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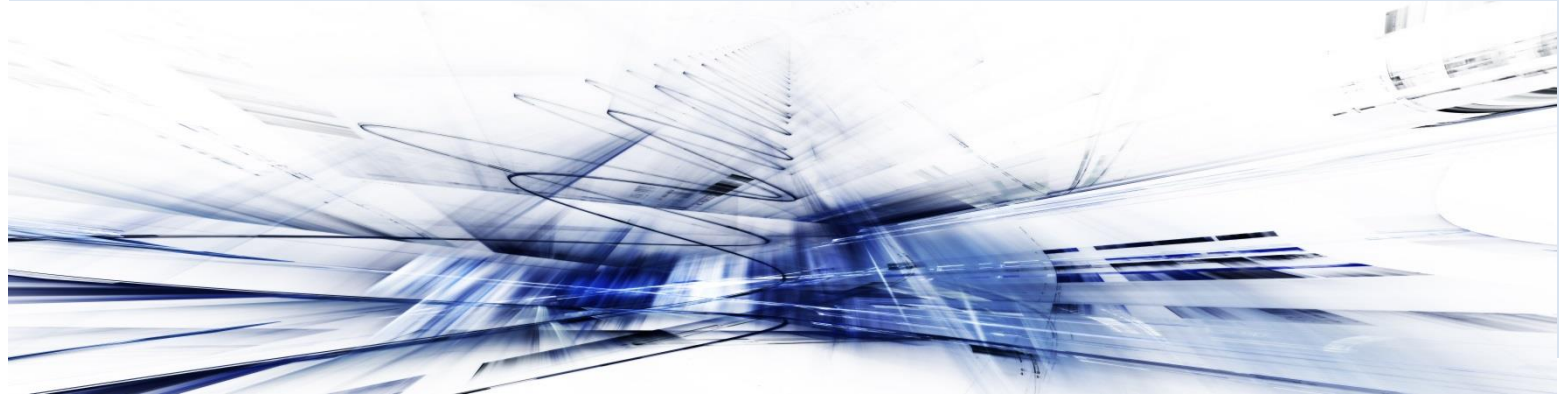
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# FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in  
central governments (top executive functions) and  
law enforcement agencies

## EVALUATION REPORT

# BOSNIA AND HERZEGOVINA



Adopted by GRECO  
at its 92<sup>nd</sup> Plenary Meeting (Strasbourg, 28 November – 2 December 2022)



Group of States against Corruption  
Groupe d'États contre la corruption

COUNCIL OF EUROPE



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## **I. EXECUTIVE SUMMARY**

1. This report evaluates the effectiveness of the framework in place in Bosnia and Herzegovina to prevent corruption amongst persons with top executive functions (members of the Presidency and their Heads of Office and advisers, the Chair of the Council of Ministers, Ministers, Deputy Ministers and their Heads of Office and advisers, hereafter “PTEFs”) and members of the Border Police and State Investigation and Protection Agency (SIPA). It aims to identify weaknesses that need addressing and positive developments that should be sustained in order to assist the authorities of Bosnia and Herzegovina in strengthening their prevention efforts and overcoming the political blockages that prevent certain reforms from taking place.

2. There is a legal vacuum in terms of corruption prevention policies in Bosnia and Herzegovina. The 2020-2024 Anti-Corruption Strategy and its Action Plan have not been adopted to date and a more holistic anticorruption policy is lacking at state-level. There is currently no specific strategy to prevent corruption and promote integrity amongst PTEFs in BiH. While the Code of Conduct for Civil Servants applies to advisers, no separate code of conduct for PTEFs in general exist. All other existing rules (on conflict of interests, gifts, access to confidential information, etc.) are scattered across many different regulations. In addition, the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK) is lacking the capacity to exercise its duties properly and independently and has been hardly operational.

3. Insofar as PTEFs are concerned, an operational corruption prevention action plan based on a risk assessment specifically targeting PTEFs should be adopted. In order to prevent risks of conflicts of interest in the Executive, integrity checks should be carried out as part of recruitment procedures. More generally, clear guidance regarding conflicts of interest and other integrity related matters should be developed in a code of conduct for PTEFs, accompanied by proper monitoring and enforcement mechanism. In connection with these standards, systematic and regular briefing and training of PTEFs should be organised. Rules on how PTEFs engage in contacts with lobbyists and other third parties who seek to influence Governmental decision making should also be introduced.

4. As regards transparency and access to information, a review of the legislation governing freedom of information should be carried out independently in order to address existing problems such as the lack of responsiveness of the authorities to requests for information. While there has been some progress, further efforts are required to increase the transparency of the law-making process by ensuring that external inputs to legislative proposals and their origin be identified, documented and disclosed.

5. Moreover, the system for managing conflicts of interest of PTEFs should be reviewed and strengthened, notably by ensuring that statements of interests of PTEFs be subject to regular substantive checks, with proportionate sanctions in case of breach, including for false reporting or failure to report. In the same vein, all PTEFS should be subject to the same disclosure requirements, irrespective of whether they are elected or not, and all declarations should be made systematically, easily and publicly accessible on-line for transparency and accountability purposes.

6. Regarding law enforcement, a system of regular anti-corruption action plans should first of all be ensured, with clear goals based on identified risks and an external assessment of

their achievement. The existing codes of ethics of the Border Police and SIPA need to be supplemented with practical guidance illustrating all issues and risk areas with concrete examples. Training on ethics and integrity for new recruits and serving personnel should be based on the practical guidance to be adopted for the codes of ethics and be compulsory for all. Security checks relating to the integrity of police officers, should also be carried out at regular intervals throughout their career and a system of asset declarations be put in place. Measures should also be taken to further promote a more balanced representation of genders in all ranks, to ensure that appointments of top police officials in the Border Police and SIPA are based on merit and guided by open, standardised and transparent competitions and to introduce an institutional system of rotation of police staff in risk-prone areas. Additionally, a legal provision defining incompatibilities with policing duties should be adopted and authorised secondary activities duly recorded. Moreover, rules should be adopted to ensure transparency and limit the risks of conflicts of interest when police officers leave the Border Police and SIPA to work in other sectors. Finally, the protection of whistleblowers should be reviewed and strengthened.

## II. INTRODUCTION AND METHODOLOGY

7. Bosnia and Herzegovina joined GRECO in 2000 and has been subject to evaluation in the framework of GRECO's First (in July 2003), Second (in December 2006), Third (in May 2011) and Fourth (in December 2015) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage ([www.coe.int/greco](http://www.coe.int/greco)). This Fifth Evaluation Round was launched on 1 January 2017.<sup>1</sup>

8. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of Bosnia and Herzegovina to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of Bosnia and Herzegovina, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, Bosnia and Herzegovina shall report back on the action taken in response to GRECO's recommendations.

9. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Bosnia and Herzegovina from 20 to 24 June 2022, and reference was made to the responses by Bosnia and Herzegovina to the Evaluation Questionnaire, as well as other information received, including from civil society. The GET was composed of Mr Holger SPERLICH, Government Director, Permanent Representation of the Federal Republic of Germany to the European Union (Germany), Ms Gulisa KAKHNIASHVILI, First Category Chief Specialist, Analytical Department of the Ministry of Justice (Georgia) and Mr Flemming DENKER, Former Deputy State Prosecutor at the State Prosecutor, for Serious Economic and International Crime (Denmark). The GET was supported by Mr Gerald DUNN and Ms Anne WEBER of the GRECO Secretariat.

10. The GET interviewed representatives of the Secretariat of the Presidency, the General Secretariat of the Council of Ministers, the Office of the Chairman of the Council of Ministers, the Ministry of Security, the Ministry of Finance and Treasury, the Ministry of Justice, the Ministry of Internal Affairs, the Prosecutor General's Office, the Independent Board of the Parliamentary Assembly, the Commission for Deciding on Conflicts of Interest, the Agency for Prevention of Corruption and Coordination of the Fight against Corruption and the Central Election Commission, as well as representatives of the State Investigation and Protection Agency, the Border Police and the Directorate for Coordination of Police Bodies of Bosnia and Herzegovina. The GET also met with the Human Rights Ombudsmen. Moreover, the GET spoke with representatives of the international community, including the European Union, the Organisation for Security and Cooperation in Europe and the International Monetary Fund. Finally, the GET met representatives of non-governmental organisations, academia, investigative journalists and trade unions.

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<sup>1</sup> More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's [website](http://www.coe.int/greco).

### III. CONTEXT

11. Bosnia and Herzegovina (BiH) has been a member of GRECO since 2000. Since then, it has been subject to four evaluation rounds focusing on different topics linked to the prevention and the fight against corruption. BiH initially had a positive track record in implementing GRECO recommendations: in the First Evaluation Round, 83.3% of the recommendations were ultimately fully implemented (the remainder being partly implemented). However, in the Second Evaluation Round, only 43.7% of the recommendations were fully implemented and only 45.4% in the Third Evaluation Round, confirming a declining trend. In the Fourth Evaluation Round concerning members of parliament, judges and prosecutors and for which the compliance procedure is still on-going, none of the recommendations have been fully implemented according to the latest public report<sup>2</sup> and BiH has been in a non-compliance procedure since September 2020. To date, only limited measures have been taken by BiH to comply with the outstanding recommendations under this round.

12. This lack of progress is reinforced by a general perception that corruption is prevalent in the country. BiH has dropped from the 72<sup>nd</sup> position in 2013 to the 110<sup>th</sup> in 2021 in the Corruption Perception Index put together by Transparency International.<sup>3</sup> According to Transparency International's Global Corruption Barometer 2021, 20% of public service users paid a bribe in the previous twelve months to receive the services they needed. In 2022, Freedom House rated BiH 1 out of 4 for the effectiveness of safeguards against corruption, noting that corruption remains widespread and systemic, and legislation designed to combat the problem is poorly enforced.<sup>4</sup> Selective and non-transparent judicial follow-up in corruption cases of public resonance was also observed.<sup>5</sup>

13. According to public information available and the interviews carried out by the GET on-site, the public procurement sector appears to be particularly vulnerable to corruption in BiH. Interlocutors reported that public funds were often diverted due to corruption and procurement procedures were opaque. Competent authorities are investigating cases over alleged corruption in the procurement of ventilators at the start of the COVID-19 pandemic.

14. Overall, numerous blockages at various levels of government have occurred in recent years. The blockage at the state level has forced the BiH institutions to operate under temporary budget for 16 months, with no state-level budget adopted in 2021 and for the first two quarters of 2022. As a result, BiH institutions are largely paralysed, legislative output is non-existent, and reforms – including those required to advance towards EU membership – have stalled.<sup>6</sup> In particular, a draft law on Prevention of Conflict of Interest as well as amendments to the Law on Public Procurement remain pending and have been long awaited.

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<sup>2</sup> For update, please check the GRECO website: <https://www.coe.int/en/web/greco/evaluations/bosnia-and-herzegovina>. In the Second Compliance Report, 53.3% of the recommendations had been partly implemented.

<sup>3</sup> <https://www.transparency.org/en/countries/bosnia-and-herzegovina>

<sup>4</sup> <https://freedomhouse.org/country/bosnia-and-herzegovina/freedom-world/2022>

<sup>5</sup> European Commission, [Bosnia and Herzegovina Report 2022](#), p. 23.

<sup>6</sup> 61<sup>st</sup> [Report](#) of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations, 11 May 2022.

#### **IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)**

##### **System of government and top executive functions**

###### *System of government*

15. The Republic of Bosnia and Herzegovina (official name “Bosnia and Herzegovina”, hereinafter BiH) is a parliamentary republic. According to the Constitution of BiH, which is in the Annex 4 to the General Framework Agreement for Peace in BiH (the Dayton Agreement) supplemented by Amendment I to the Constitution of BiH (Official Gazette of BiH, 25/09), BiH is set up as a democratic state, which operates under the rule of law and with free and democratic elections. The legislative power is vested in the Parliamentary Assembly,<sup>7</sup> which is bicameral and consists of the House of the People and the House of Representatives. At State-level, the executive authority of BiH consists of the Presidency of BiH and the Council of Ministers of BiH.

###### *The Presidency*

16. The function of Head of State is collectively carried out by the three members of the Presidency of BiH: one Bosniac and one Croat directly elected from the territory of the Federation of Bosnia and Herzegovina and one Serb directly elected from the territory of Republika Srpska. The position of Chairperson rotates every eight months among the three members, each elected for a four-year term.<sup>8</sup> Members are eligible to succeed themselves once and are thereafter ineligible for four years.

17. According to Article V, paragraph (3), of the Constitution of BiH, the Presidency of BiH shall have responsibility for: a) conducting the foreign policy of BiH; b) appointing ambassadors and other international representatives of BiH, no more than two-thirds of whom may be selected from the territory of the Federation of Bosnia and Herzegovina; c) representing BiH in international and European organisations and institutions and seeking membership of such international organisations and institutions of which BiH is not a member; d) negotiating, denouncing, and, with the consent of the Parliamentary Assembly of BiH, ratifying treaties of BiH; e) executing decisions of the Parliamentary Assembly; f) proposing, upon the recommendation of the Council of Ministers, an annual budget to the Parliamentary Assembly; g) reporting as requested, but not less than annually, to the Parliamentary Assembly on the expenditure by the Presidency; h) coordinating as necessary with international and non-governmental organisations in BiH; and i) performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the Parliamentary Assembly, or as may be agreed by the Entities. In addition, each member of the Presidency shall have civilian command authority over the armed forces.

18. The Presidency shall strive to adopt decisions concerning matters arising under Article V, paragraph (3) (a)-(e) of the Constitution by consensus. Such decisions may nevertheless be adopted by two members when all efforts to reach consensus have failed. A

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<sup>7</sup> For more information see [4<sup>th</sup> Round Evaluation Report](#) on BiH, in particular paras. 20 to 28.

<sup>8</sup> The three members of the Presidency are currently: Željka Cvijanović (Serb); Denis Bećirović (Bosniak) and Željko Komšić (Croat) (since 16 November 2022). Željka Cvijanović is Chairperson for the next eight months (starting on 16 November 2022).



dissenting member of the Presidency may declare a Presidency Decision to be destructive of a vital interest of the Entity from the territory from which he was elected, provided that s/he does so within three days of its adoption. Such a Decision shall be referred immediately to the National Assembly of the Republika Srpska, if the declaration was made by the Member from that territory; to the Bosniac Delegates of the House of Peoples of the Federation, if the declaration was made by the Bosniac Member; or to the Croat Delegates of that body, if the declaration was made by the Croat Member. If the declaration is confirmed by a two-thirds vote of those persons within ten days of the referral, the challenged Presidency Decision shall not take effect.

19. The Presidency nominates the Chairman of the Council of Ministers and submits the nomination to the House of Representatives. The Presidency of BiH may dissolve the House of Peoples (Article IV, paragraph (3) (g) of the Constitution).

20. The Presidency can introduce a proposed draft law within the scope of its respective competencies.<sup>9</sup> The Parliamentary Assembly of BiH passes the laws which are binding on all executive authorities.

21. The General Secretariat of the BiH Presidency, headed by a Secretary General, serves as an administrative, technical and professional service to the Presidency (Article 55, Rules of Procedure of the BiH Presidency). The Secretary General is obliged to act on orders of the members of the Presidency and is responsible for his/her work to the members of the Presidency. The Secretary General has two deputies, who are responsible for their work to the Secretary General and the members of the Presidency. The Secretary General and his/her deputies are managerial civil servants (on positions of general secretaries with special assignments), and are appointed for a period of five years. They can be dismissed by the Presidency. The Secretary General organises the performance of all tasks within the competence of the Secretariat, passes regulations and other general and individual acts for which s/he is authorised by law and other regulations; and s/he decides on the rights, duties and responsibilities of employees under or in connection with the employment relationship.

22. Each member of the Presidency is supported by a Head of Office and advisers, who are all appointed and dismissed by them. The Head of Office, holding a status of an appointed person, manages the office and is directly responsible for his/her work to the member of the Presidency. Both Heads of Office and advisers are involved in matters directly related to the decision-making process.

23. GRECO agreed that a head of State would be covered by the Fifth Evaluation Round under the “central government (top executive functions)” topic where that individual actively participates on a regular basis in the development and/or the execution of governmental functions or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure and taking decisions on the appointment of individuals to top executive functions.

24. The GET notes that the Presidency members are directly elected by popular vote and are prominent characters of the political life in the country, often appearing in the media.

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<sup>9</sup> See 4<sup>th</sup> Round Evaluation Report: The GET was told that around 90% of the legislative initiatives come from the Government.

Members of the Presidency remain members of their political parties and exercise leading functions within their parties (the three current members have all leading positions in their parties). In addition, Presidency members are involved in the exercise of various executive powers: the Presidency proposes the annual budget to the Parliamentary Assembly, has the right of legislative initiative, nominates the Chairman of the Council of Ministers and is the commander of the armed forces. The Presidency appoints government officials such as Central Bank's Steering Board members<sup>10</sup> and can dissolve the House of Peoples of the Parliamentary Assembly of BiH.<sup>11</sup> A member of the Presidency may also apply to the Constitutional Court to review the legislation. As regards foreign affairs policy, the Presidency has exclusive competence. The Presidency members appoint ambassadors at their own discretion and negotiations on international treaties are also conducted by the Presidency. The GET was told by all non-governmental interlocutors that, overall, the Presidency members have a strong political influence. They remain party leaders and as such are involved in elections campaigns and often set the tone for future reforms<sup>12</sup> as part of party manifestos. The GET observes that the veto right that the members of the Presidency are entitled to use to protect what they consider to be the vital interests of the Entity from which they were elected, is at the origin of several blockages, preventing the BiH Presidency from adopting decisions,<sup>13</sup> and thus contributes to shaping the political life of the country.

25. In view of the above, the GET concludes that the members of the Presidency of BiH are in a position to influence government policy on a regular basis and actually do exercise this influence in practice. It follows that the GET considers the Presidency members and the persons directly advising them (Heads of Office and advisers) as involved in the exercise of executive functions to a sufficient degree to be covered by this report. However, the GET is of the view that the Secretary General to the Presidency should not be considered as PTEF as s/he do not appear to be contributing regularly to the decision-making process.

### *The Council of Ministers*

26. The Council of Ministers, headed by a Chairperson, consists of the cabinet, which is made up of Ministers and Deputy Ministers. The Council's task is to carry out "the policies and decisions of Bosnia and Herzegovina". The Council of Ministers shall adopt the acts falling within its competence by a majority vote of the present members.

27. Article V.4. of the BiH Constitution (Council of Ministers) prescribes that the Presidency of BiH nominates the Chair of the Council of Ministers, and the Chair nominates Ministers and their Deputies,<sup>14</sup> who shall not come from the same constituent people as their Ministers. At least one representative of the "others" shall be represented in the Council of Ministers or shall have the position of Secretary General of the Council of Ministers.

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<sup>10</sup> Article 49 of the Rules of Procedure of the Presidency of BiH.

<sup>11</sup> Article 39 of the Rules of Procedure of the Presidency of BiH.

<sup>12</sup> Such as the reform of several aspects of the electoral rules through amendments to the BiH Election Law and limited constitutional changes needed to ensure full compliance with the judgments of the European Court of Human Rights (*Sejdić and Finci group v. Bosnia and Herzegovina*, Application No. 27996/06).

<sup>13</sup> See for instance the vetoes by the Serb member of the Presidency on the visit of the President of Montenegro and on cooperation with the EU border agency Frontex: <https://balkaninsight.com/2020/02/27/bosnian-serb-parliament-backs-dodiks-double-veto/>

<sup>14</sup> Article 8 of the Law on Council of Ministers of BiH prescribes that each minister will have one deputy, apart from the Minister of Defence who will have two.

28. The Chair has the power to nominate two Ministers as his/her deputies. No more than two-thirds of all Ministers may be nominated from the Federation of Bosnia and Herzegovina. The Chair and the Ministers assume office upon approval by the House of Representatives of the Parliamentary Assembly of BiH. The Council of Ministers is responsible before the Parliamentary Assembly and will resign in case the Assembly issues a vote of no confidence. The term of office of the Council of Ministers shall coincide with the mandate of the Parliamentary Assembly.

