Policy Insights

Fair Market Conditions for Competitiveness in the Adriatic Region

Bosnia and Herzegovina Country Profile

OECD

GLOBAL RELATIONS
South East Europe

Acknowledgements

This Country Profile on Bosnia and Herzegovina is an outcome of the project *Fair Market Conditions for Competitiveness in the Adriatic Region*. The three-year project supports the creation of a level-playing field and fair market conditions in Bosnia and Herzegovina, Croatia and Serbia. It aims to enhance competitiveness and integrity in a sustainable and inclusive way through a collective action approach. The project, which is co-ordinated by the OECD South East Europe Division and funded by the Siemens Integrity Initiative, benefits from the guidance of Marzena Kisielewska and Anita Richter. The work is being led by Hendrik Bosshammer (all from the OECD South East Europe Division).

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Background and Context

In the South East Europe (SEE) region, businesses continue to identify corruption and lack of transparency as key constraints to economic growth and competitiveness. Similarly, the *OECD Competitiveness Outlook for South East Europe* from 2018 and 2021[1] found a number of policy shortcomings in this regard. These range from limited practical support for whistle-blowers and a lack of business integrity mechanisms to insufficient fining for anti-competitive behaviour and risks of politicisation of state-owned enterprises' governing boards.

To address these findings, the OECD is implementing the project *Fair Market Conditions for Competitiveness in the Adriatic Region* (the Project) which is funded by the Siemens Integrity Initiative and provides the context for this report. The Project aims to support the creation of a level playing field in three pilot countries from the SEE region (Bosnia and Herzegovina, Croatia and Serbia) to enhance competitiveness and integrity in a sustainable and inclusive way. Having a level playing field means that the same rules regarding financial, regulatory and fiscal treatment, as well as public procurement, apply consistently to public, state-owned and private companies. This ensures that no entity operating in the market is subject to undue competitive advantages or disadvantages, and that every actor has equal market access (OECD, 2012[1]). Levelling the competitive playing field can help boost productivity, efficiency, output quality and innovation. Eventually, a level playing field increases a country's level of competition and economic development as well as the economic well-being of its citizens. In this context, the Project's first key objective is to raise awareness about integrity standards and good practices among government officials, businesses and civil society. The second objective is to build capacity and to foster the implementation of recommendations on transparency and efficiency of anti-corruption and competition authorities. The third objective is to promote the latest knowledge on international standards and practices on anti-corruption and integrity in academic curricula, as academia plays a major role in educating future public and private actors.

By building on an extensive set of OECD analyses[2] – primarily, the OECD Competitiveness Outlook – and good practices from OECD member countries, as well as input from external experts and stakeholders, this document aims to support the Project's second objective. To this end, this country profile maps the main legal and institutional frameworks, key achievements and policy challenges and provides actionable policy recommendations in the areas of **anti-corruption, competition and state-owned enterprises (SOEs)** which are considered particularly relevant for creating fair market conditions. As these areas are interconnected, reforms in one policy domain may influence policy settings in the others (OECD, 2015[2]). For instance, the unjust allocation of power and resources as a result of corrupt practices, can create unfair market conditions by diminishing regulation and antitrust enforcement intended to correct market imperfections and by creating barriers to market entry. Moreover, bribery can direct companies' efforts towards rent-seeking instead of focusing on generating customer benefit. Corruption can also harm competition in public procurement by excluding potential competitors or by favouring others (OECD, 2010[3]). Inversely, high levels of competition and sound competition policies reduce opportunities and incentives for corrupt behaviour. Lastly, SOE and competition policies are often intertwined as they both influence the rules that apply to a specific type of market actor.

In this profile, a focus is set on the energy and industry sectors for several reasons: Firstly, given their significant contribution to GDP and employment in the Bosnian and Herzegovinian economy they are

[1] Competitiveness in *South East Europe: A Policy Outlook 2018* (OECD, 2018[13]); *Competitiveness in South East Europe: A Policy Outlook 2021* (OECD, 2021[68]).
[2] E.g. the publications *Competitiveness in South East Europe: A Policy Outlook* from 2018 and 2021, hereinafter OECD Competitiveness Outlook, and the *SME Policy Index: Western Balkans and Turkey* from 2019.

important to the country's social and economic development[3] (see Box 1 and 2). Secondly, ensuring a level playing field is particularly vital in these sectors. Since they are very capital-intensive, there are usually higher market entry barriers and a higher market concentration. This market dominance can attract more anti-competitive and corrupt behaviour to increase profit margins. Thirdly, in the energy and industry sectors there is a strong prevalence of SOEs since these sectors require considerable administration due to their size and indispensability for the population (IMF, 2019[4]). As governments make in some circumstances deliberate decisions to pursue non-neutral practices in the favour of SOEs (OECD, 2012[1]), a disruption of the level playing field may occur more likely in sectors with a high number of SOEs. Lastly, meeting specific standards in these sectors is also relevant for EU accession which Bosnia and Herzegovina is pursuing.

Box 1: The Industry Sector in Bosnia and Herzegovina

The **industry sector** plays a crucial role in Bosnia and Herzegovina's economy by contributing to 23.9% of its GDP (Santander, 2021[5]) and to 32.0% of employment (Agency for Statistics of BiH, 2020[6]). Bosnia and Herzegovina benefits from a long-standing specialisation in industrial production, wage-cost advantages compared to Western Europe and geographic proximity to the EU market (OECD, 2009[7]). The manufacturing sector receives the highest amount of FDI (32%), followed by the banking sector (26%). Other sectors with significant FDI are telecommunications (13%), trade (12%) and services (4%). FDI also contributes to 2.0% of the GDP (FIPA, 2021[8]).

Bosnia and Herzegovina does not have a unified approach to enterprise and industrial policy, since this is an exclusive competence of the entities. There is no state-level body promoting consistency between industrial strategies and other policies affecting industrial competitiveness. The rather fragmented institutional framework is not always conducive to business creation, investment, entrepreneurship, innovation and the promotion of SMEs (European Commission, 2021[9]). The value of industrial production by entities is accounted for by the Federation of Bosnia and Herzegovina (FBiH) (65%), the Republika Srpska (RS) (32%) and the Brčko District (3%) (Agency for Statistics of BiH, 2020[10]). The subsectors of the industry sector on which this country profile focuses are manufacturing, construction, transportation and water resources management.

The **manufacturing sector** makes up 15.2% of GDP (Agency for Statistics of BiH, 2022[11]) and it employs 20.6% of the working population (Agency for Statistics of BiH, 2021[12]). The sector increased its industrial turnover by 19.8% from 2015 to 2019 (Agency for Statistics of BiH, 2020[6]). Manufacturing is the leading sector in FDI (28%) (OECD, 2018[13]). Yet, it witnessed a sharp decline in recent years, especially for coke and petroleum products, following the overhaul of the oil refinery, and the production of textiles and leather products, which rely on the business of the European car industry (Central Bank of BiH, 2019[14]). There are projects in the automotive (e.g. Volkswagen), electronics (e.g. Siemens, Gorenje), communications technology (ICT, e.g. Microsoft, Cisco), food (e.g. Meggle, Nestlé), metalwork (e.g. ArcelorMittal) and textile (e.g. Socksmaker) industries. However, the trade balance is negative (-22.7%) (European Commission, 2021[9]).

The **construction sector** refers to the creation, renovation, or extension of fixed assets of infrastructure. It contributes to 5.5% of GDP (Agency for Statistics of BiH, 2022[11]) and employs 4.7% of the working population (Agency for Statistics of BiH, 2021[12]). The production index decreased by 4.2% from 2015 to 2019 (Eurostat, 2021[15]). The vast majority of construction firms are located in larger urban areas such as Sarajevo, Banja Luka and Mostar. Major companies are Euro-Asfalt (a private firm headquartered in Sarajevo) and MG MIND (a private firm headquartered in Banja Luka).

[3] The industry sector contributes to 27% of GDP and 35% of employment; the energy sector contributes to 4.0% of GDP and 1.2% of employment.

Construction companies supply key markets in the MENA Region, Russia and Asia, since local market demand decreased from 2009. The labour force is skilled and well recognised over the world, which explains the increase in foreign works by 131% from 2010 (FIPA, 2021[8]).

The **transportation sector** relates to the operation, construction and maintenance of transport networks such as rail, road and air transport. It accounts for 3.8% of GDP (Agency for Statistics of BiH, 2022[11]) and employs 4.8% of the working population (Agency for Statistics of BiH, 2021[12]). The main companies operating in the transport sector are SOEs or joint-stock companies with partial government ownership. Despite liberalisation efforts, the market remains very concentrated. Two companies belonging to each entity operate in the railway market: Republika Srpska Railways (ŽRS) in RS and Railways of the Federation of Bosnia and Herzegovina (ŽFBH) in the FBiH. The former is headquartered in Doboj, the latter in Sarajevo. They each have around 3 000 employees. Railway companies make up 0.6% of total employment. For road transport, the main companies are SOEs located in Mostar (Autoceste Federacije Bosne i Hercegovine), Sarajevo (JP Ceste Federacije BIH) and Banja Luka (Autoputevi Republike Srpske). There are four international airports, serving Sarajevo, Tuzla, Banja Luka and Mostar. There are currently two operative airlines, namely FlyBosnia (private and headquartered in Sarajevo) and Icar Air (private and headquartered in Tuzla).

The **water resources management sector** relates to water supply. It accounts for 1.3% of the GDP (Agency for Statistics of BiH, 2022[11]) and employs 1.7% of the working population (Agency for Statistics of BiH, 2021[12]). In Bosnia and Herzegovina, local, publicly owned companies are responsible for water supply and sewerage for municipalities. The country possesses considerable water resources, with great potential for general economic development in many areas (European Environment Agency, 2020[16]). This explains the importance of hydropower in the energy sector (see Box 2). Households are the largest water consumers (73.4 % of total public water supply in 2019). Water is abstracted from underground sources (47.4%), surface sources (35.0%), rivers and streams (14.6%), reservoirs (0.8%) and lakes (1.2%) (Bosnia and Herzegovina, 2019[17]). Bosnia and Herzegovina suffers huge losses of water through leakage in the existing water supply systems (Bosnia and Herzegovina, 2019[17]). As regards water catchment[4], agencies have been established for the FBiH following a new Law on Waters from 2008: the Agency for Water Catchment for the Sava River basin and the Agency for Water Catchment for the Adriatic Sea. In RS, water agencies have not yet been established and the Republic Directorate for Waters is currently responsible for water management[5] (European Environment Agency, 2020[16]).

Box 2: The Energy Sector in Bosnia and Herzegovina

The **energy sector** is a strategic industry in Bosnia and Herzegovina with substantial weight in its economy. It contributes to 4.6% of GDP (Agency for Statistics of BiH, 2022[11]) and employs 2.2% of the working population (Agency for Statistics of BiH, 2021[12]). It comprises the totality of industries involved in the production and supply of energy. The energy industry also includes integrated power utility companies such as renewable energy and coal. In 2018, the total energy supply (TES)[6] in Bosnia and Herzegovina amounted to 7 854 ktoe which corresponds approximately to 2.6% of

[4] A water catchment is an area of land through which water from any form of precipitation (such as rain, melting snow or ice) drains into a body of water (such as a river, lake or reservoir, or even into underground water supplies – 'groundwater').

[5] However, the Directorate for Waters in RS will soon be transformed into two water agencies, one for the Sava River basin and another for the Adriatic Sea basin.

[6] Total Energy Supply (TES) is the evaluation of energy supplied by fuels in their primary form, prior to any conversions such as coal to electricity.

Germany's energy supply (IEA, 2021[18]). The TES stems from coal (54%), oil (21%), biofuels (15%), waterpower (7%) and natural gas (3%) (IEA, 2021[18]). The majority of energy produced still comes from fossil fuels (63%). However, the remaining 37% are derived from renewable sources, an increase of 19.1% compared with 2009 (Eurostat, 2019[19]). The energy dependency rate, i.e. the proportion of energy that an economy must import, corresponds to 27.4% (Eurostat, 2019[19]) as opposed to the EU27 average of 60.6% (European Commission, 2021[9]).

SOEs and public enterprises dominate the energy sector. Elektroprivreda BiH (EPBiH), Elektroprivreda Republike Srpske (ERS) and Elektroprivreda Hrvatske Zajednice Herceg Bosna (EPHZHB) are the main public utilities for electricity (USAID, 2020[20]). They generate electricity predominantly from hydropower and lignite. Several new lignite-fired power plants are planned or currently under construction. The country is a major exporter of electricity to the regional market, including the EU. It purchases natural gas imported from Russia through one interconnector with Serbia. The first wind farm in the country started operating in 2018 (Energy Community Secretariat, 2020[21]). For gas the main transmission operator in RS, Gas Promet Pale a.d.[7], is an SOE headquartered in Eastern Sarajevo. The other operator is Sarajevo-gas a.d. Istocno Sarajevo: a vertically integrated company headquartered in Eastern Sarajevo. Only 3.3% of the market share is served under public supply conditions. The Banja Luka-headquartered SOE GAS RES is the dominant supplier serving 87% of the retail market. In the FBiH, the dominant market player is the Sarajevo-headquartered SOE BH-GAS. It holds an import contract with Gazprom Export and acts as a transmission system operator. The main company in the oil sector in the FBiH and RS is the joint-venture headquartered in Sarajevo, Energo Petrol (EP) (Energy Community Secretariat, 2020[21]).

Final energy consumption stems from households (38.3%), transport (30.0%), the industry sector (16.8%) and other sectors (14.9%) (Eurostat, 2019[19]). Energy prices are considerably lower than in the EU: -84.2% for medium sized households and -14.4% for non-household medium sized consumers (Eurostat, 2021[22]). Electricity prices are 59% lower and natural gas prices are 50% lower than the EU average (USAID, 2020[20]).

The following three subchapters on the areas of anti-corruption, competition and SOEs are each structured into policy issues which are fundamental for policy frameworks that effectively foster fair market conditions, ensure a level playing field and tackle corruption.

