the challenge of politically-controlled steering boards and associated “self-censorship, heightened in the context of Russia’s war of aggression against

¹⁴ European Commission, ‘COM(2024) 129 Final: Communication from the Commission to the Council and the European Parliament - Report on Progress in Bosnia and Herzegovina - March 2024’ (European Commission 2024) 4, available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/fa9da504-4ecb-4317-b583-c9fff0b833b2_en?filename.pdf, accessed 21 November 2024.

¹⁵ European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 73.

¹⁶ European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 41.

¹⁷ Human Rights Committee (n 5) para 37.

Ukraine.”¹⁸ Particular issues highlighted in this respect are that (as of November 2023) the “Federation [BiH] Parliament ha[d] not filled the vacancies on the steering board of the public broadcaster FTV nor appointed a director of FTV since 2013.”¹⁹ The 2023 report also notes that

Republika Srpska’s RTRS public channel spreads Russian and Serbian disinformation, including on Russia’s aggression on Ukraine and on Bosnia and Herzegovina’s EU accession path. Banja Luka-based provider M-tel continued to carry the signal of the RT and Sputnik channels, despite Bosnia and Herzegovina’s alignment with EU sanctions on Russia prohibiting the broadcasting of content from these Russian state-sponsored media outlets.²⁰

The Commission’s October 2024 indicates no substantive change in these respects.²¹ International oversight also highlights concerns regarding BiH’s obligations to ensure equitable and effective service of all segments of society by public broadcasters. These obligations can be pitched at a relatively high level of abstraction, but typically refer to e.g. “equal use of all official languages”.²²

Related concerns are reflected, for example, in the 1992 European Charter for Regional or Minority Languages’ March 2022 Committee of Experts’ Evaluation and Recommendations (e.g. “Neither the television station (BHT1), nor the radio station (BHR1) of the BHRT broadcast content in minority languages”).²³ The 2017 Opinion of the Advisory Committee for the 1995 Framework Convention for the Protection of National Minorities also included a call for “the authorities to step up their efforts to ensure that public radio and television stations fulfil their legal obligations regarding the inclusion of specific programmes for national minorities in their

¹⁸ European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 41.

¹⁹ Ibid.

²⁰ Ibid.

²¹ European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 39.

²² See e.g. ‘UPR of Bosnia and Herzegovina (3rd Cycle - 34th Session): Thematic List of Recommendations’ (n 4) 5, 16. (120.46 “Ensure that public broadcasters serve all segments of society through equal use of all the official languages of Bosnia and Herzegovina” (Cyprus); 120.90 “Reform the public radio and television broadcasters with the goal of ensuring that they serve all segments of society through the equal use of all official languages” (Croatia).)

²³ Committee of Experts of the European Charter for Regional or Minority Languages, ‘Third Evaluation Report on Bosnia and Herzegovina’ 14, available at: <https://rm.coe.int/min-lang-2022-2-er3-bosnia-and-herzegovina-final-version/1680a84a90>, accessed 21 November 2024. See also Committee of Ministers, Council of Europe, ‘Recommendation CM/RecChL(2022)4 of the Committee of Ministers to Member States on the Application of the European Charter for Regional or Minority Languages in Respect of Bosnia and Herzegovina’, available at: [https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%220900001680a85895%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%220900001680a85895%22],%22sort%22:[%22CoEValidationDate%20Descending%22]}), accessed 21 November 2024. (“Recommends that Bosnia and Herzegovina take account of all the observations and recommendations of the Committee of Experts and, as a matter of priority: 5. make adequate provisions so that public broadcasters offer programmes in the minority languages.”)

programming schedules.”²⁴ The follow up 2024 Opinion similarly notes that “[t]here have been no changes in the legislation governing public service broadcasting and the production of national minority programming.”²⁵

a. Legislation and practice

The nominal framework for public broadcasting in BiH is set by the 2005 state Law on Public Broadcasting System.²⁶ However, the funding and management system envisaged in this law, has never been implemented. In consequence, funding arrangements remain fragmented and the broadcasting system closely subject to political circumstances.²⁷ Alongside political considerations in governing structure appointments, there are in turn suggestions that editorial independence is constrained in respect of each of the three system broadcasters.²⁸

²⁴ Advisory Committee on the Framework Convention for the Protection of National Minorities, ‘ACFC/OP/IV(2017)007: Fourth Opinion on Bosnia and Herzegovina’ 27, available at: <https://rm.coe.int/4th-op-bih-en/16808e2c53>, accessed 21 November 2024 (at para. 92). See also: Committee of Ministers, Council of Europe, ‘Resolution CM/ResCMN(2019)8 on the Implementation of the Framework Convention for the Protection of National Minorities by Bosnia and Herzegovina’ 2, available at: <https://rm.coe.int/090000168094ebc8#:~:text=ensure%20that%20public%20radio%20and%20television%20stations%20fulfil>, accessed 21 November 2024. (“ensure that public radio and television stations fulfil their legal obligations regarding the inclusion of programmes for national minorities in their programming schedules; take determined measures to stimulate broadcasting and publications in minority languages”).

²⁵ Advisory Committee on the Framework Convention for the Protection of National Minorities, ‘ACFC/OP/V(2023)5: Fifth Opinion on Bosnia and Herzegovina, Adopted 8 February 2024’ 28, available at: <https://rm.coe.int/5th-op-bih-en/1680b07a26>, accessed 21 November 2024 (at para. 112).

²⁶ Law on the Public Broadcasting System of Bosnia and Herzegovina 2005 (Official Gazette of Bosnia and Herzegovina). This statute was imposed by the High Representative after lengthy debate across political actors, within and across entities. See generally: Amer Džihana, ‘Creation and Reform of the Public Broadcasting System in B-H: Reform on Hold’, available at: https://osfbih.org.ba/images/Progs/00-16/PDFP/pdftp_08/amer_dzihana_final_policy_brief_en.pdf, accessed 21 November 2024.

²⁷ As observed recently by High Representative Schmidt, for example: “BHRT management claims that its debt is due to the decision of the RS public broadcaster Radio-Television Republika Srpska (RTRS) to deprive BHRT of 50 percent of the funds RTRS collects in the RS as defined by law. In 2019, the RTRS unilaterally decided to commence its own collection of RTV tax and stopped depositing it in the single system account. The Federation public broadcaster, Radio-Television Federation of BiH (RTFBiH) shares its collected revenue with BHRT, but this revenue is primarily collected in Bosniak-majority areas of the Federation. In Croat areas, the leading Croat party, HDZ BiH, has called on people not to pay the RTV tax and instead donate BAM 1 per month to the private broadcaster TV Herceg-Bosnia...” (‘61st Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations’ (Office of the High Representative, 11 May 2022) para 107, available at: <https://www.ohr.int/61st-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-united-nations/>, accessed 21 November 2024.) See also reporting in e.g. ‘Bosnia’s Public Broadcaster Warns of Imminent Financial Collapse’ (Intellinews, 2 January 2024) available at: <https://www.intellinews.com/bosnia-s-public-broadcaster-warns-of-imminent-financial-collapse-306143/>, accessed 21 November 2024.

²⁸ See e.g.: ‘PSB System of BiH’ (State Media Monitor, 18 August 2024), available at: <https://statemediamonitor.com/2024/08/psb-system-of-bih/>, accessed 21 November 2024. (“The broadcasters are also supposed to have editorial independence. However, as local experts and journalists have said in interviews conducted in April and May 2024, they are highly politicized, with politicians exerting influence by appointing governing structures and financing.”) Similarly: Borka Rudić and others, ‘Urgent Action Needed to Save Radio-Television of Bosnia and Herzegovina’ (International Press Institute, 27 May 2024), available at: <https://ipi.media/radio-television-of-bosnia-and-herzegovina/>, accessed 21 November 2024. (“The problematic situation in which the workers find themselves is the result of the inaction of the current and previous political authorities, which have failed to ensure stable funding and functioning of the Public Broadcasting Service of Bosnia and Herzegovina and to implement the existing law.”)

Tensions also persist between the various broadcasters, particularly in respect of financing arrangements. This resulted, for example, in the Radio-Television Federation of Bosnia-Herzegovina (RTV FBiH) signal being cut off by BHRT for a period in mid-2024.²⁹ The financial situation of BHRT in 2024 also resulted in directed funding of that institution from the Council of Ministers.³⁰ This appears likely to do little to alleviate the overall political dependency of the broader public broadcasting system.

There are initiatives underway which may ameliorate the situation somewhat. In particular, the state Ministry of Communications and Transport (MCT) has established a working group to produce a new law on the public broadcasting system, which may address both infrastructure/technical issues such as digitalisation,³¹ as well as funding gaps.³² In addition, in May 2024 BHRT and RTV FBiH concluded an agreement which appears to have resolved some of the financing issues between these two bodies, at least in the short term, as well as allowing for a renewed contract with Elektroprivreda BiH to facilitate collection of license fees.³³

²⁹ See reference at note 14. More generally see accounts in e.g. Darko Kurić, 'BiH, the public service on the brink of collapse' (Osservatorio balcani e caucasa transeuropa, 17 May 2024) available at: <https://www.balcanicaucaso.org/eng/Areas/Bosnia-Herzegovina/BiH-the-public-service-on-the-brink-of-collapse-231414>, accessed 21 November 2024; ARTICLE 19 Europe and others, 'Bosnia and Herzegovina: Break the Deadlock Facing Public Broadcasters' (ARTICLE 19, 16 May 2024), available at: <https://www.article19.org/resources/bosnia-and-herzegovina-break-the-deadlock-facing-public-broadcasters/>, accessed 21 November 2024.

³⁰ See: '10 Million for Public Services, 4 Million for BHRT' (Ministry of Communications and Transport of Bosnia and Herzegovina, 9 February 2024), available at: <https://www.mkt.gov.ba/Publication/Read/10-miliona-za-javne-servise-4-za-bhrt>, accessed 21 November 2024.

³¹ Some progress has been made in digitalisation - see e.g. '65th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the UN' (Office of the High Representative, 15 May 2024) para 228, available at: <https://www.ohr.int/65th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-un/>, accessed 21 November 2024. ("The digitalization process is advancing through two Multiplexes...") Digitalisation itself, however, has also been politicised. See e.g. '61st Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations' (Office of the High Representative, 11 May 2022) para 109, available at: <https://www.ohr.int/61st-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-united-nations/>, accessed 21 November 2024. ("Despite the BiH State having allocated BAM 40 million for the digitalization process with three public broadcasters in BiH jointly acting as the implementing entity, the process is stalled as there is no progress in the tendering of digital equipment by the BiH Ministry of Communications and Transport, and no steps taken by the three public broadcasters to establish a joint legal entity...")

³² See account in: Zinaida Đelilović, 'New Public Broadcasting System Law: It Is a "Story for Kids"' (Association of BH Journalists – BH Novinari, 31 October 2021), available at: <https://bhnovinari.ba/en/2021/10/31/new-public-broadcasting-system-law-it-is-a-story-for-kids/>, accessed 21 November 2024. Note also observations in: '66th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the UN' (Office of the High Representative, 1 November 2024) para 239 available at: <https://www.ohr.int/66th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-un-2/>, accessed 21 November 2024. ("On 29 June 2024, it was reported in the media that the Ministry of Communications and Transport of Bosnia and Herzegovina will request for the debt repayment towards EBU to be financed from the State budget for 2025, and that further strengthening of Bosnia and Herzegovina Radio-Television through a new law on the public broadcasting system, which will guarantee the collection of the RTV tax throughout the country, needs to be achieved. Minister of Communications and Transport Edin Forto is reported to have emphasized the importance of smooth functioning of Bosnia and Herzegovina Radio-Television as one of the most obvious symbols of statehood that must survive despite everything and be stronger than ever. However, considering the overall political context, the intended activities will be quite a challenge to carry out.")

³³ 'BHRT and RTV FBiH Reached an Agreement, Signed an Agreement on Cooperation' (BHRT, 30 May 2024), available at: <https://bhrt.ba/bhrt-i-rtv-fbih-postigli-dogovor-potpisan-sporazum-o-saradnji>, accessed 21 November 2024. See also reporting in e.g. Charlotte Pion, 'New Agreement Gives Hope to BHRT' (Public Media Alliance, 12 June 2024) <<https://www.publicmediaalliance.org/new-agreement-gives-hope-to-bhrt/>> accessed 21 November 2024; 'BHRT

That said, some issues also seem likely to persist: in particular governance within both Federation of Bosnia-Herzegovina (FBiH) and BiH broadcasters risks continued politicisation, with steering boards de facto requiring political assent, and reducing minority representation accordingly.³⁴ Likewise, there is little indication of imminent change in the RS, where RTV RS remains directly funded and tightly controlled by the government.

b. Observations and recommendations

International attention and effort will doubtless continue to focus on strengthening public broadcaster governance and financing, and any new law has the potential to be a positive step in this direction. Given the apparent slow progress of the MCT-convened working group to date, however, there can be no guarantee of this initiative coming to fruition in the near future. Local civil society, moreover, have already produced proposals for consideration by state institutions, although these do not appear – at least to date – to have had a significant impact on the prevailing impasse.³⁵

That said, however, given the participation in the EEx Working Group of key civil society bodies (especially the BiH Journalists Association and the Press Council) alongside state institutions also involved in the MCT legislative working group - including the CRA as well as MCT itself – this group may prove a valuable means of enabling more robust, institutionalised gathering, sharing and analysis of information across sectors that may be of assistance in the *subsequent* development of legislative (and policy/practice) reform in this area. Indeed, reflecting the group’s terms of reference, it would also be possible to include non-Working Group members in such activities (as a means of “strengthening communication and coordination... of related initiatives and activities”).³⁶

ii. Transparency of media ownership

and RTV FBiH Reached an Agreement’ (Sarajevo Times, 30 May 2024), available at: <https://sarajevotimes.com/bhrt-and-rtv-fbih-reached-an-agreement/>, accessed 21 November 2024.

