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**Executive summary**

**Note by the Secretariat**

**Addendum**

**Contents**

	<i>Page</i>
II. Executive summary .....	2
Bosnia and Herzegovina .....	2

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\* [CAC/COSP/IRG/2019/1](#).



## II. Executive summary

### Bosnia and Herzegovina

#### 1. Introduction: overview of the legal and institutional framework of Bosnia and Herzegovina in the context of implementation of the United Nations Convention against Corruption

Bosnia and Herzegovina signed the United Nations Convention against Corruption on 16 September 2005 and ratified it on 26 October 2006. According to the Dayton Agreement, Bosnia and Herzegovina is a State consisting of two entities, each with a high degree of autonomy: Republika Srpska and the Federation of Bosnia and Herzegovina. In addition, the District of Brčko operates as a single administrative unit under the sovereignty of Bosnia and Herzegovina.

The implementation by Bosnia and Herzegovina of chapters III and IV of the United Nations Convention against Corruption was reviewed in the second year of the second cycle, and the executive summary of that review was published on 25 September 2015 (CAC/COSP/IRG/II/4/1/Add.23).

The criminal legislation and legislation on criminal procedure are adopted at the State, entity and Brčko District levels. Each jurisdiction has its own criminal code and criminal procedure code. Entity and Brčko District laws are enforced solely by the courts of the entities and Brčko District, while legislation at the State level is enforced by the Court of Bosnia and Herzegovina.

From the constitutional standpoint, the current system is a highly decentralized federal system in which each entity has its own constitution, president, government, parliament and judiciary.

The specificity of the governance system and the fact that the federal Constitution was a result of the Dayton process and an integral part of the peace agreement creates a number of peculiarities. The Convention against Corruption is not one of the 15 international treaties that constitute a part of the Constitution of Bosnia and Herzegovina and that are listed in annex II to the Constitution. Nevertheless, as the Convention has been signed and ratified, the country is under the obligation to ensure the compliance of the domestic legal order with its provisions.

The most important institutions for preventing and countering corruption are the Agency for Prevention of Corruption and the Coordination of the Fight against Corruption (APIK) and the anti-corruption bodies at the entity and canton levels.

#### 2. Chapter II: preventive measures

##### 2.1. Observations on the implementation of the articles under review

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

Bosnia and Herzegovina has adopted a written anti-corruption strategy at the State level; strategies are also adopted by Republika Srpska, the Federation of Bosnia and Herzegovina, Brčko District and some of the individual cantons. In Bosnia and Herzegovina, there are a total of 13 anti-corruption strategies and 13 anti-corruption action plans.

The State Anti-Corruption Strategy has been developed in coordination with the entities and civil society and was adopted by the Government on 7 July 2015. The Strategy is accompanied by an Action Plan for its implementation.

APIK is the main preventive anti-corruption body at the State level in Bosnia and Herzegovina. It is independent and autonomous and reports to the Parliamentary Assembly of Bosnia and Herzegovina.

APIK is responsible for, inter alia, drafting the Anti-Corruption Strategy and the Action Plan for the prevention of corruption, as well as coordinating and supervising their implementation, coordinating the work of public institutions in preventing corruption and conflicts of interest, monitoring conflicts of interest, cooperation with international organizations, and the development of educational programmes for preventing and fighting corruption. For a more efficient implementation of the Anti-Corruption Strategy, institutions and agencies at all levels, as well as public agencies and other bodies of public authority, are obliged to cooperate with APIK.

At the entity level, two specialized bodies with preventive functions have been established: the anti-corruption team of the Federation of Bosnia and Herzegovina Government and the Commission for the implementation of the Anti-Corruption Strategy of Republika Srpska. In 2016, the Commission for prevention of corruption and coordination of activities to combat corruption in Brčko District was appointed.

