



Groupe d'Etats contre la corruption
Group of States against corruption



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First Evaluation Round

Evaluation Report on Bosnia and Herzegovina

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I. INTRODUCTION

1. Bosnia and Herzegovina was the twenty eighth GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Steven E. BUNNELL, Chief of Fraud and Public Corruption Section, United States Attorney's Office (general policies expert), Robert FREMR, Presiding Judge at the Prague High Court – Czech Republic (expert for the prosecution and judiciary) and Mr Guy MILBERT, Chief Superintendent of the Luxembourg Police (police expert). This GET, accompanied by two members of the Secretariat, visited Bosnia and Herzegovina from 1 to 5 July 2002. Meetings were held in Sarajevo and Banja Luka, the State and Entities' capitals. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval I (2002) 29E – not available in electronic form) provided by each of the two Entities. These replies were incomplete and contained no information on the situation at State level, nor on the overall situation in the country.
2. The members of the GET greatly appreciated the commitment of certain practitioners who arranged last minute meetings due to certain gaps in the coordination between the State and the Entities. The GET is therefore grateful *vis a vis* those practitioners who accepted to meet the GRECO delegation at very short notice and without prior preparation.
3. The GET met with officials from the following institutions: State level: Deputy Minister for European Integration, Ministry for Foreign Relations, State Border Service, the Ombudsman's Office, Chamber of Commerce, Audit Office, Constitutional Court; House of Representatives (Committee for legal and Constitutional affairs, Committee on Human Rights, Immigration, Refugees and Asylum Issues); Federation of Bosnia and Herzegovina: Ministry of Internal Affairs (Department for the fight against Corruption and Money Laundering), Federal Ministry of Justice (Criminal Legislation Department, Presidents of the Sarajevo City Court and Cantonal Court, Federal Prosecutor and Deputy Prosecutor), Ministry of Finance (Customs Department, Tax Department, Department of Financial Police); Republika Srpska: Ministry of Justice (the assistant Minister responsible for global anti-corruption/anti-crime coordination, Public Prosecutor's Office), Supreme Audit Institution, Ministry of Finance (Tax Department and Customs Department), Ministry of Interior (police Department). Moreover, the GET also met with members of the following non-governmental institutions: the national Chapter of Transparency International, and the Independent Union of Journalists of the Federation of Bosnia and Herzegovina (whose president also owns the only independent news agency). Finally, given the country's particular situation, the delegation also met with representatives of the Legal and Anti-Fraud Departments of the Office of the High Representative (OHR). The time available for the evaluation visit did not make it possible to pay visits to authorities of the Brcko District.
4. It is recalled that GRECO agreed, at its 2nd Plenary Meeting (December 1999) that the 1st Evaluation round would run from 1 January 2000 to 31 December 2001, and that it agreed at its 6th and then 7th Plenary meetings (September and December 2001) to extend this round until 31 December 2002 in order to evaluate the newer members. It was also agreed at the 2nd Plenary meeting that, in accordance with Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:
 - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);

- Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
 - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).
5. The principal objective of this report is to evaluate the measures adopted by the authorities of Bosnia and Herzegovina, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Bosnia and Herzegovina, the general anti-corruption policy, the institutions and authorities in charge of combating it -their functioning, structures, powers, expertise, means and specialisation- and the system of immunities preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in Bosnia and Herzegovina is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations to Bosnia and Herzegovina in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

6. The State of Bosnia and Herzegovina, which declared its independence from Yugoslavia in March 1992, is located in South-eastern Europe, between Croatia and Serbia-Montenegro, with a 20 km of coastline on the Adriatic Sea. The total population is about 3.96 million (90,000 in the Brcko District (429 km²)), the size of the territory 51,129 km², and the GDP per capita about 1800 €. According to official figures, the unemployment rate is about 40%, with an average salary amounting to 368 KM in the Republika Srpska, and 460 KM in the Federation of Bosnia and Herzegovina (1KM=0,51€). The privatisation process is still ongoing. At the moment, out of the 6000 companies registered in Bosnia and Herzegovina, 20% are State owned.
7. Concluding four years of war, the Dayton Peace Agreement was signed in Paris¹ on 14 December 1995. It established the post of High Representative (hereinafter HR), tasking him to oversee the civilian aspects of the Agreement. Heading an important office – the Office of the High Representative (hereinafter OHR), he/she is the final authority with regard to the interpretation of the Agreement, authorised to impose legislation and dismiss officials (including judges), and tasked with co-ordinating the activities of other international civilian organisations. The OHR's scope of activities has extended with time to include nowadays, for instance, the functioning of institutions and the rule of law, and the fight against fraud². As a result, various

¹ The agreement contains a number of annexes:
 Annex 1-A: Agreement on Military Aspects of the Peace Settlement
 Annex 1-B: Agreement on Regional Stabilization
 Annex 2: Agreement on Inter-Entity Boundary Line and Related Issues
 Annex 3: Agreement on Elections
 Annex 4: Constitution
 Annex 5: Agreement on Arbitration
 Annex 6: Agreement on Human Rights
 Annex 7: Agreement on Refugees and Displaced Persons
 Annex 8: Agreement on the Commission to Preserve National Monuments
 Annex 9: Agreement on Bosnia and Herzegovina Public Corporations
 Annex 10: Agreement on Civilian Implementation
 Annex 11: Agreement on International Police Task Force

² The variety of activities is illustrated by the different Departments of the OHR: Political Department, Reconstruction and Return Task Force Department, Economic Department, Anti-Fraud Department, Legal Department, Human Rights / Rule of

legal acts and decisions, relevant for the purpose of this evaluation, were prepared and passed by the Office of the High Representative (OHR). At the time of the GET's visit, the OHR was employing about 250 international and 640 national staff, and had several offices throughout Bosnia and Herzegovina and one representation office in Brussels³.

8. The Dayton Agreement established Bosnia and Herzegovina (BiH) as a State comprising two Entities, each with a high degree of autonomy: the Republika Srpska (RS) and the Federation (FBiH). As a matter of fact, there is at present a "third Entity", namely the district of Brcko (BD), situated in the north of the country. It is subject to particular regulations⁴ and subject to close international supervision. From a constitutional point of view, the current system bears the features of a very decentralised federal system, with each Entity having its own Constitution, President, Government, Parliament, judicial organisation, military responsibility and penal law. In fact, it is the State which is vested with a subsidiary competence. The Entities may conclude international agreements and relations between the Entities are normally regulated by agreements. Contrary to the RS, the FBiH is itself a federation subdivided into Cantons (which have their own constitutions⁵ and may also enter into international agreements under certain conditions), each being governed by a Canton President, a Deputy-President and a Government led by a Prime Minister. At the lowest level, the Municipalities – regulated by their own statute - elect their municipal council, headed by the mayor or prefect. Sarajevo is the State capital and that of the RS and of the FBiH according to the three constitutions concerned.
9. The legal/institutional situation in the country is the result of many compromises and ethnic/religious considerations; these compromises are notably reflected in the logic of parity or proportional representation at State, Entity and canton/local levels of public institutions (government, police, judiciary etc.), and also in the physical outline of each Entity (the GET heard sometimes criticism as the current shape creates so-called territorial "pockets").

a. The phenomenon of corruption and its perception in Bosnia and Herzegovina

Overview

10. The replies to the questionnaire indicate that recently, in both Entities, corruption is mostly linked with the misuse of public funds or abuse of office/power, notably for the purpose of compensating losses of public companies and private business activities. Replies of the RS also underline in

Law Department, Press Office Department, Media Development Department, Military Cell Department, Administration and Finance Department, Personnel Department.

