



CONCRETIZATION OF EUROPEAN INTEGRATION PROCESS: MASKS TO FALL OFF

BENCHMARKING IN BOSNIA AND HERZEGOVINA



CONCRETIZATION OF EUROPEAN INTEGRATION PROCESS: MASKS TO FALL OFF



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Lejla Ramić-Mesihović, Mr.Sci

Authors:
Amela Hrasnica, Junior Researcher
Lejla Ramić-Mesihović, Senior Researcher

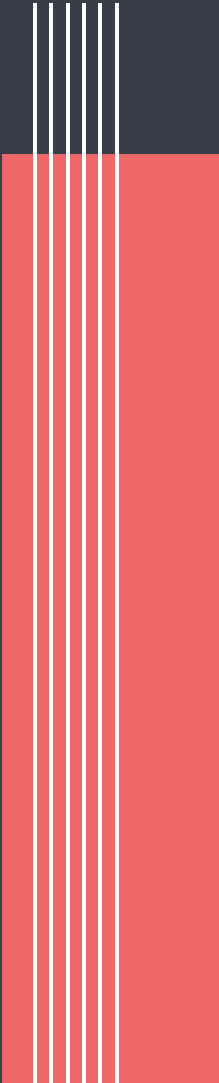
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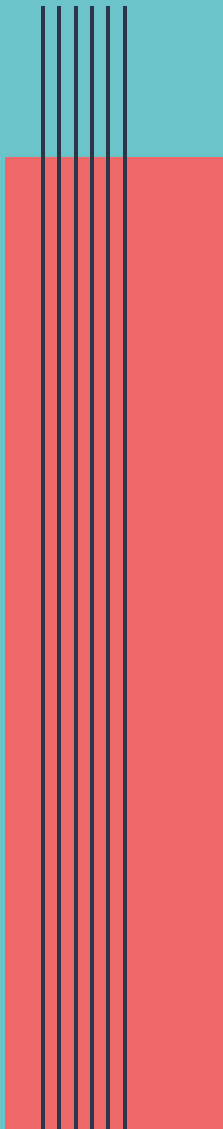


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INTRODUCTION



Bosnia and Herzegovina has missed and prolonged numerous deadlines in implementing the necessary reforms for the improvement of the functionality of the country as well as to progressing on its path towards the membership in the European Union. Various factors underpin this situation, from the complex institutional organization of the country, over the prevailing need to improve legislation and ensure rule of law, to continuous political crises. The responsibility is often shifted from one institution to another, exemplifying the expected and known inefficiency of internal coordination despite the repeated requests by the EU for BiH to speak with one voice and complete the necessary tasks.

As with other required reforms, in contrast to the institutions, civil society organizations have intensified their efforts in monitoring and evaluating the work of the institutions. BiH CSOs submitted their alternative answers to the EU Questionnaire in line with their respective expertise, showing a good example of coordination and dedication to supporting the EU integration process of the country (despite the official answers to the EU questionnaire being delayed for over a year since the questions had been received). Speculations over the timeline vary (additional questions, analysis of answers, forming of the Opinion), so looking at the pace of current events, it is hard to predict the timing of the next steps. What is certain, on the other hand, is that, as evident from the initial steps taken in the process, BiH will have to pick up the pace and commit to the process more vigorously, especially in comparison to other countries in the region.

Looking into the future, and the start of the negotiation phase, BiH will have to learn from the experience of the neighbouring countries and heavily invest in ensuring smooth and unobstructed harmonization process. It is evident that negotiating chapters 23 and 24 will be the most burdensome for the country, given the past and current state affairs in these areas. Progress in the field of democratization, human rights and the rule of law is the foundation for the reform processes in Bosnia and Herzegovina, which would not only bring the country closer to the EU, but improve the standards within the country. Chapter 23 entails judiciary reform, anti-corruption policy and ensuring the protection of fundamental rights. The reasons for the complexity of adopting these reforms in BiH lie in the fact that their content is heavily politicized, given that they contain scarce legal guidance. For BiH citizens, the implementation of these, the highest EU standards in these fields would lead to upholding of an independent, depoliticized judiciary with equal access to justice for all BiH citizens, a systemic solving of corruption and better protection of human rights. This does not mean, as it has been often the case in BiH, that the laws and strategies exist for their own sake, but that they are efficiently implemented.

Eleven areas of the more technical Chapter 24 would entail that BiH is able to protect its borders from illegal migration and prepare for entering the Schengen area, and at the same time face some of the biggest challenges of current times – international terrorism and organized crime. Taking into consideration the sheer volume and complexity of these issues, and the fact that the negotiations could be severely hampered and/or stopped if no progress is made, it is evident that it is high time for BiH to put efforts into depoliticization of the process.

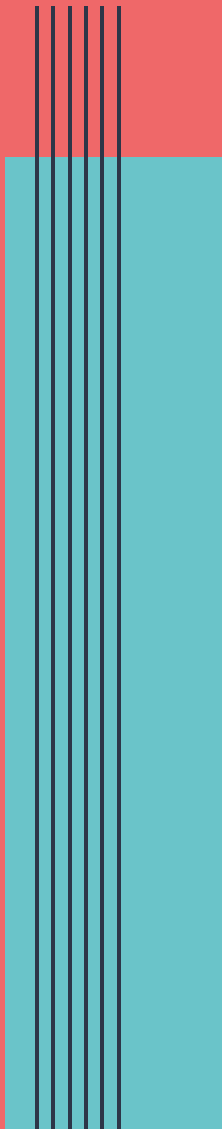
Analysing the previous transformative leverage the EU has had over BiH, it is difficult to come to a clear conclusion on the effectiveness of the former approaches since the case of BiH is rather specific taking into consideration that the EU acknowledged the previous conditionality has not functioned (the nine year long stalemate) which led to the British-German initiative in 2014, which managed to temporarily unlock the process and bring some positive actions in following years, thus demonstrating that the accession process is more relevant than the conditionality. However, despite the positive momentum in reform implementation that the new approach brought to the country, the fulfilment of next steps is one again being hampered by the inability to reach consensus within the country and agree on the way forward. As evident from the European Commission's Report for BiH from 2016, many recommendations from 2014 and 2015 reports are repeated, thus indicating that further efforts are still needed as far as the independence, efficiency and effectiveness are concerned, as well as the importance of strengthening the integrity of the judiciary and the civil service as well as strengthening the borders and ensuring adequate investigations and processing of crime.

This report, part of a regional project, studies the effectiveness of the EU's benchmarking system on a selected policy issues within the Chapters 23 and 24 focusing on the case of Bosnia and Herzegovina. The sample was selected following a mapping of benchmarks that are common or similar among the six Western Balkan aspirants for EU membership. This analysis represents a first major attempt to critically evaluate the degree to which the objectives are achieved and the extent to which targeted problems are solved in order to further advance in the

EU accession process. The structure of this paper the following: first, it provides a contextual overview of the benchmarking in Bosnia and Herzegovina as a case study followed by a brief explanation of the methodology. The empirical section that follows provides an analysis of the evolution of each of the selected benchmarks since their introduction joined by an assessment of the current state of play. Last, the study reflects on the findings and provides recommendations.



METHODOLOGY



The **selection of the sample of benchmarks** was done according to the following steps: interim and opening benchmarks that have been laid out for Serbia and Montenegro in Chapter 23 and 24 were taken as basis and were categorized in a table, depending on the type of action required:

Adoption of a policy document (Pol); Adoption of legislation (Leg); Implementation: Setting up/strengthening a body (B); Training (T) Setting up ICT systems (ICT) Cooperation (Coop) Track-record (Trck) Other (O).

Next, the research team selected a sample of 8 benchmarks which will be analysed in depth. In this process the following factors were considered: the relevance and importance of the issue both from a national and regional perspective; common critical junctures and equal distribution of categories and actions as set by the benchmarks; availability of information pertinent to assess the effectiveness of the benchmarks. While Montenegro and Serbia have traced the benchmarks in their Screening reports and Common position papers as countries that have opened negotiations, the other countries have adequately traced the benchmarks in the enlargement documents (EC country reports; roadmaps; Enlargement strategy). Thus, the following benchmarks were selected:

Chapter 23	
• Merit-based career system for the judges	Track record
• Judicial academy reforms	Setting up / strengthening a body
• Merit-based career system for civil servants	Other / track record
• Track record for addressing media intimidation; attacks on journalists; media independence	Track record / strengthening a body
• Implementation of Law on prohibition of discrimination	Leg/Pol
Chapter 24	
• Law on Asylum aligned with EU acquis	Leg
• Specific anticorruption plans; providing adequate follow up of detected cases	Track record/Cooperation
• The role of intelligence services and the oversight mechanisms that are introduced; established initial track record of investigations in organised crime	Other/track record

The **data collection** for all countries was consisted of **desk analysis of and interviews with stakeholders**. First, the **key documents**¹ related to the EU accession process were analysed for the identification, sampling and analysis of the evolution benchmarks. In addition, for the assessment of the effectiveness of the benchmarking the study utilises the assessments of own reports of the research team engaged, but also reports of other international bodies that have monitored developments in the policy areas studied. These included Progress/Country Reports and strategic documents on enlargement by the European Commission SIGMA reports, OSCE reports, US Department State Reports, Reports of UN bodies, as well as Council of Europe Monitoring Mechanisms. Where available, the analysis of the state of play also includes a review of available quantitative indicators such as: the Freedom House Nations in Transit scores, Bertelsmann Transformation Index in combination with perception indicators through regional surveys. Second, in all countries **semi-structured interviews** were conducted with representatives of the EU delegation and/or EU Members States as well as representatives of national institutions in charge of EU accession and in the implementation of the selected benchmarks. The focus on the EU staff and the national civil servants is a result of the important role these individuals play in both crafting the benchmarks at the EU level as well as the respective national response(s). In the case of Bosnia and Herzegovina eleven interviews were conducted in the period 09.11.2017 – 31.12.2017 and included representatives of relevant local and international institutions included in the implementation of the selected benchmarks as well as civil society actively engaged in monitoring the reform processes.

