

# BTI 2010 | Bosnia and Herzegovina Country Report

<b>Status Index</b>	1-10	<b>6.43</b>	# 39 of 128	
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scale: 1 (lowest) to 10 (highest)      score      rank      trend

This report is part of the Transformation Index (BTI) 2010. The BTI is a global ranking of transition processes in which the state of democracy and market economic systems as well as the quality of political management in 128 transformation and developing countries are evaluated.

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## Key Indicators

Population	mn.	3.8	HDI	0.81	GDP p.c.	\$	7752
Pop. growth	% p.a.	-0.1	HDI rank of 182	76	Gini Index		35.8
Life expectancy	years	75	UN Education Index	0.87	Poverty <sup>2</sup>	%	<2
Urban population	%	46.9	Gender equality <sup>1</sup>	-	Aid per capita	\$	117.5

Sources: UNDP, Human Development Report 2009 | The World Bank, World Development Indicators 2009.

Footnotes: (1) Gender Empowerment Measure (GEM). (2) Percentage of population living on less than \$2 a day.

## Executive Summary

Bosnia and Herzegovina (BiH) can be said to fulfill the formal conditions for democracy, particularly in terms of legal frameworks and relatively stable institutions, as will be described by some indicators, but it falls short on democratic substance: active citizens participation, horizontal and vertical accountability, true freedom of media, issue-driven public discourse, policies and political dialogue. The political climate since the general elections in 2006 has been characterized by a return to emotionally powered, wartime rhetoric, securitization of ethnic issues in public discourse and tensions over BiH's territorial structure and constitution. The discourse between major political actors was fashioned in an inflammatory and confrontational style, thereby causing the already divergent ethnic positions to drift further apart. This was primarily manifested not only through several calls for a referendum on independence for the Republika Srpska (RS) by its prime minister, Milorad Dodik, but also through frequent calls for the abolishment of the RS by a member of the BiH presidency, Haris Silajdzic.

Consensus-building on key reforms boiled down to perpetual and lengthy political negotiations between the governing parties, which took place outside the formal institutions and without any involvement or consultation of civil society. In most cases, those negotiations have been limited to the signing of political agreements and declaratory reform agendas, with little effort being invested toward genuine implementation.

Strategic international priorities changed as the situation inside and outside BiH evolved. This was primarily the case with the decision on the final status of Kosovo, elections in Serbia, the International Court of Justice's judgment that Serbia was involved in the act of genocide in Srebrenica, etc. The state-building reform activities, previously mostly led by the international community, slowed down as the international focus shifted away from BiH toward Iraq, Afghanistan and Kosovo. Internally, however, priorities have continued to be determined by the international community, stemming primarily from the EU conditions and further integrations. The Office of the High Representative in Bosnia and Herzegovina's (OHR) "disengagement" was seen mainly through the lens of this approach, namely through a more enforced European

integration reform agenda. The high representative, Miroslav Lajcak, thus faced a very challenging environment upon his arrival, as the OHR had already lost a lot of its credibility and already had a plan of transition to an Office of the EU Special Representative (EUSR). This plan was delayed in 2007, and the final decision on OHR closure is still pending and is likely to be made in 2009.

The state of public finances is a cause of serious concern. 2008 ended without a budget adopted at the state level, which threatens to paralyze state institutions and will endanger the implementation of key reforms, including police reform. The parliament of the Federation of Bosnia and Herzegovina (FBiH) adopted its entity budget with an already evident deficit, as the revenue inflow is not sufficient to cover the ambitious financial-assistance packages for war veterans, which were adopted immediately before the 2006 elections.

In the RS, public finances continue to be stable. However, there is evidence of rent-seeking and corruption within the RS government. Toward the end of the year, the State Protection and Investigation Agency announced that it had opened an investigation into the involvement of RS Prime Minister Dodik in the awarding of illegal construction and privatization contracts. The Sarajevo canton prosecutor also announced that it is investigating the case of the selection of strategic partners for the construction of electric power plants in breach of public procurement procedures, which could result in charges against FBiH Prime Minister Brankovic and FBiH Minister of Energy, Mining and Industry Vahid Heco. At the beginning of 2009, entity governments adopted a set of measures against the looming financial crisis, but they seem to be targeted at problems that respective governments would have faced in any case, and they may not represent an adequate response to the spillover of the international financial and economic crisis.

BiH signed the Stabilization and Association Agreements (SAA) with the European Union on 16 June 2008, which has been considered one of the most significant political developments since the signing of the Dayton Peace Accords. In spite of such a significant positive development, the prevailing feeling continues to be that the status of democracy in BiH has deteriorated significantly since the 2006 elections and that the political leadership has revived strong feelings of past injustices in order to manipulate public support for policies that seek to maintain the status quo.

## History and Characteristics of Transformation

Bosnia and Herzegovina (BiH) has not followed the peaceful transitional path to democracy and market economy seen elsewhere in Central and Eastern Europe. Instead, the first multiparty parliamentary elections and a referendum for independence were followed immediately by a violent conflict between 1992 and 1995, which interrupted Bosnia's democratic transformation.

Following the massacre of thousands of civilians in Srebrenica at the beginning of July 1995, 16 nations met at a conference in London beginning on 21 July 1995, during which the U.N. Secretary General gave the U.N. military commander the authority to request NATO airstrikes. The participants at the conference also agreed in principle to use large-scale NATO airstrikes, and as a result of the bombing under Operation Deliberate Force, the Bosnian leaders (Bosniak, Croat and Serb), as well as the Serbian and Croatian political leaderships, met in Dayton, Ohio, in November 1995, where they signed the Dayton Peace Accords, a peace treaty that formally ended the war. As part of the accords, NATO agreed to provide 60,000 peacekeepers for the region as part of the Implementation Force (IFOR). These forces remained deployed until December 2006, when those remaining in the region were transferred to the Stabilization Force (SFOR). SFOR peacekeepers remained in Bosnia until 2004 and were subsequently replaced by EU forces, which joined a continuing NATO presence in the country.

A study produced by the Foreign Policy Initiative BH entitled "Governance Structures in BiH" states that "the governance system put in place at Dayton was part of a peace package with the obvious and undeniable advantage of ending the armed conflict. Few, however, believed that the state it envisaged would be capable of functioning. Dayton established a system of government at the state level that was not designed to produce strong or effective government but to prevent the majority from taking decisions that adversely affect other groups." As a result, BiH's complex constitutional structure cuts across four levels of government, including the state, two entities, 10 cantons, one district and 142 municipalities. Moreover, the entities are designed asymmetrically so that the Republika Srpska (RS) is more centralized in that it has a fairly clearer allocation of functions between the entity and local level. On the other hand, the FBiH is overly decentralized in that it has the local level as well as 10 cantons, each having its almost unique system of governance and allocation of responsibilities.

This fragmented structure of governance maintains social relations deeply divided along ethnic lines using a state structure that is disputed in one way or another by the majority of its citizens, who have a very low level of trust in each other, their political leaders or state institutions. Furthermore, the public's support for democratization has been weakened by nationalism and ethnic divisions. There are no strong internal voices in politics or civil society that could generate substantive pressure for societal integration or democratization. The absence of a domestic consensus on BiH's statehood enables the ethno-political elites to project divergent interests on state policies rather than having a wide civic representation going across entity and ethnic lines.

There have been a few attempts to improve the constitutional arrangements. In 2001, then-High Representative Wolfgang Petrich began the process of preparing proposals for amending the constitutions of both entities and the protection of the rights of constituent peoples in line with four partial decisions the BiH Constitutional Court passed in 2000, which contained provisions on the constitutionally guaranteed rights of Bosniaks, Serbs, and Croats in both entities. To the largest extent, relevant amendments to entity constitutions were passed by the entity parliaments, and only a few elements had to be imposed by the high representative in his decisions of 19 April 2002, which included several amendments to BiH's election law. As a result, general elections in October 2002 and thereafter have been held in accordance with the constitutional amendments.

There was another attempt to amend the state constitution through a process of fairly informal political negotiations that commenced in early 2005. These were more formalized in an effort led by the United States in late 2005, which resulted in a package that was submitted to the BiH parliament in March and April 2006. The constitutional changes thus proposed would have gone some way toward streamlining the decision-making process. They contained valuable mechanisms that would have contributed to unblocking different decision-making deadlocks, such as an amendment intended to bring all necessary responsibilities in EU integration from the entity level to the BiH parliament and Council of Ministers (i.e., the country's cabinet). However, the package was voted down by a marginal difference.

Constitutional reform has dominated the public political discourse since then, but instead of discussions on streamlining the power-sharing and decision-making mechanisms, it has shifted more toward negotiations among political parties about internal territorial rearrangements. This has created further tensions around this contentious issue and has been a stumbling block in negotiations on any other high-priority issues that have arisen on the political agenda.

In general, it can be said that the pressure to democratize BiH's society has mainly come from the outside (i.e., from the international community), while the internal drive continues to be lacking. Since no specific government policies have addressed this evident gap, the country has failed to "internalize" a domestic ambition to democratize. Additionally, the powerful rhetoric that promotes the status quo and the pursuit of further social divisions erodes the acceptance of democratic norms.

# Transformation Status

## I. Democracy

### 1 | Stateness

BiH constitutionally does not have monopoly over the use of force as these competencies lie with lower levels of government, which lack coordination and often face overlaps in responsibilities and jurisdictions. The director of the State Investigation and Protection Agency recently stated that, during a recent, complex investigation, five different policy agencies clashed on the ground. The EU-led multinational peacekeeping force EUFOR continues to provide a security guarantee for the state of BiH, but the size of its personnel has been successively reduced to 2,100 troops by March 2009.