³ The OHR's activities are well documented on Internet: <http://www.ohr.int>

⁴ On March 8, 2000 the Brcko District Statute was enacted. The Statute provided for the establishment of the Brcko District of Bosnia and Herzegovina as a single administrative unit beyond the control of the Entities and under the exclusive sovereignty of Bosnia and Herzegovina.

The Statute is the first local charter of this nature in Bosnia and Herzegovina, which makes no reference to ethnic groups and envisions the emergence of civil society. The three war and post-war municipal administrations (Brcko City, Ravne Brcko and Brcko-Gornji Rahic) were merged to form the multi-ethnic Brcko District of Bosnia & Herzegovina. Differences in the laws of the two Entities have largely been or are in the process of being harmonized to create progressive laws and by-laws specific to the Brcko District. Legal reform will concentrate on lower tax rates, incentives for investment, and legal and banking reform to protect investments and enforce contract compliance. An independent, progressive civil service-orientated government has been put in place, and is being continually trained and developed as well as an independent multi-ethnic police and judiciary. The Brcko District has a single, unified, multi-ethnic Government and a multi-ethnic District Assembly, with whom the OHR-N works very closely. [Information provided by the OHR website]

⁵ In December 1997, the Peace Implementation Council urged the Federation to align all Cantonal Constitutions with the Constitution of Bosnia and Herzegovina.

addition, that corruption is used to evade taxes and other obligations [permits, licences etc.], and to facilitate the employment of State officials' relatives.

11. Whilst the replies indicate that the occurrence of corruption is rather widespread, no overall information was provided to the GET as regards the importance of the phenomenon in the country. Nor was overall information provided concerning the number of corruption-related cases. Statistics are held at the level of the Council of Ministers of BiH – Ministry of Foreign Trade and Economic Relations - concerning the evolution of economic crime cases (see Appendix II).
12. BiH benefits from a number of international initiatives aimed at reforming and stabilising the State structures such as the UN Mission in Bosnia & Herzegovina (UNMIBH). Therefore, various information sources are available and a number of reports have analysed the situation and importance of corruption in the country, e.g. those of the World Bank, those of the Customs and Fiscal Assistance Office (CAFAO – a European Commission funded programme) released in 1997 and 1998, assessment of March 1998 sponsored by the United States Agency for International Development (USAID)⁶. BiH is also a party to the Stability Pact Anti-Corruption and Anti-Organised Crime Initiatives (SPAI and SPOC). Country reviews and priorities for reform have been identified in this framework, a multi-lateral monitoring mechanism and technical cooperation activities (such as the Council of Europe Programme against Corruption and Organised Crime in South-Eastern Europe – PACO) were put in place⁷. A number of recent studies on the functioning of certain institutions, are also available.⁸
13. BiH has never been among the hundred countries or so, which are subject to assessment for the purpose of establishing the annual Transparency International Corruption Perception Index. According to an analysis carried out by the World Bank (*Anti-Corruption in Transition: A Contribution to the Policy Debate*, 2000) based on a 1999 survey of more than 3000 enterprise owners and senior managers in 22 transition countries, all corruption indicators appeared to be higher in Bosnia and Herzegovina than in other East and South-east European transition countries. The forms of corruption particularly pointed out by almost half of the firms doing business in Bosnia and Herzegovina were the paying of bribes to public officials to avoid taxes and regulations, as well as contributions by private interests to political parties. Other corrupt practices influencing the business sector were the sale of court and arbitrage decisions and the sale of presidential decrees and of parliamentary votes (for almost 30% of firms). Furthermore, 45% of the firms indicated that there were numerous cases of public officials appointing friends and relatives to official positions⁹. A further report entitled "Bosnia and Herzegovina – Diagnostic Surveys of Corruption" was drafted on the basis of surveys conducted in BiH in June-July and September 2000 with 700 public officials, 350 enterprise managers and 1200 members of the general public. The findings in 2000 are similar to those of 1999.

⁶ The USAID assessment stated in 1998 that: „For the economic and democratic development of Bosnia and Herzegovina to succeed, the large-scale fraud and corruption in the government must be reduced substantially. Bank fraud, customs fraud, tax fraud, procurement fraud, bribery, extortion and an active organized crime network severely undermine economic and democratic reforms. The losses resulting from fraud and corruption appear massive, yet cannot be quantified accurately due to the lack of transparency in government and business operations. A lack of public disclosure and accountability of public funds makes discovering and proving the scope of fraudulent activities in government impossible“.

⁷ See notably „Anti-Corruption measures in South-eastern Europe“, by the SPAI Steering Group, September 2001 and the homepage of SPAI at <http://www1.oecd.org/daf/SPAIcom/bih/monit.htm>

⁸ „Policing the police in Bosnia: a further reform agenda“ and „Courting disaster: the misrule of law in Bosnia Herzegovina, (the International Crisis Group – ICG, dated 10 May 2002 and 25 March 2002 respectively); „Prosecuting Corruption: a study of the weaknesses of the criminal justice system in Bosnia and Herzegovina“ (UN Mission in BiH – Judicial System Assessment Programme, November 2000)

⁹ The authorities of BiH indicated that, after the visit, a body was set up to deal with the appointment of senior officials.

14. The national Chapter of Transparency International (TI) has recently sub-contracted a State-wide corruption perception survey which was just completed at the time of the GET's visit. The report has since been translated and published¹⁰. The report underlines that corruption has constantly increased over the last 10 years, a phenomenon which could also partly be a result of extensive media coverage and increased public perception. At the same time, out of the 1200 respondents, the percentage of those who acknowledge having been personally, directly confronted with corruption varies from 26,6 (no vocation) to 36,1 (private businessmen) depending on the professional category considered. As to the sectors mostly/least affected, the study provides the following figures:

RS	FBiH
Most affected sectors	
Customs	Political parties
Political parties	Parliament of the Federation of BiH
Tax administration	Customs
State owned companies	Government of the Federation of BiH
Municipal administration	Judiciary
Least affected sectors	
Teachers	Journalists
Journalists	Teachers
University professors	International community
Post and telecommunication employees	Post and telecommunication employees
Bankers	Bankers

15. The study shows that fundamental State functions, such as the police and the courts do not enjoy a good reputation, although it is indicated in most cases, based on personal experience with the police for instance, that it is not the police officer who first proposes an "illegal deal".
16. As far as links between corruption and organised crime are concerned, the replies to the questionnaire did not provide a clear answer. The TI study indicates that – when talking about "street" crime – more than 85% of the respondents believe that organised crime groups operate in BiH (smuggling of goods, drug trafficking, prostitution, arms smuggling, racketeering, trafficking in human beings, sale of personal IDs). Occasionally, the media have also revealed controversies about criminal or doubtful activities involving international assistance staff or economic operators working in the context of peacekeeping operations. These controversies were underlined on a few occasions by local interlocutors.

Anti-Corruption Policy

17. Corruption is considered a serious problem in BiH by the international assistance providers, the OHR and national authorities; the importance of the problem is currently proclaimed in various reform programmes. In December 1997, the OHR was called on by the international community to design a strategy to combat corruption, fraud and diversion of public funds given the growing concern about the level of corruption in Bosnia and Herzegovina. As a result, the Anti- Fraud Unit was established, which later became the **Anti-Fraud Department (AFD)**¹¹.