29. Article 5 of the Law on Council of Ministers of BiH envisages that the Council of Ministers is comprised of the Chair and the following Ministers: Minister of Foreign Affairs, Minister of Foreign Trade and Economic Relation, Minister of Finance and Treasury, Minister of Communications and Transport, Minister of Civil Affairs, Minister for Human Rights and Refugees, Minister of Justice, Minister of Security and Minister of Defence. Currently, the Council of Ministers consists of nine Ministers, including two women (Minister of Foreign Affairs and Minister of Civil Affairs). This composition is not in line with the Committee of Ministers' [Recommendation Rec\(2003\)3 on balanced participation of women and men in political and public decision](#), according to which making balanced participation of women and men is taken to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40%. The GET therefore encourages the authorities to increase their efforts towards better gender balance in government in future.

30. Ministers are covered by the Law on Conflict of Interest in Governmental Institutions of BiH (hereafter LCI) and have to submit a financial statement within 30 days from the date of taking office with a view of identifying potential conflicts of interest (Article 12 of the LCI, see para. 100). Furthermore, security checks are to be carried out for certain state-civil service positions in BiH institutions working on data related issues with a certain level of secrecy (confidential, secret, strictly confidential), such as the Ministry of Security of BiH. Prior to the appointment, candidates from the list of the most successful candidates are to be subjected to security checks, with the type of verification depending on the degree of secrecy of data processed and on the tasks carried out (Article 30, Law on Protection of Secret Data).

31. The GET notes that all persons on a post or applying for a post with access to confidential information are subjected to different security checks, depending on the degree of access to confidential information. However, these security checks are limited to persons having access to confidential information and do not cover the whole Cabinet. Moreover, security clearance does not include integrity checks pertaining notably to risks of conflicts of interest owing to a person's financial interests. The GET stresses that integrity checks should not be confused with security checks and aim at identifying possible conflict of interests in connection with the exercise of public functions in government. It believes that integrity checks should be carried out when persons are being considered by the Chair of the Council of Ministers for a ministerial post. Such integrity checks would play an important part in preventing corruption by providing an opportunity to identify conflicts of interest of persons contemplated for a particular ministerial portfolio before joining the government. Similarly, integrity checks appear to be important for other categories of PTEFs who are not recruited upon a competition. Therefore, **GRECO recommends laying down rules requiring that integrity checks take place prior to the appointment of Heads of Office of members of the BiH Presidency, the Chair of the Council of Ministers, and Ministers/Deputy Ministers in order to identify and manage possible risks of conflicts of interest.**

### *Other functions in the Executive*

32. The Chair of the Council of Ministers and the Ministers are assisted in their work by a General Secretariat. The General Secretariat is managed by the Secretary General who is appointed and dismissed by the Council of Ministers at the proposal of the Chair, in accordance with the Law on Civil Service in the Institutions of BiH. The Secretary General is directly responsible for his/her work to the Chair of the Council of Ministers. S/he manages and represents the General Secretariat. In particular, s/he passes regulations and other general and individual acts in relation to the rights, duties and responsibilities of the employees of the General Secretariat stemming from or in connection with the employment relationship; s/he is responsible for the use of the financial and material resources of the General Secretariat as a budgetary entity, as well as other tasks assigned to him/her by law and other regulations. In addition to the Minister who is responsible for the work of the Ministry as a whole and the Deputy Minister, there shall be in each Ministry a Secretary of the Ministry who shall carry out tasks and duties as set out in the Law on Civil Service (Article 8 of the Law on the Council of Ministers of BiH). The Secretary General and secretaries of the ministries have the status of civil servants (senior executive managers) and are therefore subject to the Law on Civil Service in the Institutions of BiH. Their tasks are mainly of a managerial and administrative nature and they do not directly contribute to the decision-making process. Therefore, the GET is of the view that the Secretary General and secretaries of the ministries are not to be considered PTEFs.

33. The Chair of the Council of Ministers, Ministers and Deputy Ministers can also appoint advisers in accordance with Article 18 of the Law on Civil Service in the Institutions of BiH. The role of these advisers is to provide advise on certain matters and to perform other tasks assigned to them by the Chair of the Council of Ministers and Ministers/Deputy Ministers. They provide opinions and participate in the preparations of laws, regulations and general acts. Moreover, the Chair of the Council of Ministers and each Minister and Deputy Minister appoint one adviser as Head of Office. The Heads of Office perform all tasks that are directly related to the work of the Chair of the Council of Ministers, Ministers and Deputy Ministers, in addition to managing the office; they advise the Chair of the Council of Ministers, Ministers and Deputy Ministers in a number of areas of work and are accountable to them for their work. Pursuant to Article 5 of the Law on Civil Service in the Institutions of BiH, individuals employed as advisers to the members of the Presidency, the Chair of the Council of Ministers, the Ministers and the Deputy Ministers, are not civil servants. Nevertheless, some articles of the Law on Civil Service apply to advisers.<sup>15</sup> They are also obliged to behave and act in accordance with the Code of Conduct for Civil Servants adopted by the Council of Ministers (Article 14(5), Law on Civil Service). Civil servants who are appointed advisers either take leave from the civil service and will return to the post after ceasing to be an adviser or, in the case of managerial civil servants, they no longer belong to the civil service. An adviser is not granted a security of tenure and may be dismissed at any time by his/her appointing authority. The mandate of an adviser cannot be longer than the mandate of the individual s/he advises.

34. While advisers do not themselves have direct executive functions, the GET notes that they are often closely involved in decision-making processes of the Chair of the Council of Ministers and Ministers and Deputy Ministers that have selected them. Therefore, for the

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<sup>15</sup> In particular, an adviser is to refrain from activities or omissions in the performance of his/her professional duties that violate or are incompatible with the duties established by this law and to refrain from publicly expressing his/her political beliefs.

purpose of this report, advisers, including advisers appointed as Heads of Office, will be considered PTEFs, along with the Chair of the Council of Ministers, Ministers and Deputy Ministers.

35. During the visit, it appeared to the GET that there was a lack of transparency in the recruitment and effective functions of advisers. In practice, advisers are discretionarily chosen by Ministers and Deputy Ministers. There are no limits to the number of advisers and each ministry defines that number in its internal rules.<sup>16</sup> There is also no requirement as to their academic qualification or experience. The number, names and functions of advisers are usually not published. Some interlocutors indicated that the position of advisers was often seen as a way to enter the public service and benefit of several advantages. According to the GET, this situation ought to be looked into in order to ensure more transparency, including by publishing regularly updated list of advisers, their competences and remunerations on the ministries' website.

36. Furthermore, the GET notes that the recruitment process of advisers to the members of the Presidency, the Chair of the Council of Ministers, the Ministers and the Deputy Ministers does not include integrity checks to identify and manage possible conflicts of interest. While general requirements for the appointment of civil servants also apply to advisers, who have to abide by some integrity rules, there is no oversight as to how and according to which criteria they are hired. Whilst the GET recognises that some leeway should be left to Ministers and Deputy Ministers in choosing their close collaborators, there is a need to introduce some formal checks upon their recruitment. This should include unambiguous integrity criteria pertaining notably to potential conflicts of interest linked to their interests and/or those of their dependents, liabilities, secondary activities, links with lobbyists or third parties seeking to influence decision-making, as well as awareness-raising and training on integrity matters (this aspect as well as other aspects related to conflict of interest are dealt with later on in the report). This should also apply to the recruitment of advisers to the members of the Presidency in order to have a harmonised approach.

37. In view of the above, **GRECO recommends that (i) advisers to the members of the Presidency, Heads of Office of the Chair of the Council of Ministers, of Ministers and of Deputy Ministers, and advisers to the Chair of the Council of Ministers, to Ministers and to Deputy Ministers undergo integrity checks as part of their recruitment in order to avoid and manage conflicts of interests; (ii) the names and area of competence of all such Heads of Office and advisers be made public and easily accessible.**

#### *Status and remuneration of persons with top executive functions*

38. The members of the Presidency are directly elected in each entity. Any vacancy in the Presidency is to be filled from the relevant entity. According to Article 8.4 of the Election Law of BiH, when a member is unable to fulfil his/her role, the member's substitute for the Presidency is to replace him/her.

39. The Chair of the Council of Ministers is nominated by the Presidency of BiH at each new mandate of the Parliamentary Assembly of BiH. According to the Law on the Council of Ministers of BiH, the decision on nomination is to be submitted to the House of

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<sup>16</sup> The GET was for instance told that the BiH Minister of Justice had two advisers and the deputy Minister of Justice had the right to four advisers.

Representatives for approval. The Chair of the Council of Ministers is to take office after the House of Representatives approves his/her nomination. The approval of a Chair of the Council of Ministers is to be completed within 30 days following the date of nomination.

40. Pursuant to Article V(4) of the Constitution of BiH, the Chair of the Council of Ministers nominates Ministers and Deputy Ministers immediately upon taking office and requests the House of Representatives to approve such nominations. Ministers and Deputy Ministers take office immediately upon approval by the House of Representatives. The approval of Deputy Chairs, Ministers and Deputy Ministers is to be completed within 30 days following the date on which the Chair takes office. It is incompatible to hold at the same time one directly or indirectly elected office and one position in an executive body (i.e. Presidency of BiH or Council of Ministers, Article 1.8 of the Election Law of BiH).

41. If the House of Representatives fails to approve the decision of the Presidency of BiH nominating the Chair of the Council of Ministers, the Presidency must nominate another Chair of the Council of Ministers, within eight days, and submit such decision to the House of Representatives for approval. If the House of Representatives fails to approve the decision of the Chair of the Council of Ministers nominating a Minister or Deputy Minister, the Chair must nominate another individual for such post within eight days, and submit such decision to the House of Representatives for approval.

42. If the Chair of the Council of Ministers resigns or is permanently unable to perform his/her duty, the Council of Ministers is to resign as a whole, and continue to perform its duties pending the approval of a new Chair and members of the Council of Ministers. The Presidency of BiH may propose the dismissal of the Chair of the Council of Ministers. If the Parliamentary Assembly of BiH records a vote of no confidence in the Chair, the Council of Ministers is to resign as a whole, but continue to perform its duties pending the approval of a new Chair and members of the Council of Ministers. The Parliamentary Assembly may also, on its own initiative, record a vote of no confidence in the Council of Ministers.

43. If a Minister or Deputy Minister resigns or is permanently unable to perform his/her duty, the Chair of the Council of Ministers nominates his/her successor. The successor of the Minister or Deputy Minister shall take office upon approval by the House of Representatives. In addition, the Chair of the Council of Ministers may propose the dismissal of a Minister and Deputy Minister. If the Parliamentary Assembly of BiH approves such dismissal, the Chair of the Council of Ministers shall be obliged to appoint a new Minister or Deputy Minister.

44. As to the level of remuneration, the Law on Salaries and Remuneration in the Institutions of Bosnia and Herzegovina regulates salaries and remuneration of employees, appointed and elected persons in institutions at the level of BiH. The salary calculation basis is set every year (by 30 June) by a regulation of the Council of Ministers of BiH for the next year, with the provision that it may not be less than 50% of the average monthly net salary in BiH. The decision on determining the basis is made public in the Official Gazette of BiH. The salary comprises an increment based on years of previous service and, when relevant, an increment based on special work conditions. Bonuses might be awarded for extraordinary work results.

45. The average monthly net wage in 2021 in BiH amounts to BAM 998 according to the Agency for Statistics of Bosnia and Herzegovina.<sup>17</sup> The average annual gross salary of PTEFs at the level of BiH institutions amounts to BAM 93 115 (EUR 47 760). Salaries of PTEFs are not made public proactively but are disclosed upon request and can be calculated on the basis of the salary grades and coefficients, which are public.

46. Article 10 of the Law on Salaries and Remunerations in the Institutions of BiH provides for salary grades and coefficients for elected and appointed persons. With regard to persons considered to be PTEFs, the relevant figures are as follows:

Salary grade	Position	Coefficient
A1	Member of the BiH Presidency	10.00
A2	Chair of the Council of Ministers	9.00
A3	Deputy Chair of the Council of Ministers	8.80
A4	Minister	8.50
A6	Deputy Minister	7.50
A8	Head of Office of the Council of Ministers' Chair, Head of Office of the BiH Presidency Member	6.10
A11	Head of the Minister's Office, Adviser of the Chair of the Council of Ministers, Adviser of the BiH Presidency Member	4.50
A12	Head of the Deputy Minister's Office, Adviser of the Minister and the Deputy Minister	3.55

47. Net salaries are calculated by multiplying the basic amount – BAM 535 (EUR 273) as from 01 October 2022 – by the appropriate coefficient established in the law, adding 0.5% for each year of service. In addition, pursuant to the Decision on method and procedure for exercising the rights of employees in the BiH institutions to reimbursement of accommodation costs, separate maintenance and secondment allowances, the aforementioned elected and appointed officials are entitled to a separate maintenance allowance (average annual compensation BAM 3 349 (EUR 1 717)) as well as reimbursement of accommodation costs (monthly amount up to BAM 300 (EUR 153), provided that the place of residence is more than 80 km away from the workplace). Employees are also entitled to a financial allowance for meals during work (BAM 6 (EUR 3) for each day spent at work, paid on a monthly basis based on the attendance records) and a vacation allowance paid together with the salary for July (BAM 300 (EUR 153) in 2021).

### **Anticorruption and integrity policy, regulatory and institutional framework**

#### *Anticorruption and integrity policies*

48. The Law on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (hereinafter APIK) was adopted in December 2009 and the Agency began its operation in 2011. APIK is entitled by law to coordinate anti-corruption policies of other

<sup>17</sup> <https://bhas.gov.ba/?lang=en>. This corresponds to approximately 510 EUR (1 Convertible Mark (BAM)=0.51 EUR).

State bodies (see below, para. 62). APIK has developed a set of Recommendations on establishing a body to prevent corruption and preparing strategic documents at all levels of government in BiH.

49. There is currently no specific strategy to prevent corruption and promote integrity amongst PTEFs in BiH. General Anti-Corruption Strategies have been adopted previously. However, these strategies were general in character and did not address the particular situation and risks linked to PTEFs. Following the expiration of the 2015-2019 Anti-Corruption Strategy, APIK finalised in February 2020 the draft of the 2020-2024 Anti-Corruption Strategy and its Action Plan. Although the draft Strategy was initially submitted on 14 July 2020 to the BiH Council of Ministers for adoption, it has not yet been adopted. The Council of Ministers considered a draft *Decision on Adoption of the Strategy* on 3 February 2021, but it was not adopted due to the lack of required majority of votes.

50. Despite this deadlock, APIK initiated on 30 June 2021 the development of anti-corruption plans for 2022 at the level of the BiH institutions, on the basis of Guidelines for Strategic Planning of Anti-Corruption Policies in BiH it has developed, and required the appointment of contact points for cooperation with the Agency on this matter. At the time of the on-site visit, 43 institutions in BiH had developed such plans. The authorities have not indicated whether the Presidency and all or some of the ministries have developed anti-corruption plans on the basis of APIK Guidelines.

51. APIK is also responsible for the establishment of integrity plans in public institutions of BiH and for the supervision of the implementation of the measures and recommendations contained in adopted integrity plans. Integrity plans are tools for raising awareness of the weak points in the operations of an institution, the purpose of which is to prevent and warn against the possibilities of corruptive phenomena. Following the development of draft integrity plans, the institutions submit them to APIK for opinion and recommendations. After the opinion from APIK is obtained, the plans are finally adopted by the managers of the institutions. The institutions shall then submit to APIK once a year, and more often, if necessary, reports on the implementation of measures and recommendations for the enhancement of integrity proposed in the adopted plans. The GET was informed that public institutions are not legally obliged to adopt integrity plans. If they adopt such plans, these plans are considered to be internal documents and there is no obligation to make them available to the public. Out of 74 public institutions in BiH, 15 had started to update their integrity plans at the time of the on-site visit, while 6 plans had been adopted and 9 were being prepared. The remaining institutions are implementing old plans from the previous period.

52. Following a self-assessment of the impact of risk factors of corruption, the Secretariat General of the Council of Ministers of BiH had developed and adopted an Integrity Plan in May 2015. The risk assessment was carried out by a working group appointed by a separate decision of the Secretary General, and all staff members of the Secretariat General of the Council of Ministers participated in the drafting of the Plan based on the guidelines prepared by APIK. The Integrity Plan is a document valid for four years from the date of its adoption.



However, the 2015 Integrity Plan for the Council of Ministers was not updated in 2019 as was foreseen and is still in the process of being revised.

53. The GET regrets that the 2020-2024 Anti-Corruption Strategy and its Action Plan have not been adopted to date and that a more holistic anticorruption policy is lacking at state-level (Presidency and Council of Ministers). It acknowledges that the process of adopting integrity plans, in particular by the Secretariat General of the Council of Ministers, is a positive practice, although these plans do not look into risks faced specifically by PTEFs across the government in a holistic manner. Moreover, not all ministries have adopted such plans, which are not compulsory, and these documents have not been made public. The GET takes the view that the development of various documents with similar content but varied specificity and relevance (Anti-Corruption Strategy, anti-corruption plans, integrity plans) do not contribute to the visibility and efficiency of the anticorruption policy in the country. It considers that specific attention should be paid to PTEFs considering their executive powers, or proximity to the exercise of these powers, and the specific corruption risks to which they are exposed. This should be addressed by adopting a devoted policy document covering all PTEFs, including in the Presidency. Therefore, **GRECO recommends that an operational corruption prevention action plan covering the Presidency and the Council of Ministers be adopted and made public. Such an action plan should be based on a risk assessment specifically targeting persons with top executive functions and include particular steps to mitigate risks identified in respect of them.**

#### *Legal framework and ethical principles/rules of conduct*

54. At State-level, the legal framework relating to PTEFs includes the Law on Council of Ministers of Bosnia and Herzegovina, the Law on Ministries and other bodies of administration of Bosnia and Herzegovina as well as the Election Law of BiH. Conflict of interests of elected officials, executive officeholders and advisers in the governmental institutions of BiH is regulated in the Law on the Conflict of Interests in the Governmental Institutions of Bosnia and Herzegovina (see below).

55. The Law on Civil Service in BiH Institutions spells out the duties and rights of civil servants, in particular the principles of legality, transparency and publicity, accountability, efficiency and effectiveness and professionalism and impartiality. Moreover, Article 2 of this Law stipulates that recruitment and professional career promotion of a civil servant is based on open competition and professional abilities, thereby underscoring the principle of meritocracy.

56. At State-level, a Code of Conduct for Civil Servants in the Institutions of Bosnia and Herzegovina was adopted on 28 May 2013 by the Council of Ministers of BiH upon a proposal of the Civil Service Agency of BiH.<sup>18</sup> This Code regulates the rules and principles of good behaviour of civil servants in the institutions of BiH, in the performance of the civil service based on the Constitution, ratified and published international treaties, laws and other regulations. It deals with integrity issues such as the prevention of conflict of interest and gifts.

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<sup>18</sup> According to its website, the Civil Service Agency of BiH is responsible for the recruitment process of civil servants on the request of institutions of BiH. It assists institutions in their human resources policies, organizational development, as well as in the establishment of human resources management information in the institutions of BiH. The Agency ensures training and professional development of civil servants and performs other duties stipulated by the Law on Civil Service.

It also serves at informing citizens of the behaviour they have the right to expect from civil servants. The purpose of the Code is that a civil servant, as a representative of an institution, by his/her conduct, protects the public and legal interest based on the Constitution and Law and thus contributes to the strengthening of the role and reputation of the civil service. The Code is publicly available on the official webpage of the Civil Service Agency of BiH.<sup>19</sup>

57. The provisions of the Code of Conduct for Civil Servants also apply to persons who have been appointed in an institution, trainees, volunteers, employees (unless otherwise provided by the Law on Labour in the institutions of BiH), as well as persons who perform jobs for the institution under a work contract.<sup>20</sup> According to Article 5 of the Law on Civil Service, the Code also applies to advisers working for the Executive.