Other bodies that play a role in the prevention of corruption include the Commission for Deciding on Conflicts of Interest, the Central Electoral Commission, anti-corruption bodies at the entity level, the Ministry of Finance, the financial intelligence unit in the Ministry of Security and the National Audit Office. The legislation provides these bodies with the necessary independence to carry out their tasks effectively.

On 25 October 2017, Bosnia and Herzegovina informed the Secretary-General that the Agency for the Prevention of Corruption and the Coordination of the Fight against Corruption is the designated prevention authority under article 6, paragraph 3, of the Convention.

Bosnia and Herzegovina actively participates in various anti-corruption initiatives and programmes. It is a member of the Group of States against Corruption and a State party to the agreement establishing the International Anti-Corruption Academy. Bosnia and Herzegovina participates in the Regional Anti-Corruption Initiative, which is based in Sarajevo.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

The Law on Civil Service in the Institutions of Bosnia and Herzegovina regulates the legal status of civil servants in institutions at the State level. The legislation proclaims that the recruitment and professional career advancement of civil servants is based on open competition and merit. Civil service is based on the principles of legality, transparency and publicity, accountability, efficiency and effectiveness, and professional impartiality.

The Law on Civil Service in the Institutions of Bosnia and Herzegovina does not differentiate positions with respect to the risk of corruption. Rotating individuals among jobs in the civil service is only possible through promotion or internal or external transfer, but is otherwise not practiced.

The bodies that manage the civil service include the institutions of Bosnia and Herzegovina, ombudsmen, the Civil Service Agency of Bosnia and Herzegovina and the Civil Service Appeals Board.

The Civil Service Agency provides training to the public officials with anti-corruption responsibilities.

The Central Election Commission (CEC) is responsible for the control over political party financing. CEC also collects declarations on the assets of candidates for elected office at the State and entity levels, as well as those of elected members of governmental bodies at all other levels of government, using a special form. The completed forms are made available to the public. CEC submits an annual report to the Parliamentary Assembly of Bosnia and Herzegovina.

Rules for recusal and disqualification of public officials in cases of conflict of interest are set out in the Law on Conflict of Interest in the Governmental Institutions of

Bosnia and Herzegovina. The Commission for Deciding on Conflict of Interest decides whether certain actions or omissions constitute violations of the provisions of the legislation, and maintains a registry. It also submits an annual report to the Parliamentary Assembly of Bosnia and Herzegovina.

Bosnia and Herzegovina reported that codes of conduct had been adopted for Members of Parliament, judges and prosecutors, employees of APIK and civil servants. As part of the training organized by the Civil Service Agency of Bosnia and Herzegovina, training courses are organized on ethics in public administration and the code of conduct for civil servants.

The Law on Whistle-blower Protection in the Institutions of Bosnia and Herzegovina provides for protected whistle-blower status to individuals who report corruption. In the event of adverse treatment of the reporting person (e.g., cancellation of an employment contract, suspension from work or downgrading to a lower-ranked position), sanctions can be imposed. Similarly, sanctions are imposed for knowingly submitting a false report.

The Law on Civil Service in the Institutions of Bosnia and Herzegovina (arts. 54–58) and the regulations on the disciplinary accountability of civil servants in the institutions of Bosnia and Herzegovina legally regulate, inter alia, disciplinary procedures, responsibilities and measures. At the request of the institutions of Bosnia and Herzegovina, the Civil Service Agency of Bosnia and Herzegovina conducts the first-instance disciplinary proceedings for serious breaches of official duty.

To strengthen the integrity of the judiciary and the prosecution service, the Code of Ethics for Judges and Prosecutors of Bosnia and Herzegovina, the Framework Action Plan of the Court in the Fight against Corruption, the Integrity Plan and Ordinance on the internal reporting of corruption and protection of persons who report corruption in the Court of Bosnia and Herzegovina, as well as the Integrity Plan of the Prosecutor's Office of Bosnia and Herzegovina, were adopted. Violations of anti-corruption standards contained in the aforementioned Code may entail disciplinary sanctions.