1. Anti-Corruption Policy: Fostering Integrity in the Public and Private Sector

Why Anti-Corruption Policies Matter

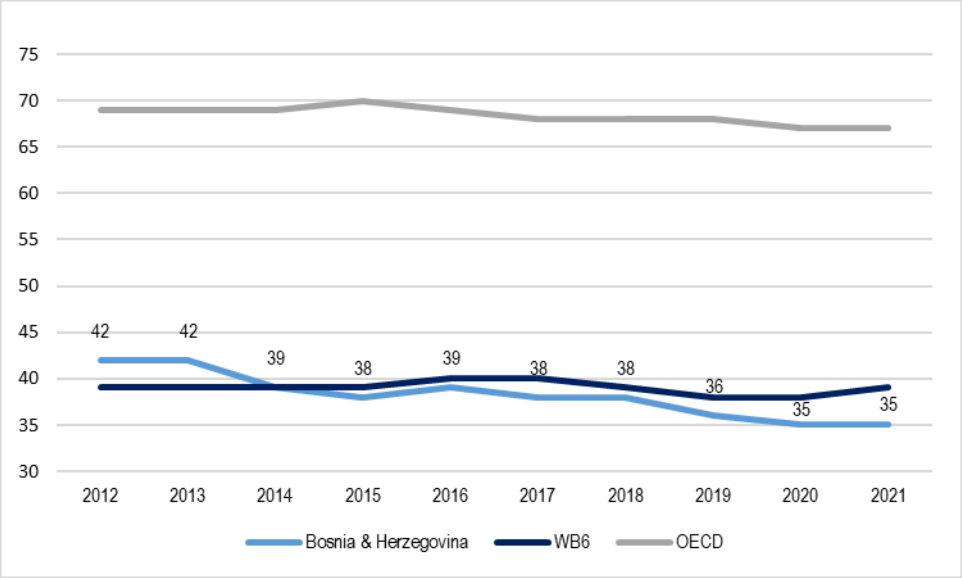
Corruption has negative effects on numerous areas that are crucial for a country's economic and social development such as investment, competition, entrepreneurship, government efficiency and human-capital formation (OECD, 2015[23]). Having well-designed standards on public integrity and anti-corruption is a prerequisite for tackling the consequences of corruption such as resource misallocation, price distortion, reduced quality or scarcity of goods and services, distorted competition, decreasing growth and innovation, unfair allocation of benefits and a loss of trust in the government and public authorities.

Perceptions of Corruption in Bosnia and Herzegovina

[7] a.d. stands for Akcionarsko društvo, meaning joint-stock company.

According to the 2021 Transparency International's Corruption Perception Index (CPI), Bosnia and Herzegovina ranks 110th out of 180 evaluated countries (Transparency International, 2022[24]). In comparison, the lowest scoring EU member states Romania (rank 66), Hungary (rank 73) and Bulgaria (rank 78) perform still significantly more advanced. Bosnia and Herzegovina, together with Albania, has the lowest performance among the Western Balkan Six (WB6). Its score has dropped by seven points since 2012 (see Figure 1). During the pandemic, the country documented violations of human and labour rights, as well as discrimination in economic aid distribution and alleged unlawful procurement of medical equipment (Transparency International, 2021[25]). These expert findings are also supported by public opinion. For instance, as shown by the Balkan Barometer 2021, 74% of the respondents do not think that the government fights corruption successfully; making it one of the most pessimistic economies in this regard in the Western Balkans by quite a wide margin (ACIT and EPIK Institute, 2021[26]). Survey participants agreed that among public actors in the country, political parties (88.0%), customs (83.5%) and the police (83.8%) are most affected by corruption. For all other categories of actors, the perception of corruption was always the highest in Bosnia and Herzegovina among all Western Balkan economies. This lack of public trust could indicate a need to further include civil society in the design of the anti-corruption policy framework.

Figure 1: Transparency International Corruption Perception Index: Bosnia and Herzegovina's Scores in Comparison (2012-2021)



Note: The scores of the CPI range from 0 ("highly corrupt") to 100 ("very clean"). The vertical axis shows a limited range of the scores for better visualisation of the yearly score changes. The scores are shown for the last nine years since Transparency International started to use an improved methodology from 2012 on which is still used today.
Source: Transparency International Corruption Perception Index from 2012 to 2021.

Findings of the OECD Competitiveness Outlook 2021 on Anti-Corruption Policies

The findings of the OECD Competitiveness Outlook 2021 show that although Bosnia and Herzegovina's performance regarding anti-corruption policy is below the WB6 average, its efforts regarding corruption risk assessment and anti-corruption public awareness and education reflect the strongest relative progress in comparison to the 2018 assessment. The country has several elements of a legal framework for the prevention of corruption and has strengthened awareness-raising and education

activities. However, the investigation and prosecution of high-level corruption remains limited and there is evidence of insufficient capacity and independence of prosecutorial institutions. The results of the OECD Competitiveness Outlook 2021 are elaborated in more detail in the sub-parts following this introduction.

The Role of Anti-Corruption Policies in the Energy and Industry Sector

Comprehensive anti-corruption policies are indispensable in particular in the industry and energy sectors[8], where large-scale investments have been made to modernise and expand the energy, transport and water infrastructures in Bosnia and Herzegovina. For instance, in the timeframe 2009-2020 the Western Balkans Investment Framework (WBIF) supported 26 projects in Bosnia and Herzegovina with WBIF grants of EUR 285.5 million across all eligible sectors as of June 2020, including energy (EUR 2.5 million), transport (EUR 232.8 million) and environment which also comprises water (EUR 39.1 million); whereas the loans signed on WBIF projects had reached EUR 1.6 billion (WBIF, 2020[27]). Furthermore, in the framework of the Instrument for Pre-Accession Assistance 2014-2020 (IPA II), it received EUR 238.5 million of bilateral grants, which inter alia covered funding for projects related to transport (EUR 31.8 million) and environment (EUR 42.2 million) (WBIF, 2020[27]). In addition, from 2013 to 2021 China has made investments in ten energy projects and five infrastructure projects related to transport in Bosnia and Herzegovina with respective values of approximately EUR 3.9 billion and EUR 1.3 billion (Balkan Investigative Reporting Network, 2021[28]). In 2018 and 2019, Russia was among the main investors with EUR 107.9 million, being predominantly directed towards the energy sector (FIPA, 2021[29]). In such circumstances, where investments are high but where the prevalent policy and legal frameworks do not sufficiently address corruption, the risk of anti-competitive behaviour usually grows significantly. Therefore, the anti-corruption policies mentioned in this subchapter also apply to the industry and energy sectors.

1.1. Prevention of Corruption

The **Agency for Prevention of Corruption and Co-ordination of the Fight against Corruption (APIK)** has been Bosnia and Herzegovina's main corruption **prevention body** on the state level since 2013. Its mandate includes developing the anti-corruption strategy and action plan and monitoring the implementation, designing methodologies, co-ordinating the work of public institutions, monitoring the implementation of anti-corruption legislation and instances of conflict of interests, taking action upon receiving information on corruption-related acts and developing educational programmes. The APIK has certain independence and accountability provisions. It reports to the Parliamentary Assembly (PA) of Bosnia and Herzegovina, which appoints inter alia the director of the APIK and two deputies upon proposal of the Selection and Monitoring Committee of the Agency, following open competition. The committee may not interfere in the daily work of the APIK nor request information on individual cases. Meetings of the committee should be open to public. However, in practice, the mandate of the committee expired in 2018. In September 2020 civil society informed about the appointment to the committee of someone included in the US sanctions list for corruption (Transparency International BiH, 2020[30]). In April and May 2021 the committee held two sessions in order to elect a new APIK director (Parliamentary Assembly of Bosnia and Herzegovina, 2021[31]). At the time of writing, civil society reported that the process was still on hold due to the blockade of central state institutions by Serbian representatives. According to the law, the committee should review reports on the APIK's operations at least twice a year. However, the annual reports for 2018 and 2019 have not yet been considered and approved for publication yet. Another shortcoming is that the APIK does not have any guarantees of a certain level of funding. With 30 employees, the APIK is one of the smallest prevention agencies in the SEE region. While the Federation of Bosnia and Herzegovina (FBiH) and the Republika

[8]See Box 1 and 2.

Srpska (RS) do not have specific prevention bodies, within the FBiH government there is an Anti-Corruption Team and in RS the Ministry of Justice is in charge of coordinating anti-corruption activities. Moreover, Sarajevo canton has a prevention body, the Office for Combatting Corruption and Quality Management.

The **Law on Conflict of Interest** in Governmental Institutions of Bosnia and Herzegovina governs matters of **conflict of interest** at the state level. There are also equivalent laws in the FBiH (not implemented since 2013) and the RS. The state-level law applies to elected officials, holders of executive functions and advisors, which is similar to the scope of the entity-level laws. In other respects, the laws differ and lead to a diversity of approaches. For example, the RS law defines a conflict of interest in terms of an actual or apparent conflict, while the state-level law does not cover an apparent conflict. Laws on civil service at the state and entity levels regulate conflicts of interest of civil servants. The **oversight institution** at the state level is the **Commission for Deciding on Conflicts of Interest (CDCI)**. The Republican Commission for Determining Conflicts of Interest in Public Bodies of RS is the oversight body in RS. The membership rules of the two commissions differ in terms of political neutrality. At the state level, members of the PA sit on the commission, whereas in RS members may not engage in party political activities. However, in neither case safeguards for political independence appear particularly strong. Bosnia and Herzegovina has not implemented the Group of States Against Corruption (GRECO) recommendations to harmonise "the legislation on conflicts of interest throughout the national territory" and to ensure the independence and timeliness of the advisory, supervisory and enforcement regime regarding conflicts of interest (GRECO, 2018[32]). According to the law, the CDCI may initiate proceedings based on a credible, well-founded and non-anonymous application, or by virtue of the office held in cases where an individual has information on a possible conflict of interest. In terms of sanctions, the CDCI may suspend payment of part of the net monthly salary, propose a dismissal from office and call for resignation. Sessions of the CDCI should be open to the public and decisions published on its website. The mandate of the CDCI expired in 2018 and it resumed activity only in mid-2020. Civil service agencies at the state level and in the FBiH have organised training on conflict of interest, but necessary effective and stable oversight in this area is yet to be developed.

Another vital tool to safeguard integrity in public service is **asset and interest disclosure** by public officials. It allows oversight institutions and the public to track the officials' finances, to scrutinise whether variations in wealth are justified and to monitor their outside interests. On the state level, elected officials, executive office holders and advisors are required to submit financial reports to the CDCI within 30 days of the assumption of office, followed by annual submissions. The CDCI decides the form and content of the financial report, which covers the personal data of officials and close relatives, information on public functions, current revenue and sources of income, assets, liabilities, and data on other positions, and the positions of their close relatives but not of their assets and income. The CDCI checks but does not publish the accuracy of the content of the statements. In RS, officials submit financial reports to the Republican Commission for Determining Conflicts of Interest. In the FBiH, no general functional system of disclosure is in place, although the Sarajevo canton maintains an online public register of data on the property of public officials. The Election Law of Bosnia and Herzegovina obliges elected officials at all levels to submit a signed asset declaration form to the Central Election Commission (CEC). Elected persons must also submit declarations after the termination of their tenure. The CEC makes the statements available to the public, with restrictions concerning personal information. The CEC is not legally competent to verify the accuracy of the data, and hence the system is conducive to failures in fully disclosing assets (CIN, 2020[33]). Generally, there is little evidence of effective implementation of asset and interest disclosure. Bosnia and Herzegovina is yet to establish a comprehensive and fully functional framework of asset and interest disclosure in line with the recommendations of GRECO regarding the publication and control of disclosure reports (GRECO, 2018[32]). At the time of writing, the Regional Anti-Corruption Initiative (RAI) is conducting the

project *Southeast Europe – Together against Corruption* (SEE-TAC) with support of the United Nations Office on Drugs and Crime (UNODC). One of the project's goals is Bosnia and Herzegovina's accession to and implementation of the International Treaty on Exchange of Data for the Verification of Asset Declarations which could bring about improvements in this area (Regional Anti-Corruption Initiative, n.d.[34]). For instance, it could lead to the establishment of a regional mechanism for data exchange on asset disclosure among integrity bodies to strengthen national asset disclosure systems.

Whistle-blower protection – mechanisms that protect employees, who disclose information allegedly providing evidence of a legal, regulatory or ethical violation, from retaliation – is provided at the state level by the **Law on Whistle-blower Protection in the Institutions of Bosnia and Herzegovina** (adopted in 2013). The law applies only to the public sector at the state level. Whistle-blower reports and identities constitute an official secret. If the APIK establishes that a detrimental action has been taken against the whistle-blower in relation to the reported case of corruption, it can issue an instruction to the director of the institution to act against this action and remove its consequences. The law envisages internal reporting as the default option, with external reporting to investigation/prosecution authorities, the APIK or the public subject to conditions, such as when the whistle-blower has reasons to believe that the recipient of the internal report is associated with the act of corruption. The law is short of providing many elements set out in EU Directive 2019/1937 on the protection of persons who report breaches of Union law. For instance, it is not applicable to the private sector; it does not cover several categories of reporting persons who are not current employees of the institution, as well as persons connected with whistle-blowers; it imposes specific mandatory preconditions for external reporting; and it envisages a narrower set of forms of retaliation. Moreover, the law does not envisage provisional protection before the decision on granting whistle-blower status and free legal assistance. The **Law on Protection of Persons Reporting Corruption of the Republika Srpska** (adopted in 2017) is in several important ways more comprehensive than the state-level law. For example, it protects reporting persons in both the public and private sectors, envisages protection of persons connected with the whistle-blower, does not set mandatory preconditions for external reporting, envisages a broad set of forms of retaliation and provides the right to free legal assistance. However, there is no whistle-blower protection law in the FBiH.

The APIK and the Ministry of Justice are the **oversight bodies** for the implementation of the law at the state level. The APIK has supported implementation by, among other things, supervising and co-ordinating the adoption of the respective internal acts in public institutions, establishing a toll-free number for reporting persons, preparing promotional materials, and conducting training and lectures. However, the government provided no up-to-date statistics on whistle-blower activity for this assessment, and it is therefore impossible to understand the effectiveness of implementation of the laws. According to the APIK, there have been instances of denied whistle-blower status due to reporting persons not being employees of state institutions covered by the law, not having acted in good faith, or failing to have concrete evidence for the allegations. According to the European Commission, the level of protected whistle-blowers has been very low in the last years. The APIK granted administrative protection to whistle-blowers in zero cases out of four requests in 2020, compared with one case in 2019 (European Commission, 2021[35]). In RS, one request for protection to whistle-blowers was filed and partially upheld in 2020, compared with one request field but dismissed by courts in 2019 (European Commission, 2021[35]). One of the most prominent recent whistle-blower cases involves Emir Mešić, an employer of the Indirect Taxation Authority (ITA), who reported suspected irregularities in the collection of parking fees at customs terminals managed by ITA. After media had reported on the allegations, ITA initiated a disciplinary procedure against the whistle-blower. He was suspended from work, even though he had been granted the status of a protected whistle-blower by the APIK (Balkan Insight, 2020[36]).

