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Local and regional democracy in Bosnia and Herzegovina

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee)

Rapporteurs:¹ Lelia HUNZIKER (Switzerland, L, SOC)
Carla DEJONGHE (Belgium, R, ILDG)

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Summary

This report follows the third monitoring visit and two post-monitoring visits to Bosnia and Herzegovina since the country ratified the European Charter of Local Self-Government in 2002.

Overall, the report notes that little progress has been made in implementing the Congress' previous recommendations, on the situation of local and regional democracy in Bosnia and Herzegovina. It notes with satisfaction that local authorities enjoy freedom of association to promote and defend their interests and sub-state authorities actively engage in international cross-border co-operation.

The rapporteurs express their concern about the following points: the lack of progress in the implementation of constitutional reforms at all levels of authority, the absence of elections in Mostar since 2008, the lack of clarity in the allocation of responsibilities between the various levels of authority, the failure to respect the principle of subsidiarity and the lack of consultation of local authorities on all issues that directly concern them.

The authorities of BiH are invited to ensure the proper functioning of local and regional democracy by introducing the principle of local self-government in the Constitution of Bosnia and Herzegovina, strengthening political dialogue to find a viable solution to the electoral deadlock in the municipality of Mostar, revising legislation to avoid overlapping competences and ensuring the practical application of the principle of subsidiarity and the systematic consultation of local authorities on all matters affecting them, including financial resources and reforms of local autonomy.

1 L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

RECOMMENDATION 442 (2019)²

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b, of the Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Chapter XVII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

e. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

f. Congress Recommendation 324 (2012) on local and regional democracy in Bosnia and Herzegovina, Congress Recommendation 356 (2014) and Congress Resolution 369 (2014) on post-monitoring of local and regional democracy in Bosnia and Herzegovina;

g. the explanatory memorandum on local and regional democracy in Bosnia and Herzegovina.

2. The Congress points out that:

a. Bosnia and Herzegovina joined the Council of Europe on 24 April 2002 and signed and ratified the European Charter of Local Self-Government (hereinafter "the Charter") in full on 12 July 2002. The Charter entered into force in respect of Bosnia and Herzegovina on 1 November 2002;

b. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as the Monitoring Committee) decided to examine the situation of local and regional democracy in Bosnia and Herzegovina. It instructed Ms Lelia HUNZIKER (Switzerland, SOC) and Ms Carla DEJONGHE (Belgium, ILDG), with the task of preparing and submitting to the Congress a report on local and regional democracy in Bosnia and Herzegovina. The delegation was assisted by Prof. Jens WOELK, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

c. The monitoring visit took place in two parts, from 20 to 22 November 2018 and from 19 to 21 February 2019, respectively. During the visit, the Congress delegation met the representatives of various institutions at all levels of government in Bosnia and Herzegovina. The detailed programme of both parts of the visit is appended to the explanatory memorandum;

d. The rapporteurs, aware of the specificity of the constitutional structure of Bosnia and Herzegovina, underline that the commitments entered into under the European Charter of Local Self-Government legally bind the State, but it is also and primarily the two Entities' (Federation of Bosnia and Herzegovina and Republika Srpska), and cantons' responsibility to ensure the Charter's implementation according to the distribution of competences regarding local government. The recommendations will therefore be addressed to Bosnia and Herzegovina as a member State of the Council of Europe, but the implementation thereof will also be a matter for the Entities and cantons;

e. The rapporteurs wish to thank the Permanent Representation of Bosnia and Herzegovina to the Council of Europe and all those whom they met during the visit.

² Debated and adopted by the Congress on 31 October 2019, 1st sitting (see Document CG37(2019)18, explanatory memorandum), co-rapporteurs: Lelia HUNZIKER, Switzerland (L, SOC) and Carla DEJONGHE, Belgium (R, ILDG).

3. The Congress notes with satisfaction that in Bosnia and Herzegovina:

- a. local authorities enjoy freedom of association to promote and defend their interests;
- b. sub-state authorities actively engage in international cross-border co-operation.

4. The Congress regrets, however, the little progress made in implementing its Recommendation (324) 2012 on local and regional democracy in Bosnia and Herzegovina and Recommendation 356 (2014) on Post-monitoring of local and regional democracy in Bosnia and Herzegovina. It expresses its particular concerns on the following issues:

- a. the lack of progress in the implementation of the constitutional reforms at all levels of government which would aim to improve the system of local self-government throughout the country, as a consequence of a continuous political deadlock and rigidity of political system divided along ethnic lines;
- b. the situation with local elections in Mostar which remains an important unresolved issue, depriving city residents of the right to choose their representatives at the local level (Article 3.2);
- c. the lack of clarity in the assignment of responsibilities among various levels of government, combined with the non-respect of the principle of subsidiarity, notably in the Federation of Bosnia and Herzegovina as regards cantons and municipalities (Articles 4.2 - 4.4) which leads to overlapping of competences and the lack of accountability for task performance;
- d. the shortcomings in the practice of consultation with local authorities on all matters that concern them directly, including on financial issues and relevant reforms (Article 4.6, 9.6);
- e. the capping of employment at local level in Republika Srpska which limits local authorities' capacity to take into account local circumstances and administrative efficiency when organising own administrative structures and delivering services (Article 6.1);
- f. financial resources of local authorities appear inadequate, undiversified and not commensurate with their responsibilities, and the tasks are delegated without concomitant funding (Article 9.1, 9.2, 9.4);
- g. inefficiency of the equalisation systems which fail to smooth out economic disparities between rural and urban areas (Article 9.5);
- h. local authorities' powers with respect to local taxes are relatively low to enable them to better balance and plan their budgets (Article 9.3);
- i. although the local authorities have the right of recourse to judicial remedy, the non-implementation of constitutional court judgements in Bosnia and Herzegovina, including on local issues, undermines the effective enjoyment of this right;
- j. the legislation does not sufficiently take account of a very specific situation of the city of Sarajevo (being capital of the State, the Federation of Bosnia and Herzegovina and Sarajevo Canton) and of Banja Luka (*de facto* capital of Republika Srpska but without special status) which curtails their authorities' capacity to fulfil the additional functions of capital cities legally and in practice;
- k. the lack of inter-entity co-ordination and relevant institutional framework which is not conducive to strengthening co-operation between municipalities along the Inter-Entity Boundary Line;
- l. local authorities in BiH work under a permanent electoral campaign with different kind of elections being held every two years which reduces the efficiency of their actions due to the political system divided along ethnic lines and the inflammatory rhetoric used which detracts from concrete local government issues.

5. In light of the foregoing, the Congress reiterates most of its previous recommendations from 2012 and 2014 and recommends that the Committee of Ministers invite the authorities of Bosnia and Herzegovina to:

- a. introduce in the BiH Constitution the principle of local self-government to ensure the uniform respect of a minimum standard, at least, of local self-government throughout the country;

b. enhance the political dialogue with relevant authorities of all levels of governance involved to find a workable solution to resolve the electoral impasse in Mostar so that the city residents could vote in the next local elections, scheduled for October 2020;

c. revise the legislation to avoid overlapping of competences and ensure that the subsidiarity principle is applied in practice and, specifically in the Federation of Bosnia and Herzegovina, align the cantonal legislation with the Federal law on principles of local self-government;

d. ensure systematic consultation in practice on all matters that concern local authorities, notably financial resources and local self-government reforms, and consider the establishment, in the Federation of Bosnia and Herzegovina, of a Ministry for Local Self-Government as a federal institution and relevant interlocutor for all issues concerning local government;

e. revise, in consultation with the RS Association of Local Authorities, the legal prescription of capping the municipal employment in Republika Srpska so that local authorities have more discretion and flexibility to deal with overstaffing and to guarantee cost-efficient municipal administration, without being limited in their organisational autonomy;

f. revise the legislation on local finances to ensure that local authorities dispose of adequate and commensurate financial resources and ensure the transfer of delegated competences to lower levels of government are accompanied by concomitant financial resources;

g. review the currently used formula and distribution criteria in the equalisation systems to adjust them to a rapidly changing context by taking into consideration current demographic trends;

h. increase the local authorities' powers to decide on local sources of revenue to diversify them and strengthen local fiscal autonomy, notably of smaller municipalities (9.3, 9.5);

i. introduce necessary constitutional and legislative changes so that the specific situation of Sarajevo and Banja Luka, in terms of their status and competences, is duly taken into account in legislation and ensured in practice, to facilitate fulfilling the additional functions as capitals;

j. guarantee the implementation of the constitutional courts' decisions in general and on local self-government specifically, notably in the Federation of Bosnia and Herzegovina, to ensure the effectiveness of legal protection of local autonomy;

k. support and promote inter-municipal co-operation and the joint delivery of public services, notably across the Inter-Entity Boundary Line, and ensure that it is based upon legal guarantees;

l. consider grouping together the elections of a local nature (local elections and elections to Cantonal Assemblies) in line with Congress Recommendation 432 (2019) on the elections of the Cantonal Assemblies in the Federation of Bosnia and Herzegovina (7 October 2018);

m. consider signing and ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

6. The Congress calls on the Committee of Ministers to take account of this recommendation on local and regional democracy in Bosnia and Herzegovina and the accompanying explanatory memorandum in its activities relating to this member State.

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EXPLANATORY MEMORANDUM

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1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE

1. Bosnia and Herzegovina ratified the European Charter of Local Self-Government (hereinafter "the Charter") on 12 July 2002 without reservations or declarations, and the instrument came into force in respect of that country on 1 November 2002. Bosnia and Herzegovina had not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority at the time of publication of this report.
2. A delegation from the Congress of Local and Regional Authorities of the Council of Europe carried out a monitoring visit to Bosnia and Herzegovina in two parts, from 20 to 22 November 2018 and from 19 to 21 February 2019. The delegation examined the situation of local and regional democracy in the light of the provisions of the European Charter of Local Self-Government, ratified by the country in 2002.
3. Rapporteurs on local and regional democracy, Ms Lelia HUNZIKER (Switzerland, SOC) and Ms Carla DEJONGHE (Belgium, ILDG), focused on the developments in the field of local and regional self-government occurred in Bosnia and Herzegovina since the adoption of the last Congress monitoring recommendation, in March 2012.
4. During the first visit, from 20 to 22 November 2018, meetings were scheduled in the cities of Sarajevo, East Sarajevo and Banja Luka, in particular, with Mr Safet SOFTIĆ, Speaker of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, Mr Mato TADIĆ, Vice-President of the Constitutional Court of Bosnia and Herzegovina, Ms Nives JUKIĆ and Ms Jasminka DŽUMHUR, Human Rights Ombudspersons of Bosnia and Herzegovina, Mr Milan TRIVIĆ, Deputy Mayor of Sarajevo, Mr Miroslav LUČIĆ, President of the East Sarajevo City Council, and Mr Esed KADRIĆ, President of the Brčko District Assembly.
5. In Banja Luka the delegation met Ms Lejla RESIC, Minister of Administration and Local Self-government of the Republika Srpska, Mr Dzerard SELMAN, President of the Constitutional Court of the Republika Srpska, Mr Igor RADOJICIC, Mayor of Banja Luka, and Mr Jovo RADUKIĆ, Auditor General of the Supreme Office for the Republika Srpska Public Sector Auditing.
6. The delegation held discussions with the members of the National Delegation of Bosnia and Herzegovina to the Congress, the representatives of the Association of municipalities and cities of the Federation of Bosnia and Herzegovina and the Association of local authorities of Republic of Srpska.
7. The second part of the visit in Bosnia and Herzegovina took place from 19 to 21 February 2019 and meetings were held in Sarajevo with high representatives of the Federation of Bosnia and Herzegovina: in particular with the Minister of Justice, Mr Mato JOZIĆ, the Speaker of the House of Representatives of Parliament, Mr Elvir KARAJBIĆ, the President of the Constitutional Court, Ms Aleksandra MARTINOVIĆ and the Deputy Auditor General of the Audit Office for the institutions in the Federation of Bosnia and Herzegovina.
8. In the Canton of Sarajevo, the delegation had exchanges with Mr Elmedin KONAKOVIĆ, President of the Canton Assembly, Mr Edin FORTO, Prime Minister of the Canton, Mr Amel KOVAČEVIĆ, Minister of Finance of the Canton.
9. The delegation also met Mr Suad BALIĆ, Minister of Justice, Administration and Local Self-Government of the Government of the Canton of Herzegovina-Neretva, the Head of the Prime Minister Office of the Government of the Canton of Herzegovina-Neretva and the Deputy President of the Herzegovina-Neretva Cantonal Assembly, Mr Serif SPAGO. In the city of Mostar, the delegation visited Mr Ljubo BEŠLIĆ, the acting mayor, and in Jablanica, the mayor of the municipality, Mr Salem DEDIĆ.
10. The delegation would like to thank the Permanent Representation of Bosnia and Herzegovina to the Council of Europe as well as all the interlocutors for the information they provided to the delegation during the visits.
11. In accordance with Article 84 of the Rules and Procedures of the Congress related to the consultation procedure, the preliminary draft report was sent on 24 May 2019 to all interlocutors met during the visits for comments and possible adjustments or corrections. The present report is based on the comments received which have been considered by the rapporteurs before submission to the Monitoring Committee.
12. The programmes of both visits are appended to the present report.

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

2.1 Local government system (constitutional and legislative framework, reforms)

13. The administrative and territorial structure of Bosnia and Herzegovina (BiH) has been swept away by the war, town halls and municipal property have been destroyed and the inhabitants as well as the administrative staff in many places have been forced to flee to other parts of the country. The territorial and administrative re-organisation of the country after the war was based on the division into two Entities as established in the Dayton Peace Agreement of November 1995: Republika Srpska and Federation of Bosnia and Herzegovina.

14. The Federation of Bosnia and Herzegovina is itself a federal system consisting of 10 Cantons. After the war, about 30 new municipalities have been added to the 109 pre-existing ones reaching a total of 146 municipalities and 24 cities; after the re-unification of Mostar, the number of municipalities has been reduced to 140. As in the Yugoslav system, the municipalities continue to be of rather big size also in the post-war period: in the Federation of Bosnia and Herzegovina, only 6 municipalities have fewer than 10.000 inhabitants, in the Republika Srpska 21, out of which 3 have less than 1.000 inhabitants. (Gadjanova 2006, 63) An exception are some municipalities situated at the Inter-Entity Boundary Line, which have simply been cut into two halves after the war and are thus fairly small. (Pejanovic 2006, 212).

15. The system introduced by the Constitution (annex 4 of the Dayton Peace Agreement) guarantees a maximum of autonomy to the two Entities (as part of the compromise for ending the war, while formally maintaining unity and continuity of the country). Therefore, the Constitution does not even mention local self-government (except for the Brčko District, see below), as all related competencies are vested entirely with the Entities, which have both adopted constitutional provisions as well as ordinary legislation regulating the matter.

16. Thus, the State level does not have direct relations with municipalities, which are instead within the powers of the two Entities. The two Entities are characterized by very different structures affecting the relations with municipalities (or local self-government units): The Federation of Bosnia and Herzegovina forms a three-tier system with municipalities, Cantons and the Federal level, while Republika Srpska is organized as a unitary, two-tier system, with municipalities and the Ministry of Local Self-Government.

17. Given this asymmetry of two systems, in some cases partial compliance may be concluded in the situations where the state of implementation of the Charter's provisions in the entities is different.

18. The City of Brčko is a case of its own. It completes the territorial bipartition of the country by adding a special District which connects – or separates – the two parts of Republika Srpska. It is for this very geo-strategical importance of the city that it vests a special territorial status as a local authority directly under the sovereignty of the State. The city had been under direct international administration and its status had been provisional, before it has been decided by international arbitration. In March 2009, its status has been confirmed by the first amendment to the Dayton Constitution (article IV.4) which places the Brčko District under the sovereignty of the State regarding the competencies of its institutions, while it constitutes common property of both Entities.

19. Until 2017, the territory of Republika Srpska was subdivided into 64 municipalities and two cities (Eastern Sarajevo and Banja Luka): while Banja Luka constitutes a single local authority, Eastern Sarajevo is an agglomeration of various municipalities without a true urban centre of its own (which, in view of the rapporteurs, raises issues regarding the delimitation of its boundaries and its powers). After the reform of 2017, Republika Srpska now consists of 57 municipalities and 7 cities (in 2015, the municipality Zvornik acquired the status of a city); both new laws – on local self-government and on Civil Servants and Employees – have introduced significant changes. While the cities of Banja Luka, Bijeljina, Doboj, Zvornik, Prijedor and Trebinje have no municipalities in their composition, and they are treated as any other unit of local self-government (municipalities), the territory of the City of Istočno Sarajevo consists of the territories of six municipalities (Istočna Ilidža, Istočni Stari Grad, Istočno Novo Sarajevo, Pale, Sokolac and Trnovo).

20. In the Federation of Bosnia and Herzegovina, there exist 74 municipalities and 6 cities, 2 of which with special status (Sarajevo and Mostar). In the Federation, most powers related to local government are vested with the Cantons, which is why the Federation of Bosnia and Herzegovina Constitution does not contain other than a few and generic provisions on the matter, which provide for some fundamental

principles of local self-government to be respected by the cantonal Constitutions (art. VI.A.1.-6., in the version amended as of 2004). In 2004, further amendments were proposed by the Federation of Bosnia and Herzegovina constitutional commission, which would have conferred the regulatory powers related to local government to Federation of Bosnia and Herzegovina level (see the Opinions CDL-AD(2004)014 and CDL(2004)073); however these proposals have not been adopted by the Federation of Bosnia and Herzegovina Parliament. However, a Federation of Bosnia and Herzegovina Law on “the foundations of local self-government” of 1995, adopted before the end of the war in occasion of the ratification of the Charter, defines local autonomy and determines some fundamental principles. This set of principles has been further regulated in a detailed manner by the Cantons. All cantonal Constitutions do, in fact, contain specific provisions in separate sections dedicated to “local authorities”. The Constitution of Sarajevo Canton has often been mentioned as a positive example of such a regulation. All Cantons have adopted their own laws on local self-government, introducing sometimes different solutions regarding powers and functions, taxes and resources. And among the functions of the Federation of Bosnia and Herzegovina Constitutional Court, a specific guarantee for the right to local self-government is foreseen (art. IV.C.10. Constitution of the Federation of Bosnia and Herzegovina).

21. In the Federation, the normative framework is therefore varied and complex. Apart from potential controversies, also the enormous costs of such a system must be mentioned, as in average each Canton comprises only 10 municipalities and some Cantons consist of only three municipalities. This adds to the disadvantages resulting from fragmentation on ethnic grounds, which has created serious difficulties in the past and continues, although to a lesser extent, to adversely impact today’s local politics in some cantons.