¹⁰ See <http://www.ti-bih.org>

¹¹ After the GET's visit, the AFD became the Anti-Crime and Corruption Unit (ACCU)

18. The AFD assists local authorities in identifying and prosecuting illegal activities, following court cases through all phases of the judicial process, and strives for the resolution of systemic problems through reforms of the legal and judicial systems. Additional priorities include the drafting and passage of anti-corruption legislation in accordance with international standards, increased transparency in government procedures, and strengthened civil society involvement in anti-corruption initiatives.
19. The AFD has drafted a comprehensive Anti-Corruption Strategy for Bosnia and Herzegovina, which was approved by the Steering Board in March 1999 and is being implemented by the AFD and a dozen of international organisations in cooperation with the BiH authorities. The supporting international agencies include IMF, the World Bank, the European Commission, CAFAO, USAID, IMG, INL, OSCE, IPTF, and SFOR. Furthermore, in June 2002 the HR announced the adoption of an anti-corruption plan as part of his campaign against crime and corruption: the idea would be to establish special organised crime, economic crime and corruption bodies by the end of 2002.
20. In addition, the national authorities have complemented this work by initiatives of their own:
 - at State level, the Council of Ministers of BiH, in conjunction with the State Ministry of Trade and Economic Relations, and the Governments and Ministries of Justice of the two Entities, started drafting an Action Plan for Combating Corruption. A working group was also created in February 2002 to follow up the implementation of the Plan. This Plan – which is also linked with an overall Anti-Poverty Strategy - is based on a Diagnostic study on the causes of corruption which was prepared in conjunction with the World Bank. Its finalisation had been delayed and it had not been adopted at the time of the GET's visit, due partly to elections to be held in October 2002. The Plan identifies a series of authorities responsible for various initiatives identified as crucial:
 - drafting of consistent legislation at State and Entity level on combating money laundering, on State services/public administration/preventing corruption, on conflict of interests, on the liability of legal persons for criminal offences, on the harmonisation of the Entities' criminal and criminal procedures codes, on executive procedures, on public procurement, on financing of political parties;
 - institutional measures, such as the setting-up of an office/offices for combating corruption/organised crime, restructuring/strengthening/economic crime specialisation of courts and prosecution offices, reform of the Tax and Customs Revenue, establishment of an anti-money laundering institutional framework and network, improvement of the Audit Offices' work, creation of special anti-corruption parliamentary committees;
 - educational and awareness-raising initiatives, in cooperation with civil society;
 - signing and ratifying of relevant international conventions;
 - consistency of follow-up and coordination mechanisms at State level;
 - establishment of an ongoing and wider consultation process.
 - In conjunction with the anti-corruption strategy of March 1999, the Entities have worked out their own overall plans. For instance, the FBiH (under the lead of the Ministry of Justice) drafted a wide-ranging Law on Prevention of Corruption in the Federation of Bosnia and Herzegovina. The GET was informed that this draft of June 2001 had been rejected by the OHR who considered it as superfluous, creating new and unnecessary institutions.

Legal aspects

21. Penal and penal procedure legislation fall primarily under the Entities' responsibility¹². For the State level, a Criminal Code and Criminal Procedure Code are currently being prepared by the State Ministry of Civil Affairs and Communications¹³. As far as the Entities are concerned, both are in the process of reforming their legislation. New Criminal Codes were adopted in recent years (FBiH in 1998, RS in 2000). The FBiH also adopted a new Criminal Procedure Code (such a code is being drafted in the RS). The Criminal Codes of both Entities are applicable to anyone who has committed a criminal offence on their territory, certain offences being prosecutable even if committed abroad by an Entity's citizen or a foreigner; however, these do not include bribery and corruption-related offences (Art. 130-133 of the Criminal Code of FBiH, Art. 120-121 of the Criminal Code of RS).
22. Chapters XXXI and Chapter XXVII of the Criminal Codes of the FBiH and RS, respectively, are devoted to a large extent to corruption related offences. The provisions are similar in both entities, criminalizing corruption in the public and private sector (corruption-related provisions applicable to "responsible persons"). Both provide for a definition of "officials"¹⁴, which includes members of the executive, legislative and judicial branches, and foreign members of such branches in the case of the definition in the RS. In addition, attempt, complicity (participation) and incitement to bribery also constitute a criminal offence. The table below gives an overview of the relevant provisions in FBiH and RS.

¹² The codes are available on the OHR's website: <http://www.ohr.int/ohr-dept/legal/crim-codes/>

¹³ they shall be applicable as of 1st March 2003

¹⁴ In the RS (Art. 126 para 3 of the Penal Code): the term "official" means:

„1. persons elected or appointed to legislative, executive and judicial offices within the Republika Srpska or Bosnia and Herzegovina;

2. person who continuously or occasionally executes official duty in any other body of state administration or government or has official duty therein;

3. authorized person in a company or another legal person who has been legally entrusted with performance of public authorities, who perform certain duties within the frame of the said authority;

4. military persons, if the criminal offence is defined as criminal offences perpetrator of which is an official, and which at the same time are not described under chapter 26 of this Code.

5. persons who were given a position of an official by a foreign country, who meets the conditions provided under points 1, 2, 3 of this Code;

6. person to whom an international organization where Republika Srpska or Bosnia and Herzegovina is a member, gives the position of an official person, and who meets the conditions provided under points 1, 2, 3 of this article;

7. a person who in international judiciary the jurisdiction of which Republika Srpska and Bosnia and Herzegovina recognize, carries out judicial, prosecutorial or other official duty or function."

In the FBiH (Art. 136 para 2 of the Penal Code), the term "official" means: „persons elected or appointed to legislative, executive and juridical offices within Bosnia and Herzegovina and the Federation, cantons, municipalities, cities and other governmental and administrative institutions or services which perform particular administrative, expert and other duties, within the rights and liabilities of the authority who has founded them; person who continuously or occasionally executes official duty in the mentioned administrative bodies or institutions, authorized person in a company or another legal person who has been legally entrusted with the execution of public authorities, who performs certain duties within the frame of the said authority; other persons who are performing official duty stipulated by law or other regulations based on the law; as well as military persons, if the criminal offence is defined as criminal offences perpetrator of which is an official, and at the same time is not defined as criminal offence of military personnel, or criminal offence against armed forces of the Federation."