The APIK and certain other public bodies have engaged in **public awareness and education acitvities**. For instance, the APIK gives awards for the art and literary works of school students on anti-corruption topics through an annual campaign. The authorities have also produced easily accessible information materials, with both the APIK and the RS Ministry of Interior having published leaflets on reporting corruption. The Civil Service Agency of Bosnia and Herzegovina (CSA) regularly organises training for civil servants on anti-corruption topics, and the RS Ministry of Justice has been organising training for public sector institutions. The APIK has made online training available on its website. It has also analysed training and developed harmonised programmes for all public institutions in co-operation with state-level civil service agencies, the FBiH and RS. The APIK has been co-ordinating a major programme of ethics and integrity in the education system across Bosnia and Herzegovina, and its website contains a collection of education materials. According to the FBiH, its authorities have not engaged in other anti-corruption campaigns or educational activities.

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Establish guarantees for a certain **level of funding** to the APIK and increase its **human resources capacity** so that it can play a more proactive and decisive role. Ensure the regular and timely publication of the APIK's **annual reports**. Provide evidence regarding the renewed activity of the **APIK's Selection and Monitoring Committee**.
- Provide safeguards for political independence of the oversight institution for **conflicts of interest**. The OECD Guidelines for Managing Conflict of Interest in the Public Service can provide guidance on this issue.
- Ensure that functional systems for **asset and interest disclosure** are established on all levels. Increase the legal competencies of the CDCI and the CEC so that they can verify the accuracy of disclosed data.
- Develop and adopt harmonised and comprehensive **whistle-blower protection laws** at all levels in line with the EU Directive 2019/1937. Provide up-to-date statistics on whistle-blower activity to assess the effectiveness of implementation of the law.

1.2. Anti-Corruption Policy Framework

Due to its complex constitutional structure, Bosnia and Herzegovina has several anti-corruption policy planning documents. At the state level, the expired **Anti-Corruption Strategy and Action Plan for 2015-2019** envisage the highest strategic measures and set a framework for the harmonisation of strategies and action plans at other levels of government. The **Anti-Corruption Strategy and Action Plan 2020-2024** have still not been published and fully adopted yet at the time of writing. While the FBiH and RS have their own anti-corruption action plans, they can only adopt anti-corruption strategies once this has been completed on the state-level. The anti-corruption policies of the state, the FBiH and RS do not yet have dedicated budgets. The APIK has requested dedicated budget funding for the implementation of some anti-corruption policies in the new planning period 2020-2024 which has not been approved yet. The APIK ensures the overall co-ordination of anti-corruption policy, provides explanations regarding the implementation of certain measures and proposes new activities or changes to implementation. It carries out annual reviews of implementation of the state-level strategy and action plan. Four monitoring reports have been published already. The APIK has encountered difficulties in enforcing the requirement for institutions to report on progress regarding the implementation of the Anti-Corruption Strategy (OECD, 2018[13]). The third monitoring report (published in October 2018) notes continuing challenges of non-compliance with deadlines for submitting information, discrepancies in data and uneven quality of information. However, the APIK

also claims that it has been able to overcome these flaws with an adequate methodological and systematic approach (APIK, 2018[37]). According to the government, 48% of action plan measures have been implemented, 43% have been partially implemented and 9% have not been implemented.

In April 2020, the APIK disseminated a framework action plan for the prevention of **corruption during the COVID-19 pandemic** to governments and anti-corruption bodies at all levels and called upon all competent institutions to engage teams in developing individual action plans for anti-corruption action. In terms of implementation, according to the APIK most institutions have focused on publishing information online, especially regarding the supervision and control of recruitment processes and public procurement.

It should be positively highlighted that Bosnia and Herzegovina is participating in **international anti-corruption frameworks**. For instance, it is a member of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (OECD/ACN). The OECD/ACN is a regional outreach programme of the OECD Working Group on Bribery that supports its member countries in their efforts to prevent and fight corruption. Moreover, Bosnia and Herzegovina participates in the Open Government Partnership (OGP). In the framework of this partnership, members have to co-create a two-year action plan with civil society that outlines concrete commitments to enhance transparency, accountability and public participation in government. Bosnia and Herzegovina is currently implementing 7 commitments from its 2019-2021 action plan in areas such as open data and public participation.

The **inclusion of civil society** in the drafting of the anti-corruption framework is crucial to take ownership, identify the root causes of corruption, define effective policy responses and monitor their implementation. Participatory engagement of non-governmental stakeholders took place in the preparation of the Anti-Corruption Strategy and Action Plan 2018-2022 of RS and the Anti-Corruption Strategy and Action Plan 2020-2024 of Bosnia and Herzegovina. At the state level, an interdepartmental working group was set up to prepare these documents, with 27 public institutions of different levels involved, as well as the non-governmental sector and academia. However, published documents do not reflect how the proposals by stakeholders were treated. Although efforts have been made to include the non-governmental sector and academia in the design of anti-corruption frameworks, there is no platform yet that allows for more regular exchange between civil society representatives and like-minded actors from the private and public sector who want to tackle corruption through collective action. Box 3 explains the benefits of using collective action in the fight against corruption and how a platform for interaction between collective action community members would facilitate this endeavour.

Box 3: Using Collective Action to Counteract Corruption

In contexts that are vulnerable towards corruption, collective action has proven effective in promoting integrity and competition rules that actors will actively comply with (OECD, 2020[38]). A widely accepted definition by the World Bank defines collective actions as follows: “A collaborative and sustained process of cooperation between stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organisations and levels the playing field between competitors” (World Bank, 2008[39]). The stakeholders can be representatives from the public and private sector, as well as from civil society and academia who want to define rules and standards to which they adhere globally and individually. Collective action can take many forms. It may involve a statement or declaration condemning corruption, an integrity pact, an initiative to develop common standards and principles, or a certification process (OECD, 2020[38]). Collective action is a unique tool in advancing

integrity and achieving a level playing field as it ensures that all participants, who co-operate and monitor each other, adopt the necessary standards at the same time.

However, it requires time, expertise and close collaboration to be sustainable and successful in the long term as its coordination, design and implementation are complex. Collective action does not involve a single, isolated event. In fact, a certain period of development and maturation is required, during which the various aspects of improving integrity can be addressed (OECD, 2020[38]). The creation of a self-sustaining platform for interaction and dialogue between collective action community members is a way to ensure successful collective action by:

- Allowing for more regular communication, better coordination and easier exchange of good practices.
- Enabling the community members to proceed with and promote activities that raise awareness about anti-corruption practices in the public.
- Helping to identify and boost champions for integrity that can take the position of a role model.

By law, the APIK is responsible for prescribing a uniform methodology and guidelines to public institutions for making **integrity plans** and for helping them with their implementation. An integrity plan is a preventative mechanism for the fight against corruption created individually for different types of public institutions. Several guiding documents envisage **corruption risk assessment** as one of the stages in the preparation of integrity plans, for example the Rules for the Elaboration and Implementation of Integrity Plans in the Institutions of Bosnia and Herzegovina (APIK, 2018[40]), guidance on integrity plans in judiciary institutions (VSTV BiH, 2016[41]), and rules on the elaboration and implementation of integrity plans in RS. As of mid-2018, 73 public institutions at the state level had adopted integrity plans (APIK, 2018[37]). According to the 2019 report of FBiH Anti-Corruption Team, 78 institutions had adopted integrity plans, which is 91% of the targeted number (FBiH Anti-Corruption Team, 2020[42]). According to the government, several institutions in RS have conducted ad hoc risk assessments, with one performed for the preparation of the Anti-Corruption Strategy 2018-2022. However, it is a shortcoming that there is no concrete legislation on corruption risk assessments yet and that public institutions are not legally obliged to carry them out. Moreover, evidence of the adoption of integrity plans is fragmented, and no comprehensive and up-to-date data are available on the extent and quality of the practice.

Another important aspect of the prevention of corruption is the elimination of rules and practices that create favourable conditions for corruption, called **corruption proofing of legislation** (OECD, 2015[23]). The Unified Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina prescribe the methodology for assessing the impact of regulations including on corruption and conflict of interest. The rules are mandatory for state-level institutions but only recommendatory for other levels of authority. They designate the APIK as one of the control bodies whose opinion must be obtained for impact assessments. The methodology for assessing corruption risks in regulations has been published (Hoppe, 2017[43]). According to the government, in 2019 the APIK examined and gave opinions on seven regulations, but no information is available about any modifications based on the opinions. That said, there is no evidence of corruption proofing of legislation at the entity level. The aforementioned SEE-TAC project by RAI and UNODC aims to develop corruption risk assessment and corruption proofing of legislation mechanisms in Bosnia and Herzegovina with a focus on sectors that are most vulnerable to corruption (Regional Anti-Corruption Initiative, n.d.[34]). The project, which includes activities such as tailor made trainings and the development and implementation of impact assessment methodologies, could improve the performance in these areas.

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Advance the adoption of the new **Anti-Corruption Strategy and Action Plan 2020-2024**.
- Define dedicated budgets for **anti-corruption policies** on all levels.
- Disclose publicly which proposals by **non-governmental stakeholders** are taken into account during the draft process of anti-corruption strategies and how they are integrated. The OECD Public Integrity Handbook can provide guidance on this issue.
- Develop a self-sustaining **dialogue platform for civil society** to ensure regular interaction in a sustainable way. This can help increase NGO representation and public awareness about champions in the fight against corruption. Furthermore, such a platform could be used as a mechanism to monitor the implementation of the Anti-Corruption Strategy.
- Introduce legislation on **corruption risk assessment** and ensure that institutions are legally obliged to carry them out (see Box 4). Collect evidence of the adoption of **integrity plans** and up-to-date data on the extent and quality of the practice.
- Increase **corruption proofing of legislation** on the entity level.

Box 4: Ministry of Internal Affairs of Romania: Institutional Structure, Risk Assessment and Monitoring

The Anticorruption General Directorate (DGA) is a judicial police unit subordinated directly to the Minister of Internal Affairs of Romania. Its two main fields of activity are: countering and prevention of corruption. In terms of countering corruption, DGA judicial police officers carry out criminal investigation proceedings, organise professional integrity testing of Ministry of Internal Affairs (MIA) personnel and investigate corruption crimes committed by MIA personnel.

DGA officers conduct integrity tests which represent a type of operational activities. Tests aim to verify the reaction and adopted behaviour with regards to corruption offers from the part of the MIA personnel in virtual situations, similar to those faced by the personnel in the exercise of their duties. Prevention of corruption activities focus mainly on the anti-corruption training and education of the MIA personnel, in order to identify and deter situations that might generate corruption, and also to strengthen integrity standards of its staff. Raising awareness on the causes and consequences of corruption crimes and promoting the standards of integrity among the general public represent another area of activity.

DGA has the central role in co-ordinating efforts with regards to the National Anticorruption Strategy 2016-2020 implementation at the level of MIA using the following instruments:

- The report on risks and vulnerabilities to corruption is drafted every two years by DGA based on the results of the application of the Corruption Risk Assessment Methodology by the MIA units and the assessment of the integrity incidents (corruption cases committed within this period at the level of MIA). The report is used as a basis for drafting the Integrity Plan for the 2-year period, which contains specific strategic measures for all the units of the ministry.
- Assessment of the integrity incidents. DGA drafted a specific procedure through which for each corruption case at the level of the MIA DGA conducts a thematic evaluation. The objectives of the assessment are to critically assess the efficiency of the control system in place, analyse the main factors that made possible the corruption act and recommend specific actions for the department/field of activity where the corruption occurred.
- Quantitative and qualitative studies with regards to the corruption phenomenon. The studies aim at analysing with scientific objectiveness the corruption phenomenon, the main

corruption vulnerabilities, the causes of corruption and the efficiency of the prevention of corruption activities. DGA surveys both the general population and the MIA employees in terms of the level and impact of corruption and on the areas of action to which the resources should be allocated for better control of corruption.

DGA has been successful in dismantling complex corruption schemes in some of the units of the ministry: border police, driving license units, human resources, traffic police etc., and has received positive evaluation from audits carried out in different formats. The integrity testing of personnel has created a powerful deterring environment.

The key aspects to the DGA's thorough corruption risk assessment is that it is conducted on a regular basis; a consistent methodology is applied; specific procedures for the thematic evaluation of integrity incidents exist; the main corruption vulnerabilities are identified by both, qualitative and quantitative methods; and the surveys to evaluate the level and impact of corruption include the general population which constitutes an inclusive approach.

Source: Adapted from (OECD, 2020[44]), *Anti-Corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges, 2016-2019*, https://www.oecd.org/corruption/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-ENG.pdf.

1.3. Business Integrity and Corporate Liability

Business integrity refers to the commitment by businesses to consistently adhere to laws and regulations, certain ethical standards, and responsible core values. It is a prerequisite for a level playing field, as businesses can only compete fairly if none profits from unfair advantages resulting from corrupt practices. Business integrity is also an essential ingredient for sustainable and long-term business growth since having a good reputation is necessary to gain the trust of customers, suppliers, business partners and investors. Bosnia and Herzegovina does not have a distinct policy for promoting business integrity. Company laws in the FBiH and RS do not explicitly envisage the responsibilities of boards of directors to include overseeing the management of corruption risks, apart from general fiduciary duties. That said, the APIK held several trainings on ethics and integrity in companies for private sector representatives in 2019, in co-operation with the Foreign Trade Chamber of Bosnia and Herzegovina. In 2021, they also organised online trainings for employees of the Foreign Trade Chamber on the development and implementation of the Foreign Trade Chamber's integrity plan.

There is not yet any designated **oversight institution** or **reporting mechanisms** such as a hotline for anonymous reporting of corrupt practices or a business ombudsman institution which is responsible for receiving complaints from entrepreneurs, individuals and companies about corruption-related matters in businesses apart from the APIK. Business ombudsman institutions are designed to supplement judicial and institutional responses to corruption by investigating claims of abuse of businesses' rights, resolving disputes as an impartial mediator between the involved parties and providing advocacy or advisory services (Danon and Savran, 2021[45]). Some of them have also listed whistle-blower protection as their function (OECD, 2018[46]). Ombudsman institutions are unique actors as they offer non-judicial ways of resolving suspicions of misconduct and they do not depend on the involvement of high-level authorities. Instead, they rely on their independence, neutrality, accessibility, transparency and expertise which results in high levels of trust among the society (Danon and Savran, 2021[45]). While business ombudsman institutions interact with businesses and their employees and oversee if their rights have been respected, they also monitor the implementation of policies for ensuring business integrity. In doing so, they can hold governments and businesses accountable and make recommendations for improvement (OECD, 2018[46]). Such assessments are regularly included in reports that are submitted by business ombudsman institutions. Being a flexible

tool that can fit local contexts, the institutions can either be part of a government, be based in business chambers or be independent bodies established by governments and business associations with the assistance of international partners.