22. As a consequence of the constitutional amendments to the Entity Constitutions imposed by the High Representative in 2002, proportional representation at all levels in the public administration is guaranteed to all members of the three “constituent peoples”. This includes also the local level. However, reference was made to the census of 1991 (e.g. art. 3 Republika Srpska Law on local self-government, 2004), which often did not reflect the current demographic situation (and the resulting needs). By consequence, all citizens applying for a job in the public and municipal administration are forced to declare their affiliation with one group or declare to be part of the “Others” in order to be considered for a position, which discriminates against other groups, such as Jews and Roma, which are not represented as a separate category. It also poses difficult questions regarding the precedence of merit-based criteria in the selection for filling the posts, as these are often disregarded in order to hire the candidate with the right ethnic-national background for respecting the “national quota” and the ethnic balances in the institution or municipality.

23. Already in 2006, the Congress concluded in its monitoring report with a recommendation to reduce as much as possible the ethnic elements in the electoral system and to assign the power to the State of Bosnia and Herzegovina to provide for the implementation of all international obligations, including those resulting from the Charter, at all levels of territorial government³.

24. “Cities” are defined as units of local self-government which constitute among a number of municipalities, “with reference to the daily needs of citizens, one urban, cultural, economic and administrative territorial entity”, a functional centre of gravity. However, the competencies are practically identical compared to those of municipalities and overall the concept of “city” has been emptied: a “City” has legal personality and can represent itself in court proceedings and has own tax revenues (in Republika Srpska, implementation measures regarding tax revenues still have to be taken).

25. A peculiar case is the Brčko District, with its ca. 70.000 inhabitants: after an international arbitration had ended the controversies regarding its status, since 2000, it constitutes a special district (under direct international administration). In March 2009, the Brčko District has received constitutional foundation (article VI.4) through the first and only amendment of the Dayton Constitution.⁴ It is at the same time municipality and special district with its own assembly (31 delegates) and distinct legislation (which has to be in conformity with State legislation, but not with Entity-legislation). Elections take place together with general elections, and minorities can be elected, not only members of constituent peoples. The Mayor is not directly elected but appointed by the assembly among its members.

3 Paragraph 4.c. Recommendation 202(2006) “Local and regional democracy in Bosnia and Herzegovina” Debated and adopted by the Standing Committee of the Congress on 4 November 2006 <https://rm.coe.int/168071a20d> .

4 See for the text of the amendment on Brčko District of March 2019:

([http://www.ccbh.ba/public/down/Amendment I to the Constitution of BiH \(OHR and CC\).pdf](http://www.ccbh.ba/public/down/Amendment%20I%20to%20the%20Constitution%20of%20BiH%20(OHR%20and%20CC).pdf)).

2.2 Status of the capital city

26. The Dayton Peace Agreement determines that “Sarajevo is the capital city of BiH” (article I.5 Constitution BiH); the same is true for the Constitution of the Federation of Bosnia and Herzegovina (article I.4, which also defines that the City of Sarajevo is established within the Canton Sarajevo). Thus, it is, at the same time, the capital of the State and of the Federation of Bosnia and Herzegovina as well as of the Sarajevo Canton. But there is neither a law on the capital city, nor a definition on the role, powers and resources of a capital city in other legislation. The territory was much wider before the war. Sarajevo today corresponds to the territory under siege between 1992 and 1995, with the resulting division along the front lines; after the war, administrative reforms based on ethno-political criteria have further deepened those divisions. Today, there are only four municipalities (Stari Grad, Centar, Novo Sarajevo and Novi Grad); in addition, the Canton Sarajevo exists as a higher level of territorial authority, a second tier. The other six municipalities of Sarajevo, in the territory of Republika Srpska, also enjoy “city” status (“Eastern Sarajevo”), even without having a true centre; according to the Republika Srpska Constitution (article 9), “Sarajevo” is still the capital city of Republika Srpska (although in practice it is Banja Luka where all Republika Srpska institutions are concentrated).

27. The idea of a special status or of a metropolitan region has not been taken up by a serious reform initiative. Thus, the “City” of Sarajevo is “frozen” in stagnation, according to the Deputy Mayor, because there is “neither city-infrastructure, nor has the status issue been resolved in the last 20 years”. Proposals to elevate Sarajevo to a special district re-unifying the 10 historical municipalities were not and are not politically feasible, as these municipalities are now situated in different entities. The new cantonal government of Sarajevo, a coalition of former opposition parties, has the political objective of adopting a Law on the Capital City at the Federation of Bosnia and Herzegovina and BiH levels and to strive for an amendment of the Federation of Bosnia and Herzegovina Constitution which would merge the Canton and the City of Sarajevo creating a metropolitan area such as, for instance, in Zagreb.

28. The institutional complexity affects the status and work in Sarajevo. Article 60 Local Self-Government Law of Canton Sarajevo assigns the decision on division between Canton, City and Municipalities to the Cantonal Assembly. While there is a law on local self-government, there is also direct interference with local in practice (through resources). And while the City lacks competences for the river bed of the Miljacka running through the city as well as for zoning plans (taken away from the city and transferred to its 4 municipalities), the powers for pre-war public enterprises have been taken over by the Canton. The following numbers on the budgets of the three layers of government provided by the City administration explain the situation quite well: the municipality Centar has an annual budget of 13-14 mio KM (ca. 6.5-7 mio Euro), the City of Sarajevo 18 mio KM (ca. 9 mio Euro) and the Canton Sarajevo, which comprises 5 more municipalities in addition to Sarajevo’s 4 municipalities, has a budget of 900 mio KM (450 mio Euro).

29. Reform plans for comprehensive constitutional amendments to the Sarajevo Canton Constitution, which should have implemented the Charter fully, have not been realized. Amendments only listed competencies, identical for municipalities and the City; thus, there is not sufficient differentiation between the tasks of the municipalities and those of the City. In practice, co-ordination is the central problem: municipalities have relatively wide competencies and do not see the need for co-operation with the City, the Canton does not implement decisions of the City Council. Other reforms have changed above all the electoral legislation: the 4 municipal councils now elect the Sarajevo City Council which elects the Mayor, all offices having the same mandate.

30. There are no institutional provisions on the co-operation with Eastern Sarajevo, across the Inter-Entity Boundary Line. Informally, there are some joint projects, such as the organisation of Youth Winter Olympics in February 2019. But despite the great number of commuters, the public transport systems are totally divided, parallel and not coordinated. This means that buses only run on their respective side of the Inter-Entity Boundary Line and that taxis regularly stop before crossing it in order to make their taxi sign disappear as otherwise they risk a fine, because they are not registered in the other Entity and there is no legal recognition of the license issued in one Entity by the other one (despite the common-market clause in the Dayton Constitution, art. I.6). The physical separation is worsened by the fact that political parties in Eastern Sarajevo and Banja Luka are different, which leads to lesser comprehension for local needs and fewer resources.

31. Despite the fact that Banja Luka is the *de-facto* capital of Republika Srpska, the Republika Srpska Constitution of 1992 provides for Sarajevo as capital and no change has been made to this provision (article 6), so far. In 2009, 29 amendments to the Republika Srpska Constitution had been proposed, including the change from (Eastern) Sarajevo to Banja Luka as capital city of the Entity, but after a

2/3 majority in the Republika Srpska National Assembly, the Bosniak caucus in the House of Peoples voted against the amendments, thus blocking the reform.

2.3 Legal status of the European Charter of Local Self-Government

32. Bosnia and Herzegovina ratified the Charter on 12 July 2002 without any declarations or reservations which under Article 13 of the Charter means that it applies to all levels of local self-government in Bosnia and Herzegovina, including cantons. However, to present a more detailed overview of cantonal self-government, the situation of cantonal democracy will be additionally analysed in a separate part of the present report in the light of both the Charter and the Reference Framework for Regional Democracy.

33. The Charter entered into force in respect of Bosnia and Herzegovina on 1 November 2002. The country thereby committed itself to embedding the principle of local self-government in its domestic law in order to guarantee its effective implementation, to transferring competences to local communities with concomitant financial resources and to ensuring a full implementation of the principle of subsidiarity to guarantee the establishment of local self-government as provided by the Charter. Due to the State structures and the competencies of the entities, at State level, the Charter is not specifically recognised in the BiH Constitution. However, the Entities protect the principle of local self-government in their Constitutions and legislation.

2.4 Previous Congress reports and recommendations

34. The Congress has been following the developments in Bosnia and Herzegovina since 2000. The situation of local and regional democracy in Bosnia and Herzegovina had been the subject of two Congress reports, in 2000⁵ and 2001,⁶ already before the country's accession to the Council of Europe and the Charter, and of a monitoring report in 2006⁷. The Congress adopted its Recommendation 202 (2006)⁸ on 14 November 2006.

35. The most recent monitoring visit concerning the situation of local and regional democracy resulted in Congress Recommendation 324 (2012) on local and regional democracy in Bosnia and Herzegovina. In 2012 and 2013, two post-monitoring visits were carried out in the country leading to the adoption by the Congress of Recommendation 356 (2014) and Resolution 369 (2014) on post-monitoring of local and regional democracy in Bosnia and Herzegovina.

36. However, since then, the situation of local democracy in Bosnia and Herzegovina has unfortunately become an almost recurrent point of attention for the Congress, due, among other things, to the situation in Mostar, where no local elections have been held since 2008. Thus, after the first mission in 2017, the Congress decided, during its session in October 2017, to put in place a "Reflection Group on Mostar" in the framework of the post-electoral dialogue with the authorities in Bosnia and Herzegovina; as a follow-up, another fact-finding mission took place in June 2018. Again, it was noted with concern that no progress towards holding local elections in Mostar had been made.⁹

3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE)

3.1 Article 2 – Constitutional and legal foundation for local self-government

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

5 Report on local and regional democracy in Bosnia and Herzegovina (candidate country for accession to the Council of Europe) (Doc. CG/CP(6)29 rev, 2 March 2000). Rapporteurs: Claude Haegi (Switzerland) & Gianfranco Martini (Italy)

6 Report on local and regional democracy in Bosnia and Herzegovina (Doc. CG(8)23 Part II, 8 November 2001). Rapporteurs: Christopher Newbury (United Kingdom) and Peter Kittelmann (Germany).

7 Local and regional democracy in Bosnia and Herzegovina (Doc. CG(13)30 Part II, 23 October 2006). Rapporteurs: Christopher Newbury (United Kingdom) and Karsten Behr (Germany).

8 Recommendation 202(2006) on local and regional democracy in Bosnia and Herzegovina.

9 See report CPL(2017)03, adopted on 6 September 2017, See also the website on the Congress Reflection Group on Mostar (<https://www.coe.int/en/web/congress/reflection-group-on-mostar>).

37. At State level, the BiH Constitution does not contain the concept of Local Self-Government. Thus neither constitutional guarantees for the relations between municipalities and different levels of government are established in the State Constitution, nor does (framework) legislation for local self-government exist at State level. The relations with local self-government are therefore exclusive relations between the two Entities (and, in the Federation of Bosnia and Herzegovina, also the Cantons) and local authorities. As a result, three parallel systems of local self-government exist: Federation of Bosnia and Herzegovina (and Cantons), Republika Srpska and Brčko District. The single situations of local self-government thus differ considerably one from each other, according to the respective legislative framework and in practice.

38. Legislation in the Federation of Bosnia and Herzegovina: The Law on Principles of Local Self-Government of the Federation, adopted in 2006, has been fully harmonized with the Charter; the basic principles and definitions of local government and local authorities can be found in articles 2 to 7. At the time, the Federation of Bosnia and Herzegovina legislator intensely cooperated with the Council of Europe (and UNDP), and cities and municipalities had been involved in consultations during the legislative process. The competencies have been regulated, as well as the relations between Mayors and Councils and the (stronger) role of local communities within the municipalities, *mjesne zajednice*. An attempt to amend the Law on Principles of Local Self-Government (2013/14) in order to strengthen the latter bodies further, in a perspective of strengthening citizens' participation, has met local authorities' resistance.

39. As there is no Ministry for Local Self-Government at the Federation of Bosnia and Herzegovina level, the Federal Ministry of Justice comprises a Department for Public Administration which also deals with local self-government issues. The establishment of a Ministry of its own would only be possible by constitutional amendment.

40. When it comes to the cantonal laws on local self-government, so far only three cantons have harmonised their laws with the Federation of Bosnia and Herzegovina Law on Local Self-Government, while Canton Tuzla has taken over the federal law in its entirety. This is the situation 12 years after passing of the deadline for the harmonisation of cantonal laws with Federal law, which had been established six months after the adoption of the Federation of Bosnia and Herzegovina Law, in 2006. A positive example is the Constitution of Sarajevo Canton which was amended in 2017. It now contains clear definitions of Canton, City of Sarajevo and municipalities and their respective powers. A two year-deadline has been foreseen for the implementation of these amendments regarding the harmonisation of competencies and resources. This process is still ongoing.

41. In Republika Srpska, a new Law on local self-government was adopted in November 2016. After comprehensive consultation for months and expression of full support by the Republika Srpska Association of local authorities, the new law, which is supposed to respect the guidelines provided by the Charter, entered in force on 1 January 2017.

42. Overall, Bosnia and Herzegovina's legislative situation can be considered in compliance with Article 2 of the Charter, as the principle of local self-government is expressly recognised in applicable domestic legislation.

43. However, the problem remains that the overall constitutional structure does not consider local self-government sufficiently and as part of a comprehensive system. Therefore, the introduction in the Constitution of Bosnia and Herzegovina of at least a definition of local self-government, such as the level of government closest to the citizens, and of the right to local self-government of local authorities, would be desirable and useful in order to guarantee a minimum standard throughout the country.

44. Some years ago, the Associations of municipalities and cities of the Federation of Bosnia and Herzegovina and of Republika Srpska organized public debates throughout the country (with assistance from Swiss Development Agency) and, based on the conclusions of those public debates, presented a proposal to include the concept of "local self-government" in the BiH Constitution to the then President of the BiH Constitutional Amendments Committee, Mr Sefik DZAFEROVIC (now a member of the Presidency of BiH). However, no change has ever been adopted.

3.2 Article 3 – Concept of local self-government

Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

3.2.1 Article 3.1 (substantial share of public affairs)

45. The main question is whether, in the present situation, municipalities in Bosnia and Herzegovina regulate and manage a “substantial share of public affairs under their own responsibility”.

46. In assessing compliance, both legislative and factual aspects have to be considered. Under the current legislation in the two Entities and 10 Cantons, there is a considerable number of competencies to be exercised and managed by municipalities (see article 8 of the Federation of Bosnia and Herzegovina Law on Local Self-Government, and Republika Srpska Local Self-Government Law).¹⁰ The related

10 Article 8 of the Federation of Bosnia and Herzegovina Law on principles of local self-government (2007) lists the following competencies (unofficial English translation):

"The competences of a local unit of self-government shall include specifically:

- ensuring and protecting human rights and basic freedoms in accordance with the Constitution ;
- adoption of the budget of the local unit of self-government ;
- adoption of programs and plans for the development of the local unit of self-government and providing conditions for its economic growth and job creation;
- establishing and implementation of spatial planning and environmental protection policies;
- adoption of regional, urban and implementation plans, including zoning;
- establishing and implementation of a housing policy and adoption of programs for housing development and other types of property development;
- establishing a policy and setting the level of reimbursement for the use of public goods;
- establishing and implementation of a policy for control, management and use of construction land;
- establishing a policy for control and management of property of the local unit of self-government;
- establishing a policy for managing natural resources of the local unit of self-government and distribution of revenue collected as compensation for the use of those resources;
- management, financing and improvement of the operations and facilities of the local public infrastructure:
 - Water supply, wastewater disposal and treatment,
 - Solid waste collection and disposal,
 - Public sanitation,
 - City cemeteries,
 - Local roads and bridges,
 - Street lights,
 - Public car parks,
 - Parks;
- organisation and improvement of local public transport;
- establishing a preschool education policy, improvement of the preschool institutional network, and management and funding of public institutions for preschool education;
- establishment, management, funding and improvement of institutions for primary education;
- establishment, management, funding and improvement of institutions and building facilities to satisfy the needs of citizens in the areas of culture and sport;
- assessing the work of institutions and quality of services in the areas of health care, social welfare, education, culture and sport, and ensuring funds required for the improvement of their work and quality of services in accordance with the needs of citizens and capabilities of the local unit of self-government;
- analyses of public order and peace and level of safety of people and property, and making recommendations to relevant authorities;
- organising, implementation and responsibilities for measures of protection and rescue of people and material goods from elements and natural disasters;
- establishment and conduct of compliance inspections with regard to the regulations from within the competencies of the local unit of self-governance;
- rendering regulations on taxes, reimbursements, contributions and fees within the competencies of the local unit of self-governance;
- holding referendums in the territory of a local unit of self-governance;
- floatation of bonds and decisions on debt incurrence by local units of self-governance;

problems will be discussed below under Article 4 and mainly concern the lack of clarity in the assignment of functions and the generation of unfunded mandates for municipalities through the delegation of tasks.

47. Another important indicator for assessing the role of local government, and its practical operation, is local government's share in revenue and expenditure. In the Federation of Bosnia and Herzegovina, municipalities and cities share some 10 percent of revenues, vis-à-vis a relatively small share for central government (some 20 percent) and the 10 Cantons (some 25 percent); the rest is divided between pension and disability funds at the Federation of Bosnia and Herzegovina level (around 25 percent) and separate health and employment funds in each Canton (almost 20 percent of total revenues). In Republika Srpska, cities and municipalities share some 14 percent of revenues, vis-à-vis 44 percent of central government revenues and 42 percent dominated by pensions, disabilities, health, road and employment funds.¹¹ This share may be substantial considering the political and economic situation of the country, but not so when compared to the most general standards across Europe.

48. In the light of the above, it may be concluded that Article 3.1 of the Charter is generally respected, but there is certainly room for substantial improvement.

3.2.2 Article 3.2 (elected assemblies, executive organs, participation of citizens)

49. The structure of municipalities is similar to other European countries: there is an elected council and a mayor, elected through different electoral processes. Elections are held every four years, and the last local elections were held on 2 October 2016. Elections are regulated by the constitution and by the Electoral Code. Every person who is a citizen, has reached the age of 18 and has been registered has the right to vote in local elections. Local elections have been subject to observation by the Congress and other international organisations and bodies. The general appraisal was that they were fair and regular.