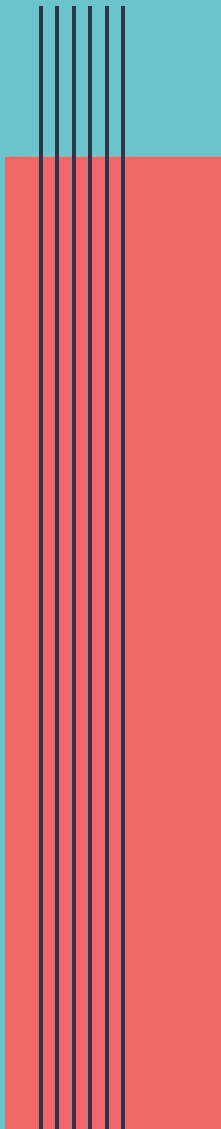
¹ EU common positions on chapter 23 and 24 (for countries in accession negotiations); EC Country reports – staff working papers (analyzing the areas in which the sample of EU benchmarks are mentioned); Enlargement Strategy – Communication of the Commission (analyzing the areas in which the sample of EU benchmarks are mentioned); EU negotiating frameworks; EU screening reports; Roadmaps, conclusions of “high level dialogues” and other instruments setting conditions for further progress in the accession process; Documents through which the countries involved respond to the set benchmarks (National Plans); Action plans submitted by relevant authorities to the European Commission, Stabilization and Association Council minutes, Subcommittees on Justice and Home affairs committees.

The analysis of the benchmarks was done through the insertion of the collected data and findings in a pre-determined template² which consisted of several steps. First, it traced the introduction and evolution of the benchmark at least in the last five years, or since the last critical juncture in the EU documents. Second, the researchers assessed current state of play through document review, including through available quantitative indicators findings in the specific policy area. Last, conclusions were drawn on the effectiveness of the benchmarking in the specific policy area thus far. The information from the templates was further used to develop the country analyses by each of the partners.

² Annex 1



I. CHAPTER 23



JUDICIARY

MERIT-BASED CAREER SYSTEM FOR JUDGES

“Rule of law is at the core of the EU accession process. Therefore, the credibility of the accession bid depends largely on the existence of an independent, accountable, professional and efficient judiciary.”³ EU Commissioner Johannes Hahn

In formal terms, Bosnia and Herzegovina has a stringent legal framework to ensure independence of the judiciary and prosecutors,⁴ appointed and regulated by High Judicial and Prosecutorial Council (HJPC), formed in 2006, though there are continuing concerns about political interference in the judiciary.⁵ HJPC's transition to a domestic body (in the beginning comprised of international and local staff) has been accompanied by political attempts to undermine its and the independence of other judicial bodies (authorities in the RS regularly question the authority and competence of state judicial institutions).⁶ The politicization of the appointment and recruitment procedures for the HJPC members and Chief Prosecutors at all levels are considered problematic. Problems in the independence and impartiality of the judiciary have been persistent, in particular, due to the political interference and pressure which has been most extensively felt in the cases of war crimes processing. During 2016, BiH Council of Ministers focused on the implementation of recommendations for the development of the judiciary in BiH and recommendations from the EU-BiH Structured Dialogue on Justice and the obligations from the Stabilization and Association Agreement⁷, as well as the Action Plan for the implementation of the Strategy of the reform of the judiciary in BiH (2014-2018)⁸ while the Strategy for the reform of the judiciary was adopted after an almost two-year long delay in 2015.⁹ The inability to reach consensus and lead open dialogue during the EU-BiH Structured Dialogue on Justice¹⁰ meetings over the years has exemplified the fact that BiH justice sector is still susceptible to political influence. This has shown that BiH officials often lack the understanding of the severity and comprehensiveness of the justice sector reforms in order to comply with the conditions set in Chapter 23 and harmonization with the EU *acquis*. Furthermore, the trust of BiH citizens in the work of judges and prosecutors is very low. Citizens believe that corruption and political influence on judges and prosecutors are the biggest problems, for which they blame the government and the bad internal organization of the justice system.¹¹

Following the rather strict assessment of the judiciary in 2014 by the European Commission, stating that there are “persistent flaws in independence and impartiality”¹², HJPC adopted the Action plan for 2015 and 2016 with the aim to improve the governing, responsibility and integrity of the judiciary and strengthen the public trust with the aim to ensure better methods and selection of the members of HJPC.¹³ HJPC's intentions to regulate and update its internal procedures have often been criticized by the international community.¹⁴ However, even the measures which yielded good results (Rulebook on orientation measures for judges) have not been enforced

3 “Hahn in BiH: Concrete Results the Only Way Forward”. European Western Balkans. Accessed on December 10th. Available at: <https://europeanwesternbalkans.com/2017/12/04/hahn-bih-concrete-results-way-forward/>

4 Due to the evident need for changes and improvement needed in the sector, in 2002 BiH started with a comprehensive judicial reform strategy. In the period 2003-2011, limited progress had been made in implementation of structural reforms in judiciary and ensuring judicial independence.

5 HJPC acts as a disciplinary body, responsible for professional standards, providing training and proposing and issuing opinions on draft legislation, regulations and other issues affecting the judiciary.

6 In 2013 RS National Assembly passed a decision calling for HJPC to be dismantled into three separate councils and the federal and entity levels which drew criticism from the EU and international community. <https://www.bti-project.org/en/reports/country-reports/detail/itc/bih/>

7 Law on salaries and other contributions in judicial and prosecutorial institutions on the state level, Law on changes and amendments of the Law on Public Defenders of BiH. Report on the work of BiH Council of Minister for 2016. Accessed on October 15th. Available at: http://www.vijeceministara.gov.ba/home_right_docs/default.aspx?id=25403&langTag=hr-HR

8 *ibid*

9 Adopting of the Justice Sector Strategy 2014-2018 and Action Plan, effective prevention of corruption and conflict of interest within the judiciary, enhancement of professionalism and integrity by prescribing objective criteria for appointment of members of judiciary and adoption of integrity measures throughout the judiciary in BiH were some of the measures that the government obliged to fulfil with the adoption of BiH Reform Agenda 2015-2018. (<http://www.fbihvlada.gov.ba/pdf/Reformaska%20agenda.pdf>)

10 In 2011, EU-BiH Structured Dialogue on Justice was launched (within the framework of the SAP process) to facilitate the revision of legislation and functioning of institutions in line with relevant European standards and aiming at ensuring an independent, effective, impartial and accountable judicial system.

11 According to Balkan Barometer Public Opinion Survey 2016, 57% believe that judicial system is partial to political influence. 49% have no confidence in the courts and the judiciary, while 62% believe that law is not applied to everyone equally. Accessed on November 27th. Available at: <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>

12 European Commission. BiH Progress Report 2014. Available at: http://europa.ba/?page_id=208. Accessed on December 5th 2017.

13 HJPC Action Plan 2015-2016. Available at: <https://vstv.pravosudje.ba/>. Accessed on December 5th 2017.

14 BiH's efforts to tackle corruption and abuse of office were criticized by the international community, noting that the track record of investigation and prosecution in high profile cases remains unsatisfactory and the overall level of effective investigations, prosecution and convictions low. https://vstv.pravosudje.ba/vstv/faces/pdfservlet?p_id_doc=34812

by all Court Presidents fully.¹⁵ Although the Disciplinary Prosecutors Office informed that 2016 saw the largest number of disciplinary cases being charges, there is still the need for independent assessment of the regularity of the sanctioning policies and new disciplinary measures are to be considered. The system of the appraisal of the work of judges and prosecutors should be established in the way that it achieves a two-fold goal: to enable a comprehensive assessment of the efficiency and capability (not hampering the principle of independence), and to be a mechanism for the improvement of the quality of the decision making process.¹⁶ Judicial scrutiny of most of HJPC's decisions on appointments and dismissal does not exist, given it is possible only for violations of constitutional and human rights as result of disciplinary proceedings.¹⁷

The procedures for entry or advancement in judicial careers based on merit and promotion exist, with the focus on candidates' professionalism and competences, assessed against objective indicators. For appointments in judiciary that would represent promotions for judges or prosecutors, candidates are evaluated in accordance with the criteria stipulated in the Law on HJPC (i.e. job performance in the low-level positions or results in the entrance exam or written tests- for candidates outside the judiciary). However, no effective and systematic application of objective criteria for final appointments to posts of judicial office holder and management level position exist. Dismissal is regulated by objective criteria under the Law on HJPC, however, very few dismissals actually occur. When comparing the existing legal framework with the international appraisal standards, the recommendation to clearly define the rule on the appraisal process has not been consistently implemented.¹⁸ Formal assessment criteria are partially aligned with the EU standards considering they include qualitative and quantitative indicators and exemplify a good basis for the establishment of an adequate appraisal system and are regulated by law and bylaws.¹⁹ However, the basic rules of appraisal are not prescribed in the law, and the existing legal framework on the entity level is not harmonized with the Minimum judicial standards as prescribed by the European Network of Councils for the Judiciary. In 2014, HJPC completed the test phase for the procedures regulating access to judicial career (new system of competitive written examinations for all candidates and systematization of structured interviews, internal promotions, etc.) with the aim to increase the objectivity, transparency and merit-based recruitment.²⁰