Bosnia and Herzegovina, the FBiH and RS each have a **Criminal Code and Law on Criminal Procedure**, which means that provisions regarding the **liability of legal persons** are multiple but generally similar. According to the Criminal Code of Bosnia and Herzegovina, for a criminal offence perpetrated in the name of or for the benefit of the legal person, the legal person shall be liable: 1) when the purpose of the criminal offence is arising from the conclusion, order or permission of its managerial or supervisory bodies; 2) when its managerial or supervisory bodies have influenced the perpetrator or enabled them to perpetrate the criminal offence; 3) when a legal person disposes of illegally obtained property gain or uses objects acquired in the criminal offence; or 4) when its managerial or supervisory bodies failed to carry out due supervision over the legality of work of the employees. Thus, for a legal person to be liable, managerial or supervisory bodies must be involved or must have failed to act. Sanctions include fines, confiscation of property and dissolution of the legal person. Security measures include forfeiture, publication of judgement and a ban on performing a certain activity. Legal consequences following the conviction of a legal person include the prohibition of work based on a permit, authorisation or concession. The law does not allow due diligence (compliance) defence to exempt legal persons from liability or mitigate sanctions, nor does it allow the court to defer the application of sanctions on legal persons if they comply with organisational measures to prevent corruption as determined by the court. The legal framework for corporate liability would benefit from guidance on anti-corruption compliance that managerial and supervisory bodies of legal persons should ensure. The effectiveness of the corporate liability framework for combatting corruption could not be assessed due to the absence of relevant statistics.

Regarding **beneficial ownership**, according to the government, information on beneficial owners of legal entities in the FBiH is not disclosed in a central register. In RS, the **Law on Registration of Business Entities** requires the submission of data on beneficial owners to the court register of business entities. Data from the Register of Business Entities are available to all interested parties without proving a legal interest, in accordance with regulations governing personal data protection. However, the definition of a beneficial owner (a founder with a 20% or more share) is narrower than envisaged in EU Anti-Money Laundering Directives. The identification of the beneficial owner (in accordance with a significantly broader definition) is one of the elements of customer due diligence, under the Law on Prevention of Money Laundering and Financing of Terrorist Activities, that should be carried out by both financial institutions and designated non-financial businesses and professions. The government provided no evidence of the level of compliance with these requirements.

Bribery of public officials is generally a common form of corruption practised by some businesses. The criminal codes used at different levels of government in Bosnia Herzegovina criminalise active and passive bribery. However, there are some inconsistencies in coverage. For example, concerning active bribery, third-party beneficiaries of the advantage are covered in the Criminal Code of Bosnia and Herzegovina but not in the other criminal codes (Transparency International, 2018[47]).

Lobbying can provide decision-makers with valuable insights and data, as well as grant stakeholders – such as businesses – access to the development and implementation of public policies. However, it can also lead to undue influence, unfair competition and regulatory capture to the detriment of the public interest and effective public policies. A sound framework for transparency in lobbying is therefore crucial to safeguard the integrity of the public decision-making process (OECD, 2013[48]). In Bosnia and Herzegovina there is no legislation to effectively regulate lobbying yet (European Commission, 2020[49]).

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Include the responsibility of boards of directors to oversee the **management of corruption risks** in businesses in company laws.
- Continue to **educate the business community** on the importance of preventing corruption, and of developing and implementing integrity plans in companies.
- Deploy **business ombudsmen** who are responsible for receiving complaints about corruption-related matters (see Box 5).
- Establish a **hotline for anonymous reporting** of corrupt practices in businesses to facilitate the collection of information and to lower inhibitions towards whistleblowing.
- Ensure the registration and disclosure of the **beneficial ownership** of legal entities in line with international standards in the FBiH and RS (see Box 5).
- Provide guidance on anti-corruption compliance for the legal framework for **corporate liability** that managerial and supervisory bodies of legal entities should ensure. Collect and publish data on the effectiveness of the corporate liability framework.
- Ensure that third-party beneficiaries of active **bribery** are covered in all criminal codes.
- Introduce legislation to regulate **lobbying**, such as a lobby register. The OECD Recommendation on Principles for Transparency and Integrity in Lobbying and the OECD publication *Lobbying in the 21st Century: Transparency, Integrity and Access* can provide guidance on this issue.

Box 5: Anti-Letterbox Companies Act of the Slovak Republic

The Anti-Letterbox Companies Act of the Slovak Republic entered into force in 2017 and was amended to be further improved in 2019. The Act is based on the principle that only those companies that voluntarily and reliably reveal their beneficial owners can "do business" with the state. Every person who has a business relation with the state specified in law, or who wishes to enter into such a relation, is obliged to register his beneficial owner. Such person is called a Partner of the Public Sector (PPS). Among other things, eligible relations with the state specified in law include receiving funds from the public budget, receiving property rights from the public sector, being a supplier in a public procurement, or fulfilment of other statutory criteria (for example, a mining permit owner). To be considered a PPS, the person has to receive financial means exceeding EUR 100 000 in one instalment or EUR 250 000 per year, acquire property or rights in value exceeding EUR 100 000. The register is managed by the District Court Zilina and is publicly accessible via Internet.

A beneficial owner (BO) is a natural person who benefits from the activities of a PPS. The BO either has control over a legal entity (solely or jointly with another person) or receives an economic benefit from the business of another legal entity. An "authorised person" (AP) entitled to conduct a registration of PPS into the register can be an attorney-at-law, a public notary, banks or branches of a foreign bank, an auditor, or a tax advisor. The AP must have a registered seat or place of business in the Slovak Republic and independently collect and assess all available information about the BO in a verification document. In this document, the AP determines the basis upon which the BO has been identified or verified and identifies the PPS shareholders and management structure.

Incorrect or incomplete information on the BO in the register is punished with a court-imposed fine in an amount corresponding to the economic benefit gained or, if not possible to determine such benefit, from EUR 10 000 to 1 million. In addition, the PPS executive bodies can be fined from EUR

10 000 to 100 000 and banned from the executive body function, followed by a registration into the "disqualification registry". The AP acts as a guarantor of payment of the fine imposed on the PPS executive body, unless the AP proves it acted with professional diligence. Anybody can file a qualified motion to the court asking to verify the registration of the BO. Facts justifying the doubts about the accuracy and validity of registration must be presented. In such case, the PPS bears the burden of proof regarding the accuracy and completeness of the BO registration.

Several court proceedings forced persons to admit their status of beneficial owners in companies receiving funds from the public sector. The investigation of the European Commission on a possible conflict of interest of the Czech Prime Minister, Mr. Babis, was based on the data from this special registry. The application of the Act also led to first fines imposed by the District Court Zilina, making the Act an effective tool for controlling those who benefit from public funds.

This example represents a comprehensive approach to registering beneficial ownership due to several aspects: registering is a mandatory prerequisite to do business with the state; concrete criteria about who is considered a PPS are established; the register is publicly accessible online and therefore transparent; and punishment mechanisms for providing incomplete information are in place to ensure compliance.

Source: (Leontiev, Pala and Wessing, 2019[50]), *First Years and Future of Anti-Letterbox Companies Act in Slovakia*, https://slovakia.taylorwessing.com/en/press-releases/first-years-and-future-of-the-anti-letterboxcompanies-act-in-slovakia.

1.4. Investigation and Prosecution

Anti-corruption frameworks can only be effective if there are well-functioning investigative and prosecutorial bodies and procedures which enforce them.

Little data are available on the **investigation and prosecution of high-level corruption**. In 2018, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) adopted the definition of high-level corruption. According to the European Commission, the track record of convictions for high-level corruption is extremely limited in Bosnia and Herzegovina (final conviction of two persons in 2017 and no final conviction in 2018) (European Commission, 2019[51]). Reportedly, only a minority of corruption investigations initiated by the **State Investigation and Protection Agency (SIPA)** in 2019 were finalised (European Commission, 2020[49]). OSCE Monitoring found that in 2017 and 2018 two out of six defendants in high-level corruption cases were convicted, i.e., the conviction rate was 33% and the sentences were imprisonment converted into fines (OSCE Mission to BiH, 2019[52]). The negative trend continued in 2019 when the conviction rate for high-level corruption cases was 12% (OSCE Mission to BiH, 2020[53]). It is common to employ plea bargain agreements, and sanctions tend to be lenient. Moreover, it is reportedly technically impossible to retrieve statistical data on final convictions (European Commission, 2020[49]). To strengthen the recovery of corruption proceeds, since 2018 the HJPC has imposed mandatory financial investigation in all corruption cases, but no data are available on the recovered amounts.

Among **specialised anti-corruption investigative bodies**, SIPA is the only institutionally separate body tasked with combating several categories of serious crime, including corruption. Within SIPA's Criminal Investigation Department, there is also a Section for Prevention and Detection of Financial Crime and Corruption. SIPA's Internal Control Department is responsible for internal investigations into allegations of misconduct by SIPA employees and investigations of actions involving the use of force, corruption, and abuse of authority by police officials. SIPA is the only specialised enforcement body that has certain special guarantees of independence as it is an operationally independent

administrative organisation. Nonetheless, SIPA lacks specific guarantees of a certain level of funding. The director of SIPA submits reports on the agency's work and the situation in the areas of competence to the Minister of Security of Bosnia and Herzegovina. In RS, several organisational units of the Ministry of Interior, such as the Department for Economic Crime and Corruption, are responsible for investigating corruption. The FBiH has not yet established specialised anti-corruption investigation units.

Bosnia and Herzegovina has no organisationally independent **specialised anti-corruption prosecutorial and judicial bodies**. Anti-corruption specialisation is ensured through internal sections and departments of the prosecutor's offices at the state level, in the FBiH (envisaged in law but not established in practice) and in RS. At the state level, corruption cases are assigned to prosecutors in the Section for Corruption within the Special Department for Organised Crime, Economic Crime and Corruption of the Public Prosecutor's Office. In the FBiH and RS, laws on the suppression of corruption and organised crime define key elements of the specialised departments. The Special Department of the Prosecutor's Office of RS is competent for 36 categories of crime, including corruption-related offences, but in practice most corruption cases are low level (OSCE Mission to BiH, 2019[52]).

In 2019, the European Commission reiterated the need to substantially enhance the capacity to investigate economic, financial and public procurement-related crime in terms of staff numbers, equipment, autonomy, specialisation and co-operation (European Commission, 2019[51]). An independent assessment carried out in 2018 and 2019 found that indictments in corruption cases frequently contained no or unclear identification of one or more of the elements of the offence; the poor quality of indictments resulted in a low rate of convictions in corruption cases. There are also reportedly flaws concerning the process of gathering and presenting evidence (OSCE Mission to BiH, 2019[52]).

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Collect and publish more data on the investigation, prosecution and convictions for **high-level corruption**.
- Establish guarantees of a certain level of **funding for SIPA**.
- Establish **specialised anti-corruption investigation units** in the FBiH.
- Increase **sanctions** for high-level corruption cases.
- Consider establishing organisationally independent **specialised anti-corruption prosecutorial and judicial bodies**. Enhance substantially the capacity to investigate economic, financial and public procurement-related crime in terms of staff numbers, equipment, autonomy, specialisation and co-operation (European Commission, 2019[51]).

Implementing the key recommendations on prevention of corruption, the anti-corruption policy framework, business integrity and corporate liability as well as investigation and prosecution of corruption cases can also serve as a basis to enhance integrity and transparency in competition and in SOEs. These policy areas will be examined in the following two subchapters.

2. Competition Policy: Moving towards an Improved Business Environment

Why Competition Policies Matter

Competition has been recognised as a powerful driver of productivity growth and innovation. It gives businesses incentives to be more efficient and innovative, to lower their costs, to reduce their prices, and to better respond to customers' needs. Furthermore, it motivates them to supply internationally competitive products and services and to upgrade in global value chains. Thus, a competitive economic environment helps raise economic growth and increase living standards, thereby also helping to reduce inequality. High levels of competition are especially important for transition economies like Bosnia and Herzegovina which can substantially benefit from the sophistication of products and services for the domestic market and for boosting their exports. Higher levels of competition can be achieved by implementing well-designed competition policies and by fostering integrity, since there is an inverse relationship between competition and corruption: low levels of competition and high levels of corruption are correlated (OECD, 2015[23]).

Findings of the OECD Competitiveness Outlook 2021 on Competition Policies

In general, the results of the OECD Competitiveness Outlook 2021 show that competition policies in Bosnia and Herzegovina have not undergone substantial changes compared to the 2018 assessment. The legislative framework on antitrust and mergers is broadly aligned with the EU competition rules and has not been significantly modified over the last few years. The Law on Competition of Bosnia and Herzegovina largely mirrors the relevant provisions of the Treaty on the Functioning of the European Union (TFEU) on restrictive agreements and on abuse of dominant position. Regarding the fight against anti-competitive behaviour, the impact of anti-trust and merger cases carried out by the Competition Council is still limited, and the related fines do not seem to ensure strong deterrence. Moreover, the leniency system is not effective in supporting cartel detection sufficiently. Advocacy action could also be expanded, with a view to both embedding competition principles in the legislation and spreading a competition culture. The results of the OECD Competitiveness Outlook 2021 are elaborated in more detail in the sub-parts following this introduction.

The Role of Competition Policies in the Energy and Industry Sector

Competition policies are particularly vital in the energy and industry sectors. As capital-intensive sectors, these are generally characterised by higher market concentration, as also seen in Bosnia and Herzegovina, and may attract more anti-competitive behaviour to increase profit margins. Moreover, a general strong prevalence of SOEs in these sectors increases opportunities for a disruption of the level playing field, meaning that SOEs may benefit from unfair advantages, due to their ownership structure. Additionally, in energy and industry projects, public procurement plays a major role – a process that sometimes attracts manipulation and rent-seeking attempts. In Bosnia and Herzegovina, public procurement processes are managed on the base of overly complex procedures which facilitate corruption (European Commission, 2020[49]).