50. Specific ethnic, or "national" representation: According to the Constitution of the State and of the Entities, the public authorities have to be „generally representative“ of the population, i.e. the three constituent peoples and „Others“. While in the Brčko District this is guaranteed by quotas (see below), in Banja Luka and Republika Srpska municipalities, there are no quotas for the direct election of the City Council. However, if "Others" count for more than 3% of the local population, one seat in the assembly is guaranteed for them through a special ballot (currently: 30 + 1).

51. A problem is the reference data for proportional representation, as for decades the last census before the war (1991) was the basis and the new census (2013) has been declared illegal by the Republika Srpska National Assembly. This has created considerable uncertainty. Banja Luka has around 190.000 inhabitants, but over 200.000 registered voters (actually, this is the number of issued ID cards) which is a difference of 30-40.000 persons (considering the voting age).

52. In the Brčko District, collective rights are protected differently compared to the rest of the country. The Brčko District had been directly governed by the (Deputy) OHR. "National interests" are protected by affirmative action in government and a guaranteed minimum number of votes (quorum), but the statute determines which specific issues are considered "vital interests" of the groups, such as educational issues, culture, language, spatial and town-planning. In practice, the veto-power has never been used so far, but the (political) threat makes agreement necessary on practically all important issues.

53. Participation of citizens in local affairs in between local elections is guaranteed in both Entities (and Cantons), in particular through provisions on local referenda.

54. However, the rapporteurs would like to stress the urgent need to redress the situation in Mostar, where no local elections have been held since 2008. This situation is in violation of Article 3.2 of the Charter which requires that the right to local self-government shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage. Given the importance of the Mostar issue for the general functioning of local democracy in Bosnia and

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- Conduct of activities for ensuring proper sanitation and health conditions;
 - ensuring proper work conditions for local radio and TV stations in accordance with the law;
 - ensuring and maintaining records of personal status of citizens and electoral rolls;
 - activities from the domain of land survey and land cadastre, and property records;
 - organisation of efficient local government in accordance with local needs;
 - establishment of the organisation of local self-government;
 - animal protection."

¹¹ LGI Report 2018, p. 31 and p. 65.

Herzegovina, the detailed analysis of the situation in Mostar is given separately at the end of the present report.

55. The rapporteurs consider that the requirements of Article 3.2 cannot be met in Bosnia and Herzegovina until the workable solution to the situation in Mostar has been found and the city residents can enjoy their right to choose their representatives at the local level. In the opinion of the rapporteurs, attention should also be given to the implementation of the 2013 census with the objective of creating certainty by reference to clear and accepted data.

3.3 Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

3.3.1 Article 4.1 (competencies, in legislation)¹²; Article 4.2 (full discretion in exercise); Article 4.4 (full and exclusive powers)

56. The three headings on competencies, their exercise in full discretion and on their exclusive character are treated together due to the situation in practice, in particular in the Federation of Bosnia and Herzegovina.

57. The competencies of municipalities are regulated in legislation of both Entities (and Cantons).

58. In the Federation of Bosnia and Herzegovina, Article 8 of the Law on Principles of Local Self-Government provides for a huge number of powers, listing 29 different competencies. However, not all of these have been fully respected or correctly implemented (yet; since adoption of the Federation of Bosnia and Herzegovina Law on Principles of Local Self-Government in 2007). Also, Cantons can transfer competencies to municipalities without the allocation of appropriate funds and so, despite Article 11 of the Federation of Bosnia and Herzegovina Law on Local Self-Government principles establishing the contrary: according to estimations by the Association of municipalities and cities of the Federation of Bosnia and Herzegovina, in practice, only 20% of the necessary funds are allocated. Thus, the system is characterized by “significant confusion and frustration due to joint and overlapping competences between the two layers of government (and) by a municipal perception that unfunded mandates are handed down to them (as well as by) a failure to overcome latent inefficiencies in the assignment of responsibilities”.¹³ In the Federation of Bosnia and Herzegovina, interlocutors expressed the opinion that local self-government competencies should include matters such as social and health care, pre-school and primary schools as well as public order as original competencies (and not as delegated ones), for which sufficient funds should be provided. This was labelled by most interlocutors as wishful thinking, as every level of government would try to “highjack” and keep as many competencies as possible.

¹² Local Government Initiative, Local Government in Bosnia and Herzegovina. Report on Consultations of a Joint Commission on Local Government, June 2018, p.12 (see overview: Table II. Selected Competences of Local Government in BiH, on p. 14).

¹³ Local Government Initiative, Local Government in Bosnia and Herzegovina. Report on Consultations of a Joint Commission on Local Government, June 2018, p.12 (see Table I. Revenue allocation to Local Governments in BiH, on p. 13)

59. Within the Federation of Bosnia and Herzegovina, it appears that Cantons do not implement decisions of the Constitutional Court. The rapporteurs were informed that there are no (sufficient) enforcement mechanisms or sanction in place to ensure the implementation of judgements.

60. In Republika Srpska, the allocation of competencies between only two levels of government is much more clear, due to the two-tier structure. The case of the “City of Eastern Sarajevo” (Republika Srpska), consisting of 6 “joint” municipalities, is special: it can also exercise competencies regarding the following subjects: public transport (subsidized), fire brigade, secondary school education, (promotion of) tourism, traffic signalization.

61. The Brčko District can exercise all competencies of the Entities, except for pension funds (see Article 9 of Brčko District statute). Its competencies seem clearly delimited from those of the State, e.g. health care, social protection and police are independent and under the supervision of the Brčko District Assembly. The same is true for the judiciary which forms a system of its own.

62. Although some progress has been made since 2012, in particular in the economic sector, recently municipalities have to cope with a number of additional problems, in particular providing care and housing for migrants, which exposes systemic problems: it appears that all levels of government can add (and add) obligations to municipalities’ tasks and cut their finances. It also seems that every level of government tries to keep competencies rather than transferring or delegating them in a subsidiarity logic. A particular problem is the divided competencies in the Federation of Bosnia and Herzegovina between Entity and Cantons as well as the lack of harmonisation of their legislation.

63. Therefore, the rapporteurs consider the requirements of Article 4.1 are generally respected while systemic problems persist regarding Articles 4.2. and 4.4 due to the lack of clarity and certainty of assignment of tasks and functions in practice, in particular in the Federation of Bosnia and Herzegovina (given the role of Cantons).

3.3.2 Article 4.3 (subsidiarity)

64. The principle of subsidiarity is not expressly enshrined in neither of the three Constitutions (of the State, Federation of Bosnia and Herzegovina and Republika Srpska). It is expressly mentioned only in Article 10 of the Federation of Bosnia and Herzegovina Law on Principles of local self-government regarding the transfer of competencies. However, in practice, in the Federation of Bosnia and Herzegovina, Cantons often absorb the competencies of municipalities, in particular with regard to utility services (water supply, sewage and heating; in the case of Canton Sarajevo also education and public transport), but central organisation at cantonal level is rarely more efficient. The new Cantonal Government of Sarajevo has announced to change the centralization policy of the past and to transfer competencies to municipalities. Interlocutors not rarely stressed that municipalities often do not even want additional powers, as these come with considerable costs (e.g. regarding elementary schools, the transfer of which already foreseen in Articles II.A.4 (b), of the Federation of Bosnia and Herzegovina Constitution and in Articles 8 and 10 of the Federation of Bosnia and Herzegovina Law on Local Self-Government Principles).

65. In a number of meetings in the Federation of Bosnia and Herzegovina, the rapporteurs heard about the importance of *mjesne zajednice*, i.e. local communities as sub-structures within municipalities. These are regulated at the Federation of Bosnia and Herzegovina level, in Articles 24 to 32 of the Federation of Bosnia and Herzegovina Law on Local Self-Government Principles, but also part of cantonal competencies on local self-government. Their Councils are established through direct election (in addition to local elections) and comprise a certain percentage of elected councillors. *Mjesne zajednice* are financed through the local budgets and apply for projects through the municipal level. Since 2013/14, there have been several attempts to amend the Federation of Bosnia and Herzegovina Law on Principles of Local Self-Government, not least for strengthening the *mjesne zajednice* and better involving citizens in a process of bottom-up development. However, local authorities resisted in order to keep their competencies.

66. In Republika Srpska, the principle of subsidiarity is not expressly anchored in constitution or legislation, but the nature of tasks as well as requirements of efficiency and economy have been considered in the reform of 2017. During the visit, the rapporteurs heard no complaints about the non-respect of the principle of subsidiarity in practice in Republika Srpska. The rapporteurs had the impression that although not expressly mentioned in the legislation, the rationale of subsidiarity in Republika Srpska seems to be mostly implemented in practice.

67. In the Federation of Bosnia and Herzegovina, a systemic approach guaranteeing the principle of subsidiarity seems hampered by the autonomous role of Cantons which tend to interfere with municipal

competencies. The role of *mjesne zajednice* should also be included in a comprehensive system based on the logic of subsidiarity.

68. Thus, overall the rapporteurs consider the requirements of Article 4.3 only partially respected in Bosnia and Herzegovina.

3.3.3 Article 4.5 (delegated powers - full discretion in adaptation)

69. Cantonal Constitutions provide for the possible delegation of competencies to lower levels as well as for the transfer to higher levels. Following consultations with the municipality concerned, this delegation shall take into account the subsidiarity principle and the capability of the municipality, according to the Law on Principles of Local Self-Government (Article 10); it shall be accompanied by the allocation of the necessary funds for fulfilling new tasks (Article 9). While various interlocutors stressed that in practice obligations and responsibilities transferred to local authorities are often not accompanied by the transfer of financial assets for the fulfilment of those obligations, in contrast with Article 9 of the Charter, no complaints have been expressed with regard to undue interferences with the exercise of delegated powers.

70. Therefore, it appears that Article 4.5. on delegated powers is respected with regard to the discretion of local authorities in the adaptation of those powers to local needs. The rapporteurs however identified more problems in the conditions of the delegation of powers such as their insufficient funding which will be further developed under the analysis of Article 9.

3.3.4 Article 4.6 (consultation)

71. In the Federation of Bosnia and Herzegovina, municipalities appear to be quite vocal in public debate and their consultation on legislative proposals is foreseen as part of mandatory public consultation by the Law on Principles of Local Self-Government (Articles 53 and 56) as well as by the Federation of Bosnia and Herzegovina Parliament's Rules of Procedures on Legislative Drafting. Among the 25 working bodies and committees within the Federation of Bosnia and Herzegovina Parliament, there is also one dedicated to local self-government issues. However, in practice, the consultation requirement by higher authorities does not seem to be systematically respected, in particular when new legislation imposes fees on local authorities (e.g. fire-brigades and electric energy supply). Currently, there are already 8 decisions by the Constitutional Court of the Federation of Bosnia and Herzegovina stating violations, including the annulment of the Federation of Bosnia and Herzegovina Law on Fire-Protection which imposed fees on local authorities without prior consultation. Another important area covers spatial plans and infrastructure. For example, Jablanica, situated on the current main North-South route to Mostar has not been consulted on the new highway (corridor 5C), which will – according to current plans – allow for an access in 40 km distance only, with probable negative consequences for the whole economic system of the municipality. Also, at Cantonal level consultation is not always respected: a law on transportation of pupils (2002) had been adopted by Canton West-Herzegovina without providing funds for municipalities to cover the new task and without approval by the Association of municipalities. Challenged by the association, in 2012, the Constitutional Court of the Federation of Bosnia and Herzegovina ruled in their favour. The issue of non-implementation of the relative Constitutional Court decisions will be mentioned under the analysis of Article 11.

72. The new Republika Srpska Law on local self-government (2016) provides for mandatory consultation with the Republika Srpska National Assembly through the Republika Srpska Association of local authorities, as an NGO representing all cities and municipalities. The rapporteurs have been informed that a strategy for the development of local self-government shall be elaborated and a working group for the follow-up on implementation has been established to this end. Already during the preparation of the new Law, for which the Charter has been used as a “guiding line” (according to the information from the Republika Srpska Ministry of Local Self-Government), comprehensive consultation has been organized for more than one year (starting in October 2015). The law has been supported by the Republika Srpska Association of local authorities and consultation has led to some changes in the draft. Some interlocutors stressed however the importance of informal, political channels for representing local interests, which could be an indicator that the official, formal channels are less used in practice.

73. The Brčko District participates via a representation office in the Council of Ministers BiH as well as in the co-ordination mechanism. The powers of the international supervisor are frozen for some years. The delegation was told by the representative of Brčko District that co-operation and compromise are part of Brčko's peculiar political culture. The delegation heard no complaints on consultation with higher level authorities.

74. The rapporteurs consider that Article 4.6. is respected only in legislation, but not in practice. The practice of consultation needs to be developed and improved, in particular in the Federation of Bosnia and Herzegovina. The establishment of a Federation of Bosnia and Herzegovina Ministry for Local Self-Government as a central institution and interlocutor for all issues concerning local government, as recommended by the Association of the municipalities and cities of the Federation of Bosnia and Herzegovina, could be an important step to improve consultation process.

3.4 Article 5 – Protection of local authority boundaries

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

75. This article requires that local communities should be consulted in case of changes of local authorities' boundaries. Due to the territorial compromise at the end of the war, with 51% of the territory assigned to the Federation of Bosnia and Herzegovina and 49% to Republika Srpska, many municipal boundaries had changed, and most new municipal boundaries reflect changes in ethnic composition. Before the war, there were 109 municipalities; after the war, their number increased, as municipalities were divided between the Federation of Bosnia and Herzegovina and Republika Srpska, and *mjesne zajednice* with ethnic minorities became new municipalities.¹⁴ Some municipalities that maintained pre-war boundaries changed ethnic composition.¹⁵ Due to the fragmentation of the country into two Entities and 10 Cantons with constitutional status, no change of municipal boundaries has occurred across the formers' boundaries.

76. Apart from the debate over the status of Sarajevo (see above), there is a debate about the (economic) sustainability of some smaller Cantons which receive transfers from the Federation of Bosnia and Herzegovina budget. However, as the Cantons are politically determined structures and established by the international Washington Agreement of 1994 and, subsequently, in the Federation of Bosnia and Herzegovina Constitution, it is difficult to imagine that any merger will have success.

77. The previous monitoring reports of the Congress did not identify a definite problem with regard to change of municipal boundaries and prior consultation of the communities concerned. During this visit, the delegation did not hear any complaints from political leaders or associations on the possible non-recognition of Article 5 in the current situation. In the absence of the recent practice and complaints on changes of local authority boundaries, the rapporteurs cannot but follow the letter of law and proceed from the principle that the provisions of the legislation on consultation in both Entities shall apply to the situation of potential changes of local authority boundaries in line with Article 5 of the Charter.

78. Thus, the rapporteurs consider the present situation in Bosnia and Herzegovina compliant with Article 5.

3.5 Article 6 – Appropriate administrative structures and resources

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

¹⁴ For example, Zvornik was majority Bosniak and is now majority Bosnian-Serb. Pre-war Doboj was approximately 55 percent Bosniak, the Bosnian-Croat population joined the municipality of Usora, and now the municipality is nearly all Bosniak. See World Bank (ECSSD), From Stability to Performance. Local Governance and Service Delivery in Bosnia and Herzegovina, January 2009, p. 6.

¹⁵ Eight municipalities have maintained the same borders: Banja Luka, Breza, Jablanica, Ljubinje, Novo Sarajevo, Široki Brijeg, Tuzla, Visegrad. Of these, Visegrad was Bosniak and Bosnian-Serb prior to the war and is now majority Bosnian-Serb. The Bosnian-Serb majority in Banja Luka increased from approximately half the population to over 90 percent. Mostar was initially divided into six municipalities (three Bosniak and three Bosnian-Croat) after the war, but subsequently OHR cancelled this division and established Mostar as a city with six areas (for the case of Mostar, see separate section below). See World Bank (ECSSD), From Stability to Performance ..., p.6.

3.5.1 **Article 6.1** (ability to determine own internal administrative structures)

79. As a rule, municipalities have the power to determine their own internal administrative structures, respecting statutory provisions and limitations. This usually requires a proposal by the mayor and decisions by the local council. The mayor, as head of the executive and of the administrative staff, also has moderate powers to introduce changes and adaptations in the administration of the municipality. However, in the large majority of local authorities, the administrative and human resources are so reduced that in reality only very few things can be determined or adapted in order to ensure “effective management”.

80. More specifically, the Federation of Bosnia and Herzegovina Law on Administrative Bodies provides for limits to the municipal autonomy introducing a proportion between the establishment of new bodies and the population numbers of the area of competences.

81. A positive example for organisation of services and interaction with citizens is the GIZ-sponsored initiative “Sistem 48” in the municipality of Jablanica. Answers to citizens’ questions on any matter related to local services are given within 48 hours. Service priorities are discussed and decided in monthly meetings with Mayor and all service providers.

82. In Republika Srpska, the new law on civil servants has introduced a set of new criteria regarding standards of employment of civil servants and employees, in particular providing for a ratio of 3 employees for every 1.000 inhabitants (in Cities 1/1.000), thus determining the size of the administration; this ratio has to be achieved by 30 June 2019. Eastern Sarajevo, for example, will have to adapt its staffing levels to 65 employees within that deadline, through retirements and dismissals. In Banja Luka, staff numbers have to be reduced from currently 750 to 570. Interlocutors expressed concern and estimated that most of the local self-government units will not be able to respect the new ratio; they asked the Association to become active in order to change the quota. Also, for the collection of a new real estate-tax introduced on 1 January 2019 for Cities (only) difficulties are expected. The Republika Srpska local self-government Ministry pointed out that the adoption of the new law has been prepared through comprehensive consultation. It also commented that the cap for staff was necessary for containing the high share of wages and salaries in local budgets, as its continuous increase risks to make the provision of some basic local services impossible. Although in some municipalities people will have to be dismissed, due to overstaffing in the past, the long period for adaptation should make a management of redundancy possible by internal re-organisation and retirement; also, emergency services, such as fire fighters or similar are not concerned. Monitoring of the implementation and the re-examination of the cap in 2020 are foreseen as well as an extension of the deadline in some well-motivated cases.

83. The privatization of public property and companies, 20 years ago, deprived local self-government units of their own companies for public services, with some exceptions. In Banja Luka, 65% of the water supply is owned by the City, 35% by others; 49% of the district heating system are also owned by the City. However, basically all public services are run by private companies, e.g. road-construction and maintenance, transportation, cleaning and gardeners. This has consequences for procurement considered as complex, slow and prone to corruption. Not rarely, complex procedures have to be repeated after complaints by competitors which causes huge delays in the implementation of important projects. In Banja Luka a new social housing-project has been launched with three buildings owned and managed by the City (59 apartments).