58. The supervision of the implementation of the Code is carried out by the head of institution. Citizens and officials may contact the head of the institution concerned with a complaint about the behaviour of a civil servant, which they deem contrary to the provisions of the Code. The head of institution considers complaints, and if necessary, submits a request for disciplinary procedure, in accordance with the Law on Civil Service in the institutions of BiH, by which a breach of this Code is determined as a violation of official duty.

59. The GET notes that there is no general code of conduct applicable to public officials or specifically PTEFs. While the Code of Conduct for Civil Servants applies to advisers, no separate code of conduct for Ministers/ PTEFs in general exists. All other existing rules (on conflict of interests, gifts, access to confidential information etc.) are scattered across many different regulations. In addition, the GET observes that the Code of Conduct for Civil Servants is couched in very general terms and that its implementation is left to the head of each institution, which means that the conduct of the head of institution is not subject to any control.

60. Therefore, the GET considers it urgent that a code of conduct applying specifically to all PTEFs be developed. Such a code should be the reference document for ethical standards for PTEFs and should cover all pertinent issues (conflict of interest, incompatibilities, gifts, contacts with lobbyists and third parties, post-employment restrictions, asset declarations, confidential information, etc.). It should be accompanied by detailed guidance containing explanations of the ethical principles, including illustrations and/or examples, in order to facilitate their understanding and application in practice. As the issue of public procurement appears as high-risk area for the Executive, it should be given particular attention. Moreover, in order to ensure its effective implementation, sanctions incurred in case of breach should be specified. Finally, such a code should be made known to the public in order to show what standards PTEFs are expected to respect and be held accountable for.

61. Consequently, **GRECO recommends (i) that a code of conduct for persons with top executive functions be adopted and made public in order to provide clear guidance regarding conflicts of interest and other integrity related matters (such as gifts, contacts with third parties, ancillary activities, the handling of confidential information and post-employment restrictions), and (ii) that proper monitoring and enforcement of such a code be ensured.**

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<sup>19</sup> [Civil Service Agency of Bosnia and Herzegovina - Home \(ads.gov.ba\)](http://ads.gov.ba)

<sup>20</sup> Article 20 of the Code of Conduct for Civil Servants.

## *Institutional framework*

62. APIK has been established as an autonomous specialised body responsible for the activities related to the prevention of corruption. Its role is to act as an effective coordination mechanism for the prevention of corruption in BiH, to develop policies to combat corruption and to supervise the implementation of the Law on whistleblowers. The functions of APIK are mostly advisory: to collect and analyse information, monitor implementation of the laws by other State bodies, coordinate their efforts, provide recommendations on anti-corruption policies, etc. It has no formal power to examine specific cases, collect evidence, start legal proceedings or impose sanctions. APIK publishes regular information on its activities in its annual reports which are available on the Agency's website.<sup>21</sup>

63. At the time of the on-site visit, APIK was facing a number of problems. First a problem of resources, as it could only count on 31 operational staff members<sup>22</sup> since 2015, whereas 41 were planned. Its funding was also uncertain, as it was forced to operate under temporary financing due to the blockade of the budget at state-level. Second, it lacked a proper management: the mandate of the Director had expired and the two Deputy Directors had left; consequently APIK had only one acting Director. To renew the management, interviews had been conducted in open sessions by a special Committee of the Parliamentary Assembly, in charge of the recruitment. However, the process has been delayed and the appointment of the new Director and Deputy Directors had not taken place yet. The Director and the two Deputy Directors were finally appointed in July 2022.

64. The GET notes that APIK, which should be at the heart of all corruption prevention activities, is lacking the capacity to exercise its duties properly and has been hardly operational. All interlocutors met agreed that APIK had merely a ceremonial role and no strong resources. The GET was also informed of a worrying trend, with APIK challenging cantonal initiatives regarding assets declaration, on the ground that this competence should be at state and Federation level. Interlocutors were particularly concerned about allegations of increasing politisation of APIK. In this context, the lack of transparency of the recruitment process for a new Director has been criticised. The authorities take issue with this analysis. Nevertheless, in the GET's view, objective rules are needed<sup>23</sup> and the recruitment process as a whole should be revised and replaced by a merit-based recruitment (e.g. combining written tests automated for the pre-selection of candidates and interviews by an independent commission) to provide for necessary independence and authority. In addition, there is a need for improving the effectiveness of APIK, in particular regarding its management and resources. Therefore, **GRECO recommends that (i) APIK be provided with adequate financial and human resources**

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<sup>21</sup> [http://apik.ba/izvjestaji/izvjestaji-agencije/Archive.aspx?langTag=bs-BA&template\\_id=196&pageIndex=1](http://apik.ba/izvjestaji/izvjestaji-agencije/Archive.aspx?langTag=bs-BA&template_id=196&pageIndex=1)  
APIK also prepared a report on the implementation of the Anti-Corruption Strategy 2015-2019 in November 2016: <http://apik.ba/izvjestaji/izvjestaji-agencije/default.aspx?id=1239&langTag=bs-BA> (*The first report on monitoring the implementation of the Anti-Corruption Strategy 2015-2019 and of the Action Plan for the Implementation of the Anti-Corruption Strategy 2015-2019*).

<sup>22</sup> Of these 31 staff members, 24 are working for APIK (including eleven who are working directly on implementing activities) and seven are attached to APIK but are working for the Commission for Deciding on the Conflict of Interests.

<sup>23</sup> The procedure for electing directors and deputy directors is carried out in accordance with Article 13 of the Law on APIK. Currently, the Law on APIK states that the Director of APIK may be appointed from among persons who, in addition to meeting the general requirements for the work in government institutions of BiH, hold a university degree, have at least five years of relevant managerial experience and high professional and moral standing. There is no provision on integrity as a condition to apply for a position in APIK.

**to perform its tasks effectively, and (ii) management posts be filled following an open and transparent process based on objective criteria to guarantee its independence.**

### *Awareness*

65. APIK's representatives organise regular trainings for all employees of public institutions (at all levels in BiH), in person or online, with the aim of familiarising them with and managing risk factors while strengthening personal ethics and professional integrity. APIK's representatives are also listed as certified coaches in the field of ethics and integrity strengthening in the civil service, in particular in respect of the Code of Conduct for Civil Servants in the institutions of BiH. When taking up their appointment, the employees of these institutions shall be obliged to sign a statement on awareness of the content of the Code of Conduct. The relevant statement shall be enclosed to the personal file of the employee. All employees of these institutions shall also participate in the preparation of integrity plans and familiarise themselves with the risks and risk factors for violation of the integrity during completion of the questionnaire for self-evaluation of the institution's integrity.

66. Furthermore, the Civil Service Agency of BiH organises regular training sessions for civil servants on topics such as Public Administration Ethics and the Code of Conduct for Civil Servants, Integrity Plans according to provisions of the Anti-Corruption Action Plan, Prevention and Suppression of Corruption etc.

67. Advice on the general rules of conduct can be obtained from APIK, which is available for assistance and questions related to the prevention of corruption. Additionally, in case of suspicion in relation to a potential violation of the Law on Conflict of Interests in the BiH Governmental Institutions, the Commission for Deciding on the Conflict of Interests (see para. 98) will give its opinion upon request of any person or institution. In the period 2017-2021, 18 opinions on enquiries related to a potential conflict of interest were provided by the Commission.

68. The GET welcomes the range of awareness activities on ethics and integrity issues that have been developed by APIK and the Civil Service Agency of BiH. However, it notes that these activities have no systematic character and only target civil servants. The GET was told that there are no systematic briefings or training on integrity issues organised for Ministers and their advisers, neither when they are taking up their functions nor while in office. Until today, there is also no system for continuous training for elected officials. The GET considers that all PTEFs should be systematically briefed/trained upon taking their posts about integrity standards applying to them and the conduct expected of them in terms of conflicts of interests, declaration duties, contacts with third parties, gifts, etc. This would be facilitated by the adoption of a code of conduct for PTEFs, as recommended earlier in the report (see para. 61). In a context of widespread corruption combined with limited oversight and discipline mechanisms, Ministers should also be briefed on their role when it comes to ensuring effective integrity and implementation of anti-corruption policies within their respective ministries.

69. In addition, the GET notes that there is no structured counselling system in place where PTEFs can address individual integrity dilemmas as they appear. The role of APIK in this respect is of a much more general nature and the Commission for Deciding on the Conflict of Interests could only issue a limited number of opinions so far. The GET also stresses that the type of

advice that should be in place for PTEFs must be adapted to the nature of their functions. Therefore, it would appear important to have a dedicated mechanism in place to which PTEFs would be able to turn in case of integrity dilemmas and where such matters could be discussed and advice provided on a confidential basis.

70. In view of the above, **GRECO recommends that (i) briefing and training on integrity issues be systematically organised and administered for persons with top executive functions upon taking up their positions, and regularly thereafter, and (ii) confidential counselling on ethical issues be available to them.**

### **Transparency and oversight of executive activities of central government**

#### *Access to information*

71. The GET notes with satisfaction that BiH has signed and ratified the Council of Europe [Convention on Access to Official Documents](#) (CETS No. 205, also known as the Tromsø Convention), which entered into force on 1 December 2021.

72. The public and the media may access information on the decision-making process via the web page of the Presidency<sup>24</sup> and the web page of the Council of Ministers of BiH,<sup>25</sup> on which the work programme as well as reports on the activities of the Council of Ministers and conclusions of its sessions are published. All other information/documents managed by the Secretariat General of the Council of Ministers are available to the public upon request, unless they are subject to exceptions under the Freedom of Access to Information Act.

73. The Freedom of Access to Information Act (FOIA) was adopted in 2000. The Act states that every natural and legal person has the right to access information in the control of a public authority, and each public authority has a corresponding obligation to disclose such information. Each public authority shall appoint an Information Officer who shall process requests made under this Act.

74. According to the FOIA, requests for information must be made in writing. The applicant can collect the requested documents in person at the competent institutions' premises or receive a copy of the requested information. The applicant may be charged in cases when the documents have to be photocopied or when the authority deems that the requests involve a substantial number of documents (the reproduction is free for up to 20 pages). Institutions have 15 days to respond to a request. When the request has been rejected, the applicant has the right to appeal the decision. The appeal steps include an administrative appeal,<sup>26</sup> initiating a procedure with the Ombudsman, and finally with the relevant court. Access to certain documents is restricted when the competent public authority: a) establishes an exception within the meaning of Article 6 (protect state security interests, ensure public safety, protect foreign and monetary policy interests, and in order not to cause harm to the prevention or detection of crimes), Article 7 (protect confidential commercial interests of a third party) or Article 8 (protect privacy of a third person) of the FOIA for entire or part of the information;

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<sup>24</sup> <http://www.predsjednistvobih.ba/>

<sup>25</sup> <https://www.vijeceministara.gov.ba/>

<sup>26</sup> According to Article 22b of the FOIA, any natural or legal person shall be entitled to submit a request to the Administrative Inspectorate of the Ministry of Justice of BiH when a public body hinders the exercise of the right to free access to information.

and b) after examining the public interest within the meaning of Article 9, determines that the disclosure of information is not in the public interest.

75. In performing its monitoring functions in relation to the FOIA, the Institution of Human Rights Ombudsman of BiH can deal with complaints related to the violation of the right to access to information, conduct investigations *ex officio*, and draft guidelines and general recommendations relating to the implementation of the FOIA.<sup>27</sup> The Ombudsman Institution shall also include in its annual report a special section regarding its activities in this area. The GET was told that, in recent years, there has been an increase in the number of complaints related to access to information submitted to the Ombudsman Institution. In 2020, 231 complaints were received and a recommendation was issued in 82 cases.<sup>28</sup> In 2021, 304 complaints were received and a recommendation was issued in 74 cases.<sup>29</sup> Between January and June 2022, 115 complaints had already been submitted. While this reflects a better understanding of the provisions of the FOIA, the GET notes that the Ombudsman Institution can only address non-binding recommendations to the authorities concerned. The GET was told that effective compliance with the legislation was challenging and that, in practice, recommendations issued by the Ombudsman Institution were often not followed.

76. Several interlocutors also referred to problems in the implementation of the FOIA. Media representatives indicated for instance that around half of the freedom of information requests they make are rejected, either formally or, in the majority of the cases, because the requests remain unanswered, even after several attempts. While in general they acknowledged that the situation had improved and that the level of responses to freedom of information requests had increased, it was pointed out that it was still very difficult to obtain documents relating to the use of public subsidies or the budget execution. Some interlocutors expressed concerns regarding the use of commercial sensitivity or data protection as a ground to refuse freedom of information requests. On the other hand, when the information requested was shared, too many documents were sometimes sent. Finally, it was stressed that those seeking information often have to turn to courts and initiate a lawsuit in order to get the information. This might however take three to four years. As a result, most information requests become irrelevant by the time the response reaches the applicant.

77. The GET notes a lack of proactive transparency by public authorities at State-level. It stresses that access to information must be timely; this is particularly true for corruption prevention purposes. When the information comes late, it may often lose its relevance. When information requests are effort and time consuming, filers are usually dissuaded not only in relation to their initial request but it may also have a chilling effect for the future. This runs counter the spirit of any freedom of information legislation. The GET believes that there is some scope for reviewing the applicable legislation, to address the above shortcomings, provide for the proactive disclosure of information and improve the implementation of the right to access to information, notably by providing the Ombudsman Institution with proper powers and resources to perform its monitoring functions effectively.

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<sup>27</sup> See for instance [Special Report on Experience in the Application of the Law on Freedom of Access to Information in Bosnia and Herzegovina](#), December 2019.

<sup>28</sup> See [Annual Report on results of the activities of the Institution of Human Rights Ombudsman of BiH for 2020](#), p. 22.

<sup>29</sup> See [Annual Report on results of the activities of the Institution of Human Rights Ombudsman of BiH for 2021](#) (in Bosnian), p. 36.

78. Furthermore, during the on-site visit, the GET was told that a draft Law on Free Access to Information at the Level of Institutions of BiH had been prepared by the Ministry of Justice of BiH and submitted to the Council of Ministers on 31 January 2022, with all the comments received during the consultation process. The draft Law, which aims at transposing the provisions of the EU Directive on open data and the re-use of public sector information,<sup>30</sup> reportedly includes proactive transparency and obliges public institutions to publish a large list of documents, in line with international standards. Civil society organisations have however expressed concern about the draft Law as it extends the list of possible exemptions to access to information.<sup>31</sup> Other reported shortcomings include the fact that the draft Law does not define a test of public interest, that the Appeals Council at the Council of Ministers<sup>32</sup> should act as the appellate body concerning the right to free access to information, that the current competencies of the Ombudsman Institution to monitor the implementation of the legislation are not mentioned and that longer deadlines for institutions to reply to requests for information are foreseen.

79. In the light of the above, the GET considers that the draft Law on Free Access to Information - currently with the Council of Ministers - should be reviewed in order to solve not only the problems with the existing legislation (lack of responsiveness of the authorities to requests) but also the concerns expressed about the draft legislation (extensive exceptions, lack of definition of public interest, longer deadlines for responding to requests, etc.). The GET is of the strong view that a review of the system should be carried out independently to identify the specific issues that the new legislation needs to address in order to be in line with European standards, in particular the Convention on Access to Official Documents, to which BiH is a Party. In this context, the authorities are encouraged to seek the advice and assistance of the Council of Europe bodies,<sup>33</sup> in particular the Tromsø Group of specialists (Access Info Group). Therefore, **GRECO recommends undertaking an independent assessment on access to information requirements in order to revise the legislation and ensure a timely access to such information, and the necessary implementation measures, that would meet the standards of the Council of Europe Convention on Access to Official Documents.**

#### *Transparency of the law-making process*

80. Information on preparation of legislative acts shall be provided to the public in accordance with Regulations on Consultations in Legislative Drafting (Official Gazette of BiH, number 5/17, hereinafter the Regulations). These Regulations set out a procedure for conducting public consultations with the interested public on the basis of which the Ministries and other bodies of the Council of Ministers of BiH act when preparing legislative and other acts. Under the Regulations, the interested public means private legal entities (associations, foundations, companies, etc.), international organisations, informal groups and natural persons participating in consultations in the context of the preparation of regulations.

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<sup>30</sup> Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information.

<sup>31</sup> See [The right to freedom of opinion and expression](#) - The safety of journalists and access to information in Bosnia and Herzegovina, report by the Office of the United Nations High Commissioner for Human Rights (OHCHR), 7 September 2022, p. 17.

<sup>32</sup> The Appeal Council is linked to the Executive as its members are elected by the Council of Ministers.

<sup>33</sup> The Council of Europe is currently implementing a project on '[Enhancing freedom of expression and freedom of access to information in Bosnia and Herzegovina](#)', funded through the voluntary contribution of Sweden, through the Swedish International Development Cooperation Agency (Sida).

81. According to Article 3 of the Regulations, each BiH institution is to maintain and keep up to date a list of legal and natural persons who are interested in its normative activities on its web page. Legal and natural persons may register for the list via the web application *eKonsultacije*.<sup>34</sup> The aim of this web application is an online service enabling citizens and civil society organisations to actively participate in consultations as part of the law-making process at the level of BiH.

82. Pursuant to Article 7 of the Regulations, once a preliminary draft or draft regulations are approved, the BiH institution concerned must upload the preliminary draft regulation or other preliminary draft on its web page and on the web application *eKonsultacije*. According to the same article, the institution is obliged to send the preliminary draft regulation or other preliminary draft to the persons included in the list referred to in Article 3 of the Regulations through their registered e-mails, with an invitation to submit their written suggestions and comments on the draft via the web application within the specified deadline.

83. According to Article 19 of the Regulations, the BiH institution concerned may conduct consultations at any stage of the preparation of the preliminary draft or draft regulation or other document, but it shall give sufficient time to complete the consultations, before the draft regulation is delivered to the Council of Ministers. In case the BiH institution does not deliver the completed statement authenticated by the stamp and signature of the BiH institution manager, or a decision of the Council of Ministers on exemption from the obligation to carry out the consultations, the Secretary General of the Council of Ministers shall return the draft regulation or other document to the BiH institution and specify the time limit for conducting consultations in accordance with these Regulations. In the absence of consultations, the Council of Ministers shall refuse to include the draft regulation or other draft document to the agenda of the session of the Council of Ministers.

84. Finally, in accordance with Article 27 of the Regulations, the BiH institution may enter into an agreement on cooperation with associations and other legal entities that are interested in its normative activities in order to improve the normative framework and practice of consultation with the interested public.

85. The GET was informed that the consultation process should last at least 15 days and can be extended to 30 days. The consultation procedure applies to both the normal and urgent legislative procedures. However, the head of the institution concerned can ask the Council of Ministers to be relieved from carrying out the e-consultation process when the procedure is accelerated; the urgency then needs to be specifically justified.

86. The GET notes with satisfaction that public consultation is ensured at State-level. At the same time, interlocutors raised concerns regarding the level of impact of proposals and amendments suggested, which is in practice limited. Proposed bills are submitted to the Council of Ministers with a summary of the comments received, but there is no possibility to track how these comments will be taken into consideration. The GET considers that it would be preferable if the authorities publish revised bills upon transmission to Parliament in a way that amendments to the initial text are clear and justified, and that the contributors are also indicated. Consequently, **GRECO recommends that the transparency of the law-making**

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<sup>34</sup> <https://ekonsultacije.gov.ba/>



**process be increased by ensuring that external inputs to legislative proposals and their origin be identified, documented and disclosed from the beginning of the legislative process.**

#### *Third parties and lobbyists*

87. There are no rules in place that regulate contacts of PTEFs with third parties and lobbyists in BiH. There are also no reporting or disclosure requirements applicable to those who seek to influence Government actions and policies.

88. The GET notes that the Anticorruption Strategy and Action Plan 2015-2019 prioritised the regulation of lobbying, at all levels of government, to be accomplished by 2019 (Strategic Programme 1.10). However, this has not been effectively pursued in practice. The GET would like to stress the importance of regulating lobbying activities for avoiding undue influence over the PTEFs. PTEFs may sometimes consider their contacts with third parties as purely private, especially in a country the size of BiH, although they could be informing the decision-making process. GRECO has consistently called for proper guidance to be provided to PTEFs so as to clearly differentiate what qualifies as strictly private exchanges from meetings that may influence, or may be seen as seeking to influence, the decision-making process. The latter should be duly reported and accessible to the public. More transparency in this respect would counter perceptions of collusion between PTEFs and businesspersons and oblige PTEFs to be more scrupulous in reporting on contacts with third parties.