Offence	FBiH		RS	
	Provisions	Sanctions	Provisions	Sanctions
Passive bribery ¹⁵	Art 362	- 1-10 years' imprisonment (bribe connected with positive acts which are not part of duties, or omission) - 6 months -5 years' imprisonment (bribe connected with positive acts which are part of duties, or omission) - 3 months – 3 years' (when bribe taken or demanded <i>ex post</i>) - In all cases, proceeds to be confiscated	Art 341	- 1-8 years' imprisonment (bribe connected with positive acts which are not part of duties, or omission) - 1-5 years' imprisonment (bribe connected with positive acts which are part of duties, or omission) - up to 3 years' (when bribe taken or demanded <i>ex post</i>) - In all cases, proceeds to be confiscated
Active bribery ¹⁶ and mediation in active bribery	Art 363	- 6 months-5 years' imprisonment (bribe connected with positive acts which are not part of duties, or omission) - up to 3 years' imprisonment (bribe connected with positive acts which are part of duties or omission) - possible release from punishment if act reported prior to discovering ("effective regret") - proceeds to be confiscated, or returned to the giver if spontaneous reporting	Art 342	- 6 months-5 years' imprisonment (bribe connected with positive acts which are not part of duties, or omission) - up to 3 years' imprisonment (bribe connected with positive acts which are part of duties or omission) - possible release from punishment if act reported prior to discovering ("effective regret") - proceeds to be confiscated, or returned to the giver if spontaneous reporting
Trading in influence	Art 364	- 0 to 10 years' imprisonment, depending on the case	Art 343	- 0 to 10 years' imprisonment, depending on the case - proceeds shall be confiscated
Other public function-related offences which are connected with the obtaining of benefits (personal or for third parties)				
Abuse of office	Art 358	- 6 months to 10 years' imprisonment, depending on importance of benefit	Art. 337	- 3 months to 10 years' imprisonment, depending on importance of benefit
Embezzlement in office	Art 359	- 6 months to 10 years' imprisonment, depending on importance of benefit	Art. 338	- fine or up to 10 years' imprisonment, depending on importance of benefit
Fraud in office	Art 360	- 6 months to 10 years' imprisonment, depending on importance of benefit		- 6 months to 10 years' imprisonment, depending on importance of benefit
Misuse of office property	Art 361	- 3 months to 5 years' imprisonment		- fine or imprisonment up to 3 years
Violation of law by a judge / lay judge	Art. 365	- 3 months to 5 years' imprisonment		
Disclosure of official secrets	Art. 367 Para 2	- no less than 1 year imprisonment		
Illegal collection and disbursement (<i>concussion</i>)	Art. 369	- up to 3 years' imprisonment	Art. 346	- Fine or up to one year' imprisonment
Unlawful appropriation of goods	Art. 371	- 1 to 10 years' imprisonment		- 6 months to 8 years' imprisonment, depending on importance of benefit

23. In addition to the above, bribery of voters or on the occasion of elections is a criminal act in both Entities (Art. 201 in FBiH, Art. 168 and 170 in RS).
24. The offence of money laundering is established as a separate offence in Art. 270 of the Criminal Code of the RS. The GET was informed that an amendment is foreseen also to introduce it into the current Criminal Code of the FBiH.
25. In the current legal framework, legal persons cannot be held criminally liable¹⁷; though civil law sanctions can be applied. Criminal liability is limited to the natural persons concerned within such

¹⁵ demanding or accepting „ a gift or any other benefit“ - even a promise of them - by an official or responsible person in connection with the performance of an official action.

¹⁶ defined as giving or promising of a gift or any other benefit to an official or responsible person.

legal persons (managers, directors, administrators). During the visit, the GET was informed that a special law on the criminal liability of legal persons was in preparation in FBiH.¹⁸

26. The prosecution time limits are determined according to the level of sanction foreseen by the law. The table below gives an overview.

	FBiH	RS
For the commission of offences for which the law provides	criminal prosecution is barred after the lapse of	
long term imprisonment	35 years	30 years
imprisonment for a term up to 20 years	-	20 years
imprisonment for a term exceeding 10 years	15 years	15 years
imprisonment for a term exceeding five years	10 years	10 years
imprisonment for a term exceeding three years	Five years	Five years
imprisonment for a term exceeding one year	Three years	Three years
imprisonment for a term not exceeding one year or a fine	Two years	Two years

27. BiH has signed the Civil Law Convention on Corruption (November 1999) and ratified the Criminal Law Convention on Corruption the first day of the GET's visit (July 2002). BiH is not a party to other relevant Council of Europe instruments, e.g. the European convention on mutual legal assistance in criminal matters, European convention on extradition, Convention on laundering, search, seizure and confiscation of proceeds of crime. On the other hand, it has ratified the UN Convention on transnational organised crime (April 2002). Assistance is provided upon request through diplomatic channels (through the competent Ministry of Justice which submits it to the Ministry of Civil Affairs and Communications of BiH, or in urgent cases only through the latter). The extradition of nationals of BiH is not allowed (according to the Criminal procedure codes of FBiH and RS).

District of Brcko

28. The Criminal Code of BD contains several offences covering corruption, namely Art. 375 and 376 on passive and active bribery and a set of special bribery offences: Art 377 and 378 on bribery of local public officials, Art. 379 on bribery of local members of public assemblies, Art. 382 and 383 on corruption in the private sector, Art. 384 on bribery of foreign officials in international organisations, Art. 385 on bribery of members of international parliamentary assemblies, Art. 386 on bribery of judges and officials of international courts, Art. 387 on trading in influence etc.. Money laundering is also criminalized as a separate offence (Art. 268).

b. Bodies and institutions in charge of the fight against corruption

b1. The police

29. According to the constitution of BiH, responsibilities incumbent upon the State are limited¹⁹ and due to opposition from the Entities, there is no State policing structure apart from the State Border Service (see below, para. b4). Written sources also mention the recent establishment of a State Investigation and Protection Agency – SIPA (aimed at providing protection for national

¹⁷ Legal persons may be held liable for violations of the Law on Suppression of Money Laundering in FBiH.

¹⁸ The authorities of BiH indicated during the examination of this report in plenary (GRECO 14, July 2003) that this draft law had been subsequently abandoned and was replaced by a law at State level of 1 March 2003.

¹⁹ "international and inter-Entity criminal law enforcement, including relations with Interpol"

institutions and facilitating national/regional/international cooperation in fighting organised crime, human beings trafficking and terrorism). This institution was not discussed during the GET's visit.

30. Within the FBiH, authority over the police is further decentralised with each of the ten Cantons having their own police (under the responsibility of the Cantonal Ministry of the Interior - MUP) and the main responsibilities, the Federation ministry of interior being mainly in charge of inter-Entity and inter-cantonal cooperation for serious crimes, and of other specific tasks (VIP protection etc.). Policing practices vary to a large extent among the cantons. At the lowest level, each municipality has a police administration.
31. In the RS, the police is unified under the responsibility of the Ministry of the Interior which has a general competence for all policing aspects and crimes within the Entity. The Entity's police structure comprises five sectors (so-called Public Security Centres – PSC) which correspond to the jurisdiction of the district courts, and the local police stations at the lowest level.
32. Over a period of six years, the Police has undergone a severe reform under the lead of the UNMIBH's International Police Task Force (IPTF) and with the participation of a number of international and foreign organisations and countries. The IPTF has overseen a reduction in police numbers from 45.000 after the war to 23.000 approximately today. Police officers have been trained and registered and have been or are still in the process of being screened. The mandate of the UNMIBH/IPTF expires end 2002. The EU (EU Police Mission – EUPM) is to take over UNMIBH's tasks as of 1st January 2003.
33. The reform of the police operated by the international community devoted large attention to the modernisation (on the basis of audits), and the enhancement of professionalism, uniform disciplinary procedures, independence and depoliticisation. As regards the latter, the broad powers and permanent interferences of the Ministers of the Interior in operational matters, a tradition inherited from the former regime, are a major matter of concern. In 2001, UNMIBH adopted a strategy foreseeing the establishment of an operationally independent Director of police in each Entity's Ministry of the Interior and police commissioners at the level of each Federation cantonal MUP. The project was implemented despite strong (political and parliamentary) opposition from Entity level which has led to compromises concerning notably the appointments. In 2002, the equilibrium remained fragile and the reform was not applied to the RS PSC and Federation chiefs of police.
34. Disciplinary control over police staff and reporting of complaints by citizens was enhanced with the creation of Internal Control Units (seven to ten persons in FBiH) at the level of the Ministries and regional police stations; attempts to harmonize the disciplinary procedures have also been made. The GET found from the written sources available²⁰ that the system is still at an early stage but that there are already some positive results (effective disciplinary proceedings and sanctions).
35. The police staff are trained in the Entity police academies. UNMIBH and foreign donors are actively involved in harmonising the curricula and selection procedures. Police salaries are low and often paid with delays; they are also heterogeneous across the country, and also across the cantons. Many leave the police and join other bodies, notably the State Border Service, which is better equipped and where remunerations are higher.