³⁴ See e.g. observations in: ‘66th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the UN’ (n 32) para 239. (“As a result of the joint letter from the international community to the Parliament of the Federation of Bosnia and Herzegovina on 27 February 2024 expressing concerns arising from the fact that Radio-Television of the Federation of Bosnia and Herzegovina has been operating with only one of four members of the Governing Board for more than 10 years, and asking the Parliament to fulfill its responsibility and appoint board members so that this body, part of the public broadcasting system board, could function properly, the Federation Parliament published vacancy for four members of the Radio-Television of the Federation of Bosnia and Herzegovina Governing Board on 1 July 2024. Interviews with candidates for members of the Radio-Television of the Federation of Bosnia and Herzegovina Governing Board were cancelled on 2 September 2024 because of lack of quorum in the Joint Working Group for appointment of the Parliament of the Federation of Bosnia and Herzegovina. Attempts at scheduling a new date for interviews are pending.”)

³⁵ See: Horić J., ‘Bosnia and Herzegovina Needs a Law on Media Ownership Transparency’ (Balkan Diskurs, 9 September 2024), available at: <https://balkandiskurs.com/en/2024/09/09/bosnia-and-herzegovina-needs-a-law-on-media-ownership-transparency/>, accessed 21 November 2024. (“Velida Kulenović, Vice President of the Association of BH Journalists, stated that in 2018 they drafted a Bill aimed at regulating media ownership transparency, information pluralism, and the advertising market...”)

³⁶ See **Error! Reference source not found..**

Concerns regarding political influence over broadcasting are also echoed in accounts of non-transparency in non-public media ownership.³⁷ Often linked to absence of criteria for allocation of publicly-funded advertising, the absence of any transparency requirement for media ownership has been highlighted by the European Parliament,³⁸ and by the European Commission, its 2023 and 2024 reports observing in identical terms that: “[n]o steps were taken to adopt legislation on media ownership transparency...”³⁹ In consequence, the Commission continues to call for Bosnia and Herzegovina to “adopt legislation on media ownership transparency and criteria for public advertising.”⁴⁰

a. Legislation and practice

BiH lacks a legal framework to ensure transparency of beneficial ownership of media, with (at least as of December 2023), this challenge affecting approximately 40% of BiH’s most prominent media outlets.⁴¹ Nor is there any obvious means of identifying, let alone (other than via the broader competition/anti-trust regime) addressing any market concentrations. Equally, the CRA’s mandate does not extend to print, nor online-only, outlets, nor does that body provide information on licensee ownership.⁴² Similarly, entity-specific corporate registries provide at best only partial information, while access to registration data for online sources is also unavailable owing to data protection concerns.⁴³

³⁷ On background, see variously e.g.: Nedim Pobrić, ‘Transparency of Media Ownership in Bosnia and Herzegovina’ (Association of BH Journalists – BH Novinari 2019), available at: <https://bhnovinari.ba/wp-content/uploads/2019/09/Media-Ownership-Transparency.pdf>, accessed 21 November 2024; ‘Bosnia and Herzegovina: Media Freedom in Survival Mode’ (Media Freedom Rapid Response 2024) <<https://www.mfrr.eu/wp-content/uploads/2024/01/bosnia-and-herzegovina-media-freedom-in-survival-mode-1.pdf>>; ‘Who Owns the Media in Bosnia and Herzegovina?’ (Media Ownership Monitor, 2023), available at: <https://bosnia-herzegovina.mom-gmr.org/en/>, accessed 21 November 2024.

³⁸ See e.g. ‘C/2024/4004: European Parliament Resolution of 12 July 2023 on the 2022 Commission Report on Bosnia and Herzegovina’ (n 11) 12 at para. 62.

³⁹ See European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 41; European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 40.

⁴⁰ European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 7.

⁴¹ See: ‘BIRN BiH Presents Media Ownership Monitor Database’ (Balkan Investigative Reporting Network, 13 December 2023), available at: <https://birn.eu.com/news-and-events/birn-bih-presents-media-ownership-monitor-database/>, accessed 21 November 2024. (“Out of 39 media outlets covered by the Media Ownership Monitor Database, nearly 40 per cent of the most prominent media outlets in Bosnia and Herzegovina do not offer full transparency.”)

⁴² See ‘CRA: More than 40 Percent of Online Media Do Not Contain an Imprint and Cannot Be Held Accountable’ (Federalna Nivinska Agencija, 13 November 2022), available at: <https://fena.ba/article/1293801/cra-more-than-40-percent-of-online-media-do-not-contain-an-imprint-and-cannot-be-held-accountable>, accessed 21 November 2024. The CRA register (at the time of writing) is available at: <https://docs.rak.ba/documents/4be2f66d-a238-46cb-8cdb-1836d49fbab2.pdf>

⁴³ See Horić J., (n 36). (“partial regulation of media ownership is also reflected in the existence of the registry of the Communications Regulatory Agency (RAK), which issues licenses to users for audiovisual broadcasting. During this registration process, there is an obligation to notify RAK of any changes in the original ownership... ownership of media in Bosnia and Herzegovina is currently partially regulated through the registration process of business entities. The full

As noted above, this is a continuing source of concern in international oversight. Civil society have long called for legislative reform in this area, with civil society-led drafting initiatives in this area, and CSOs drawing attention in particular to challenges posed by the anonymity available to online portals.⁴⁴

Again, there are also some positive indications. Perhaps most critically, another MCT-convened working group has potential to lead to more effective regulation (and transparency) of in particular online media.⁴⁵ Similarly, broader discussions on coregulation – across sectors, involving both civil society and government bodies – have the potential to valuably inform both legislative drafting, and a coordinated approach across sectors to media ownership transparency.⁴⁶

b. Observations and recommendations

As with the preceding item, lack of transparency of media ownership can be expected to be a continuing focus of international concern. Reflecting this, measures to support the design and implementation of a comprehensive, cross-sectoral legislative and policy approach may go some way towards addressing such concerns.

With this in mind and reflecting its cross-sectoral make-up and terms of reference, the EFEx Working Group may again be well-positioned to facilitate structured gathering, analysis and sharing of related information and to support (albeit principally externally) associated legislative initiatives. The participation of key civil society (Press Council, BiH Journalists Association) and key government agencies (CRA, MCT) in related Working Group activities also has the potential

name, surname, and address of the legal entity owner is data recorded in the registries which are maintained by the courts.” Also: Gadže K., ‘Legal Framework on Transparency of Media Ownership on Hold’ (Media Centar Online, 19 August 2022), available at: <https://www.media.ba/en/magazin-novinarstvo/legal-framework-transparency-media-ownership-hold>, accessed 21 November 2024. (“According to Pobrić’s research, the transparency of media ownership is only partially regulated through the process of registering business entities and organizations that are media owners or through the BiH Communications Regulatory Agency’s register of audio-visual broadcasting licensees, which does not include print and online media. Internet portals that have the national domain “.ba” are registered within the University Information Centre, which is in charge of issuing “.ba” domains according to the research. On the website of the University Information Centre www.nic.ba, it was possible to see the business entity and contact person for each website with the national domain, but this option has been denied to the public in the meantime due to non-compliance with the Personal Data Protection Act, Pobrić pointed out.”)

⁴⁴ See: Horić J., (n 36).

⁴⁵ Though this likely excludes print media. See generally accounts in: Tamara Zablocki, ‘A Long Wait for the Law on Electronic Communications and Electronic Media’ (*Media Centar Online*, 13 December 2018), available at: <https://media.ba/bs/magazin-novinarstvo/dugo-cekanje-na-zakon-o-elektronskim-komunikacijama-i-elektronskim-medijima>, accessed 21 November 2024; Gadže K., (n 44); ‘New Media Regulation Is on the Horizon, but Journalists a’ (*Media Ownership Monitor*, 2023), available at: <https://bosnia-herzegovina.mom-gmr.org/en/findings/concentration/>, accessed 21 November 2024; Jasmina Horić (n 36).

⁴⁶ See Horić J., (n 36). (“According to the Draft Law on Media Ownership Transparency, data on direct and affiliated owners of electronic media would be included in the registry of the Communications Regulatory Agency (RAK), while the same data for printed media and portals would be recorded in the registry of the Press and Online Media Council.”)

to strengthen collaboration and, in the longer run, the prospects for effective coregulation across sectors.⁴⁷

iii. Strengthening the Communications Regulatory Agency (CRA)

Concerns in relation to media regulation in Bosnia and Herzegovina, including particularly in respect of the Communications Regulatory Agency, are evident throughout recent international oversight of FoE. The 2024 European Commission report for Bosnia and Herzegovina observes, for example, that “the Communications Regulatory Agency (CRA) still lacks full political and financial independence.”⁴⁸ The 2024 report goes on to observe that: “[t]he procedure to appoint its management does not guarantee pluralistic representation of stakeholders and independence from the regulated sector and from political influence.”⁴⁹ Whereas the preceding 2023 report noted that the mandate of the CRA Board expired at the end of 2017, however, the 2024 report indicated some progress in this regard, albeit still observing that (as at the time of its preparation): “Parliament is yet to confirm the newly appointed board of the agency.”⁵⁰

These observations are not, however, restricted to the European Union. The Committee on the Elimination of Racial Discrimination (CERD), in its 2018 Concluding Observations, specifically calls for BiH to “[s]trengthen the resources of the Communications Regulatory Agency and the Press Council.”⁵¹ This is echoed in the CERD chair’s follow-up letter of September 2020, which notes that even though the CRA had imposed sanctions “on some audio-visual media service providers for racist hate speech”, the Committee did not receive information on specific measures taken

to: (a) strongly condemn and distance itself from racist hate speech and discriminatory statements in public discourse, including by public figures at the State and entity levels; and (b) call upon those responsible to ensure that their public statements do not

⁴⁷ Note in this regard also the CoE Council of Ministers’ injunction in respect of coregulation that: “States should consider, in close collaboration with national associations of journalists, trade unions and media companies or associations, contributing to the financing of press councils and other self- or co-regulatory mechanisms, in order to ensure their financial sustainability. Any financial schemes should be subject to appropriate safeguards to protect the self- or co-regulators’ autonomy and independence.” (Committee of Ministers, Council of Europe, ‘Recommendation CM/Rec(2022)4 of the Committee of Ministers to Member States on Promoting a Favourable Environment for Quality Journalism in the Digital Age’, available at:

⁴⁸ European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 39.

⁴⁹ Ibid.

⁵⁰ Ibid. See in contrast also related observations at: European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 40.

⁵¹ Committee on the Elimination of Racial Discrimination, ‘CERD/C/BIH/CO/12-13: Concluding Observations on the Combined Twelfth and Thirteenth Periodic Reports of Bosnia and Herzegovina’ para 20(d), available at: <https://documents.un.org/doc/undoc/gen/g24/152/70/pdf/g2415270.pdf>, accessed 22 November 2024.

contribute to incitement of racial hatred. The Committee requests the State party to include, in its next periodic report, detailed information on the concrete measures taken to implement these recommendations, as well as on their impact.⁵²

Similar issues have also been raised by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), whose 2022 BiH baseline evaluation report notes the paucity of findings by the CRA regarding sex discrimination (and an accompanying minimal fine of €1000).⁵³

a. Legislation and practice

As noted above, the CRA has long been considered to lack financial and political independence. This has remained the case notwithstanding the provisions of the 2002 Law on Communications setting out the agency's mandate and responsibilities, and (nominally) guaranteeing its independence.⁵⁴ In particular, Article 39 stipulates that the Council of the CRA is to have seven members, appointed by the Parliament of BiH for a renewable four-year term, while Article 44 sets out the basis for the CRA's director General to submit an annual budget for approval by the Council of Ministers, to be funded by licensing fees from telecoms operators and broadcasters and specific grants and/or donations.⁵⁵

The CRA has long operated inconsistently with these provisions. Perhaps most significantly, the mandate of its previous Council expired in 2017, with successive Councils of Ministers unable to nominate a replacement set of members.⁵⁶ At the same time, the CRA's management and conduct – including its regulatory oversight of broadcasters – has been criticised from civil society, including on grounds of politicisation.⁵⁷ Last, even though the CRA's sources of finance

⁵² See: 'CERD/101st Session/FU/MJA/Ks: Letter from Yanduan Li, Chair, Committee on the Elimination of Racial Discrimination to Her Excellency Ms. Nermina Kapetanovic, Permanent Representative of Bosnia and Herzegovina to the United Nations Office Geneva' (24 September 2020), available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=EZTZLUde4ypiSQUXNK64A5oY1mFY9LLYKnTYRoeAL6g7qROj7GG/eLWRdOO3DEezTXdN9XmzyrXV1MSijunrOA==, accessed 22 November 2024.

⁵³ Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 'GREVIO/Inf(2022)19: GREVIO Baseline Evaluation Report Bosnia and Herzegovina (Adopted 24 June 2022)' (Council of Europe 2022) 40, available at: <https://rm.coe.int/grevio-baseline-evaluation-report-on-bosnia-and-herzegovina/1680a8e5f1>, accessed 22 November 2024 at para. 115.

⁵⁴ See: Law on Communications of Bosnia and Herzegovina 2002 (Official Gazette of Bosnia and Herzegovina) esp. Arts. 36, 39, 44.

⁵⁵ Ibid.

⁵⁶ See: European Commission, 'SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy' (n 12) 40.

⁵⁷ See e.g. 'Bosnia and Herzegovina: Media Freedom in Survival Mode' (n 38) 16. ("The independence of the national Communication Regulatory Agency (CRA) continues to be undermined by the politicised appointments of its director and the non-appointment of its management council."... "The CRA's financial stability remains in doubt and lacks the resources to fully carry out its regulatory mission"). Also: US Department of State, 'Bosnia And Herzegovina 2023 Human Rights Report' (2023) 19, available at: https://www.state.gov/wp-content/uploads/2024/02/528267_BOSNIA-AND-HERZEGOVINA-2023-HUMAN-RIGHTS-REPORT.pdf, accessed 22 November 2024. ("FACE TV appealed the decision, and the BH Journalists Association described the fine as draconian, saying it was an attempt to censor and silence an outlet that criticized the decisions of the CRA and its general manager.")

are nominally clear from the 2002 law, the CRA's budget has long formed part of the state budget, with the effect that "if the state budget is not adopted on time, CRA funding depends on decisions regarding the temporary financing of state institutions."⁵⁸

b. Observations and recommendations

As the above illustrates, the financial and political independence of the CRA have long been sources of international and domestic concern within BiH. There is, moreover, little indication that the financial independence of the CRA is likely to be addressed in the near future, absent a fundamental rethinking of the current substantive approach. While in some respects, moreover, the Council of Ministers' 2024 readiness to redirect CRA funds to support the state public broadcaster may indicate a potentially valuable degree of flexibility and pragmatism, this precedent does little to inspire confidence in the financial independence of the agency.