84. The Brčko District has a peculiar administrative and institutional structure adapted to its specific situation. There are 11 Departments which correspond to small ministries. With 93.000 inhabitants (census figure, estimated 75.000 permanent residents) it has ca. 3.000 staff in the administration. Strong international presence (US) and frequent removals of office-holders have created a particular political culture which is much more open to compromise and agreement compared to the rest of the country. Thus, by contrast with the Entities, the school system in the Brčko District is not divided, but integrated and even history lessons are taught for all pupils together (the compromise being that the period 1992-95 is not treated). Only language classes are taught in different groups.

85. Municipalities have broad liberties in law, but there are also certain important restrictions, which make the rapporteurs conclude that Article 6.1 is only partially respected. The cap for local staff introduced by Republika Srpska is a matter of concern for the rapporteurs. Although the provisional application of this measure could be justified due to overstaffing in the past and the need to guarantee cost-efficient municipal administrations, it limits the organisation autonomy of local authorities in violation of Article 6 as it precisely prescribes the size of the administration (and not only a maximum threshold) without leaving room for discretion.

3.5.2 Article 6.2 (conditions of service - recruitment)

86. The Congress delegation did not hear any complaint from representatives of municipalities regarding the conditions of service or particular difficulties in recruitment. However, in general, the emigration of skilled workers to other European countries, notably Germany, affects the chances of smaller municipalities of finding trained and qualified staff, in particular for specialised tasks.

87. The Federation of Bosnia and Herzegovina framework law regulates the principles for salaries at municipal level, but it is allegedly not well respected and many municipalities seem to decide themselves on the salaries for their staff, which is bad for the comprehensive budgetary system, but does not constitute a violation of Article 6.

88. Problems have been signalled with the recruitment of civil servants, as the higher education system is not adequate, the number of inspectors too low for guaranteeing effective supervision (in Sarajevo Canton there are only 4 labour inspectors), and a Book of Rules on Professional Qualification has not yet been adopted. A particular problem affecting the local level is the lack of building-inspectors, which results in a lack of enforcement of decisions and, more generally, in a lack of respect of rules.

89. As municipalities have broad liberties in law regarding recruitment and conditions of service, although less so in practice, the rapporteurs conclude that Article 6.2 is generally respected.

3.6 Article 7 – Conditions under which responsibilities at local level are exercised

Article 7 – Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

3.6.1 Article 7.1 (free exercise by local elected representatives)

90. The legal basis can be found in Article 1.1 of the Election Law of BiH which stipulates that the principles which shall be in force at all levels of government in BiH shall be determined by the Election Law of BiH. Accordingly, the Law on the Election, Termination of Mandate, Revocation and Replacement of Heads of Municipalities in the Federation of Bosnia and Herzegovina regulates all issues relating to the directly elected Mayors in the Federation of Bosnia and Herzegovina, while the election of municipal councillors is regulated by the Election Law of BiH. The Election Law of Republika Srpska stipulates that the election of local bodies (councillors in the Municipal Assemblies) shall be conducted pursuant to the Election Law of BiH, while an Entity law regulates the election and revocation of the Mayor's mandate. The Election Law of the Brčko District regulates the election of councillors of the Assembly of the Brčko District, and its Article 1.1.(2) stipulates that provisions of the Election Law of BiH shall be directly applied in case of any issues not expressly regulated by the Election Law of the Brčko District.

91. Mayors are elected directly by a first past the post system. Elections in BiH are held under an open-list proportional representation electoral system with a 3% threshold. The Sainte-Laguë method is used for distributing seats among parties that pass the threshold, giving preference to smaller parties.

92. Since 2017, the new Law on local self-government (2016) is in force in Republika Srpska as well as the new Law on Civil Servants and Employees introducing significant changes, in particular for Assemblies which shall overcome frequent blockades: in the past, a recall of the Mayor was possible, but not for Councillors. However, it has been often tried (ca. 5-6 times), even only few months after elections, upon the initiative of a minority of Councillors or those who had left the majority. The new recall procedure provides for the Council being dissolved as a sanction, if the referendum fails. Under the new procedure, no recall referendum has been held, so far. Also, at least once every two months regular Council sessions have to be held.

93. In view of the rapporteurs, in general, local recall election may pose threats to the exercise of local self-government in view of all risks that may be caused by the abuse of this practice, such as above-mentioned blockades. The rapporteurs understand the need to establish effective safeguards to limit the

possibility of misuse of local recall election that motivated the Republika Srpska legislative efforts. However, they have doubts whether councils' dissolution can serve as an adequate safeguarding measure from the perspective of the right of local elected representatives to freely exercise their functions in the light of Article 7.1 of the Charter. The rapporteurs believe that simply rescinding the provision on a local recall election in the 2016 Law on local self-government could prove to be the most adequate solution.

94. Specific rules for ethnic or national representation apply: the Chairpersons of the Council have to be from a different ethnic group in municipalities where more than 80% of the population belong to one constituent people. Members of national minorities are entitled to representation in the Council in proportion to the percentage of their share in the total population according to the last census in BiH. The number of the members of national minorities who are elected directly to the Council is defined by the Statute of the particular Municipality or City as appropriate; national minorities which make up more than 3% in the total number of population of the particular constituency according to the last census, shall be guaranteed the minimum of one seat (article 13.14 BiH Electoral Law).

95. Various interlocutors have pointed to the problem of working under a permanent electoral campaign with different kind of elections being held every two years in BiH. In this regard, the rapporteurs would like to reiterate the previous Congress recommendation¹⁶ to consider grouping together the elections of a local nature (local elections and elections to Cantonal Assemblies).

96. The rapporteurs consider Article 7.1. generally respected in Bosnia and Herzegovina.

3.6.2 **Article 7.2** (appropriate financial compensation)

97. The Federation of Bosnia and Herzegovina laws on salaries regulate principles for staff and councillors establishing principles and setting ceilings (through co-efficients); however, 10 different laws exist in the 10 Cantons. All Mayors are professionals (no other activity is permitted), their income is calculated on the basis of a minimum salary multiplied by a co-efficient. Overall, salaries are relatively low (850 KM, on average). Councillors receive a provisional fee decided by the municipal council. In Jablanica, this fee is quite low and amounts to 300 KM per month and covers the sessions, participation in committees, travel expenses (within municipality) and office hours (once a week); reportedly, in other municipalities it may go up to 800 KM.

98. In Republika Srpska, the compensation of local self-government unit officials, i.e. mayor, chief municipality executive, their deputies, as well as the president and vice-president of the assembly, is to be decided in accordance with the Law on Officials' Status in the Local-Self Governing Units. Compared with the Federation of Bosnia and Herzegovina, the situation is similar: all Mayors are employed professionals, but the basis for the Mayor's salary is the average salary in the municipality multiplied by a Council decision (1.100 KM, on average; range from 750 KM to 2.500 KM in Banja Luka and Bijelina). Article 41 of the Republika Srpska Law on Local Self-Government states that local councillors may receive an allowance, which is determined by the decision made by the local assembly (amount of up to 50% of the average net wage paid by local authority).

99. In conclusion, currently the requirements of Article 7.2 appear to be satisfied.

3.6.3 **Article 7.3** (incompatible functions or activities)

100. Specific Laws on Conflict of Interest in the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District determine which functions or activities are incompatible with the mandate of a mayor or council member. No specific issues regarding an excessive limitation have been raised during the visit of the delegation.

101. The situation in Bosnia and Herzegovina appears to be in conformity with Article 7.3.

¹⁶ Report CPR36(2019)02final on the elections of the Cantonal Assemblies in the Federation of Bosnia and Herzegovina (7 October 2018) adopted by Congress on 3 April 2019 at: https://search.coe.int/congress/pages/result_details.aspx?objectid=0900001680937716

3.7 Article 8 – Administrative supervision of local authorities' activities

Article 8 – Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

3.7.1 Article 8.1 and 8.2

102. According to Article 8, paragraphs 1 and 2, any administrative supervision of the activities of local authorities has to be carried out according to pre-established procedures and can only aim at ensuring compliance with the law and constitutional principles.

103. In the Federation of Bosnia and Herzegovina, the Ministry of Justice carries out supervision over administrative procedures and employment issues of civil servants (of Cantons and municipalities). Although already the Congress Recommendation 2012 had called the Federation of Bosnia and Herzegovina authorities to consider the institution of a separate Ministry for Local Self-Government (similar to the one in Republika Srpska), as an interlocutor for both, Cantons and municipalities, such a Ministry has not been established so far. Up to date, the municipalities have to approach different Ministries (at Federation of Bosnia and Herzegovina level and in the Cantons) for every issue; the same is true for supervision of municipalities. The Federation of Bosnia and Herzegovina Ministry of Justice, Department for Public Administration continues to act as interlocutor for local government affairs.

104. Cantonal authorities perform administrative control over municipalities by supervising the legality of administrative and other acts adopted under cantonal legislation or for implementing this legislation (in case of non-implementation, as an extreme measure, substitutive action by the Cantonal government is possible). Detailed cantonal inspections concern every aspect of administrative action, such as construction permits and utility services and a strict and frequent supervision over the keeping of civil registry books (every 6 months). These inspections include control over expenditure by budget users, including how local authorities manage allocated grants.

105. In the Federation of Bosnia and Herzegovina, administrative control of activities of municipalities by cantonal authorities is limited, regarding the sphere of execution of their own responsibilities, to control of legal compliance of performed activities; in case of delegated competencies, also expediency may be subject to control.

106. In 2018, the Federation of Bosnia and Herzegovina Audit Office audited 3 cities and 5 municipalities (with a total budget of 96.7 mil BAM) and 5 cantons. Due to many auditees within the jurisdiction of the Audit office of the Institutions in the Federation of Bosnia and Herzegovina (over 2000), when the total number of audits is planned each year, the main factor considered is the availability of human resources. Then, based on a risk assessment, the remaining audits are selected, with the main focus of the last couple of years being on auditees which have never been audited before.

107. The Republika Srpska Ministry of Administration and Local Self-Government has an inspection department which conducts supervision of legality regarding activities of municipalities. Specialist inspections may be conducted in specific fields by the departments of the relevant ministries (public contracts, health, etc). Until 2016, courts in Republika Srpska had been flooded by requests and complaints, as supervision and controversies regarding all acts of local self-government units necessarily had to be resolved by courts. The new Republika Srpska Law (2017) provides for supervision through courts over general acts and debts (over 10.000 BAM) as well as a competence for citizens' complaints.

108. The Republika Srpska Auditor General exercises a supervision regarding financial management and performance over Republika Srpska local self-government units; 5 years are needed to cover all 64 local self-government units. All audit reports with negative findings relate to municipalities or to their enterprises. As a consequence, these municipalities are revisited in order to check whether compliance has improved according to recommendations given. Typical problems comprise the accounting treatment of property, the execution of the budget, borrowing, the consolidation of financial reports of enterprises owned by

municipalities. The main reason, according to the auditors, is the lack of qualification and of training of municipal staff. In reaction, the Republika Srpska Ministry of Finance has developed an Accounting Framework for Municipalities.

109. The rapporteurs consider the supervision framework to be in conformity with the principles enshrined in Article 8, paragraphs 1 and 2.

3.7.2 Article 8.3

110. Regarding the way in which supervision is exercised in practice, and in particular with reference to the requirement of compliance with the principle of proportionality, not much information could be obtained from interlocutors; there were no complaints.

111. Article 47 of the Federation of Bosnia and Herzegovina Law on Principles of local self-government expressly provides for proportionality in the exercise of inspection powers. All final decisions regarding annulment or amendment of municipal acts, adopted within the scope of their own responsibilities, shall be rendered by a competent court (Article 47, the Federation of Bosnia and Herzegovina Law on Principles of Local Self-Government).

112. Under Republika Srpska legislation true sanctions do not seem to be applied; in severe cases, the Public Prosecutor may become active. Usually, the report is sent to the respective municipal assembly which has to present a plan for remedies within 60 days, the implementation of which is examined with the next audit or in occasion of a special verification audit. The execution of budgets is under legality and compliance control. This is also the case in the Federation of Bosnia and Herzegovina.

113. In conclusion, the requirements of Article 8.3 regarding the proportionality of supervision appear to be satisfied.

3.8 Article 9 – Financial resources

Article 9 – Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

3.8.1 **Article 9.1** (adequate financial resources – free disposal); **Article 9.2** (commensurate with responsibilities) and **Article 9.4** (diversification)

114. Adequate, commensurate and sufficiently diversified financial resources are analysed jointly, as they altogether shall guarantee financial means for local authorities appropriate for fulfilling their tasks.

Public finances in Bosnia and Herzegovina

115. There are four systems of public finances in Bosnia and Herzegovina, i.e. the budget of BiH institutions, the budget of Republika Srpska, the budget of the Federation of Bosnia and Herzegovina, and the budget of the Brčko District. Given the size of the country, the share of subnational government in overall government is unusually high: “the State institutions absorb just 15 percent of public revenue, while the Federation of Bosnia and Herzegovina and Republika Srpska absorb about 52 percent and 30 percent respectively (the District of Brčko makes up the rest)”.¹⁷ A Global Framework of fiscal balance and policies in BiH provides for co-ordination of fiscal policies in Bosnia and Herzegovina for the next three years; it is adopted in the form of an agreement between the governments of the Federation of Bosnia and Herzegovina, Republika Srpska and BiH and issued by the Fiscal Council of BiH composed of the respective heads of government and the three ministers of finance (the governor of the Central bank and the mayor of the Brčko District have observer status).

116. While direct taxation is exclusively in the competence of the Entities and raised at Entity level, indirect tax revenues are raised by the State (Indirect Tax Authority) and devolved to the two Entities which distribute to local self-government units according to different methodologies after the following steps: after the commitment of resources to the reserve account, for the return on indirect income, pre-determined resources are allocated for financing the institutions of BiH, followed by the amount of 3.55 % or at least 124 million BAM annually for financing the Brčko District. The residual resources are shared between the Entities. Municipalities receive the smallest share in resources compared to the other levels of government. Municipalities (and Cantons) rely heavily on indirect taxes: “VAT revenues make up: 30 percent of municipal budgets in the Federation of Bosnia and Herzegovina; almost 65 percent of cantonal revenues; and 50 percent of municipal budgets in Republika Srpska”.¹⁸

117. Before the amount of indirect tax-resources within the Entities is divided between Entity-budget and municipalities (and Cantons, in the Federation of Bosnia and Herzegovina), each entity first pays its own external debts from the VAT revenues creating considerable variations in the revenues of municipalities (and Cantons, in the Federation of Bosnia and Herzegovina), due to the changing level of debt service every year.¹⁹

118. In accordance with the Republika Srpska Law on Budgetary System, from the indirect tax-resources belonging to Republika Srpska, after the commitment of resources for serving external debt, 72% belong to the Republika Srpska budget, 24 % to the budgets of local self-government units, and 4% to the Public Enterprise ‘Putevi Republike Srpske’ (road infrastructure).

119. The share of municipalities in indirect tax revenues is then distributed according to the following formula: 75% for population size, 15% for surface area, 10% for students in secondary schools. This formula (from 2005) does not differentiate between Banja Luka, the cities and municipalities, which has given rise to complaints by municipalities situated on borders or the Inter-Entity Boundary Line due to higher costs through commuters.

120. Their share in indirect taxes makes up for about 30 percent of the revenue of Republika Srpska municipalities. The Republika Srpska Law determines how local self-government units’ own revenues are structured: real property tax, fines (contraventions), administrative fees, utility tax, water supply tax, fortune games. Free expenditure of own revenues is guaranteed. The ratio between indirect and own revenues is 70% to 30%. Among the shared taxes are business tax (70% Republika Srpska – 25% municipalities), indirect VAT (72% Republika Srpska – 24% municipalities), tax on transformation of land (70% municipalities); concessions (75% municipalities), income from rental of land owned by Republika Srpska (50% Republika Srpska – 50% municipalities), water (surface and under-surface, 30% municipalities), hydroenergy (30% municipalities).

121. In Republika Srpska, the overall financial situation of local communities is considered satisfactory by the relevant Ministries (Finance, Local Self-Government). In 2017, the 64 local communities in Republika Srpska (57 municipalities, and 7 towns) achieved a surplus of 40.43 million BAM (ca. 20 mio. Euro),

17 Local Government Initiative, Local Government in Bosnia and Herzegovina. Report on Consultations of a Joint Commission on Local Government, June 2018, p.12 (see Table I. Revenue allocation to Local Governments in BiH, on p. 13)

18 Numbers according to Local Government Initiative, Local Government in Bosnia and Herzegovina. Report on Consultations of a Joint Commission on Local Government, June 2018, p.18.

19 Local Government Initiative, Local Government in Bosnia and Herzegovina. Report on Consultations of a Joint Commission on Local Government, June 2018, p.18.

and the unallocated surplus (i.e. unspent assigned funds) amounts to 16.96 million BAM (ca. 8 mio Euro). For 2018, as of 30 September 2018, a surplus of 53.7 million BAM has been achieved, and the unallocated surplus, that is, unspent assigned funds amount to 44.78 million BAM.

122. However, Mayors in Republika Srpska comment that despite some improvements the consequences of the enormous suffering for local budgets due to the economic and financial crisis are only gradually and slowly overcome and that budgets still have not returned to pre-crisis levels. In addition, the Mayor of Banja Luka specified that two changes in the electoral year 2018 have created major reductions in the City budget: changes of the accise-policy at State level and changes regarding the income tax at Entity-level. This significant reduction in the local budget (2018: -1.4 mio BAM, 2019: - 1 mio BAM expected) will have negative effects on projects and procurement. Reportedly, those changes have been pushed through via the urgency procedure, thus not allowing for any consultation. Within the next four years, the promised Republika Srpska Law on funding of local self-government shall provide certain and stable structures.

123. 3 categories of municipalities in Republika Srpska can be distinguished according to their budgetary situation:

a. Cities and large local self-government units have stable budgets, but sometimes problems with over-investments;

b. Smaller local self-government units have much smaller budgets and often problems on the revenue side. Generally, these secondary towns and cities are in decline and “perform worse than rural areas on almost every economic indicator”;²⁰

c. Smaller local self-government units (5.000-20.000 inh.) are not necessarily poor, in particular, if they have the possibility to exploit natural resources (mining, water, forest), which permits budgetary stability, together with other resources. A high share of population still resides in these rural areas (around 60 percent).