2.1. Scope of Action

The **Competition Council (CC)**, an operationally independent public body established in 2004, implements the **Law on Competition** in Bosnia and Herzegovina and has exclusive competence and decision-making power in competition matters. It consists of six members: Three members are designated by the Council of Ministers of Bosnia and Herzegovina, two members by the Government of the Federation of Bosnia and Herzegovina and one member by the Government of Republika Srpska. Every year the Council of Ministers of Bosnia and Herzegovina appoints one member as the President of the CC for a one-year term. Decisions can be taken by majority rule, but at least one member from each of the three constituent ethnic groups must vote in favour. There are 20 staff in total, in addition to the council members. The size of the CC can be compared with other competition

authorities by looking at the OECD Database on General Competition Statistics (OECD CompStats[9]), in particular at the 15 competition authorities operating in small economies (with a population lower than 7.5 million). In 2019, the average total number of staff in these 15 competition authorities was 114, of whom 43 were working on competition. In contrast, the staff number of CC is significantly lower. The budget of the CC has decreased, as in several other national public institutions, from EUR 700 000 in 2017 to EUR 650 000 in 2019. Even considering the small size of the economy, this amount is very low when compared internationally. In 2019, the average budget of the 15 competition authorities in small economies that participated in the OECD CompStat database was EUR 5.4 million.

The Law on Competition of Bosnia and Herzegovina ensures **competitive neutrality** insofar as it stipulates that the competences of the CC encompass any natural and legal persons active in the production, sale or trade of goods and services, or involved in the trade of goods and services that have or may have an influence on competition in Bosnia and Herzegovina. This includes public bodies, regardless of ownership, seat or residence.

While the legal and institutional framework described above also applies to the energy and industry sectors, some sub-bodies perform additional regulatory functions focusing on specific aspects of competition policies. In the energy sector the regulator is not established as a single regulatory authority with economy-wide competences across natural gas and electricity. There are three regulatory entities: the **State Electricity Regulatory Commission (SERC)**, the **Regulatory Commission for Energy in the FBiH (FERK)** and the **Regulatory Commission for Energy of the RS (RERS)**. According to the OECD Competitiveness Outlook 2021, the governance and regulation of the energy sector is below the Western Balkans average. The Energy Community Secretariat perceives that the regulatory entities are not entirely independent and that they do not fully conform to the EU's Third Energy Package requirements (Energy Community Secretariat, 2020[21]). It states that Bosnia and Herzegovina's energy regulator is the least compliant regulator within the Western Balkans due to non-compliance of the governing legislative framework and lack of regulatory competences (Energy Community Secretariat, 2020[21]). Moreover, the autonomy of the regulatory authorities is limited in terms of staff management as salaries are restricted by limits on salaries for general civil servants. The appointment of new commissioners of the regulators' governing board, the Board of Commissioners, is also subject to significant political influence. Nonetheless, the Energy Community Secretariat has noted that the regulators, particularly SERC, co-operate internationally and try to implement as much as possible of the Third Energy Package within their limited scope. The monitoring of regulatory activities is also in line with international good practices.

In terms of **market operations**, the wholesale electricity market is largely deregulated, except within the RS, where electricity generation prices remain regulated, although price regulation is being phased out. There is no state-level legislation or target to establish and deploy a power market and associated day-ahead market. The electricity retail market is formally deregulated, with only households and small consumers allowed to use the Universal Supplier at a regulated price. The situation is less favourable in the natural gas market. In the FBiH, the wholesale market is dominated by the incumbent BH-Gas and in the retail market customers are captive to BH-Gas' monopoly position. Meanwhile in the RS, there is a more positive situation as a wholesale market exists although the virtual trading point is not operational, which means that transactions are done on a bilateral basis. Moreover, switching rules are in place and only a small portion of consumers are supplied under regulated public supply condition. Nevertheless, the market remains highly centralised with the incumbent GAS RES which has a market share of more than 85%.

[9] OECD CompStats is a database with general statistics about competition agencies, including data on enforcement and information on advocacy initiatives. It encompasses data from competition agencies in 56 jurisdictions, including 37 OECD countries (36 OECD countries and the European Union) (OECD, 2020[67]). The database currently covers the period 2015-19 and data will be collected annually in the future.

Regarding the industry sector, namely the transport sector, each transport mode has its own regulatory agency. In **air transport**, the Air Service Regulation provides the economic framework in terms of granting and overseeing the operating licences of community air carriers, market access, airport registration and leasing, public service obligations, traffic distribution between airports, and pricing. There is room for introducing regulatory reforms and bringing the governance of the aviation sector closer to European standards and international good practices. In **rail transport**, market access has not yet been approved, which means that foreign companies cannot access the rail infrastructure and service facilities. Network statements are prepared in Bosnia and Herzegovina but not published. According to EU directives, such statements should be published to ensure transparency and non-discriminatory access to rail infrastructure, and to services in service facilities. Limited progress has been made regarding **road market** regulation since the OECD Competitiveness Outlook 2018 assessment, with only some efforts undertaken to harmonise legislation with the Transport Community Treaty (TCT). Bosnia and Herzegovina is a member of the **Transport Community** which aims to align transport policies in the Western Balkans with EU standards. The TCT also contains guidelines on competition legislation that obliges the contracting parties to abolish policies that prevent, restrict, or distort competition in the transport sector. However, inter-ministerial and state-entity communication is weak due to the complex institutional structure of Bosnia and Herzegovina, which presents a burden specifically for the transposition of the TCT.

Key Recommendations:

The following key recommendations provide guidance for the way forward:

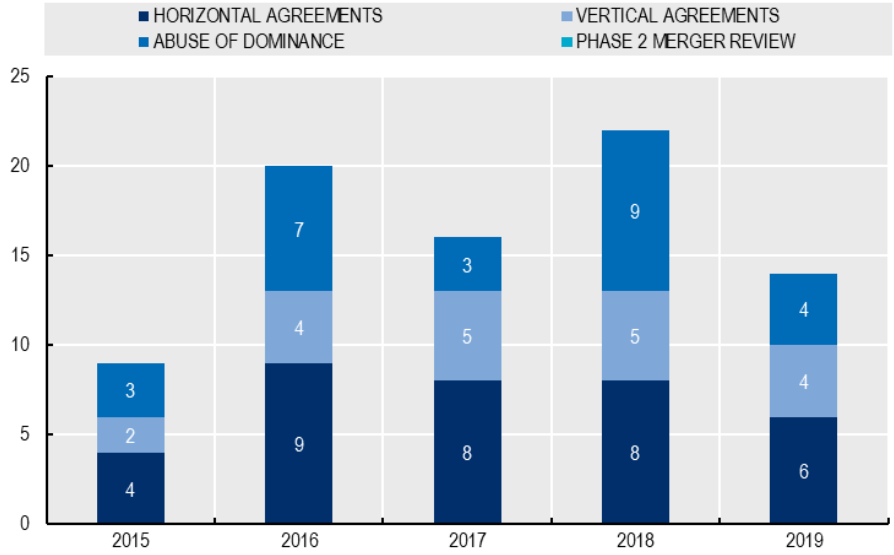
- Ensure that the CC is provided with adequate and predictable **financial and human resources**.
- Harmonise **energy policy frameworks** across energy sectors and markets, and between the entities. This would facilitate the internal efficiency of energy markets and cross-entity operations by stakeholders.
- Safeguard the independence and autonomy of **regulatory agencies** and the regulators' governing board in the energy sector by setting rules that lower political influence. Entrust Bosnia and Herzegovina's energy regulator with more regulatory competences.
- Enhance inter-ministerial and state-entity communication and strengthen regulatory bodies to move forward with the **transposition of the TCT**. Reinforce efforts to introduce **regulatory reforms** in air transport according to EU standards, to approve market access in rail transport, and to achieve progress in road market regulation.

2.2. Fight against Anti-Competitive Behaviour

The CC has appropriate powers to investigate and to sanction possible **antitrust infringements**. It can impose, cease and desist orders and remedies on firms that have committed anti-trust infringements. It is empowered to adopt interim measures in case the alleged competition breach poses a risk of irreparable damages, either on its own initiative or following a request by the parties involved. It can also accept commitments offered by the parties to remove the competition concerns and close the investigation. The CC is allowed to compel investigated firms and third parties to provide relevant information and can perform unannounced inspections on the premises of the parties, subject to a warrant by the competent court. The assessment of alleged anticompetitive conduct follows a thorough scrutiny of the collected evidence, which may include an economic analysis of the competitive effects of vertical agreements or possible exclusionary conduct. The CC has the authority to impose fines of up to 10% of the aggregate turnover of the undertaking. One fine was imposed in

2018 following an investigation on the delivery of heating energy which meant that the amount of fines peaked at around EUR 230 000. However, it dropped close to zero again in 2019. Overall, the impact of competition enforcement in Bosnia and Herzegovina is limited, despite a high number of decisions adopted by the CC in recent years (see Figure 2).

Figure 2: Competition Decisions in Bosnia and Herzegovina (2015-2019)



Note: In 2019, the CC took six decisions on horizontal agreements and four decisions on vertical agreements. These figures were even higher in 2017 and 2018, when there were eight horizontal decisions and five vertical decisions. However, it should be noted that most decisions have been related to the non-opening of formal proceedings, and no significant fines have been imposed over the last five years for prohibited agreements. In 2019 the CC also adopted four decisions on exclusionary conduct (abuse of dominance), down from nine decisions in 2018. Again, these figures include several decisions not to pursue or to drop the case, which means that sanctions following infringement decisions were negligible.
Source: Data provided by the CC.

The Law on Competition provides for a **leniency programme** that grants total or partial immunity from sanctions to firms that report to the CC the existence of an agreement and submit appropriate evidence. However, no leniency application has been submitted to the CC yet, which has never performed an unannounced inspection.

The Law on Competition also provides the ex-ante **control of mergers**, following the principles of the EU Merger Regulation. Thorough merger control, meaning the procedures used for reviewing corporate mergers and acquisitions, is vital to avoid anti-competitive consequences of concentrations, e.g. like monopolisation, less choice and higher prices for customers. The CC must prohibit concentrations that significantly restrict effective competition, in particular by creating or strengthening a dominant position. It can authorise the transaction subject to structural and/or behavioural remedies suitable to address the competition concerns, such as divestiture of assets and/or obligations to act or refrain from acting in a certain way. The investigative powers of the CC for merger review are similar to those related to anti-trust proceedings. Namely, it can compel merging firms and third parties to provide relevant information and may perform unannounced inspections on the premises of the parties. The assessment of notified mergers must also follow a thorough scrutiny of the evidence and an economic analysis of the restrictive effects. In the period

2015-2019, the CC received a limited number of merger notifications, from a minimum of 15 in 2016 to a maximum of 35 in 2018. In 2019, the CC rendered 21 merger decisions. All mergers were unconditionally cleared.

Ensuring that **public procurement** is competitive, is a prerequisite to secure the best value for public money. The current legal framework is partially in line with the EU *acquis* (European Commission, 2020[49]). The principle of non-discrimination has not been applied continuously as the government had adopted a decision on obligatory application of preferential treatment for domestic bidders at the rate of 30% for a one-year period starting on 1 June 2020. However, since June 2021 this decision is no longer valid anymore. Moreover, the legislative framework on concessions and public private partnerships is highly fragmented and needs to be aligned with the EU *acquis*. The **Public Procurement Agency (PPA)** of Bosnia and Herzegovina is the body authorised to initiate, implement and monitor public procurement reform. The PPA also manages the central procurement portal, where tenders, contract notices and other important information are published. The e-procurement system was enhanced with additional functionalities during 2019. However, the capacity to manage public procurement processes is still low as the PPA's administrative capacities are insufficient. The PPA's monitoring role is not strong enough yet to enable it to identify potential weaknesses and irregularities in procurement procedures. The right to legal remedy is laid down in the Bosnia and Herzegovina Constitution and in the **Public Procurement Law**. The legislation on review procedures is broadly in line with the relevant part of the EU *acquis* although time limits are excessively short. The implementation capacity of the **Procurement Review Body**, the first instance body that is responsible for the review procedures, is insufficient to address efficiently the high number of complaints submitted. According to Transparency International BiH, competition in public procurement is very limited, especially involving certain procurement items, such as information and communication technologies and vehicle procurement. Civil society also expressed concerns about e-auctions, particularly about cases where the bidder with the most favourable bid withdraws from the procedure and the contract is awarded to the second-ranking, usually more costly bidder (Transparency International BiH, 2020[54])

Concerning the fight against anti-competitive practices in the energy sector, the legislative base for **unbundling** and **third-party access** in conformity with international good practices as represented by the EU's Third Energy Package is not yet present across all levels of governance and sub-dimensions. Unbundling is the separation of energy supply and generation from the operation of transmission networks. If a single company operates a transmission network and generates or sells energy at the same time, it may have an incentive to obstruct competitors' access to infrastructure (European Commission, 2019[55]). Third-party access means that owners of natural monopoly infrastructure facilities have to give open and non-discriminatory access to other parties/competitors than their customers.

In electricity, the transmission system operator in Bosnia and Herzegovina is not unbundled in the sense of the EU's Third Energy Package as the legal basis for unbundling is still missing at the state level. Concerning electricity distribution system unbundling, the legal unbundling requirement according to the Third Energy Package is reflected in the legislation of both entities. Functional unbundling is also covered in legislation, but only in RS. In 2020, RS adopted the new Electricity Law of Republika Srpska which entailed legal compliance in the unbundling of distribution. Nonetheless, the distribution system operators in both entities continue to operate as legally and functionally bundled companies. Third-party access in electricity is enshrined in legislation.

The natural gas sector is operating outside of the EU *acquis* on the state level and is not even in line with the Second Energy Package. In the absence of a state-level approach, the entities have implemented divergent regulatory frameworks. The most promising actions have taken place in the

RS, which in 2018 transposed Third Energy Package legislation regarding natural gas. As part of this legislative package, RS established the basis for unbundling. Third-party access is only enshrined in legislation in the RS, and even there third-party access to pipelines is granted under regulated tariffs for only some parts of the network. In the FBiH, which is governed by a decree from 2007 that is not even compliant with the Second Energy Package, no legal basis exists for guaranteed, non-discriminated third-party access and unbundling. Without unbundling and third-party access, it is very possible that the system operators, which are natural monopolies, could prohibit market entry and lead to sub-economic market outcomes. The FBiH is currently working on implementing an Energy Sector Restructuring Programme that would address some of the shortcomings and establish the legal basis to move ahead with unbundling and third-party access. However, so far, this programme has not been adopted.