Monopoly on the use of force

Two set of developments have marked this area of transformation during the period under consideration: the success of defense reform and negotiations on police reform.

Defense reform, which (to over-simplify) resulted in the creation of a single army with unified command structures, has been one of the most successful reforms and has resulted in BiH's joining the Partnership for Peace in December 2006 and obtaining "intensified dialogue" status in April 2008 at the NATO summit in Bucharest.

Police authority has been divided among entities and cantons, as BiH's ethnic communities and political leaders perceived control over police services as safeguards of their autonomy. Since the fragmented police organization was financially unsustainable and failed to effectively combat organized crime, the international community urged BiH's political elites to create a more streamlined police service. The process of police reform was included as a key condition for BiH's signing the Stabilization and Association Agreement (SAA) with the European Union in order to gain in importance. Following numerous agreements and declarations negotiated and signed over a period of nearly four years, in June 2008, the BiH parliament adopted laws that established a state-level Directorate for the Co-ordination of Police Bodies, independent and supervisory bodies of police structures, and agencies to support police structures. As a result, BiH signed the SAA on 16 June 2008.

The aim of these laws was to rationalize and coordinate police forces across all levels of government in order to prevent and fight against all forms of organized crime and to create financially sustainable police structures at the state level. However, since the laws were passed as a result of international pressure and lacked substance, domestic political actors did not back – and even obstructed – their implementation. Therefore, the police reform cannot be seen as a process that will establish the state’s monopoly on the use of force. Its power is primarily usurped by its inability to control groups organized not necessarily territorially or politically but, rather, through informal, though very well-organized criminal structures.

There is an atmosphere of anxiety over the current constitutional arrangement in BiH and a lack of public trust in BiH institutions and of identification with the state. In 2007, the UNDP published a representative opinion survey, “The Silent Majority Speaks,” which showed that half of the citizens asked see the Dayton Peace Accords as ineffective and reject the constitution of BiH. Although one in seven respondents (14.2%) does not identify her- or himself as a citizen of BiH, there are some important differences between entities. FBiH respondents identify more enthusiastically with the notion of a BiH citizen than their RS compatriots (57.8% versus 18.9%). According to the same survey, two-thirds below the age of 30 wish to emigrate, and the motivation of the young to stay in BiH emerges as a key challenge. Public perceptions gathered in a research project conducted by the Foreign Policy Initiative BH demonstrate that “institutionalization of ethnic power-sharing at the state level” prevails over any sense of an overarching feeling of belonging to a single state or even a common state identity, with the result that almost every aspect of state governance is seen through “the ethnic lens.”

State identity

BiH is formally a secular state, and the status of religious communities is regulated by the Law on Freedom of Religion and Legal Status of Churches and Religious Communities in BiH. Nonetheless, leaders of all three religious communities exert considerable influence on – and interference with – politics and the law, particularly during election campaigns. For example, a candidate for the mayor of central Sarajevo, Dino Konakovic, held election speeches in mosques after evening prayers accompanied by imams. Likewise, the leader of the Islamic community, Mustafa Ceric, issued a statement in the middle of the election campaign calling on Dr. Haris Silajdzic, a Bosniak candidate for the state presidency, to change the BiH Constitution and thereby publicly support his election candidature. Ceric also held meetings with political leaders and media representatives in order to influence the outcome of negotiations on police reform. In 2007, the FBiH parliament withdrew from its agenda the Law on the Sales of Apartments with a Tenancy Right at the request of the Islamic community, which claims rights to some property regulated through this law. In a speech delivered in Zagreb in December 2008, Cardinal Vinko Puljic again expressed his view that the Dayton Peace Accords are unjust and that Croats should be granted the right to a third entity through a change of

No interference of religious dogmas

constitution. The Tuzla-Zvornik bishop, Vasilije Kacavenda, caused some controversies when he stated during a liturgy in Tuzla that local authorities are conducting a “spiritual genocide” and are involved in actions against Christianity in that city. Tuzla is considered to be a rare example of a multiethnic community in BiH, with its high percentage of inter-ethnic marriages. In April 2007, Bishop Kacavenda refused to perform a service in the presence of Orthodox soldiers in the unified BiH army, who were departing on a mission to Iraq, thereby expressing his lack of support for the joint army.

The religious leaders of all three constituent groups are also regularly consulted by the international community on political matters, including constitutional change.

According to a study on “Governance Structures in BiH” conducted by the Foreign Policy Initiative BH in 2007, “the BiH state lacks the independence enjoyed by central governments in other decentralized states and thus cannot perform basic state functions. Ethno-territorial veto points at state-level [are] accompanied by a complicated division of competencies shared between the state and entities, which require high levels of cooperation to function and seriously constrain the ability of the state institutions to perform their functions.”

Basic  
administration

## 2 | Political Participation

The October 2008 municipal elections were generally conducted in a democratic manner, though under a complex legal framework. The OSCE/ODIHR Needs Assessment Mission reported that national issues were prevalent over local issues. As a result of an amendment to the election law, candidates in 34 municipalities were able to compete for seats reserved for national minorities under a plurality voting system, while special voter registration rules were designed for former residents of Srebrenica for these elections only. The quality of the voter lists has improved with the passive voter-registration system, and the Central Election Commission enjoys public confidence.

Free and fair  
elections

Bosnia has held regular elections since 1996. For the first time, the national elections in 2006 were entirely administered by local authorities, and they were deemed free and fair in accordance with international standards. However, voters registered in the FBiH are confined in their rights as they have to choose either a Bosniak or Croat candidate for the presidency. Likewise, voters registered in the RS cannot vote for a non-Serb for president. Citizens who do not identify themselves as belonging to one of the three “constituent peoples” are not entitled to run for president. These ethnic-territorial restrictions violate the European Convention on Human Rights.



At the state level, democratically elected political representatives are limited in their effective power to govern by abuses of the constitutional checks against majoritarian decision-making. The Dayton Peace Accords established a system of government at the state level that prevents the majority from taking decisions that adversely affect other groups, including ethnic veto powers in the presidency, entity voting in state parliaments, national caucus majority voting in the House of Peoples and instruments ensuring the protection of vital national interests. Initially designed to ensure a fair ethnic representation in the state institutions, these constitutional mechanisms have been abused by political actors to block decisions. For example, opposing political parties and politicians have used tactics of quorum busting, boycotted state institutions and excessively resorted to their constitutional veto right protecting vital national interests.

Effective power to govern

Independent political and civic groups have unrestricted rights to assemble and associate at the state level guaranteed by the constitution and the BiH Law on Associations and Foundations. The law was amended again in 2008, facilitating further the registration process and defining in more detail the status of associations. However, the registration procedure continues to be cumbersome and lengthy, sometimes taking several months, mainly due to the lack of administrative capacity of the BiH Ministry of Justice to process registration requests.

Association / assembly rights

Formally and constitutionally, the freedom of expression is guaranteed. However, during the reporting period, the pressures on electronic media have intensified. In broad terms, it can be stated that while some press and media are closely associated with certain parties, political leaders and businesses in the FBiH, there are nonetheless several media outlets for critical voices and the opposition. To the contrary, in the RS, the trend is moving in the direction of an almost full-scale suppression of the media, including marginalization by the government through various means (e.g., financial sanctions and various other sorts of pressure, including death threats).

Freedom of expression

Politicians from the RS boycotted the state Public Broadcasting Service (PBS) for several months. Its management was eventually dismissed, and people allegedly close to RS political structures have been put in its place. In a similar fashion, the management and editorial boards of electronic and print media in the RS have been filled with people with political leaning toward the Alliance of Independent Social Democrats (SNSD).

Since accusing RS Prime Minister Dodik and his government of corruption relating to the construction of the building housing the RS government, the former director of Transparency International (TI) for BiH, Boris Divjak, has been a continuous target of Dodik's verbal attacks. Dodik claims to have added Divjak to his "black list" of journalists and intellectuals who continuously criticize him, and the pressures – and even open threats – led TI to close down its office for a while.

Radio Free Europe reported many other examples of Dodik's pressures on representatives of the press and media, including strong, foul language against journalists, including Milijana Kos of Alternative TV (who had questioned the use of a government plane for private purposes) and Nadja Diklic of Dnevni Avaz (who raised doubts as to the origin of Dodik's property wealth). Dodik also accused a member of the European Parliament, Doris Pack, of being a "liar," a "Serb hater" and "an enemy of the RS and of Serbs as people." Previously, Pack had alleged that Dodik had misused EU funds during his first mandate as RS prime minister in 1998. Likewise, Sadik Bahtic, a member of the BiH House of Representatives, physically attacked a Federal Television journalist in 2008.

At the BiH level, the Communications Regulatory Agency continues to regulate electronic media, but the appointment of its new management was extensively delayed due to political arguments in the Council of Ministers and the BiH parliament over the nationality of the new director to be chosen. In legal terms, the printed media are self-regulating since there are no formal regulating institutions. Libel can thus only be controlled through the courts, a fact which results in a very high number of court proceedings. The daily papers *Oslobodjenje* and *Avaz* have been at the opposite poles of the debate on restructuring the energy sector, each representing a different political side and being backed by influential interested investors. Weekly political magazines in the FBiH voice some criticism of corruption and political obstruction, but they often fail to substantiate such claims. In the eyes of the public, the biggest critics of different criminal schemes on all sides have been the journalists of the FTV weekly political program "60 Minuta," who are under continuous police protection due to the serious threats they regularly receive.