²⁰ See „Policing the Police in Bosnia: a further reform agenda“, 10 May 2002, ICG Balkans report N°130

36. The FBiH and RS Ministries of the Interior comprise criminal police and specialised departments, including a Department for the fight against Corruption and Money Laundering formed less than two years ago (FBiH), and a Department for Organised and Economic Crime with several units for corruption, fraud etc. (RS). The balance of staffing is sometimes inadequate: for instance, in the RS, economic crimes represent 55% of the police workload but only half of 250 criminal police positions are filled.

District of Brcko

37. The BD has its own autonomous police force and structure. The Director of police reports to the District Assembly. The Assembly, in turn, convenes a police supervisory committee. The salaries in the BD police are higher than in the Entities.

b2. The court system and the public prosecution services

38. With nearly 900 judges for the entire country, the judicial power is numerically important although it falls primarily (and exclusively) within the competence of the Entities. It is subject to a constant reform process, in particular concerning the status of judges. With the exception of minor offence courts in both the FBiH and RS, there is no court or prosecution service specialisation. The judiciary makes use of lay judges, no information on their status and functions was available to the GET. The GET was informed of the large backlog of cases in the country, which was explained as being caused primarily by the numerous settlements of claims and disputes occasioned by the war and which are difficult to solve²¹. Written sources describe thoroughly the situation of the judicial power in BiH in its various aspects (structural, financial, political etc.)²².
39. As far as the Constitutional Court is concerned, Article Vi 3.b) of BiH Constitution foresees that "The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina" On this basis, the Constitutional Court's position is that the efficiency of appellate control, provided by the Constitution, would be remarkably reduced if, against the judgments of entity constitutional courts, no appeal could be placed to the BiH Constitutional Court regarding their harmonization with the Constitution of BiH. The Constitutional Court in its practice has judged the constitutionality of entity constitutional courts' judgments. As for the BiH Constitutional Court's jurisdiction over OHR decisions, the Constitutional Court in its court practice has been of the position that it is not competent to judge neither the authorizations of the High Representative nor the performance of such authorizations resulting from Annex 10 of the General Framework Agreement, relevant resolutions of UN Security Council and PIC declarations. However, when the High Representative intervenes in BiH legal system, enacting laws, he substitutes local authorities, so that those laws are of local character in form as well as in essence. The Parliamentarian Assembly is free to change the entire texts or a part of those laws, under the precondition that the appropriate procedure has been followed. The Position of BiH Constitutional Court is that, in accordance with its jurisdiction and the procedure prescribed by the Constitution, it is competent to control harmonization of those laws with the Constitution of BiH. In its court practice the Constitutional Court usually judges the constitutionality of the laws enacted by the High Representative as well.

²¹ The authorities of BiH stressed the ongoing effort in favour of a reduction of the backlog (such as enabling appeal courts to rule on the merits instead of returning the case to the first instance court, introduction of the plea-bargaining in penal cases at State level on 1 March 2003); however, no alternative dispute resolution mechanisms have been put in place.

²² See the International Crisis Group report „Courting disaster: the misrule of law in Bosnia & Herzegovina“, 25 March 2002, Balkans Report N° 127

40. A State court was established by law in 2000, and should start functioning in 2003 with two specialised criminal chambers: one for economic crime cases (including corruption) and one for organised crime cases (including trafficking in human beings, drugs, arms and ammunitions). A special appellate panel would hear appeals against decisions of those specialised panels. Judges of these panels would be trained and experienced in dealing with such specialised cases²³. The GET was informed of the plan to establish a corresponding PPO but it was unclear whether this State PPO would be able to sue officials of the Entities.²⁴
41. In the **FBiH**, the judicial power is exercised by the following courts:
- the Constitutional Court (composed of nine judges deciding on constitutional matters) and the Supreme Court (which is the highest court of appeal): according to Art. 6b of the FBiH Constitution, these judges are normally appointed by the President upon the proposal of the Vice-president with the approval of a majority of the House of People;
 - 10 cantonal courts (having appellate jurisdiction over municipal courts and first instance jurisdiction in certain matters): cantonal judges are normally appointed by the cantonal President and elected by cantonal legislature.
 - 52 municipal courts²⁵ (having first instance jurisdiction over all civil and criminal matters, with some exceptions): the judges are normally appointed by the President of the cantonal court after consultation with the municipal executive
42. In the **RS**, the judicial power is exercised by the following courts:
- the Constitutional Court (composed of seven judges elected for a period of 8 years – not renewable)
 - the Supreme Court
 - 5 regional courts (which function simultaneously as appeal courts for first instance courts, and as first instance courts in a few cases)
 - 25 local courts²⁶ which have first instance jurisdiction in most cases.
43. Judges and prosecutors have life tenure in the RS. They are normally elected or appointed and recalled by the National Assembly and may not hold a public office or a job defined as incompatible by law. Both judges and prosecutors enjoy independence, which is guaranteed by the Constitution (Art. 121 and 128). In the FBiH, judges have life tenure and prosecutors are appointed for a term of 8 years.²⁷

²³ Information gathered after the visit indicates that the Court would comprise 15 judges, of which seven would be appointed by the OHR on the basis of their merit, and 8 by the High Judicial and Prosecutorial Council (established in August 2002); out of the 15 judges, six would come from abroad to assist their domestic counterparts. Four prosecutors would be assigned to the Court.

²⁴ Since the GET's visit, the OHR has enacted the Law on the State Prosecution Office of BiH (August 2002). According to that law, the State PPO will be competent for the investigation and prosecution of cases falling within the BiH Court remit. The State PPO will also be competent to handle requests for international legal assistance in criminal matters. A Special department for organised crime, economic crime and corruption would be created.