That said, more recent developments perhaps augur slightly better for the political independence of the CRA. In March 2024, the Council of Ministers agreed on a set of nominations for the Council of the CRA, subsequently adopted by the Parliamentary Assembly in October 2024.⁵⁹ Having been stalled since 2017, this is a notable achievement, and – while concerns over the politicisation of the agency's management may nevertheless persist – this development has the potential to strengthen the independence of the agency, at least for the foreseeable future.

Set against this backdrop, doubtless the international community will continue to promote strengthening of CRA governance and regulatory conduct, including to address continuing concerns about politicisation and its financing. With this in mind, and given that thinking in this direction is already underway, the EFEx Working Group may, again, be particularly well-placed to facilitate transparency and information-sharing between government agencies, including the CRA, and civil society, and to conduct associated analyses, pursuant to its role "[p]articipating in, supporting, and contributing to accurate and reliable data collection, collation, and analysis

⁵⁸ Jusic T., 'Independence Through Intervention? International Intervention and the Independence of the Communications Regulatory Agency in Bosnia and Herzegovina' (Social Science Research Network, 2013) 6, available at: <https://papers.ssrn.com/abstract=2536560>, accessed 22 November 2024. See similar observation in US Department of State, 'Custom Report Excerpts: Bosnia and Herzegovina', available at: <https://www.state.gov/report/custom/a41d18dc44/>, accessed 22 November 2024.

("The CRA's financial independence continued to be of concern, however, since it was still subject to the Law on Budget and Salaries.")

⁵⁹ See variously: 'ODRŽANA PRVA KONSTITUTIVNA SJEDNICA NOVOG SAZIVA VIJEĆA REGULATORNE AGENCIJE ZA KOMUNIKACIJE' (Regulatory Agency for Communications of Bosnia and Herzegovina, 31 October 2024), available at: <https://www.rak.ba/bs-Latn-BA/news/14782>, accessed 22 November 2024; 'Alma Čolo i Još Šestero Imenovani u Vijeće RAK-a: Iz RS-a Izabrana Jedna Osoba Manje Nego Ranije' (Klix Vijesti, 10 October 2024), available at: <https://www.klix.ba/vijesti/bih/alma-colo-i-jos-sestero-imenovani-u-vijece-rak-a-iz-rs-a-izabrana-jedna-osoba-manje-nego-ranije/241010091>, accessed 22 November 2024; 'Council of Ministers of Bosnia and Herzegovina Holds Its 41st Session' (Council of Ministers of Bosnia and Herzegovina, 3 April 2024) available at: https://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/default.aspx?id=42641&langTag=en-US, accessed 22 November 2024.

in respect of FoE and FoI”.⁶⁰ Such activities may also facilitate further discussion and exploration of potential pathways to strengthen effective cross-sectoral coregulation.⁶¹

IV. Protection of journalists

The protection of journalists features prominently in international oversight. Reviewing published reports and recommendations, two issues in particular dominate. These relate respectively to:

- i. Ensuring effective investigation and judicial follow-up of alleged criminal acts against journalists, and
- ii. Shortcomings in legal frameworks, especially in respect of Strategic Lawsuits Against Public Participation (SLAPPS) and defamation.

It is important to note that these two issues, as well as additional specific issues, are highlighted amongst a range of broader concerns. Uruguay’s UPR recommendation in this regard, that BiH should “[e]nsure the effective protection of human rights defenders and journalists, and that they are free from acts of intimidation or reprisals” is illustrative.⁶² In similar fashion, journalists’ working conditions, in particular those of women, are underlined in both the 2023 and 2024 European Commission reports.⁶³ Gender-related issues in the context of the protection of journalists were also noted by Canada in the last UPR round.⁶⁴

These issues are also raised against the backdrop of a range of international guidance and associated instruments. The Human Rights Committee’s General Comment 34 (2011), for example, notes that: “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties” and highlights the potential chilling effects of defamation claims.⁶⁵ Concern for gender-related issues in journalism is also evident in CEDAW reporting guidance,⁶⁶ as well as in Recommendation CM/Rec(2016)4 of the

⁶⁰ See **Error! Reference source not found..**

⁶¹ On coregulation see esp. Kevin D., and Rokša-Zubčević A., Towards Coregulation of Harmful Content Online in Bosnia and Herzegovina: A Study of European Standards and Co-Regulatory Practices for Combating Harmful Content Online, pp. 37–39, available at: <https://rm.coe.int/hf38-coregulation-harmful-content-online-study-eng/1680adee89>, accessed 22 November 2024 (Section 5.4).

⁶² ‘UPR of Bosnia and Herzegovina (3rd Cycle - 34th Session): Thematic List of Recommendations’ (n 4) 15.

⁶³ See: European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 42; European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 38.

⁶⁴ ‘UPR of Bosnia and Herzegovina (3rd Cycle - 34th Session): Thematic List of Recommendations’ (n 4) 16.

⁶⁵ Human Rights Committee (n 6) 9.

⁶⁶ See: Committee on the Elimination of Discrimination against Women, ‘CEDAW/C/74/3/Rev.1: Guidance Note for States Parties for the Preparation of Reports under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women in the Context of the Sustainable Development Goals’ 9, available at: <https://documents.un.org/doc/undoc/gen/n22/615/24/pdf/n2261524.pdf>, accessed 23 November 2024 at para. 27(b). (States should provide information inter alia on “the number and proportion of media outlets with a policy to

Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors.⁶⁷

Associated international standards also reflect more generally applicable instruments and guidance. The European Court of Human Rights' guide to Article 10 of the Convention, for example, observes that:

States are required to establish an effective mechanism for the protection of authors and journalists in order to create a favourable environment for participation in public debate of all those concerned, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the official authorities or by a significant part of public opinion, or even if they are irritating or shocking to the latter.⁶⁸

Similarly, the OSCE Representative on Freedom of the Media recommends (inter alia) that "States should promote an enabling environment for freedom of expression and freedom of the media."⁶⁹

Further, extensive and highly detailed guidance for states is set out in the Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors. The guidelines set out in this recommendation, for example, include the imposition of "a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear."⁷⁰ The guidelines also refer to specific elements of related legislative frameworks and their implementation, including in respect of defamation, protection of and support for journalists, and investigation and prosecution of associated offences.⁷¹

As noted above, however, this analysis will focus on two specific sets of issues that have arisen in respect of protection of journalists. The first issue is:

discourage the use of discriminatory gender stereotypes and the type of media outlet, including the number and proportion of women journalists or media professionals involved in combating gender stereotypes.")

⁶⁷ See: Committee of Ministers, Council of Europe, 'Recommendation CM/Rec(2016)4 of the Committee of Ministers to Member States on the Protection of Journalism and Safety of Journalists and Other Media Actors' (n 7) generally, but note esp. para. 17. ("... a gender-specific perspective should be a central feature of all measures and programmes dealing with the protection of journalists and other media actors and the fight against impunity.")

⁶⁸ European Court of Human Rights, 'Guide on Article 10 of the European Convention on Human Rights: Freedom of Expression' 11–12, available at: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_10_eng, accessed 20 November 2024.

⁶⁹ OSCE Representative on Freedom of the Media, 'Recommendations on Protecting Media Freedom and Freedom of Expression in the Regulation of Online Content in South East Europe' 13 available at: <https://www.osce.org/files/f/documents/2/1/392999.pdf>, accessed 23 November 2024.

⁷⁰ See: Committee of Ministers, Council of Europe, 'Recommendation CM/Rec(2016)4 of the Committee of Ministers to Member States on the Protection of Journalism and Safety of Journalists and Other Media Actors' (n 7), at Appendix, Section I, Para. 2.

⁷¹ See e.g. *ibid*, at Appendix, Section II, Para. 36. ("Actual misuse, abuse or threatened use of different types of legislation to prevent contributions to public debate, including defamation, anti-terrorism, national security, public order, hate speech, blasphemy and memory laws can prove effective as means of intimidating and silencing journalists and other media actors reporting on matters of public interest.")

i. Effective investigation and judicial follow-up of alleged criminal acts against journalists

Concern in this area is widespread.⁷² In the last UPR round, for example, the US, Austria, Canada, Estonia, France, the Netherlands, Switzerland, Greece, Norway, and Lithuania all called attention to the need to more effectively (as put by the US) “[i]nvestigate allegations of criminal acts against journalists, and hold accountable those responsible, including with respect to acts of intimidation or reprisal against journalists and media outlets.”⁷³ Similar sentiments were referenced by the other states listed. This issue was also raised by the Human Rights Committee in its 2017 Concluding Observations, the Committee’s concerns “about reports of harassment and intimidation of journalists”, prompting a recommendation that BiH authorities “should thoroughly investigate all incidents of attacks on journalists and the media, and bring those responsible to justice and, if convicted, impose appropriate penalties”.⁷⁴

European Commission and Parliament outputs also reflect these concerns. The Commission’s 2019 opinion on BiH’s application for EU membership, for example, sets out as a key priority “[g]uarantee[ing] freedom of expression and of the media and the protection of journalists, notably by (a) ensuring the appropriate judicial follow-up to cases of threats and violence against journalists and media workers.”⁷⁵ The European Parliament, similarly, in its July 2023 resolution on the Commission’s 2023 report “insists on appropriate, systematic and effective judicial follow-up and the protection of journalists, including by a special layer of protection in the criminal code and improved capacities of prosecutors and judges”.⁷⁶

These recommendations feature also in the 2023 and 2024 European Commission reports. The former, for example, observes “backsliding in addressing Opinion key priority 12 to guarantee freedom of expression and of the media and the protection of journalists.”⁷⁷ The Commission goes on to note in this regard, *inter alia*, that:

⁷² On background, see discussion in: ‘Bosnia and Herzegovina: Media Freedom in Survival Mode’ (n 38).

⁷³ See: ‘UPR of Bosnia and Herzegovina (3rd Cycle - 34th Session): Thematic List of Recommendations’ (n 4) 14.

⁷⁴ Human Rights Committee (n 5) 6 at paras. 37-38.

⁷⁵ ‘European Commission: Communication from the Commission to the European Parliament, the Council: Commission Opinion on Bosnia and Herzegovina’s Application for Membership of the European Union - COM(2019) 261 Final’ (n 10) 15-16.

⁷⁶ ‘C/2024/4004: European Parliament Resolution of 12 July 2023 on the 2022 Commission Report on Bosnia and Herzegovina’ (n 11) 12.

⁷⁷ European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 39. The 2024 report notes that: “There was no progress in guaranteeing freedom of expression and of the media, and the protection of journalists... Political pressure, intimidation and harassment towards journalists continued, including physical and verbal attacks, with no appropriate institutional follow-up.” (European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 6-7.)

[p]olitical pressure, intimidation and harassment towards journalists, including physical and verbal attacks, continued during the reporting period, and there was no appropriate institutional follow-up. No steps were taken to align the legislative framework with European and international standards or to fully enforce it.⁷⁸

The Commission also notes that:

[t]he polarised political climate, constant verbal attacks and nationalist rhetoric have created a hostile environment for media freedom. High-level politicians continued their public attacks and disparaging remarks against journalists, analysts and media workers, particularly against women. The authorities continue to downplay the issue with no public statements on these issues, and institutional follow-up is weak.⁷⁹

By March 2024, moreover, the Commission was only able to report limited progress in this regard, noting that “[a]ll prosecutors’ offices and law enforcement agencies have appointed contact points for journalists, to be publicised on the platform safejournalists.net” and that “[t]he first EU-funded training of contact point (sic) took place in late February.”⁸⁰ The observations in the October 2024 Commission report follow a similar vein.⁸¹

The 2023 and 2024 Commission reports also highlight weaknesses in state data gathering and reporting, the former referring to data collected from BH Novinari, SafeJournalists, the Human Rights Ombudsman, and the Online Media and Press Council. It reiterates that:

⁷⁸ European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 39. The 2024 report observes similarly that: “Political pressure, intimidation and harassment towards journalists continued, including physical and verbal attacks, with no appropriate institutional follow-up.” (European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 7.)

⁷⁹ Emphasis added. European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 40. See in similar vein observations in: European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 36–7.

⁸⁰ European Commission, ‘COM(2024) 129 Final: Communication from the Commission to the Council and the European Parliament - Report on Progress in Bosnia and Herzegovina - March 2024’ (n 14) 4.

⁸¹ See similarly: European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 21.

[a]uthorities are expected to act swiftly and demonstrate zero tolerance for threats or attacks against the media, including by ensuring effective police investigations and judicial prosecution leading to final convictions of the perpetrators.⁸²

This wording is reiterated in the October 2024 report.⁸³

a. Legislation and practice

Legal frameworks relating to police and judicial conduct are in place at entity, district, and state levels in BiH. None of these provide specific protection for journalists encountering criminal behaviour, however.⁸⁴ Despite extensive and persistent reports, particularly from civil society, of such threats, moreover, available information suggests that judicial follow-up, including investigation and prosecution, has often been lacking, further reinforcing a sense that journalists can be threatened and attacked with impunity.⁸⁵

This said, while issues around legislative frameworks are not a new concern, recent institutional developments, particularly the appointment of specified contact points for journalists across prosecutorial and law enforcement bodies, perhaps holds out the prospect of more effective – or at least more transparent – engagement between these agencies and journalists/related civil society organisations. Contact points in prosecutors’ offices also appear to be engaged more closely in investigation and data gathering than previously.⁸⁶

Equally, the possibility of legislative – or at least regulatory - development should also not be entirely discounted. While experience counsels careful management of expectations, in 2022 the BiH Council of Ministers was tasked with preparing recommendations for amendments to

⁸² European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 40.