124. Two examples illustrate the situation: Eastern Sarajevo as a – *de facto* – secondary city (despite being legally the capital of Republika Srpska) and the – *de facto* – the capital city of Republika Srpska, Banja Luka.

a. Eastern Sarajevo's budget is composed of 26% direct and indirect taxes and of 74% own revenue, i.e. generated in or by local self-government, e.g. licensing, sale of land. Most money (2/3) comes from indirect taxation, while local taxes and fees (on real estate, utilities and tourism) make up for ca. one third. The municipal budget is stable, with a current debt level of 8% (the maximum possible is 18%). A limited budget surplus every year is used for services. In 2004, the budget amounted to the total of 15 Mio BAM (7.5 mio Euro), in 2012 to 50 Mio BAM (25 mio Euro). However, according to the Mayor, almost three times as much were needed to fulfil all tasks.

b. The annual budget of Banja Luka amounts to 132 mio BAM (60 mio Euro), one third of which comes from indirect taxes (40 mio BAM / 20 mio Euro) and 50% from local taxes. Expenditure covers salaries (27%), the city administration, kindergardens, sport facilities, water supply and local enterprises; 1/3 (ca. 50 mio BAM) is spent for capital investments.

125. The structure of financial resources in the Federation of Bosnia and Herzegovina is complex, too. Revenue mainly comes from indirect taxation (around 60-70%), while direct taxes, most of them paid to Cantons and municipalities, only make up for a small portion of the Federation of Bosnia and Herzegovina budget. In addition, borrowing makes up for additional funds (see below). For municipalities in the Federation of Bosnia and Herzegovina, 30 percent of their budgets comes from indirect taxes, 9 percent (on average) from direct taxes, over 11 percent from property taxes, the rest are grants and transfers by the governments and other sources of income. A Federation of Bosnia and Herzegovina Law on financing of local self-government units has been a demand by associations; in the meantime, a draft has already been prepared, but a working group needs to be established (after the Federation of Bosnia and Herzegovina government is formed).

126. The Brčko District raises local taxes (ca. 60 mio. Euro) and receives a share of VAT and indirect taxation (which is distributed on a monthly basis). It is considered a stable situation, in which 3,55% are guaranteed, for the first 5 years by legislation and an OHR decision, now through a gentlemen's

²⁰ Local Government Initiative, Local Government in Bosnia and Herzegovina. Report on Consultations of a Joint Commission on Local Government, June 2018, p.18

agreement. Almost no credits or debts. 35 mio Euro (1/3 of budget) are spent on salaries, including judiciary and the education sector.

Budget procedures

127. The competences of the Republika Srpska Ministry of Finance are prescribed by the Law on Republic Administration (Articles 18 and 34) and Article 7 of Republika Srpska Law on Tax Procedure. The process of drawing up the Republika Srpska budget shall be based on the Document of Framework Budget presented by the Republika Srpska Government for a three-year period, which defines policies and priorities (regulated by Republika Srpska Law on Budget System). It represents a preliminary draft budget for the following year and contains mandatory expenditure ceilings for any budget user.

128. In recent years, the Republika Srpska has conducted a series of budget reforms in co-operation with international institutions, with the purpose of strengthening administration and planning in the field of public finance. Budgeting in Republika Srpska moved from a traditional budget planning process towards the principles of program planning based on programs defined according to policy goals and intended results.

129. According to the Republika Srpska government, the Republika Srpska Minister of Finance does not provide local authorities with budgeting guidelines on prioritization, programs, policies etc. Instead, those guidelines are already determined by legislation: the Republika Srpska Law on Budget System (OG RS, numbers 121/12, 52/14, 103/15 and 15/16), the Document of Framework Budget, the Republika Srpska Law on Borrowing, Debt and Guarantees (OG RS, numbers 71/12, 52/14 and 114/17), the RS Law on Local Self-Government (OG RS, 97/16), the Law on Fiscal Responsibility (OG RS, numbers 94/15 and 62/18), and by the Decisions on Local Communities' Budget Execution.

130. After preparation by the municipalities, the Republika Srpska Ministry of Finance (MoF) adopts recommendations on the draft budget, e.g. on the salary bill, on (shared) indirect revenues or on allocation of sufficient resources for debt-serving (if the ceiling for borrowing is exceeded). Municipalities are bound by these, but Councils adopt the budget and the accountability rests with the Mayor (who takes the final decision). Quarterly reports on the implementation of the budgets have to be submitted to the Ministry of Finance. Only 1% of the recommendations are not followed, according to the MoF; in those cases, the Ministry of Finance activates the budgetary inspectorate to examine the reasons.

131. The budgetary procedure in the Federation of Bosnia and Herzegovina is similar: the Federation of Bosnia and Herzegovina Ministry of Finance has to give an opinion on the revenue-side of Cantons prior to the adoption of their respective budgets, the same is the procedure vis-à-vis local authorities. These opinions are not binding and comment on whether ministerial guidelines and projections have been respected by the local authority in adopting a draft-budget. A Fiscal Co-ordination Body, composed of the Federation of Bosnia and Herzegovina Ministries of Finance and of the Ministries of Finances from the 10 Cantons meets at least 2-3 times per year; it also includes a representative from the Association of local authorities of the Federation.

Municipal property

132. Each municipality has its own property. There have been problems with military property (formerly JNA) and surrounding territory, which was not registered in the land registry. Another problem is related to construction land, as urban planning is often a shared power between a local self-government unit, Canton and Entity, while in 2003, the High Representative has imposed a spatial plan on construction land at State level, for which the municipality is responsible. Cantons oppose this.

133. The land registry is an Entity institution; however, it is quite peculiar that a local self-government unit has to pay for information it needs for its own, public purposes (such as planning). A decentralisation of the registry might be considered.

134. Bosnia and Herzegovina is rich in natural resources, in particular water, forests, mining. In both Entities, property rights are vested with the Entities, whose ministries are tasked with the management of natural resources (in the Federation of Bosnia and Herzegovina also the cantonal ministries which are accused of strongly interfering and impeding the use of benefits). Municipalities benefit from a share of the revenues arising from the exploitation by public companies or concessions. The local self-government Associations argue that local self-government units should be allowed to issue concessions in 14 areas.

135. In the opinion of the rapporteurs, natural resources should belong to municipalities. In 2002, the Federation of Bosnia and Herzegovina adopted a Law on Forestry transferring the managements of

forests to the cantonal ministries (in Republika Srpska, there is a special Forestry Department within the Ministry of Agriculture, Forestry and Water Management). However, in 2009, the Federation of Bosnia and Herzegovina Constitutional Court annulled the law because of violation of the Charter and of the Federation of Bosnia and Herzegovina Law on Principles of Local Self-Government. So far, no new law has been adopted at the Federation of Bosnia and Herzegovina level; thus, 8 Cantons have adopted their own legislation. In view of the rapporteurs, the legislation regarding Forestry should be adopted in order to implement the Constitutional Court decision.

136. In Republika Srpska, Ministries consider the financial resources at disposal of local authorities to be in accordance with the responsibilities the latter are obliged to fulfil. In case financial resources are not sufficient, the local authorities conduct a due-diligence, which aims to identify ways for overcoming the lack of financial resources. However, 70% of property is held by 6 cities, which explains that the latter are not indebted. Controversies regarding property are quite frequent. Municipalities are in conflict with schools and other institutions as well as with cooperatives (who managed huge areas of farmland) regarding the ownership of formerly public property.

137. The rapporteurs consider that the requirements of Article 9, paragraphs 1 and 2, are not respected. They are concerned about the lack of adequate financial resources which are commensurate to the tasks local authorities have to fulfil.

138. The rapporteurs further suggest following up the legislative situation in both Entities: while a Republika Srpska Law on funding of local self-government shall be adopted within the next years providing certain and stable structures, in the Federation of Bosnia and Herzegovina, a working group needs to be established to discuss the draft Federation of Bosnia and Herzegovina Law on financing of local self-government units. The rapporteurs call upon the competent authorities to provide for this necessary legislation as soon as possible to improve the financial situation of local self-government in both Entities and ensure compliance with Articles 9.1 and 9.2 of the Charter.

139. Besides, more diversification in the sources of revenue of local authorities in Bosnia and Herzegovina, in particular for smaller municipalities, appears fundamental to bring the situation in line with Article 9.4.

3.8.2 **Article 9.3** (local taxes and charges)

140. Since 2017, the municipalities in Republika Srpska are responsible for the collection of its taxes and fees. In Republika Srpska, there have been plans (and consultations) for new types of revenues, e.g. real estate or property tax. However, the consulted local representatives seem to have been more interested in exceptions and exemptions rather than in legislative change permitting greater discretion for local self-government units, e.g. through the power to set rates by means of local decisions.

141. In the Federation of Bosnia and Herzegovina, there are different opinions regarding the adequacy of municipal finances. It has been stated that this is above all a problem for smaller and underdeveloped municipalities, which are hardly self-sustainable. Celic in North Bosnia, with 10.000 inhabitants, mainly farmers, has been mentioned as example, where the budget only covers a basic minimum (salaries, street lights and basic utility infrastructure), while funds for development lack completely. Thus, the municipality is completely dependent on grants from the higher level of government.

142. The municipal revenues in the Federation of Bosnia and Herzegovina are largely determined by higher levels of government. Local authorities do not have any role in the collection of revenue, which is carried out by the Federation of Bosnia and Herzegovina or Cantons. Only a small segment is left for municipal decision, i.e. local taxes and fees with the two major local charges on citizens being related to land-use (KGZ) and to fees for services.

143. Another problem is that the proportional relations for determining financial resources were established a long time ago and can hardly be corrected or changed due to the high number of political actors with diverging interests. This also concerns Cantons: while Sarajevo Canton, with approximately 350-400.000 inhabitants, has a budget of ca. 800 mio. KM (ca. 400 mio Euro), Tuzla Canton, with 500-600.000 inhabitants, only disposes of 350 mio. KM annually (ca. 170 mio Euro). Despite the higher costs of being the capital city, this striking imbalance leads to disadvantages for residents in the Tuzla area, when it comes to the provision of services. Meetings of Prime Ministers of the Cantons for greater co-ordination have not given any success and are now been discontinued.

144. The rapporteurs observe that the requirements of Article 9.3 are only partially met and giving more powers to local authorities to decide on local sources of revenue appears necessary to strengthen their fiscal autonomy.

3.8.3 Article 9.5 (financial equalisation)

145. Based upon Article 76 of the Republika Srpska Law on Local Self-Government, the distribution of revenues to municipalities depends on their level of development. Thus, Republika Srpska local self-government units are subdivided into 4 categories according to their development status, means and potential (Republika Srpska National Assembly decision on criteria for assessment of the development level, 2016) as (a) developed (cities), (b) medium developed, (c) underdeveloped and (d) extremely underdeveloped municipalities. The situation of the latter raises the question of equalisation mechanisms as there is no cure for the shortage of funds, because their population is not sufficient for generating revenue. Equalisation is mainly achieved through transfers of special grants by the Republika Srpska Ministry of local self-government (2.3 mio KM in 2018) according to criteria in the 2015 Rulebook, which are for each municipality and respectively previous year: (1) total per capita revenues of registered companies (35%); (2) total budget revenues (25%); density of population (20%) and unemployment rate (20%). In addition, other grants cover specific other areas, such as SMEs, agriculture, environment, infrastructure, etc.²¹

146. The Federation of Bosnia and Herzegovina budget co-finances lower levels with 10-20 mio KM p.a. Although there is neither a formal, legal obligation, nor a formalized equalisation system (considered necessary by interlocutors for the future), government subsidizes Cantons financially under strain by allocation and takes decisions on grants. Grants are received by local authorities in the form of financial assistance, i.e. co-financing of projects, e.g. construction, school buildings or specific-purpose grants. Local authorities have to report justifying the expenses 6 months after. Regarding Cantons, many interlocutors lamented careless financial management and, in general, the difficulty to establish general criteria; also, there are no priorities or guidelines. Instead, need is assessed from year to year.

147. The Federation of Bosnia and Herzegovina Law on disbursement of public revenue, which sets up criteria for lesser developed areas, simplifies the distribution by relying on 4 fundamental criteria: (1) population-size; (2) territory-size; number of pupils in (3) primary schools and (4) secondary schools. According to some interlocutors, these simplified criteria set an additional cause for inequality through the use of different coefficients for calculating the needs of a local population (ranging from 1.1 to 2.0, e.g. Sarajevo is calculated with 1.5). This leads to advantages with social protection and health services better in Sarajevo and worse in the periphery. Therefore, it shall be reformed (technical mission of IMF, 2018): a new draft law shall include equalisation elements for "vulnerable areas" and higher indirect taxes (for differentiation, while direct taxes, in the Federation of Bosnia and Herzegovina competence, will remain equal everywhere). However, it is now up to the new government to take up the proposal and to update the current law, including the criteria (demographic numbers, number of pupils etc.). So far, the issue of underdeveloped areas is addressed by the Cantons.

148. The problem of migration will make new equalisation criteria and procedures even more urgent. Many interlocutors shared their concerns regarding this problem. In recent years, many (more) people leave the country; this demographic trend, together with the urbanization of the last 20 years, concentrated on few centers (in particular Sarajevo and Banja Luka) creates great difficulties, above all for rural areas and secondary towns and cities in the periphery, as the only potential for development is people and population growth. Bigger cities are still growing, but mayors estimate that there are more than 100.000 people leaving the country every year, mostly due to the (feeling of) uncertainty created by the "frozen conflict". By contrast with the past, not only workers ("*Gastarbeiter*"), but whole families are leaving. In Banja Luka the number of unemployed people has dropped by 5.000 every year and there is already a lack of qualified workers in some professions (e.g. bus drivers). While the reduction of unemployment is certainly a positive factor, the reduction and ageing of the population result in a smaller tax and revenue base and higher costs for essential service (in particular health care and care for the elderly).

149. The rapporteurs consider that Article 9.5 is only partially fulfilled, as the current systems either rely too heavily on special grants (Republika Srpska) or are in need of reform (the Federation of Bosnia and Herzegovina). Thus, the introduction of a formal, legal obligation for development and equalisation should

21 See Local Government Initiative, Local Government in Bosnia and Herzegovina. Report on Consultations of a Joint Commission on Local Government, June 2018, p.69 (Box 20: The RS Grant System to Undeveloped and Extremely Undeveloped Municipalities).

be considered together with the establishment of a formalised equalisation system after careful examination of the currently used formula and criteria in order to adapt them to a rapidly changing context (e.g. emigration and demographics).

3.8.4 **Article 9.6** (consultation on allocation of financial resource)

150. In Republika Srpska, specific provisions in legislation guarantee and oblige institutions to consult local self-government units on issues relevant to the position and role of local self-government. Article 73, point 2 of Republika Srpska Law on Local Self-Government (O.G. RS 97/16) states, inter alia, that local self-government units are to be consulted about any issue regarding provision and distribution of resources, as well as about any amendments to the Law, which may affect the financial status of a local self-governing unit. Article 151, point 2 of the same law specifies that in the process of drafting legislation or other regulations concerning the position, rights and duties of local self-government, the respective organs are obliged to submit the draft laws or proposals and other acts of general application to the Association of Local Authorities and local self-government units for consultation. A memorandum which regulates the (means of) co-operation in the field of financing local self-government units has been signed between the Republika Srpska Government and the Association of Local Authorities. However, some interlocutors pointed to too many changes which had occurred in the tax sector producing instability and uncertainty of revenue sources.

151. In the Federation of Bosnia and Herzegovina the legislative situation is similar. Article 34 of the Federal Law on Principles of Local Self-Government provides that “The legislator shall be obliged to obtain the opinion of the Association of Municipalities and Towns on all issues that concern allocation of funds, as well as on all changes to laws that may affect financial obligations of local units of self-government.” However, as the rapporteurs noted under analysis of Article 4.6 (see supra para.77), some shortcomings remain in the practice of consultation, such as on fee issues.

152. Therefore, the rapporteurs conclude that the situation of consultation on allocation of budgetary resources in Bosnia and Herzegovina seems compliant in law, but there is still room for improvement in practice to bring it fully in line with Article 9.6.

3.8.5 **Article 9.7** (grants, not to be earmarked)

153. In Republika Srpska, local self-government units do not easily get loans for financing their investments from the Republika Srpska budget. Considerable resources are planned for capital investments of local communities, from the Republika Srpska budget for 2018 on the position of public investment (as of 30 November 2018, 25.854 million KM has been distributed, i.e. ca. 12.5 million Euro). In addition to resources from the Republika Srpska budget, local self-government units receive resources for capital projects from the Republika Srpska Government and resources from clearing debt. Two types of transfers by the Republika Srpska local self-government Ministry can be distinguished: while ordinary transfers are not purpose-specific, extraordinary transfers can be conditioned by the Ministry.

154. In the Federation of Bosnia and Herzegovina, direct cantonal grants to municipalities are the rule, as partial investments covering 40-50% of the costs, with municipalities obliged to report on the expenditure. In numerous cases, partnerships with International Organisations, such as World Bank, UNDP; GIZ provide additional funds for investments in schools, energy efficiency etc.

155. The requirements of article 9.7 are satisfied, according to the rapporteurs.

3.8.6 **Article 9.8** (borrowing, access to capital market)

156. Republika Srpska government does not impose limitations on indebtedness; these are regulated by the Republika Srpska Law on Borrowing, Debt and Guarantees (O.G. RS, numbers 71/12, 52/14 and 114/17) which sets a ceiling for borrowing. This favours cities, while smaller municipalities can hardly ask for large funds, as their small budgets cannot sustain serving debts.

157. In the Federation of Bosnia and Herzegovina, borrowing makes up for additional funds for capital investment, with lower levels relying predominantly on domestic means (some also issue their own bonds), and the Federation of Bosnia and Herzegovina relying on domestic and international borrowing as well as on issuing treasury bills and long-term bonds. However, due to the general improvement of the economic situation, there is currently less need to borrow.

158. Currently, the Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina is a part in court proceedings against the Federation of Bosnia and Herzegovina regarding the repayment of loans to the IMF, which is served as a priority before the distribution of resources to Cantons or municipalities. Thus, the Association claims that the repayment resulted in a reduction in funds for local government units from indirect taxes.

159. The requirements of Article 9.8 appear as generally satisfied; however, the situation in the Federation of Bosnia and Herzegovina regarding the repayment of IMF loans should be followed due to concerns regarding the consequence of reducing funds for local government.

3.9 Article 10 – Local authorities’ right to associate

Article 10 – Local authorities’ right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

160. Article 10 regards forms of co-operation among municipalities (10.1.), their entitlement to forming and belonging to (international and domestic) associations on local government (10.2), and to engage in cross-border co-operation (10.3). Considering the peculiar institutional structure of BiH, it seems appropriate to discuss paragraphs 1 and 3 together.