Independence of the judiciary is a necessary condition for the realization of the principle of rule of law. However, BiH has yet to adopt the Law on Court, which has been the subject of EU-BiH SDJ meetings for years. The Law and comments were delivered in mid-2017, while the EU experts have not yet presented their opinion. The remaining issues consider the jurisdictions of the BiH Court and its location. The implementation of state level laws and their monitoring should be done by BiH Supreme Court (or its equivalent), which does not exist on the level of the state. The existence of such body is necessary for the accession process, with the aim to monitor the harmonization of state, entity and cantonal legislation with the EU *Communitaire*.²¹ The process of naming and appraising the work of judges and prosecutors and the process of the protection of legal rights significantly contributes to the realization of the set principles. In the context of BiH, structural changes within HJPC and the legal framework are necessary in order to ensure efficient legal protection in the process of naming of judges and prosecutors, in line with the European standards.²²

15 EU-BiH Structured Dialogue on Justice. Recommendations and Conclusions of the 3rd meeting. Available at: <http://europa.ba/?p=19589>

16 Dodik, Bozidarka. Vrednovanja rada sudija u Bosni i Hercegovini. Fondacija Centar za javno pravo. Available at: http://www.fcjp.ba/templates/ja_avian_ii_d/images/green/Bozidarka_Dodik.pdf

17 The principles of judicial independence and prosecutorial autonomy are set out in legislation and Entity Constitutions but not in the State Constitution. External and internal independence and autonomy have legal basis, but there is no effective oversight for their implementation (no formal procedures with penalties for undue influence or threats to judicial independence). HJPC can produce public statements or non-binding opinions if judges or prosecutors file complaints to politically motivated influence.

18 BiH Law on Courts does not entail the basis for the assessment of the work of judges and Court Presidents (in FBiH the assessment is done on an annual basis, while in the RS and BD once in three years – newly named judges are assessed once a year). The international standards do not prescribe often appraisals, given that it might be considered the exertion of pressure and hamper impartiality.

19 Dodik, Bozidarka. Vrednovanja rada sudija u Bosni i Hercegovini. Fondacija Centar za javno pravo. Available at: http://www.fcjp.ba/templates/ja_avian_ii_d/images/green/Bozidarka_Dodik.pdf

20 In line with the recommendations from the BiH Reform Agenda (2015-2018), and in order to improve accountability of the judiciary, HJPC adopted guidelines related to the prevention of conflict of interest, drafting of integrity plans and improvement of disciplinary proceedings. Despite the existence of the Code of Ethics for judges and prosecutors, no formal enforcement mechanisms with powers to initiate disciplinary cases exist which underlines the need to more structurally address corruption on the judiciary.

21 Mirascic, Dzeneta. Principi vladavine prava u kontekstu najavljenih promjena: Reformska agenda za Bosnu i Hercegovinu za period 2014.-2018. Godine. Fondacija Centar za javno pravo. Available at: http://www.fcjp.ba/templates/ja_avian_ii_d/images/green/Dzeneta_Mirascic.pdf

22 Pobic, Nurko. Mogucnost zastite prava u procesu imenovanja sudija i tuzilaca. Fondacija centar za javno pravo. Available at: http://www.fcjp.ba/templates/ja_avian_ii_d/images/green/Nurko_Pobic3.pdf

JUDICIAL ACADEMY REFORMS

Judiciary, as is the case with other sectors, is burdened by the complex constitutional setup of the country. Efforts to improve the functioning, cooperation and communication within different parts of the legal system have often been hampered by political influence and poor infrastructure. Having recognized the poor state of the judiciary, reforms have begun as early as 2003,²³ yielding limited results which prompted more inclusive involvement of the European Union through the mechanism of the EU-BiH Structured Dialogue on Justice. In addition to this mechanism, the EU and the international community have provided BiH with substantial technical and financial support in order to improve the work of the judiciary and ensuring its independence. However, judges and prosecutors are still facing political pressure within the institutions, which seriously obstructs justice.

Independent, efficient and professional judiciary is one of the key standards of functioning of rule of law. The European Union, international community, and BiH citizens have been witnessing the porous state of BiH judiciary for years now, influenced by numerous factors. One of the preconditions for efficient and effective functioning of the judiciary is the proper capacity building and training provided to the judicial staff.

The poor implementation track record of the efforts to implement strategies and action plans for the justice sector reform resulted in limited capacities, backlogs of cases and improperly trained judges and prosecutors. Training for the judiciary is provided by the Judicial and Prosecutorial Training Centers (JPTCs) of the two Entities, operational from 2003. The State and Brcko District judiciaries have no formal training centres, and they participate in the training programmes organized by the entity centres. In cooperation with local and international stakeholders²⁴, the centres organize trainings on judicial ethics and initial training for newly appointed judges. The training centres have exclusive jurisdiction to provide professional training to the named judges and prosecutors. Though not obligated, centres can provide training to other interested individuals. In the Strategy for Judicial and Prosecutorial Training in BiH (2007-2010), JPTCs were recognized as key institutions for professional education of current and future members of the judiciary. Trainings on a wide range of substantive and procedural topics have been relevant in the late 2000s, having in mind the changes to BiH legal system and introductions of the EU legal system. The aims of the JPTCs are set in order to reach the standards which will enable BiH judiciary to successfully overcome the challenges of implementation of the EU law and local legislative in the context of the judicial practice of the European Court for Human Rights.²⁵ High Judicial and Prosecutorial Council established the minimum of three working days of education which each judges and prosecutor need to comply with in the course of one academic year.²⁶

Trainings for prosecutors and judges in JPTCs are based on the three year mid-term strategy (developed in 2004) for introduction and continuous training provided by the HJPC. Each centre prepares annual curriculum, with distance learning modules being 30% of the available modules. Most judicial staff complies with the mandatory training days per year, institutional reforms of the training centres are needed to improve the delivery and substance of training. However, training standards, methodology and delivery need upgrading, particularly on building up specific capacities to handle complex cases (cases of human trafficking, financial and organized crime). Training on a wide range of substantive and procedural topics is especially relevant given the legislative changes over the years, including fundamental changes to BiH legal system. However, the training centres have been facing understaffing and budgetary issues which influenced their performance and the quality and quantity of training provided.

BiH has an observer status in the European Judiciary Training Network. The training centres do not systematically provide management training and training for specialized judicial or prosecutorial functions. In order to strengthen the capacities of the judiciary, training centres have to develop a comprehensive training needs analysis on the basis of career development, job competencies and regular performance reports. Furthermore, a system for independent monitoring and assessment is to be developed based on the latest assessment of the EU. Furthermore, the quality of the training should be improved given the poor capacities of the training centers and the needs to widen the scope of trainings.

²³ Restructuring of courts and prosecutorial services, re-appointment of judges and prosecutors and the establishment of BiH Ministry of Justice and High Judicial and Prosecutorial Council.

²⁴ OSCE Mission in BiH and USAID's Justice Project BiH, Council of Europe (within the Lisbon Network) are among the most comprehensive interventions by the international community in the country. Programms aim to improve the strategic frameworks and improve the overall functioning with the particular emphasis on capacity building, ensuring transparency, professionalism and most of all, independence in the work of the judiciary.

²⁵ Public Institution Centre for Judicial and Prosecutorial Council in FBIH, <http://www.fbih.cest.gov.ba/index.php/o-centru>, Public Institution Centre for Judicial and Prosecutorial Council in RS, <http://www.rs.cest.gov.ba/index.php/o-nama-2>, accessed on 2nd October 2017

²⁶ Despite the discussion on the perception of continuous training for sitting judges and prosecutors, the mandatory training is necessary in order to ensure continuance and professionalism within the sector.

ANTI-CORRUPTION

MERIT BASED CAREER SYSTEM FOR CIVIL SERVANTS

Merit-based recruitment and promotion procedures for civil servants are enshrined in BiH legislation; however, the application is obstructed by unclear legal provisions, formalistic application of procedures and low capacity of selection committees. Human resource management is fragmented and (in)efficient due to the lack of a centralized policy-making institution at state and entity levels (four main Civil Service Agencies perform centralized HRM functions, but are not empowered to lead and monitor implementation of civil service policy and legal framework). As it is the case with many other aspects, the performance appraisals in civil service exist, they are regulated and carried out regularly. However, it can be noticed that a close link between performance appraisals and professional development and mobility are lacking. Despite the fact that dismissal and disciplinary procedures formally exist, the number of dismissals is severely low.

2016 Report for BiH²⁷ underlines the need for ensuring implementation of a more efficient system of human resource management, with specific focus on recruitment procedures. Furthermore, the EU recommends the change of legislation which regulates civil service to make it more inclusive and merit-based and to lower the risk of politicization. On the other hand, SIGMA's assessment underlined the problems with the fragmentation of the civil service and the lack of a strategic framework for the implementation of reforms.²⁸ The key challenges for the civil service in BiH are the protection of merit-based recruitment system and safeguarding of the public interest in the reform process. Moreover, the legislation needs to reflect the clear separation between politics and public service.