### 3 | Rule of Law

Research conducted as part of the Foreign Policy Initiative's (FPI) study on Governance Structures has shown that, despite the assumption of many competencies over the last 12 years, the BiH central state bears little resemblance to the center in federal or decentralized states elsewhere. It remains handicapped by: (a) a weak executive; (b) a parliamentary decision-making process in which there are multiple veto points, including de facto entity vetoes on state matters; (c) limited competencies that are often shared with other levels of government with no clear hierarchy of functions or enforcement capacity at the state level; (d) an inadequate public administration in terms of both quality and quantity; and (e) continued reliance on international intervention in day-to-day governance.

The highest BiH judicial institutions have been subject to heavy criticism by Republika Srpska Prime Minister Dodik, particularly in 2008. He expressed his dissatisfaction with the fact that judicial appointments are made independently by

Separation of powers

Independent judiciary

the High Judicial and Prosecutorial Council, and he accused them of being corrupt. He also claimed that the BiH Court and Prosecutor's Office are biased and selective in filing charges. The president of the BiH State Court stated that all the accusations were understood as being pressure on the independence of the judiciary.

For several months, the RS government refused to hand over documentation on the construction of the RS government building as had been requested by the state prosecutor, and the RS government threatened to use force against the State Protection and Investigation Agency if it tried to obtain documentation without its consent. The RS Prime Minister Dodik stated that he did not want "Muslim judges" to rule over matters concerning RS institutions. At the same time, Dodik continued to form parallel structures at the entity level, including a special prosecutor's office in the RS.

By appointing two judges with clear party affiliations, Krstan Simic (SNSD) and Mirsad Ceman (Party for Democratic Action, or SDA), parliamentary deputies further increased their influence on BiH's Constitutional Court and undermined its independence.

Since 2000, major reforms have restructured the court system, reduced the number of judges and established state-level institutions, such as the High Judicial and Prosecutorial Council, the State Court and the State Prosecutor's Office. These institutions have improved the professionalism and independence of BiH's judicial system to some degree. However, skepticism has been raised regarding their efficiency in prosecuting high-profile criminal cases. International judges and prosecutors coming from different international backgrounds often engage in disparate legal practices, which results in poor conviction records. The BiH authorities adopted the judiciary reform strategy in June 2008 as well as the Action Plan for the Implementation of the Strategy in December 2008. However, the level of resources allocated for this purpose threatens to endanger the success of the reforms. This was manifested in a BAM 1.8 million reduction in the budget allocated to the State Court in 2009, which is likely to have an impact on the court's operations. The mandates of international judges and prosecutors expire at the end of 2009, and there is no clear sign from the international community that these mandates will be extended, nor are there sufficient finances to support them. Last but not least, different legal systems persist in the entities, and political actors have not been able to agree on the creation of a supreme court.

Although the legal system has mechanisms for prosecuting office abuse, several high-profile cases in 2007 and 2008 showed that politicians use legal and political loopholes in order to avoid prosecution. In the previously reported case of office abuse by Dragan Covic, the president of the Croatian Democratic Union of Bosnia and Herzegovina (HDZ) and former BiH minister of finance, the BiH prosecutor changed the indictment in 2007, and the BiH State Court dropped the charges in

Prosecution of  
office abuse

2008. In April 2008, the Central Election Commission (CEC) ruled that there was a conflict of interest in the appointment of Minister of Foreign Affairs Sven Alkalaj, Deputy Defense Minister Igor Crnadak and Deputy Minister of Civil Affairs Senad Sepic. The decision prohibited them from running for a public office for four years, but neither the government nor the courts has taken any action to enforce this decision, and all of them still hold office. Alkalaj filed an appeal against the decision before the State Court, which was rejected in 2009. The BiH Council of Ministers and parliament have yet to decide on his removal from office. In the case of FBiH Prime Minister Nedžad Branković, a conflict of interest was reported by Transparency International, but the CEC decided this was not in its jurisdiction in spite of an earlier decision to the contrary by the State Court. Finally, in January 2009, the Constitutional Court ordered the CEC to consider the case. The Sarajevo cantonal prosecutor opened an investigation of suspected office abuse by Branković and Minister of Energy Vahid Heco after the FBiH financial police submitted 11 reports of the illegal selection of strategic partners for construction of electric power plants, for which the contracts were worth over BAM 7 billion. The state prosecutor is investigating a number of similar cases of office abuse by RS Prime Minister Dodik, including ones related to the privatization of an oil refinery and the construction of the RS government building.

The Helsinki Committee for Human Rights in BiH reports that the only institution for protecting human rights at the level of Bosnia and Herzegovina remains solely on paper, which leaves human rights protection to the nongovernmental sector. Its findings on the status of human rights in BiH point to the fact that returnees – and particularly minority ones – are still being discriminated against in employment, access to health care, education, the exercise of the right to a pension and other social rights. According to official records, 2,700 families are still living in collective centers at 106 locations in 43 municipalities. Almost 45,000 requests for restoration of housing units were carried over into 2008, which means that there are more than 140,000 people who have expressed a desire to return and are still waiting for help. The authorities have never made a distinction between returnees who only took repossession of their property and those who kept on living in their property units. The implementation of the Constitutional Court decision on the representation of constituent peoples in public offices is generally deficient. There are municipalities in Bosnia and Herzegovina where not even a single member of a minority group is employed by public administrative bodies, institutions and companies.

Civil rights

#### 4 | Stability of Democratic Institutions

Existing ethnic divisions and the consociational electoral system tend to reduce the accountability and performance of government institutions by fragmenting the

Performance of  
democratic  
institutions

electorate along ethnic lines and raising the salience of ethnic themes in public discourse at the expense of other policy issues. Ethno-political elites undermine democratic institutions by engaging in rent seeking and patronage politics.

As the FPI's study on Governance Structures in BiH points out, the number of BiH state institutions exercising exclusive competencies is small. In other areas, state-building has generally entailed the transfer of only partial competencies to the central state, which leaves in place a complex system of shared competencies that relies on the goodwill of several different layers of government to operate. In particular, although the state has a role in policy-setting, particularly when it comes to inter-entity harmonization of standards and compliance with international obligations, the entities continue to have legislative power in all shared competencies and often ignore or undermine the requirements of state law. There is little consultation, coordination or cooperation between different levels of government. This obstruction is both political and administrative, and both entities display disregard for the authority of the state, while failing almost completely to coordinate between themselves. Some level of coordination between different levels of government is beginning to appear in the newly established Fiscal Council.

According to a report on the performance of state institutions conducted by the Center for Civic Initiatives (CCI), the BiH parliament adopted only 36 out of 134 laws planned in 2008 and only 20 out of 135 in 2007. In 2008, the parliament voted down 20 laws, withdrew 15 laws from procedure and left 28 in procedure. The Council of Ministers sent 30 laws to parliamentary procedure, of which only 15 have been adopted; this illustrates the level of friction between the executive and legislative branches. CCI reports for respective entity and cantonal governments show similar trends.

In terms of general performance, although the functions of the RS government are more compact and efficient, they have recently been falling back to the old practices of over-centralization. Likewise, policy priorities in both entities are influenced by the dominant political interests rather than by the needs of the public or functional reasons.

According to the Venice Commission's "Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative" issued during the 62nd plenary session (Venice, 11-12 March 2005), members of the BiH parliament frequently continue to vote along ethnic lines and use inflammatory rhetoric on identity and ethnicity-related issues, which impacts the functionality of BiH institutions and legislative reforms. Negotiations on key reforms, including constitutional, police and EU integration, have taken place outside BiH institutions and have been constrained to informal talks among the leaders of the governing parties. These often involving religious leaders and, in most cases, exclude representatives of the legislative and executive branches and, particularly, the

Commitment to  
democratic  
institutions

opposition parties in parliament. Throughout this period, RS Prime Minister Dodik sustained rhetoric and actions aimed at undermining the legitimacy of BiH institutions and attacked the High Judicial and Prosecutorial Council, the Public Broadcasting Service, the Communications Regulatory Agency and Indirect Tax Authority.

The Serb and Bosniak members of the BiH presidency cast a veto several times on issues with a predominantly ethnic background. BiH Prime Minister Nikola Spiric and the RS delegates in the BiH Parliamentary Assembly boycotted the work of state institutions for several months as a protest against a decision of the High Representative that simplified voting procedures in the Council of Ministers and the BiH parliament.

## 5 | Political and Social Integration

The Dayton Peace Accords created divisive structures representing exclusivist interests of the three main ethnic groups. By permeating and dominating political life in such way, nationalism serves as the dominant ideology and further disintegrates the party system in BiH. The party system is a reflection of existing internal divisions, which can only create policies based on the lowest common denominators. There are 12 parties sharing 42 seats in the BiH House of Representatives, with the largest party occupying nine seats. In total, 35 seats are occupied by parties appealing to particular ethnic groups. The remaining seven seats are shared between three parties with a wider, cross-ethnic appeal; with five seats, the Social Democratic Party (SDP) is the largest. However, the powerful nationalist rhetoric emphasizing ethnic loyalties and the pursuit of narrow political interests remains the *raison d'être* of political life, and it blocks the saliency of wider social interests and further fragments them.