89. Therefore, **GRECO recommends (i) introducing rules on how persons with top executive functions engage in contacts with lobbyists and other third parties who seek to influence Governmental legislative and other work; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion.**

#### *Control mechanisms*

90. For institutions at State-level, scrutiny over the work of administrative bodies is carried out through an administrative oversight, a parliamentary oversight and a system of internal audit.

91. Pursuant to the provisions of the Law on Administration (Article 12), administrative oversight includes the oversight over the legality of acts ruling on administrative matters, the oversight over the legality of activities of institutions with public authority, and a mechanism of inspections.

92. In addition to administrative oversight, special laws also provide for parliamentary oversight over the work of specific administrative bodies, such as the work of the Intelligence and Security Agency (Joint Committee for Oversight over the Work of the Intelligence and Security Agency) or the work of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (Commission for the Selection and Monitoring of the Work of APIK). Moreover, the Parliamentary Oversight Act regulates the oversight of the Parliamentary Assembly of BiH over the work of all budgetary and extra-budgetary institutions of BiH, administrative bodies and institutions with public powers, as well as the oversight over the work of persons who manage a part of the budgetary and extrabudgetary sources of funds of

profit or non-profit organisations and bodies, originating from the sources of BiH or donated to institutions and bodies of BiH, regardless of the percentage amount, and persons whose appointment is confirmed or approved by one or both Houses of the Parliamentary Assembly of BiH. Parliamentary oversight is carried out through public hearings and thematic sessions; by conducting parliamentary public inquiries, parliamentary or delegate issues and interpellations; by submitting requests to the BiH Presidency for the delivery of written reports; and by proposing a vote of no confidence to the Parliamentary Assembly of BiH. The Parliamentary Oversight Act provides for fines for a responsible and authorised person of the institution subjected to the parliamentary oversight.

93. Pursuant to the Law on the Audit of Institutions of BiH, the Audit Office of the Institutions of BiH is tasked with carrying out audits to ensure independent opinions on budget execution and financial reports and on the use of resources and management of state properties by the Council of Ministers. The Audit Office of the BiH Institutions is an external, independent auditor auditing business operations of the institutions of BiH.

94. According to the Law on Audit, the mandate of the Office includes all institutions and organisations funded from the budget adopted by the Parliamentary Assembly of BiH, extrabudgetary funds, any funds provided to any institution or activity by external organisations, companies in which the state has a 50% ownership interest plus one share or more.<sup>35</sup> The Audit Office conducts financial audits (including compliance audit), performance audits and special audits. Financial audit implies verification of financial statements and accompanying accounts of institutions with a view to assessing whether the financial statements are reliable and whether the balances completely reflect the results of budget execution. The Audit Office assesses whether the institutions comply with current regulations, use funds for corresponding purposes and assesses financial management, internal audit functions and internal control systems. The Audit Office, *inter alia*, performs audits every year and gives its opinion on the annual report of the execution of the budget. A particular focus relates to public procurement and the execution of contracts. Performance audits imply a review or examination of a certain business aspect of the entire or a part of the institution, programme or activity in terms of the cost-efficiency, efficiency and effectiveness of the institution's use of its resources. Through the publication of audit reports on its webpage, the Audit Office informs the Parliamentary Assembly of BiH and the public of its findings and recommendations.

95. Finally, in institutions at the level of BiH, oversight of the civil service is performed internally and externally. Internal oversight is performed within administrative authorities, based on a system of subordination, where the superior civil servant monitors and directs the work of subordinate civil servants. External oversight includes inspections and oversight of the legality of acts, where the external oversight body inspects alignment of the actions of civil servants with relevant laws and regulations. Control over the implementation of the Law on Civil Service in Institutions of BiH is performed by administrative inspectors functioning as civil servants with special powers. In the event of any identified irregularities, administrative inspectors will issue a decision to order the removal of irregularities or illegalities. Employers and employees may appeal against the decision of an administrative inspector to the Ministry of Justice of BiH within 15 days from the date of receipt of the decision. The decision of the Ministry is final and binding, but an appeal against that decision may be filed with the

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<sup>35</sup> Ministries with more than 200 employees or a budget of at least 10 million of BAM are obliged to have an internal audit unit.

Administrative Division of the Court of Bosnia and Herzegovina. Pursuant to Article 63 of the Law on Civil Service, the Civil Service Appeals Board is, as the second-instance body, responsible for considering any final decisions, actions taken or omitted by the institution, including members of the Presidency of BiH, the Council of Ministers, Ministers or Deputy Ministers.

### **Conflicts of interest**

96. Conflicts of interest of elected officials, executive officeholders and advisers in the BiH governmental institutions are regulated in the Law on Conflict of Interest in Governmental Institutions of BiH (LCI), adopted in 2002 and lastly amended in 2013. Article 1 of the LCI stipulates that a conflict of interest occurs in situations where elected officials, executive officeholders and advisers have a personal interest that has influenced or may have influenced the legality, transparency, objectivity and impartiality of the performance of public office. In exercising their public duties, elected officials, executive officeholders and advisers must act in the interest of citizens; accordingly, they cannot put their private interest above the public interest, nor can they avail themselves of any relationship that puts their independence at risk (Article 2, LCI). The LCI is applicable to the officials of the State-level institutions. Elected officials include the Members of the Presidency of BiH and the Chairman of the Council of Ministers of BiH, while the term “executive officeholders” covers ministers and deputy ministers in the Council of Ministers of BiH, as well as directors and deputy directors of the state administration bodies (Article 3, LCI). Advisers include advisers of elected officials and executive officeholders. The civil servants of a lower rank are governed by the provisions of the general legislation on the civil service. Therefore, all PTEFs are covered by the LCI.

97. The LCI regulates a vast array of issues, including the incompatibility of certain permanently existing occupations or engagements with public office, the restrictions on private employment for officials, the acceptance of gifts, financial statements by public officials. It also sets principles of conduct of elected officials, executive officeholders and advisers, including integrity, transparency and ethics.

98. For the purpose of implementation of the LCI, the Commission for Deciding on Conflict of Interest (hereinafter CDCI) has been established (Article 17, LCI). The CDCI is composed of nine members: three members from the House of Representatives and three members from the House of Peoples (at least one third of whom must comprise delegates from opposition parties), as well as the Director and two Deputy Directors of APIK. CDCI members serve for a four-year term which coincides with the mandate of Parliament; they can be reappointed once. The CDCI decides by a majority of votes of all its members, which should include the votes of at least two members from each of the three “constituent peoples” of BiH (Serbs, Croats and Bosniacs) (Article 17a(2), LCI). The Office of the CDCI performs the professional, administrative and technical tasks falling within the competence of the Commission. APIK provides the administrative support to the Office.<sup>36</sup>

99. The CDCI may institute proceedings falling within its competence *ex-officio* or on the basis of a credible, grounded and non-anonymous report.<sup>37</sup> The CDCI decides on

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<sup>36</sup> The Office of the CDCI is comprised of seven employees (one head of Office, two professional advisers, two senior professional advisers, one expert associate and one clerical worker).

<sup>37</sup> For more details on the procedure and the functioning of the CDCI, see GRECO’s Fourth Round Evaluation Report in respect of Bosnia and Herzegovina, paragraph 64 and further.

administrative sanctions for non-compliance with conflict of interest rules and can impose the suspension of a portion of salary payment.

100. According to Article 12 of the LCI and the Rules of Procedure of the CDCI, any elected officials, executive officeholders and state-level advisers shall provide the CDCI with a financial statement within 30 days from the date of taking office, as well as regular reports by 31 March each year for the previous year and at the end of their mandate, within 30 days after the expiry of six months following the termination of the office. The form and content of the financial statement is determined by the CDCI and shall contain the following information: personal information of official persons and their close relatives, information on public duties, current income and sources of additional incomes (salary, pension, remuneration, commissions, fees etc.), assets (real property, stocks, securities, personal property, tenancy, business documents and other assets in value exceeding BAM 1 000 (approx. EUR 511) in BiH and abroad), liabilities (bonds, loans and guarantees for such liabilities in BiH and abroad) and information on any other functions (in public or private companies, the Agency for Privatisation, associations or foundations). They are also required to give statements on functions (in public or private companies and the Agency for Privatisation) of their close relatives (a marital or extramarital partner, child, mother, father, adoptive parent and adopted child), but not on their assets and income. The CDCI shall verify the content of the financial statements, but it shall not disclose them. The purpose of these statements is to help prevent conflicts of interest and to identify possible conflicts of interest.

101. During the period 2017-2021, 21 proceedings were initiated; 14 sanctions were imposed on elected officials (including a member of the Presidency of BiH), executive officeholders (including a former Deputy Minister of Defence of BiH) and advisers (including the head of the Office of the Chairman of the Council of Ministers, an adviser of the BiH Deputy Minister of Defence and an adviser in the Office of the Deputy Minister of Foreign Affairs of BiH) for violation of provisions of the LCI. Sixteen opinions were given in relation to possible violation of provisions of the Law. During the same period, the Office of the CDCI also annually checked around 500 financial statements; in 2021, it received and checked 290 financial statements of elected officials, executive officeholders and advisers.

102. Out of 10 sanctions imposed by the CDCI, four were imposed for performing incompatible functions in a public company, one for performing an incompatible function in a private company, two for illegal engagement of close relatives, while three sanctions were imposed for failing to provide the CDCI with a financial statement. Sanctions imposed ranged from a reduction of the net monthly salary of 10% for one to six months to a reduction of 30% for five months. In four cases, the CDCI had only established the existence of a conflict of interest, but the pecuniary sanction was not imposed since, at the moment of adoption of the decision, the relevant official did not perform any function and was registered as an unemployed person, so that, although a violation of the Law was identified in the relevant case, imposition of a sanction could not be executed.

103. It became apparent to the GET from discussions with various interlocutors that the LCI suffers from several deficiencies, notably when it comes to its implementation. The GET was told that the CDCI is not seen as independent due to its – mainly political – composition. Moreover, the CDCI has hardly functioned in the past years. Following general elections in October 2018, appointments to the CDCI were delayed for two years. The new CDCI was appointed by the Parliamentary Assembly only in July 2020. The adoption of decisions was

then blocked due to the inability to reach the required quorum. Finally, only six sessions have taken place during the current mandate. As a result, the CDCI only imposed 11 sanctions in the past two years. At the time of the on-site visit, the CDCI had only seven members, following the departure of the two Deputy Directors of APIK, leading to renewed difficulties in the decision-making process. The GET also notes that sanctions often come very late, as it takes several years for a report to be put on the agenda of the CDCI.<sup>38</sup> Furthermore, these sanctions usually consist of a fine amounting to a very small percentage of the salary to the detriment of an effective deterrent and dissuasive system.

104. Another important issue which proves problematic is the scope of the oversight by the CDCI. The GET notes that the CDCI's mandate is limited to the identification of *prima facie* conflict of interest, without any substantive checks being carried out nor the accuracy of the statements being verified. The LCI does not provide for sanctions in case of incomplete or false information indicated in the financial statement. Moreover, the failure to submit a statement is rarely subject to sanction. The GET was informed that five high-ranking officials from the Presidency and the Council of Ministers had for instance never submitted any financial statement, without any legal consequences. The GET is of the firm belief that the statements of interests of PTEFs should systematically be assessed in depth given their role in decision-making at the very top of the Executive. This is of paramount importance for the oversight system to be meaningful in respect of PTEFs in order to identify possible conflicts of interest and impose dissuasive sanctions where necessary.

105. Finally, while the sessions of the CDCI are open to the public, its website is no longer operational due to a lack of financial, human and organisational capacity. The decisions of the CDCI are therefore not accessible to the public and the system remains overall very opaque.<sup>39</sup> The GET underlines that, for the sake of transparency, any confirmed conflict of interest should be disclosed and decisions regarding conflicts of interest should be accessible to the public.

106. The GET recalls that these concerns were already pointed out in GRECO's Fourth Round Evaluation Report on BiH as the CDCI also covers parliamentarians. Serious doubts were raised as to the adequacy of the composition of the CDCI, the timeliness of its decision-making process owing to periods of inactivity, and the sanctioning regime, in particular the very low available span of fines.<sup>40</sup> The GET regrets that the draft Law on Prevention of Conflict of Interest in the Institutions of BiH, which is to address these concerns,<sup>41</sup> has been blocked for

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<sup>38</sup> A former member of the Presidency was for instance found to be in violation of the LCI in 2021 and fined with a 10% salary reduction for one month for events dating from 2017, see [Dragan Čović punished for conflict-of-interest violation - CIN](#).

<sup>39</sup> Financial statements are not made public.

<sup>40</sup> In the Fourth Round Evaluation Report, GRECO recommended, in respect of members of parliament, that the advisory, supervisory and enforcement regime regarding conflicts of interest be completely reviewed and properly articulated, notably, by ensuring its independence and timeliness, and by making it effective through a system of appropriate sanctions. In its last Compliance Report, GRECO concluded that, in view of the persistent lack of progress, this recommendation had not been implemented ([Fourth Round Interim Compliance Report](#) on Bosnia and Herzegovina, adopted on 3 December 2021, para. 34).

<sup>41</sup> This draft law is one of the three laws that are part of the 14 Key Priorities from the European Commission's Opinion on BiH's application for EU membership. There is a second draft law on the prevention of conflict of interest which was developed by a working group created by the Ministry of Justice and was submitted to the Council of Europe European Commission for Democracy through Law (Venice Commission) for opinion, see the 2021 Opinion of the Venice Commission Bosnia and Herzegovina – [Opinion on the draft Law on preventing of](#)

several years. It has been stuck in the parliamentary procedure since 2017 and has failed to be adopted by the House of Peoples so far. The GET considers that any blockages should be resolved without delay. This would benefit not only the prevention of corruption but also the general trust in public officials and democratic institutions.

107. In addition, the GET notes that the LCI does not provide for the disclosure of *ad hoc* conflicts of interest. It recalls that the notion of conflict of interest should cover both actual and potential conflicts and also appearances of such a conflict. In this respect, the GET wishes to stress that conflicts of interest occur often in the day-to-day life of PTEFs and it is crucial that they be managed so that detrimental effects on the decision-making process are avoided. This means that internal checks and balances have to be in place within the government as within each institution, in order to help PTEFs and other officials to identify timely challenges related to conflicts of interest and withdraw from the decision-making process whenever there is an existing or perceived conflict of interest in respect of the topic at issue. This goes hand in hand with the need to establish an integrity plan in respect of the government (see para. 51).

108. In light of the foregoing considerations, **GRECO recommends that the system for managing conflicts of interest of persons with top executive functions be reviewed and strengthened by (i) ensuring that statements of interests of persons with top executive functions be subject to regular substantive checks, with proportionate sanctions in case of breach, including for false reporting or failure to report; (ii) making decisions regarding conflicts of interest available to the public; and (iii) introducing a requirement of *ad hoc* disclosure in respect of persons exercising top executive functions in situations of conflicts of interest as they arise.**

### **Prohibition or restriction of certain activities**

#### *Incompatibilities, outside activities and financial interests*

109. Elected officials, executive officeholders and advisers shall not serve on a management board, supervisory board, or management of a public enterprise or an agency for privatisation, or act in the capacity of an authorised person for a public enterprise or as director of a directorate or an agency for privatisation. Employment in a private enterprise under circumstances that create a conflict of interest is also incompatible with serving as an elected official, an executive officeholder or an adviser (Articles 4 and 5, LCI).

110. Elected officials, executive officeholders, or advisers shall resign from any incompatible office no later than three days after they have assumed office.

111. According to the LCI, “financial interests” mean any interest that entitles an elected official, executive officeholder or adviser to receive money in the amount of BAM 1 000 (approx. EUR 511) per year, and any ownership interest of an elected official, executive officeholder or adviser, which represents a value of a minimum of BAM 10 000 (approx. EUR 5 113) in a company, unlimited company, limited partnership, joint-stock company or a limited company.

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[conflict of interests](#), adopted by the Venice Commission at its 127th Plenary Session (Venice and online, 2-3 July 2021).

112. Elected officials and executive officeholders shall not vote on any issue which directly concerns the private company in which they, or other interested parties,<sup>42</sup> have a financial interest (Article 7, LCI). In such situations, the official must refrain from voting and announce, in an open session, the reasons for his/her abstention from voting. In case an elected official, an executive officeholder or an adviser violates the provisions of this Article, the vote or the decision shall be deemed null and void.

#### *Contracts with state authorities*

113. Elected officials, executive officeholders and advisers cannot serve on the management board, steering board, supervisory board, executive board, or act in the capacity of an authorised person, for any private company in which the governmental body where s/he serves has invested capital in the four years prior to taking office and during his/her term of office (Article 6 (1), LCI).

114. Elected officials, executive officeholders and advisers cannot serve on the management board, steering board, supervisory board, executive board, or act in the capacity of an authorised person, for any private company that contracts, or otherwise does business, with government authorities, at any level, when the value of the contract or the business conducted exceeds BAM 5 000 (approx. EUR 2 556) per year (Article 6 (2) of the Law). In addition, elected officials cannot act as authorised persons in foundations and associations which are financed from the public budget, at any level of government, in an amount exceeding BAM 10 000 (approx. EUR 5 113) per year, or BAM 50 000 (approx. EUR 25 564) per year in the case of sporting and cultural foundations/associations. However, elected officials may perform executive duties in foundations and associations that are not financed from the budget at any level of government and are founded pursuant to the Law on Associations and Foundations (Article 11, LCI).

115. Elected officials, executive officeholders and advisers cannot enter into a contract with any public company to provide personal services. This ban extends to contracts with private companies awarded a public contract in so far as the value of the contract or business exceeds an annual turnover of BAM 5 000 (approx. EUR 2 556). Infringements of the aforementioned provisions result in the contract being deemed null and void (Article 8, LCI).

116. These restrictions on government investment in private enterprises and personal service contracts (Articles 6 and 8, LCI) extend to close relatives (Article 8a, LCI). Close relatives are not, however, covered by the restrictions applicable to involvement in foundations and associations benefiting from the government's budget.

#### *Gifts*

117. Public officials are prohibited from accepting or soliciting gifts in connection with the performance of their public duties (Article 10, LCI). The definition of gift comprises items, rights, services without remuneration and any other benefit given or promised to the elected official, executive officeholder or adviser, such as catering service, overnight stay, release of debt or liability, travel expenses or similar services, tickets, an art piece, souvenirs, insurance

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<sup>42</sup> A relative, or a person who is with the elected official, executive officeholder or adviser, in a personal, political, economic, or other relationship which may affect objectivity in the work of the elected official, executive officeholder or adviser.

or similar service, medical or similar service provided at a rate which does not correspond to its market price. Gifts received from relatives are exempted from the Law (Article 3(1j), LCI).

118. Only gifts of a symbolic and diplomatic nature are acceptable, i.e. gifts valued under BAM 200 (approx. EUR 102). Any gift that exceeds this threshold has to be reported to the CDCI, which records it in a central register. The GET was informed that a total of 51 gifts were registered in the period 2015-2021, mainly gifts received by the Presidency of BiH.

119. The recorded gift should then be given to the governmental institution that has elected or appointed the concerned official, and on behalf of which s/he performs public duties. If there is any doubt as to the value of the gift, an invoice is to be requested from the donor.<sup>43</sup> Elected officials, executive officeholders and advisers shall not accept money, check, or any other securities regardless of the amount (Article 10(5), LCI).

120. The Council of Ministers of BiH adopted in 2008 an Ordinance on procedure, manner of recording, submission and safekeeping of received gifts of value exceeding BAM 200. This Ordinance deals more specifically with gifts received in relation to the performance of public duties by elected officials, executive officeholders and advisers in the Council of Ministers of BiH, and in the state administration bodies, agencies, directorates and other institutions and bodies of the Council of Ministers of BiH.