²⁵ With the reform of the judiciary in 2003, the number is 28

²⁶ With the reform of the judiciary in 2003, the number is 19

²⁷ With the reform of the judiciary in 2003, all judges in BiH (FBiH, RS, BD) enjoy life tenure and prosecutors are appointed for a term of 8 years

The public prosecution service

44. The public prosecution services are organised hierarchically in three levels corresponding to the court system. Each Entity has its own Public Prosecution Office - hereinafter PPO.
45. The FBiH PPO, headed by the FBiH General Prosecutor's Office sitting in Sarajevo, is divided into 10 cantonal and 58 municipal PPOs²⁸. The total number of prosecutors is 170. The RS PPO, headed by the RS General Prosecutor's Office sitting in Sarajevo, is divided into five District and 25 local PPOs²⁹. The total number of prosecutors is 80.
46. The high number of offices (particularly at the lowest level in FBiH) is the reason why the number of prosecutors in each office is very limited. For that reason each prosecutor deals with all kinds of cases and according to PPO representatives met by the GET, it is impossible to set up specialized departments or prosecutors specialised exclusively in corruption cases (even in economic crime cases)³⁰. In the FBiH, it was therefore decided to establish a "federal team for fighting corruption", headed by the Deputy Prosecutor General, holding monthly briefings and activities involving the Financial Police, Customs, State Border Service, and the Ministry of Internal Affairs. 10 cantonal teams have also been created. The GET was told that their work had proven effective, notably in uncovering fictitious firms.
47. Some prosecutors have also attended training activities organised by various foreign organisations on economic crimes including corruption.
48. According to the anti-corruption strategies adopted recently by the parliaments of both Entities (as indicated earlier, the FBiH strategy was rejected in 2001), the General Prosecutor's Offices of both Entities should be the lead agencies co-ordinating the fight against corruption. Offences relating to corruption and inter cantonal or inter district crime can be dealt with directly by their offices. They are also allowed to issue binding instructions to subordinated prosecutors, to withdraw cases from subordinated prosecutor offices where there is a risk of political interference at local level and decide how to proceed themselves. In addition, the General Prosecutor of FBiH was granted, by measures taken by the OHR, the faculty of transferring organised crime, drug trafficking and terrorism cases from one Canton to another. Currently, such competence is complicated by the lack of staff in PPOs in both Entities.

Particular considerations

49. A Code of Ethics for Judges and Prosecutors was signed in June 1999 by the Presidents of the Associations of Judges and Prosecutors of both Entities. Accordingly, judges and prosecutors must be immune from local, Entity or national political influence of any type (Art.1), impartial (Art. 2), must avoid any potential conflict of interest (Art. 3) and act diligently (Art. 4), and shall not belong to any political organizations (Art. 5).

²⁸ With the reform of the judiciary in 2003, all municipal PPOs have been suppressed and there are at present 11 PPOs altogether

²⁹ With the reform of the judiciary in 2003, the local PPOs have been suppressed and there are at present 6 PPOs altogether

³⁰ Shortly after the visit (22 August 2002), the OHR issued a decision harmonising the Prosecutorial system in both Entities: all municipal level PPOs have been closed and consolidated with the existing cantonal (FBiH) and district (RS) PPOs. The aim of this structural reform is to enable specialization of prosecutors on more complex cases including cases of economic crime. It should also lead to a decrease in the number of prosecutors.

50. An important step taken to reduce corruption among judges was the increase of their salaries, which are now 3-4 times higher than those of normal civil servants. This should help to make these professions more attractive for genuine experts and experienced lawyers.
51. One of the alleged shortcomings limiting judicial independence repeatedly mentioned by BiH judges and prosecutors is their impossibility to influence the budget of courts and prosecution offices, a matter which remains in the hands of representatives of the executive branch.
52. Most BiH practitioners met by the GET criticised the lack of independence of the judiciary, particularly at the lower courts' level. The process of selection and appointment of judges and prosecutors would have been heavily politicised and abused for the purpose of creating links notably among local judges and prosecutors on one side, and with "powerful" individuals from certain cantons and districts on the other. In consequence, the OHR has used its faculty to transfer sensitive cases from small, local courts to Sarajevo.
53. The functioning of the judiciary and recruitments were previously under the responsibility of the Entity Judicial Councils. Given the absence of legal provisions on appointments (e.g. in the RS), certain controversies, and in an effort to align the BiH judiciary with European standards, the OHR also passed, in May 2002³¹, legislation on the High Judicial and Prosecutorial Councils (hereinafter HJPC) for BiH, the FBiH and RS in order to ensure the maintenance of an independent, impartial and professional judiciary at all levels³². This took place in a context of opposition at Entity level. The composition of the three HJPCs is similar and guarantees the participation of judges and prosecutors elected by their peers in the HJPCs.
54. The competence of these bodies would be the following:
 - selection and appointment of judges, lay judges, reserve judges, prosecutors
 - appointment of the presidents of the courts
 - proposing candidates to the Constitutional Court
 - supervising professional training
 - deciding on the transfer of judges and prosecutors
 - initiating and conducting inquiries and disciplinary proceedings
 - proposing the number of judges and prosecutors of a particular court or PPO
 - providing opinions on draft laws that may affect the judiciary
 - making budget proposals for all courts and PPOs in consultation with relevant authorities, presenting these budget proposals to the Government and the Parliament and Assemblies of the cantons and monitoring their execution
55. Pending the effective functioning of the HJPCs, the OHR - within its competence – has taken certain immediate actions such as the suspension of several judges and prosecutors; new appointments would be made by the HJPC following an examination.
56. In 2002, the Law on Centres for Judicial and Prosecutorial Training was passed in both Entities in order to provide the country's judges and prosecutors with adequate, systematic and coherent training. These Centres are likely to start operating only after their funding has been secured.

³¹ The legal act was not implemented at the time of the visit

³² The HJPC was established in August 2002. The first members of each of the three councils were appointed in August 2002 according to the rules mentioned above. While members of RS and FBiH HJPC are selected exclusively from BiH nationals, 8 foreign judges, prosecutors and attorneys were appointed to the BiH HJPC.

District of Brcko

57. The BD has its own Public Prosecution Office and it counts two district courts dealing with both first instance and appellate agenda (altogether 17 judges and seven prosecutors).

b3. Criminal investigation and prosecution of corruption

58. Prosecution is mandatory in the FBiH and the RS (in the RS, the principle of discretionary prosecution is applied only to underage perpetrators). The competent prosecutor is obliged to undertake criminal proceedings if there is evidence that a crime has been committed. The authorities of BiH indicated, however, that in practice there is some discretion applicable too, for instance when the offence is a minor one and/or the threat to the general interest is not serious enough, or the cost of the proceeding would not be justified by the seriousness of the offence³³. If the competent prosecutor finds that there are no grounds to institute or to extend criminal proceedings, the injured party can start the prosecution. Citizens and public enterprises and institutions are obliged to report certain categories of criminal offences (including corruption offences).
59. The prosecutor takes the necessary steps to gather evidence, to identify perpetrators, to guide preliminary proceedings; he/she supervises for such purposes the activities of law enforcement agencies but all major decisions are taken by the investigative judge (initiating a preliminary examination or inquiry, an inquiry audition of persons etc.) upon the prosecutor's request. Once the police has prepared a case and given it to the prosecutor, the latter is not obliged to follow the classification of the case (although in many cases, the classification by the police is accepted as it is appropriate). The investigative judge or court can then, change the classification given by the prosecution. The investigative judge completes the investigation when sufficient evidence has been found for filing an indictment. The board of judges then decides on the course of the investigation, and it can request explanations from the investigating judge or parties.
60. The prosecutor drafts and defends an indictment or indictment proposal before the competent court, and files appeals against court decisions. Decisions of the investigative judge may be appealed by the prosecutor and parties before the panel of judges.
61. The role of the investigating judge within the criminal proceedings, and the fact that the prosecutor does not supervise the investigation from the outset were criticised by most experts met by the GET.
62. In the FBiH and RS, statements made before the investigating judge during preliminary proceedings can be used as evidence before the court during the main trial (if the presence of the witness in court is impossible and the parties agree that the statement of the witness made before the investigating judge be read during the main trial). On the other hand, statements made before the police investigative authorities in preliminary hearings cannot be used as evidence before the court.
63. As seen above, there is no specialisation regarding economic crime cases at the level of prosecution and courts. The investigating judge may request the assistance of specialist State employees (e.g. from the Ministry of Finance) and such assistance must be provided. Expert

³³ Since 1 March 2003, the prosecutor may also grant – at State level - immunity from prosecution to collaborators of justice (in the framework of the fight against organised crime). Such possibilities have been introduced at the level of the RS and BD on 1 July 2003, and at the level of the FBiH on 1 August.

witnesses may be used too – by the investigating or court judge, not by the prosecutor) but this depends largely on the available funding (such possibilities seem to be insufficient or inexistent at the moment). The GET was informed that the RS is envisaging such funding possibilities and discussing the possibility of setting up teams specialised in economic crime cases (as part of the criminal legislation reform, led by the Independent Commission).