For other officials of the Prosecutor's Office of Bosnia and Herzegovina, the anti-corruption standards of conduct are prescribed by the Code of Conduct for Employees in the Prosecutor's Office of Bosnia and Herzegovina. Non-compliance with the provisions of the said Code may entail disciplinary liability.

*Public procurement and management of public finances (art. 9)*

Bosnia and Herzegovina has a decentralized procurement system, with individual ministries and agencies responsible for their own procurement. The Department of Public Procurement is the body responsible for the overall coordination of procurement in Bosnia and Herzegovina, as well as for providing advice to contracting authorities. The legal framework complies with the relevant European Union directives.

The distribution of information relating to procurement procedures and contracts, including information on invitations to tender and pertinent information on the award of contracts, is public, allowing potential tenderers sufficient time to prepare and submit their tenders. All procurement notices, contract award notices, public procurement cancellation notices, voluntary ex ante transparency notices and prior information notices are published on the public procurement portal and in the Official Gazette. The bidding documentation establishes the minimum criteria required for candidates with regard to their capacity, economic and financial standing, and technical expertise.

At the entity level, the Law on Budgets of the Federation of Bosnia and Herzegovina requires budget users to introduce a system of internal control. In Republika Srpska, a budget framework paper is adopted for a period of three years and is reviewed annually. The budget framework paper contains macroeconomic projections and forecasts of budget funds and expenditures for the next calendar year and the next

two fiscal years. The General Audit Office is authorized to audit all institutions financed from the budget, as well as funds and other off-budget institutions established by law.

*Public reporting; participation of society (arts. 10 and 13)*

While Bosnia and Herzegovina has adopted the necessary legislation on access to information at the State and entity levels, there are repeated concerns about the effectiveness of both proactive disclosure of information and responding to requests from citizens.

Since 2014, Bosnia and Herzegovina has been a member of the Open Government Partnership, an international initiative that aims to provide an international platform for domestic reformers committed to making their governments more open, accountable and responsive to citizens.

Information on the structure, functions and operations of the ministries and agencies is readily available on their respective Internet sites.

*Private sector (art. 12)*

The legislation of Bosnia and Herzegovina at the State and entity levels prohibits the establishment of off-the-books accounts and requires all subjects of the Law on Prevention of Money-laundering and Financing of Terrorist Activities to know their clients and to determine the beneficial owners and the purpose and intention of the business relationship. Transactions may be refused and suspicious transactions should be reported to the financial intelligence unit.

All companies are required to keep the information and documentation pertaining to the client, business relationship and transactions for 10 years.

Legislation at both the State and entity level prohibits the making of off-the-books or inadequately identified transactions. The recording of non-existent expenditures, the entry of liabilities with incorrect identification of their objects, the use of false documents and the intentional destruction of bookkeeping documents earlier than foreseen by the law are criminal offences.

*Measures to prevent money-laundering (art. 14)*

The anti-money-laundering legislative framework is harmonized with relevant international and regional conventions and standards, and special attention is given to the recommendations of the Financial Action Task Force, the Warsaw Convention and European Union directives. Money-laundering in Bosnia and Herzegovina is mainly governed by the Law on the Prevention of Money-Laundering and the Financing of Terrorist Activities (the AML Law), the banking laws (such as the Law on the Banking Agency of Republika Srpska and the Law on the Banking Agency of the Federation of Bosnia and Herzegovina), the criminal codes, as well as a number of regulations. The criminal procedure codes and criminal codes of the State, the two entities and Brčko District have been harmonized and contain similar money-laundering provisions (art. 209 of the Criminal Code of Bosnia and Herzegovina; art. 272 of the Criminal Code of the Federation of Bosnia and Herzegovina; art. 280 of the Criminal Code of Republika Srpska; and art. 265 of the Criminal Code of Brčko District). As a result, the ministries of the interior of the Federation and of Republika Srpska, as well as the Brčko District Police, have jurisdiction over combating money-laundering, together with the State of Bosnia and Herzegovina.