⁸³ See: European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 37.

⁸⁴ See: Office of the United Nations High Commissioner for Human Rights (OHCHR) Human Rights Adviser’s Unit, ‘The Right to Freedom of Opinion and Expression: The Safety of Journalists and Access to Information in Bosnia and Herzegovina’ 23, available at: <https://bosniaherzegovina.un.org/sites/default/files/2022-09/Report%20-%20Safety%20of%20journalists%20and%20access%20to%20information%20in%20Bosnia%20and%20Herzegovina%20-%20ENG.pdf>, accessed 23 November 2024.

⁸⁵ See e.g. discussion on “Journalists’ perception of the role of the judiciary in protecting media freedom and the safety of journalists” in Amer Džihana, ‘Journalists’ Experience and Views on Judicial Transparency in Bosnia and Herzegovina’ 31–34, available at: <https://kq.freepressunlimited.org/wp-content/uploads/2022/12/Perception-Study.-Journalists-Experience-and-Views-on-Judicial-Transparency-in-Bosnia-and-Herzegovina-2022.pdf>, accessed 23 November 2024. For a recent case, see also account in: Media Freedom Rapid Response and SafeJournalists Network, ‘We Call for Police Protection for Bosnian Journalist Nataša Zubac’ (European Centre for Press and Media Freedom, 6 November 2024), available at: <https://www.ecpmf.eu/bosnia-and-herzegovina-mfrr-and-safejournalists-urgently-call-for-police-protection-for-investigative-journalist-natasa-miljanovic-zubac/>, accessed 23 November 2024.

⁸⁶ As observed in Working Group meeting, October 2024.

the BiH Criminal Code to afford more effective protection of journalists.⁸⁷ The extent to which this initiative may prove of value remains to be seen: at minimum, however, it indicates a degree of parliamentary (and government) cognizance of associated challenges.

b. Observations and recommendations

The international community can be expected to continue to raise concerns about the safety of journalists, including inadequacies in investigative and judicial follow-up. Fundamentally, both legislative reform to provide greater protection for journalists and more effective institutional follow-up are to be commended.

In the context of the EEx programme, however, there is also a range of activities that the Working Group may undertake that could both support others to address and – independently – go some way towards ameliorating these challenges. The group already, for example, provides support to the Ministry for Human Rights and Refugees (MHRR) in its participation in the CoE Campaign for the Safety of Journalists (“Journalists Matter”).⁸⁸ Reflecting this, this aspect of the group’s work should continue to be strengthened, with a view to further enhancing BiH’s participation in this campaign, including the adoption of a multistakeholder approach to journalists’ protection, in line with the campaign’s 2024 annual thematic conference.⁸⁹ Again, these activities fall comfortably within the group’s terms of references, including in this case as specific support to the MHRR.

More broadly, the EEx Working Group may also be well-positioned to strengthen links between institutional contact points and civil society, including via networking as well as in respect of capacity building (inc. via training), and information gathering.⁹⁰ In the latter regard, in particular,

⁸⁷ See: Office of the United Nations High Commissioner for Human Rights (OHCHR) Human Rights Adviser’s Unit (n 86) 24. (“In July 2022, the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina adopted an initiative proposed by a group of parliamentarians, which obliges the Council of Ministers of Bosnia and Herzegovina to prepare, within 60 days at the latest, and submit to parliamentary procedure, amendments to the Criminal Code of Bosnia and Herzegovina to treat attacks on journalists as a special crime. If adopted, such an amendment could provide enhance the protection of journalists. There were previous initiatives in the parliaments of both entities to treat attacks on journalists as attacks on officials or as separate offences, but these did not lead to legislative changes.”)

⁸⁸ See: ‘Journalists Matter : Council of Europe Campaign for the Safety of Journalists’ (Council of Europe), available at: <https://www.coe.int/en/web/freedom-expression/safety-of-journalists-campaign>, accessed 23 November 2024.

⁸⁹ See in this vein: Journalists Matter: Council of Europe’s Campaign for the Safety of Journalists, ‘Minutes of the Meeting: Annual Thematic Conference: Protection of Journalists- a Multistakeholder Dialogue’ 5 available at: <https://rm.coe.int/minutes-of-the-annual-thematic-conference-protection-of-journalists-a-/1680b27751>, accessed 23 November 2024. (“Participants acknowledged the efforts undertaken during this year dedicated to the protection of journalists and agreed on the importance of continued, coordinated, multistakeholder approaches involving law enforcement, civil society, public authorities and media professionals alongside with gender and other specific initiatives as part of a broader actions to enhance journalist safety.”)

⁹⁰ This may include e.g. developing a joint (i.e. multi-stakeholder) database via closer information sharing and alignment with PROFREx capacity-building activities. (See e.g. ‘Boosting Journalist Safety: Prosecutors and Police Sharpen Skills to Better Protect Media Workers in Bosnia and Herzegovina’ (Council of Europe Office in Sarajevo, October 2024), available at: <https://www.coe.int/en/web/sarajevo/-/boosting-journalist-safety-prosecutors-and-police-sharpen-skills-to-better-protect-media-workers-in-bosnia-and-herzegovina>, accessed 23 November 2024.) For an example of work in this vein to date see also e.g. ‘BiH Needs More Efficient Judicial Processing of Attacks on Journalists’ (Sarajevo Times, 7 April 2023), available at: <https://sarajevotimes.com/bih-needs-more-efficient-judicial-processing-of-attacks-on-journalists/>, accessed 23 November 2024. Both information gathering and

the Working Group's inclusion of both state/entity/district agencies and civil society may position it especially well to consider how data gathering may be strengthened across sectors, working towards if not harmonisation, then a clearer understanding of the gaps between and differing approaches to record-keeping and resultant data production across civil society and public bodies. These activities, again, should fall comfortably within the Working Group's roles in respect of monitoring and reporting, capacity building, and communication and cooperation.

ii. Strategic Lawsuits Against Public Participation (SLAPPs) and defamation

Shortcomings in legal frameworks regarding SLAPPs and issues around defamation feature particularly heavily in European Union oversight. The European Commission's 2022 Report on BiH, for example, observes that: "[t]he growing number of strategic lawsuits against public participation (SLAPP) further fuels self-censorship" adding that "[t]wo SLAPP cases were reported in 2021, with extremely high compensation claims threatening the financial survival of the media."⁹¹ The associated 2023 European Parliament resolution similarly

strongly condemns attacks and threats, smear campaigns, insults, intimidation and strategic lawsuits against public participation (SLAPP) against journalists and media workers, including by politicians and public figures including the recent attacks on journalists Aleksandar Trifunović and Nikola Morača, and by private companies.⁹²

These sentiments are closely reflected in the 2023 and 2024 European Commission reports. The former cites the reintroduction of criminal penalties for defamation in the RS as "severely impact[ing] the environment for civil society, restricting freedom of expression and of the media and represent[ing] a major step backwards in the protection of fundamental rights."⁹³ It additionally highlights that "the Sarajevo Canton government endorsed a draft law that would introduce sanctions for online 'fake news'; if adopted, it could be abused to restrict online communications and intimidate reporters."⁹⁴ Similar observations are made in the 2024 report.⁹⁵

⁹¹ European Commission, 'SWD(2022) 336 Final: Commission Staff Working Document - Bosnia and Herzegovina 2022 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2022 Communication on EU Enlargement Policy' (European Commission 2022) 32, available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/a113b381-3389-4be7-95b2-a4fb91c8c243_en?filename=Bosnia%20and%20Herzegovina%20Report%202022.pdf, accessed 23 November 2024.

⁹² 'C/2024/4004: European Parliament Resolution of 12 July 2023 on the 2022 Commission Report on Bosnia and Herzegovina' (n 11) 12 at para. 62.

⁹³ European Commission, 'SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy' (n 12) 36.

⁹⁴ *ibid* 39.

⁹⁵ European Commission, 'SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy' (n 12) 37.

The 2023 Commission report also highlights, as a broader deficiency in the legislative environment, that even prior to the recriminalisation of defamation in the RS, “politicians and public officials [used...] civil lawsuits to intimidate journalists.”⁹⁶ Accordingly, in its 2023 report the Commission recommends that “to prevent an environment that forces journalists into self-censorship, courts should step up their efforts to ensure expedient processing of defamation cases and consistency of case-law on damages awarded.”⁹⁷

As at March 2024 matters seemed – if anything – to have further deteriorated, with the Commission observing that the RS did not recognise the BiH Constitutional Court’s finding that the reintroduction of criminal penalties for defamation was unconstitutional.⁹⁸ In a contemporaneous weakening of a further element of the legal framework, media institutions, particularly in the Republika Srpska, may also be put under further pressure via “foreign agent” registration and reporting requirements.⁹⁹

a. Legislation and practice

As noted above, there is no specific legislative framework in place for the protection of journalists in BiH. Evidence from civil society – including the BiH Journalists Association – also underlines that SLAPPs remain a serious challenge for Bosnian journalists.¹⁰⁰ This challenge is exacerbated,

⁹⁶ European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 40.

⁹⁷ Ibid.

⁹⁸ European Commission, ‘COM(2024) 129 Final: Communication from the Commission to the Council and the European Parliament - Report on Progress in Bosnia and Herzegovina - March 2024’ (n 14) 6. These concerns are (again) echoed in the 2024 European Commission report. See: European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 37.

⁹⁹ See for further information: ‘Bosnia and Herzegovina: Media Freedom in Survival Mode’ (n 38) 7–8.

¹⁰⁰ See generally e.g. Harun Iseric, ‘SLAPPs against Media in Bosnia and Herzegovina: Analysis of Selected Examples’ (Association of BH Journalists – BH Novinari 2024), available at: <https://bhnovinari.ba/wp-content/uploads/2024/06/SLAPPs-against-media-in-Bosnia-and-Herzegovina-by-Harun-Iseric.pdf>, accessed 23 November 2024. Also to see generally detailed information at ‘Incidents – SafeJournalists’, available at: https://safejournalists.net/incidents/?lang=en&keyword=&country=BA&gender=&type_of_incident=&incident_mean_s=&incident_year=&who_was_attacked=&were_authorities_informed=&by_whom=&perpetrator=&judiciary_status=&type_of_violation=&ja_reaction=&ja_was_informed=&page=1, accessed 23 November 2024. See also e.g. Media Freedom Rapid Response and SafeJournalists Network, ‘SafeJournalists and MFRR Partners: KRIK Journalists Facing SLAPPs after Publishing the Profile of Judge Dušanka Đorđević in Database’ (Association of BH Journalists – BH Novinari, 18 June 2024), available at: <https://bhnovinari.ba/en/2024/06/18/safejournalists-and-mfrr-partners-krik-journalists-facing-slapps-after-publishing-the-profile-of-judge-dusanka-djordjevic-in-database/>, accessed 23 November 2024. As to regional developments more broadly, including the development (via the PRO-FREX project) of a “Regional Baseline Assessment of Legislative and Policy Needs for Implementation of Council of Europe and European Union Standards on countering the use of SLAPPs”, see: ‘Strengthening Legal Protections for Journalists in the Western Balkans: Regional Exchange on Combatting SLAPPs - Freedom of Expression - Wwww.Coe.Int’ (Council of Europe, 15 November 2024), available at: <https://www.coe.int/en/web/freedom-expression/-/strengthening-legal-protections-for-journalists-in-the-western-balkans-regional-exchange-on-combatting-slapps>, accessed 23 November 2024.

moreover, by recent legislative changes, including in particular the criminalisation of defamation in the RS, as well as related regulatory conduct.¹⁰¹

Such challenges (and practices) notwithstanding, however, there have been some recent – potentially positive - legislative and other developments. On the latter front, for example, the recent completion of appointments to the CRA Council may reduce risks of politicisation in that agency’s regulatory approaches.¹⁰²

Equally, on the former, in June 2024 the lower house of the parliament of the FBiH adopted a potentially valuable draft “Law on Citizens’ Initiative and Protection of Citizens and Activists of the Federation of BiH”.¹⁰³ At the time of writing, this appears not to have been progressed further. Nevertheless, in providing for early dismissal of likely SLAPPs, this civil society-promoted initiative may hold out the prospect of greater protection for journalists against SLAPPs, particularly set against recent European initiatives including April 2024’s EU Directive 2024/1069 (the SLAPPs Directive)¹⁰⁴ and the Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs).

b. Observations and recommendations

Not least in light of these recent CoE and EU legislative developments, it seems highly likely that addressing SLAPPs in BiH will remain prominent in respect of international oversight. In more local terms, however, there are several avenues open to civil society and other bodies – including EEx Working Group members individually and collectively – to support both domestic and international efforts to combat SLAPPs.

Foremost amongst these is, arguably, information gathering. Reflecting the Working Group’s terms of reference, for example, and in light of the Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against

¹⁰¹ Re. the latter, see e.g. February 2023 measures imposed by the CRA against FACE TV and editor Senad Hadžifejzović. (Associated reporting at: ‘The Hadžifejzović Case: Threats of Rigorous Sanctions From the CRA’ (Media Centar Online, 11 November 2022), available at: <https://media.ba/en/magazin-novinarstvo/hadzifejzovic-case-threats-rigorous-sanctions-cra>, accessed 23 November 2024; ‘CRA Financially Fines Local TV for Allegedly “Calling for the Murder of Milorad Dodik”’ (Sarajevo Times, 6 February 2023), available at: <https://sarajevotimes.com/cra-financially-fines-local-tv-for-allegedly-calling-for-the-murder-of-milorad-dodik/>, accessed 23 November 2024; ‘CRA’s Decision to Fine Local TV Is a Way to Introduce Media Darkness’ (Sarajevo Times, 11 February 2023), available at: <https://sarajevotimes.com/cras-decision-to-fine-local-tv-is-a-way-to-introduce-media-darkness/>, accessed 23 November 2024.)