Party system

According to an European Commission report on institutional cooperation between the governmental and the nongovernmental sectors, the public policies, institutions and administration are seen to be serving exclusively the current government and governing parties, but not society. According to a report of the Center for Civic Initiatives (CCI), out of the 36 laws adopted by the BiH parliament in 2008, 15 have some relevance to the “citizens’ platform” signed by 100,000 citizens before the 2006 general elections. However, only five of them can make notable improvements to the 12 most important problems identified thus far. Weaknesses in civil society in BiH are usually attributed to its lack of capacity and interest, without there being any recognition of the enormous capacity of political elites and state to resist internal drives for change. The “privatization” of public offices suppresses the role of civil society in formal relations with the state in favor of informal/private influences.

Interest groups

A 2007 UNDP survey showed that half of the citizens surveyed see the Dayton Peace Accords as ineffective and reject the BiH constitution. Of them, 59% trust the police, 48.9% have confidence in the courts, 19.9% believe another war would break out if the international community were to withdraw and 62.9% disagree with the last point. While people understand in intellectual terms that change is needed, the vehicles of change are less clear. The population does not appear confident enough to initiate change. Although many surveys show that the constitutional system is widely unaccepted and that the majority of respondents do not have trust in elected representatives or civil servants, there are no indications that the wider population would resort to unconstitutional means of seeking change. According to the UNDP survey, only one in eight respondents (12.8%) would consider using violence in the pursuit of political ends, and 6.2% said they have used violence in the past (19.0% combined).

Consent to  
democratic norms

A 2007 UNDP survey indicated a “virtual breakdown of social trust” in BiH. Only around 7.2% of the citizens surveyed believed others can be trusted.. Only two in 10 expected fair treatment from others. Optimism is relatively weak, and there is a sense of inertia. The relationship between citizens and the political world is dominated by low interest and disengagement. The most immediate implication is that citizens refrain from any kind public associational activities in the belief that the political world is too distant to be influenced by citizens and that they cannot exert any pressure or effect any change. Likewise, owing to the low level of trust between different groups, the ethnic divide deepens, as all citizens associate more within their own homogenous communities. In so doing, they associate less along civic lines and more along nationalistic ones.

Associational  
activities

## II. Market Economy

### 6 | Level of Socioeconomic Development

The HDI for Bosnia and Herzegovina is 0.803, which gives the country a rank of 66th out of 177 countries. According to the U.N. Human Development Report 2007 – 2008, the Gini coefficient is 26.2. With a gross national per capita income of \$2,980 in 2006 (World Bank data), BiH is much poorer than neighboring Croatia or Serbia and approximately on the same level as Albania (\$2,960).

Socioeconomic  
barriers

Economic indicators		2004	2005	2006	2007
GDP	\$ mn.	10022.8	10763.6	12264.2	<b>15144.2</b>
Growth of GDP	%	6.1	5.0	6.2	<b>6.8</b>
Inflation (CPI)	%	-	-	-	-
Unemployment	%	-	-	31.1	<b>29.0</b>
Foreign direct investment	% of GDP	7.1	5.6	5.9	<b>13.9</b>
Export growth	%	5.3	16.2	13.7	<b>12.6</b>
Import growth	%	3.9	4.6	-6.9	<b>14.2</b>
Current account balance	\$ mn.	-1639.3	-1844.4	-981.0	<b>-1595.4</b>
Public debt	\$ mn.	2686.3	2555.8	2829.6	<b>3014.0</b>
External debt	\$ mn.	5244.7	5294.7	5668.9	<b>6478.5</b>
Total debt service	% of GNI	2.3	2.3	4.6	<b>4.3</b>
Cash surplus or deficit	% of GDP	1.5	2.1	2.9	<b>1.0</b>
Tax Revenue	% of GDP	19.0	20.7	22.8	<b>22.3</b>
Government consumption	% of GDP	21.5	20.4	21.2	<b>21.8</b>
Public expnd. on edu.	% of GDP	-	-	-	-
Public expnd. on health	% of GDP	5.3	5.1	5.2	-
R&D expenditure	% of GDP	-	-	-	-
Military expenditure	% of GDP	2.0	1.6	1.5	<b>1.3</b>

Sources: The World Bank, World Development Indicators 2009 | UNESCO Institute for Statistics | International Labour Organization, Key Indicators of the Labour Market Database | Stockholm International Peace Research Institute (SIPRI), Yearbook: Armaments, Disarmament and International Security.

## 7 | Organization of the Market and Competition

There are a number of laws and institutions that deal with market competition, such as the recently established Agency for Market Surveillance. However, the institutional framework is characterized by weak and incoherent constitutional foundations and lacks enforcement capacities and a large informal sector. Barriers to market entry are still significant due to a complex set of required permits and administrative hurdles. Moreover, as a VAT was only introduced at the state level in 2006, the tax administration is still developing mechanisms for VAT return. The

Market-based  
competition



new laws on corporate and personal income taxes at the entity level have to some extent harmonized the legal framework of taxation.

BiH adopted a Competition Law in 2005 and established the Competition Council (CoC), which further developed the necessary bylaws. Nevertheless, the law still needs adjustments and improvements in order to meet EU standards. In practice, the CoC is dealing mostly with merger cases and takeovers of local companies as well as merger cases resulting from mergers within the EU that affect subsidiaries in BiH, mostly in the banking sector. In a recent case, the CoC levied large fines on mother companies in the European Union that had failed to meet the strict eight-day deadline for notifying it of a merger (e.g., in 2008, it levied fines totaling €350,000). Unfortunately, the CoC does not deal with either forbidden price agreements and practices or existing cartels (e.g., oil-distribution cartel), local monopolies or price fixing (e.g., in the telecom sector). In 2008, the CoC dealt with 44 merger cases and only four monopolies and abuses of dominant position. At the same time, the CoC faces political pressure to not enforce competition rules when state companies are sold to strategic investors.

Anti-monopoly  
policy

Foreign trade is liberalized and has uniform, low tariffs. There is no fundamental state intervention in free trade. This has been done in accordance with the obligation taken under the SAA and the Interim Agreement with the European Union. Beginning in January 2009, 11,000 E.U. products became eligible for duty-free imports. However, this positive fulfillment of EU standards has a negative impact because the state did not take measures to establish a positive economic environment for local companies so as to enable them to cope with the market forces and competition in the European Union as set in the Copenhagen Criteria. BiH has been implementing the Central European Free Trade Agreement (CEFTA) since November 2007.

Liberalization of  
foreign trade

The institutional foundations are laid for a solid banking system oriented toward international standards with functional banking supervision by the Central Bank of BiH, the Currency Board and the Agency for the Security of Deposits. However, capital markets are differentiated and vulnerable to severe fluctuations due to extreme dependence on outside factors and a de facto lack of supervision.

Banking system

## 8 | Currency and Price Stability

The Central Bank of BiH is independent, and the national currency is controlled by the currency board, which pegs the convertible mark (BAM) to the euro. According to the BiH Statistics Agency, the annual inflation rate in November 2008 was 5.5%, while monthly price growth was 7.5%. The annual inflation results primarily from factors including: 10% higher prices in housing, water supply, electricity and gas;

Anti-inflation /  
forex policy

8.4% in food prices; and 5.9% in communications costs.

The institutional elements for stability have been introduced by the adoption of a BiH Law on a Fiscal Council in May 2008. The Fiscal Council, comprising the state and entity ministers of finance, is responsible for agreeing on the fiscal targets and ensuring macroeconomic stability. However, by March 2009, the council had not met a single time. Governments at lower levels continue to be vulnerable to arbitrary and populist changes of spending policies (e.g., the FBiH government amended the Revenue Allocation Law to divert part of revenues into a fund for war veterans). The FBiH budget is particularly vulnerable, and its minister of finance constantly warns against a potential budget collapse, as its deficit for 2009 is projected to be between BAM 400-500 million, according to the FBiH minister of finance.

Macrostability

## 9 | Private Property

The right of all displaced BiH citizens to return to their prewar private or socially owned property is enshrined in Annex 7 of the Dayton Peace Accords. At the end of 2006, the OSCE, UNHCR and OHR officially certified that all municipal authorities had completed their legal obligations under the property laws of BiH, including the resolution of claims for socially owned and private properties.

Property rights

On 25 November 2008, the RS National Assembly adopted the Law on Real Rights, which will mark a new approach in the regulation of ownership and other rights and will have an enormous impact on property relations in this entity. The law establishes uniformity of property rights and deals with the transformation of former socially owned property into private property. A similar law is in procedure in the FBiH parliament.

Overall, although the issue of restitution continues to loom over property relations in BiH, there has been no political agreement on this issue so far.

A 2007 UNDP survey found low popular confidence in the enforceability of property rights. When asked whether they believe the legal system would protect them in pursuit of their contractual or property rights, a very low percentage of those surveyed said that they would strongly agree, whereas 35.6% of Bosniaks, 25.8% of Croats and 51% of Serbs would somewhat agree.

A 2007 World Bank survey of some 460 companies from across BiH suggested some improvements in the process of business registration and inspections. The study also signaled that the overall business and investment environment in BiH still lags behind others in the region. Nowadays, it takes on average of 44 days to register a company in the FBiH, 19 days fewer than in 2004. In the RS, the survey showed a basically unchanged situation, with 32 days spent on the obligatory

Private enterprise

registration process in early 2007, as compared to 31 days in 2004 and 31 days in 2002. The situation slightly improved in 2008 owing to the establishment of the new business-registration system in 16 courts in major cities and towns, which was financed by the U.K. Department for International Development (DFID).