The government is **subsidising** coal production, with a cascading effect onto power via the five coal-fired power plants. An Energy Community study estimates that between 2015 and 2019 Bosnia and Herzegovina provided direct annual subsidisation to coal/lignite electricity producers amounting to EUR 166.6 million, or roughly EUR 33 million per year (Miljević, 2020[56]). The study estimates that this subsidisation amounted to an indirect subsidisation of electricity generated from coal of about EUR 2.1/MWh, meaning that coal-fired generation was around EUR 2.1/MWh cheaper than it would have been without direct subsidisation (Miljević, 2020[56]). This subsidisation has market distorting effects that lead to higher consumption due to cheaper electricity consumption away from market equilibrium and optimal outcome, while also making it harder for renewable energy to compete as it lowers prices. This is especially counterproductive as the public financial support mechanism for renewable energy will have to compensate for lower fossil fuel prices.

With regard to industry sector-specific efforts to prevent anti-competitive practices, in the transport sector adoption of the **TCT's procurement rules** is still lacking. Based on the law on procurement in force, alternative procurement processes are allowed for some specific groups. The institutions and implementing agencies carrying out activities related to procurement and implementation procedures do not have sufficient human and financial capacity to carry out their tasks. There has been no exchange of good practices related to the lessons learned for the implementation and procurement of public-private partnership (PPP) projects in the region. National bodies have not been given oversight roles for the procurement and monitoring of PPPs. There is no clear evidence of procurement procedures or project outputs being consistently monitored and no evidence of *ex post* evaluation of procurement procedures.

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Prioritise boosting **cartel enforcement** and imposing high fines to deliver a strong message that firms engaging in collusion risk severe punishment. The concern for fines is also a key driver for **leniency applications**, thus fostering the effectiveness of the leniency programme and further boosting detection.
- Extend the cooperation of the CC with the PPA to reduce the risks of **bid rigging** through careful design of the procurement process and to detect bid-rigging conspiracies (see Box 6). The OECD Guidelines on Fighting Bid Rigging in Public Procurement provide guidance on this issue.
- Harmonise the legislative framework on **concessions and public private partnerships** to align it with the EU *acquis*.
- Strengthen the **administrative capacities** and the **monitoring role** of the PPA and the Procurement Review Body by increasing their staff and by providing appropriate training.

- Advance the implementation of the EU's Third Energy Package, especially regarding **unbundling** and **third-party access** to avoid anti-competitive practices and to move the energy market into a position where international good practices are used.
- Reduce **subsidisation** to coal/lignite electricity producers and redirect resources to more productive use (e.g. to public investment or to firms that have the potential to generate more jobs and growth through innovation) if beneficial.
- Increase the human and financial capacities of agencies which are responsible for implementing the **TCT's procurement rules** and ensure monitoring of the procurement procedures and project outputs of PPTs. Authorities should also regularly exchange good practices with other Western Balkans economies related to the lessons learnt from implementing the TCT.

Box 6: Preventing Bid Rigging through Awareness Raising Materials and Training Programmes for Public Procurement Officials in Poland

The OECD Recommendation on Fighting Bid Rigging in Public Procurement requests Adherents to "ensure that officials responsible for public procurement at all levels of government are aware of signs, suspicious behaviour and unusual bidding patterns which may indicate collusion, so that these suspicious activities are better identified and investigated by the responsible public agencies". Therefore, the Office for Competition and Consumer Protection in Poland, UOKiK, has developed guidelines on bid rigging and a reporting form, which are targeted at procurement officials and contracting entities and draw on the OECD Guidelines. Both documents are available on UOKiK's website, along with additional public campaign materials, like films, videos, news articles and radio broadcasts. In order to reach out to procurement officials, the President of UOKiK, has established a network for competition grouping UOKiK, the Public Procurement Office, the Central Anti-Corruption Bureau, the Internal Security Agency, the Prosecution Services and the police. In the framework of this network UOKiK provides trainings on bid-rigging for public officials, municipalities and other partners. UOKiK also reaches out to stakeholders at various conferences and other events.

In 2014, UOKiK participated in a conference on the practical aspects of public procurement organised by the Public Procurement Office where it presented its insights concerning bid rigging practices. UOKiK has also contributed significantly to legislative works leading to the amendment of the Public Procurement Law, as well as to the drafting of the upcoming guidelines of the Prime Minister regarding recognition, prevention and detection of threats to trade, especially bid-rigging practices, detrimental to public interests like state safety or entrepreneurs' and consumers' interests.

UOKiK's actions reflect OECD best practices and build on particular strengths. Training materials are publicly available online which ensures easy access for everyone. Moreover, a variety of mediums are offered so that the trainings can be tailored depending on the audience. Lastly, creating networks facilitates the exchange of knowledge between officials.

Source: (OECD, 2016[57]), *Fighting Bid Rigging in Public Procurement: Report on Implementing the OECD Recommendation*, http://www.oecd.org/daf/competition/Fighting-bid-rigging-in-public-procurement-report-2016.pdf.

2.3. Advocacy

Promoting compliance with competition principles through advocacy is an important precondition for developing a stable competition culture in the long term.

The CC is entrusted by the Law on Competition to provide opinions and **recommendations on competition** issues and principles, either ex officio or upon request of the state authorities, economic entities or companies. The CC is also empowered to issue opinions on drafts laws and regulations that have an impact on competition. Proponents are required to submit the drafts to the CC and verify their compliance with the Law on Competition. Between 2015 and 2019 the CC did not issue any formal opinions to the government or parliament on draft or existing laws or regulations. However, the CC cooperates with public institutions on competition matters and expresses its views on industry practices that may restrict competition. Upon request by the Agency for Public Procurement, the CC has also been analysing the rules on public tenders. The CC has organised some **advocacy events** aimed at developing competition culture. Lastly, it should be highlighted that unlike most competition authorities, the CC cannot conduct **market studies**, which represent a key tool to gain an in-depth understanding of restrictions to competition in crucial sectors. Although this shortcoming has been pointed out in the OECD Competitiveness Outlook 2018, no changes were made.

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Encourage the CC to regularly speak out against laws and regulations that restrict competition to ensure **competitive neutrality** (see Box 7). The OECD's Competition Assessment Toolkit is a practical methodology that can support the CC in identifying unnecessary restraints on market activities and in developing alternative measures that still achieve government policy objectives. On top of establishing a competition mind-set and culture within the economy, such advocacy would strengthen the CC's standing and reputation.
- Give the CC the power to perform **market studies**, as most of the competition authorities in the world to assess how competition in a sector or industry is functioning, to detect the source of any competition problems and to identify potential solutions. The OECD Market Studies Guide for Competition Authorities can provide guidance on this issue.

Box 7: Measures for Ensuring Competitive Neutrality in the European Union

Countries that are members of the European Union or use the EU model for ensuring competitive neutrality often have a provision like Article 106 EC, setting the rules for entities that perform services of general economic interest or are granted special or exclusive rights. Broadly, Article 106 EC provides that the services performed by government entities, or private entities on behalf of the government, should be subject to the competition provisions of the EC Treaty – unless applying these rules obstructs the performance of the particular tasks assigned to them under the law.

In addition to Article 106 EC, the European rules on state aid and subsidies apply to all subsidies and state aids that Member States or other public bodies provide to any company, public or private. They are particularly important in the context of public companies, given the specific relationship public bodies have with public companies. State aids cover not only capital injections or grants, but also tax reductions or tax holidays, reductions in the social security costs and warranties. State aids are generally forbidden, though there are exceptions. The Member States are obliged to notify the

Commission if they plan to grant state aid to any company. The Commission then scrutinises the planned measure and decides whether to authorise it. Another tool used by the Commission to achieve competitive neutrality between public and private firms is the Transparency Directive, 13, which concerns the financial relationships between public bodies and public companies. The Transparency Directive requires separate accountability. Public companies that have both commercial and non-commercial activities need to separate their accounts to demonstrate how their budget is divided between commercial and non-commercial activities.

There are two characteristics that especially contribute to the practicality of the EU's approach:

- Firstly, the principle of neutrality was recognised in the Treaty of the European Union for more than 50 years. Article 106 of the Treaty clearly establishes that public companies fall under the scope of competition law and that EU Member States are not entitled to do anything contrary to this rule. Public companies are also subject to rules on monopolisation and state aids (subsidies).
- Secondly, characteristic of the system is that the Treaty empowers the European Commission with the tools to tackle problems concerning the economic activities of public-sector companies. The Commission can require Member States to apply competition rules to public companies. And, if a public company infringes competition rules, the Commission itself can issue a decision against that company requiring it to stop the conduct and can impose fines. If the public company infringes competition law with the assistance of the government, or due to governmental influence, the Commission can address a directive or a decision to the Member State, requiring it to stop these practices.

Source: (OECD, 2011[58]), *OECD Corporate Governance Working Papers No. 1, Competitive Neutrality and State-Owned enterprises: Challenges and Policy Options*, http://dx.doi.org/10.1787/5kg9xfgjdhg6-en.

3. State-Owned Enterprises (SOEs): Ensuring a Level Playing Field

Why SOE Policies Matter

SOEs play an important role in the Bosnian and Herzegovinian economy. The national-level entities together own approximately 80 SOEs (53 owned by the FBiH and 27 owned by the Share Fund of RS). In addition, the FBiH's cantons and municipalities own approximately 128 SOEs, while the municipalities of RS own over 100 SOEs. Moreover, the FBiH holds minority shares in 4 enterprises and the Share Fund of RS in 13. SOEs in Bosnia and Herzegovina employ approximately 80 000 people, accounting for an estimated 11% of national employment (Parodi and Cegar, 2019[59]). To ensure that these SOEs operate for the common good and on an equal footing with private companies, well-designed ownership policies have to be in place. In sectors with a strong prevalence of SOEs, it is crucial to have sound transparency and accountability policies that ensure a level playing field. Such practices prevent SOEs from receiving favourable financial, regulatory and tax treatment. Unfair advantages granted only to SOEs but not to private companies create market distortions, lowers the level of competition and thereby decrease necessary innovation and productivity. Lastly, consistent policies for restructuring and privatising SOEs have to ensure that such major interventions are conducted in a transparent and structured manner.

Findings of the OECD Competitiveness Outlook 2021 on SOE Policies

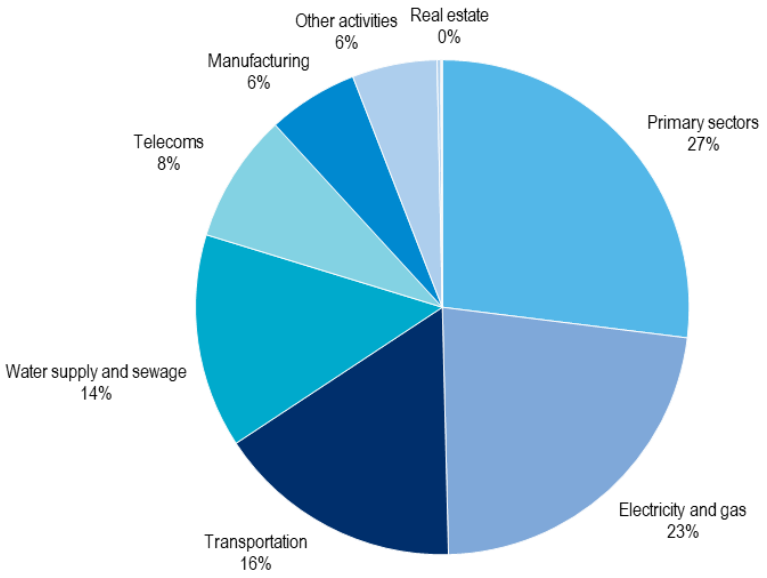
The results of the OECD Competitiveness Outlook 2021 show that Bosnia and Herzegovina's SOE policies have not significantly changed since the 2018 assessment. There is still an absence of significant state ownership reforms. Moreover, external assessments of SOEs' financial statements

point to low profitability and insufficient investments in infrastructure (Parodi and Cegar, 2019[59]). In contrast, the country's performance regarding transparency and accountability practices is better, reflecting the fact that most SOEs are required to prepare annual financial statements that are often publicly available. More efforts have to be made to ensure a level playing field with private companies. The fact that there are legal differences for SOEs which are incorporated as statutory entities and that SOEs' overall under-perform, distorts market efficiency. However, both the FBiH and RS have announced plans to establish central co-ordinating units to monitor SOEs, which, if implemented, could improve the overall performance going forward. The results of the OECD Competitiveness Outlook 2021 are elaborated in more detail in the sub-parts following this introduction.

The Role of SOE Policies in the Energy and Industry Sector

As measured by employment, SOEs in Bosnia and Herzegovina are highly concentrated in the primary sector (27% of all SOE employees), followed by electricity and gas (23%), transportation (16%), and water supply and sewages (14%) as shown in Figure 3. SOEs generally have a strong presence in the energy and industry sectors since they require considerable administration due to their size and indispensability for the population (IMF, 2019[60])[10]. In Bosnia and Herzegovina, SOEs are either the sole or the main providers of essential public goods, infrastructure and services that are critical for social and economic development.

Figure 3: Sectoral Distribution of SOEs by Employment in Bosnia and Herzegovina



Source: Calculations based on data provided in (Parodi and Cegar, 2019[59]), *State-Owned Enterprises in Bosnia and Herzegovina: Assessing Performance and Oversight*, https://www.imf.org/en/Publications/WP/Issues/2019/09/20/State-Owned-Enterprises-in-Bosnia-and-Herzegovina-Assessing-Performance-and-Oversight-48621. The figures used in the IMF study have been transferred into a different sectoral classification system, to allow for an alignment with the OECD's recurrent SOE data collection exercise (OECD, 2017[61]), *The Size and Sectoral Distribution of State-Owned Enterprises*, https://doi.org/10.1787/9789264280663-en.

[10] See Box 1 and 2.