¹⁰² See discussion at: Strengthening the Communications Regulatory Agency (CRA) (above).

¹⁰³ See background at: ‘New Law in FBiH Strengthens Citizens and Activist Rights’ (Balkan Civil Society Development Network, 1 July 2024), available at: <https://balkancsd.net/new-law-in-fbih-strengthens-citizens-and-activist-rights-2/>, accessed 23 November 2024. Text available at: https://parlamentfbih.gov.ba/v2/userfiles/file/Materijali%20u%20proceduri_2024/Nacrt%20Zakona-Sanela%20Klarić%20i%20Damir%20Nikšić.pdf, accessed 23 November 2024.

¹⁰⁴ See: ‘Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on Protecting Persons Who Engage in Public Participation from Manifestly Unfounded Claims or Abusive Court Proceedings (“Strategic Lawsuits against Public Participation”)’..

public participation (SLAPPs) definitions and indicators, the Working Group may be well-placed to collaboratively develop a means of tracking data on SLAPPs across state and civil society sectors, building inter alia on civil society work in this area to date.¹⁰⁵ Such an initiative could conceivably similarly be extended to tracking defamation cases and indictments in the RS.

Subject to appetite across the Working Group, there may also be scope to support planning and delivery of capacity building training and expertise on SLAPPs (including the CoE SLAPPs Recommendation) more broadly across civil society, potentially including environmental and other NGOs engaged in supporting the development of the draft FBiH law referred to above.¹⁰⁶ This could open the way in turn to further exploring and supporting options to incorporate means of addressing SLAPPs into relevant BiH legal frameworks, including in respect of addressing Directive 2024/1069 in BiH as part of the EU acquis.¹⁰⁷

V. Hate speech

In respect of this topic, three sets of issues are highlighted in international oversight:

- i. Hate speech by public figures;
- ii. Hate speech online;
- iii. Effective investigation, prevention, and prosecution of hate speech.

As with the other areas considered, these issues arise within the context of both broader generic as well as further specific concerns regarding hate speech.¹⁰⁸ Instances of the former can be found across international oversight mechanisms, including (by way of example) Honduras' 2019 UPR recommendation that BiH authorities should "[r]edouble efforts to combat hate speech, in accordance with articles 12 and 20 of the International Covenant on Civil and Political Rights".¹⁰⁹ Similar generic concerns and recommendations are evident in the Human Rights Committee's Concluding Observations of March 2017,¹¹⁰ in the November 2017 Opinion of the Advisory Committee for the 1995 Framework Convention for the Protection of National Minorities,¹¹¹ and

¹⁰⁵ BH Novinari "announced the establishment of a working group for recording, monitoring, and reporting on SLAPP lawsuits in January 2023". (Harun Iseric (n 102) 7.)

¹⁰⁶ As noted by the Balkan Civil Society Development Network (BCSDN), the draft law "is a product of Think Nature! project, implemented by BCSDN member, the Center for Civil Society Promotion (CPCD) in BiH since 2019. In collaboration with six environmental associations- project partners Eco Hubs, the text of the law was drafted and advocated for this legislation. After a year of development, the initiative, supported by over 2000 petition signatories, was submitted to the Parliament of the Federation of BiH in December 2023. Just six months later, the draft law was adopted." ('New Law in FBiH Strengthens Citizens and Activist Rights' (n 105).)

¹⁰⁷ As observed by the BiH Council of Ministers Directorate of European Integration, "Alignment of Bosnia and Herzegovina's legislation with the EU *acquis* implies not only the alignment of provisions but also their effective implementation." ('Alignment of Legislation' (Directorate of European Integration), available at: <https://www.dei.gov.ba/en/instrumenti-za-uskladivanje-s-pravnom-tecevinom-eu>, accessed 26 November 2024.)

¹⁰⁸ On broader Council of Europe initiatives in respect of freedom of expression and hate speech, see: 'Co-operation projects in Bosnia and Herzegovina - Freedom of Expression - www.coe.int' (Council of Europe), available at: <https://www.coe.int/pt/web/freedom-expression/bosnia-and-herzegovina>, accessed 23 November 2024.

¹⁰⁹ 'UPR of Bosnia and Herzegovina (3rd Cycle - 34th Session): Thematic List of Recommendations' (n 4) 1.

¹¹⁰ Human Rights Committee (n 5).

¹¹¹ Advisory Committee on the Framework Convention for the Protection of National Minorities (n 24). See at note 11, *supra*.

in the European Parliament's 2023 resolution on the 2022 European Commission report on BiH.¹¹²

These recommendations and concerns are themselves set in the context of a broader set of international instruments and guidance in respect of hate speech. In addition to relevant treaty provisions and case law, particularly relevant in this instance are General Recommendation No. 35 of the UN Committee on the Elimination of Racial Discrimination (CERD) on Combating Racist Hate Speech,¹¹³ and the Recommendation CM/Rec(2022)1 of the Committee of Ministers to member States on combating hate speech.

International oversight also identifies a further range of related issues, albeit less systematically. UPR recommendations as well as the Human Rights Committee, for example, highlight the specific needs for protection from hate speech of ethnic groups and religious minorities.¹¹⁴ Other UPR recommendations note the need to tackle hate speech based on sexual orientation and gender identity¹¹⁵ and the relationship between addressing hate speech and integrating returnees and promoting "peaceful cohabitation".¹¹⁶ The CERD has also noted concern at "reports of anti-Semitic hate speech in sports and about incidences of hate crime against Roma"¹¹⁷ while the European Parliament has highlighted the need to tackle hate speech including "against women, minorities, including ethnic minorities, LGBTIQ+ persons, people with disabilities, refugees, displaced persons and people on the move".¹¹⁸

Concerns about discriminatory language among BiH's main ethnicities, as well as "ethnic hate speech, xenophobia, anti-Semitism and racism" at and around football matches are also underlined by the Advisory Committee to the 1995 Council of Europe Framework Convention for

¹¹² 'C/2024/4004: European Parliament Resolution of 12 July 2023 on the 2022 Commission Report on Bosnia and Herzegovina' (n 11). See e.g. *ibid* 12 para. 66. ("The European Parliament ... condemns all forms of discrimination, segregation, violence and hate speech against women, minorities, including ethnic minorities, LGBTIQ+ persons, people with disabilities, refugees, displaced persons and people on the move, and calls on BiH to ensure their protection and fundamental freedoms; urges for the implementation of effective access to legal remedies and the prosecution of such cases without delay; calls on BiH to safeguard and promote the countrywide rights of all minorities, including their rights to participate in democratic elections... calls on the BiH authorities to gather statistical data on hate crimes categorised by motivation.")

¹¹³ Committee on the Elimination of Racial Discrimination, 'CERD/C/GC/35: General Recommendation No. 35 - Combating Racist Hate Speech', available at: <https://www.refworld.org/legal/general/cerd/2013/en/101142>, accessed 24 November 2024.

¹¹⁴ See 'UPR of Bosnia and Herzegovina (3rd Cycle - 34th Session): Thematic List of Recommendations' (n 4) 4, 41. ("120.41 Redouble efforts to combat hate speech as well as physical and verbal attacks and protect vulnerable sections of the society, particularly members of ethnic groups and religious minorities" (Bangladesh)... 120.60 Fight ethnic cleavages, including by condemning the political rhetoric that accentuates them" (Canada).) Human Rights Committee (n 5) 4 at para. 21. ("21. The Committee remains concerned about reports of racially motivated verbal and physical attacks against members of ethnic groups and religious and national minorities.")

¹¹⁵ See 'UPR of Bosnia and Herzegovina (3rd Cycle - 34th Session): Thematic List of Recommendations' (n 4) 25. ("120.21 Provide training to law enforcement and judiciary officers in tackling discrimination, hate speech and acts of violence based on the sexual orientation and gender identity of the victims (Denmark).")

¹¹⁶ See *ibid* 42. ("120.64 Implement programmes and activities to stop hate speech at all levels, in order to accelerate the integration of returnees and promote peaceful cohabitation" (Turkey).)

¹¹⁷ Committee on the Elimination of Racial Discrimination, 'CERD/C/BIH/CO/12-13: Concluding Observations on the Combined Twelfth and Thirteenth Periodic Reports of Bosnia and Herzegovina' (n 52) para 19.

¹¹⁸ 'C/2024/4004: European Parliament Resolution of 12 July 2023 on the 2022 Commission Report on Bosnia and Herzegovina' (n 11) 12 at para. 66.

the Protection of National Minorities.¹¹⁹ The CERD's 2018 and 2024 Concluding Observations likewise highlight issues around racist hate speech, noting a lack of clarity around associated criminal legislation.¹²⁰

Discussion now turns to the issues highlighted above and the manner in which they are noted by oversight bodies.

i. Hate speech by public figures

Hate speech by public figures in BiH, particularly politicians, is widely noted (and condemned) across international oversight processes.¹²¹ Valuable context is also provided in this instance by the Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech which specifically underlines that:

[p]ublic officials, particularly those in leadership positions, should, given their position of influence, avoid engaging in, endorsing or disseminating hate speech... [and that] [p]arliaments, other elected bodies and political parties should be encouraged to put in place specific policies to address and combat hate speech. They should also avoid any expression that is likely to foster intolerance and should openly condemn hate speech.¹²²

Reflective of the extent of this challenge in BiH, in its 2018 Concluding Observations, for example, the CERD draws specific attention to “reports of racist hate speech and discriminatory and disparaging statements in public discourse by public and political figures”¹²³ The CERD also calls on the BiH government to

[t]ake appropriate measures to strongly condemn and distance itself from racist hate speech and discriminatory statements in public discourse, including by public figures at the State and entity levels... [and to] [c]all upon those responsible to ensure that their public statements do not contribute to incitement of racial hatred.¹²⁴

¹¹⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities (n 24) 24 at para. 77.

¹²⁰ See: Committee on the Elimination of Racial Discrimination, ‘CERD/C/BIH/CO/12-13: Concluding Observations on the Combined Twelfth and Thirteenth Periodic Reports of Bosnia and Herzegovina’ (n 52) para 17; Committee on the Elimination of Racial Discrimination, ‘CERD/C/BIH/CO/14-15: Concluding Observations on the Combined Fourteenth and Fifteenth Periodic Reports of Bosnia and Herzegovina’ paras 14–18, available at: <https://documents.un.org/doc/undoc/gen/g24/152/70/pdf/g2415270.pdf>, accessed 25 November 2024.

¹²¹ For background information see generally: Dejan Lučka, ‘Hate Speech Among Politicians in Bosnia and Herzegovina (Sowing Hatred for the Sake of Reaping Election Votes)’ available at: https://www.researchgate.net/publication/353779594_Hate_Speech_Among_Politicians_in_Bosnia_and_Herzegovina_Sowing_Hatred_for_the_Sake_of_Reaping_Election_Votes, accessed 24 November 2024.

¹²² Committee of Ministers, Council of Europe, ‘Recommendation CM/Rec(2022)16 of the Committee of Ministers to Member States on Combating Hate Speech’ (n 7) 7, at Appendix, Section 3, para. 28.

¹²³ Committee on the Elimination of Racial Discrimination, ‘CERD/C/BIH/CO/12-13: Concluding Observations on the Combined Twelfth and Thirteenth Periodic Reports of Bosnia and Herzegovina’ (n 52) para 19.

¹²⁴ *ibid* 20(a), (b).

These sentiments are echoed in the CERD's 2024 Concluding Observations, the Committee noting concern

that hate speech and ethno-nationalistic narratives, including the public denial of genocide, crimes against humanity and war crimes committed during the 1992–1995 conflict in Bosnia and Herzegovina, are often used by political leaders and public figures, including in sports and public events.¹²⁵

The committee highlights in its 2024 recommendations that BiH should “continue its efforts to provide training to law enforcement officials and to carry out targeted awareness-raising campaigns to prevent and combat racist hate crimes and hate speech, *including among politicians*” and again “[e]nsure that public authorities, including high-level public officials, distance themselves from hate speech and that they formally and publicly reject and condemn hate speech and the dissemination of racist ideas.”¹²⁶

This issue is also reflected in the 2017 Opinion of the Advisory Committee for the Council of Europe Framework Convention for the Protection of National Minorities. In similar fashion to the CERD, the committee recommends that BiH authorities “unequivocally condemn public statements of politicians and other public figures that incite ethnic hatred or discord”, observing that “[s]ome public figures resort to fuelling deep-seated ethnic divisions, thereby weakening democracy and undermining the rule of law”, and calling on “the authorities to ensure that public statements of politicians and other public figures that incite ethnic hatred or discord are unequivocally condemned, to ensure that such discourse is not condoned in society.”¹²⁷ The subsequent (2019) Committee of Ministers’ Resolution echoes this recommendation.¹²⁸

a. Legislation and practice

Hate speech is addressed to some degree in BiH legislation, but in inconsistent form. The Criminal Code of Bosnia and Herzegovina (the BiH Code), for example, criminalises publicly inciting or inflaming “national, racial or religious hatred, conflicts or intolerance among the constituent peoples and others, as well as among other people living or residing in Bosnia and Herzegovina”.¹²⁹ Similar – albeit not identical – provisions are included in the criminal codes of the FBiH and Brčko District, with “abuse of an official post or authority” resulting in more far-

¹²⁵ Committee on the Elimination of Racial Discrimination, ‘CERD/C/BIH/CO/14-15: Concluding Observations on the Combined Fourteenth and Fifteenth Periodic Reports of Bosnia and Herzegovina’ (n 125) 4 at para. 15.

¹²⁶ *ibid* 5 at paras. 16 (f), (h).

¹²⁷ Advisory Committee on the Framework Convention for the Protection of National Minorities (n 24) 40, 21 (at para. 68), 24 (at para. 79).