64. Concerning witness protection measures, the **FBiH** Law on Special Witness Identity Protection in Criminal Proceedings was enacted in 1999. It essentially allows witnesses to testify anonymously. There are no special provisions in this regard in the Criminal Procedure Code. Moreover there is no special agency nor special programmes aimed at the physical protection of witnesses, or allowing the change of their identity after trial, their relocation etc. The GET was however informed that the possibility to protect witnesses has been used several times during criminal proceedings in murder and organised crime cases. In comparison, corruption and economic crime cases are not considered serious enough to justify the application of the existing (and other) witness protection measures during and after the proceedings. The **RS** has no legal, institutional or other special measures (police service, programme) for the protection of victims, witnesses or collaborators of justice at all³⁴.
65. As for special investigative means (SIMs), the Criminal Procedure Code of **FBiH** provides only for the recording of telephone and other conversations (Art. 205-210). SIMs, and information gathered by that way, are extremely difficult to use since there is no adequate legal framework on their use in court. In the **RS**, the Criminal Procedure Code is often considered as anachronistic and needs to be amended – especially as concerns investigative techniques. The new code would comprise more appropriate and coherent provisions³⁵.
66. According to BiH prosecutors and judges, international legal assistance usually takes months and causes significant delays in proceedings including those concerning neighbouring countries.
67. The same could be said for the complexity of relationships between the two Entities (and between cantons) which make police and judicial cooperation difficult: difficulty to localise witnesses, difficulties to obtain information (e.g. the address of a suspect) etc. The authorities of one Entity are not allowed to operate on the territory of the other, whereas the free movement of persons/goods/funds is ensured (thus allowing to take advantage of more advantageous regulations, e.g. when it comes to laundering criminal proceeds, establishing fictitious firms). In fact, relations between the Entities are based on formal request and dealt with on a case by case basis, sometimes through the channel of the Ministries of Justice, sometimes on the basis of direct contacts. The relations seem to be variable (e.g. in RS the PPO experience good ones and the Customs bad ones). The former High Representative recently passed a law on assistance between the Entities. Some of the GET's interlocutors commenting about this and other such legal initiatives expressed a clear rejection of legislation imposed by the OHR.
68. A number of economic crime offences have been successfully prosecuted throughout the country (see the appended statistics); including for abuse of office, misuse of position etc. Interlocutors met by the GET confirmed that economic crime cases are difficult to handle due to interferences

³⁴ A State law was passed on 1 March 2003 on the protection of the identity of witnesses (providing for the possibility to conceal the identity for a period of 30 years). On 1 July 2003, the RS and BD, and on 1 August 2003 the FBiH adopted similar legislation (the same text as the one adopted at State level but adopted at entities' level).

³⁵ On 8 April 2003, the Government of RS adopted draft legislation on the criminal law, criminal procedure and protection of witnesses. A number of issues, including the use of SIMs, the protection of witnesses etc. would thus be dealt with in the near future.

of the executive, in particular in the local police. The prosecutor/investigative judge cannot bypass the naturally competent law enforcement bodies (of the jurisdiction where the offence was committed), e.g. by calling in other units. In such sensitive cases, cooperation between the prosecution/investigative judge, and the police can be difficult. In some instances, the police have worked with the Border Guard Service in corruption cases concerning the latter, but the outcome of such cases is unknown.

District of Brcko

69. The criminal and investigation procedure is specific as it ignores the institution of investigating judge. The Criminal Procedure Code allows for agreements to be made with the suspect who accepts to collaborate regarding criminal acts of corruption (plea bargaining). It also envisages witness protection measures and the same special investigative means as in the BiH. Statements given during the investigation cannot be used as evidence before court.

b4. Other mechanisms and institutions

i) Prevention and detection of corruption mechanisms

General mechanisms

70. Apart from isolated rules preventing conflicts of interests in either of the Entities, a Law on conflicts of interests in State level governmental institutions entered into force on 15 June 2002³⁶. It deals with special obligations of elected officials, executive office holders, and advisors in the BiH government institutions. The law provides for the adoption of a code of conduct, deals with the issue of conflict of interests, limits the acceptance of gifts – allowing to keep a gift in the amount not exceeding KM 50 without a duty to report it. Gifts exceeding that limit have to be reported and shall become the property of the State. That law also prescribes an obligation to regularly file financial reports. Failure to comply with the law is subject to sanctions.
71. A “Law on Party Financing” – applicable to the entire country - was adopted in July 2000, obliging candidates and parties to disclose their assets and to make financial reports (submitted to monitoring). The law also prevents companies in which the State has a majority share and private companies that carry out public works on behalf of the government from contributing to party finances. The law also prohibits political pressure on legal and natural persons when soliciting contributions for political parties, and the making of promises of privileges or personal benefits of any kind to a political party.
72. The Law on State services also provides for the disclosure of income and assets of State civil servants (including family members). The draft general Law on Civil Servants foresees the same, but does not provide for a control mechanism³⁷.
- ##### *ii) The State Border Service (SBS)*
73. The protection of the State border, and the supervision and controlling of cross-border traffic is under the exclusive responsibility of the SBS, which is the only State level police force. It was

³⁶ Information gathered during the evaluation indicated that the text was expected to enter into force after the elections of October 2002. After the visit, the authorities of BiH indicated that the text is applied also by the entities, pending the adoption of their own legislation.

³⁷ The authorities of BiH confirmed that the draft had not been passed at the time the report was discussed (July 2003)

established by law in 2000, taking over responsibilities shared among 8 ministries. The law was ratified in 2001 by the BiH Parliament after strong opposition from the Entities' level (the RS in particular) but the SBS was already effectively operational long before the adoption of a legal framework. The setting up is to be finalised by September 2002 with an increase of personnel (1750 to 2700³⁸).