3.1. Efficiency and Performance through Improved Governance

Regarding the clarification of **ownership policy** and rationale, neither the FBiH nor RS have developed an ownership policy that outlines the rationale for the state ownership of enterprises. Although this may be implicitly gleaned from other government policy documents, there is a problematic absence of any overarching policy explaining why the government owns companies and what it expects them to achieve. The rationale for state ownership is implicitly presented in the **Law on Public Enterprises** in force in each entity. In the FBiH, the Law on Public Enterprises establishes that a "public enterprise" is one that performs "public interest activities in the field of energy, communications, utilities, management of public resources and other public interest activities". This implies that the purpose of state ownership in the FBiH is to serve the public interest by offering public goods and services. Similarly, in RS the Law on Public Enterprises establishes that a "public enterprise" is any joint stock or limited-liability company that is at least majority owned by RS or local government units and is established to perform "activities of common interest". However, many SOEs in both the FBiH and RS do not have an obvious public interest activity, which underscores the lack of clarity about why the state owns certain companies. In a similar vein, in RS the state maintains ownership of 42 largely inactive companies that have not been registered as companies in accordance with applicable legislation. In these companies, the rationale for continued state ownership is particularly unclear. At the time of writing, the FBiH government is in the process of preparing an ownership policy for the SOEs under its remit, which is expected to clarify the entity's rationale for owning companies and its expectations of the SOEs in its portfolio. Efforts to professionalise state ownership practices are relatively limited in Bosnia and Herzegovina, as ownership responsibilities are often exercised in a decentralised manner by various line ministries, subject to almost no central co-ordination. In both government entities, while the government as a whole is by law responsible for exercising state ownership rights, in practice SOEs are mostly under the jurisdiction of line ministers who play a strong role in their operational oversight. This is problematic for several reasons, partly because it leads to a mixing of the state's roles – ownership roles, regulatory roles and policy development roles – which can lead to conflicting or unclear objectives.

The FBiH government is by law accorded state ownership rights, which it can exercise directly or through federal authorities, including ministries. In practice, many state ownership decisions are made directly by the government. All of the FBiH's 53 SOEs are under the explicit jurisdiction of several individual line ministries. This indicates that there is limited co-ordination of ownership practices and limited separation of ownership from regulatory functions. Independent regulators, notably in the energy sector, establish some degree of separation of functions, but this is not the case in all sectors. The authorities report that an informal co-ordinating unit is in place in the Prime Minister's Office, but additional steps are needed to give this unit the formal authority to co-ordinate ownership decisions across the FBiH.

Similarly, in RS the government is by law responsible for exercising ownership rights in fully state-owned enterprises, with these rights delegated by decisions of the government either to the Share Fund (which is managed by the Investment Development Bank of Republika Srpska) or to line ministries. Although the Share Fund's ownership responsibilities would seem to indicate a stronger separation of ownership and regulatory functions in RS, in practice the SOEs in the Share Fund's portfolio are also subject to oversight by relevant line ministries. This indicates a mixing of the state's ownership and regulatory roles among these SOEs. The Share Fund's portfolio includes all SOEs in RS that are incorporated as joint-stock or limited liability companies. SOEs incorporated under the separate legal form of "public enterprise" are held by the government as a whole and are under the jurisdiction of individual line ministries. In these companies, the government makes ownership decisions at the annual general meeting (AGM) based on recommendations and information provided by the responsible line ministries.

There are minimal elements of a common approach to **SOE board nominations**, namely that they are subject to general requirements set forth in legislation applicable to governmental appointments in both entities. However, these general requirements cannot really be considered to constitute an SOE board nomination framework as they apply to all governmental appointments and not specifically to SOEs. This also indicates the broader issue that SOEs often appear to be run as arms of the public administration, rather than as corporate entities operating under independent boards of directors with private sector expertise. Even if strong corporate boards with private sector expertise were put in place in BiH, the current level of SOE policy development would make it difficult for boards to effectively oversee enterprise strategy and management decisions given the absence of clear financial and non-financial performance objectives communicated by the state.

In the FBiH the Law on Ministerial, Governmental and Other Appointments outlines the general requirements for SOE board member nominations, notably establishing that an open competitive procedure must be carried out to fill relevant positions. Dedicated qualifications criteria are defined for each board vacancy; however, in the absence of a public document outlining the necessary professional qualifications for SOE board members, the procedure can be considered as lacking transparency.

Similarly, in RS the Law on Ministerial, Government and Other Appointments establishes that board nominations must be subject to a public competition. The law covers basic requirements, including that such appointments can only be made to persons aged over 18 who have not been dismissed from the civil service as a result of a disciplinary measure. The authorities of RS also reference the Law on Companies and the Law on Public Enterprises as setting forth information on the board nomination process, pointing to a complexity of requirements. The Law on Public Enterprises only sets forth minimal elements regarding the legal responsibilities for board nomination. It states that the general meeting of shareholders is responsible for appointing supervisory board members, and that the aforementioned Law on Ministerial, Government and Other Appointments must be respected in the process. Specific requirements are developed for individual board nominations, but no formal documents exist on how those criteria are established, so the process can be considered as lacking transparency.

The authorities have not established criteria to promote **independent and professional boards** in SOEs. In both entities, boards are generally perceived to operate as arms of ownership ministries, rather than as independent corporate oversight organs. In some cases, there is also a perception that individual SOEs are essentially under the control of political parties, which increases risks of corruption and mismanagement (U.S. Department of State, 2019[62]). This perception was confirmed by stakeholders interviewed for the assessment of the OECD Competitiveness Outlook 2021, as well as by several local media reports, for example by the Centre for Investigative Reporting. One such report indicated a perception that executive director appointments in one of the economy's largest SOEs, BH Telecom, are accorded based on political affiliations rather than professional qualifications (CIN, 2020[33]). Despite these shortcomings, it should be highlighted positively that SOE boards are not staffed predominantly by civil servants but by experts appointed via dedicated nomination procedures. In this sense, Bosnia and Herzegovina differs from many economies around the world, where SOE boards are often predominantly composed of civil servants who may not have the appropriate private sector expertise to oversee corporate strategy.

In the FBiH, the state's strong role in SOE corporate oversight is evidenced by the requirement that the chair of the supervisory board submits three-monthly reports to the government on its work. There does not seem to be any practice of requiring independent members on boards, although some basic requirements confer independence from management, for example the chief executive officer (CEO) cannot also be the chair of the supervisory board. Concerning duties and liability, SOE board

members in the FBiH are required by company law to act in the best interest of the enterprise. Specific legislative provisions stipulate that any damages to the company brought about by the CEO or a supervisory board member owing to "non-performance or disorderly performance of their duties" must be compensated. The company law also establishes fines in case the chair or CEO does not perform certain duties such as convening the AGM. Separately, a Government Decree on Executing Authorities in Companies with State Capital Share establishes that the CEO and supervisory board members must act in the interests of the capital owner (the state shareholder). This is supported by the requirement that the supervisory board chair submits at least once every three months a written report on the work of the supervisory board. This document applies equally to fully state owned enterprises and to those with minority shareholders, pointing to weaknesses in the equal treatment of all shareholders. If SOE boards are explicitly expected to act (only) in the interests of the state shareholder, then there may be instances when corporate decisions are made to serve the state's interests at the expense of minority shareholder interests. This could include politically expedient decisions that may jeopardise the commercial viability of SOEs.

The state's strong role in SOE management oversight – and the accompanying weakness of SOE boards of directors – is similarly evident in RS, where SOEs operate primarily under the Law on Public Enterprises and are subject to close direct oversight by the public administration, including the state audit office. In RS, the strong role of the state in corporate decision making is somewhat mitigated by the fact that SOE boards are reportedly not predominantly staffed with civil servants but with experts in relevant fields, including law, economics and technical sciences. The authorities report that civil servants can serve on SOE boards in exceptional cases, but that it is not common practice. There are no requirements for non-executive or independent members on SOE boards (except for stock-exchange listed companies whose boards must comprise a majority of non-executive directors, of which two must be independent). However, the Law on Public Enterprises of RS – which also sets forth SOE board duties – establishes the principle that board members must avoid any conflicts of interest that could go against the interest of the enterprise or prevent them from fulfilling their duties.

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Develop a **state ownership policy** and improve central **monitoring of SOEs** (see Box 8). The ownership policy should clearly outline the rationales for state ownership, clarify the strategic objectives for SOEs and put in place concrete performance criteria. The implementation of the objectives should be monitored and used to guide structural changes to improve SOEs' efficiency. The authorities of both entities should centralise data on SOEs to ensure that the elaboration of policy priorities and performance objectives are evidence-based.
- Strengthen **SOE board competencies** by improving the nomination framework and making it more transparent and merit-based. The authorities should strengthen and publish the professional criteria applicable to SOE board appointees to ensure that members have a sufficient diversity of expertise to effectively oversee necessary strategic and structural decision-making within SOEs.

Box 8: Establishment of a Governance Coordination Centre for SOEs in Lithuania

Lithuania had primarily decentralised state ownership arrangements. In most of the country's SOEs, primarily line ministries that are also responsible for sectoral policy and/or regulation in the relevant markets exercise state ownership rights. However, this complicates the harmonisation of

practices across the public administration. In contrast, a more centralised model would help improve monitoring and professionalising state ownership practices, ultimately leading to better performance and management of SOEs.

To address this challenge, Lithuania has taken significant steps to harmonise state ownership practices across the public administration through the development of SOE governance and disclosure standards and the establishment of a Governance Coordination Centre (GCC) tasked with monitoring and reporting to the public on their implementation. It notably produces a detailed annual report on SOEs. Its main tasks include the following:

- Preparing aggregate reports on SOEs, with information on their financial performance and efficiency.
- Supporting SOE goal setting, including by calculating return-on-equity targets and evaluating the content and implementation of strategic goals.
- Participating in SOE board nomination processes.
- Contributing to SOE policy formulation, including by making methodological recommendations and initiating legislative reforms.
- Advising and consulting with the government, responsible line ministries and SOEs on matters like SOE governance practices, ownership decisions and dividend pay-outs.

These reforms have led to significant achievements like the creation of an evaluation tool by the GCC – the SOE Good Corporate Governance Index – that facilitates the evaluation of the quality of SOE governance based on the Guidelines on Corporate Governance of SOEs developed by the OECD. An evaluation carried out by the GCC shows that the overall quality of the strategic planning of Lithuanian SOEs is improving. In addition, the transfer of the GCC to a public institution, together with the doubling of its operational budget, have further strengthened its capacity to monitor and to help enforce the state's governance and disclosure standards. Accordingly, the OECD has recognised these changes as "significant progress" in their report *Corporate Governance in Lithuania*.

A number of requirements proved key for these improvements to materialise. For instance, the responsibilities of the GCC had to be sufficiently broad and include a variety of tasks that are essential for the co-ordination of SOEs. Furthermore, the centralisation of these tasks in one body ensured the standardisation of processes, higher efficiency and greater clarity of responsibilities.

Source: (OECD, 2018[63]), *Corporate Governance in Lithuania*, https://doi.org/10.1787/9789264302617-en. See also the website of the Lithuania Governance Co-ordination Centre: https://governance.lt/en/.

3.2. Transparency and Accountability Practices

Financial and non-financial reporting of SOEs are important transparency and accountability practices that give stakeholders an accurate depiction of SOEs' performance, operations, liquidity and use of finances. SOEs in both entities are required, by various laws, to submit financial reports to various state entities. According to the IMF study, SOEs do not consistently comply with related reporting requirements, for example several do not make their financial statements available in a timely manner (Parodi and Cegar, 2019[59]). Limited information was provided by the authorities concerning SOEs' non-financial reporting practices for the assessment of the OECD Competitiveness Outlook 2021, indicating that producing annual reports with non-financial information is either not required of SOEs or is not a widespread practice. Nonetheless, the RS authorities report that SOEs regularly include some non-financial information in their annual reporting to the government.

In the FBiH, SOEs are required by the Law on Public Enterprises to prepare accounting records and financial reports in accordance with the Law on Accounting and Audit. It is not clear whether financial statements must be made publicly available. The Law on Public Enterprises requires that the AGM of SOEs submits "reports on their operations" to the municipal council, cantonal assembly or parliament at least once a year and that these reports are made publicly available, but these are not financial statements. The authorities report that approximately two-thirds of SOEs are required by various laws to publish annual reports, but limited information was provided on the content of these annual reports and whether they discuss SOEs' public policy activities or other non-financial information.

In RS, SOEs' reporting requirements are also mostly established through the Law on Public Enterprises, which notably requires that SOEs prepare financial reports in accordance with applicable laws on accounting and auditing, as well as three-year business plans that are submitted to both the Auditor General and the competent ministry. According to the Law on Public Enterprises, SOE management boards are responsible for drafting and supervising the implementation of these business plans, which include some basic non-financial reporting, for example concerning issues related to environmental protection and labour force trends. However, they are not required to be made publicly available, so they do not constitute the annual reports traditionally produced by companies.

Auditing, the examination of financial reports, increases the credibility of financial statements and gives the shareholders confidence that the accounts are true. Concerning auditing practices, certain categories of SOEs in Bosnia and Herzegovina are required to have their financial statements audited by an independent external auditor. In the FBiH, independent external audits are only required for SOEs that exceed certain size thresholds, in accordance with the Law on Accounting and Audit. Audited financial statements should be presented to the AGM with an external audit report. In RS, SOEs' financial statements are, according to the Law on Public Enterprises, adopted by the AGM along with an independent auditor's report. The independent auditor must submit a statement of independence with the audit report. In RS, SOEs are also subject to close oversight by the Auditor General, which reviews SOEs' three-year business plans. This indicates a general financial oversight system that mirrors more closely the public administration system (e.g. through public budget planning processes) rather than the systems of privately owned corporations. There is limited information on the quality and credibility of SOEs' financial statements in both entities, which, alongside the limited compliance of many SOEs' with existing reporting requirements, indicates that an in-depth review of SOEs' reporting practices may be warranted.

Key Recommendations:

The following key recommendation provides guidance for the way forward:

- Improve transparency at the level of both SOEs and the state as owner. There is scope for SOEs to go beyond financial reporting and produce more detailed reports on their **non-financial performance**, in particular for SOEs that are engaged in public-interest activities. The authorities should undertake an in-depth review of SOEs' reporting practices to identify and address weaknesses. The state should begin producing publicly-available reports on the performance of the SOE sector as a whole, using the information that is collected from individual SOEs (see Box 9).

Box 9: Aggregate Disclosure in Lithuania

Since 2010, the Lithuanian authorities have published an annual report on the characteristics, operations and performance of the SOE portfolio. The report is produced by a central co-ordinating

body, the Governance Co-ordination Centre, which is tasked with monitoring and reporting on SOEs' compliance with the state's policies and guidelines bearing on corporate governance and transparency. The report is available online and is notably produced in both Lithuanian and English. Among the main elements included in the report are the following:

State ownership policy. The report gives an overview of the Lithuanian state's ownership policy and disclosure requirements for SOEs, enshrined in two policy documents, Ownership Guidelines and Transparency Guidelines. It also references the key legal acts bearing on SOEs' operations. It furthermore communicates the state's overarching objectives for SOEs, based on sorting enterprises into three categories according to whether they are primarily commercially oriented, primarily public service oriented or a mixture of both.