121. Finally, under Article 8 of the Code of Conduct for Civil Servants in the Institutions of BiH, a civil servant shall not accept a gift, or any service or other benefit in the exercise of his or her duties, except for protocols or occasional gifts of minor value. If a gift is offered to a civil servant, s/he shall reject it, or return it, and take action to identify the person who offered it and, if possible, find witnesses and immediately make an official note and notify her/his superior.

122. From the GET's exchanges during the visit, it came out that the rules on gifts lacked clarity. While the principle is that no gifts should be accepted by PTEFs, they can keep gifts valued under BAM 200 (approx. EUR 102), which do not have to be reported at all. The GET considers that the provisions regulating the acceptance of gifts should be more precise. In addition, it should be required that gifts be disclosed from a lower threshold. In this respect, the GET also points out that other GRECO member States often use low value thresholds in order to establish strict limits on gifts and other benefits, something from which the authorities could draw inspiration. In any event, given the sensitivity of the issue of gifts at Executive level, the GET considers it important that the future code of conduct for PTEFs and the accompanying guidance (see para. 61) present in sufficient detail the "dos and don'ts" regarding the acceptance and reporting of gifts and hospitality.

123. The GET also notes that the register of gifts maintained by the CDCI is not accessible to the public, since the CDCI website is not functioning. The GET was told on-site that the information can be made available upon request, by media or other interested parties. The GET considers that the situation calls for increased transparency, in a way that the public is made aware of gifts received by PTEFs and from whom at regular intervals.

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<sup>43</sup> These provisions also apply to persons who accept a gift on behalf of an elected official, an executive officeholder or an adviser, it being understood that the relevant person is aware of the acceptance of the gift.



124. In view of the above, **GRECO recommends establishing more stringent rules on gifts and other benefits for persons with top executive functions by lowering significantly the threshold for declaring and recording gifts and ensuring that gifts registers are accessible to the public.**

#### *Misuse of public resources*

125. In the exercise of their duties, elected officials, officeholders and advisers are bound to use the property and means entrusted to them exclusively for the purposes for which they are intended and in an efficient manner (Article 2, LCI).

#### *Misuse of confidential information*

126. The use of privileged information about the work of governmental authorities for reasons of personal benefit or benefit of interested parties is prohibited (Article 9, LCI).

#### *Post-employment restrictions*

127. A cooling-off period of six months applies to elected officials, executive officeholders and advisers during which they are prohibited from serving on the management board, supervisory board, assembly or management, or act in the capacity of an authorised person for a public enterprise (Article 5, LCI). During that period, they shall also not be members of the management board or the supervisory board, or be directors of a directorate or an agency for privatisation.

128. In the light of GRECO's practice, the six-month period appears to be too short to be effective in respect of PTEFs and should be extended. The GET considers that the system would also benefit from a dedicated mechanism from which PTEFs should gain approval or advice before taking up new employment in the public or other sectors upon leaving office.

129. Furthermore, the GET notes that the prohibition for PTEFs on being employed by a public company or a privatisation agency for six months after leaving office does not apply to the private sector. There is no provision governing the passage of PTEFs from the public to the private sector ("revolving door"). This should be remedied so that rules apply to employment in both the public and private sectors, when there are risks of conflicting interests. Moreover, existing rules should be broadened to cover lobbying the Executive straight after leaving office. This should be read in conjunction with the lack of practical rules on contacts of PTEFs and third parties (see para. 89). Therefore, **GRECO recommends that (i) it be considered to extend the length of the cooling-off period for persons with top executive functions; (ii) post-employment rules in relation to persons with top executive functions be broadened to cover employment in the private sector; and (iii) rules on persons with top executive functions expressly prevent lobbying activities towards the government for a lapse of time after they leave government.**

### **Declaration of assets, income, liabilities and interests**

#### *Declaration requirements*

130. There is a dual system of asset declarations at State-level. Elected officials, executive officeholders and advisers must submit regular financial statements and disclose their assets and interests to the CDCI by virtue of the LCI (see para. 100). In addition, elected officials at all levels must submit declarations of their assets to the Central Election Commission by virtue of the Election Law of BiH. The obligation to submit asset declarations also extends to candidates for election.

131. Elected representatives at all levels of government are obliged to submit to the Central Election Commission of BiH a signed statement of total assets on a specific form (Articles 15.7, 15.8 and 15.9, Election Law ). Members of the Presidency of BiH are covered by the Election Law of BiH. Members of the Council of Ministers of BiH are not covered by these provisions, unless they have been candidates for the House of Representatives of BiH prior to their appointment. The statement shall contain information on current income and sources of income (e.g. all incomes, wages, profit from property, etc.); property which exceeds BAM 5 000 (approx. EUR 2 556) in BiH and abroad (e.g. money, bank accounts, business documentation, shares, bonds, real estate, etc.); and liabilities (e.g. debts, disbursements, promissory notes, loans, etc.). Declarations are to be submitted at the beginning (30 days from the day of appointment) and at the end of the mandate (30 days from the termination of the mandate). The asset declarations submitted must also include details on the property situation of close relatives. The notion of close relatives covers the spouse, children and members of the family household whom it is the official's legal obligation to support. There is no obligation to make updates while in office if significant changes in value occur.

132. Under the Election Law, the Central Election Commission of BiH files the declarations received, but does not check the accuracy of the information contained in the forms. The Central Election Commission developed an application, in 2016, to make the filed declarations available online; the application has been in operation since December 2017 and declarations are publicly available on the Commission's website<sup>44</sup> (personal data are excluded).

133. Furthermore, Article 16(2) of the Law on Civil Service in the Institutions of BiH stipulates that a civil servant shall disclose all information on properties at his/her disposal and at the disposal of his/her close family members as well as activities and functions that s/he and members of his close family perform, during his/her appointment as a civil servant.

#### *Review mechanisms*

134. The CDCI is responsible for verifying the content of the financial statements of elected officials, executive officeholders and advisers to detect potential conflict of interest.

135. Under the Electoral Law, the Central Election Commission is not responsible for the accuracy of data submitted or complaints regarding the information contained in the forms. It only initiates and conducts procedures in case of failure to submit assets declarations, and can impose fines in case of irregularity. The non-submission and late submission of asset declarations by a candidate elected at any level of government is punishable by fines ranging from BAM 300 to 3 000 (approx. EUR 153 to 1 533). There is no penalty for incorrect/false reporting, other than those in criminal law.

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<sup>44</sup> [www.izbori.ba](http://www.izbori.ba)

136. In 2017, the Central Election Commission found that, following the 2016 local elections, 67 elected officials terminating their office and two elected officials assuming their mandate did not submit their assets declarations on time. While some of these cases are still ongoing, the Central Election Commission adopted 24 decisions thus far imposing a fine of BAM 300 on elected officials who did not submit their declaration of assets at the beginning or end of the mandate. In the period from 2008 to 2018, the Central Election Commission issued a total of 179 decisions for sanctioning elected officials due to the failure of submitting the asset declaration at the beginning or end of the mandate.

137. The GET finds the dual system of assets declaration/financial reports and review quite cumbersome.<sup>45</sup> It notes that the two types of declarations are partly overlapping in terms of the coverage of officials and of the data declared. As a result, not all PTEFs are subject to equivalent requirements. Some PTEFs (elected officials or candidates) are obliged to submit two types of documents (financial statement under the LCI and assets declaration under the Election Law), while others are only subject to one reporting regime. Asset declarations of elected officials are made available to the public through the website of the Central Election Commission, whereas financial statements are not made public. The GET stresses that it is instrumental to the credibility of an effective asset disclosure system that all PTEFs, who are by virtue of their position especially exposed to corruption risks, be subject to a unified system of declaration. Therefore, all PTEFs should be subject to the same disclosure requirements, irrespective of whether they are elected or not, and all declarations should be made systematically, easily and publicly accessible on-line for transparency and accountability purposes. There should also be an obligation to report significant changes to assets and property while in office. The GET refers to its recommendation on introducing a requirement of *ad hoc* disclosure in this respect (see para. 108).

138. While the GET notes that there has been some progress, as assets declarations are now publicly accessible online on the Central Election Commission's website, the absence of mechanisms allowing the declarations to be effectively verified was still seen as a crucial weakness in the existing regime by many of the GET's interlocutors. The GET considers that there is clearly a need to harmonise the existing requirements for financial disclosure applying to all PTEFs and introduce an effective control mechanism. For any meaningful verification to take place and serve better transparency, there should be an independent body tasked with performing efficient verification of the declarations of assets and with the power to impose proportionate and dissuasive sanctions to guarantee the accuracy and correctness of information declared as well as the actual filing of a declaration, including the possibility to refer a matter to criminal investigation.

139. Consequently, **GRECO recommends that the system of asset declarations for persons with top executive functions be harmonised and strengthened by ensuring that (i) all persons with top executive functions are uniformly obliged to provide asset declarations;**

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<sup>45</sup> GRECO issued two recommendations in the Fourth Evaluation Round to improve the financial disclosure system applicable to elected officials. They related to the need to unify the applicable requirements regarding financial disclosure in one single declaration form, to provide an update in the event of significant change in the information to be reported, to publish financial information and to introduce an effective control mechanism (including random verifications) with appropriate sanctions for false reporting. In the corresponding compliance process, these recommendations were considered not or only partly implemented. In particular, GRECO regretted that no tangible progress had been made to introduce an obligation to report significant changes to assets and property in the course of the legislative mandate (Fourth Round [Interim Compliance Report](#) on Bosnia and Herzegovina, adopted on 3 December 2021, para. 25).

**(ii) adequate verifications are carried out and effective, proportionate and dissuasive sanctions are applied when the rules are violated and; (iii) all asset declarations are made easily accessible to the public.**

#### Accountability and enforcement mechanisms

##### *Criminal proceedings and immunities*

140. Immunities for members of the BiH Presidency and members of the BiH Council of Ministers are regulated by the Law on Immunity of Bosnia and Herzegovina (Official Gazette of BiH No. 37/03 and 75/09). Under this Law, the BiH Presidency members and the members of the Council of Ministers of BiH benefit from non-civil liability for actions taken in the course of duty; they shall not be held civilly liable for any procedure carried out within the scope of their competences in the BiH Presidency or the Council of Ministers of BiH.

141. Persons who have the right to invoke the immunity may invoke it at any moment for the procedures carried out within the scope of their competences in the relevant institutions, but this is not considered a general obstacle to the initiation of a civil procedure. When, during the civil procedure initiated against the BiH Presidency member or the member of the Council of Ministers of BiH, the relevant person declares that the procedure was carried out within the framework of his/her competences, the competent court will deliberate and decide on this matter. The person invoking immunity has to present evidence which demonstrate his/her capacity. A panel of three judges decides on the right of the person invoking immunity within three days from the date of receipt of the counterparty's plea, i.e. from expiry of a deadline for a plea. An appeal may be brought against the panel's decision before the court deciding in second instance on the decisions of the competent court within three days from the receipt. The second-instance court adopts a decision within three days.

142. PTEFs do not enjoy immunity from criminal proceedings. The rules of criminal procedure laid down in the Criminal Procedure Code of BiH apply equally to all citizens and there is no specific criminal procedure for PTEFs at the national level. The Court of BiH, in the framework of its criminal jurisdiction, has jurisdiction over cases for corruption-related offences as set forth in the Criminal Code of BiH, such as accepting gifts and other forms of benefits (Article 217); giving gifts and other forms of benefit (Article 218); accepting reward or other forms of benefit for trading in influence (Article 219); giving reward or other forms of benefits for trading in influence (Article 219a); abuse of office or official authority (Article 220); embezzlement in office (Article 221); fraud in office (Article 222); using property of the office (Article 223); lack of commitment in office (Article 224) or forging official documents (Article 226).

143. Since the beginning of operation of the Court of BiH until 30 September 2017, a total of 136 cases of corruption involving 222 persons resulted in final judgments before this Court. Out of the total number of persons prosecuted, convictions were delivered in relation to 142 persons, 68 persons were acquitted, while verdicts dismissing charges were issued in relation to 14 persons.<sup>46</sup> According to the most recent figures, there has only been one proven

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<sup>46</sup> Internal publication of the Court of Bosnia and Herzegovina entitled: "Processing corruption and terrorism cases before the Court of Bosnia and Herzegovina", December 2017.

case of corruption or related offences in relation to PTEFs,<sup>47</sup> while in four further cases, six PTEFs have been acquitted.

144. In the light of the above, the GET notes that few PTEFs have been prosecuted for corruption offences, especially compared with allegations of corruption reported widely in the media. Several interlocutors mentioned cases of alleged corruption of PTEFs that were not pursued by the Prosecutor General's Office as well as cases which were pursued but then dragged on before the courts before being dismissed on a technicality or due to the lack of evidence. This leads to an impression of impunity in the general public. While the GET finds it positive that a specific team has been recently set up within the Prosecutor's Office of BiH<sup>48</sup> to deal with corruption cases committed at the highest level of the State, it considers that the Office should be equipped with more resources and powers to conduct inquiries in respect of PTEFs suspected of having committed corruption-related offences. Therefore, **GRECO recommends that the Section for Corruption of the Special Department for Organized Crime, Economic Crime and Corruption of the Prosecutor's Office be provided with adequate human and technical resources and prosecutors benefit of highly specialised training to effectively investigate and prosecute corruption-related offences concerning persons with top executive functions.**

#### *Non-criminal enforcement mechanisms*

145. As indicated above, the CDCI and the Central Election Commission of BiH may initiate proceedings to decide respectively on a violation of the LCI and in case of failure to submit assets declarations. There is otherwise no possibility of disciplinary proceedings against PTEFs. In order to improve the trust of the public in the strict abidance of PTEFs to integrity rules, the GET refers to its recommendation on a code of conduct for PTEFs that should be accompanied by proper enforcement (see para. 61).

## **V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES**

### **Organisation and accountability law enforcement/police authorities**

#### *Overview of various law enforcement authorities*

146. At the state level of BiH, there are three police agencies coming under the Ministry of Security BiH: the Border Police BiH, the State Investigation and Protection Agency and the Directorate for Coordination of Police Bodies in BiH. All three are organised as civil agencies. In addition, both constituent entities and the Brčko District have their own law enforcement authorities, which operate autonomously from the state level, except in cases coming within the competence of the aforementioned state agencies. This evaluation will focus on two law

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<sup>47</sup> In 2021, a former Minister of Security of BiH was sentenced to 6 months' imprisonment for abuse of office or official authority under Article 220(1) of the Criminal Code of BiH.

<sup>48</sup> The Section for Corruption of the Special Department for Organized Crime, Economic Crime and Corruption in the Prosecutor's Office of BiH is currently composed of 5 prosecutors headed by the Head of Section and supervised by the Head of the Special Department for Organized Crime, Economic Crime and Corruption (who is also deputy chief prosecutor) within which the Section operates, as well as the Chief Prosecutor, and assisted by technical staff and investigators. Each prosecutor deal with one file and a half on high level corruption.

enforcement agencies operating at the state level, namely the Border Police BiH and the State Investigation and Protection Agency.

147. The Border Police BiH (BP), while coming under the Ministry of Security BiH, is operationally autonomous and does not receive government instructions. By law it operates exclusively on professional grounds and not by representing, protecting or undermining the interests of any political party, registered organisation or association, of any constituent or other people in BiH. It is entrusted primarily with policing duties pertaining to border crossing control. As such, it is responsible for the enforcement of the Law on Surveillance and Control of the Crossing of State Border and the Law on Movement and Stay of Aliens and Asylum. It must also prevent, detect and investigate criminal offences contained in the Criminal Codes of BiH when such criminal offences are directed against the security of the state's borders or against the execution of activities and tasks falling within the competence of the State Border Service of BiH.

148. The BP was established with an aim of ensuring coordination of all activities at the central, regional and local level, so as to provide highly specialised services and to ensure a two-way data exchange between central, regional and local levels of organisational units. Entity and cantonal ministries of internal affairs of the entities as well as the competent authorities of the Brčko District must cooperate with the BP and, at its request, provide assistance in the performance of tasks falling within its competence, and coordinate the activities falling within its competence.

149. There are eight main units established at the central level: (1) Office of the Director, (2) Department for Operations, (3) Department for Administration, (4) Office for Professional Standards and Internal Control, (5) Office for Strategic Planning and European Integration, (6) Central Investigation Office, (7) Office for Training and Professional Development, and (8) Internal Audit Office. At the regional level, there are six main units, including field offices and, at the local level, there are 26 units. The BP is headed by a Director and Deputy Directors.

150. The Director of the BP submits an annual report to the Minister of Security BiH who forwards it to the Council of Ministers BiH, and submits reports to the Parliamentary Assembly BiH, the Council of Ministers BiH and the BiH Presidency at their request.

151. The BP counted 2 218 staff members as of 7 February 2022:

<i>Status</i>	<i>Women</i>		<i>Men</i>		<i>Total</i>	
	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>
<i>Police officers</i>	188	9,3	1 825	90,7	2 013	90,76
<i>Civil servants and employees</i>	134	65,3	71	34,7	205	9,24
<i>Total</i>	332	14,5	1 896	85,48	2 218	100

152. The State Investigation and Protection Agency (SIPA) is an administrative organisation within the Ministry of Security BiH with operational autonomy. It operates on professional

grounds and does not represent, protect or undermine the interests of any political party, registered organisation or association, or any constituent or other people in BiH.

153. In addition to its headquarters, SIPA has four regional offices. It is headed by a Director and Deputy Director and is financed from the budget of the institutions of BiH. Its main tasks include the prevention, detection and investigation of criminal offences pertaining to organised crime, terrorism, war crimes, trafficking in human beings and serious financial crime. In this context, it assists the Court and the Prosecutor's Office BiH in collecting information and executes their orders. Witness protection also comes within its competence. Entity and cantonal ministries of internal affairs and the competent authorities of the Brčko District must cooperate with SIPA. It can provide assistance to these authorities in the performance of activities falling within its competence.

154. The total number of persons employed in SIPA as of 20 January 2022 was 772:

<i>Status</i>	<i>Women</i>		<i>Men</i>		<i>Total</i>	
	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>
<i>Police officers</i>	93	16,26	479	83,74	572	74,10
<i>Civil servants</i>	37	55,22	30	44,78	67	8,67
<i>Employees</i>	77	57,89	56	42,11	133	17,23
<i>Total</i>	207	26,81	565	73,19	772	100

155. The Directorate for Coordination of Police Bodies of BiH (the Directorate) is an administrative organisation within the Ministry of Security BiH with operational autonomy. Duties that fall within the competence the Directorate include communication, cooperation and coordination amongst police bodies of BiH; communication and cooperation with relevant foreign and international bodies.

156. General policing functions are carried out at the level of the two constituent entities and the Brčko District: entity ministries of internal affairs (respectively, the Federal Ministry of Internal Affairs of the Federation of BiH and the Ministry of Internal Affairs of Republika Srpska) and the BiH Brčko District Police.

157. The Federation of BiH (FBiH) has a decentralised police system with elements of coordination. The police is organised in 10 cantons headed by cantonal Ministries of the Interior, which are not hierarchically subordinate to the FBiH Ministry of Internal Affairs and are operationally autonomous. They are competent for such matters as personal security of citizens, the protection of property, the detection of criminal acts and arrest of perpetrators, maintaining public order and peace and road traffic. Cantonal Ministries of the Interior and the FBiH Ministry of Internal Affairs share a joint IT system, statistical data processing and database. In addition, FBiH Police Administration, which is part of the FBiH Ministry of Internal Affairs, carries out operational police activities specified by law, e.g. prevention and detection of terrorism, inter-cantonal crime, trafficking in narcotics and organised crime, protecting certain persons and facilities of the FBiH.

158. The Ministry of Internal Affairs of Republika Srpska (RS) is, *inter alia*, responsible for policing matters, including the personal security of citizens, the protection of property, the detection of criminal acts and arrest of perpetrators, maintaining public order and peace, safety and control of road traffic, etc. It is organised in ten police administrations across the territory of RS, which are under the authority of the Ministry's police headquarters.