Under the pressure and financial support of the international community, the process of Public Administration Reform in BiH began in 2003.²⁹ Public Administration Reform Coordinator's Office (PARCO) was established in 2004 under the authority of the Chairman of BiH CoM, with the role to promote the PAR agenda, despite being limited by budget and staffing to this day. Civil Service Agencies of BiH and the RS have been operational since 2003, while FBIH CSA became operational in 2004, followed with the adoption of the first PAR Strategy and Action Plan (2006-2010). In 2008, BiH witnessed some progress in the area of public administration reform. Recruitment done by the State CSA improved, but their procedures need improvement as well as the coordination with entity level CSAs. Efforts to sustain political interference and limit the role played by ethnicity, identity and party affiliation in public administration remained insufficient. After 2010, having in mind that the PAR Action Plan is not implemented fully, a revised Action Plan for the period 2011-2014 was adopted.³⁰ Civil service remained highly politicized and is in need of transparent, merit-based recruitment, a system of modern career development and professionalization. No progress was evident in limiting the role of political affiliation in public administration. For the last three years, the reforms are being implemented under the "expired" legal framework, while, despite the intentions to adopt a new Strategy and the accompanying Action Plan, it has not been done yet.³¹ The data from BiH PARCO indicate that in the period 2011 – 2014 only 61% of the total reform goals have been met (an average figure for all four public administration structures of BiH).³² However, the reform process has received very limited political support, as noted by local and international experts, resulting in implementation of small portions of the reform package, the results of which are hardly visible.

Public service recruitment and appraisal process in BiH is still heavily influenced by politics. By adopting the amendments to the Civil Service Law of FBIH in 2015³³, the principles of merit-based recruitment and political neutrality were brought into question given that most senior positions (Secretary of the Ministry, Assistant Minister) are no longer part of the civil service but part of the Minister's cabinet. Formally, the recruitment processes

27 European Commission. Bosnia and Herzegovina Report 2016. Accessed on December 17th 2017. Available at: http://europa.ba/wp-content/uploads/2016/11/20161109_report_bosnia_and_herzegovina.pdf

28 SIGMA/OECD. Monitoring Report: The Principles of Public Administration BiH 2016. Accessed on January 9th. Available at: <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>

29 With the 2003 agenda for "Reforming of Public Administration", BiH government recognized that the country's public administration does not meet the standards (slow, multi-layered, unpredictable and money consuming with poorly trained staff and no safeguards against political influence). However, with the introduction of Civil Service Laws at State and Entity levels were introduced, the legal framework for civil service was enabled.

30 European Commission's BiH Progress Report 2011 identified stronger political will and increased resources as crucial for successful implementation of PAR. http://europa.ba/wp-content/uploads/2015/05/delegacijaEU_2011121405454612eng.pdf

31 Largely, due to the inability to reach inter-entity consensus on priority measure and competent bodies for the implementation and monitoring of the reforms. 32 PARCO. Annual Progress Report (Monitoring of Implementation of Revised Action Plan 1 of PAR in BiH). 2014. Available at: <http://parco.gov.ba/wp-content/uploads/2010/07/retku-za-pracenje-provodjenja-revidiranog-akcionog-plana-1-strategije-reforme-javne-uprave-u-bih.pdf>. Accessed on January 11th 2018.

33 FBIH Constitutional Court judged that the Law is unconstitutional and abolished it.

of civil servants on the State and entity levels look compatible with the principles of merit-based recruitment. Vacancy notices are published in newspapers, competitions are conducted and the candidates have the right to appeal following the selection decision. On the State level and in the RS, first-ranked candidate is either automatically appointed (at the State level, this applies for non-managerial positions), or they had to be appointed by the head of the institution (in the case of the RS). As for managerial posts, at the State level they are filled through open competition, however, the head of the institution holds the final say on the decision (they can pick any of the successful candidates). In FBiH, the head of the institutions have the liberty to pick both managerial and non-managerial post candidates from the list of successful candidates (lists are alphabetical and do not contain rankings based on the examinations). However, as evident from practice, the main fault is not in the legal provisions but the implementation and particularly when it comes to selection committees, which have managed to ensure that the preferred candidate gets the job in the end. This practice underlines the need for the increase of transparency of the process and the establishment of corrective measures for the selection committee members. Civil service structures on all levels would benefit from the increase of transparency of human resource management. It is evident that the use of social media for vacancy notice advertisement is very low. Recruitment procedures which would ensure application of objective and merit based criteria, transparency and prompt appointment to vacant positions are still a big burden for BiH public service. With the adoption of key principles for Public Administration Reform with the aim of creating a more modern, efficient and transparent public service, BiH Council of Ministers planned to adopt measures which would limit employment on all levels of government until the revision of the existing structures is finalized. Due to the political influence on the work of public service, there has been an evident lack of political support to advance in the area of public administration reform.³⁴ Public sector is still the most desirable employer in BiH (due to stability, longevity, regular income and the respect of contractual obligations). On the other hand, the general perception in the country is that the recruitment process is highly lacking in transparency that it is corrupt, filled with nepotism and party related employment. Although such perception should lead to changes and improvement of the system, the application of practices which further hamper the professionalism in the public service continue to be implemented (insistence on tri-national employment key).

Depoliticized public service is one of the key goals of BiH Public Administration Reform Strategy. High decentralization, fragmentation and division of competences in terms of conditions and procedures for nomination and appointment (employment of executives and managers in public service) hamper the transparency of the appointment and appraisal processes in the public service. Employment requirements differ depending on the hiring administrative body as well as the government level. Unfortunately, politicization, recruitment and appointment along political lines have become a rule rather than the exception which seriously hamper the rule of law in the country and the overall performance of the public service.

³⁴ The Agency for Prevention of Corruption and Coordination of the Fight Against Corruption regulates the anti-corruption and integrity plans, which are well addressed at the state level. However, the public perception of corruption remains high given the limited power of the Agency to enforce these plans. No legal requirement for public sector employees to make public information on their professional assets and income exists. There is no whistle-blower protection legislation in the Entities and Brcko District. Criminal Code and relevant law at all levels do not exempt public sector employees from liability in cases of abuse of authority, however, the number of individual prosecuted for abuse of authority remains very low.

FUNDAMENTAL RIGHTS

TRACK RECORD FOR ADDRESSING MEDIA INTIMIDATION; ATTACKS ON JOURNALISTS; MEDIA INDEPENDENCE

In line with the Action Plan by the BiH Council of Ministers for 2015³⁵, BiH Ombudsman was tasked to develop a special report on the position of journalists and cases of media intimidation in BiH. The statistical data show that the situation in the media is worse today than it has been in the previous years.³⁶ Formally, the legal framework for protection of the media exists, but the adequate implementation is insufficient. On the World Press Freedom Index, BiH is at the 65th place (out of 180), improving from the previous position at 68th place.³⁷ However, looking further back, it can be noticed that BiH was constantly going down on this scale (in 2006 BiH was at 19th place out of 167 countries). It is important to note that the criminal law in BiH does not treat threats/attacks against journalists as a criminal offence.³⁸ According to the data provided by the Association BH Journalists, the number of attacks against journalist increased in 2016 (64 cases, while in 2012-47, 2013-45 and in 2014 37 cases were reported). From 2013, 217 media houses, institutions and association have been attacked. Often, such attacks do not receive adequate judicial follow up. Reporters without borders assessed that BiH has some of the most liberal media law in the world, but their implementation is stopped by the overcrowded judiciary. Libel was decriminalized in 2003, but court proceedings are still possible. Journalists are often targets of threats and political pressures. The situation is worsened by the fact that pro-parties media have direct or indirect support. In average, journalist receive around 300 libel suits annually with around 100 libel suits are processed. The institution of BiH Ombudsman has made recommendations given that court proceedings are quite often quickly and inappropriately handled, without adequate follow up by the judiciary. BiH entity and state libel laws have completely decriminalized libel, making BiH first country in the Europe to do so. In 2015, 236 libel suits were reported, and 226 in 2016.

In the beginning of the 2000s, BiH operated under a law on freedom of information, according to which the governments are to disclose information to the public. The media and freedom of expression were respected with electronic media being overseen by independent Communications Regulatory Authority (CRA) with financial and staffing shortages. CRA continued to work effectively and reduce inflammatory language in electronic media. The laws regulating freedom of the press are under jurisdiction of the cantons in FBiH and to central authorities in the RS. Occasional physical attacks and attempts by politicians to exert influence were evident through 2004. BiH Press Council exists without means to enforce a code of ethics to print media, still divided along ethnic lines.³⁹ Due to the limitations of the self-regulating instruments in the Press Code, the press does not work efficiently; media often disregard it and exhibit lack of professionalism and understanding leading to the worrisome increase in the ethnic divisions within media outlets.

The period of 2007-2009 saw an increase of physical attacks against journalists and editors with a clear recommendation of the EC for vigorous prosecution given that the actions taken by law enforcement and judicial authorities had been insufficient. According to the data collected by the Journalists Association of BiH, in the period from 2006-2017, out of 91 reported cases, in 37 cases of reported and processed media intimidation, follow up by relevant police and judicial authorities was lacking.⁴⁰ 495 cases of threats or attacks were recorded and currently there are 178 libel suits active, 22 cases were ruled in favor of journalists, while 19 cases were ruled against them. The court trials last in average from two to eight years, while there are 14 open cases.⁴¹ Journalists often lose the libel suits given that they are taken too lightly, which is why they opt for retractions. Threats to journalists and editors (physical, death threats and intimidation) continued and intensified in parallel with the increase of political pressure to the media and the obstructions of work of the CRA (given that the Law on Communication provides legal safeguards to ensure independence, attempts were made to form ad hoc com-

35 Implementation of priorities from the European Commission's BiH 2015 Country Report.

36 WB Regional Platform for Media Freedom and Journalist Safety Advocacy. Indicators of the level of media freedom and journalist safety (Bosnia and Herzegovina). Available at: <http://safejournalists.net/wp-content/uploads/2016/12/Full-BiH-BiH-Digital.pdf>. Accessed on December 15th 2017.