The central bank of Bosnia and Herzegovina has financial oversight of the banking sector. In addition, the State of Bosnia and Herzegovina, the two entities and Brčko District maintain separate bank supervision, regulatory and enforcement bodies. Regulations are harmonized at the entity and district levels, and are consistent with the AML Law. The AML Law establishes a list of financial and non-financial institutions subjected to this regime (art. 4). Supervisory authorities of these institutions are listed under article 80 of the AML Law. Reporting entities are required

to identify their customers, including occasional ones, as well as all beneficial owners (arts. 6 and 7 of the AML Law). They are also required to establish a risk profile of their clients and implement an appropriate risk management system (arts. 5–7 of the AML Law).

A risk-based approach is, in principle, taken pursuant to risk assessment guidelines established by the Financial Intelligence Department and by-laws issued by competent supervisory bodies. There are no corresponding guidelines for Brčko District, as it does not have any licensed banks in its territory.

Bosnia and Herzegovina recently underwent a national risk assessment, with the assistance of the World Bank, to identify, assess and understand the money-laundering and terrorism-financing risks within its jurisdiction; it was adopted by all levels of government. Bosnia and Herzegovina has established a financial intelligence unit, called the Financial Intelligence Department (FID). The unit is a member of the Egmont Group of Financial Intelligence Units and has concluded several memorandums of understanding with national and international institutions to share information received domestically and internationally, although such memorandums are not prerequisite to the sharing of information (art. 55 of the AML Law).

Article 71 of the AML Law, on cross-border transfer of cash, and articles 7 and 22 of the Indirect Taxation Authority Law, create an obligation for the Indirect Taxation Authority and the Border Police of Bosnia and Herzegovina to cooperate with the competent authorities of Republika Srpska, the Federation of Bosnia and Herzegovina and Brčko District in the supervision and control of the cross-border transfer of cash and financial instruments. The Indirect Taxation Authority, pursuant to article 71 of the AML Law, provides an obligation to declare every cross-border transfer of cash or its equivalent exceeding 20,000 marka (approximately 10,000 euros). FID is in the process of developing and implementing a decision on the data, record-keeping and means of provision of data relating to the transfer of cash across the border, for electronic reporting on the transfer of cash and financial instruments across the border. Foreign exchange operations in Bosnia and Herzegovina are under the jurisdiction of the entities and Brčko District, and are therefore governed by their respective jurisdictions, but have been harmonized to ensure consistency in reporting.

Articles 31 to 34 of the AML Law and article 21 of the Decision on Minimum Banking Standards to Prevent Money-Laundering and the Financing of Terrorist Activities have specific requirements for electronic transfers and money remitters that are in line with the Convention.

## **2.2. Successes and good practices**

- The development of a written anti-corruption strategy and action plan at the State level that is linked to the anti-corruption strategies and action plans of the entities of Bosnia and Herzegovina, with the “umbrella” Anti-Corruption Strategy 2015–2019 at the level of Bosnia and Herzegovina (art. 5)
- The establishment of specialized anti-corruption bodies at the entity level, tasked with preventive and policy coordination functions
- The adoption of specialized legislation to protect the persons who report corruption in good faith at the State level

## **2.3. Challenges in implementation**

- Ensure that authorities at the entity level consider implementing the good practices found at the State level in respect of the development and monitoring of anti-corruption strategies and action plans (art. 5).
- Ensure that the necessary material, human and financial resources are available to APIK and other anti-corruption bodies at the entity and cantonal levels for carrying out their functions (art. 6).