3.9.1 Article 10.1 and 10.3

161. Various forms of intermunicipal co-operation (IMC) exist within the Entities, in particular regarding the organisation and maintenance of infrastructure, such as local roads, water and waste management, as well as schools. However, in case of larger or more important projects, most of these are managed directly by the Cantons (in the Federation of Bosnia and Herzegovina) or by the Republika Srpska government, respectively.

162. Although there are no specific incentives for promoting them, some forms of inter-Entity co-operation between local authorities exist, too, often with the objective of economic development and within the framework of projects funded by international donors (e.g. UNDP, Council of Europe). However, different regulations in the Entities have to be respected and often create considerable obstacles. The more so, as inter-entity co-operation is not actively promoted and encouraged and thus difficult to realise in practice: thus, co-operation is possible, but remains rather the exception.

163. Thus, day-to-day services across the Inter-Entity Boundary Line most often either do not function well or are totally lacking. The Republika Srpska Ministry pointed to the difficulty of finding the right interlocutor on the Federation of Bosnia and Herzegovina-side, as there is no local self-government ministry in the Federation of Bosnia and Herzegovina (sometimes the Ministry of Justice steps in). It seems that only where foreign donors support co-operation financially, cross-Inter-Entity Boundary Line co-operation can develop, e.g. the Swiss-funded water supply-system for the Una-Sana-region. A telling example regards the situation of commuters between East Sarajevo (Republika Srpska) and the City of Sarajevo (Canton Sarajevo, Federation of Bosnia and Herzegovina) situated in two adjacent and neighbouring valleys. Taxis crossing the Inter-Entity Boundary Line (running between the two cities) have to stop and to take down their taxi signs, if they do not want to risk a fine for running a public service not recognized by the legislation and authorities of the other Entity. The same is true for public transport, which on each side stops just before the Inter-Entity Boundary Line. The rapporteurs were surprised to hear that some interlocutors considered this situation as normal saying: “of course, there is no direct bus-line connecting the two cities”. The interlocutors explained the situation by different legislations regarding public transport in the two Entities. While public transport is part of the powers of municipalities, the Republika Srpska Law on general transport appears to be an effective obstacle for organizing cross-entity public transport as a service for commuters. This bewildering fact (and attitude) is even more strange considering Article 1.6 of the Dayton Constitution which provides for the establishment of a Common Market in BiH; this provision is at least not fully implemented, creating disincentives for citizens and enterprises. In contrast with the information received by the concerned local authorities, the Republika Srpska Ministry of local self-government told the delegation that the two cities could resolve the issue by coming together and

concluding an agreement. It is true that such agreement had been reached after the war regarding the water supply. Again, it appears that good will would make bottom-up co-operation possible.

164. Co-ordination problems between the Entities also regard the police forces, with the difficulty to guarantee the continuation of a car chase across the Inter-Entity Boundary Line in the (frequent) case of car-thefts, in particular in Sarajevo, where the Inter-Entity Boundary Line is close, but also the guarantee of health care-services for citizens from other areas (the guarantee of the latter is difficult even between some Cantons).

165. There are some significant developments with municipalities themselves organizing and agreeing on the modalities of co-operation. Examples are the co-operation between the municipalities of Tesanj, Teslic and Zepce, as well as Sarajevo and East Sarajevo jointly hosting the European Youth Winter Games (EYOF) in February 2019, i.e. a major international sport event organized together across the Inter-Entity Boundary Line. This event, financed mostly by the Canton Sarajevo (4.5 mio KM plus infrastructure), can be considered a positive example for what can be done, if there is political will on both sides.

166. The Federation of Bosnia and Herzegovina Ministry of Justice and the Republika Srpska Ministry of Public Administration and Local Self-Government suspended the implementation of the project "Beacon Scheme" conducted by the Federation of Bosnia and Herzegovina and Republika Srpska Associations, where municipalities had a chance to compete in various areas and topics and were awarded prizes for their best practices. The project promoted inter-municipal co-operation of all local self-governments in BiH with a competitive approach. The project, which had been run for seven years was recently suspended due to a lack of funds (35,000 Euro per Ministry and year).

167. Cross-border co-operation has been successfully promoted (and financially supported) by the EU and the Council of Europe, e.g. in a trilateral Interreg program (launched in 2007), and results in a number of projects with Serbia, Croatia and Montenegro. In the Drina-river region, the areas of co-operation comprise secondary schools, hospital and transportation as well as twinning agreements. An Action Plan between Serbia and Republika Srpska shall establish priorities. The Herzegovina-Neretva Canton is one of the co-founders of the Adriatic-Ionic-Euregio, established in 2006.

168. The rapporteurs welcome the engagement in cross-border co-operation projects and consider the requirements under Article 10.1 and 10.3 satisfied. However, they call upon the authorities in both Entities to promote and support the co-operation of municipalities across the Inter-Entity Boundary Line by creating the necessary positive environment for those activities in order to facilitate the provision of services and to foster economic development.

3.9.2 Article 10.2

169. Bosnia and Herzegovina has two independent Associations of Municipalities and Cities (AMCs), one in and for the Federation of Bosnia and Herzegovina and the other one in and for Republika Srpska. The Association of local authorities of Republika Srpska consists of 64 local governments, whereas the Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina represents 80 local governments, plus Brčko District. They play a crucial role in advocating for changes in legislation and funding on behalf of municipalities, hold regular meetings and frequently organize discussions for their members and the public. They also provide professional services to municipalities primarily in the area of legal and fiscal support and EU integration. A jointly funded project by the Swiss and Swedish Governments aims at strengthening capacities and activities over three phases in the period from January 2016 to December 2027, with a total investment of 5.000.000 CHF. The project will be realized in partnership of the Swiss Agency for Development and Co-operation (SDC) and the Swedish International Development Cooperation Agency (SIDA).

170. The Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina repeatedly criticized the authorities for not having been sufficiently involved in the reform processes, by contrast with the Congress's last recommendation.

171. The situation of the associations is in compliance with Article 10.2.; their representative role should be continuously and constructively used in consultation processes, in particular where reforms are planned.

3.10 Article 11 – Legal protection of local self-government

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

172. The effective legal and judicial remedy for municipalities as a guarantee for local self-government depends on the issue raised. For many issues, the ordinary jurisdiction is competent; municipalities enjoy locus standi in courts in order to defend their rights, property or interests, just as any other legal person. Therefore, cities and municipalities have access to regular courts, where they can defend their interests and rights. In this matter, the delegation did not hear any complaints from interlocutors.

173. Other issues can be brought by the municipalities to the Constitutional Courts of the Entities, which can decide with “final and binding” judgments (for local self-government, see e.g. Articles IV.C.3 and 10 (3) of the Federation of Bosnia and Herzegovina Constitution). There are constantly controversies involving local authorities in front of the Constitutional Courts of the Entities, most of them regarding the obligation to consult on legislative proposals concerning local authorities. In particular, many laws in the Federation of Bosnia and Herzegovina have been declared unconstitutional for violation of consultation requirements. Due to the competence of the Constitutional Courts of the Entities, the Constitutional Court of BiH has declined its own competence in 10 cases which included, among others, also issues related to local self-government.

174. In fact, mirroring the absence of any provision on local self-government in the Constitution of BiH, the Constitutional Court of BiH does not have any competence in this field. However, some of its rulings on electoral matters can influence the situation of local government, e.g. the Ljubic case of 1.12.2016 (U 23/14) which strongly affects the situation in Mostar. After the expiry of a 6-months deadline without action by the legislator, the unconstitutional provisions have been eliminated creating a legal vacuum and making action by the legislator a precondition for holding local elections in Mostar (see below).

175. In front of the Federation of Bosnia and Herzegovina Constitutional Court, in the ten years between 2009 and 2019, 99 cases concerned local self-government: 57 decisions stated a violation of the right to local self-government, 14 found that there was no violation, 9 cases were inadmissible or withdrawn and 11 cases are still pending. Most cases concern the violation of Article 4 of the Charter or the lack of consultation. A second major group of cases concerns the imposition of duties and tasks without sufficient funding, in contrast with the principle of commensurate financing; an example is the provision by allowances for firefighters by cantonal legislation without consulting the municipalities whether they can afford these and without providing additional funds. And finally, the non-harmonisation of cantonal local self-government legislation with the Federation of Bosnia and Herzegovina Law on local self-government principles. For instance, the Sarajevo Canton did not yet adopt its own law on local self-government and after a complaint by Mayors and the Association of Municipalities, in 2011 the Federation of Bosnia and Herzegovina Constitutional Court stated the need to legislate. However, this decision has not yet been implemented.

176. Problems with the lack of respect and implementation of the judgments of the Federation of Bosnia and Herzegovina Constitutional Court regarding the protection of the rights to local self-government continue: until December 2017, 44 decisions of the Federation of Bosnia and Herzegovina Constitutional Court have not been not executed. As an example, despite a judgment from 2009 in favour of the Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina together with the municipality of Konjic, amendments to the Law on Forestry have not yet been adopted. The judgment obliged the relevant Ministry to harmonise the law in question in co-operation with the Association of Municipalities and Cities of the Federation of Bosnia and Herzegovina, within a period of six months which has passed without anything been done. As forests are a significant municipal resource and source of income, this is of great concern.

177. But Constitutional Courts cannot enforce their own judgments. Although there are provisions in the criminal codes sanctioning non-enforcement of judicial decisions, no action has been taken on their basis, as elements of intent would have to be proven, which would – with regard to the legislator – be interpreted as limiting the principles of the free mandate and of the separation of powers. The real problem lies in the political dimension of these cases which would require wider and profound changes for which there is no political agreement, in particular regarding the current system of ethnic representation. Thus, even legal void seems more acceptable (as it guarantees the *status quo*) than reforms which would necessarily have to touch and shift balances. However, the legal void may create considerable financial consequences: a 2009 complaint against the Sarajevo Canton regarding preschool education led in 2011 to a judgment in

favour of the municipalities. That this decision has not been enforced is certainly due to the cost of the measure for the budget of Sarajevo Canton: enforcing the decision means to distribute 300 Mio KM to local self-government units.

178. The rapporteurs underline that it is a matter of great concern that judicial protection through the Federation of Bosnia and Herzegovina Constitutional Court is in many cases not effective, as court decisions are not implemented.

179. By contrast with the situation in the Federation of Bosnia and Herzegovina, in front of the Republika Srpska Constitutional Court there are hardly any cases regarding the conflict over jurisdiction, while there are numerous initiatives by citizens challenging local decisions encroaching upon their rights in ordinary courts. The most controversial issues concern utilities, infrastructures, publicly owned land or planning decisions (development and zoning plans). The problem often seems to consist in mistakes in implementing legislation, as claims are often confirmed for procedural reasons. While no violation has been found regarding the constitutionality of the Republika Srpska Law on local self-government, some violations have been detected in decisions and general acts of administrative supervision (Ministry of local self-government) and ordinary courts.

180. Following the German model, there is also a direct complaint of municipalities to the Republika Srpska Constitutional Court for alleged violation of the right to local self-government, but the delegation was informed by the Court that this is not used in practice, as municipalities seem to prefer political channels through their Association, and voluntary harmonisation is often an alternative to a complaint before a court. The judicial means for obtaining guarantees of local self-government vis-à-vis the Ministry, e.g. regarding the exercise of inspection powers, are also not exercised in practice; it seems that again the political dialogue with the Ministry is preferred by local self-government units. The dominance of the same political party at both levels (municipalities and Republika Srpska government), may play a role here.

181. In light of the preceding considerations, the requirements of Article 11 appear to be formally respected.

4. ANALYSIS OF THE SITUATION OF REGIONAL DEMOCRACY IN THE LIGHT OF THE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

182. Considering the structure of the country, with its two constituent “entities” (and Republika Srpska having a unitary structure), the rapporteurs consider Cantons as a – functionally – intermediate tier between the Entity level and municipalities. Thus, for the purpose of the following detailed analysis of the situation of regional democracy, Cantons will be treated as equivalents to “Regions”.

4.1. Main developments concerning regional democracy and constitutional scheme for regional democracy

183. While Republika Srpska is a two-tier unitary structure, the Federation of Bosnia and Herzegovina, established prior to the Dayton Peace Agreement with the Washington Agreement in 1994, is itself a federal system consisting of 10 Cantons with their own Constitutions, Parliaments and Government. Some of Cantons have either a Bosniak or Croat majority, while two Cantons do not have a clear majority of one group. The Cantons differ strongly in size: Canton 10 is the biggest in territorial size (4.934.000 km²), but has just over 82.000 inhabitants, while the two smallest Cantons (Posavina Canton and Bosnian Podrinje Canton) count only 41.200 and 33.700 inhabitants, respectively. Sarajevo and Tuzla are the most populous Cantons with 420.000 and quasi 500.000 inhabitants, respectively. This scheme is repeated within most Cantons, e.g. Herzegovina-Neretva Canton (92.000 inhabitants) comprises 9 municipalities, but more than half of its population resides in the City of Mostar (46.752 inhabitants).

184. In March 2005, the Venice Commission suggested the abolition of the Cantons as a “radical” solution, “thereby creating a situation similar to that in Republika Srpska”; should this prove impossible in political terms, “a step in the right direction” would be to concentrate the legislative function at the Federation of Bosnia and Herzegovina level, “making the Cantons structures of a mainly executive nature”, which would rationalise the administration at both, Federation of Bosnia and Herzegovina and cantonal levels.²² However, these suggestions have led nowhere in the political debate. In fact, no decentralization reform

²² Commission for Democracy through Law (Venice Commission), Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, adopted at its 62nd plenary session (Venice, 11 and 12 March 2005) (Doc. CDL-AD(2005)004), para. 51.

has ever been carried out nor is one planned, neither for the State of Bosnia and Herzegovina, nor in the Federation of Bosnia and Herzegovina. This is due above all to constitutional reasons, as any reform would affect the overall constitutional and federal structures as enshrined in the international agreements which ended the war (Washington Agreement, 1994 for the Federation, and Dayton Peace Agreement, 1995, for the State of Bosnia and Herzegovina).

4.2. Internal organisation

185. All Cantons enjoy the same constitutional status as constituent parts of the Federation of Bosnia and Herzegovina. However, the factual differences between the Cantons are striking with regard to their economic, demographic and geographical situation. Many Cantons consist of a small number of municipalities, their number ranging from 3 (Bosnian Podrinje Canton Gorazde) to 13 (Tuzla Canton); the same is true for the population which ranges from 25.336 to 477.278 inhabitants.

186. The constitutions of four cantons continue to use the term "counties" ("županije") despite the fact that in 1998 the Federation of Bosnia and Herzegovina Constitutional Court declared the use of that term unconstitutional (in addition, in the constitutions of those four cantons, the official language of the Bosniak people in BiH is not referred to as "Bosnian" language, but as non-existent "Bosniak" language). Already on 7 July 1998, the Constitutional Court of the Federation of Bosnia and Herzegovina clearly established that the use of the term "counties" ("županije") in the articles of the Constitution of the West Herzegovina Canton is not in accordance with the Constitution of the Federation of Bosnia and Herzegovina. This decision is especially symbolic since the term "counties" is used (instead of "canton") in other three cantons in the Federation of Bosnia and Herzegovina, namely Posavina Canton, Herzegovina-Neretva Canton and Canton 10. 19 years after, things have not changed and official bodies still use the unconstitutional term.

4.3. Analysis of the situation of regional democracy on an article by article basis, from the perspective of the Council of Europe Reference Framework for Regional Democracy

Regional competences

187. The Federation of Bosnia and Herzegovina Constitution establishes the cantonal competencies as residual competencies (Article III.4); they are further defined in the Cantonal Constitution (e.g. Article 12 of Canton Sarajevo Constitution). But regarding the exact powers exercised by the Cantons some uncertainties remain. On the one hand, there is an area of considerable overlap, as Cantons share competencies with the Federation of Bosnia and Herzegovina (Article III.2 Constitution of the Federation of Bosnia and Herzegovina and Article 13 of Canton Sarajevo Constitution). If they exercise a power through their own legislation, they are obliged to harmonize the latter, if the Federation of Bosnia and Herzegovina subsequently adopts legislation in the same field; e.g. forestry. In the latter case the Federation of Bosnia and Herzegovina has an obligation to consult with the concerned Canton(s), Article III.3 (1)-(3); however, this obligation is not defined by a special law. The uncertainty regarding joint responsibilities of Federation and Cantons inevitably leads to conflicts and different regulations in the same areas. Consultation on draft laws takes place but is not always sufficient for resolving controversies. On the other hand, Cantons tend to absorb the competencies of local authorities for organising services at a wider, more comprehensive level without necessarily reaching economies of scale. The main functions of Cantons are education, health care, public order and safety, courts. Typically, utility services are run by the Cantons (water supply, heating); some Cantons also manage public transport. On average, 40% of cantonal budgets are spent on salaries. For instance, the Sarajevo Canton employs ca. 25.000 staff for administration, in the public health structures, in schools and educational facilities, public transport etc.

188. Cantons have their own Assembly. Specific representation of the constituent groups is guaranteed by institutional and procedural rules, e.g. that the Speaker of the Assembly and the Prime Minister have to be from different groups and that Deputy-Speakers also have to be from different groups. All decisions are taken by simple majority, except from constitutional amendments and the appointment of government which require a 2/3 majority.

189. General principles regarding the remuneration of staff are regulated by the Cantonal Law on Salaries, in line with the Federation of Bosnia and Herzegovina Law on Salaries (e.g. prescribing a co-efficient for the calculation of salaries). The Canton decides autonomously on the remuneration of Assembly members. In Herzegovina-Neretva Canton the members of the Cantonal Assembly receive 900 Euro per month, twice the average salary of civil servants at the Federation of Bosnia and Herzegovina level (ca. 450 Euro).

Relations with other sub-state territorial authorities

190. In some Cantons, in particular in Sarajevo Canton, an assessment of the efficiency of management of functions has begun in order to transfer as many competencies as possible to local authorities without losing in efficiency. Some municipalities have a surplus in their budgets and are easy with their expenditure, while Cantons have to cope with a large number of competencies and a high number of staff (and, consequently, with the salaries). An example for the relations between Cantons and Municipalities is the law on municipal fees which are collected at cantonal level. In order to implement a BiH-wide reform agenda of creating a more business-friendly environment, a new law on cantonal taxes had been adopted, which required staff for tax-collection at cantonal level and created worries at municipal level regarding the compensation of lost revenue, while at the same time producing a rather insignificant reduction of taxes for entrepreneurs, which was not sufficient for being an incentive for start-ups. This led to an initiative in co-operation with the Association of cities and towns for an amendment of the law on public revenues in order to create more favourable conditions for entrepreneurs and start-ups.