37 Reporters Without Borders. World Press Freedom Index 2017. Available at: <https://rsf.org/en/ranking#>. Accessed on December 15th 2017.

38 BiH Ombudsman. Special Report on the Status and Cases of Media Intimidation in BiH. Available at: http://ombudsmen.gov.ba/documents/obudsmen_doc2017082415202346bos.pdf. Accessed on December 7th 2017.

39 2004 also saw the development of journalists' associations in Sarajevo, Mostar and Banja Luka.

40 BH Journalist Association. 40% of Cases of Attacks Against Journalist were not processed in Courts. Available at: <http://bhnovinari.ba/bs/2017/11/02/40-posto-slucajeva-napada-na-novinare-u-bih-u-protekloj-deceniji-nije-dobilo-sudski-epilog/>. Accessed on November 27th 2017.

41 Klix.ba. In the last 10 years 495 cases of attacks against journalist registered. Available at: <https://www.klix.ba/vijesti/bih/u-deset-godina-zabiljezeno-495-slucajeva-prijetnji-ili-napada-na-novinare-u-bih/161118152>. Accessed on November 24th 2017.

mittees in charge of appointment of CRA Council).⁴² Even with Ombudsman's recommendations issued, public bodies denied access to information. Press Council received an increasing amount of complaints on news reporting; however, its self-regulating provisions were insufficient to enforce professionalism.

Prior to the general elections in 2014, political and financial pressure on the media increased, particularly ethnically and politically motivated threats against journalists and editors. Attacks were most evident from the RS politicians, coupled with alleged wiretapping of journalists.⁴³ Furthermore, during the protests in spring of 2014, cases of intimidation of journalists by law enforcement officers were recorded with insufficient follow up by the authorities. Only a few judicial cases of defamation were recorded. In 2015, members of an extremist group registered in the RS and in Serbia, physically and verbally attacked N1 and FTV TV crews. The RS authorities did not condemn the attack in public and the RS police issued only two minor offence orders to perpetrators.

In general, transparency of media ownership in BiH is very limited. BiH does not have the law on media ownership transparency. Transparency is partly ensured through the process of court registration of business entities, but the full information is not accessible due to legal provisions which limit the insight into ownership structures (especially troubling for online media, not registered as media businesses). Lack of transparency in distribution of subsidies on entity and cantonal levels has been especially troubling given that the advertising practices of public companies controlled by political parties also affect media integrity (public companies often under (in) direct political influence). The advertising money in some cases follows political party affiliations and influence editorial policies. Public broadcasters which are not part of the system are financed from municipal and cantonal budgets (with no transparency into budgeting sources) which allow them to remain heavily influenced by politics. As evident from the most recent reports by the international community (primarily the EC), in the field of media independence and integrity, there has been noticeable backsliding. Despite the existing legal provisions, institutional and political environment do not support full freedom of expression.

IMPLEMENTATION OF LAW ON PROHIBITION OF DISCRIMINATION

Analyzing the legal provisions at all government levels in BiH, it can be concluded that prohibition of discrimination is one of the key principles of the country's legal framework. Law on Prohibition of Discrimination (LPD) was adopted in 2009 and created the foundation for efficient protection against discrimination. The adoption of the Law was the result of EU's conditionality, based on adoption of key directives in the field of non-discrimination. The adoption of this law in 2009 was one of the final conditions for the visa liberalization (considered a major success in BiH's EU integration process), and, as seen by numerous experts, as one of the most successful results of EU's conditionality towards BiH.⁴⁴ The newly adopted law was largely in line with the relevant EU Directives and other international standards. The law defined all instances of discrimination and prohibitions. In addition, the law prescribed legal mechanisms for protecting the legal rights due to discrimination and the rules of court proceedings in such instances. However, throughout the years of implementation, certain shortcomings were evident (recognized and evidenced by the EC Progress Reports for BiH), which led to the drafting and adopting of a new anti-discrimination law⁴⁵. However, the new law did not address the exclusion of age and disability categories, definition of sexual orientation and gender identity are not in line with internationally agreed terminology.⁴⁶ Ethnic issues are prevalent in BiH and ethnic identity is being used by local politicians to gain cheap political points. While ethnically related incidents have over the years decreased, follow up investigations has been problematic, and as evident from a number of cases, one instance is sufficient to cause long lasting harm to reconciliation and stability of the society.

In the early 2000s, discrimination in employment and education were the key obstacles for the safe return of refugees and displaced persons. Even though BiH Constitution prohibits discrimination on the basis of sexual

42 Only in 2014 CRA's Council was elected with relative insurance given to the institution's stability, having in mind that the political, institutional and financial independence was not ensured.

43 One of the most visible cases of media intimidation happened in December 2014 when the police of the RS and Sarajevo Canton raided the offices of the Sarajevo based news portal over a criminal investigation involving the RS PM. The courts ruled that the raid was unlawful and in violation of European Convention on Human Rights as well as the BiH law. Given that this was one of the most outspoken cases, the reaction by the authorities was swift, but for other follow-ups, it has been insufficient. Quite often, cases of verbal attacks by politicians were recorded (during press conferences or following official meetings/sessions).

44 Kadribasic, Adnan. Guidebook for Implementation of the Amended Law on Prohibition of Discrimination in BiH. Sarajevo Open Centre. Sarajevo, 2017. Accessed: November 28th. Available at: <http://soc.ba/site/wp-content/uploads/2017/09/webb.pdf>

45 Amendments to the law were adopted in 2016, further aligning the Law with the EU acquis.

46 Strategic, legal, institutional and policy framework need to be strengthened and improved.

orientation, this provision is not enforced in practice causing frequent discrimination on this basis. BiH society in general, and media in particular, have been insensitive and lacking awareness on the instances of discrimination which is why it took serious efforts by the civil society organization and experts active in this field to work on education and promotion of human rights and the fight against discrimination and creating of societal standards which would ensure equal treatment. Especially worrisome has been the violence against women (sexual assault, domestic violence, mobbing and discrimination at workplace), which remained widespread and underreported.⁴⁷ Although BiH is a signatory to a number of international documents which provide mechanisms for protection of discrimination, and the governments had the obligation to prevent and remove occasions of discrimination, it is still widely spread and the institutions are often lacking a serious response. Prior to the passing of the Law on Prohibition of Discrimination in 2009, BiH State and entity Constitutions were the guarantee of equal treatment of all people,⁴⁸ with evident deficient implementation. Through the mechanisms of official recommendations and high level documents, the EU warned against the poor preservation of human rights and widespread discrimination. While the adoption of the LPD in 2009 was deemed as positive, it was noted that the law exempt religious groups and gave only limited protection to several vulnerable groups.⁴⁹ The implementation of the law was limited, in part due to the lack of resources of the Ombudsman of BiH and the lack of public awareness of the legal provisions of the law.⁵⁰ In addition, poor track record was evident due to the lack of adoption of the state-level anti-discrimination strategy. In 2016, amendments to the Law on Prohibition of Discrimination were adopted which included age, sexual orientation, gender identity and disability as grounds for discrimination. Also, gender characteristics are named as basis of discrimination, making BiH the first country in South-East Europe which entails within the law the protection on intersex persons.⁵¹ For the first time since the adoption of the Law, BiH Council of Ministers made the first report on Discrimination Instances followed by recommendation for the decision-making and other bodies for prevention.⁵²

In 2014 and 2015, the rise in cases of mobbing and work places discrimination was evident,⁵³ followed by discriminations on the basis of ethnical belonging, sexual orientation, national or social origin, social status, gender and religion. However, it is evident that there are still a large number of unreported cases, due to a general lack of trust in institutions and the fear from negative consequences for the victims. Increase in number of discrimination cases on the basis of sexual orientation is more evident, as well as hate speech. During 2015 and 2016 no public campaigns on informing the citizens about the LPD and mechanisms of protection and information were carried out in BiH. Legal aid is mostly provided by civil society organizations. Some vulnerable groups (Roma and LGBT) are hesitant to use the Law due to the inaccessibility of the legal system. Discrimination is largely based on the basis of being a member of some of minority groups (political organizations or syndicates, national or minority groups, disabled persons, women, returnees to areas where their constituent peoples are in minority, gender and sexual minorities). Multiple discrimination is evident on the basis of women with disabilities, women from rural areas, Roma women, etc. Furthermore, discrimination is present with the achievement of the right to education, work (sexual harassment and mobbing), right for health and social protection, property rights to returnees, etc.

47 A special report published by the human rights ombudsmen in 2015 regarding protections for mothers revealed widespread discrimination against women in the workplace, including the regular unwarranted dismissal of women because they were pregnant or new mothers. Many job announcements openly advertised discriminatory criteria, such as age and physical appearance, for employment of female applicants. BiH Country Report on Human Rights Practices for 2016. US Department of State. Accessed on October 17th. Available at: <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

48 The law did not include age and disability as grounds for discrimination.

49 Social discrimination against LGBT people remained widespread with the increase in physical attacks, ill-treatment and acts of intimidation which lacked official condemnation by government authorities and effective investigation and prosecution.

50 Law on prevention of discrimination was not aligned with the EU acquis, which was directly recommended on the SDJ meeting in 2014 and the meeting of the Interim Committee. Civil society organizations have given their recommendation as to the amendments of the Law in order to harmonize it.