- Ensure that best practices (models) employed by Bosnia and Herzegovina for recruitment, hiring, retention, promotion and retirement of civil servants and other non-elected public officials are identified, harmonized and firmly established in the institutions at all levels (art. 7, para. 1).
- Improve monitoring of political party financing and election campaign funding (including the introduction of measures and instruments that will make the receipt of donations and other sources of income, as well as expenditure, traceable). Harmonize and unify the legal framework on financing political parties and election campaigns (art. 7, para. 3).
- With the aim of increasing the transparency and accountability of public office holders, consider the online publication of information on the assets and interests of elected officials, executive office holders and advisers who fall under the Law on Conflict of Interest, as well as of public servants, if applicable, with due respect to the legislation on personal data protection (art. 7, para. 4).
- Strengthen the legal framework on and supervision of conflicts of interest, including by harmonizing the legislation on conflicts of interest at all levels. Ensure the necessary independence and impartiality of the Commission for Deciding on Conflicts of Interest as the body in charge of the implementation of the Law on Conflict of Interest in the government institutions of Bosnia and Herzegovina by revising the selection and appointment procedures for the members of the Commission (arts. 7, para. 4; 8, para. 5; and 12, para. 2 (e)).
- Consider undertaking further activities to promote the application of codes of conduct (art. 8, para. 2).
- Adopt the necessary legislation to establish protected reporting channels for whistle-blowers at all levels of power and governance in all entities, cantons and municipalities of Bosnia and Herzegovina (art. 8, para. 4).
- Strengthen the public procurement system and consolidate actions to combat corruption in the field of public procurement through the mandatory publication of public procurement plans on the public procurement portal (art. 9, para. 1).
- Consider incorporating, in the ongoing and planned upgrades (improvements) to the e-public procurement system, more details regarding public procurements, including by establishing and publishing a database of decisions that will include all previously made procurement decisions (art. 9, para. 1).
- Ensure that records on implemented contracts are published on the public procurement portal (art. 9, para. 1).
- Consider implementing further activities to improve budget transparency, such as publishing all stages of the draft budget, designed in such a way to present key public finance information to a general audience, and the mid-year review, as well as to identify good practices and to implement them at all levels (art. 9, para. 2).
- Raise awareness and build capacities for implementation of international standards in internal auditing and internal control, especially through the provision of training for public sector organizations at all levels on the topics of risk management and the timely and effective reaction to irregularities and fraud, with emphasis on implementation of related managerial responsibilities (art. 9, para. 2).
- Clarify the legal prohibition on receiving gifts and prescribe precise definitions of the terms “occasional gift” and “gift of minor value” (art. 12).
- Consider introducing harmonized legislation at all levels to ensure that all records of any entity spending public funds are retained for an agreed number of years, with timetables for the destruction of main ledgers and supporting records also agreed. The legislation should address areas of risk and vulnerability, and prescribe offences associated with relevant documentation

(such as cash payments, recording of non-existent expenditure, the entry of liabilities with incorrect identification of their objects, the use of false documents, and the unauthorized destruction of or tampering with bookkeeping documents) (art. 12, para. 3); consider taking measures to train staff who work in internal audit departments in private enterprises in order to ensure their proper and legal compliance with international auditing standards and to more easily recognize suspected acts of corruption in private enterprises (art. 12); consider taking measures to promote an administrative culture within the institutions that will adopt and implement principles of proactive transparency, such as measures to improve public officials' knowledge of such principles (art. 13 (b)).

- Consider explicitly adopting a risk-based approach (art. 14, para. 1 (a)).
- Continue efforts to establish and strengthen reporting on the transfer of cash and financial instruments across the border (art. 14, para. 2).

### **3. Chapter V: asset recovery**

#### **3.1. Observations on the implementation of the articles under review**

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

The asset recovery regime in Bosnia and Herzegovina is in the early stages of development. The Convention may be directly applied; however, its application is yet to be demonstrated in practice, given the absence of clear procedures demonstrating its application among the four jurisdictions, as well as actual cases. The legislative framework consists of legislation at all four levels of government. At the State level, asset recovery is covered by the Criminal Procedure and Evidence Act, the Criminal Code and other laws, while at the entity and district levels there are specific laws in place regarding confiscation of unlawfully acquired property, as well as laws regulating asset management (see the first-cycle report on asset management in Bosnia and Herzegovina).