159. The Brčko District has its own police force that is operationally autonomous and financed from its own budget. Its policing functions include protection of life and property, protection of human rights and freedoms of citizens, prevention, detection and investigation of criminal offences and minor offences not falling under the exclusive competence of other police authorities in BiH, maintenance of public order and peace, road traffic police, and protection of property.

#### *Access to information*

160. The public and the media may access and request information and documents pertaining to the law enforcement authorities in accordance with provisions of the FOIA. Article 6 on the law provides among exemptions where disclosure would reasonably be expected to cause substantial harm to crime prevention and detection. However, according to Article 9, a competent authority must disclose the requested information, notwithstanding the fact that it has claimed an exemption, where to do so is justified in the public interest, having regard to both any benefit or harm that may result from doing so.

161. The BP is equipped with Guidance on Standard Procedures of Establishing Public Relations. Depending on the expressions of interest and existence of the right of access to information, the interested parties may be provided with information in accordance with the relevant regulations. The BP enables access of the public to general information on the activities through public announcements, via the webpage or direct responses. From 2019 to 2021, the BP received 464 requests and responded positively to 82% of them.

162. The FOIA as well as the Information Access Guidelines are published on the webpage of SIPA. SIPA gives responses to questions of the media daily and sends press releases on current events. Representatives of the public and the media, as well as persons directly interested in the work of law enforcement agencies, may request information and documents from them referring to the Law on Freedom of Access to Information in BiH. Over the last three years, SIPA dealt with 83 requests, out of which 20% were rejected, 74% accepted and 6% referred to a different authority.

#### *Public trust in law enforcement authorities*

163. According to a survey carried out as part of the report "Assessment of Police Integrity in Bosnia and Herzegovina" published by the Belgrade Centre for Security Policy and the Centre for Security Studies - BiH, with the support of the European Union, 82% of respondents believed that politicians had influence on the operational work of the police force (47% completely and 35% to a high extent).<sup>49</sup>

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<sup>49</sup> <https://lacuna.org.uk/wp-content/uploads/2017/09/Assessment-of-police-integrity-in-Bosnia-and-Herzegovina-ENG-web.pdf>



### *Trade unions and professional associations*

164. The Trade Union of the BP is independent from the state, entity, cantonal and regional bodies, institutions, political parties and associations, religious communities, governing bodies, employers and their associations. As of 31 March 2021, it had 1 298 members. Through its programme objectives and activities, it strives to oppose any form of corruption.

165. The Trade Union of SIPA currently has 544 members. The Trade Union has seven subsidiaries, thus ensuring the territorial coverage of BiH. It is a member of a higher level of organisation, namely the Federal Union of Police Bodies in BiH.

166. The “Policewomen’s Network” Association is a part of the Women Police Officers Network, which is one of the projects of the South-East European Police Headquarters Association (SEPCA). It brings together policewomen from 16 institutions, including the BP and SIPA. The aim is the promotion of gender equality and democratic principles in the police work, and the improvement of the integrity and status of policewomen in law enforcement agencies.

### **Anti-corruption and integrity policy, regulatory and institutional framework**

#### *Anti-corruption and integrity policy*

167. The policy for preventing corruption and improving integrity within the law enforcement institutions in BiH is included in the Anti-Corruption Strategy 2015-2019. The following one, the Anti-Corruption Strategy 2020-2024, has yet to be adopted by the Council of Ministers BiH. This has delayed the adoption of new actions plans by the BP and SIPA. To allow each body to adopt an updated anti-corruption plan in the absence of the new strategy, APIK adopted guidelines, and both the BP and SIPA have formed working groups to prepare new anti-corruption plans on this basis. APIK is associated with the preparation of these documents and in general with supervising the implementation of anti-corruption plans. In addition, a Declaration on corruption zero-tolerance towards corruption has been signed by all law enforcement agencies in BiH.

168. SIPA adopted anti-corruptions plans in 2017, 2018, and 2019. The 2019 plan and a special anti-corruption plan during the Covid-19 pandemic were revised in 2021 and implemented until the adoption of a new anti-corruption plan for 2022, which is to merge both aforementioned plans, taking into account the recommendations of APIK, as part of the anti-corruption policy currently being developed.

169. An Anti-Corruption Policy is implemented within the BP based on its anti-corruption plan; the last plan was prepared in accordance with the aforementioned Anti-Corruption Strategy 2015-2019 and has expired with it. As mentioned above, a working group has been set up to prepare a new anti-corruption policy document on the basis of the guidelines prepared by APIK.

170. In respect of the integrity plans adopted by the BP and SIPA, APIK has made a number of recommendations over time. Some of these recommendations included: developing procedures for informing all employees of the institution’s strategic documents and the ethics; preparing a detailed analysis of wrongdoings and imposed sanctions to improve the

effectiveness of sanctions; organise compulsory training on integrity for all; monitoring the public procurement system.

171. The GET notes that the development of up-to-date anti-corruption plans in the BP and SIPA has been largely hampered by the failure since 2019 to adopt a general Anti-Corruption Strategy at the national level, on which they are made dependent. Consequently, the outdated plans have simply expired. This is detrimental to the dynamic character which should characterise any anti-corruption strategy, with steps being planned and followed by new steps so as to gradually enhance the system and work out how to limit risks in the long run. The GET notes that APIK took the initiative of preparing guidelines, allowing for anti-corruption plans to be prepared in the BP and SIPA. It also notes that a contingency plan was adopted by SIPA during the Covid 19 pandemic. The BP also adopted a separate policy document independently from the strategy. However, this is a “piecemeal” approach to work around the deadlock on the adoption of the new Anti-Corruption Strategy by the Council of Ministers, but it cannot be seen as a lasting solution as it prevents a long-term vision of prevention. Moreover, according to the GET, the multiplication of anti-corruption policy documents (anti-corruption plans, integrity plans, risk management strategies, etc.) is not conducive to the coherence of anti-corruption action.

172. The GET underlines the need to find a way of warranting a coherent and long-term vision on fighting corruption in law enforcement agencies, in particular the BP and SIPA. This depends notably on the preparation and adoption of regular anti-corruption action plans, which define risk-based goals with specific deadlines, include an external assessment and build on the results achieved by the previous plan. For this purpose, risks should be regularly assessed in order to identify any new corruption threats and inform strategic anti-corruption documents. This is to secure an uninterrupted, dynamic, result-oriented approach and hence improve corruption prevention through time. Therefore, **GRECO recommends that action plans with clear goals based on identified risks be adopted without delay for the Border Police BiH and the State Investigation and Protection Agency and thereon assessed and updated regularly to ensure a coherent and dynamic approach to corruption prevention through time.**

#### *Risk management measures for corruption prone areas*

173. Insofar as the BP is concerned, services and situations that are most corruption-prone include the performance of border checks of the persons considered to be of a high migration risk at border crossings where technical equipment (video surveillance) is not installed, and general checks at border crossings. A risk management strategy was adopted in 2021. Other risk analyses are prepared annually, locally by organisational units and centrally by the strategic risk analysis.

174. The main SIPA organisational units have submitted information on the risks identified during their activities. In February 2018, a Register of Risks of SIPA was established with identified risks. The main organisational units are expected to update registers of risks and risk management reports. They must prepare draft internal document on the control and risk management strategies through their representation in the Working Group for the establishment and development of a financial management and control system and risk management in SIPA. In the coming period, the possibility of revising the existing plan in

accordance with real needs is to be considered to improve existing modalities regarding the timely identification and detection of certain/potential risks.

175. As mentioned above (see para. 172), the GET considers critical that the BP and SIPA undertake regular risk assessments not only to identify new risks but also to gauge how effective any steps taken to mitigate previously identified risks have been and to inform the next anti-corruption plan. This is therefore an inseparable component of the anti-corruption action plans to be implemented by both agencies as per the recommendation in paragraph 172.

#### *Handling undercover operations and contacts with informants and witnesses*

176. Undercover operations, including investigations into corruption offences, are conducted under the control of the acting prosecutor of the Prosecutor's Office BiH. Contacts with witnesses take place in line with instructions and directions of a prosecutor and an investigator who comply with the SIPA Instruction on Working with Informants.

177. According to the BP Instruction on the Work with Informants, the Handbook for Collection of Criminal Intelligence and the Work with Informants, the Guideline on Criminal Intelligence Operations, the Rulebook on the Establishment, Use, Recording and Control of Special Purpose Funds and the Code of Ethics for police officers of the BP, police officers are allowed to recruit informants or operative connections from targeted criminal groups in order to obtain information relevant to investigations.

#### *Ethical principles and rules of conduct*

178. The Instruction on the Rules of Conduct and Mutual Relations of Police Officers of the BP of 2009 defines the rules of conduct and mutual relations of police officers. The Code of Ethics of police officers in the BP, which was adopted in 2010, covers the notions of conflicts of interest, gifts, the handling of confidential information, involvement in procurement procedures, secondary activities, and contacts with third parties. Both documents are available to all police officers in electronic form and a written copy of the Code of Ethics is handed to all police officers. Certain minor infractions are specified in the Code of Ethics and appear to be capable of leading to disciplinary sanctions. However, violations are usually combined with a breach of official duty "conduct damaging reputation of a police authority". Sanctions for such violations are from 20% for four months to 30% for five months of basic salary of a police officer. From 2017 to 2021, 67 reports on violation were submitted in the relevant period in relation to the aforementioned behaviour.

179. The Code of Ethics for police officers of SIPA was also adopted in 2010. It is to be handed out to all police officers of SIPA who, after gaining fuller knowledge of its provisions, are to sign a form. Its content is similar to that of the BP. The Code of Ethics itself does not impose sanctions in case violation. Violations of the Code are sanctioned through other forms of control (i.e. internal control, in accordance with the Law on Police Officials of BiH or LPO), as well as other legal and sublegal regulations governing the area of disciplinary and criminal liability of police officers. In the last five years, there have been no sanctions imposed for violation of the Code of Ethics. Violations of the provisions of the Code of Ethics which happened concurrently to breaches of official duty by police officers can be taken into account

as an aggravating circumstance in internal and disciplinary proceedings initiated for breach of official duty.

180. The GET notes that the current Codes of Ethics for the BP and SIPA cover comprehensively relevant integrity standards pertaining to conflict of interest prevention. While their existence appears to be adequately known as they are covered in induction training and distributed to all members of the BP and SIPA, it was widely agreed that the practical implications of the standards contained in them are insufficiently assimilated and thus implemented by police members.

181. In order to guarantee the highest standards of professional conduct, these codes should be supplemented with proper practical guidance in order to link the principles contained in them to the daily work of police officers and more prevalent risks (such as border crossings). Guidance should be understood as a manual including practical examples, notably based on experience in the country and the agencies concerned, to illustrate the complexity of the situations covered by these principles and steps to be taken to avoid or defuse corruption risks. This should start with the very notion of conflict of interest, which should be made clear and properly illustrated. Gifts and hospitality is another issue which typically can prove difficult to grasp beyond the general definitions that may be contained in a code and merits being explained in practical terms and with concrete examples. Similarly contacts with third parties should be clearly explained. Guidance should also draw inspiration from real cases of breaches committed by police officers as they are likely to point to issues where corruption risks are higher. While minor breaches of the Code of Ethics of the BP appear to potentially lead to disciplinary proceedings and sanctions, this does not appear to be the case with the Code of Ethics of SIPA. Moreover, it appears that for more serious breaches, both codes can only be used in support of proceedings initiated for breach of duty as laid down in the LPO and the Regulation on Official Duties. This should be remedied in order to ensure that breaches of the codes of ethics can lead to dissuasive sanctions that are proportionate to their seriousness. Furthermore, another important dimension is the information of the public about the codes so that they know what conduct to expect from police officers, therefore contributing to reducing corruption risks and reinforcing trust in the police. This implies not only making public the code but taking active steps to publicise it among citizens, demonstrating the no-corruption tolerance within the BP and SIPA. The GET notes that both codes of ethics are available on their websites and that a Facebook post was made in 2015 on the BP's page. The GET encourages the authorities to ensure that regular initiatives are taken to draw the public's attention to the ethical standards that BP and SIPA members must observe.

182. In view of the above, in order to ensure that integrity standards find true resonance in the day-to-day work of police members, the GET considers it expedient to adopt practical guidance to supplement the existing codes of ethics of both the BP and SIPA. This should form the basis of all training organised by both bodies (see para. 187). In addition, the codes of ethics should be made enforceable with sanctions proportionate to the seriousness of the breaches in order to deter wrongdoing. Therefore, **GRECO recommends that (i) the codes of ethics of the Border Police BiH and the State Investigation and Protection Agency be supplemented with practical guidance illustrating all relevant integrity matters (such as conflict of interest, gifts, contacts with third parties, outside activities, the handling of confidential information) with concrete examples; and (ii) the codes of ethics be made enforceable in case of breach.**

183. The GET notes that all police forces within BiH operate on the basis of the same or similar ethical principles. Having regard to the particular constitutional structures of the country, the BiH authorities are urged to encourage the constituent entities and the Brčko District to have their respective police forces consider adopting practical guidance to supplement their codes of ethics, and to form the backbone of their training. Similarly, the Directorate for Coordination of Police Bodies of BiH should also be encouraged to adopt practical guidance supplementing its code of ethics.

*Advice, training and awareness*

184. A training curriculum on “Combating Corruption in the BP” was introduced in 2017. The purpose of this training is to inform employees of what constitutes corruptive behaviour and activities, which laws in BiH deal with corruption, and the disciplinary consequences of participating in corruptive behaviour. This training is held internally; it is provided by 14 certified internal instructors. Training is compulsory for all employees of the BP. A training session lasts one day: two teaching classes, each class lasting for 45 minutes and including lectures, discussions and tests. The curriculum does not stipulate that these trainings be recurrent. In one annual period (2017), a total of 1 775 employees were trained, of which 1 622 police officers and 153 civil servants and employees, accounting for 85.3% of total employees in BP.

185. SIPA conducts training according to an annual training plan. Corruption is among the topics covered and includes investigations of corruption in BiH institutions, abuse in public procurement procedures, etc. These training sessions last for one to two days and are planned as basic as well as advanced training. Basic training is mandatory, while advanced training is not. The former is organised by the Agency for Education and Professional Training for basic training, while the latter is mainly organised by foreign embassies and other donators, so that the budget and the training personnel are not provided by the Agency in such cases. Training takes place over one to several days, depending on whether it is initial training or professional training. The GET was informed that the Agency for Education and Professional Training was experiencing difficulties in proposing a full array of training activities owing to the different expectations of the various law enforcement agencies which appear to be unpredictable, making it hard to plan and organise training ahead. In addition, specialised training is usually dependent on international partners. It should therefore become the subject of some reflection to improve the training framework.

186. APIK also organised training sessions for most institutions on rights and obligations under the Law on Protection of Persons Reporting Corruption in BiH Institutions and reporting corruption. In this regard, training was held for SIPA, including training on ethics and integrity strengthening in public institutions, as well as the development and implementation of integrity plans in BiH institutions. However, the GET was told that, owing to cost issues, attendance by SIPA officers was problematic.

187. While the GET notes that some form of training is organised, especially in the BP, it considers that it should be further strengthened, in particular in SIPA. Improving the planification of training should be an objective in order to make use of the potential of the Agency for Education and Professional Training. As previously recommended, the codes of ethics of both bodies should be accompanied by practical guidance containing real-life

examples reflecting the specific risks faced by each agency in order to ensure that the content of the codes go from being abstract principles to concrete standards implementable in day-to-day policing. This guidance should become the backbone of training on corruption. Compulsory and sufficiently detailed training should be systematically organised for new recruits and, at regular interval during the careers of serving personnel, notably to take account of any legislative or other developments. It should become a priority in order to ensure that a culture of integrity gradually takes root in both bodies. Therefore, **GRECO recommends strengthening compulsory training on ethics and integrity for new recruits and serving personnel based on the practical guidance to be adopted for the codes of ethics of the Border Police BiH and the State Investigation and Protection Agency.**

188. Regarding advice, a police officer of SIPA facing an ethical dilemma can either approach their direct superior or the Internal Control Department. In the Border Police, there is an officer who is responsible for professional standards that provides confidential advice.

### **Recruitment, career and conditions of service**

#### *Recruitment requirements*

189. The LPO regulates the police labour legal status, including rights and duties; employment; education and training; deployment; ranks; performance assessment and promotion; compensations; working conditions; disciplinary liability; damage liability and termination of employment. In order to employ someone on a post of a police officer, that person must meet the following general requirements: BiH citizenship; aged between 18 and 35; at least IV degree of professional qualification for the rank of a police officer, and at least VI degree for the rank of a junior inspector; medical certificate; evidence that the person was not dismissed from state administration or from military service as a result of a disciplinary sanction, that a criminal proceeding was not initiated against that person and that custodial sentence or detention order for a criminal offence was not made in accordance with the Criminal Code; that the person did not refuse to appear before the International Criminal Tribunal for former Yugoslavia as a defendant.

190. The director of a law enforcement agency selects the posts for employment of police officers and junior inspectors. Employment of police officers is to be based on availability of posts, media job advertisement campaign, public competition, previous establishment of conditions and transparent selection process. The director must appoint a selection committee for every selection process, in order to ensure fairness, transparency and quality of employment.<sup>50</sup>

191. The selection committee advertises the job vacancy, indicating, *inter alia*, the number of posts, the post requirements, the type of tests to undergo and the length of the probation period. The testing method and procedure are regulated by the Decision on the candidates' testing method, manner and scoring system for junior trainees-cadets and the Decision on the method and programme of testing the candidates in the police officer selection process, method and scoring system for testing the basic cadet training candidates. Candidates who

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<sup>50</sup> The selection committee consists of five members: three police officers with a rank of senior inspector and two civil servants employed as expert advisers at the Ministry of Security of BiH and who were appointed by the minister. The selection committee is presided by the member with the highest police rank, and operates under rules, criteria and methods fixed by the director.

meet the requirements of the post are tested, *inter alia*, on general knowledge and physical fitness, undergo a medical and psychological examination and an interview.

192. The scoring list of all candidates are published on the agency's notice board. All candidates have access to their tests. They can lodge an appeal with the Board for Complaints of Police Officials within eight days. In such case, the selection process is suspended, and the final list of all candidates who are nominated for employment is to be approved by the agency's director after the Board for Complaints of Police Officials delivers its ruling on all appeals that have been submitted. Following successful completion of the basic training in the Agency for Education and Professional Development of Staff, the agency and the candidate conclude an employment contract. Specific selection rules apply additionally to the ranks of deputy director, chief inspector general and inspector general as well as managers of organisational units of the BP.

193. According to the Law on Protection of Secret Data of BiH, all persons on a post or applying for a post with access to secret information are subjected to different security checks for access to confidential, secret and top-secret information.<sup>51</sup> These checks cover the last five years for access to confidential information and 10 years for access to secret and top-secret information. The Intelligence Security Agency of BiH and SIPA are involved. There are no integrity tests at regular intervals as there are no legal provision requiring it. While completing the main security questionnaire, information from the excerpts from the criminal records, conduction of criminal proceedings and information on the property of the person to be employed and information on members (adult persons) with whom the person subjected to the check lives in the same household (see also para. 228).

194. The GET notes that security checks are entirely geared toward access to police documents, their frequency depending on the level of their confidentiality (10 years for confidential documents and 5 years for secret and top-secret documents). They are based on security questionnaires covering such issues as personal income and immediate family, real estate, vehicles, savings, legal entities (if involved in them or family), records of sanctions of any kind across the country. If there are suspicions of misconduct of a police officer, e.g. unexplained enrichment, contacts with the criminal milieu, in addition to legal regular checks, the Internal Investigations Department of SIPA can initiate expanded checks.