51 Report on the Work of BiH Ombudsman's Office 2016. Accessed on October 15th 2017. Available at: http://www.ombudsmen.gov.ba/documents/obudsmen_doc2017032310003163bos.pdf

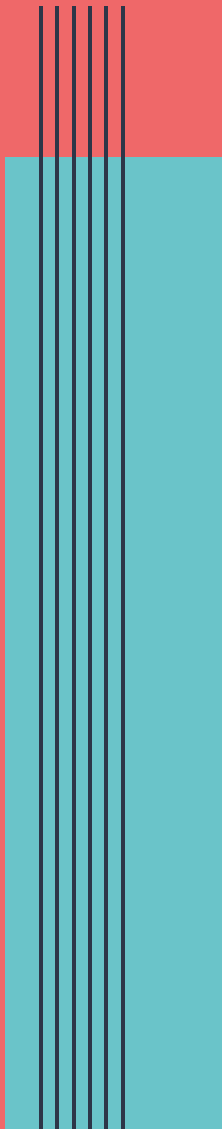
52 Report on the work of BiH Council of Minister for 2016. Accessed on October 15th. Available at: http://www.vijeceministara.gov.ba/home_right_docs/default.aspx

53 Buka.com. Implementation of LPD in BiH: Mobbing in BiH rises, 69 complaints registered in the previous year.

Available at: <http://www.gyka.com/novost/90377/-primjena-zakona-o-zabrani-diskriminacije-bih-mobing-u-bih-u-porastu-prosle-godine-69-zalbi>. Accessed on 17th October 2017.



II. CHAPTER 24



ASYLUM

LAW ON ASYLUM ALIGNED WITH EU ACQUIS

In the early 2000s, asylum was a new issue for BiH given that the focus was on refugees returning and reintegrating in the society. BiH is part of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Law on the Movement and Stay of Aliens and Asylum regulated these issues. In 2003 BiH adopted the Law on the Movement and Stay of Aliens and Asylum, thus replacing and unclear Law from 1999.

The Asylum Sector (unit designated to deal with these issues within the BiH Ministry of Security (MoS)) became operational in 2004 and took over the responsibility for conducting refugee status determination and management of refugee centres from the United Nations Refugee Agency (UNHCR). The Asylum Sector developed a well established asylum procedure and saw an increase in the number of applications in the period 2004-2006. However, the Sector was not properly staffed with small premises in order to properly operate and no asylum reception centre was operational. The administrative capacities improved in 2005 with the introduction of additional procedures and new premises, however, UNHCR still funded the reception centres. As of mid 2000s, BiH improved its efforts into assuming full financial and administrative obligations for the existing asylum centres. In 2004, BiH MoS issued a bylaw to the Law on Movement and Stay of Aliens, prescribing principles, competent authorities and requirements and procedure for receiving refugee status and temporary residence on humanitarian grounds which in broad terms met the international standards. In 2005, MoS proposed amendments to the Law on Immigration and Asylum related to the acceleration procedures, detention of aliens, withdrawals/cessation/cancellation of status. In the 2005 Progress Report, the EU underlined that the amendments should be made in line with the acquis and international standards and not delay the implementation of existing provisions. A new law on movement and stay of aliens entered into force in May 2008. The responsibilities for the sector are divided between BiH MoS and the Ministry for Human Rights and Refugees. In November 2008 BiH adopted a national asylum and migration strategy and action plan which was fully implemented during the following period with evident good cooperation amongst relevant institutions in charge for the implementation (the Immigration Department, the border police and the Service for Foreigners' Affairs). Since 2010 BiH's preparations in the fields of asylum and migration advanced. The asylum and international protections system, monitoring of migration flow and interagency cooperation improved, despite that some border crossings still require strengthening.⁵⁴

In 2012, BiH adopted a new migration and asylum strategy and the related action plan (for the period 2012-2015). With the adoption of the amendments to the law in 2013, BiH further aligned the law with the EU and international standards. However, the provision on the maximum period of detention at the Immigration Centre is yet to be fully harmonized. The action plan for 2012-2015 period was implemented with the financial assistance from international donors. The coordination body for monitoring the implementation of the new strategy was set up and well functioning. A new law on asylum came into force in February 2016, with a view to further harmonize BiH asylum policy with international standards and EU acquis (on the rights of asylum applicants and beneficiaries of international protection to work, education, social and medical welfare, reunification of families and the 'non-refoulement' principle.⁵⁵ BiH adopted most of the implementation rules.

During the legislative procedure the draft law was sent to BiH Directorate for European Integration for the assessment on the level of harmonization with the EU acquis. The Directorate assessed the Law to be partly harmonized with the explanation that, given the current status of the EU integration process, certain procedures are not to be harmonized yet, while some articles will be addressed in the bylaws. In the process of reforming the migration system of BiH, previous Law on movement and residence of foreigners and asylum of BiH stopped being relevant with the adoption of the Law on Foreigners (2015) and Law on Asylum (2016).⁵⁶ The Strategy and Action Plan on Migrations and Asylum 2016-2020, adopted in March⁵⁷, refers to the need to strengthen reception capacity in the country and increase regional and international cooperation taking into consideration the migration crisis and the situation in the region and abroad (BiH has no agreement with the European Asylum Support Office). In 2016, the Service for Foreigners' Affairs, BiH Border Police, SIPA, OSA, FBIH Police, RS Ministry of Internal Affairs and Brcko District Police signed a memorandum on cooperation and coordination of

⁵⁴ Communication from the Commission to the EU Parliament and Council, Enlargement Strategy and Main Challenges 2011-2012. Accessed on October 16th. Available at: http://europa.ba/wp-content/uploads/2015/05/delegacijaEU_2011121405364782eng.pdf

⁵⁵ As a core principle of international refugee law, it provides that no one shall expel or return ("refouler") a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.

⁵⁶ Analysis of the Law on Asylum in BiH. Foundation "Vasa Prava BiH" and Fondacija lokalne demokratije. 2016. <http://www.vasaprava.org/wp-content/uploads/downloads/2016/06/Komentar-Zakona-o-AZILU-BiH.pdf>

⁵⁷ Report on the work of BiH Council of Minister for 2016. Accessed on October 15th. Available at: http://www.vijeceministara.gov.ba/home_right_docs/default.aspx?id=25403&langTag=hr-HR

activities in case of migrant crisis in BiH (for the period April-June 2016). Overall, the asylum and international protection system in Bosnia and Herzegovina is largely in line with EU and international standards.

EXTERNAL BORDERS AND SCHENGEN

SPECIFIC ANTICORRUPTION PLANS; PROVIDING ADEQUATE FOLLOW UP OF DETECTED CASES; COOPERATION ON BORDERS

In the areas of justice, freedom and security, Bosnia and Herzegovina has over the year significantly progressed in enhancing and optimizing the situation on external borders as well as the judicial cooperation and customs cooperation. Particularly important for successful realization of adequate follow up of detected criminal activities on borders has been internal and regional cooperation between law enforcement and judicial bodies (creation of professional networks, regional centers, internal agencies/coordination bodies). Fight against corruption has been recognized as one of the key strategic goals⁵⁸ of the country which should be based on solid legal and institutional framework.⁵⁹ In August 2016, BiH signed a Memorandum of Cooperation with Europol, becoming a part of the European police system and thus confirming its efforts in achieving greater cooperation with international agencies and reaffirming its stance in the importance of border controls and fight against corruption.⁶⁰

Since the early 2000s, BiH has struggled with the technical equipment, professional capacities and budgetary means in the work of Border Police and their coordination with other relevant institutions which also hampered the efficient implementation of legislation. In 2002, State Border Service (SBS) took over control of all BiH's official international border crossings, in cooperation with interior ministries and police and customs administrations. This action reduced human trafficking and illegal migration through BiH. BiH adopted a series of law on border management (Law on Police Officers, Law on Supervision and Control of Crossing of the State Border, and a new law on State Border Service). In 2005, BiH adopted the Integrated Border Management Strategy (IBM)⁶¹ which provided for better cooperation between the SBS, Indirect Taxation Administration, phytosanitary and veterinary services and market inspections (on the basis of regional guidelines for the Western Balkans by the EU). In the framework of the South-East European Cooperation Centre, the Democratic Control of Armed Forces Programme and the Ohrid Process and the Stability Pact, the involvement of the State Border Service increased, regionally and internally (with the State Investigation and Protection Agency (SIPA) and the Indirect Taxation Authority (ITA)). With the improvements of internal capacities of border police, the cooperation and exchange of information with other relevant institutions/agencies increased, improving the efficiency of State Border Service and detection of illegal activities on border crossings. In 2008, by signing of a MoU the Integrated Border Management Joint Risk Analysis Centre (JRAC) was formed aimed to increase communication and exchange of data among agencies.⁶² JRAC The implementation of the strategy was hampered by the limited human resources in JRAC and the lack of communication among agencies. A joint centre for police cooperation between BiH, Montenegro and Serbia was established in 2014 which was to improve regional capacities in countering cross border crimes and illegal migration. BiH is signatory to the Convention on Police Cooperation in Southeast Europe, the Operational and Strategic Agreement with Europol, and a number of agreements with neighbouring countries, including on joint patrols, joint cooperation centres and local border traffic. Since 2014, the border police have in place a team to constantly monitor changes in the EU *acquis* and align with those changes whenever possible. However, more than half border crossing in BiH do not meet EU standards.⁶³

In June 2009, BiH adopted a Law on Border Control which stipulated competences, procedures and measures for crossing and control of borders. The adoption of the Law led to positive improvements in the sectors⁶⁴, primarily with the improvements of conditions on border crossings (surveillance and equipment), closing of illegal crossings (with Serbia and Montenegro) as well as the positive implementation of the working agreement with Frontex (BiH being part of the Western Balkans risk analysis network). During 2016, BiH Border Police recorded an increase in criminal activities on the borders as compared to 2015. 364 persons are being suspected for criminal

58 The coordinating body, without executive functions is the Agency for prevention of corruption and fight against corruption.