¹²⁸ Committee of Ministers, Council of Europe, ‘Resolution CM/ResCMN(2019)8 on the Implementation of the Framework Convention for the Protection of National Minorities by Bosnia and Herzegovina’ (n 24) 1. (“Recommendations for immediate action: ... unequivocally condemn public statements of politicians and other public figures that incite ethnic hatred or discord... ”)

¹²⁹ See: Criminal Code of Bosnia and Herzegovina (Unofficial, consolidated version) 2003 (Official Gazette of Bosnia and Herzegovina) art 145a (1).

reaching sanctions.¹³⁰ These protections have not been extended, however, to include hate speech on the grounds of sexual identity and gender orientation.¹³¹ Hate speech on other grounds of discrimination, such as language, colour, and citizenship, similarly remains excluded in these acts,¹³² save in the BiH Code, which since 2021 has also criminalised incitement otherwise “directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.”¹³³

In contrast to the situation in FBiH and Brcko District, the Criminal Code of the RS is in some respects rather broader, referring to inciting hatred on account of “national, racial, or religious or ethnic affiliation, skin colour, gender, sexual orientation, disability, gender identity, origin or any other characteristics”.¹³⁴ At the same time though, the latter code does not include abuse of an official position as a form of aggravation. There has also been a recent initiative to remove gender identity from the set of protected characteristics in the RS.¹³⁵

Over time, numerous other legislative provisions have been put in place in respect of different aspects and forms of hate speech.¹³⁶ These provide inter alia for the prohibition of denial of atrocity crimes in the BiH Criminal Code,¹³⁷ regulating use of media to incite “violence or national or ethnical conflicts”,¹³⁸ and prohibiting incitement of religious hatred,¹³⁹ specific provisions in

¹³⁰ See: Criminal Code of the Federation of Bosnia and Herzegovina 2003 (Official Gazette of the Federation of Bosnia and Herzegovina) art 163; Criminal Code of the Brcko District of Bosnia and Herzegovina 2003 (Official Gazette of the Brcko District of Bosnia and Herzegovina) art 160.

¹³¹ As observed in the 2024 European Commission report on BiH: “Entity level legislation criminalises hate speech only when causing national, racial and religious hatred and it still needs to be aligned with the EU acquis.” (European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 39.)

¹³² See related observations in: Anida Sokol, ‘National Regulatory and Self-Regulatory Framework against Hate Speech and Disinformation: Factsheet Bosnia and Herzegovina’ 5 <<https://seenpm.org/wp-content/uploads/2021/12/Resilience-Factsheet-Bosnia-and-Herzegovina.pdf>> accessed 24 November 2024.

¹³³ See: High Representative Decision Enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina 2021 (Official Gazette of Bosnia and Herzegovina). Though see also associated observations in: Committee on the Elimination of Racial Discrimination, ‘CERD/C/BIH/CO/14-15: Concluding Observations on the Combined Fourteenth and Fifteenth Periodic Reports of Bosnia and Herzegovina’ (n 125) 4.

¹³⁴ See: Criminal Code of Republika Srpska 2017 (Official Gazette of Republika Srpska) art 359(1).

¹³⁵ See: ‘Vlada RS Iz Krivičnog Zakonika Briše Pojam “Rodni Identitet”’ (Radio Slobodna Evropa, 4 July 2024) <<https://www.slobodnaevropa.org/a/vlada-rs-krivicni-zakonik-rodni-identitet/33021703.html>> accessed 24 November 2024.

¹³⁶ For broad overview see United Nations Bosnia and Herzegovina, ‘Hate Speech Factsheet’ 3–4, available at: https://bosniaherzegovina.un.org/sites/default/files/2022-10/hate%20speech%20factsheet%20ENG_Oct2022.pdf, accessed 24 November 2024.

¹³⁷ See: High Representative Decision Enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina. Note though, that this has been opposed in the RS. (See: ‘Narodna skupština usvojila Zakon o neprimjenjivanju Odluke visokog predstavnika i Zakon o dopuni Krivičnog zakonika’ (*Narodna Skupština Republike Srpske*, 30 July 2021), available at: <https://www.narodnaskupstinars.net/?q=la/vijesti/narodna-skup%C5%A1tina-usvojila-zakon-o-neprimjenjivanju-odluke-visokog-predstavnika-i-zakon-o-dopuni-%D0%BArivi%C4%8Dnog-zakonika>, accessed 24 November 2024.)

¹³⁸ Criminal Code of the Federation of Bosnia and Herzegovina art 363 (2). See similarly: Criminal Code of the Brcko District of Bosnia and Herzegovina art 357 (2).

¹³⁹ Law on Freedom of Religion and Legal Position of Churches and Religious Communities in Bosnia and Herzegovina 2004 (Official Gazette of Bosnia and Herzegovina) art 5 (2), a, c, d, g.

the BiH Election Law applying during election campaigns,¹⁴⁰ and in the CRA's Code on Audio-Visual Media Services and Radio Media Services.¹⁴¹

Despite these various legal and regulatory measures, however, hate speech – particularly by public figures - continues to be a marked feature of the media landscape. There are no official statistics regarding the prevalence of such incidents.¹⁴² Hate speech appears to be particularly apparent online, however,¹⁴³ with reports from civil society indicating a particular issue with hate speech emanating from public figures, including politicians and in the media.¹⁴⁴

Providing a flavour of the prevalence of hate speech more broadly, the CERD recently observed that:

[h]ate speech, notably targeting people based on ethnicity and religion, reportedly remained widespread across Bosnia and Herzegovina. In a 2021 study, 14.6 per cent of male respondents and 13.9 per cent of female respondents reported having experienced hate speech online or offline in the previous 12 months. Also, 26 per cent of young respondents considered that expressing hate should be permissible.¹⁴⁵

¹⁴⁰ See: Election Law of Bosnia and Herzegovina 2001 (Official Gazette of Bosnia and Herzegovina) art 7.3 (1) (7); 16.13 (1) (d); 19.9 (1) (14).

¹⁴¹ See: Code on Audio-Visual Media Services and Radio Media Services 2015 (Official Gazette of Bosnia and Herzegovina) art 4.

¹⁴² Indeed, “[t]here is no institutional system for recording and collecting hate crime data in the country.” (OSCE ODIHR Hate Crime Reporting, ‘Bosnia and Herzegovina Hate Crime Report 2023’ 1 available at: <https://hatecrime.osce.org/reporting/bosnia-and-herzegovina/2023>, accessed 24 November 2024.)

¹⁴³ See below. More generally, as noted by the BiH Ombudsman in May 2024: “Data on online hate speech is inconsistent, but most stakeholders report that it appears to be on the rise and that online platforms are often used to incite hatred and spread fake news.” (Human Rights Ombudspersons Institution of Bosnia and Herzegovina, ‘Information Regarding the Report of Bosnia and Herzegovina on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and the CERD Recommendations’ 6, available at: https://ombudsmen.gov.ba/documents/obudsmen_doc2024060409375891eng.pdf, accessed 24 November 2024.

¹⁴⁴ See data and observations in e.g.: Lejla Gačanica, ‘Monitoring Report on Hate Speech in BiH’, available at: <https://cin.ba/wp-content/uploads/2024/02/Govor-mrznje-ENG.pdf>, accessed 24 November 2024. (“In period April 2022 – December 2023, in total 97 cases of hate speech were registered by media monitoring. Hate speech had its peaks for different grounds, depending on events which occurred during the year – such as pre-election period, Pride related events, commemoration of 90ties war events, etc. Hate speech was pronounced regarding four grounds: gender, ethnicity, sexual minorities and political affiliation.” *ibid* 6.) More recently, the <https://stopgovorumrznje.com/> portal received “250 reports of hate speech and inflammatory rhetoric” between April and September 2024. (See: Jasmin Begic, ‘Bosnians Use Online Platform to Report Hate Speech Ahead of Elections’ (*Balkan Insight*, 4 September 2024), available at: <https://balkaninsight.com/2024/09/04/bosnians-use-online-platform-to-report-hate-speech-ahead-of-elections/>, accessed 24 November 2024.) See also e.g. Nino Bilajac, ‘Bosnian Serb Mayoral Candidate Fined for Glorifying Ratko Mladic’ (*Balkan Insight*, 27 September 2024) <<https://balkaninsight.com/2024/09/27/bosnian-serb-mayoral-candidate-fined-for-glorifying-ratko-mladic/>> accessed 24 November 2024. See also / similarly e.g. Tim Bidley and Chloe Gaillard (eds), ‘Combating Hate Speech in Bosnia and Herzegovina’, available at: https://issuu.com/pcrc-bih/docs/combating_hate_speech_in_bih_trainee?utm_medium=referral&utm_source=balkandiskurs.com, accessed 24 November 2024.

¹⁴⁵ ‘Experts of the Committee on the Elimination of Racial Discrimination Commend Bosnia and Herzegovina’s Statelessness Policy, Ask Questions on the Education of Roma Children and Attacks on Returnees’ (*United Nations Office at Geneva*, 13 August 2024), available at: <https://www.ungeneva.org/en/news-media/meeting-summary/2024/08/experts-committee-elimination-racial-discrimination-commend-0>, accessed 24 November 2024.

Put simply, as observed by Lejla Gačanica in her recent report, the available information indeed suggests that: “Hate speech has become normalised in Bosnia and Herzegovina's public space.”¹⁴⁶

b. Observations and recommendations

As the above indicates, while there are deficiencies in the legal frameworks regulating hate speech, including from public figures, the broader regulatory issue appears to be one of regime fragmentation (i.e. cross-cutting, inconsistent treatment of hate speech in overlapping legal regimes), rather than an absence of regulation of hate speech per se. Reflecting this, it may be anticipated that international pressure will continue to be brought to bear on BiH and entity/district institutions to harmonise these legislative frameworks across BiH, substantively in line with European and international standards.

This notwithstanding, however, even with a range of legislative tools, absent effective understanding and tracking of the phenomenon in question, and associated enforcement under one or another of these legal regimes – perhaps in particular where emanating from public figures - legislative provisions alone are likely to remain a set of dead letters. Given this and reflecting the terms of reference of the Working Group in respect of “contributing to accurate and reliable data collection, collation, and analysis” and to capacity-development,¹⁴⁷ the group may be well-positioned to contribute both to cross-sectoral data gathering and analysis in respect of hate speech by public figures, and to enhancing associated training for law enforcement institutions.

Experience in the context of EFEx and other international and Council of Europe initiatives (including PROFREx), for example, underlines the potential value in developing and implementing a carefully constructed and curated training curriculum for judicial and investigative agencies across BiH. Future training in this area may particularly highlight the specific challenges posed by hate speech by public figures, including politicians and in local/national media, reflecting and drawing on assessments of relevant international jurisprudence, including from the ECtHR.¹⁴⁸ Indeed, given its role in “[p]articipating in, supporting, and contributing to the production... of high-quality domestic information papers”¹⁴⁹ this again is an area where the Working Group may be well-positioned to oversee the production of a tailored, digest and associated materials.

Similarly, given its cross-sectoral character, the Working Group may collectively be well-positioned both to bring together, collate, organise and analyse civil society and official data on hate crime by public figures, as well as to consider – at least in exploratory fashion - how the associated legal regimes might be strengthened. At the same time, while law reform may be a challenging area in general, given its role in respect of data analysis,¹⁵⁰ the Working Group may

¹⁴⁶ Lejla Gačanica (n 149) 4.

¹⁴⁷ See: **Error! Reference source not found.**

¹⁴⁸ This could build on the present EFEx training curriculum.

¹⁴⁹ See: **Error! Reference source not found.**

¹⁵⁰ Ibid.

also be well-placed to conduct data-driven analysis and mapping of gaps and deficiencies in current legislation and enforcement in this regard relative to European standards, to inform – if not drive – future reform initiatives.

Last, consistent with its role in respect of FoE protection and promotion and “strengthening communication and coordination across this network (including but not limited to Working Group members) of related initiatives and activities”, the Working Group may also facilitate the organisation of cross-sectoral engagement events, with a view to demonstrating and consolidating a shared commitment from public sector and civil society actors to combatting hate speech emanating from public figures.

ii. Hate speech online

Hate speech online forms a particular focus of concern across oversight mechanisms. The Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech underlines the need for legislation regarding online hate speech as well as the corporate responsibility of internet intermediaries.¹⁵¹ The CERD has also warned on multiple occasions about the prevalence of racist hate speech on the internet in BiH.¹⁵² The Human Rights Committee has similarly (2017) noted concern “about reports of the pervasive use of hate speech, especially in the media and on the Internet”.¹⁵³

Last, though again perhaps particularly critically, the European Commission’s November 2023 and October 2024 reports on BiH also highlight concerns around hate speech online. In both reports the Commission notes that “[o]nline platforms are used to spread hate speech and disinformation, as self-regulation of online media has a limited effect.”¹⁵⁴ While the 2023 report added that “the trend is declining” (citing Press and Online Media Council data),¹⁵⁵ moreover, both reports observe also that criminal prosecution is particularly problematic, being “limited to the incitement of religious and ethnic hatred”.¹⁵⁶

¹⁵¹ Committee of Ministers, Council of Europe, ‘Recommendation CM/Rec(2022)16 of the Committee of Ministers to Member States on Combating Hate Speech’ (n 7).

¹⁵² Committee on the Elimination of Racial Discrimination, ‘CERD/C/BIH/CO/12-13: Concluding Observations on the Combined Twelfth and Thirteenth Periodic Reports of Bosnia and Herzegovina’ (n 52) para 19; Committee on the Elimination of Racial Discrimination, ‘CERD/C/BIH/CO/14-15: Concluding Observations on the Combined Fourteenth and Fifteenth Periodic Reports of Bosnia and Herzegovina’ (n 125) para 15.

¹⁵³ Human Rights Committee (n 5) para 21.

¹⁵⁴ European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 41; European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 37.

¹⁵⁵ European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 41.