A number of law enforcement, financial and judicial institutions play a role in the asset recovery process in Bosnia and Herzegovina at all four levels. In addition, specialized and independent institutions have been established with the mandate to recover assets and manage them, such as the Federal Agency for the Management of Seized Assets of the Federation of Bosnia and Herzegovina and the Asset Recovery Office and the Asset Management Agency of Republika Srpska. These independent institutions do not have mechanisms in place to ensure domestic inter-agency coordination.

In Brčko District, the management of assets is conducted by the Office for Public Property Management of the District. Apart from Republika Srpska, Bosnia and Herzegovina has not yet had any cases either domestically or internationally. Results in Republika Srpska to date include \$13 million in managed or seized assets, \$7 million in confiscated assets and \$5.5 million in domestic asset returns.

Article 26 of the Law on Mutual Legal Assistance in Criminal Matters provides that authorities may, subject to reciprocity, spontaneously share information with another State if they consider that the disclosure of such information could assist in initiating investigations or criminal proceedings or if it could lead to a request for legal assistance by that State.

Bosnia and Herzegovina has ratified the Police Cooperation Convention for South-East Europe and is a signatory to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. In addition, Bosnia and Herzegovina has concluded bilateral agreements with a number of countries on police cooperation in international criminal matters, most of which relate to joint investigation teams.



*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

Beneficial owners are defined under article 3 of the AML Law. The text provides definitions of persons with a high-risk profile, in particular politically exposed persons, including both domestic and foreign politically exposed persons.

The Central Bank of Bosnia and Herzegovina coordinates the activities of the banking agencies of entities of Bosnia and Herzegovina that are in charge of bank licensing and supervision. These institutions take measures to prevent risks related to the use of new technologies (art. 2). Moreover, financial institutions subject to anti-money-laundering measures use various screening tools for profiling clients. Foreign politically exposed persons and United Nations Security Council resolutions are included in the screening tools. According to the AML Law and the circulars from supervisory authorities, it is required that enhanced due diligence mechanisms relating to transactions carried out by high-risk customers be put in place (arts. 23, para. 2; 27, para. 2; and 33 of the AML Law and arts. 4, 8 and 10 of the Ordinance on the Implementation of the Law on the Prevention of Money-Laundering and the Financing of Terrorist Activities).

Reporting entities are required to keep information, data and documentation for 10 years from the date of an operation or the date of termination of their relations with customers, the date on which a client was identified at a casino or entertainment room, or the date on which the client accessed the safe (art. 77 of the AML Law).

The establishment of “shell banks” is prohibited (arts. 36 and 83 (dd) of the AML Law). Financial institutions must also refrain from establishing or maintaining correspondent banking relationships with any fictitious financial institutions and must verify that their correspondents abroad are subject to the same obligation (arts. 36 and 24 (d) and (e) of the AML Law and art. 18 of the Decision on Corresponding Banking Relationships).

There is a system of annual asset declarations in place for high-level officials at the State level, although the level of detail provided is limited. Declarations are not published and are made exclusively for the Law on Conflict of Interest. Procedures are not yet in place for sharing the declarations with the competent domestic and international law enforcement authorities, and none have been shared to date. However, access may be granted on the basis of the Freedom of Access to Information Act. It is not clear if there are sanctions for non-compliance, save for elected officials (art. 19.9 and 19.10 of the Election Law of Bosnia and Herzegovina). Brčko District does not have any asset declaration systems in place for its public officials.