59 BiH Reform Agenda 2015-2018. Available at: <http://www.fbihvlada.gov.ba/pdf/Reformska%20agenda.pdf>

60 Information on the Status of Safety in BiH in 2016. Accessed on December 5th. Available at: <http://www.msb.gov.ba/PDF/info2017.pdf>

61 Delays in implementation of strategy led to the reducing of EU financial assistance and cancellation of projects, which led to lowering of the overall efficiency of the border police. In 2014, BiH Parliament adopted amendments to the Law.

62 The Centre comprises of representatives of BiH Ministry of Security, Border Police, Indirect Taxation Authority, State Veterinary Office, State Plant Health Protection Agency and the Service for Foreigners' Affairs.

63 Galic, Zoran, Head of BiH Border Police. "Border Controls are in line with EU standards".

Available at: <http://www.granpol.gov.ba/data/documents/pdf/BrosuraGPBiH2015.pdf>

64 Taking into consideration that the Law and other relevant legislation was mostly in line with the EU *acquis*.

activities (301 in 2015). Regarding human trafficking, nine cases were reported and five official reports were submitted to the judiciary. For criminal activities related to corruption ten official reports were submitted to the judiciary (10 in 2015). During 2016, BiH Border Police submitted 1729 cases to other relevant institutions (3% of which were criminal activities, 81.1% offences, 14.4% information and 1.4% of other data).⁶⁵ In 2016, BiH Border Police exchanged 422 cases with neighbouring countries (a 24.9% increase when compared to 2015).⁶⁶

As part of the fight against corruption, BiH border police implements the Rulebook on Internal Reporting, Corruption and Protection of Whistle-blowers (disciplinary proceeding against 7 police officers began in 2015). BiH Border Police adopted the Plan for the fight against corruption for the period 2016-2017. Video surveillance and complaint boxes as well as a phone line for citizens are available in order to report corruption; however, the track record needs to be further developed. In general, corruption has been one of the most prevalent challenges the country faced, mostly due to the lack of political commitment and determined action in the fight against corruption. The judicial follow-up of detected cases was slow with only a limited number of high profile cases being prosecuted.⁶⁷

FIGHT AGAINST ORGANIZED CRIME

-THE ROLE OF INTELLIGENCE SERVICES AND THE OVERSIGHT MECHANISMS THAT ARE INTRODUCED; ESTABLISHED INITIAL TRACK RECORD OF INVESTIGATIONS IN ORGANIZED CRIME

The European Commission has been rather clear and forthcoming in its assessment and recommendations for combating organized crime in BiH. Organized crime has been recognized as one of the major obstacles in the early 2000s, which continued to hamper the country's progress, the negative effects of which are felt nowadays.⁶⁸ The 2005 BiH Country Report clearly identifies that organized crime was a single main threat to the country's security and stability despite the country being party to the main international conventions in the area, the legal framework was not used in full in order to achieve visible results. State Investigation and Protection Agency, formed in 2002, is the relevant institution in implementing activities related to combating organized crime. Despite the positive track record in investigative activities of SIPA and joint inter-agency actions, the track records indicate that the investigations lack adequate convictions. SIPA was active in developing cooperation with the civil society and citizens (through a crime hotline). The Agency receives around 4000 yearly calls which contain from 6.1% (2016) to 24% (2012) useful and actionable information.⁶⁹ Due to the changing nature of the criminal activities, prompt reactions are needed, both from the law enforcement agencies and from the relevant institutions in order to formulate the most efficient policies, strategies and laws.

In 2006, BiH adopted a national strategy to combat organized crime which included a number of benchmarks and foresaw development of action plans by individual law enforcement agencies. As evident from the Country Reports 2006-2007, the lack of national statistics instruments for measuring crime has been one of the key challenges in coordinating efforts and developing action plans. Poor cooperation between the police bodies and the judiciary hampered the investigations, which is additionally complicated by the inconsistent legislation between the different levels of government.⁷⁰ In 2009, a revised Strategy for fight against organized crime (2009-2012) was adopted (the action plan adopted in 2010); however, amendments to the Criminal Procedure Code were adopted only in 2010, thus harmonizing them with the CoE Conventions on combating organized crime, prevention of terrorism and the action against trafficking in human beings.⁷¹

The period 2010-2013 saw the realization of successful joint police operations which lacked the confirmation of indictments (in 2011, less than 10% of indictments were confirmed). During this period, BiH continued with preparation of relevant legislation and developing cooperation with neighbouring countries.⁷² In 2014, first Organized Crime Threat Assessments were developed by all law enforcement agencies in the country using

65 Summary of the BiH Border Police Annual Report for 2016. Accessed on December 5th. Available at: <http://www.granpol.gov.ba/content/read/71>

66 Information on the Status of Safety in BiH in 2016. Accessed on December 5th. Available at: <http://www.msb.gov.ba/PDF/info2017.pdf>

67 The EC recognized organised crime as a major problem for BiH (which includes smuggling, customs fraud, trafficking). Also, BiH was used as a transit country for smuggling and transit into the countries of the Western Europe.

68 Smuggling, customs fraud, drug trafficking intensified due to porous borders, divided legal jurisdictions and weak customs control, resulting in BiH being used as a transit country to Western Europe.

69 Report of the SIPA Crime hotline. Available at: <http://www.sipa.gov.ba/bs/dokumenti/krimolovci>. Accessed on January 16th 2018.

70 In the period 2006-2008, only the Action Plan on fighting against vehicle-related crimes was developed in order to implement the strategy on combating organized crime.

71 The new strategy and action plan for 2013-2016 were adopted and implemented during the timeframe; however, laws were not harmonized with the EU and international standards.

72 Protocols of Police Convention on Cooperation in South-East Europe were signed with Croatia, FYROM, Montenegro and Serbia.

EUROPOL methodology.⁷³ BiH began preparation for concluding cooperation with Eurojust in order to enhance the area of judicial cooperation in criminal matters. During 2014-2015, 22 convictions for organized crime were carried out. The cooperation with EU member states saw the successful realization of large scale operations. In the period 2015-2016 30 instances of convictions for organized crime were recorded⁷⁴. With a noticeable fall in statistics for 2015 as compared to 2014 in the number of organized actions, arrests, and prosecutions made, 2016 marked the continuing of good cooperation between different bodies within BiH and internationally in the efforts to combat organized crime.^{75/76}

Through EU-BiH Structured Dialogue on Justice meetings, it was concluded that cooperation mechanisms between prosecutors and police officials need to be straightened in order to yield results (the lack of proper implementation of the system of prosecutor-led investigation was recognized as an obstacle as well as the lack of trust between law enforcement agencies for systematic exchange of intelligence) as well as the lack of trust between law enforcement agencies for systematic exchanges of intelligence. Furthermore, the cooperation within different police bodies needs to be more strengthened through regular trainings and exchange of experience (case management system, case oversights and accountability structures need to be enforced). In order to produce more concrete results in fighting organized crime, prosecutorial offices need to develop more strategic approach (develop a common criteria to approach high level and complex cases) as well as to establish a highly functioning data exchange system. Arrangements for practical cooperation between the judiciary and law enforcement agencies require improvements in order to ensure more effective of detected cases. Additionally, better regulation is needed in order to determine access rights to data and databases. Statistics on investigations, prosecutions and convictions for criminal offences are collected from the judiciary throughout the country in an automated fashion and centralized using the HJPC's case management system. However, the qualitative analysis of cases has yet to be introduced. Fighting organized crime remains fundamental to countering criminal infiltration of the political, legal and economic system of the country. Organized crime in BiH is determined by the geographical position, transitional processes in the country and neighbouring countries and the obstructed socio-economic system. Corruption is the most influential factor for development of organized crime in the country.⁷⁷ Having in mind that organized crime recognizes no borders; international coordinated activities are required, particularly in the area of the Western Balkans.⁷⁸ The biggest number of organized crime groups in BiH is engaged in illegal drug trade and human trafficking. The major obstacles in the efficient countering of organized crime have been the lack of technical and administrative capacities, communication with international partners, slow processing of cases within the judiciary and the lack of coordination of law enforcement agencies. BiH Intelligence and Security Agency (OSA) assessed that that instances of violent organized crime are in decline, whereas white collar crimes, deeply connected to corruption are growing which is why the fight against organized crime is vital for prevention criminal infiltration in political, legal and economic system of the country.

73 Serious and Organized Crime Threat Assessment was developed and provides a strategic picture for organized crime in BiH (the findings were not used in coherent policies and used for formulating priorities).

74 43 organized crime investigations against 238 suspects were ordered, 84 persons were indicted in 19 indictments.