¹⁵⁶ *ibid*; European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the

a. Legislation and practice

In similar manner to hate speech by public figures, hate speech online is inconsistently addressed in BiH legislation as well as in practice. A key challenge in this respect is that there is no register of online media. A recent study indicates that only a small proportion of online portals are registered with the Press and Online Council.¹⁵⁷ Similarly, the CRA's regulatory reach extends only to online portals of broadcast and other audiovisual media and (as of 2023) video-sharing platform services.¹⁵⁸ Beyond this, the general criminal law and election law regimes apply to hate speech online as they do to this phenomenon in other contexts.¹⁵⁹ Last, the Press and Online Media Council's self-regulatory ambit extends only to providers and portals that are (voluntarily) registered with the Council.

Reflecting the extent of these legislative and regulatory challenges, it is perhaps unsurprising that there is widespread concern about online hate speech, from both international and domestic stakeholders. Indeed, as Kevin and Rokša-Zubčević observe (referring to the last year for which Press and Online Media Council data are available) that “out of 509 complaints about hate speech, only 4 pertained to articles, and 505 to user comments. The numbers suggest that all complaints received by the Press and Online Media Council about user comments in 2021 concerned (alleged) hate speech.”¹⁶⁰ Another study puts matters more starkly, observing that:

[t]he internet and social networks are used by diverse actors for spreading hate speech, denials of war crimes and glorification of war criminals, disinformation, politically and ethno-nationally biased media reporting and smear campaigns against individuals for diverse motives that can undermine freedom of expression and democratic processes.¹⁶¹

b. Observations and recommendations

As with the issues canvassed previously, it is difficult to imagine hate speech online not remaining a prominent aspect of both international oversight and internal concern in BiH. Drawing on observations from both sectors, however, the overriding impression is that legislative and regulatory approaches to this topic suffer particularly from fragmentation: an incomplete

Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy' (n 12) 37.

¹⁵⁷ Deirdre Kevin and Asja Rokša-Zubčević (n 63) 20.

¹⁵⁸ Re. the latter see: Regulatory Agency for Communications of Bosnia and Herzegovina, 'Rule 96/2023 on Video-Sharing Platform Services', available at <https://docs.rak.ba/articles/5370e55e-9aef-498a-9150-46c155f05190.pdf>, accessed 25 November 2024. On the role (and limits) of the CRA generally re. “harmful content”, see discussion in: Deirdre Kevin and Asja Rokša-Zubčević (n 63) 23–25.

¹⁵⁹ See discussion at section i above.

¹⁶⁰ Deirdre Kevin and Asja Rokša-Zubčević (n 63) 22. Data referred to are available at: 'Slučajevi 2021. Pregled', available at: https://vzs.ba/wp-content/uploads/2023/06/BHS_2021.pdf, accessed 25 November 2024.

¹⁶¹ Anida Sokol and Maja Čalović, 'Regulation of Harmful Content Online in Bosnia and Herzegovina: Between Freedom of Expression and Harms to Democracy' 11 available at: https://media.ba/sites/default/files/eng_regulacija_stetnog_sadrzaja_na_internetu_-_web_pages_1.pdf, accessed 25 November 2024.

legislative framework with significant gaps, featuring a multiplicity of (insufficient) legislative and regulatory regimes involving numerous agencies – and civil society – but with a marked absence of coordination and collaboration.¹⁶² Recent and ongoing legislative initiatives, for example, include recently-imposed (March 2024) amendments to the BiH Election Law,¹⁶³ cantonal legislative initiatives on online “public order and peace”,¹⁶⁴ and an ongoing state-level MCT-convened legislative working group on hate speech online.¹⁶⁵

Such fragmentation may, of course, simply reflect that hate speech online presents challenges engaging the competencies of a range of public sector institutions. Equally, however, there are also some promising initiatives in this issue area, including opportunities where a valuable role may be performed by the EEx Working Group.

One such initiative is reflected in debates over coregulation of media generally, and online media in particular.¹⁶⁶ In this regard, given its cross-sectoral character and its stated roles in capacity building and in “strengthening communication and coordination across this network”,¹⁶⁷ the Working Group may be potentially well-placed to foster closer working relationships between and capacity building across civil society and public sector agencies active in this field. While this could be a by-product of the existing planned work of the group, moreover, it may be instructive (in line with the latter aspect of the group’s terms of reference) also to invite group members to consider potential avenues to strengthen coregulation, and in so doing potentially opening future avenues to addressing the challenges in combating online hate speech posed by fragmentation across both sectors and legal regimes.

As in other areas, the EEx Working Group may also be relatively well-positioned to contribute to cross-sectoral information gathering and analysis, in turn again potentially supporting more effective coregulation and opening avenues to address fragmentation in the regulation of hate

¹⁶² Deirdre Kevin and Asja Rokša-Zubčević call attention, in this vein, to “fragmentation of approaches and lack of strategy”. ((n 63) 28.)

¹⁶³ See ‘Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina’ (*Office of the High Representative*, 26 March 2024), available at: <https://www.ohr.int/decision-enacting-the-law-on-amendments-to-the-election-law-of-bosnia-and-herzegovina-11/>, accessed 25 November 2024. The amendments provide inter alia that: “Electronic media covering election campaign shall observe the principles of balance, equal access, fairness and impartiality.” (ibid 94.)

¹⁶⁴ See esp. controversy around the proposed Canton Sarajevo “Law on offenses against public order and peace” (at e.g. Emir Zulejhić and Dalio Sijah, ‘Draft Law on Offenses against Public Order and Peace in Sarajevo Canton: Between Public Order and Peace and Freedom of Speech’ (*EU-Monitoring.ba*, 7 August 2023) <<https://eu-monitoring.ba/en/draft-law-on-offenses-against-public-order-and-peace-in-sarajevo-canton-between-public-order-and-peace-and-freedom-of-speech/>> accessed 25 November 2024; Azem Kurtić, ‘Bosnian Canton’s Move to Penalise “Fake News” Worries Critics’ (*Balkan Insight*, 11 May 2023) <<https://balkaninsight.com/2023/05/11/bosnian-cantons-move-to-penalise-fake-news-worries-critics/>> accessed 25 November 2024; ‘Katica o Nacrtu: Sankcije i Za Lažne Objave Na Facebooku’ (*N1*, 11 May 2023) <<https://n1info.ba/vijesti/katica-nacrt-novog-zakona-predvidja-kaznu-i-onima-koji-daju-novac-prosjacima/>> accessed 25 November 2024; ‘The Government of CS Introduces Sanctions for Violence on the Internet’ (*Sarajevo Times*, 28 April 2023) <<https://sarajevotimes.com/the-government-of-cs-introduces-sanctions-for-violence-on-the-internet/>> accessed 25 November 2024.

¹⁶⁵ See references at: Deirdre Kevin and Asja Rokša-Zubčević (n 63) 25, 28, 47 (including recommendation to cancel this initiative).

¹⁶⁶ Deirdre Kevin and Asja Rokša-Zubčević (n 63).

¹⁶⁷ See **Error! Reference source not found..**

speech online. In this regard, it may be particularly valuable to consider how the Working Group might contribute to the implementation of key aspects the Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech, including the injunction that “Member States should regularly publish reports containing comprehensive information and statistics on online hate speech”.¹⁶⁸

iii. Effective investigation, prevention, and prosecution of hate speech

Inadequate investigation, prevention, and prosecution of hate speech, reflecting underlying legislative weaknesses, form a further focus of particular concern highlighted across international oversight mechanisms. These concerns are also reflected in elements of the Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech, which emphasises the importance of “comprehensive and effective” legal frameworks for hate speech, “consisting of appropriately calibrated [and effectively implemented] provisions of civil, administrative and criminal law.”¹⁶⁹

More generally, concerns around the effective implementation of satisfactory legal frameworks in respect of hate speech are prevalent throughout international oversight. BiH’s most recent round of UPR recommendations includes, for example, Denmark’s calling for BiH to “[p]rovide training to law enforcement and judiciary officers in tackling discrimination, hate speech and acts of violence based on the sexual orientation and gender identity of the victims.”¹⁷⁰ Similarly, in 2017 the CERD called on BiH authorities to: “[e]ffectively apply its legislation by registering, investigating, bringing to justice cases of hate speech and hate crime and sanctioning those responsible with appropriate penalties.”¹⁷¹ In its 2024 Concluding Observations, the CERD similarly expressed “concern about the small number of investigations and prosecutions of cases of hate speech and hate crimes, despite the number of cases reported...” reiterating its recommendation to “ensure that all incidents of hate speech... are effectively investigated and prosecuted and that those found guilty are punished, regardless of their official status”.¹⁷² The Human Rights Committee, similarly, has flagged that “the legislation in place... does not specifically address the issue of hate speech on the Internet”, recommending BiH to “investigate hate crimes and ensure that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions and that the victims are provided with adequate remedies.”¹⁷³

Turning to European Union oversight, concerns about legislative frameworks and enforcement are reflected again in the European Parliament’s 2023 resolution, which in reference to hate speech against marginalised communities, “urges for the implementation of effective access to

¹⁶⁸ Committee of Ministers, Council of Europe, ‘Recommendation CM/Rec(2022)16 of the Committee of Ministers to Member States on Combating Hate Speech’ (n 7), Appendix, Section 2. (‘Legal Framework’), para. 25.

¹⁶⁹ *ibid* Appendix, Section 2. (‘Legal Framework’), para. 7.

¹⁷⁰ ‘UPR of Bosnia and Herzegovina (3rd Cycle - 34th Session): Thematic List of Recommendations’ (n 4) 25.

¹⁷¹ Committee on the Elimination of Racial Discrimination, ‘CERD/C/BIH/CO/12-13: Concluding Observations on the Combined Twelfth and Thirteenth Periodic Reports of Bosnia and Herzegovina’ (n 52) 4 at para. 20 (c).

¹⁷² Committee on the Elimination of Racial Discrimination, ‘CERD/C/BIH/CO/14-15: Concluding Observations on the Combined Fourteenth and Fifteenth Periodic Reports of Bosnia and Herzegovina’ (n 125) 4–5 at paras. 15, 16 (b).

¹⁷³ Human Rights Committee (n 5) 4 paras. 21, 22.

legal remedies and the prosecution of such cases without delay.”¹⁷⁴ Unsurprisingly, moreover, this issues has also been highlighted by the European Commission: its 2023 Report on BiH highlights weaknesses in legal frameworks surrounding hate speech, particularly online, as well as noting a specific case in point with the draft Sarajevo Canton Law on Public Order and Peace introducing potentially unreasonably far-reaching penalties for disseminating “fake news” – underlining the importance of both effective and appropriate legal frameworks.¹⁷⁵ The 2024 Commission Report again notes the absence of enforcement of the prohibition of hate speech online, as well as highlighting in particular that “[h]ate crimes and hate speech against LGBTIQ persons remain insufficiently prosecuted, despite the existing legal provisions.”¹⁷⁶

a. Legislation and practice

As noted above, the fragmentation and broader insufficiency of the multiple legal frameworks involved in addressing hate speech are fundamental challenges in this area in BiH, spanning state and entity/district level. The challenges encountered in investigation, prevention, and prosecution of hate speech should accordingly be set against this backdrop.

Even given the legal frameworks already in place, however, challenges in respect of these functions are still evident. The issues encountered in this regard are apparent, for example, when examining different sets of figures gathered on instances of hate speech relative to prosecution of this phenomenon.

Lejla Gačanica’s recent study for the Centre for Investigate Journalism (CIN) is instructive, by way of example: this study identifies 97 cases of hate speech between April 1st 2022 and 31st December 2023, focusing principally (though not solely) on statements by public figures, including politicians.¹⁷⁷ Similarly, a study by Balkan Investigative Reporting Network Bosnia and Herzegovina (BIRN BiH) examining the period October 2021–October 2022 found 124 instances of hate speech, but was able to identify only one case as having resulted in an indictment by prosecutors.¹⁷⁸

¹⁷⁴ ‘C/2024/4004: European Parliament Resolution of 12 July 2023 on the 2022 Commission Report on Bosnia and Herzegovina’ (n 11) 12 para. 66.

¹⁷⁵ See: European Commission, ‘SWD(2023) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2023 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2023 Communication on EU Enlargement Policy’ (n 12) 41, 43. (The latter includes observation that: “The authorities have not taken any measures to counter hate speech, which remains present in official discourse. There is no monitoring or enforcement of the prohibition of hate speech in online media. 56 reports were filed and eight rulings, of which six convictions, were handed down for hate speech in 2022, compared to 70 reports and eight convictions in 2021.”)

¹⁷⁶ European Commission, ‘SWD(2024) 691 Final: Commission Staff Working Document - Bosnia and Herzegovina 2024 Report - Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2024 Communication on EU Enlargement Policy’ (n 12) 39–40.

¹⁷⁷ (n 149) 5.

¹⁷⁸ See: Azra Husarić Omerović, ‘Milorad Dodik Najveći Izvor Mrzilačkih Narativa u BiH: Istraživanje’ (*Detektor*, 10 February 2023), available at: <https://detektor.ba/2023/02/10/milorad-dodik-najveci-pojedinacni-izvor-mrzilackih-narativa-u-bih/>, accessed 25 November 2024. (“Out of a total of 124 entries in the database, only one incident was processed as a hate incident for which an indictment was filed. According to the data that BIRN BiH managed to collect, the police and prosecutor’s offices acted only on received reports and did not initiate investigations ex officio,

In line with these differences, data reported to the OSCE ODIHR for 2023 (the most recent on record), indicate that whereas the police recorded 54 instance of hate crime *generally* – i.e. beyond hate speech – in that year, resulting in eight sentences being handed down following ten prosecutions, civil society figures in contrast indicated a total of 98 such incidents.¹⁷⁹ In short, alongside international concern, ongoing domestic reporting similarly suggests continuing, significant discrepancies in reporting/recording as well as in investigative and judicial follow-up of hate speech in BiH.