195. At the same time, the GET underlines that integrity vetting as construed by GRECO is about possible conflicts of interest linked to a person's individual circumstances that may affect policing in general and not only access to documents of a confidential nature as is the case in BiH. Therefore, the GET considers that vetting within this meaning should be put in place to gauge the vulnerability to corruption of members of the BP and SIPA, not only upon recruitment but also on a regular basis thereafter. The frequency of 10 years for most current security checks appears far too long, and the frequency should depend notably on whether the person is working in a high-risk area in which case integrity checks should be more frequent. Moreover, these integrity checks should look into various resources (as do to some

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<sup>51</sup> Security checks follow the Rulebook on the method of conducting security checks and data sources during performance of security checks ("Official Gazette of BiH", number: 63/13), which describe: the method of conducting security checks, data sources and records used during the check, the content of the report, the safe-keeping of materials generated during the check and other measures and procedures related to the security check, as well as the authorities competent for performance of security checks.

extent the current security checks for access to documents). The GET takes the view that random checks of a certain number of individuals should be organised every year.

196. The GET emphasises that personal circumstances are likely to change over time and, in some cases, make a person more vulnerable to possible corruption risks (financial problems arising, for example, as a result of a mortgage or consumer loan, divorce, the illness of a relative, the bankruptcy of a spouse, etc.). Therefore, regular vetting as a tool for prevention should become the rule and take place at least every five years. It could build upon the existing security checks for accessing confidential documents. Furthermore, some sectors having already been identified as particularly risk prone, namely border crossings, and other being particularly sensitive areas such as corruption and organised crime, it would be all the more beneficial to ensure more frequent vetting for personnel working in these areas. It would also appear necessary to include directors and deputy directors of both agencies to these regular integrity checks as well as random checks every year of a selection of police officers. Finally, there is no record keeping of cases of conflict of interest that have been detected, which the GET considers would be necessary to ensure proper follow-up and inform risk analyses. For these reasons, **GRECO recommends that (i) security checks relating to the integrity of police officers, including directors and deputy directors, in the Border Police BiH and the State Investigation and Protection Agency be carried out at regular intervals throughout their career; (ii) random integrity checks on a sample of police officers take place annually; and (iii) ensure record-keeping of detected conflicts of interest.**

197. From the figures provided for both the BP and SIPA, the proportion of women among police officers remains very low (see para. 154). The GET understands that these agencies are working together with the Policewomen's Network Association to change a long and enduring situation of not seeing women join the police, at least not as police officers.<sup>52</sup> In SIPA, some steps have been taken such as the appointment of a gender focal point, which though positive need to be further strengthened given the current global figures. The GET considers that a deliberate recruitment policy should be put in place to attract more women in positions of police officers and thereafter to progress towards higher positions, including managerial positions. Therefore, **GRECO recommends that steps be taken to further promote a more balanced representation of genders in all ranks in the Border Police BiH and the State Investigation and Protection Agency as part of recruitment and internal upwards career moves.**

#### *Appointment procedure and promotion to a higher rank*

198. Directors and deputy directors of the BP and SIPA are appointed and dismissed by the Council of Ministers BiH upon a proposal of the Minister of Security BiH from a list of candidates prepared by the Independent Committee of the Parliamentary Assembly BiH for a term of office of four years with the possibility of reappointment for another term.

199. The Rulebook on Procedure for Promotion of Police Officers in Police Bodies of BiH regulates the procedure for promotion of the police officers employed by the BP and SIPA. The Director of the BP and the Commission for Promotion of Police Officers is responsible for promotion of police officers with the agency. A Decision on the Promotion of Police Officers is made by the Director of SIPA on the proposal of the Commission for Promotion of Police

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<sup>52</sup> See also the report of the Centre for Security Studies – BiH "[The-Position-of-Women-in-Police-Agencies-in-BiH](#)" (2021).



Officers, after the procedure of promoting the police officers by internal advertisement on vacancies for promotion of police officers, in accordance with the provisions of the LPO.

200. In order to avoid risks of politicisation of appointments of top officials in the police and ensure that they are made on merit and competence, the GET considers that the integrity, due process and transparency of appointment procedures need to be significantly strengthened. This would also serve to remove the prevalent feeling among the population that investigations are politicised. The GET was told by multiple interlocutors that the Independent Committee of the Parliamentary Assembly was in practice politically influenced. Its role is crucial as it carries out interviews and draws up the shortlist of candidates for the posts of directors and deputy directors then sent for decision to the Council of Ministers. Their decisions were said to be the result of political compromises to share the lead roles in the different police agencies between political parties, also delaying the selection of candidates.<sup>53</sup> Moreover, the GET was informed by several interlocutors that interviews of candidates did not appear to follow a set of standard questions for every candidate and could in some cases be extremely short, reinforcing suspicions that competition procedures are skewed towards candidates pre-agreed amongst the different political parties. This should be remedied by scrupulously following the same format and questions for the interviews of all candidates and ensuring the full transparency and publicity of the process. Current rules do not appear to be sufficient and should therefore be revised and strengthened. Therefore, **GRECO recommends that measures be taken to ensure that appointments of top police officials in the Border Police BiH and the State Investigation and Protection Agency are strictly based on merit and guided by open, standardised and transparent competitions.**

#### *Performance evaluation*

201. A police officer's performance evaluation takes place at least once a year and is prepared and signed off by his/her immediate superior and approved by the director of the agency. The performance evaluation of a police officer holding a managerial post is prepared by the deputy director of the agency and is signed by the director. The performance evaluation is considered during the promotion process. Evaluation criteria are laid down in the Rulebook on LEO Performance Evaluation, as follows: problem detection and solving, initiative-taking, personal appearance, attitude towards the assets of the agency, compliance with the provisions of the Code of Ethics of police officers, efficiency and quality of work, professional development. According to provisions of the Rulebook, the performance evaluation is a basis and a criterion for rank progression and progress in employment and exercise of rights of police officers to awards and commendations.

202. In case a police officer has been given a score "unsatisfactory", s/he will be subjected to re-evaluation three months later. Upon expiry of that deadline, if there has been no satisfactory performance improvement, an internal transfer or termination of employment will be decided. A police officer who does not agree with the performance evaluation result may bring an appeal to the Board for Complaints of Police Officials within eight days from receiving the contested decision.

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<sup>53</sup> See also, for example, the report published by the Centre for Security Studies - BiH "[Policing in Bosnia and Herzegovina During the COVID-19 Pandemic \(2020–2021\)](#)" (p. 6).

## *Rotation*

203. The procedure of internal transfers of police officers in the BP is carried out according to section 4 of the LPO and the Rulebook on the Internal Transfer of Police Officials. It is to be conducted in accordance with the needs of the service and/or at the request of police officers. Some form of rotation can take place in border crossings which have been identified as high-risk. But it will not concern individuals but teams and will be used exceptionally. There is no rotation system in SIPA.

204. The GET notes that some sectors, including border crossings, have been identified as being particularly corruption prone, as reflected notably by cases leading to sanctions. Sectors such as organised crime, including human trafficking, or police officers dealing with informers are traditionally sectors where risks are higher owing to the daily proximity with persons gravitating around the criminal world. While some form of rotation is possible in the BP, it appears to be extremely restrictive and limited, even though there have been a number of cases of corruption at the borders. In SIPA, there is no rotation at all. The authorities argue that it is dependent on the diverse nature and specialisations of units (financial investigations, witness protection, organised crime, war crimes and trafficking in human beings). Nonetheless, the GET considers that some form of rotation should be in place as most of these areas are particularly exposed to risks of corruption and that risks will increase if the same persons occupy the same posts over a long period of time. Such rotations can be planned long ahead, allowing sufficient time for training.

205. The setting-up of some form of rotation has been shown to be a useful prevention tool for the most sensitive posts, coupled with more frequent vetting (see para. 195). Rotation is not to be understood as a rigid notion and can be adapted to the sectors concerned and the context. The aim is to avoid police officers spending a significant part of their career and sometimes their whole career in specific work or geographic area, notably where corruption risks are higher. There are various ways to achieve that, such as incentives and professional development schemes. Therefore, **GRECO recommends that an institutional system of rotation of police staff in the Border Police BiH and the State Investigation and Protection Agency be put in place, which could be applied, as appropriate, in areas considered particularly exposed to corruption risks.**

## *Termination of service and dismissal from office*

206. A decision on termination of a police officer's employment with SIPA is adopted by the Director in accordance with the Law on SIPA and the LPO. A disciplinary sanction of dismissal may be imposed on a police officer for serious wrongdoing in office upon completion of a disciplinary procedure. In case of serious wrongdoing in office, the Disciplinary Commission is to launch a disciplinary procedure within seven days from receiving a request from the Internal Control Department and decide within 60 days from receiving the request. An appeal may be brought before the Board for Complaints of Police Officials within 15 days from receiving the contested decision.

207. The Director of the BP is responsible for dismissals of the agency's police officers. A decision on the termination of a police officer's employment is adopted by the Director, while the Council of Ministers BiH is competent to dismiss the Director and Deputy Directors under

the conditions and procedures carried out by the Independent Board of the Parliamentary Assembly BiH.

### *Salaries and benefits*

208. The annual lowest gross salary of a police officer (LEO) with a police allowance is approximately BAM 19 000 (EUR 9 714) and the highest is BAM 70 000 (EUR 35 790). The basic salary is determined by multiplying the base for the calculation of the salary and the corresponding coefficient. The base for the calculation of the salary shall be fixed in the amount of 85% of the average net salary in BiH. In 2022, the average monthly paid off net earnings per person in employment in legal entities in BiH amounted to BAM 1 154.

Salary band	Rank	Coefficient
1.	Police officer	1.60
2.	Senior Police officer	1.75
3.	Sergeant	1.90
4.	Senior Sergeant	2.10
5.	Junior Inspector	2.30
6.	Inspector	2.55
7.	Senior Inspector	2.93
8.	Independent Inspector	3.25
9.	Inspector General	4.20

209. Police officers are entitled to a special contribution (police allowance), representing up to 40% of the basic salary at most on an individual basis. Police officers are entitled to additional allowances: compensation for accommodation costs (BAM 300-475.68 / EUR 153-243); compensation for leaving apart from family (BAM 300); and holiday allowance (BAM 300). Police officers of the BP are entitled to a special police allowance in the amount of 35% of their basic salary. It was brought to the GET's attention by some interlocutors that the salaries and allowances of police officers working in state level agencies, such as BP and SIPA, were lower than those of agencies of the constituent entities. This appears to have the consequence of making less attractive posts in police bodies at the state level, which as a result are currently understaffed, especially the BP.<sup>54</sup> The GET considers that efforts should be made to make posts in the BP and SIPA as attractive as those in the constituent entities' police forces.

### **Conflicts of interest**

210. The provisions of the Law on Conflict of Interest in the Governmental Institutions of BiH, the LPO and the codes of ethics of both agencies deal with the prevention and resolution of conflicts of interest. According to the codes of ethics, a conflict of interest occurs when

<sup>54</sup> See also the report published by the Centre for Security Studies - BiH "[Policing in Bosnia and Herzegovina During the COVID-19 Pandemic \(2020–2021\)](#)" (p. 5 and 6).

police officers work with individuals, businesses and other entities who they know privately, with whom they are in friendly relations or with whom they share private interests during performance of their official duties.

211. For the purpose of preventing situations of conflict of interest, a police officer is to submit a statement on conflict of interest as an integral part of the codes of ethics. The conflict of interest is to be resolved by submitting the aforementioned statement to the immediate manager; it must contain detailed instructions on how to respond to the situation in hand. In case immediate managers consider that they are not able to solve the situation alone, they are to seek further instructions from the director of the agency and, in the meantime, that specific task is to be assigned to another employee.

212. In addition, for the purpose of implementing the Law on Conflict of Interest in the Institutions of BiH, the CDCI was established (see para. 98). The procedure for resolving the conflict of interests by the CDCI can be initiated based on its decision concerning a valid, well-founded and non-anonymous application or ex officio in cases where it is informed of the possible conflict of interest.

213. In SIPA, one internal procedure was conducted against a police officer for breaching the provisions related to conflict of interest and exclusion from the case, i.e. one disciplinary procedure was conducted in 2020, which resulted in a disciplinary sanction for another police officer.

214. Given the central character of the issue of conflict of interest in any anti-corruption action, the GET considers it crucial that the future practical guidance that should accompany the codes of ethics of the BP and SIPA (see para. 182) contain sufficiently detailed and numerous illustrations of what may constitute a conflict of interest in the specific context of these two agencies, explain the requirement to submit statements of conflicts of interest and be tackled in subsequent training.

### **Prohibition or restriction of certain activities**

#### *Incompatibilities and outside activities*

215. A police officer cannot take up a post, perform a function or activity which is incompatible with his/her official duties, nor perform any additional activity for remuneration, except as authorised by the agency's Director (Art. 38, LPO). Authorisation needs to be obtained before engaging in outside activities.

216. SIPA police officers are not to perform any additional activity that is incompatible with official duties or any additional activity for remuneration, except as authorised by the Director. A similar principle applies in the BP. In the period 2017-2021, the BP issued a total of 34 approvals for additional activities (31 police officers and 3 other staff).

217. The GET notes that there are no written rules establishing restrictions on secondary activities for police officers working in either the BP or SIPA. This means that there is no list of incompatibilities that would clearly delineate what activities are permissible or not. It is left entirely to the management to authorise or not outside activities. The GET considers that this leaves far too much subjectivity, with the risk of inconsistencies between comparable

activities carried out by different officers. Therefore, in order to ensure better legal certainty and clarity for BP and SIPA personnel, there should be a legal provision specifying activities which cannot be carried out in parallel to policing duties and those that can be authorised subject to specific criteria being met. This appears all the more necessary that the GET was told that the salaries of personnel of both agencies was considered as comparatively low, prompting personnel possibly to seek complementary remuneration through secondary activities.

218. The GET underlines the importance of an adequate system to authorise secondary activities but also to check regularly that they still correspond to what has been initially authorised and/or that no conflict of interest has arisen over time. For this purpose, a proper central record should be kept of all authorised activities in each agency. In SIPA, authorisations need to be renewed annually by the direct manager and then validated by the Director, but there is no central register of secondary activities. In the BP, there does not appear to be any control beyond the initial authorisation by the direct manager and validation by the Director; no central register is in place either. Practical guidance should be made available in connection with the codes of ethics (see para.182), training (see para.187) and easy access to confidential advice (see para. 188) on the subject of secondary activities.

219. In view of the above, **GRECO recommends that (i) a legal provision defining incompatibilities with policing duties in the Border Police BiH and the State Investigation and Protection Agency be laid down; and (ii) authorised secondary activities of both agencies be duly recorded and that regular checks be undertaken thereafter.**

### *Gifts*

220. A police officer is not to accept any gift or hospitality, except if it is of negligible value; it is offered on a public forum, seminar or during a visit when the refusal would be awkward; the hospitality is related to hosting (business lunch). The provisions governing prohibitive or restrictive measures are contained in the Law on Conflict of Interest in the Governmental Institutions of BiH, the Criminal Code BiH, the LPO and the Codes of Ethics for Police Officers.

221. The gifts received in the BP are to be handed to the Office of the Director which keeps a register of gifts. The BP delivers gifts to the Secretariat General of the Council of Ministers in order to inform the Central Election Commission for the recording of gifts in the central register of gifts. Apart from the Director and Deputy Directors who can receive gift intended for the agency, officers are prohibited from receiving gifts. If the gift has nonetheless been received at a border crossing, disciplinary proceedings will be initiated.

222. SIPA is equipped with a Rulebook on gifts which prescribes precisely how to treat gifts, value, which situations they can be given. There are provisions governing the value and threshold. Officers and staff, except the director and deputies who are appointed, are required to inform in writing the immediate supervisor, but are not allowed to accept gifts above EUR 12. If an officer is offered a gift above, s/he must notify the person willing to give the gift about the restriction and propose that the gift be given to the institution. They are to report all gifts.

223. Given that there have been instances of gifts received at border crossings without being declared and few reports appear to be made in general, the GET considers it important

that the practical guidance to be developed alongside the codes of ethics of both the BP and SIPA be illustrated by concrete examples in a sufficiently detailed manner. Moreover, specific training and advice need to be provided.

#### *Misuse of public resources*

224. The misuse of public resources is considered serious wrongdoing (Art. 105 para. 1, LPO). Violations related to the use of public resources are mostly related to the serious violation “unauthorised use of funds allocated for performance of tasks and duties” and sanctions for such violations are from 15% for three months to 20% for four months of the basic salary of a police officer. In the BP, in 2017-2021, five reports of violations were submitted. In addition, for a serious violation “malfeasance in office” for which a sanction of 30% of the basic salary of a police officer for six months or termination of employment is to be imposed.

#### *Third party contacts, confidential information*

225. Having contacts outside the official procedures, with third parties who approach them about cases under their purview as well as the misuse of confidential information are prohibited (Art. 105 para. 1, LPO). No such cases have been recorded in the last five years. There were no recorded cases of unauthorised contacts with third parties in relation to cases falling outside formal procedures nor misuse of confidential information within the BP. This is traditionally a sensitive area which deserves to be covered adequately in the guidance to be adopted in support of the codes of ethics of both agencies (see para. 182).

#### *Post-employment restrictions*

226. According to regulations, there are no restrictions on employment after leaving law enforcement agencies, unless there is an impediment in the entity for which s/he would perform such activities.

227. There are no post-employment restrictions that would apply to police officers leaving either the BP or SIPA. The GET underlines the opportunity of certain employment outside police agencies can entail risks (offers of jobs as rewards, use of communication channels with former colleagues or specialised knowledge on police procedures for the benefit of new employers, etc.) especially for high-ranking posts (e.g. directors, deputy directors, managers) but not exclusively. This is not without links with the duty to respect the confidentiality of police information and contacts with third parties. Therefore, **GRECO recommends that rules be adopted to ensure transparency and limit the risks of conflicts of interest when police officers leave the Border Police BiH and the State Investigation and Protection Agency to work in other sectors.**

### **Declaration of assets, income, liabilities and interests**

#### *Declaration requirements and review mechanisms*

228. Pursuant to the Law on Protection of Secret Data of BiH, any person to be employed is to complete security questionnaires (see para. 193) which, *inter alia*, contain information on property, shares, real estate and similar, sources of income, liabilities, and information on

spouses, common-law partners and adult members of the same household. The private interests of police officers also include the interests of the following persons: immediate family members; personal friends; clubs or associations s/he is a member of; other groups of people with whom the police officer has personal or social relations; persons to whom s/he owes a debt of gratitude or other type of debt.

229. After their appointment, police officers must, in accordance with the LPO, provide all information on the functions and activities carried out by him/her or members of his/her immediate family, as well as data on the property of their immediate family members. As said previously, police officials are to submit a statement of interest where there is a risk of conflict. The Ministry of Security BiH, as the designated National Security Authority, monitors the implementation of the Law on the Protection of Secret Data and therefore checks the aforementioned security questionnaires.

230. Security questionnaire are to be filled out before and during employment in the BP. Depending on the security check regime, they will last five or ten years (see para. 194). A record of submitted security questionnaires is kept. The Office for Professional Standards and Internal Control (OPSIC), SIPA and the Intelligence Security Agency BiH are responsible for checking questionnaires. There is no record keeping of cases where there had been a conflict of interest. There have been no cases related to violation of the provisions regulating security questionnaires in the last five years in SIPA and the BP. The GET considers important that some checks on assets and interests of police officers are undertaken on a regular basis. It notes that in BiH, such checks and security checks are conflated. For this reason, it underlines that asset declarations should be made in combination with the security checks. For police officers of a higher rank asset declarations should be made every year. In-depth random controls of these declarations should take place. Moreover, the relevant regulation should be revised so that law enforcement authorities can use all public information in their cases without prior court order. Therefore, **GRECO recommends that (i) asset declarations be regularly submitted by police officers (annually for higher rank officers) and subject to random in-depth checks and; (ii) all publicly available information related to asset declarations be usable in investigations without a prior court order.**

### **Oversight mechanisms**

#### *Internal oversight and control*

231. An Internal Investigations Department (IID) has been established within the Internal Control Department of SIPA, which, *inter alia*, handles internal reports of corruption in the agency with a staff of four. Investigators undergo specialised training on integrity strengthening and professional standards, organised by local and foreign institutions. Internal reports can be filed by any civil servant, police officer or employee of SIPA who has information and/or material evidence on the existence of corruption in the agency, in accordance with provisions of the Rulebook on Internal Reporting of Corruption in SIPA. After investigating internal reports of corruption, a report is submitted to the Director. If a criminal offence has been identified, the Director informs the Prosecutor's Office BiH. If it can be concluded that the offence amounts to wrongdoing in office, disciplinary proceedings are to be initiated before SIPA's Disciplinary Commission, a body set up by the Director.<sup>55</sup>

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<sup>55</sup> The Disciplinary Commission is established by the Director and is composed of a president, two members and two deputy members. The president is a police officer of the highest rank who is a graduate of law. Two members

232. Moreover, a Section for Prevention and Detection of Financial Crime and Corruption has been established within the Criminal Investigation Department of SIPA; it deals with criminal cases that may also apply to employees of SIPA, where, in addition to disciplinary liability, the existence of criminal liability is also considered. After carrying out the activities falling within their respective competences, the police officers working on the financial crime and corruption problem submit the corresponding report to the Prosecutor's Office BiH according to Article 219 Criminal Procedure Code (CPC) BiH.