In 2007, the RS government privatized the RS telecom system (by selling it to the Serbian telecom company) and the oil refinery in Brod. In the FBiH, the privatization of the energy sector and telecom system has been highly politicized and have remained under governmental control.

## 10 | Welfare Regime

The BiH Medium-Term Development Strategy (PRSP) 2004 – 2007 envisaged accelerating structural reforms, which in the short term would cause job losses and, consequently, an increase in poverty. All levels of government were thus required to implement economic policy measures that would prevent an increase in poverty and lower the poverty rate by 20% from the present level. However, the current macroeconomic data and poverty level do not confirm the success of these measures. Combating poverty seems to have lost its momentum as the presence of the World Bank and the IMF has decreased. Immediately before the 2006 general elections, the FBiH parliament adopted a comprehensive and generous financial aid package for war veterans, civil victims of war and members of other social groups. However, since then, the government has struggled to balance the budget due to the fiscal burdens resulting from this assistance, and the 2009 budget lacks funds for some categories of benefit recipients.

Social safety nets

The 2001 Constitutional Court decision on the representation of constituent peoples can be measured by each group's representation in public service, companies and government based on the 1991 census. According to a survey conducted by the Centre for Promotion of Civil Society (CPCD) at the end of 2007, the implementation of this decision at the local level has been very poor. As an illustration, the municipality of Central Sarajevo employs 4.72% Serbs, whereas the local share of ethnic Serb residents was 20.98% in the 1991 census. Similarly, the municipality of Ilijas employs 1.43% Serbs, although the census representation of Serbs was 44.97% in 1991. Likewise, the Foca municipality employs 2.9% Bosniak people, although Bosniaks constituted 51.32% in the census.

Equal opportunity

According to the 2007 national Human Development Report, minority communities are not merely psychologically or politically excluded, but also deprived in a direct and material way. Similarly, in the economic sphere, employment and business opportunities are weakened not only by pervasive discrimination, but also by legal and institutional mechanisms orchestrated by the ruling groups.

According to another CPCD report, after the 2006 elections, the participation of women in state parliaments dropped from 26% to 14.28%. There are no female ministers in the Council of Ministers, and only 8% of cantonal ministers are women. The report claims that women are discriminated against not only in political appointments, but also in the civil service and in seeking positions in managerial offices and governing boards. Another report also warns of numerous cases of violence against women; however, data on those cases is scarce since the governments have not yet adopted legislation on protecting women and young girls against domestic violence and the BiH Criminal Law does not include such provisions.

Homosexuality was decriminalized in the FBiH in 1996 and in the RS in 1998. Likewise, the Gender Equality Law enacted in 2002 stipulates that discrimination based on sex/gender and sexual orientation is forbidden and punishable by law. However, an attempt to organize a “queer festival” in Sarajevo in September 2008 was abruptly terminated due to threats, violence and physical attacks on participants.

## 11 | Economic Performance

While per capita GDP has grown slightly (Bam 5,633 in 2007), the underlying economic data indicate that such growth is driven more by remittances from abroad than by economic progress within the country. GDP growth in 2007 was estimated to be 6.84%. Employment levels are inadequate (the estimated unemployment level is 29%), the trade balance is unfavorable (BAM 7.9 billion) and governmental groups are having difficulties balancing budgets. On the other hand, tax revenues are performing strongly, with BAM 5.5 billion in taxes collected in 2007 (a 12% growth).

Output strength

The UNDP reports a considerable jump in investments from 2006 to 2007 (from €564 million in 2006 to €1,628 million in 2007). On the other hand, growing international fuel and food prices have adversely affected the economy. Fuel and food price inflation were the main culprits behind the 10% growth in consumer prices. The reported Consumer Price Index in 2007 was 1.5%, the average salary in 2008 was around \$500, and the number of formally registered unemployed persons was 504,000. Real growth in GDP in the first half of 2008 was 6.84%.

## 12 | Sustainability

Environmentally compatible and sustainable growth is barely taken into consideration in BiH. Even though a number of activities have been undertaken in order to set up the necessary legal and institutional frameworks, their implementation has been meager. Those activities include setting up the Agency for Environmental Protection of Bosnia and Herzegovina, passing the Law on Environment Protection of Bosnia and Herzegovina, and developing the National Biodiversity Strategy and Action Plan. The individual entities have been planning separate environment protection strategies, and both of them plan to adopt sets of environmental laws (17 in the FBiH and 17 in the RS) and create a Fund for Environmental Protection.

Environmental  
policy

The European Commission's 2008 Progress Report for BiH recognized some progress in the field of education: "Coordination between the fourteen Ministries of Education has improved as a result of the establishment of the Conference of Ministers chaired by the Minister of Civil Affairs. The Law on vocational education and training (...) [and a] strategy paper on the reform of the education sector (...) have been adopted."

Education policy /  
R&D

However, the commission's report also noted that "harmonization of legislation at Entity and Canton level was not completed by the end of April 2008, as provided for by the Higher Education Law, and equal implementation throughout the country is not being ensured. (...) The 2003 Framework Law on primary and secondary education, which gave a mandate for the introduction of nine-year primary education in schools, is not yet fully implemented in certain Cantons. (...) No measures have been taken to improve the efficiency of public spending in education. There is no systematic approach to improving education outcomes."

The persisting segregation of pupils based on ethnicity in numerous FBiH schools remains the most striking example of the failure of education reforms in BiH. These schools were established to encourage the return of families with school-aged children to areas in which their nation had become a minority during the war. However, in many of these cases, pupils and teachers of one or another nation are required to use separate entrances or to attend in separate shifts. Likewise, they are denied access to some facilities, classrooms and common spaces. International organizations and groups for civil and children's rights have repeatedly condemned this practice.

In November 2007, BiH ministers signed an education reform strategy that required BiH authorities to end the practice of segregation and provide for "integrated multicultural schools free from political, religious, cultural and other bias and discrimination."

There is no integrated research policy, and budgetary allocations to support research are very limited. Research policy is still designed and implemented at the entity level, and there is no real coordination. No progress has been made on preparing a countrywide policy, and the research infrastructure remains poor.

# Transformation Management

## I. Level of Difficulty

A study of Governance Structures in BiH prepared by the Sarajevo-based Foreign Policy Initiative (FPI) in 2007 reports that much of the postwar state-building process in BiH has been based on the principle of “institutional layering,” in which prewar, wartime and postwar institutions have been allowed to coexist with serious mandate and authority overlaps. In order to function, this web of interconnected and interdependent authorities would require a high level of political will and consensus as well as a relatively sophisticated civil service capable of managing delicate intergovernmental relations and institutions. Although the state has a role in policy-making, particularly as regards inter-entity harmonization of standards and compliance with international obligations, the entities continue to have legislative power in all shared competencies, and they often ignore or undermine the requirements of state law. Both in individual sectors and on broader issues of cross-sector planning and strategy, there is little consultation, coordination or cooperation between different levels of government. Where coordination or cooperation with the entities is built into state-level institutional design, the result is, at best, inefficient and, at worst, unworkable due to the consociational procedures at the state level, which often result in decision-making deadlocks.

Structural  
constraints

Civil society traditions in BiH are very weak. Instead, civil society consists of a cluster of independent NGOs rather than a concerted effort that would act as an intermediary between the government and society and would represent and advocate a wide range of interests. Hardly any civil society organization is engaged in building civic culture or nurturing social trust. NGOs continue to be largely divided along ethnic/entity lines and, apart from some symbolic actions, hardly any organizations manage to build and sustain pressure on the executive or legislative branches. There is an evident lack of strong internal voices in politics or civil society that could generate substantive pressure to build social trust and civic culture as well as to integrate the society.

Civil society  
traditions

Bosnia and Herzegovina is a post-conflict society, is divided along ethnic lines and has with a state structure that is disputed in one way or another by the majority of its citizens. The political will and public support for democratization have been exhausted and entirely consumed by support for nationalism and ethnic divisions. As a deeply divided society struggling to come to terms with its realities, BiH does not have answers for overcoming internal divisions or for designing a constitutional arrangement that most citizens could subscribe to.

Conflict intensity

## II. Management Performance

### 14 | Steering Capability

For the over 10 years since the Dayton Peace Accords were signed, it has been the international community that has been setting the key reform priorities in BiH and putting pressure on local authorities to address them. BiH authorities failed to assume full responsibility for the reform process when the influence and pressure of international community began decreasing in 2005, which has resulted in the creation of an ownership vacuum. Most priorities continue to be determined by an international agenda, either stemming from previously made commitments (e.g., Council of Europe requirements for constitutional change) or from conditioning for future EU integration (e.g., police reform and signing the SAA). Due to a lack of agreement on either issue in 2007 and 2008, BiH governing parties engaged in a series of lengthy negotiations with short-term effects, which at best concluded with the signing of political agreements that have been hard or impossible to implement. These negotiations consumed a lot of time, bargaining energy and political power. Likewise, along the way, they precipitated a series of political crises that brought governments to a halt for several months and ultimately diverted the attention of policymakers away from the needs of the society, economy and, particularly, democracy.

Prioritization

This was the case with the so called Prud Agreement signed in November 2008, which set the basis for organizing a national census on the condition that more funds would be dedicated to supporting the return of refugees. The BiH presidency accordingly increased the state budget by BAM 93 million, while other policy priorities, including the police reform, did not make it into the budget. Most of these political negotiations did not serve any purpose other than short-term political interests and sometimes and sometimes got bogged down in detail while still barely holding the governing coalition together.