75 SIPA Yearly Report for 2015, Accessed Oct 5th 2017. Available at: http://sipa.gov.ba/assets/files/izvjestaji/izvjestajoradusipa_bo.pdf

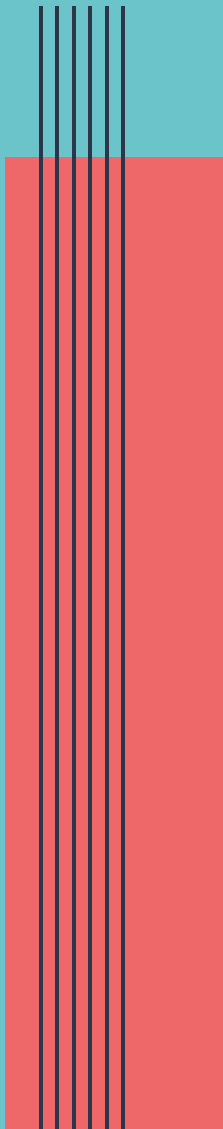
76 The strategy for the period 2014-2016 lacked the efficient mechanism to overview the implementation of a high number of action plans by law enforcement agencies throughout the country and ensure a consistent approach in tackling organized crime. In 2017, the Strategy for the period 2017-2020 was adopted focusing on strengthening capacities and cooperation of institutions and increasing of regional and international cooperation.

77 Accompanied by the poor socio-economic system, unstable political situation, specific geostrategic position of the country, social inequality and poverty, high unemployment. (Information on the Status of Safety in BiH in 2016. Accessed on December 5th. Available at: <http://www.msb.gov.ba/PDF/info2017.pdf>)

78 BiH Organized crime threat assessment (OCTA) . Accessed on December 5th. Available at: http://www.msb.gov.ba/PDF/OCTA_BiH_2016_Final_usvojena_08032017.pdf



CONCLUSION



TIME TO GET SERIOUS

BiH authorities and politicians unfortunately often forget that the EU integration process is primarily the question of political responsibility, which has been severely lacking. Reaching agreements and implementing policies for achieving short term political gains should not be acceptable by the citizens who are still waiting to see improvements in economy, rule of law, functioning of the public service and the society at large. The statistical data concerning the public perception of the integration process in the country are worrisome, given the decline to the support in the last three years and the fact that more than ever citizens think that BiH will never join the EU.⁷⁹

While the EU conditionality is highly important in prompting reforms and empowering of democratization of the region, significant transformative effects are currently missing. As noticeable quite often, the process is more about pretending to reform and pretending to be reformed in order to advance in the accession process rather than implementing the changes for the sake of good governance.

Despite the fact that EU's decision to change the approach towards the BiH has been deemed successful and praised for the short term success it has brought, the initial impetus has slowed and the backburner issues are coming back to the front page, reminding that BiH cannot pick and choose the easiest things to do and ask for lenience each time the deadlines are long past due.

While awaiting the beginning of the screening process for Chapters 23 and 24, BiH should use the opportunity to learn from the experience of the neighboring countries and get serious about improving internal coordination and implementing long awaited reforms with concrete, visible results.

Based on the analysis of the previous benchmarks and their effectiveness, the overall recommendation for the EU is to define the conditions in the manner which would not allow the delivery of only descriptive results. Furthermore, benchmarks focusing on implementation of specific sectoral strategic and action plans should stipulate provisions of objective oversight mechanisms and development of monitoring mechanisms in order to ensure objective observing of the implementation. Moreover, the focus of the benchmarks should be on relevant implementation of concrete measures from the strategic documents and action plans, which would allow for more transparent monitoring of progress. In order to determine progress on some of the more complex benchmarks (career systems in the judiciary and civil service, anti-corruption measures), in depth expert analysis are required, in close consultation with the civil society and relevant institutions.

On the other hand, in order to achieve concrete results in reform implementation, BiH should focus on primarily harmonizing the legal framework with international conventions and directives. Furthermore, the country needs to put significant effort into ensuring adequate implementation of specific measures from the sectoral strategic and action plans as well as to improve horizontal and vertical cooperation among institutions and levels of government. Increase of powers of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption would help in enforcing anti-corruption and integrity plans in the civil service, which is riddled with corruptive practices. Systemic solutions for fighting corruption and politically motivated influence within the judiciary are required in order to achieve greater efficiency and professionalism within the sector. Increase of transparency of the employment procedures would lead to greater meritocracy and efficiency of the public service in BiH. The practice of annual reporting on discrimination with clear proposals for measures to combat and prevent discrimination should be adopted. In order to strengthen the anti-discrimination efforts, training programmes for the judiciary should be developed (on ethical and disciplinary matters) as well as the specialized peer-to-peer trainings. In general, independent monitoring bodies are required to monitoring the implementation of the reforms in which case, closer cooperation with the expert community and the civil society organization should be developed.

⁷⁹ Draft Communication Strategy for the BiH Accession Process to the EU. October 2017. Accessed on December 11 2017. Available at: http://dei.gov.ba/dei/media_servis/vijesti/default.aspx?id=19112&langTag=bs-BA; Interview with Marina Kavaz-Sirucic, DEI Spokesperson. Accessed on December 12. Available at: <https://gradjankezaustavnepromjene.wordpress.com/2017/12/11/iako-pada-podrska-bh-gradana-ki-za-ulazak-u-eu-i-dalje-je-ubjedljivo-najvisa-u-regionu/> Balkan Barometer Public Survey results for 2017, available at: <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>

ANNEX 1

Benchmark [xxx]

[Country]

Date created:	[dd.mm.yyyy]
By:	[Organisation]

0. Benchmark basics

Method of introduction <i>[E.g. laid out in document...]</i>	
Year introduced	
Content of the benchmark and actions required <i>[Please list actions required as bullets as per EC last report/specific document]</i>	
Type of benchmark and actions required <i>[E.g. Adoption of a policy document (Pol); Adoption of legislation (Leg); Implementation; etc.]</i>	

1. Data analysis/methodology

Documents subject to analysis <i>[Desk research e.g. EC reports; OSCE reports; own monitoring reports - please include hyperlink next to each document]</i>	
Interviews <i>[Number of interviews and type of respondents]</i>	
Focus groups <i>[if applicable]</i>	

<p>Quantitative indicator findings <i>[Here inserted you have the indicators for each of the benchmarks – since we will fill out a separate template for each benchmark, please delete the rows of the benchmark you are not filling in and appropriately copy paste the rows for each of the benchmarks in their separate adequate template – you should at the end have 8 identical templates in which the sole difference is this section. In these regards note that we have taken the same indicators for the two benchmarks in the area of judiciary.]</i></p>	<p>Merit-based career system for the judges</p> <p>Judicial academy reforms</p>	<p>Freedom house – Nations in Transit</p> <p>Judicial Framework and Independence score <i>(insert the score for your country for the last 3 years)</i></p> <p>Balkan barometer –</p> <p>Figure 86: Do you agree that the following institutions are independent of political influence? (by economies)(NEW QUESTION) <i>(fill in the score for your country for this year for judiciary)</i></p> <p>Table 16: To what extent do you agree or not agree that the following categories in your economy are affected by corruption? (by economies)(NEW QUESTION) <i>(fill in the score for your country for this year for judiciary)</i></p>
	<p>Merit-based career system for civil servants</p>	<p>BTI –</p> <p>Rule of Law – Independent Judiciary <i>(insert the score for your country for the last 3 years)</i></p> <p>Balkan barometer –</p> <p>Table 16: To what extent do you agree or not agree that the following categories in your economy are affected by corruption? (by economies)(NEW QUESTION) <i>(fill in the score for your country for this year)</i></p>
	<p>Track record for addressing media intimidation; attacks on journalists; media independence</p>	<p>Freedom house – Nations in Transit</p> <p>Independent Media - <i>(insert the score for your country for the last 3 years)</i></p> <p>Freedom house - Freedom of the Press Scores</p> <p>Total Score; Legal Political and Economic Environment - <i>(insert the score for your country for the last 3 years)</i></p>
	<p>Implementation of Law on prohibition of discrimination</p>	<p>European Equality Law Network –</p> <p><i>(Source for Macedonia, Montenegro and Serbia. The rest of the countries: Kosovo; BiH and Albania please insert relevant grey literature reference.)</i></p>
	<p>Law on Asylum aligned with EU acquis</p>	<p>Findings from interviews and EC country report from the last 3 years</p>
	<p>Specific anticorruption plans; providing adequate follow up of detected cases; cooperation on borders</p>	<p>Findings from interviews; FOI request for track records and EC country report</p>
	<p>The role of intelligence services and the oversight mechanisms that are introduced; established initial track record of investigations in organised crime</p>	<p>Findings from interviews and EC country report from the last 3 years</p>

2. Overview of findings

Timeline/evolution of the benchmark over time <i>[Please add as many rows as needed in the table]</i>	<table border="1"> <thead> <tr> <th>Event/document/juncture</th> <th>Year</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Event/document/juncture	Year				
	Event/document/juncture	Year					
Narrative timeline of the benchmark <i>[Please briefly explain the evolution of the benchmark over time guided by the info that you have inserted in the table]</i>							
Key findings on the implementation and monitoring of the benchmark <i>[Please provide a critical evaluation and incorporate your findings from the interviews/ desk research/organization expertise – please reference in this process]</i>							
Key findings on the effectiveness of the benchmarks <i>[Please provide findings from interviews and findings from quantitative indicators accompanied with a critical evaluation – please reference in this process]</i>							
Key challenges for the implementation/effectiveness of the benchmark <i>[Briefly state in bullets]</i>							
Observed trends <i>[Briefly state in two sentences]</i>							

3. Recommendations

Recommendations for strengthening the monitoring mechanism/the effectiveness of the benchmark <i>[Please list in bullets; add rows if needed.]</i>	To the government/specific institutions	
	To the European Commission	

4. Conclusions

[Please mention briefly the conclusion of your findings related to the specific benchmark.]