Involvement in the State decision-making process

191. Cantons determine the composition of the Federation of Bosnia and Herzegovina House of Peoples and are involved in the legislative process at the Federation of Bosnia and Herzegovina level through this second chamber.

Supervision of regional authorities by State authorities

192. The Cantons exercise oversight through inspections regarding administrative procedures in the municipalities, but they do not function as appeal authorities for citizens. Appeals or objections against decisions are dealt with in Courts. The Federation of Bosnia and Herzegovina Audit Office is tasked with supervision and assessment of the financial management of Cantons. The audit reports of cantons are sent to the auditees/cantonal assemblies and to the Federation of Bosnia and Herzegovina Government and to the Federation of Bosnia and Herzegovina Assembly. However, recommendations in these reports are not binding. According to the Federation of Bosnia and Herzegovina Audit Office, requests for criminal prosecution in cases of individual responsibility are (too) often not taken up by the Prosecutors' Offices due to insufficient evidence, e.g. over the last two years, 7 reports to Prosecutors' Offices regarding public procurement. Thus, the Audit Office argues that public procurement legislation needs a systemic overhaul; in particular regarding the public procurement agency and the review office (complaints seem too often rejected for formal reasons).

Protection of regional self-government

193. Cantons can defend their prerogatives before the Federation of Bosnia and Herzegovina Constitutional Court.

Right of association

194. Cantons have the right to cooperate, but do not engage much in this. However, an exception is increased co-operation between the Cantons with Croat majority-population. This co-operation has a clear political dimension, as Croats lament their unequal treatment as a constituent people due to the lack of a "third entity" (i.e. a Croat-dominated political territorial body). The ministries for education, science, culture and sports of the Croat majority Cantons have developed and prepared a school curriculum for nine-year primary schools in Croatian language in BiH. A "Croat Community Herzeg-Bosnia (HZHB)" is providing a political and cultural platform actively supporting this co-operation between Croat majority Cantons. In April 2019, a private media company, Radio-Television Herzeg-Bosnia, received a broadcasting license (the name is a reference to the secessionist project of the self-proclaimed administrative-territorial unit of Croats during the war in the 1990's). In general, Cantons are much criticized for being a redundant or superfluous, but costly layer of government (in particular the smaller Cantons). Although demands for their abolition or their merger in order to create larger, more efficient areas are popular, such demands do not have sufficient political support in the institutions and constitutional change is necessary at two levels (Federation of Bosnia and Herzegovina and Canton), at least, for changing the institutional structure of the Federation of Bosnia and Herzegovina.

External relations. Trans-frontier co-operation

195. Each Canton can conclude agreements with countries and international organisations only with the approval of the Federation of Bosnia and Herzegovina Parliament. Together with municipalities (see above), some Cantons engage in cross-border projects and programs.

4.4. Regional Finances

196. Local government (Cantons and municipalities) accounts for two thirds of public expenditure in the Federation of Bosnia and Herzegovina. Cantons do not gather or distribute resources autonomously, as most of these are defined by State or the Federation of Bosnia and Herzegovina legislation (Value Added Tax, excise duties and custom fees, Federation of Bosnia and Herzegovina Law on entitlement to public revenues, Federation of Bosnia and Herzegovina Law on Income Tax). Property tax and land tax, transfer of real estate and some other incomes are within the cantonal autonomy.

197. The annual budgets of the 10 Cantons amounts to 2.1 bio KM (compared to 750 mio KM for the 80 municipalities in the Federation of Bosnia and Herzegovina, i.e. 1/3). Expenditure is mostly on consumption, staff/administration and on social benefits, in most Cantons there is hardly any money spent on investments. According to the Federation of Bosnia and Herzegovina audit office, typically a cantonal budget spends 55% on salaries, 28% on current living costs and capital transfers and 9% on material costs. However, large areas of “debts” are not recorded in the balance sheets of most Cantons, in particular entitlements of civil servants from collective labour agreements (going back to 2002) resulting from law-suits for compensation of unpaid salaries. These entitlements create arrears (e.g. 200 mio KM in Sarajevo, 170 mio KM in Una Sana Canton, 150 mio KM in Zenica-Doboj Cantons), which are in some cases higher than the budgets questioning the sustainability of the concerned Cantons, as the interests for the non-enforcement of Court enforcement orders contributes to the accumulation of debts.

198. Although Cantons cannot go bankrupt, in legal terms, the financial situation of some smaller Cantons appears economically hardly sustainable. An example is the smallest Canton, the Bosnian Podrinje Canton (Gorazde), which consists of 1 town with 3 municipalities and where an additional layer of government is particularly costly raising serious questions about its added value. However, these structures do not primarily serve the purpose of efficient territorial government; rather they are politically determined as an attempt to strike balances between the two dominant ethnic groups (Bosniaks and Croats).

199. The distribution of resources within the Federation of Bosnia and Herzegovina is based upon an umbrella law on the distribution of public revenue, which contains a set of parameters, such as the size of population, size of territory, consumption and number of school-children. It is heavily criticized, as it favours some Cantons, in particular Sarajevo: In 2016, Sarajevo Canton received 377 million KM in indirect tax revenues, while the most populous Canton, Tuzla, received 209 million KM. The formula, based upon a combination of data (population, size of area, pupils), is complex and considered outdated and inadequate. In order to consider differences between some areas, the formula is corrected by multiplication with a coefficient. While under the current law, the Canton Sarajevo receives 36% of its revenue, under the new law this source will decrease progressively until 17% only (currently it amounts to 26%).

200. However, Sarajevo, with 20% of the entire population of BiH, generates 1 billion KM p.a., which is more resources than the whole Republika Srpska and 33% of the Federation of Bosnia and Herzegovina GDP. Thus, there are worries that the decrease in available funds will have a fatal impact on the economy of the City, of the Federation of Bosnia and Herzegovina and of the whole country. Thus, Sarajevo Canton receives a special share in personal income tax distribution, i.e. 98 percent of the personal income tax paid in the Canton, by contrast with a maximum of 65.54 percent for all other Cantons and 34.46 percent to the municipalities in which the tax payer resides (according to the Law on Public Revenue Allocation). Sarajevo Canton also has significantly more competencies than other Cantons, notably education at all levels (with 3.820 staff) and cantonal utility companies (instead of municipal ones in other Cantons). However, after 8 amendments to the Sarajevo Cantonal Constitution in 2017, a decentralisation process of public utilities to the municipalities has begun, leaving the option to the four City municipalities of voluntarily entrusting the Canton with the management of water supply, heating, waste management and transport.²³

23 This paragraph is in large part based on the information received during the meeting with members of the Cantonal government Sarajevo and on “Box 12. Specifics of the Sarajevo-Canton”, in Local Government Initiative, Local Government in Bosnia and Herzegovina. Report on Consultations of a Joint Commission on Local Government, June 2018, p.5; available at (<https://europa.ba/wp-content/uploads/2018/06/Master-LGI-report-04062018-web-eng.pdf>).

Starting in 2004, court decisions on labour controversies, in particular on unpaid allowances and benefits (holidays and meals), have created a huge burden of unpaid debts putting cantonal finances under considerable strain (the Herzegovina-Neretva Canton has to pay a total of 37 mio KM, of which already 16 mio KM have been paid over the last three years). While there are Cantons, e.g. Zenica-Doboj, which are close to bankruptcy, the Herzegovina-Neretva Canton has even seen an increase in revenues of 10 mio KM in 2018 (compared to 2017).

Future reforms for economic development and efficient service provision?

201. A recent study published by the Local Government Initiative, based upon ample consultation with local governments and surveys, proposes a “regional” approach (referring to a spatial dimension, independent from current institutional structures in the two Entities).²⁴ The study recommends stronger co-operation between the Cantons in the Federation of Bosnia and Herzegovina, which should assume the role of coordinators for the provision of cantonal and municipal services, while for the Republika Srpska, based upon the new multi-type system of municipalities proposed by the Republika Srpska government (and supposed to replace the current system of uniform bodies), a network system around the larger cities and towns is proposed. For different types of services, this “regional approach” would need to take different institutional forms: a) a “hub-and-spoke”-approach for single access services (such as Health care); b) a collaborative approach for the provision of a common product where economies of scales are possible through shared infrastructure (e.g. water); c) an “associated approach” for providing “grouped network services” through functional agencies which are jointly owned by local governments (e.g. for economic development or public transport). The study highlights the importance of co-operation for effectively and (cost-)efficiently providing services “in a small country, where two-thirds of the municipalities in both entities border a municipality from the other entity.”

5. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT

5.1 Citizens’ participation in local decision-making:

202. The new Republika Srpska Law (2017) introduces different means of participation for citizens, starting with the direct election of representatives in townships and local communities as well as introducing consultation in planning and budgetary processes (in the latter, social partners and NGOs are involved in public consultation).

203. In the Federation of Bosnia and Herzegovina, municipalities have to make their budgets accessible to citizens and usually publish them on their website. Novo Sarajevo goes one step further by publishing a user-friendly guide for understanding the budget and the budgetary process: Budget for Citizens / “Budzet za Gradane” (<https://novosarajevo.ba/budzet-za-gradane-2018-godine/>). Citizens find data, explanations and can leave comments on the budget and related issues.

204. Local communities: in Bosnia and Herzegovina, there are 2.587 formally established *mjesne zajednice*: 1.451 in the Federation of Bosnia and Herzegovina, 1.058 in Republika Srpska, and 78 in the Brčko District. Their legal status differs: while in the Federation of Bosnia and Herzegovina they are legally defined local governments, in Republika Srpska they do not have legal status and in the Brčko District they are recognised as an association of citizens. Between 2015 and 2019, a UNDP project has focused on “Strengthening the role of *mjesne zajednice*” trying to foster a culture of active participation in local communities below municipal level with focus groups and public debate allowing citizens to set priorities. The project covered 24 municipalities and 136 *mjesne zajednice* in both Entities. Reportedly, the interest of the population in participating at this sub-municipal level is high.²⁵

205. The rapporteurs encourage the BiH authorities to continue efforts aimed at strengthening the direct participation of citizens in public affairs at local level and to consider signing and ratifying the Additional Protocol to the Charter on the right to participate in the affairs of a local authority.

²⁴ See Local Government Initiative, Local Government in Bosnia and Herzegovina. Report on Consultations of a Joint Commission on Local Government, June 2018, p.8-9; available at:

(<https://europa.ba/wp-content/uploads/2018/06/Master-LGI-report-04062018-web-eng.pdf>)

²⁵ See the documentation on the UNDP website:

(http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home/operations/projects/democratic_governance/strengthening-the-role-of-local-communities-mjesne-zajednice--mz.html)

5.2. Ombudspersons

206. In BiH 3 Ombudspersons with 60 staff (with a seat of the Institution in Banja Luka, regional offices in Sarajevo, Mostar, and Brčko and a field office in Livno) monitor the situation of Human Rights. They engage in promotional and awareness-raising campaigns and receive specific complaints (a total of 5.000 cases per year). In case violations are found, recommendations are issued by the Ombudspersons. An annual report as well as special, thematic reports address human rights violations in a systematic manner. It was stressed that after a “painful” accreditation process, the institution has received an international “A”-rating, but that improvements in the financial basis are still necessary, also for effectively guaranteeing the independence of the institution. Consequently, a proposal for amendment to the Law on Ombudspersons has been submitted to Parliament with the aim of anchoring the institutions exclusively to Parliament and keeping the Ministry of Finance out of financial decisions. This corresponds to the conclusions of the accreditation committee to be implemented in the next cycle of accreditation.

207. Regarding local self-government, the Ombudspersons stressed the central role of local authorities for access to rights, starting with personal and voting registers. In 2012, a special report on social welfare centres had been adopted, screening the share for social services in local budgets. While progress can be registered and sometimes excellent results are achieved at local level, the situation is very different in different parts of the country. An example are the new electronic health cards (which ensure that bearer is registered, and contributions have been paid) which cannot be used by the doctors, because they do not have the readers for them. The Ombudspersons are concerned about the lack of respect and enforcement of judgments and criticize the selective approach in enforcement. Regarding the frequent complaints over (the use of) symbols, they consider that, above all, representation of all citizens (with no exclusion) should be at the centre of any decision, as well as the participation of all those concerned in the political process.

208. The rapporteurs would encourage the Ombudspersons to consider dedicating a special report to the non-implementation of the judgements of the Constitutional Court(s), among which a considerable number referring to local government issues.

5.3. The situation in Mostar

209. As previously mentioned in this report, no local elections have taken place in Mostar for the last 10 years. During the visit, most interlocutors expressed their thoughts that the underlying political (and constitutional) issues were difficult or even impossible to resolve. From 24 to 27 June 2018, a Congress delegation visited Sarajevo and Mostar in order to assess the situation in Mostar. The purpose of the visit, which was a follow-up to the fact-finding mission in the framework of the post-electoral dialogue with the authorities in Bosnia and Herzegovina,²⁶ was to understand the reasons for this impasse, with a view to achieving progress as regards the obstacles for holding local elections in the city.²⁷

210. Mostar is part of the Herzegovina-Neretva Canton with a clear Croat majority and is considered the major city of Croats in Bosnia, thus having an important symbolic dimension for the latter. The war not only led to a decline in the total population (2013: 105.797, compared to 126.662 in 1991), but also to a significant demographic change in Mostar: according to the data of the 2013 census, Croats have become the strongest group (52.2%; up from 33.3% in 1991) and although the number of Bosniaks has also increased, today they are only the second largest group with 46.8% (34.8% in 1991), while Serbs and “Others” have virtually disappeared (4.2%, instead of 18.8%, and 1.9%, instead of 12.5%, respectively).²⁸

211. After the war, there have been several (not successful) attempts to re-unify single public services, schools and public health-services, until in 2003 a Special Commission was established for reforming the city. In 2004, a new Statute for the City of Mostar was finally imposed by High Representative

26 In the report published by the Congress on September 2017 it had been noted with concern that no progress had been made; see CPL(2017)03, adopted on 6 September 2017. The delegation of the 2018 visit was composed of the President of the Chamber of Local Authorities Anders KNAPÉ (Sweden, EPP-CCE), Congress Vice-President Barbara TOCE (Italy, SOC) and the Thematic Spokesperson on observation of local and regional elections and Rapporteur on the 2 October 2016 local elections in Bosnia and Herzegovina, Stewart DICKSON (United Kingdom, ILDG). Dr Franz SCHAUSBERGER, Chair of the Committee of the Region’s Working Group on Western Balkans, and Mr Petri MIRALA (CIVEX) also participated in the visit.

27 The following paragraphs are directly based upon the findings of that mission in June 2018 and on the interviews during the visit in the city, in February 2019.

28 See official census data 1991 and 2013 in an interactive map (<http://www.statistika.ba/?lang=en>) - 9 Sept. 2018.

Paddy Ashdown.²⁹ It transformed the former six municipalities into six electoral districts for a single city council, providing guarantees against outvoting and for defending vital interests (i.e. introducing the same characteristic features as on the other levels of government). Although administrative and institutional reunification had been achieved, most utilities remain divided and lacking consensus among the parties resulted in obstacles to implementation, even after the first elections in 2004. The city remained fundamentally divided along territorial and ethnic lines.

212. The electoral arrangements from 2004 provide for a city council of 35 councillors. They divide the city into six zones, each of which elects three councillors, independently of the size of the constituency (which varies from 3.000 to 38.000 voters), while residents in the so-called central zone can only vote for the remaining 17 councillors in a city-wide electoral constituency.³⁰ The second and (so far) last local election has been held in 2008. To draw attention to this fact, in October 2016 a coalition of NGOs had organised mock local elections under the motto “Elect Mostar”.

213. Currently an Acting Mayor (Croat), lacking democratic legitimacy and accountability, manages the ordinary affairs of the city on the basis of a “technical mandate”, together with the Head of Finances, a civil servant (Bosniak). Both have been empowered by a decision of the Federation of Bosnia and Herzegovina Parliament in 2012, after the expiry of the Council’s mandate. The last Council had adopted 23 programs and plans which have been the basis for development activities, so far (an expert commission, composed of 2 Croats, 2 Bosniaks and 1 Serb, deciding by 2/3 majority decides upon assessments regarding urban planning). However, new projects and urban plans cannot be adopted.³¹ Also, Mostar residents continue to pay taxes and fees and thus the fundamental democratic principle “no taxation without representation” is in question.

214. Mostar’s budget is comprised within the budget of the Federation of Bosnia and Herzegovina and of temporary nature (one calendar year), which enables financial operations for which Mayor and Head of Finance are responsible. The Law on Budgets authorizes the Mayor to substitute the Council, if the latter does not approve the budget for 3 months, and provides for arbitration with the cantonal Minister of Finance.³² The draft budget is subject to public debate in the Federation of Bosnia and Herzegovina Parliament. It has to rely on current resources, borrowing or taking loans is not possible.

215. The Acting Mayor points to the enormous loss of money under the current situation. An example given is the completed construction of a waste water purifier plant, which is operational, but running under reduced capacities, as the necessary testing for full capacity and authorisation by a commission are missing. Also, no raise in water costs is possible despite better services. While tourism is growing fast, reconstruction of some ruins along the former front line in the middle of the city is hindered by the risk of lawsuits of owners and former tenants.

216. However, the City has applied for becoming “European Capital of Culture” (2024), on the basis of an agreement by (nearly) all political parties under the remarkable motto “*Everything is BRIDGEable!*” which refers to its diversity, the famous (rebuilt) old bridge, and – perhaps – to the electoral impasse? It is also telling that Mostar (Federation of Bosnia and Herzegovina) and Banja Luka (Republika Srpska) applied separately, allegedly without knowing from each other; both are now in the second round.

217. Over the last 10 years, various judgments on electoral matters of the Constitutional Court of BiH and of the European Court of Human Rights have affected the legitimacy and validity of these and other electoral rules for Mostar and other levels of government in Bosnia conditioning any solution for Mostar:

a. In 2010, the Constitutional Court declared some provisions of the Mostar City Statute unconstitutional (Mostar case), due to the limitations for voters in central zone and the unequal value of votes. The election of 3 councillors for each zone, independent from the number of registered voters, was seen in contrast with the strong differences in the number of registered voters among the zones. The Constitutional Court asked the legislator to amend legislation within six months, but this did not happen which is why no elections were held in 2012 and 2016. In the so-called Ljubic case of 2016, the Constitutional Court declared ethnic quotas

29 Text of the Mostar City Statute available on website (<https://www.mostar.ba/statut-181.html>) - 9 Sept. 2018.

30 Map of the six districts of Mostar, see p. 70-71, Recommendations of the Commission for Reforming the City of Mostar, 15 December 2003 ([http://www.ohr.int/archive/report-mostar/pdf/Reforming%20Mostar-Report%20\(EN\).pdf](http://www.ohr.int/archive/report-mostar/pdf/Reforming%20Mostar-Report%20(EN).pdf)).