Government functioning was also held hostage by political leaders who departed from the main political agenda and sidelined government priorities at times of crisis over the final status of Kosovo and the ICJ's decision on the genocide in Srebrenica.

The implementation of policies was also controlled by the international community for a long time after Dayton. The OSCE ran the democratization process and elections, the World Bank and IMF looked after fiscal stability, the currency board

Implementation



system was maintained by the Central Bank, which used to be led by a foreign expert (governor), and foreign specialists held key positions in the judiciary, customs, tax administration and other segments of government. As the international community sought a way out of BiH, a doctrine of hasty reforms was adopted along with an almost unrealistic timeframe for their implementation. This approach produced a vast number of so called “paper reforms,” which resulted in good laws but equipped domestic institutions with few or no mechanisms for implementing them. To date, domestic institutions continue to lack capacities and struggle to implement these reforms.

In the proposed 2009 budget for BiH institutions, no space has been devoted to the new institutions that would be created as a result of the police reform. Likewise, the key line ministries (e.g. the Ministry of Finance, the Ministry of Foreign Trade and the Veterinary and Phyto-Sanitary Agency), which should be in charge of implementing the SAA obligations, lack adequate human resources in terms of both numbers and expertise.

Many of the newly created institutions resulting from these “paper reforms” still lack adequate housing, while the state has no mechanisms for enforcing the implementation of its laws across the sub-state levels of government. Some have been formally established but have never started functioning (e.g., the Fiscal Council). In addition, there is insufficient coordination between different levels and sectors of government. For example, the Director of the State Investigation and Protection Agency recently stated that five different police agencies clashed on the ground during a recent complex investigation.

A successful example of policy implementation would be the defense reform and, to a certain degree, the state border service, the State Investigation and Protection Agency, and the Indirect Tax Authority. In many other cases, not only has policy implementation been obstructed along the way, but there are also examples of the RS’s having tried to reverse the process and dismantle some of the institutions created at state level (e.g., the electric transmission company and electricity regulatory agency, the state court and prosecutor, the election commission, the public broadcasting service and the Indirect Taxation Authority).

Government policies in BiH are created ad hoc, have no strategic outlook and usually loose continuity as the government changes (even if it remains in the power of the same parties). Public policies often stem from a need to satisfy some populist demand or as a result of strong internal pressures and vested interests inside the governing coalitions or single political parties (e.g., reform of the energy sector in the FBiH). Knowledge-based and issue-based policies are rare and hardly ever become top priorities. Policies promoting and enforcing democratic consolidation have lost momentum as the international community has withdrawn from the policy-making process and, in some cases, there is strong evidence of reverting to

Policy learning

old practices. This is particularly the case when it comes to appointments to the highest civil service positions, where ethnicity, political patronage and party allegiances appear to be decisive factors in the selection process and results of a competitive, merit-based process are often neglected. Also, the RS government continues to privatize large state-owned companies without any public tenders, despite the fact that several investigations have been launched regarding this very matter. In the FBiH, the budget has repeatedly been adopted with a delay, although parliamentary deputies know that this constitutes a sufficient reason for the FBiH president to dissolve the parliament. There was such a threat at the beginning of 2007, which sent a strong message to the FBiH government and parliament. Since then, they seem to have kept this in mind, as they have proposed budgets without excessively long delays.

## 15 | Resource Efficiency

The FPI's study on Governance Structures points out that the efforts to reform the public administration since 2003 have failed to address the acute problems of public administration, including: the fragmentation of government structures; the many overlapping functions and a lack of coordination between agencies; the segmentation into 13 parallel jurisdictions; the unclear lines of accountability with weak enforcement mechanisms; the very poor policy-development and coordination-management capacity; the lack of experienced professional staff members with the necessary skills; and the lack of robust procedures for recruitment and appointment on merit, which has led to a high number of patronage-based appointments. Abuse of constitutional mechanisms designed to ensure fair ethnic representation in the state institutions has translated into an ethnocratic imperative, where national – and often nationalistic – affiliations dominate the public administration.

The fiscal system in BiH lacks redistributive competencies on the state level and has rigidity in terms of distribution between various levels of government. Formal fiscal-coordination mechanisms are incomplete, and there is little or no formal coordination in practice between different levels of government. There are fiscal disparities and overlaps in fiscal responsibilities. The inefficient direct tax system is not harmonized across the country and results in numerous tax law loopholes and weak revenue collection at all levels. The entity and cantonal levels of government in BiH benefit from the highest revenues, as their functions carry the highest levels of expenditures (e.g., education, police and judiciary). These functions are becoming more and more expensive given that their management and implementation is carried out separately by a total of 13 governments with little coordination and with no regard for pooling certain resources in the interests of efficiency. Salaries within the public administration were raised for employees and

Efficient use of  
assets

parliamentarians at BiH and entity levels, and new grants are approved without taking into account the fiscal viability of such measures.

Politically motivated dismissals and appointments have increased in 2008, often masquerading under formal procedures of dismissal and fair public competitions. Ends of mandates or sometimes even more open political dismissals and publicly advertised selection processes often result in top candidates being dismissed without any grounds and candidates with poorer results but strong political links being appointed. Selection of several key civil service positions was delayed for several months due to political bargaining and a lack of agreement on the distribution of ethnic quotas. This has been the case, for example, with the director of the State Investigation and Protection Agency (SIPA), the director of European Integrations, the Indirect Tax Authority director, the director of the Regulatory Communications Agency, the director of the Civil Service Agency and the management of the Public Broadcasting System.

BiH suffers from a critical lack of policy coordination by both domestic and international actors in the political, financial and administrative areas. This is true for both horizontal and vertical coordination. Policies are often designed in the way that they lead in different directions with little regard for each other. Efforts to increase the competencies of the state as part of the domestic and international state-building agenda have largely not been accompanied by attempts to build a complementary fiscal and financial framework. On the contrary, the bulk of competencies and public funds remain concentrated at mid-levels of government. Likewise, efforts to reform the public administration have not been designed to complement the state-building process. A 2007 study by the Sarajevo-based Foreign Policy Initiative showed that where coordination or cooperation with the entities is built into state-level institutional design, the result is at best inefficient and at worst unworkable due to decision-making deadlock stemming from numerous protection mechanisms of entity and ethnic interests as well as veto powers. This is most evident when it comes to the adoption of budgets at the state and entity levels, particularly in the FBiH, where populist demands (e.g., assistance to war veterans) clash with a need for more structural changes and even fiscal stability. RS representatives use purely political grounds to obstruct increases in the state budget that would otherwise complement the state-building agenda. This also runs contrary to both international priorities and the domestic commitment to further EU integration.

Policy  
coordination

Independent auditing offices exist at the state and entity levels, and they regularly audit government spending. However, their recommendations are rarely implemented; and where irregularities are found, little or no action is taken against irresponsible officeholders. On the other hand, officeholders do not have a strong sense of accountability even when directly elected or publicly exposed. Corruption is usually blamed on antagonistic media sources or the international community or

Anti-corruption  
policy

becomes politicized in other ways. There is a good legal framework regulating party financing, but the Central Election Commission (CEC) has limited resources to conduct regular and thorough audits; instead, it usually reacts only in the cases of formal complaints or reported abuses. The legal framework regulating public procurement is to a high degree harmonized with EU standards, but it has been ignored in some of the major government projects in both the RS (e.g., allocation of an almost BAM 300 million contract for construction of the RS government building, the Gacko coal mine and electric power plant, and the privatization of the Brod oil refinery) and in the FBiH (e.g., with the selection of strategic partners for constructing electric power plants). At the end of September 2008, Transparency International published its global report, which identified Bosnia and Herzegovina as the most corrupt country in Southeast Europe, ranked 93rd out of 180 countries worldwide. Some major cases of corruption are currently being investigated, but most attempts to prosecute corruption have so far failed.

## 16 | Consensus-Building

Having a democracy and market economy tend to be goals declared by the political elites, but there is strong evidence that the basic values and norms of democracy are breached on an almost daily basis.

Consensus on goals

BiH's constitutional system is designed to depend on the full consensus and political will of the governing parties. The international community held together this power-sharing mechanism for a decade after the Dayton Peace Accords were signed, but as soon as their influence decreased, the weakness of the system began to emerge. The problems resulting from a lack of consensual political culture have been further compounded by high tensions between the political parties that formed a loose coalition after the 2006 elections. RS Prime Minister Milorad Dodik and Haris Silajdzic, the Bosniac member of the BiH presidency, have won elections based on nationalistic rhetoric, which they have successfully sustained since then and which culminated in the fabrication of political crises in November 2007 and February 2008. Their discourse is fashioned in an inflammatory manner, which moves the already divergent positions further apart. The divergent visions for BiH of those two leaders were manifested in the election promises they employed during the 2006 election campaign. Haris Silajdzic continues to use emotionally powered rhetoric that advocates for the abolishment of the RS and relies on the power of the notion of genocide. Milorad Dodik's rhetoric is often based on calls for a referendum on the RS's secession from BiH. This secessionist rhetoric secured his party a landslide victory in the RS. Since then, the rhetoric between the two political figures has become even more inflamed and less refined. The European Commission's 2007 and 2008 Progress Reports on BiH stated that "members of the parliament frequently continue to vote along ethnic lines." And the Venice

Commission at the Council of Europe highlighted other substantive obstacles to consensual democracy, which were, for example, reflected in “an underlying tension between a constitutional system based on collective equality of ethnic groups and the principle of individual rights and equality of citizens”.