233. OPSIC was set up within the BP for the prevention and investigation of internal corruption cases. Ten police officer posts and two employee posts were classified in OPSIC. It cooperates with prosecution offices, courts and public appeal bureaus, as well as law enforcement agencies. OPSIC provides the Director with a report on every individual case it handles and in which misconduct has been identified. The Deputy Director for Operations and Organisation is provided with a report on all the procedures carried out. After completing the internal procedure for police officers for which it has been established that there is evidence related to suspicion of wrongdoing in office, OPSIC submits the request for initiating a disciplinary procedure to the BP Disciplinary Commission for police officers.<sup>56</sup>

234. Police officers can appeal against sanctions with the Police Officers Appeals Committee of BiH, which is to deal with appeals within nine months.

#### *External oversight and control / Complaints system*

235. External oversight over the work of police officers is performed by the competent prosecutor if the relevant act has the characteristics of a criminal offence.

236. Parliamentary oversight is carried out by the Joint Committee on Defence and Security of BiH of the Parliamentary Assembly BiH. It is tasked with monitoring and establishing whether the policing activities are in accordance with plans, standards and results in order to observe and remove in a timely manner shortcomings which may jeopardise the whole defence and security system, and this includes the BP and SIPA.

237. External oversight is also performed by the Citizens' Complaints Board to the Parliamentary Assembly BiH if corruption is reported by citizens. It is an independent body, which acts impartially and without affiliation to any political party, registered organisation, association, or people in BiH. The Board consists of seven members: prominent citizens, who are elected from the BiH constitutive peoples. Members cannot be employed by any of the police bodies. The Board is responsible for receiving, registering, and assessing complaints relating to the conduct of BiH police officials. It then sends the complaints to the police bodies concerned and monitors the progress of the complaint. It keeps records and databases of citizens' complaints against police officials and collates investigation results and other evidence for the instigation of disciplinary or criminal proceedings. It provides all necessary information to the complainant with regards to their complaint.

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and one deputy must have a rank of independent inspector or a higher rank, while the second member and the second deputy must be civil servants. At least two members of the Disciplinary Committee must be graduates of law.

<sup>56</sup> The Disciplinary Commission consists of a president (a police officer), two members (police officers and a civil servant) and one administrator. The president of the Disciplinary Commission must be a police officer-lawyer by profession, and one of the remaining two members of the commission must also be a law graduate.



238. The BP website provides a telephone number for citizens wishing to file reports and complaints 24/7. In addition, reports can be submitted by e-mail, in writing, orally or by placing a report or complaint into the complaint boxes installed at each border crossing as well as in every organisational unit. Every corruption-related complaint is to be subjected to preliminary verifications and internal investigations, and depending on the justification of the report, the Prosecutor's Office BiH is also informed. In 2021, the Board dealt with 177 complaints at state level: 148 concerning the BP, 6 on SIPA, 7 on the Directorate and it was not competent for the remainder. Out of this total, 15 concerned corruption, with 3 considered well-founded and leading to disciplinary measures, 4 were unfounded and the rest did not provide enough evidence. By way of example, BP officers were offered money by people who were not meeting the Covid 19 requirements to cross the border.

239. Additionally, APIK is responsible for dealing with applications filed with the indications of corrupt behaviour in accordance with Article 10, paragraph h) of the Law on APIK. Up until December 2021, the Agency had received 110 submissions with indications of corrupt behaviour by mail, e-mail, telephone or in person.

### **Reporting obligations and whistleblower protection**

240. The obligation to report a criminal offence is prescribed by Article 213 CPC BiH. A fine or imprisonment up to three years may be imposed.

241. The Law on the Whistleblower Protection in the Institutions of BiH entered into force on 1 January 2014. APIK is to assign the status of protected whistleblower to individuals who report corruption within 30 days from filing the report. APIK is responsible for assessing the justification of a request for the protection of a whistleblower, assessing whether the report has been submitted in good faith. It is responsible for the protection and elimination of harmful consequences.

242. In accordance with the aforementioned law, the BP adopted a Rulebook on Internal Reporting of Corruption and Protection of Persons Reporting Corruption. An information campaign has been conducted; at all border crossings and in the organisational units, as well as on its website, a slogan related to the fight against corruption, phone numbers and an email address to which corruption can be reported, were posted. Whistleblowing is part of the training curriculum. There have been no recorded cases of failures to report corruption.

243. According to the Rulebook on Internal Reporting of Corruption of SIPA, no actions aimed at deterring from reporting corruption, i.e. punishment for corruption reporting are to be taken against the employee who is informed of the existence of corruption or who reports corruption, and the Director of SIPA and other superiors of the person reporting corruption must ensure protection of that person's personal and professional integrity. Within SIPA, suspected corruption would be reported to a designated person in the Internal Control Department, who is to conduct preliminary assessment, notify the party concerned no later than two weeks later, and inform the Director. This procedure and the identity of the whistleblower are confidential. Alternatively, a person wishing to report corruption can go directly to APIK in order to obtain the official status of whistleblower.

244. The GET notes that the Law on the Whistleblower Protection in the Institutions of BiH applies across all public authorities, including to law enforcement agencies. The GET was informed that there had not been any whistleblowing from within the BP and did not receive any information indicating that there had been any in SIPA either. According to several interlocutors met by the GET, the current framework suffers from several weaknesses. APIK is the agency responsible for granting whistleblower status, but the GET was informed that it had been rather conservative in doing so, with only some 10 persons in total having been granted the status since the entry into force of the law in 2014. The GET was told that much leeway resulted from the fact that one of the three criteria to grant this status was to demonstrate “good faith” in reporting corruption, implying a wide margin of appreciation. This is said to have had the consequence of discouraging potential whistleblowers, potentially also from within law enforcement agencies, such as the BP and SIPA, where usually the “law of silence” is strong. Moreover, from what the GET has heard from various interlocutors, there was still a lack of trust in the protection afforded to whistleblowers in a context where closing ranks remains the default reaction.<sup>57</sup> In addition, the GET was informed that the agencies’ personnel would go directly to APIK rather than follow the procedure set out in the rulebooks, which calls for some in-depth reflection.

245. The GET considers that, eight years after its entry into force, the Law on Whistleblower Protection ought to be thoroughly reviewed with a view to strengthening its effectiveness, in particular regarding whistleblowing in law enforcement agencies. It should then be further promoted at all levels of the BP and SIPA in order to incentivise the reporting of corruption by personnel of both agencies. Therefore, **GRECO recommends that (i) the protection of whistleblowers be improved and strengthened; and (ii) personnel from the Border Police BiH and the State Investigation and Protection Agency be trained and informed on a regular basis about whistleblowing protection measures.**

246. Internal reporting of corruption within law enforcement agencies is a crucial component of anti-corruption action and, for this reason, the authorities are urged to encourage the constituent entities and the Brčko District to strengthen awareness-raising initiatives and training on whistleblowing from within all law enforcement authorities operating across the country.

### **Enforcement and sanctions**

#### *Disciplinary proceedings*

247. The LPO, Chapter XI, provides for disciplinary responsibility of police officers for violations of official duties. In this respect, there are eight minor violations and 26 severe violations of official duty, as well as sanctions and points for severe violations of official duty, are prescribed. The Rulebook on Disciplinary Responsibility of Police Officers of BiH regulates in detail the disciplinary action rules.

248. Sanctions stipulated for violation of regulations committed by police officers include, for minor violations of the official duty, a written warning or 15% deduction from the basic monthly salary for one month and, for severe violations of official duty, 15% for two months

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<sup>57</sup> According to research carried out by the Crime and Policy Research Centre, more than half police personnel said they would not report their colleagues in 2006, and slightly more than half would report it in 2017, hence remaining quite low.

of 20% for six months of the basic salary, a ban on promotion to a higher rank for a specified period of time as well as termination of employment. Appeals against the decision of the first instance body may be filed by police officers with the Board for Complaints of Police Officials.

*Criminal proceedings and immunities*

249. There are no procedural privileges or special criminal proceedings for police officers. Criminal procedure rules apply to them as any other citizens.

250. The Section for Prevention and Detection of Financial Crime and Corruption and the corresponding lines of work in the regional offices of SIPA did not handle any case related to investigation of SIPA officers' alleged corruption. The Internal Investigation Department has not dealt with any cases of the internal corruption reporting against a staff member of SIPA.

251. The CPC BiH contains provisions regulating the process of gathering evidence and submitting reports to the competent prosecutor's office, while the form of these reports is prescribed by the Instructions on the Conduct and Cooperation of Authorised Official Persons and Prosecutors in conducting evidence gathering during investigations. Criminal investigations are initiated by order of the acting prosecutor pursuant to Article 216 CPC BiH. The conduct of an investigation is prescribed by Article 217 CPC BiH, under the supervision of prosecutors over the work of police officers, in accordance with Article 218 CPC BiH.

252. Sanctions for violations of official duties are pronounced at public hearings and are not published in the media or in any other manner accessible to the public. Criminal sanctions imposed after the criminal proceedings had been conducted, are public and are published on the website of the court that imposed the sanction.

### *Statistics*

253. After adopting the Ordinance on procedure, manner of recording and handover of received gifts and establishing the records, there were no recorded data in the BP. In the BP, during the period 2017-2021, there have been 31 reports on violation in relation to gifts, exercise of outside activities, etc. These reports cannot be disaggregated by type of violation. In 2019, 7 internal proceedings/investigations were initiated against 10 police officers and 3 requests were submitted to initiate disciplinary proceedings against 3 police officers, due to actions related to corruption, and 2 police officers were temporarily suspended due to actions related to corruption. In 2020, 12 internal proceedings were initiated against 21 police officers, and 8 requests were submitted to initiate disciplinary proceedings against 13 police officers for actions related to corruption, and 12 police officers were temporarily suspended due to actions related to corruption. In 2021, 10 internal proceedings were initiated against 16 police officers for actions related to corruption, 8 requests were submitted to initiate disciplinary proceedings against 9 police officers for actions related to corruption and 7 police officers were temporarily suspended due to actions related to corruption. These cases were based on violations of official duty under Article 105, paragraph (1), point 1), 9) and 23) of the LPO and Article 5, paragraph (1) point 1), 9) and 23) of the Rulebook on Disciplinary Liability of BiH Police Officers, which is defined as "*non-execution, negligent, untimely or careless execution of official tasks*", "*behaviour that damages the reputation of the police authority*" and "*abuse of official position*".

254. The Central Investigation Office, which is responsible at the central level for conducting the activities to establish criminal responsibility, over the past five years has prosecuted 41 persons, with 20 reports of criminal offence of corruption and perpetrators thereof being forwarded to the relevant prosecutor's offices. In 2019, a report was filed against an officer suspected of committing a criminal offence under Article 217 "Receipt of gifts and other forms of benefits" of the Criminal Code (CC) BiH. In 2020, seven reports were filed against 11 officers suspected of committing criminal offences under Article 217, Article 249 "Association for the purpose of committing criminal offences" in connection with Article 220 "Abuse of official position and authority" of the CC BiH. In 2021, four reports were filed against seven officers suspected of committing criminal offences under Article 249 in connection with Article 220 and Article 217 CC BiH.

255. The Internal Control Department of SIPA has not dealt with any violations of the rules. The Section for Prevention and Detection of Financial Crime and Corruption and the corresponding lines of work in the regional offices of SIPA did not handle any cases related to investigation of SIPA police officers' possible corruption cases. However, two internal proceedings were conducted against two police officers (male) for performing activities that were not in the interest of SIPA, outside working hours, for financial compensation, without the consent of the head. Two disciplinary proceedings were conducted which resulted in disciplinary sanctions against two police officers.

256. At the request of the SIPA Internal Control Department, three disciplinary proceedings were conducted against three police officers for violating the code of conduct related to corrupt activities, and two civil servants were reported for corrupt activities. One police officer was subject to a final court verdict and his employment was terminated; in one case the disciplinary procedure was suspended until the end of the criminal procedure; and in one case a disciplinary sanction was imposed on the police officer.

257. When it comes to police officers across BiH, APIK has received six submissions with indications of corrupt behaviour in the past three years. Three are associated with police officers in the BP and SIPA: two cases in BP related to seeking and receiving bribes; and one case in SIPA related to irregularities during the promotion process. However, there were no cases related to reporting of corruption by police officers from within the BP and SIPA.

## **VI. RECOMMENDATIONS AND FOLLOW-UP**

258. In view of the findings of the present report, GRECO addresses the following recommendations to Bosnia and Herzegovina:

*Regarding central governments (top executive functions)*

- i. **laying down rules requiring that integrity checks take place prior to the appointment of Heads of Office of members of the BiH Presidency, the Chair of the Council of Ministers, and Ministers/Deputy Ministers in order to identify and manage possible risks of conflicts of interest (paragraph 31);**

- ii. that (i) advisers to the members of the Presidency, Heads of Office of the Chair of the Council of Ministers, of Ministers and of Deputy Ministers, and advisers to the Chair of the Council of Ministers, to Ministers and to Deputy Ministers undergo integrity checks as part of their recruitment in order to avoid and manage conflicts of interests; (ii) the names and area of competence of all such Heads of Office and advisers be made public and easily accessible (paragraph 37);
- iii. that an operational corruption prevention action plan covering the Presidency and the Council of Ministers be adopted and made public. Such an action plan should be based on a risk assessment specifically targeting persons with top executive functions and include particular steps to mitigate risks identified in respect of them (paragraph 53);
- iv. (i) that a code of conduct for persons with top executive functions be adopted and made public in order to provide clear guidance regarding conflicts of interest and other integrity related matters (such as gifts, contacts with third parties, ancillary activities, the handling of confidential information and post-employment restrictions), and (ii) that proper monitoring and enforcement of such a code be ensured (paragraph 61);
- v. that (i) APIK be provided with adequate financial and human resources to perform its tasks effectively, and (ii) management posts be filled following an open and transparent process based on objective criteria to guarantee its independence (paragraph 64);
- vi. that (i) briefing and training on integrity issues be systematically organised and administered for persons with top executive functions upon taking up their positions, and regularly thereafter, and (ii) confidential counselling on ethical issues be available to them (paragraph 70);
- vii. undertaking an independent assessment on access to information requirements in order to revise the legislation and ensure a timely access to such information, and the necessary implementation measures, that would meet the standards of the Council of Europe Convention on Access to Official Documents (paragraph 79);
- viii. that the transparency of the law-making process be increased by ensuring that external inputs to legislative proposals and their origin be identified, documented and disclosed from the beginning of the legislative process (paragraph 86);
- ix. (i) introducing rules on how persons with top executive functions engage in contacts with lobbyists and other third parties who seek to influence Governmental legislative and other work; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion (paragraph 89);
- x. that the system for managing conflicts of interest of persons with top executive functions be reviewed and strengthened by (i) ensuring that statements of interests of persons with top executive functions be subject to regular substantive checks,

with proportionate sanctions in case of breach, including for false reporting or failure to report; (ii) making decisions regarding conflicts of interest available to the public; and (iii) introducing a requirement of *ad hoc* disclosure in respect of persons exercising top executive functions in situations of conflicts of interest as they arise (paragraph 108);

- xi. **establishing more stringent rules on gifts and other benefits for persons with top executive functions by lowering significantly the threshold for declaring and recording gifts and ensuring that gifts registers are accessible to the public (paragraph 124);**
- xii. **that (i) it be considered to extend the length of the cooling-off period for persons with top executive functions; (ii) post-employment rules in relation to persons with top executive functions be broadened to cover employment in the private sector; and (iii) rules on persons with top executive functions expressly prevent lobbying activities towards the government for a lapse of time after they leave government (paragraph 129);**
- xiii. **that the system of asset declarations for persons with top executive functions be harmonised and strengthened by ensuring that (i) all persons with top executive functions are uniformly obliged to provide asset declarations; (ii) adequate verifications are carried out and effective, proportionate and dissuasive sanctions are applied when the rules are violated and; (iii) all asset declarations are made easily accessible to the public (paragraph 139);**
- xiv. **that the Section for Corruption of the Special Department for Organized Crime, Economic Crime and Corruption of the Prosecutor's Office be provided with adequate human and technical resources and prosecutors benefit of highly specialised training to effectively investigate and prosecute corruption-related offences concerning persons entrusted with top executive functions (paragraph 144);**

*Regarding law enforcement agencies*

- xv. **that action plans with clear goals based on identified risks be adopted without delay for the Border Police BiH and the State Investigation and Protection Agency and thereon assessed and updated regularly to ensure a coherent and dynamic approach to corruption prevention through time (paragraph 172);**
- xvi. **that (i) the codes of ethics of the Border Police BiH and the State Investigation and Protection Agency be supplemented with practical guidance illustrating all relevant integrity matters (such as conflict of interest, gifts, contacts with third parties, outside activities, the handling of confidential information) with concrete examples; and (ii) the codes of ethics be made enforceable in case of breach (paragraph 182);**
- xvii. **strengthening compulsory training on ethics and integrity for new recruits and serving personnel based on the practical guidance to be adopted for the codes of**

**ethics of the Border Police BiH and the State Investigation and Protection Agency (paragraph 187);**

- xviii. that (i) security checks relating to the integrity of police officers, including directors and deputy directors, in the Border Police BiH and the State Investigation and Protection Agency be carried out at regular intervals throughout their career; (ii) random integrity checks on a sample of police officers take place annually; and (iii) ensure record-keeping of detected conflicts of interest (paragraph 196);**
- xix. that steps be taken to further promote a more balanced representation of genders in all ranks in the Border Police BiH and the State Investigation and Protection Agency as part of recruitment and internal upwards career moves (paragraph 197);**
- xx. that measures be taken to ensure that appointments of top police officials in the Border Police BiH and the State Investigation and Protection Agency are strictly based on merit and guided by open, standardised and transparent competitions (paragraph 200);**
- xxi. that an institutional system of rotation of police staff in the Border Police BiH and the State Investigation and Protection Agency be put in place, which could be applied, as appropriate, in areas considered particularly exposed to corruption risks (paragraph 205);**
- xxii. that (i) a legal provision defining incompatibilities with policing duties in the Border Police BiH and the State Investigation and Protection Agency be laid down; and (ii) authorised secondary activities of both agencies be duly recorded and that regular checks be undertaken thereafter (paragraph 219);**
- xxiii. that rules be adopted to ensure transparency and limit the risks of conflicts of interest when police officers leave the Border Police BiH and the State Investigation and Protection Agency to work in other sectors (paragraph 227);**
- xxiv. that (i) asset declarations be regularly submitted by police officers (annually for higher rank officers) and subject to random in-depth checks and; (ii) all publicly available information related to asset declarations be usable in investigations without a prior court order (paragraph 230);**
- xxv. that (i) the protection of whistleblowers be improved and strengthened; and (ii) personnel from the Border Police BiH and the State Investigation and Protection Agency be trained and informed on a regular basis about whistleblowing protection measures (paragraph 245).**

259. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Bosnia and Herzegovina to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2024. The measures will be assessed by GRECO through its specific compliance procedure.

260. GRECO invites the authorities of Bosnia and Herzegovina to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.



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## About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: [www.coe.int/greco](http://www.coe.int/greco).

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