This is not to suggest, however, that the landscape is entirely bleak. Launched ahead of the 2024 local elections, for example, the stopgovormrznje.com platform provides a valuable instance of how civil society and state institutions – in this case the Central Election Commission – can work in mutually supportive fashion in this field.¹⁸⁰ Similarly, training and capacity building continues – including via the Council of Europe PROFREx project – to support the work of police and prosecutors in respect of hate speech.¹⁸¹

Last, and perhaps most significant, in November 2023 the BiH Council of Ministers adopted a European Union-funded (and Council of Europe-developed) report on “Mapping Responses to Hate Speech in Bosnia and Herzegovina”, including proposals for closer cross-sectoral cooperation in addressing hate speech (including through legislative reform), capacity building, and public education and awareness-enhancing measures.¹⁸² These proposals, in particular, open potential avenues and space where the EFEx Working Group may be well-positioned to contribute to more effective investigation, prevention, and prosecution of hate speech.

b. Observations and recommendations

As with the preceding issues identified, it seems likely that deficiencies in the investigation, prevention, and prosecution of hate speech will continue to be an area of international concern in respect of BiH. Similarly, as set out in “Mapping Responses to Hate Speech in Bosnia and

which they can do based on media reports or posts on social networks... According to data from police agencies, out of 77 incidents recorded by BIRN BiH, a total of 14 cases were established, and in the end only one indictment was filed.”)

¹⁷⁹ OSCE ODIHR Hate Crime Reporting (n 147) 2, 6.

¹⁸⁰ See: Begic (n 149).

¹⁸¹ See e.g. ‘Prosecutors and Police Representatives from Bosnia and Herzegovina Trained on Standards on Protection from Hate Speech’ (Council of Europe Office in Sarajevo, 15 November 2023) <<https://www.coe.int/en/web/sarajevo/-/prosecutors-and-police-representatives-from-bosnia-and-herzegovina-trained-on-standards-on-protection-from-hate-speech>> accessed 25 November 2024; ‘Addressing Hate Speech: Training for the Prosecutors and Police in Bosnia and Herzegovina’ (European Union-Council of Europe Joint Programme: Horizontal Facility, 18 June 2024) <<https://pjp-eu.coe.int/en/web/horizontal-facility/-/addressing-hate-speech-training-for-the-prosecutors-and-police-in-bosnia-and-herzegovina>> accessed 25 November 2024.

¹⁸² Adnan Kadribašić, Chara Bakalis, and Nasir Muftić, ‘Mapping Responses to Hate Speech in Bosnia and Herzegovina: A Situational Analysis and Mapping Report’ <https://mhrr.gov.ba/ljudska_prava/Mapping%20responses%20ENG_11.04.pdf> accessed 25 November 2024. See also: ‘European Union and Council of Europe New Study Sets out Clear Roadmap for Combating Hate Speech in Bosnia and Herzegovina’ (Council of Europe Office in Sarajevo, 12 October 2022) <<https://www.coe.int/en/web/sarajevo/-/european-union-and-council-of-europe-new-study-sets-out-clear-roadmap-for-combating-hate-speech-in-bosnia-and-herzegovina>> accessed 25 November 2024.

Herzegovina”, the issues in this area are sufficiently complex and intertwined that any effective interventions – whether stemming from domestic or international institutions – are likely to require a strategic, cross-sectoral approach. As Kadribašić et al. observe:

due to its constitutional structures, reaction to hate speech in BiH requires various governmental and nongovernmental actors to react together or one after another, in monitoring and reporting incidents, sanctioning perpetrators, mitigating consequences or informing the public in order to provide deterrent effect.¹⁸³

That said, while gaps remain in respect variously of legislation and policy, government (inc. entity/district) capacity, as well as public awareness of these issues, enhancement of “enforcement capacity”¹⁸⁴ spanning government/public institutions and civil society is an area where the EEx Working Group is perhaps particularly well-placed to contribute, not least reflecting its capacity-building role.¹⁸⁵ Reflecting this need, the Working Group may consider developing its current EEx training curriculum to include elements focused on international standards in respect of investigation, prevention, and prosecution of hate speech, and mapping domestic routes to promoting these objectives, highlighting the potential contributions of public sector and civil society bodies.

In addition, to support such capacity building – as well as potential strategic reform – the Working Group may also facilitate cross-sectoral cooperation in associated information-gathering and analysis: again, with such cooperation envisioned in the group’s terms of reference,¹⁸⁶ subject to availability of resources and institutional readiness, the Working Group may be well-positioned to design and lead a collaborative cross-sectoral effort “to identify, record, monitor and analyse trends” and to support (if not “ensure”) “the collection and dissemination... of disaggregated data on criminal hate speech” as well as of “data on victim perceptions and the perceived prevalence of non-criminal but harmful speech”.¹⁸⁷

Last, and more generally, again reflecting the particular complexity of this set of issues, the Working Group may also perform a valuable role in “strengthening communication and coordination” across the cross-sectoral network it is charged to assist in developing.¹⁸⁸ In this respect, the contribution of the group is likely to be fundamental rather than necessarily operative, primarily focused on enhancing inter-institutional, cross-sectoral relationships and mutual confidence. While not necessarily linked to immediate deliverables or outputs designed specifically to address challenges in investigating, preventing, and prosecuting hate speech, however, the potential underlying value of activities focused principally on confidence-building

¹⁸³ Adnan Kadribašić, Chara Bakalis, and Nasir Muftić (n 189) 35.

¹⁸⁴ This phrase is adapted from: *ibid* 37.

¹⁸⁵ See **Error! Reference source not found..**

¹⁸⁶ In this respect it bears noting that the Working Group includes a cross-section of the civil society and state/public sector stakeholders identified in Adnan Kadribašić, Chara Bakalis, and Nasir Muftić (n 189) (see esp. list at Annex I, pp. 40-44).

¹⁸⁷ *ibid* 38.

¹⁸⁸ See:**Error! Reference source not found..**

should not be underestimated. Indeed, confidence-building across and amongst its members is arguably a particularly valuable – even if not directly tangible - aspect of the establishment of the Working Group as a standing cross-sectoral body.

VI. Concluding observations and recommendations

This paper examines three sets of issues persistently and broadly reflected in external oversight relating to FoE in BiH: media regulation and freedom, protection of journalists and hate speech. Across these, eight sets of priority issues are then identified as of particular concern, again, reflecting specific sets of issues highlighted in a range of international oversight mechanisms over time. These relate variously to:

- Public broadcasting governance and funding
- Transparency of media ownership
- Strengthening the Communications Regulatory Agency
- Effective investigation and judicial follow-up of alleged criminal acts against journalists
- Strategic Lawsuits Against Public Participation (SLAPPS) and defamation
- Hate speech by public figures
- Hate speech online, and
- Effective investigation, prevention, and prosecution of hate speech

Various legislative and practical shortcomings – and in some cases opportunities and potentially positive developments – have been detailed in respect of each of these areas. In cross-cutting terms, however, it is important to recall that - indeed, reflecting their persistent and broad recognition in international oversight – these are collectively, perhaps inherently, complex and relatively intractable legislative and policy challenges. Moreover, though it may be tempting to seek to address each of these issues in relative isolation, the various FoE-related challenges set out and considered in this paper are also both conceptually and practically closely inter-related.

It is equally for this reason, though, that the EEx Working Group, with its distinct cross-sectoral membership and formally-established footing – recognised and led by the MHRR – is well-placed to play a valuable role in addressing these different issues. Reflecting the three sets of activities envisaged in its terms of reference, the Working Group is also well-placed to design, plan, and participate in (if not lead) associated interventions and activities in a strategically informed, (relatively) comprehensive fashion.

Given this, rather than enumerate the potential contributions of the Working Group to these challenges issue by issue, it may be helpful instead to group these by the manner in which they relate to the various aspects of the group's terms of reference and its envisioned activities.

i. Monitoring and reporting

Turning first to the Working Group’s role in monitoring and reporting, this aspect of the group’s terms of reference is potentially engaged across the issues considered.

Many of the associated recommendations relate, in particular, to supporting cross-sectoral data gathering, information-sharing, and analysis, in line with the tasks of the Working Group regarding “[p]articipating in, supporting, and contributing to accurate and reliable data collection, collation, and analysis in respect of FoE and FoI”, and “[p]articipating in, supporting, and contributing to the production and... dissemination of high-quality domestic information papers... and other outputs... by the Ministry of Human Rights and Refugees of Bosnia and Herzegovina and (where relevant) other ministries and public bodies.”¹⁸⁹

The Working Group’s activities are engaged in particular in the following issue areas, with (in paraphrased form) accompanying recommendations.

Issue	Recommendation/s to consider
Public broadcasting governance and funding	- Enabling more robust, institutionalised gathering, sharing and analysis of information across sectors.
Transparency of media ownership	- Facilitating structured gathering, analysis and sharing of related information and to support associated legislative initiatives.
Strengthening the CRA	- Facilitating transparency and information-sharing between government agencies, including the CRA, and civil society, and to conduct associated analyses.
Effective investigation and judicial follow-up of alleged criminal acts against journalists	- Strengthening data collection across sectors, understanding the gaps between and differing approaches to record-keeping and resultant data production across civil society and public bodies.
Strategic Lawsuits Against Public Participation (SLAPPs) and defamation	- To collaboratively develop a means of tracking data on SLAPPs (and defamation cases/indictments) across state and civil society sectors.
Hate speech by public figures	- To gather and analyse civil society and official data on hate crime by public figures, to inform strengthening of associated legal regimes. - To conduct data-driven analysis and mapping of gaps and deficiencies in current legislation and enforcement relative to European standards.
Hate speech online	- To support implementation of CoE Recommendation CM/Rec(2022)16 via “reports containing comprehensive information and statistics on online hate speech”.

¹⁸⁹ See **Error! Reference source not found.**

Effective investigation, prevention, and prosecution of hate speech	- To design/lead cross-sectoral trend analysis, disaggregated data on criminal hate speech, and data on victim perceptions/perceived prevalence of non-criminal hate speech.
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The above do not encompass all the recommendations associated with this area of the Working Group’s potential activities. In particular, the analysis also commends strengthening the group’s support to the MHRR in its participation in the Council of Europe Campaign for the Safety of Journalists, bolstering a multi-stakeholder approach to this issue in BiH. Nevertheless, as the present table indicates, there would appear to be potentially significant contributions to be made by the Working Group in respect of data collection, collation, and analysis, and support for the production of associated domestic information papers.

ii. Capacity building

The second aspect of the Working Group’s terms of reference potentially engaged is its role in respect of capacity building, where the group is (inter alia) to “support the identification and planning of [FoE-related] training and capacity-development needs and priorities across Bosnia and Herzegovina public institutions and civil society”. As with the monitoring and reporting, this area of activity is engaged in a range of the issue areas considered: these are set out with associated (again, paraphrased recommendations) below.

Issue	Recommendation/s to consider
Effective investigation and judicial follow-up of alleged criminal acts against journalists	- To consider potential capacity building (inc. training) for institutional contact points and civil society.
Strategic Lawsuits Against Public Participation (SLAPPs) and defamation	- To support planning/delivery of capacity building (inc. on CoE Recommendation CM/Rec(2024)2)) across civil society.
Hate speech by public figures	- To support training for judicial and investigative agencies across BiH.
Effective investigation, prevention, and prosecution of hate speech	- To consider enhancing government/public sector and civil society “enforcement capacity” via tailored training curriculum, inc. relevant international standards and potential roles of public sector and civil society bodies.

iii. Communication and cooperation

Last the Working Group is also charged with conducting activities falling under the heading of “communication and cooperation”. In this regard, it is to “participate in and assist in the development of an effective network of state, public and civil society/private sector stakeholders

regarding FoE and FoI monitoring, reporting, protection, and promotion”, including “strengthening communication and coordination across this network”.

Perhaps unsurprisingly, a number of recommendations are set out (and in this case may also be closely derived from) the above discussions, that may also implicate this aspect of the Working Group’s role. These may, again, be paraphrased as follows.

Issue	Recommendation/s to consider
Public broadcasting governance and funding	To consider including non-Working Group members in associated information gathering, sharing and analysis-related activities.
Transparency of media ownership	To consider including non-Working Group members in associated information gathering, sharing and analysis-related activities.
Effective investigation and judicial follow-up of alleged criminal acts against journalists	To consider including non-Working Group members in networking activities between institutional contact points and civil society, potentially inc. capacity-building activities and cross-sectoral cooperation in data gathering.
Hate speech by public figures	To consider facilitating/convening cross-sectoral engagement events, to demonstrate and consolidate shared public sector/civil society commitment to combatting hate speech emanating from public figures.
Hate speech online	To consider avenues to foster closer working relationships between civil society and relevant public sector agencies, with view to strengthening scope for effective coregulation in combating hate speech online.
Effective investigation, prevention, and prosecution of hate speech	To consider facilitating/convening cross-sectoral confidence-building initiatives.

iv. Conclusion

Neither the various issue areas identified, nor the associated recommendations, should be considered in isolation. These are, rather, often quite intricately connected. Regarding media regulation and freedom, for example, the three issue areas flagged are mutually reinforcing, insofar as both addressing transparency of media ownership and strengthening the CRA are likely in turn to strengthen public broadcasting institutions. Similarly, addressing shortcomings in legal frameworks is likely to facilitate effective investigation and judicial follow up of criminal conduct against journalists. Likewise enabling more effective investigation, prevention and prosecution of hate speech is liable to bolster efforts to address hate speech by public figures and online.

In related fashion, addressing these various issues effectively is likely to require both a comprehensive, strategic approach, and close cooperation across BiH’s public sector and civil

society. Given this last, alongside the broad scope of the EFEx Working Group's terms of reference, this group, with its institutionalised, cross-sectoral make-up, is accordingly well-positioned to work towards potentially significant contributions across these fields.

This is not to suggest that the Working Group holds a uniquely privileged position in this regard. As the preceding analysis efforts to strengthen freedom of expression (FoE) in Bosnia and Herzegovina (BiH) are likely to continue involving a broad range of domestic and international actors. Furthermore, the nature of any related activities undertaken by the Working Group, as well as how these might integrate into its future workplan, will require careful deliberation among its members and supporting organisations.

Nonetheless, the potential value of sustained, strategically informed cross-sectoral cooperation in addressing the issues outlined above cannot be overstated. Should its members and supporters decide to advance such measures, the Working Group would be well-positioned to make a significant and meaningful contribution to strengthening FoE in BiH.