The line between reform-minded and less democratic actors in BiH has been blurring over the past few years. Parties and leaders, particularly the SNSD and its leader, Milorad Dodik, who used to be supported (financially as well as politically) by the international community, turned out to be very prone to undemocratic practices and rhetoric once they were in power. In response to his having accused Dodik and his government of corruption regarding the construction of the RS government building, the former director of Transparency International (TI) for BiH, Boris Divjak, was a continuous target of Dodik’s verbal attacks. This culminated in Dodik’s public statement that he would not allow Divjak to enter into office on account of his alleged “sexual orientation.” This was a blatant example of inappropriateness of language used in a “democratic environment.” Pressures on the TI continued through the government-controlled press and, eventually, through the court. Dodik also claims to have a black list of journalists and intellectuals who continuously criticize him. Radio Free Europe reported many other examples in which Dodik clearly crossed the line of democratic (and professional) behavior, particularly in his treatment of representatives of the media. In a number of cases, he used foul language and directly threatened some journalists.

Anti-democratic  
veto actors

The current political leadership of the governing parties clearly exacerbates the existing ethnic cleavages, and this has been particularly the case since the 2006 elections. On a number of occasions, RS Prime Minister Milorad Dodik threatened that the RS would split off from the country, drawing parallels with Kosovo’s status and even engaging an American lobbying firm to represent such interests internationally. Petitions were organized to collect signatures of support for a referendum on secession across the RS. In February 2008, the National Assembly of the Republika Srpska adopted a resolution that included a claim to a right to organize a referendum on its legal status. Dodik has managed to marginalize the dominant Bosnian Serb party from the war period, the Serbian Democratic Party (SDS). Over a brief period of time, the SDS transformed itself from being a very radical extremist party into one that pursues moderate policies and a reform agenda before retreating once again to some of its old positions. For example, to symbolize the party’s solidarity with the Bosnian Serb wartime state-building project, SDS President Mladen Bosic visited Radovan Karadzic while he was being detention in Belgrade soon after his arrest.

Cleavage /  
conflict  
management

A similar transformation could be attributed to Haris Silajdzic and his Party for Bosnia and Herzegovina (SBiH), which was once a part of a moderate and reformist, though short-lived Alliance for Change. In the 2006 elections, Silajdzic secured his return to BiH political life by building a strong opposition to a package

of amendments to the BiH Constitution, using the argument that the package did not go far enough to curb the autonomy of the RS, which – in his opinion – should be abolished altogether.

Haris Silajdzic used the ICJ decision on genocide in Srebrenica to revive a sense of victimization among Bosniaks and to request a special status for Srebrenica, which dominated the political debate for several months and paralyzed any possibility of finding a consensus on other issues. He used every opportunity in the international arena to spread this message, including his speeches at the Council of Europe and the U.N. General Assemblies.

Dodik and Silajdzic created an atmosphere of uncertainty over the current constitutional arrangement and evoked some long-buried anxieties, which has diverted attention away from real reforms.

The Party of Democratic Action (SDA) came to power before the war and represented the Bosniak community. Although it was originally one of the three major nationalist parties, it has been slowly moving toward more pragmatic policies and has played a key role in building coalitions around individual policy issues. As such, it has become a reliable partner for both the governing as well as the opposition parties. Its position was further strengthened after the 2008 municipal elections, and its moderate president, Sulejman Tihic, recently delivered a groundbreaking speech announcing a total shift in SDA policies, namely, that its focus would move away from the victimization of Bosniaks and the prevailing wartime rhetoric and more toward the future. However, the real test for the appeal of Tihic's rhetoric will be the party congress scheduled for 26 May 2009, in which he will be confronted with more conservative party officials vying for the presidential candidacy.

A similar trend – though one with much lesser intensity – can be seen in the Bosnian Croat community, where the HDZ has gained ground against the Croatian Democratic Union 1990 (HDZ1990) and its radical separatist policies. The SDP remains the major opposition party with cross-ethnic appeal.

The political system has weak or no links with civil society. There has been an attempt to fill this void through a memorandum of understanding between the nongovernmental sector and the Council of Ministers, which was signed in May 2007. However, no implementing institutions have been set up so far, and civil society is generally not consulted in the policy-making process. One illustrative example was the case of mass protests against the cantonal and city government in Sarajevo after a teenage boy was brutally killed in a tram. The protests were organized by several NGOs, which claimed that those two levels of government were responsible for the boy's death because they had not undertaken sufficient public safety measures. The city mayor and cantonal prime minister not only

Civil society  
participation

ignored those requests, but they even issued paid advertisements in newspapers calling protestors a mob and their protests uncivilized and anarchist as well as threatening them with police action and arrests.

Even though the current leadership in BiH is not taking steps that would contribute to the process of reconciliation, in the long run, a series of legal decision made during the period under review may have just such an effect. On 26 February 2007, the International Court of Justice (ICJ) handed down a decision confirming Serbia's involvement in the massacre of Bosnian Muslims (Bosniaks) in Srebrenica in 1995. The court ruled that Serbia did not carry out genocide in Srebrenica, but is responsible for not having prevented it. While this decision can contribute to overcoming the injustices committed in the past, Bosniaks have primarily viewed it as an attempt to please all sides (or to not satisfy any one side more than the other). In reaction to the court's decision, Bosniak leaders and citizens' groups from Srebrenica demanded a special status for the city, which eventually resulted in a package of measures that would improve the economic situation in Srebrenica.

Reconciliation

According to a 2008 European Commission progress report, "cooperation between ICTY and the State level and Entity authorities is adequate at an operational level. In Republika Srpska, an Action-Plan on cooperation with the ICTY was drawn up in March 2008 and a coordination team for war crimes investigations was established."

The arrest of Radovan Karadzic and Stojan Zupljanin in Serbia has been seen as another positive development. In January 2008, the Council of Ministers adopted a decision on provisional measures freezing the funds and economic assets of the fugitive ICTY indictees. In 2008, 38 proceedings against 41 individuals were initiated. However, the European Commission also states that "Bosnia and Herzegovina needs to step up its efforts to combat the networks supporting indicted war criminals. According to the ICTY, Republika Srpska has failed to take appropriate action to have Radovan Stankovic re-arrested after his escape from Foca prison in 2007."

The State Court has continued to perform its duties well when it comes to war crimes. Ten people that have been indicted have been transferred from The Hague to the Special War Crimes Chamber in BiH, and four of these trials have been completed. In September 2008, there were 61 ongoing war-crime cases, of which 23 were at the state level, 23 at the federation level, 13 in the RS and two in the Brčko District. The number of untried war-crimes cases remains high, with estimates varying between 10,000 and 16,000. The Council of Ministers recently adopted a strategy for processing war crimes.

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The international community has focused on mainstreaming its technical support to BiH through EU institutions as a long-term strategy for development in BiH. In 2007, BiH became eligible for the use of EU Instrument for Pre-accession Assistance (IPA), and it has access to only two IPA components: transition assistance and institution strengthening, on the one hand, and cross-border cooperation, on the other. The aim of IPA funding is to support the realization of each country's National Development Plan (NDP). Since the creation and implementation of the NDP has a strong economic and financial impact, its creation has to be coordinated among the responsible authorities at many levels of government in BiH. The partnership relation between BiH and the European Union also requires matching funds from the BiH side. Problems will certainly arise in coordinating financial responsibilities from 14 parallel budgets, many of which are shared among two or more levels of government (e.g., transport, agriculture, education and science). The lack of political consensus was evident at the very start of IPA implementation, and there were long delays in signing the Financial Agreements with the European Union. The 2007 agreement was signed in mid-2008, with a delay of almost two years. The assistance was then further blocked when BiH authorities chose not to exempt EU assistance from the VAT. This problem was eventually resolved at the end of 2008. However, even when political consensus is reached, the inert public administration will continue to seriously hamper BiH's capacities to absorb assistance funds. Reform in this area is urgently needed. Otherwise, BiH will be unable to take advantage of IPA funds, prioritize development areas and improve its competitiveness.

Effective use of support

At the end of 2008, Standard and Poor's gave BiH a B+ credit rating along with stable future prospects. The main reason for such an improvement in its rating is reportedly its long-term prospects for economic growth along with relatively good repayment of foreign debt and monetary stability, which can mainly be attributed to the stability of the currency and measures taken by the Central Bank of BiH. However, delays in establishing the Fiscal Council, as well as the announced fiscal crisis and budget deficit predicted for 2009, may reverse this position.

Credibility

In spite of the perceived financial (though not so much economic) stability, the political situation continues to deteriorate. The international community has wavered when it comes to its perception of the trust in local institutions. On one hand, there has been an evident ownership vacuum created by a decrease in the influence of the international community. As a result, the growing political and ethnic tensions – particularly at the time of the decision on Kosovo's status and ICJ's decision on genocide in Srebrenica – informed its decision to extend the mandate of the Office of the High Representative after the meeting of the Peace



Implementation Council (PIC) in the spring of 2007. On the other hand, the high representative at the time, as well as some states and members of the PIC (in particular, Russia), have been making the case that there were visible improvements in the reliability of local governments in 2008, which would allow for the transition from the OHR to an office of the EU special representative in 2009. Formally, seven conditions (also known as “5+2 conditions”) will need to be fulfilled before making this decision. In its session on 27 March 2009, the PIC decided to re-extend the mandate of OHR, tying its closure again to the “5+2’ conditions” rather than to a specific timeframe. However, the PIC communiqué after the March meeting uses much stronger and decisive language that points toward the loss of credibility by local institutions and political elites: “... [The PIC] expressed its concern about political developments in BiH since it last convened. Divisive and nationalist rhetoric challenging the sovereignty and constitutional order of BiH has continued to be frequent. In addition, it condemned actions and statements by BiH actors that pose a threat to OHR staff, challenge the authority of the High Representative and the Peace Implementation Council Steering Board, and demonstrate disdain for the Parties’ obligations under Annex 10 of the GFAP” – the General Framework Agreement for Peace in Bosnia and Herzegovina – “and under the decisions taken by the High Representative. These types of actions display open disrespect for the fundamental principles of the GFAP, directly impact on the political situation, are unacceptable and have to stop.”