Obliged entities are required to make suspicious transaction reports to FID, which is under the supervision of the State Investigation and Protection Agency (arts. 4 and 38 of the AML Law). FID is a law enforcement-type financial intelligence unit with a broad range of powers, and is tasked with promoting cooperation between the competent authorities of the State of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District, as well as the competent authorities of other States, in the area of preventing money-laundering. FID itself currently cooperates well, and has full access to the databases of all jurisdictions in Bosnia and Herzegovina, although details of such cooperation are not explicitly provided in any text. In case of non-compliance, entities may be subject to financial penalties by their supervisory entities (art. 83 of the AML Law). FID receives, analyses and investigates suspicious transaction reports, then forwards them to the competent prosecuting and investigating authorities (art. 55, para. 3).

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

Natural and legal persons are entitled to initiate civil action, sue for compensation and be recognized as legitimate owners of property acquired through an offence

established in accordance with the Convention (art. 193 of the Criminal Code of Bosnia and Herzegovina). Its extension to foreign States is provided for in the Federation and Republika Srpska (art. 25, para. 1, of the Law on Civil Procedure), as well as Brčko District (art. 40, para. 1, of the Law on Civil Procedure). Moreover, Bosnia and Herzegovina has never had a case involving a foreign State as a civil party.

The legislation of Brčko District, the Federation and Republika Srpska allows the direct enforcement of foreign judgments and orders for confiscation (art. 32 of the Law on Forfeiture of Illegally Acquired Assets of Brčko District, art. 37 of the Law on Forfeiture of Proceeds of Criminal Offences in the Federation of Bosnia and Herzegovina, and arts. 73–77 of the Law on Seizure and Confiscation of Proceeds of Crime of Republika Srpska). A mechanism for the transfer of confiscated assets to the requesting country, providing details on the institutional involvement and manner of transfer, is planned to be introduced by the State through amendments to the Law on International Legal Assistance in Criminal Matters. Bosnia and Herzegovina has not yet had such a case in the context of corruption offences.

Confiscation of proceeds and instrumentalities of money-laundering is provided for (art. 209 (5) of the Criminal Code of Bosnia and Herzegovina), including when the crime is committed outside Bosnia and Herzegovina or if the funds are of foreign origin. The provisions allow for the consideration of objective factual circumstances in assessing the fate of bona fide owners (art. 209 (6) of the Criminal Code of Bosnia and Herzegovina).

The legislation of Bosnia and Herzegovina at the State level provides for the possibility of non-conviction-based forfeiture (art. 110a, on extended confiscation of property gain acquired through perpetration of a criminal offence). Similarly, article 5 of the Law on Forfeiture of Proceeds of Criminal Offences of the Federation of Bosnia and Herzegovina provides for a special procedure for forfeiture of property in cases where the offender cannot be prosecuted owing to the death or absconding of the defendant; however, this article does not address the mere absence of defendants. In Republika Srpska, article 30 of the Law on Seizure and Confiscation of Proceeds of Crime provides for the seizure and confiscation of assets when the offender cannot be subjected to a criminal procedure, is unable to participate in the procedure owing to mental illness, is beyond the reach of prosecuting authorities and the court, or in case of his or her death. In Brčko District, article 5 of the Law on Forfeiture of Illegally Acquired Assets also provides for a special procedure allowing forfeiture in cases where circumstances exclude criminal prosecution.

The enforcement of foreign interim measures, such as freezes and seizures of property in Bosnia and Herzegovina, may take place following a court order (arts. 65, 66, 72 and 218 of the Criminal Procedure Code of Bosnia and Herzegovina). Furthermore, in case of emergency, Bosnia and Herzegovina has a mechanism to temporarily preserve property for confiscation through prosecutorial orders (art. 72 (3) of the Criminal Procedure Code of Bosnia and Herzegovina), as well as through FID (art. 58 of the AML Law). However, there is no legislation specifically addressing how the enforcement of interim measures requested by a foreign State party is carried out.