Corporate governance index. The corporate governance index rates all SOEs according to the quality of their corporate governance in three dimensions: transparency, boards of directors, and strategic planning and implementation. This section of the report is also used to highlight significant recent developments or issues of concern, such as major changes in the functioning or composition of SOE boards of directors.

SOE executive remuneration. This section reports on the average remuneration of high-level SOE executives by sector and by corporate form.

SOEs' non-commercial objectives. This section reports on the costs associated with SOEs' non-commercial objectives ("special obligations" in national nomenclature), as well as their related funding arrangements. It provides a breakdown by individual enterprise, including any losses incurred for funding non-commercial objectives. The related information is requested annually from line ministries by a central co-ordinating agency.

Value and performance of SOEs. This section provides an overview of the value of SOEs, their annual aggregate financial performance and their contributions to national employment, all broken down by sector. It also reports on SOEs' rates of return and highlights significant related evolutions since the preceding year.

Reporting on individual SOEs. This section provides detailed reporting on recent financial and corporate governance developments in Lithuania's largest SOEs. It also provides information on their board composition, identifying which board members represent ministries and which are considered independent.

Lithuania's Aggregate Disclosure is comparatively on a high international level and is regarded as significant progress in the country's SOE reform. Its strengths lie in the following components: it is comprehensive (e.g. by also including reports about non-financial performance of SOEs) and detailed since it is produced by a central co-ordinating body; and it is easily accessible to both the Lithuanian and international public.

Source: (OECD, 2015[64]), *Review of the Corporate Governance of State-Owned Enterprises: Lithuania*, http://dx.doi.org/www.oecd.org/daf/ca/Lithuania_SOE_Review.pdf.

3.3. Ensuring a Level Playing Field

When it comes to **legal and regulatory treatment**, most SOEs in both entities are incorporated according to general company law (as joint-stock or limited-liability companies), although 11 SOEs in the FBiH and 6 SOEs in RS have not been incorporated as companies (they are "public enterprises",

javno preduzeće/JP) and operate primarily subject to enterprise-specific legislation and the **Law on Public Enterprises**. The authorities of both entities report that SOEs are generally subject to the same tax, competition and other regulatory treatment as private enterprises. While a separate Law on Public Enterprises regulates SOEs in both entities (meaning that SOEs operating as joint-stock or limited-liability companies are subject to a company law and an SOE-specific law), it does not appear to introduce major differences in legal treatment that would create specific advantages or disadvantages in the competitive marketplace. In fact, the SOE specific law in each entity establishes several basic principles related to ensuring fair competition in the marketplace.

In the FBiH the Law on Public Enterprises establishes some basic principles aimed at ensuring a level playing field between SOEs and private competitors. It notably establishes that there must be sufficient supervision of state aid to ensure that it does not distort fair competition. In this sense, although a separate law applicable to SOEs may create different legal treatment, it does take steps towards minimising differences in treatment between SOEs and private companies. In RS, the Law on Public Enterprises similarly establishes several principles related to avoiding distortions to fair competition in the marketplace, such as prohibiting abuses of dominant positions, liberalising services of general interest to prevent monopolies and prohibiting agreements by public enterprises that could prevent, distort or restrict competition in the marketplace. However, the presence of a separate legal form ("public enterprises") for some SOEs raises concerns about their operational treatment. In general, it is considered good practice to ensure that SOEs undertaking predominantly commercial activities are incorporated according to the general company law. Information provided by the authorities of the FBiH also points to some potential disadvantages that SOEs face owing to their state ownership, which may be shared by SOEs operating in RS. These disadvantages include the fact that SOEs are by law subject to the same public procurement procedures applicable to government bodies, which can create an operational burden that private competitors do not face. Such issues can be particularly acute in sectors that were previously monopolistic but where competition has been introduced (e.g. the postal services and telecommunications sectors). SOEs may also face advantages in such situations due to their historically dominant market share and regulatory leniency owing to their state ownership. SOEs' competitive position in markets where competition has been recently introduced should be continuously assessed to minimise market distortions.

Regarding **access to finance**, the authorities of both entities have limited formal information on whether SOEs benefit from favourable terms when accessing commercial credit. It is likely that as in other economies around the world, SOEs in Bosnia and Herzegovina benefit from at least an implicit state guarantee that many commercial lenders use to justify more favourable credit terms. It does not appear that explicit guarantees on SOEs' commercial debt are commonplace, but FBiH authorities report that they are sometimes accorded to SOEs, particularly when engaged in large infrastructure projects that often receive financing from international financial institutions. The Law on Debt requires that such guarantees are approved by parliament. In RS, the authorities report that there have been cases where the government issued explicit guarantees on SOE debt, but that this is no longer common practice. SOEs in Bosnia and Herzegovina often do not earn economically significant rates of return, which effectively constitutes a cost of equity capital that is not market consistent. For example, persistent losses posted by RS Railways – which is currently undergoing a restructuring process – has led the company to incur large unpaid debts to the tax office. External assessments have found that many SOEs have similar unpaid debts to state authorities, including for example health and pension contributions (U.S. Department of State, 2020[65]). It is likely that SOEs face some leniency concerning unpaid debts owed to the relevant authorities, pointing to their unequal treatment compared to private enterprises. Overall, SOEs' underperformance creates a situation where economic resources are not channelled into the most productive activities, which in the long term can crowd out private sector activity and lead to inefficient market outcomes. For instance, an analysis of landmine operations belonging to Elektroprivreda BiH, conducted for the period from 2015 to 2020

by Transparency International BiH, has shown that mines are often indebted with limited opportunities to improve their operations. The analysis has found examples of malpractice indicating the possibility of corrupt practices such as irregularities in public procurement. This was especially evident regarding rental of machinery and equipment, since contracts have been frequently awarded to the same companies (Transparency International BiH, 2021[66]).

Concerning the impact of the **COVID-19 pandemic**, FBiH authorities reported that several companies under the purview of the Ministry of Energy, Mining and Industry have suffered losses due to the crisis, and that the ministry is working on an overview of the financial state of its SOEs for the FBiH government. RS authorities did not report any specific measures taken for SOEs related to COVID-19. In April 2020, the **State Aid Council** published the *Manual on Application of State Aid Rules* and a notification on application of the **State Aid Law** in the context of COVID-19 pandemic, designed to be aligned with the European Commission's guidelines set out in the Temporary Framework of 18 March 2020 (European Commission, 2020[49]).

Key Recommendations:

The following key recommendation provides guidance for the way forward:

- Ensure a **level playing field** when SOEs compete in the marketplace. The authorities should review SOEs' operational requirements with a view to identifying any regulatory or operational differences that hinder healthy competition in the markets in which they operate. They should also consider fully corporatising SOEs that undertake primarily commercial activities but are still organised under the separate legal form of "public enterprise". In a similar vein, they should move forward with the necessary liquidations of SOEs that are no longer active.

3.4. Reforming and Privatising State-Owned Enterprises

Reforming and privatising SOEs are major interventions that require a smooth organisation to be conducted successfully. The current FBiH government reform agenda includes a section devoted to **reforming SOEs** that focuses on improving their performance, depoliticising management and strengthening their transparency. As mentioned earlier, at the time of writing the FBiH government is in the process of developing an ownership policy. There are also plans to formalise the Prime Minister's Office's (currently informal) SOE monitoring unit to strengthen central monitoring of SOEs and harmonise ownership practices across the FBiH. In RS, recent reforms have mostly involved the financial and organisational restructuring of individual large SOEs such as RS Railways to create a self-sustaining company. The restructuring process has so far led to staff reductions of over 800. RS authorities have recently established an SOE working group to undertake an analysis of SOE operations and reform priorities, with the support of the World Bank. Similar to developments in the FBiH, RS authorities intend to establish an SOE monitoring unit within the Cabinet of the Prime Minister.

Privatisation efforts continue in both entities, although some recent planned privatisations have been unsuccessful in RS. According to external assessments, SOEs can often be unattractive investments to potential private buyers due to, for example, their high unpaid debts that must be paid post-privatisation and/or requirements to maintain staff contracts after privatisation (U.S. Department of State, 2020[65]). At the time of writing, eight SOEs have been transferred to the FBiH Privatisation Agency for planned privatisation. The privatisation list in the FBiH emerged from a 2015 review of all SOEs that classified companies into three broad categories: 1) strategic companies that should remain in state ownership and not be privatised; 2) companies with business difficulties that should be

restructured; and 3) companies that should be privatised. On the basis of this list, the government instructed the FBiH Privatisation Agency to prepare a Privatisation Plan, with proposals for models and methods of privatisation for eight companies. Privatisations undertaken by the agency are in accordance with the Law on Privatisation of Companies, which also regulates privatisations undertaken by ten cantonal privatisation agencies. Since 2010, 24 SOEs owned by the FBiH have been privatised, all operating in the manufacturing sector. The latest privatisations took place in 2016, when the state relinquished its remaining minority ownership shares in the Sarajevo Tobacco Factory and the pharmaceutical company Bosnalijek. In RS, the Investment-Development Bank adopts a privatisation plan as part of its annual work plan, which lists the companies slated for privatisation, together with the current state ownership share. The 2020 plan included three SOEs lined up for privatisation. These SOEs undertook activities related to radar and missile systems, manufacturing parts for aircraft engines, and chemical corn processing. Recently, some planned privatisations in RS were not successful, including the planned stock-exchange auction of Ljubija a.d. Prijedor and a tender for the sale of Novi mermer a.d. Šekovići. The planned stock-exchange auction of the state's 65% shareholding in Ljubija a.d. Prijedor was reportedly unsuccessful due to the absence of qualified investors interested in the purchase, while the tender for the fully state-owned Novi mermer a.d. Šekovići resulted in only one bid, the terms of which the government determined unsatisfactory.

Key Recommendations:

The following key recommendation provides guidance for the way forward:

- Continue the establishment of SOE monitoring units to further **professionalise SOE management**.

Conclusion

This country profile provides an updated picture of the framework, challenges, achievements and recommendations regarding anti-corruption, competition and SOE policies in Bosnia and Herzegovina with a focus on the energy and industry sectors. The key recommendations provided for each policy issue are based on the extensive research and analysis of the OECD Competitiveness Outlook 2021, several other OECD publications and tools, as well as input from external experts and stakeholders.

Overall, several elements of the anti-corruption system exist in law but have not been functional in practice for prolonged periods of time such as the oversight committee of the APIK and significant parts of the framework for managing conflicts of interest and asset disclosure. While RS has a relatively more comprehensive law on whistle-blower protection, the respective law on the state level lacks several key elements and no such law exists in the FBiH. Generally, measures should be taken to increase incentives and encouragement for whistleblowing. Furthermore, Bosnia and Herzegovina would highly benefit from establishing a central register for beneficial ownership of legal entities to ensure its registration and disclosure in line with international standards. Lastly, convictions for high-level corruption are few and only on the state level, there is a specialised anti-corruption enforcement body with special guarantees of independence.

In terms of competition policies, the legal framework is aligned with international standards. However, there are relevant areas for improvement in competition enforcement. The efforts of the CC in tackling prohibited agreements and abuses of dominant position have not resulted in strong decisions with significant fines and the leniency programme partially lacks effectiveness. Ensuring a careful and better design of procurement processes is necessary to reduce the risks of bid rigging and to detect

bid-rigging conspiracies more frequently. There is also room for improvement for the CC when it comes to promoting competition principles and fostering competition culture through advocacy initiatives. Moreover, the CC – unlike most competition authorities – cannot carry out market studies.

To ensure that SOEs operate efficiently, transparently and on a level playing field with private companies, reforms are necessary for some policy areas. For instance, state ownership responsibilities in Bosnia and Herzegovina are dispersed across the public administration and not yet subject to a common ownership policy or clear performance objectives, contributing to SOEs' frequent under-performance. In addition, SOE boards of directors are often perceived to operate as arms of their responsible ownership ministries, rather than as independent corporate bodies. There is also scope to improve non-financial reporting and transparency by the state as an owner and to ensure that SOEs do not face any major regulatory or operational differences when competing.

When taking into account the key recommendations made in this country profile, Bosnia and Herzegovina should pay particular attention to the energy and industry sectors. Due to their indispensability for public service delivery and their major contributions to GDP and employment, having well-designed policy frameworks for anti-corruption, competition and SOEs in place in these sectors is vital for the social and economic development. To increase transparency and competitiveness in the energy and industry sectors, emphasis should be put on ensuring transparent public procurement procedures, further decreasing regulatory barriers that reduce competition, monitoring the distribution of state-aid and professionalising SOE management.

In essence, the present country profile provides a guidepost for reforms that authorities can use to enhance their policy efforts in the policy areas of anti-corruption, competition and SOEs. It has to be reiterated that these policy areas are often interconnected so that reforms in one of them might influence processes in the others. Implementing the policy recommendations made in this country profile equips the authorities with additional and improved tools to fight corruption and to create fair market conditions. Eventually, this will help Bosnia and Herzegovina to establish a level playing field and to increase its competitiveness and economic growth.

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COUNTRY PROFILES

FAIR MARKET CONDITIONS FOR COMPETITIVENESS IN THE ADRIATIC REGION PROJECT

High levels of corruption and lack of transparency are key constraints to economic growth in many countries worldwide. This Country Profile for Bosnia and Herzegovina aims to map existing legal and institutional frameworks in the policy areas of anti-corruption, competition, and state-owned enterprises to identify policy challenges to a level playing field. It also provides actionable policy recommendations which draw on a broad set of OECD analysis, guidelines, legal instruments and good practices as well as on additional data collected for the report.

This Country Profile, along those for Croatia and Serbia, is one output of the three-year OECD project to promote fair market conditions for competitiveness in the Adriatic region, which is supported by the Siemens Integrity Initiative. Through Collective Action, government officials from the region as well as business leaders, anti-corruption experts and practitioners, civil society representatives and academics have engaged to jointly enhance integrity and transparency.

These efforts are part of the engagement of the OECD South East Europe Regional Programme, which collaborates with the region since 2000 to advance private sector development, improve the investment climate and raise living standards for an inclusive and sustainable future for the people of South East Europe.

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