The increasing political polarization within BiH since 2006 has caused a radical shift in BiH’s neighborhood policies. The return to power of RS Prime Minister Dodik led to the strengthening of special relations between Serbia and RS at the expense of the state-level cooperation between the two countries. This policy shift was exacerbated by SBiH leader Haris Silajdzic, who made frequent and violent verbal attacks on Serbia and its politicians, claimed that he would never officially visit Serbia, and refused to congratulate Serbian President Boris Tadic and his party after their victory in the 2008 Serbian parliamentary elections. In January 2008, the RS National Assembly and the Serbian parliament signed a protocol on inter-parliamentary cooperation. Silajdzic has been opposed to holding a session of the Interstate Council on Cooperation between BiH and Serbia, which has been the main forum for cooperation between the two states since 2000. No border agreement between BiH and Serbia has been signed, and there has been no progress toward addressing issues related to property. The appointment of BiH’s ambassador to Serbia has been delayed for over two years.

BiH and Croatia continue to have several outstanding bilateral questions, including the status of Ploce harbor, the building of a bridge to the Peljesac peninsula, a dispute over two islands and the border issue along the River Una. BiH has not yet ratified the agreement on dual citizenship with Croatia. Nebojsa Radmanovic, a Serb member of BiH Presidency, said he would block the scheduling of the next

Regional  
cooperation

Interstate Cooperation Council with Croatia until such a meeting is organized with Serbia.

Political cooperation between BiH and Montenegro has intensified, and a state visit by the Montenegrin president took place in 2008. However, on 19 March 2009, Silajdzic triggered a mechanism for protection of a vital national interest against a decision to sign a bilateral agreement with Montenegro on dual citizenship. If successful, this initiative will be quite destructive for the bilateral relations between two countries.

BiH continues to be an active participant in regional cooperation initiatives, such as the South-East European Cooperation Process (SEECP), the Regional Cooperation Council (RCC), the Central European Initiative, the Adriatic-Ionian Initiative and the Danube Cooperation Process. The RCC, with its headquarters in Sarajevo, was officially inaugurated in February 2008. Bosnia and Herzegovina ratified the Host Country Agreement in April 2008.

In May 2008, BiH, Croatia and Montenegro signed a declaration on cross-border cooperation in the event of natural or other disasters as well as in the area of natural-resources management. Although BiH is signatory party to the Energy Community Treaty, it continues to lag behind in meeting its obligations under the treaty, especially in relation to the reforms in gas sector, due to opposition from the Republika Srpska.

Bosnia and Herzegovina has not recognized Kosovo's declaration of independence.

## Strategic Outlook

The state of democracy in BiH will not improve in the near future. The political standoff between the governing parties is likely to continue until the next elections, which are scheduled for 2010. In addition to the political disputes regarding democracy and economic stability, BiH will also have to deal with the looming global financial crisis, its indigenous economic problems, the weaknesses of its legal system and the low capacity of its public administration. More political turmoil may be expected if the state judiciary pursues stronger policies that prosecute and sanction the abuse of public office.

Somewhat more encouraging is the Party for Democratic Action's (SDA) shift of its policy focus away from the victimization of Bosniaks and more toward issues related to the future. If persistent and consistent in its application, the SDA could play the role of a stabilizing factor in BiH. However, they will be challenged, primarily by the Party for Bosnia and Herzegovina (SBiH), which will try to use Bosniak national feelings against the SDA and may mobilize members of veterans' associations, women victims of war and similar groups for this purpose. The SDA's role will also depend on the internal support it gives to President Sulejman Tihic at the next party congress as well as on its future choice of partners and agenda. For the pursuit of larger structural and constitutional programs, the SDA will need partners with a broader, cross-ethnic appeal. However, this would require a lot of 'wound-licking' between the SDA and the Social Democratic Party of BiH (SDP). Parties in BiH will polarize further along the lines of whether they will opt for policies of "firefighting" or will want to be more decisive in tackling real structural problems. This may turn out to be the main point of contestation between the SDA and the SDP.

So far, the international community has not had adequate responses to the radicalization of the political agenda and the rhetoric of Milorad Dodik and his party, the Alliance of Independent Social Democrats (SNSD). This will continue to be one of the biggest challenges to stability in BiH; at a minimum, stronger messages and stricter anti-radicalization measures will be required.

At its meeting on 26 March 2009, the Peace Implementation Council (PIC) decided to extend the mandate of the Office of the High Representative (OHR) and reconsider it again in June 2009, with a vision of transitioning it into the Office of the EU Special Representative (EUSR). The current EUSR office is preparing a plan for the transition and consolidation with the European Commission Delegation to Bosnia and Herzegovina, based in Sarajevo. However, the task and division of responsibilities between the two remains blurry. This may also mean a change in the way U.S. policy will be represented in BiH. So far, the high representative has had a principle deputy who was always a U.S. diplomat. The absence of this position in the future may be compensated for by some fluctuating arrangement that would ensure continued U.S. influence without its having to maintain a constant presence on the ground. Proposed U.S. Secretary of State Hillary Rodham Clinton has already indicated that she may use channels of "shuttle diplomacy" similar to those used extensively during the administration of her husband, former

President Bill Clinton, which involve deploying special envoys to specific crisis areas. However, much of this will depend on the general priorities of the new U.S. administration. So far, the U.S. priority in BiH continues to be its constitutional reform. This is likely to emerge as a top priority issue by the summer of 2009, as there is a plan to complete the process well before the 2010 election campaign gets into a full swing.

However, given the fact that BiH authorities will need to tackle the lagging implementation of the Stabilization and Association Agreements (SAA) and are still pursuing the agenda of the EU visa-liberalization roadmap (which proved to be very demanding and challenging for the weak BiH administration), the challenge will again be one of prioritization. For its part, the European Union should also consider some shift in policy in order to pursue a more determined democratization policy in BiH. The previous democratization efforts in Central and Eastern Europe were somewhat less challenging for the European Union since the divide on the political spectrum was much clearer. It was an almost binary situation: Political actors were either for or against democracy, either extremists or moderates. That split is far less clear in BiH. On the one hand, most politicians claim to be democratic and pro-European. On the other hand, over the past two election cycles, the “nationalists” have become more moderate, and some “moderates” have become rather radical.

From the perspective of a deeply divided society that is struggling to come to terms with its realities and does not have answers for overcoming internal divisions, and in the absence of a more functional constitutional arrangement, the European Union is the only structure that can provide a framework of democratic norms, principles and values to which most BiH citizens could subscribe without having to surrender their own identities and beliefs. However, as long as the interests of individual ethnic groups are able to penetrate and dominate the political arena in BiH through the existing divisive structures and as long as the rhetoric of nationalist political leaders prevails, public support for EU integration will continue to be marginalized. In the context of a society in which the governing elites would rather preserve the status quo than integrate their individual groups, EU membership is not very appealing because it jeopardizes this position. The European Union itself compromises its own values for the sake of short-term political wins and gains, as was the case with police reform in BiH. EU democratic values have not had much “selling power” and have not been powerful enough to overcome the undemocratic “counter-norms” and influence of nationalist rhetoric.

Given the lack of a domestic drive for democratization, such pressure should come from outside, particularly from the European Union. For this reason, the European Union should rethink and redirect its democratization policy in BiH toward greater insistence on substantial changes in applying democratic principles and practices. Its current policy relies mainly on positive and negative conditionality as instruments of policy promotion. But as the police reform and the hasty process of signing the SAA illustrated, the European Union compromises its own principles and values in cases when faster integration serves its alternative interests and short-term political goals. The experience with police reform has weakened the credibility of the European Union’s political conditionality in BiH, which poses a question regarding whether the conditionality instrument alone can be effectively used in support of future efforts at

constitutional reform or institutional consolidation within BiH. This would tie into the whole discussion on whether, and within the framework of what specific arrangement, is the European Union capable of guaranteeing political stability in BiH once the Office of the High Representative in Bosnia and Herzegovina (OHR) has been terminated. In that regard, the European Union may need new answers for resolving divisions within BiH. This will entail thinking beyond the creation of a virtual democracy and the standard “toolbox” of EU democratization policies, which will not yield the desired results. BiH is not a classical transitional society; instead, it is a post-post-conflict, divided society, which requires the use of tailor-made policies and instruments. Nonetheless, EU integration still is the process and the solution for the problems of BiH. For this reason, the European Union needs policies that will overcome the fear of an “endless entering into the European Union” by focusing more on the substantive and normative integration of BiH into the European Union. Thus, in the end, a more engaged approach is needed, one which would require both greater political will and attention from EU member states and institutions and an effective political broker in the position of the EU special representative (EUSR).