Bosnia and Herzegovina does not require a treaty to render international cooperation. However, domestic provisions seem to not cover all forms of mutual legal assistance established in accordance with the Convention. Accordingly, domestic legislation does not specify measures to be taken prior to the lifting of provisional measures.

The rights of bona fide third parties (art. 55, para. 9) are protected in Bosnia and Herzegovina at all levels (arts. 74 and 111 of the Criminal Code of Bosnia and Herzegovina, art. 78 of the Criminal Code of the Federation of Bosnia and Herzegovina, art. 62 of the Criminal Code of Republika Srpska, and arts. 3 (3) and 23 of the Law on Forfeiture of Illegally Acquired Assets of Brčko District).

Although a singular, dedicated legal and institutional framework for the management of confiscated assets does not yet exist, such frameworks have been established at the entity and district levels. In the Federation of Bosnia and Herzegovina, there is the

Law on Forfeiture of Proceeds of Criminal Offences, which established the Agency for Management of Forfeited Criminal Proceeds of the Federation of Bosnia and Herzegovina. In Republika Srpska, there is the Asset Management Agency, established in accordance with the Criminal Assets Recovery Act. In Brčko District, there is the Law on Forfeiture of Illegally Acquired Assets, as well as the Office for Public Property Management of the District, tasked with the management of assets.

*Return and disposal of assets (art. 57)*

Although there are laws and procedures governing the domestic return of assets (art. 110 of the Criminal Code of Bosnia and Herzegovina and arts. 193–195 of the Criminal Procedure Code of Bosnia and Herzegovina), there is no specialized law that specifically mentions and provides procedures for the disposal and return of assets, including with deductions of reasonable expenses, to other States in the case of offences under the Convention. A draft amendment is under way to address these lacunas. Consequently, Bosnia and Herzegovina has not yet returned assets internationally or concluded any agreements for the final disposal of confiscated property.

### **3.2. Successes and good practices**

- The definition of politically exposed persons includes domestic politically exposed persons (art. 52, para. 1).

### **3.3. Challenges in implementation**

- Consider adopting measures to clarify the practical aspects of asset recovery at all four jurisdictional levels, such as through the development of asset recovery guides and the establishment of domestic inter-agency coordination mechanisms (art. 51).
- Strengthen mechanisms relating to the level of reporting by both the banking and non-banking sectors (art. 52).
- Ensure that all reporting entities, including non-financial entities, use screening tools in order to assess customers' risks (art. 52, para. 2).
- Consider establishing effective asset disclosure systems for appropriate public officials in the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District. Put in place appropriate sanctions for non-compliance, and consider putting in place procedures for sharing declarations with competent domestic and international law enforcement authorities at all four jurisdictional levels (art. 52, para. 5).
- Adopt the necessary measures to allow confiscation for all offences under the Convention, and take measures to allow the direct enforcement of foreign judgments and orders for confiscation at the State level (arts. 54 and 55).
- Continue efforts to put in place a mechanism for the transfer of confiscated assets to requesting countries (arts. 54 and 55).
- Consider including the absence of defendants as a basis for exercising non-conviction-based forfeiture in the Federation of Bosnia and Herzegovina (art. 54, para. 1 (c)).
- Monitor the practice whereby Bosnia and Herzegovina, when it receives a request for confiscation of proceeds of crime, permits the submission of the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, gives effect to it (art. 55, para. 1).
- Take steps to specify the measures to be taken prior to the lifting of provisional measures, including providing the requesting State party an opportunity to present its reasons in favour of continuing the measures (art. 55, para. 8).

- Take measures to return confiscated assets to the requesting State party in the case of offences under the Convention (art. 57).
- Consider adopting measures to clarify the practical aspects of the cooperation with FID at all four jurisdictional levels, including access to databases and external information sources (art. 58).

**3.4. Technical assistance needs identified to improve implementation of the Convention**

- Capacity-building and training (arts. 52–57).
  - Legislative assistance and model laws (arts. 52–57).
-