31 The delegation has been told about a waste-burning plant, which has been constructed but never been inaugurated.

32 It is obvious that interpretation and application of these rules are (over)stretched. However, there is no commissioner foreseen in the Law on Local-Self Government of the Federation, only extraordinary elections which are clearly not a suitable option in the case of Mostar.

in the election to the House of Peoples of BiH unconstitutional and annulled them,³³ because of a distortion of the right of representation of constituent peoples (each constituent people had been represented in the FBH House of Peoples by one member for each Canton, independently from the numbers of voters in the respective Canton).³⁴ However, no alternative or interim solutions have been provided by the Constitutional Court.

b. Also, two judgments of the European Court of Human Rights on electoral matters have an impact on the electoral system in Mostar: Already in 2009, in the case *Sejdic and Finci vs Bosnia and Herzegovina* the European Court of Human Rights found that restrictions in eligibility rights requiring affiliation with one constituent people are discriminatory and violate the rights of “Others”. While in the case decided, a Roma and a Jew were excluded from candidacy for the BiH Presidency, the question of how to consider “Others” within a system based upon ethnicity without violating their individual rights to vote and to stand for election is fundamental for any reform of the current system in Bosnia, at all levels. In 2016, in the case *Ilijaz Pilav vs Bosnia and Herzegovina*, the European Court of Human Rights added that also restrictions in eligibility rights due to residency are discriminatory (a Bosniak in Republika Srpska could not vote for the Bosniak member of the Presidency, but only for the Serb candidate). Judgments on other, similar cases followed (the latest being *Zornic and Slaku*).

c. However, up to date, none of the above judgments has been implemented. At State level elections in 2014 and October 2018 have nevertheless been held, in spite of the continuous violation of voting rights of some citizens. By contrast, in Mostar, the legal vacuum created by the two judgments of the Constitutional Court persists and therefore reforms of the electoral system are necessary before new local elections can be held.

218. In 2017, possible amendments to the Election Law have been discussed within the Inter-Agency Working Group on changes to election legislation in the Parliament of BiH (with three representatives each for the BiH House of Peoples, the BiH House of Representatives, the BiH Council of the Ministers and the Central Election Commission), in particular related to the implementation of the above judgments. However, the general lack of political will did not enable it to adopt any significant decision. The judgments and the interconnections between the different levels of government in electoral matters raise the question of whether a package deal is necessary for implementing the judicial decisions or whether there is room for a solution limited to Mostar and negotiated and agreed upon there, i.e. at local level.

219. In Mostar, local politicians have elaborated two models (referred to as “A” and “B”) for implementing the decision by the Constitutional Court and agreed upon the following principles: (1) Mostar has to remain one, multicultural city; (2) the ruling of the Constitutional Court has to be implemented fully, in all parts (elections, City Statute); (3) the issue of local elections is to be kept separate from other issues (House of Peoples, Presidency). However, differences persist, mainly on two issues. The first one is procedural and related to the question of who should amend the City Statute? The newly elected City Council after elections organized after a change of the Law on elections? Or should first the Statute be amended (2 articles) in order to define the number of voters and Councillors there? This is related to the second question which regards the request for further changes to the City Statute adapting the institutional guarantees for constituent peoples (and “Others”). Shall this issue become part of a package (reform of the entire statute) or shall it be treated once a new City Council is legitimately elected? These differences show a lack of common vision despite agreement reached on technical solutions (number of Councillors, see models A and B).

220. At small, local scale, Mostar reflects the stalemate in the country as a whole and is at the same time hostage of the wider context. There is no progress despite numerous initiatives and mediation attempts (including OHR). Obstacles to any solution are ethnic calculations, as the ethnic picture on the ground has changed over the last two decades making solutions even more difficult. The long-lasting impasse and the non-implemented judgments demonstrate that Bosnia is caught between an institutional set-up which shall, on the one hand, guarantee the parity of constituent peoples (under the Dayton Peace Agreement) and, on the other, the obligation to guarantee individual rights and individual equality (under the European Court of Human Rights). These are opposed concepts, the first one linked to the necessity of ending a war, the

33 The Constitutional Court partially accepted the appeal in December 2016 giving the State Parliament six months to amend problematic parts of the election law. As Parliament failed to do so, the Court decided to remove those parts of the law itself. With the removal, the Court annulled the legal basis for establishing the House of Peoples in the Federation. Without it, governments cannot be formed on either the federal or the State level.

34 The problem of equality of votes in the ethnic and territorial representation can be found at other levels, too. One example is the election of the 42 members of the BiH House of Representatives, which are elected in 8 districts (3 RS – 5 FBH), which differ in their size of up to 200.000 voters, according to the Central Electoral Commission.

second one to European Human Rights Law; both are fundamental constitutional principles in BiH's post-war order, but more than 20 years after the end of the conflict and with the aim of future accession to the European Union, a re-balancing of their respective weights seems inevitable. However, the political class seems unable (or unwilling) to resolve this dilemma on its own, preferring the continuation of the status quo.

221. In any case, 10 years without local elections and meaningful means for the population to participate in local government raise serious questions regarding the kind of democracy, accountability and perspectives for the future development of the city (and of the country). As a matter of fact, the stall in Mostar dramatically illustrates the situation of the whole country and the lack of a common vision: while Serb and Croat political parties tend to emphasize the importance of the status of constituent peoples and their guarantees, Bosniaks support a civic model of citizenship and rights.

222. By contrast with the situation in Mostar, the Brčko District is an interesting example of a different political culture, where agreement and compromise are positively seen and where the dominant discourse is not political, but centered around the life of citizens.

223. The rapporteurs are deeply concerned about the situation in Mostar and urge authorities, at all levels, to work on a sustainable solution to restore local democracy in the City of Mostar and to amend the legislative framework, especially the Election Law and the Statute of the City. In view of the rapporteurs, in order to avoid domination by one group in a united city, amendments will have to guarantee both, the equality of votes, in line with the Constitutional Court judgments, and provide safeguards for groups in the institutional set-up after the elections, without discriminating against "Others".

6. CONCLUSIONS

224. Overall, the rapporteurs recorded little progress in the implementation of the previous Recommendations addressed by the Congress to the BiH authorities in 2012 and 2014. Although the two entities in BiH have separate and very different systems of local government, which requires to treat them separately, there are some serious common challenges: an ageing and falling population; the decline of secondary cities and a growing urban-rural divide; the fragmented and often costly local government administration; burdens through external debt service; controversies over the horizontal allocation of resources (especially in the Federation of Bosnia and Herzegovina); the often inefficient management and sharing of natural resources (which cannot develop into an important source of local government financing); no scope for aggregate tax increase (which could resolve local financing issues); insufficient co-operation among various levels of government. "Both systems of local government suffer from significant problems and are in need of fundamental reforms. And this conclusion is shared by a large majority of leaders of local governments."³⁵

225. To sum up, the system of local government in Bosnia and Herzegovina is extremely complex and not coherent, in particular regarding the delimitation of responsibilities between the municipal and the cantonal or Entity levels. Also, the administrative and financial autonomy of municipalities, in particular smaller ones, appears quite limited. Decision-making procedures at local level are as inefficient as the administration at local level which often lacks competencies.

226. This complex and fragmented institutional structure is itself an obstacle to local development and autonomy at municipal level. Far from being functional and efficient, the fragmentation impedes co-operation, in particular between neighbouring municipalities belonging to different Cantons or Entities reflecting the absence of a comprehensive framework, or, at least, a co-ordination between the two Entities as well as the weakness of the State level. The motto "one country, two systems (and Entities)" prevails.

227. The Mayor of Banja Luka efficiently illustrated the difficulties of fragmentation and institutional complexity with the example of an EBRD loan for water supply, bridges and other infrastructure, which has to be approved by too many institutions (Presidency BiH, Council of Ministers BiH, two Chambers of Parliament BiH, Republika Srpska government, Republika Srpska National Assembly and, last but not least, the local self-government unit).

³⁵ These "common challenges" have been identified by a recent study carried out by the Local Government Initiative, funded by the European Union, see Local Government Initiative, Local Government in Bosnia and Herzegovina. Report on Consultations of a Joint Commission on Local Government, June 2018, p.8; available at: (<https://europa.ba/wp-content/uploads/2018/06/Master-LGI-report-04062018-web-eng.pdf>).

228. Interestingly, already in 2006, concrete steps for improvement without constitutional changes were proposed, such as the adoption of a resolution by the Parliamentary Assembly of BiH confirming the Charter principles as well as the establishment of a State Agency for the development of local self-government to be tasked with the promotion of co-operation between municipalities (Pejanovic, 2006, 228). None of these proposals have become reality.

229. In the opinion of the rapporteurs, an omnipresent pervasive control by political parties divided along ethnic lines combined with a patronage system is the main reason for the absence of tangible improvements. Such control is exercised directly and everywhere in the decision-making processes (also through veto-powers) and through the use of media. It often gives rise to the violation of the rights of minorities (and of "Others") and is the major obstacle to the creation of a participatory democratic culture involving citizens.

230. It is also important to note, that politics in Bosnia and Herzegovina is in a permanent electoral campaign-mode: elections are held every second year (either general or local elections) and the formation of governments very often takes several months. Due to continuous divisive rhetoric and controversies between nationalist parties, it is difficult to concentrate on concrete medium and long-term work in the numerous executives.

231. Despite urgent reform needs, the rapporteurs have doubts that any constitutional reforms or major legislative changes aimed at improving the framework in which local authorities must operate can be expected in the near future, given the political situation in the country. Thus, additional efforts should be applied to correct shortcomings and to improve the system of functioning of local government through making the best use possible of the current constitutional and legal framework.

232. An important source of legitimacy for local institutions is their capacity of guaranteeing efficient services which depends, on the one hand, on the local situation and on the persons involved, but, on the other, also on the comprehensive context and on wider processes, such as the allocation of competencies and of financial resources. In Bosnia and Herzegovina this interrelation with the situation of the State is particularly evident. It seriously limits the potential of local self-government and the positive contribution it could make to the development of the country.

APPENDIX – Programme of the Congress monitoring visits

**CONGRESS MONITORING VISIT TO BOSNIA AND HERZEGOVINA
Sarajevo, East Sarajevo, Banja Luka**

**(20-22 November 2018)
Part I**

DRAFT PROGRAMME

Congress delegation:

Rapporteurs:

Ms Lelia HUNZIKER

Rapporteur on local democracy
Chamber of Local Authorities, SOC³⁶
Member of the General Council of the City of Aarau (Switzerland)

Ms Carla DEJONGHE

Rapporteur on regional democracy
Member of Chamber of Regions, ILDG³⁷
Member of Parliament of the Brussels-Capital Region (Belgium)

Congress Secretariat:

Ms Svitlana PEREVERTEN

Co-Secretary to the Monitoring Committee of the Congress
of Local and Regional Authorities of the Council of Europe

Expert:

Mr Jens WOELK

Member of the Group of Independent Experts of the Congress
on the European Charter of Local Self-Government (Germany)

The working language of the meetings will be English. Interpretation from and into Bosnian/Croatian/Serbian will be provided.

³⁶ SOC: Socialist Group

³⁷ ILDG: Independent Liberal and Democratic Group

**Tuesday, 20 November 2018
Sarajevo, East Sarajevo**

**JOINT MEETING WITH THE MEMBERS OF THE BOSNIA AND HERZEGOVINA
DELEGATION TO THE CONGRESS AND THE ASSOCIATIONS:**

- **NATIONAL DELEGATION OF BOSNIA AND HERZEGOVINA TO THE CONGRESS:**

Mr Ivan VUKADIN, Mayor of Tomislavgrad, Member of the Congress

- **ASSOCIATIONS:**

Mr Ljubiša ĆOSIĆ, President

Association of local authorities of Republic of Srpska, Municipality of East New Sarajevo

Mr Faris HASANBEGOVIĆ, President of the Association of municipalities and cities of the Federation of Bosnia and Herzegovina Assembly, Mayor of Municipality of Sanski most

Mr Hamdo EJUBOVIĆ, President of the Association of municipalities and cities of the Federation of Bosnia and Herzegovina Presidency, Mayor of Municipality of Hadžići

Ms Vesna TRAVLJANIN, Director of the Association of municipalities and cities of the Federation of Bosnia and Herzegovina

Ms Mirela BUBALO, President of the Committee on international relations and co-operation, and EU integration of the Association of municipalities and cities of the Federation of Bosnia and Herzegovina, Municipality of Novi Grad Sarajevo

Mr Dževad BEĆIREVIĆ, Advisor to Mr Nedžad AJNADZIĆ (Mayor of Municipality of Centar Sarajevo)

SARAJEVO CITY:

Mr Milan TRIVIĆ, Deputy Mayor of Sarajevo

Mr Ensar EMINOVIĆ, Mayor's advisor

Ms Dragana SOLAKOVIĆ, Assistant to the Mayor for Local Self-Government and City Development

Ms Nina FUCEC, Associate to the Mayor for International Co-operation

PARLIAMENTARY ASSEMBLY OF BOSNIA AND HERZEGOVINA:

Mr Safet SOFTIĆ, Speaker of the House of Peoples

EAST SARAJEVO CITY:

Mr Miroslav LUČIĆ, President of the East Sarajevo City Council

Mr Ognjen JUGOVIĆ, Head of the Mayor's Office

BRČKO DISTRICT AUTHORITIES (meeting in Sarajevo):

Mr Esed KADRIĆ, President of the Brčko District Assembly

**Wednesday, 21 November 2018
Sarajevo**

CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA:

Mr Mato TADIĆ, Vice-President

Mr Zvonko MIJAN, Registrar

INSTITUTION OF HUMAN RIGHTS OMBUDSMEN OF BOSNIA AND HERZEGOVINA

Ms Nives JUKIĆ, Ombudsperson

Ms Jasminka DŽUMHUR, Ombudsperson

**Thursday, 22 November 2018
Banja Luka**

**MINISTRY OF ADMINISTRATION AND LOCAL SELF-GOVERNMENT OF
THE REPUBLIKA SRPSKA:**

Ms Lejla RESIC, Minister

Ms Gordana VUJIĆIĆ, Adviser to the Minister

MINISTRY OF FINANCE OF THE REPUBLIKA SRPSKA:

Ms Svjetlana RADOVANOVIĆ, Assistant Minister

Ms Maja PERIC, Assistant Minister

BANJA LUKA CITY:

Mr Igor RADOJICIC, Mayor

Mr Bojan GREBENAR, Cabinet of Mayor

CONSTITUTIONAL COURT OF THE REPUBLIKA SRPSKA:

Mr Dzerard SELMAN, President

SUPREME OFFICE FOR THE REPUBLIKA SRPSKA PUBLIC SECTOR AUDITING:

Mr Jovo RADUKIĆ, Auditor General

Ms. Božana TRNINIĆ, Deputy Auditor General

**CONGRESS MONITORING VISIT TO BOSNIA AND HERZEGOVINA
Sarajevo, Mostar, Jablanica**

**19-21 February 2019
(II part)**

Programme

Congress delegation:

Rapporteurs:

Ms Lelia HUNZIKER

Rapporteur on local democracy
Member of the Chamber of Local Authorities, SOC³⁸
Member of the General Council of the City of Aarau (Switzerland)

Ms Carla DEJONGHE

Rapporteur on regional democracy
Member of the Chamber of Regions, ILDG³⁹
Member of Parliament of the Brussels-Capital Region (Belgium)

Congress Secretariat:

Ms Svitlana PEREVERTEN

Co-Secretary to the Monitoring Committee of the Congress
of Local and Regional Authorities of the Council of Europe

Expert:

Mr Jens WOELK

Member of the Group of Independent Experts of the Congress
on the European Charter of Local Self-Government (Germany)

The working language of the meetings will be English. Interpretation from and into Bosnian will be provided.

³⁸ SOC: Socialist Group

³⁹ ILDG: Independent Liberal and Democratic Group

**Tuesday, 19 February 2019
Sarajevo**

MINISTRY OF JUSTICE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA:

Mr Mato JOZIĆ, Minister of Justice

Mr Enver IŠERIĆ, Director Institute for Public Administration

Ms Ajša SOFTIĆ, Secretary of the Ministry

Mr Alen TALETOVIĆ, Assistant Minister in the sector of Administration

MINISTRY OF FINANCE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA:

Ms Mirjana VUČIĆ, Assistant Minister of Finance

Mr Alija ALJOVIĆ, Assistant Minister in the sector for Budget and Public Expenditure

PARLIAMENT OF THE FEDERATION OF BOSNIA AND HERZEGOVINA:

Mr Elvir KARAJBIĆ, Speaker of the House of Representatives

Ms Elvira HABOTA, Advisor to the Speaker for European integration & international relations

**AUDIT OFFICE FOR THE INSTITUTIONS IN THE
FEDERATION OF BOSNIA AND HERZEGOVINA:**

Mr Dragan KOLOBARIĆ, Deputy Auditor General

Ms Mia BULJUBAŠIĆ, Senior Auditor for international relations & communication

Mr Sead ČORBO, Head of financial audit department for the institutions of cantons, cities and municipalities

CONSTITUTIONAL COURT OF THE FEDERATION OF BOSNIA AND HERZEGOVINA:

Ms Aleksandra MARTINOVIĆ, President

Ms Kata SENJAK, Judge

Mr Zaim OSMANOVIC, Registrar

**Wednesday, 20 February 2019
Sarajevo, Mostar**

SARAJEVO CANTON:

Mr Elmedin KONAKOVIĆ, Chairman of the Cantonal Assembly

Mr Edin FORTO, Prime Minister of the Canton

Mr Amel KOVAČEVIĆ, Minister of Finance of the Canton

Ms Aida ARAP, Head of the Chairman's office

Ms Lejla MUJKIĆ, Head of the Prime Minister's Office

Mr Nenad MARILOVIĆ, Protocol Department

GOVERNMENT OF HERZEGOVINA-NERETVA CANTON:

Mr Suad BALIĆ, Minister of Justice, Administration and Local Self-Government

Mr Veselko ČERKEZ, Head of the Prime Minister Office

Ms Kristina CRNJAC, Head of Communication Department

HERZEGOVINA-NERETVA CANTON ASSEMBLY:

Mr Šerif ŠPAGO, Deputy President of the Canton Assembly

Thursday, 21 February 2019
Mostar, Jablanica

MOSTAR CITY:

Mr Ljubo BEŠLIĆ, Acting Mayor

JABLANICA MUNICIPALITY:

Mr Salem DEDIĆ, Mayor