74. The SBS is headed by a Directorate consisting of a *triumvirate*, with one Director and two Deputies (representing the three constituent people). The staff is multiethnic although the criteria of ethnicity does not seem to play a role in recruitment. The SBS was established with the assistance of and training provided by the UNMIBH's Border Service Department and the EU. The efforts deployed to establish proper control over the border and the results achieved so far had not avoided a number of controversies³⁹: persistent customs evasion, organised and politically well connected smuggling operations, ease for criminals to leave the country, crossing points remaining unsupervised or open for certain persons, bribery of SBS staff connected with transport of illegal immigrants etc. At the time of the visit, 88% of the border was supervised and it was expected that 100% would be covered as of September 2002.
75. Specific measures have been adopted to guarantee the integrity of staff, in particular on the basis of criteria prescribed by UNMIBH/IPTF: joint recruitment with foreign/international partners, introduction of internal controls, creation of a special disciplinary commission, temporary contracts. 37 disciplinary proceedings were initiated in 2001 (not only corruption related acts).

iii) *Financial authorities*

76. The Ministry of Finance of FBiH comprises the Financial Police Department, the Taxation Office, the Customs Administration and the Office for Bank Privatization. Within the Ministry of Finance of RS, in January 2002 the Financial police was merged with the Administration of Public Revenue to become the Tax Administration. The Customs of the RS have, in addition, responsibility for the BD. A number of initiatives have been taken to limit the risks of corruption in both the FBiH and RS: codes of conduct, rotation of staff, internal inspectorates, "four eyes" control etc. Some interesting initiatives have also been taken, such as technical advisers to whom Tax Administration employees of the RS must report suspicions of corruption. The structures have also been reorganised and computerised to increase their efficiency and to limit opportunities for corruption. The Customs Departments have been assisted in their modernisation by the EU Customs Assistance mission in Bosnia and Herzegovina – CAFAO.
77. As in other comparable countries, the vast majority of BiH income is collected at the border, which puts the Customs (and SBS) under great pressure, in particular because salaries are low. In the FBiH, 18 charges were filed by the SBS against Customs officers for corruption. The FBiH Minister of Finance, Head of Customs and other high ranking officers were recently removed for reasons of corruption. The country's system also suffers from a lack of harmonisation of laws and taxes. In the RS, an agreement was signed between the SBS and Customs and cooperation with neighbouring countries is considered satisfactory by those practitioners interviewed.
78. As far as the Financial Police of the FBiH is concerned (where it has not been merged with the Tax Administration), the central and ten cantonal divisions are in charge of administrative tasks and the supervision of compliance with business regulations and with tax, customs and other regulations. The GET took note of the project to place this institution under the Ministry of Justice

³⁸ After an assessment of the needs, the figure was fixed at 2453 (information provided after the visit).

³⁹ See „Policing the Police in Bosnia: a further reform agenda”, 10 May 2002, ICG Balkans report N°130

in order to facilitate its involvement in the fight against economic crime (carrying out investigations with police techniques, providing expertise in court etc.).

iv) *The Office of the Ombudsman*

79. The Dayton agreement – Annex VI - foresees the establishment of a Commission on Human Rights (the "Commission") which consists of the Office of the Ombudsman and the Human Rights Chamber, the latter examining complaints and forwarding them to the Ombudsman. The laws establishing these institutions were passed shortly before the visit of the GET, providing for the establishment of one office at State level, and one office at the level of each Entity. The competencies of these institutions are the following:

- to investigate allegations of violations of human rights;
- to present special reports to any competent government organ or official – those receiving such a report shall reply within a time limit;
- to publish a report, which, in the case that a person or body does not comply with his or her conclusions and recommendations, will be forwarded to the high representative
- they may also initiate proceedings before the Human Rights Chamber based on such report

v) *Auditing bodies*

80. There are three supreme audit institutions, each being responsible for the financial management at its level. All started working at the same time, in September 2000. A coordination board is facilitating joint activities and international representation. The **State** Audit function is to evaluate the control of finances by BiH State-level governmental institutions. Since the beginning, the Office has been focusing on the auditing of public bodies and money flows. It is also foreseen to develop performance auditing in the future. Results of the revisions are published in the national gazette and an annual report is submitted to parliament. The work of the Audit Office is public. The State Audit Office counts 19 staff out of 26 foreseen by the regulations and a lack of funding does not allow the institution to have its own premises.

81. As indicated above, the two Entities have their own audit bodies. The Chief Auditor of **RS** is responsible for auditing public expenditures, including those by State owned companies. The Auditor's Office in RS is accountable only to the Parliament, although it is dependent on the Ministry of Finance for its operational funds. The Chief Auditor is nominated by the government and approved by the National Assembly RS . The Office has 14 auditors. The GET was told that there is a pressing need for better record keeping and accounting standards for government expenditures, and that spending authority has to be more precisely defined to prevent current abuses of discretion in the procurement process. The absence of internal controls undercuts the effectiveness of audits. In the **FBiH**, the Federation Supreme Audit Institution was established and became operational after some difficulties, with the Auditor-General and Deputy Auditor-General appointed in October 2000. Shortly after, in February 2001, the HR established the Special Auditor (SA) for the FBiH to remedy the lack of transparency and independent audit at cantonal level. The position was filled by a foreign auditor in April 2001. The SA is assisted by special staff and vested with investigative powers. Audits are subject to confidentiality until the audit report is published. Although the aim of the new body was better control over the cantons' finances (considered non-transparent), the Special Auditor's scope extends to all federal, cantonal and municipal authorities of FBiH. Furthermore, the first series of special audit reports also addressed the RS, in addition to the FBiH central authorities and six cantons. The overall conclusions (RS and FBiH central and cantonal levels) were strongly negative and documented

inappropriate and illegal use of public funds, biased selection of vendors, use of three-party barter transactions sometimes used to divert funds, poor financial control, cashier and payroll functions performed usually by the same person, lack of cooperation with the AS in some cases etc.

82. The GET was informed that in both the FBiH and RS, audit bodies are involved in the detection of criminal offences (reporting of suspicions of offences etc.), and that several cases have led to investigations, in particular in the RS.

b6. Civil society and private sector

83. The GET met with a representative of the BiH Chapter of Transparency International, established in February 2001. This NGO counts about 20 to 25 active members and it received strong support from the government and journalists. It is the only NGO active in BiH specifically in the field of anti-corruption policies. As mentioned in the beginning of the report, TI BiH has commissioned a corruption perception survey on the basis of which a report was prepared.

84. Further interesting research papers originated from other NGOs, such as the multinational NGO International Crisis Group - ICG (which has a field office in Sarajevo – see footnote 8), and the Alternative Information Network - AIM, a network of independent journalists in former Yugoslavia and the southern Balkans which provides a service of in-depth information in various languages. They have produced a dossier on corruption in south-eastern Europe. But these NGOs are not involved in anti-corruption militantism.

85. The GET was told that the media lack professionalism and independence, but that the journalists have been quite independent in the recent years. Their investigative work has led to cases and the conviction of two former Ministers of the interior who used their position to make their business more profitable: they were first found innocent and then convicted following private prosecution by journalists. In recent months, the economic crisis had increased the pressure of political parties on journalists.

86. According to the Law on Free Access to Information (which entered into force in 2002), each person has free access to information, and public authorities are obliged to disclose all information, except in a few cases :

- interest of defence and security, protection of public safety
- prevention and detection of crime
- protection of the decision-making process, opinions, advices or recommendations by the public authority, not including facts, statistics, scientific or technical information

87. A number of companies are registered in BiH with the competent courts but the exact figures are variable and the GET was told that a number of them are shield companies. At State level, steps have been taken in favour of the enhancement of business standards but there is no special anti-corruption strategy in this respect at the moment.

c. Immunities from investigation, prosecution and adjudication for corruption offences

88. The situation was difficult for the GET to determine since various pieces of legislation of unequal importance - and variable availability (at least from the GET's standpoint) - regulate the matter. Furthermore, there was little information on the subject in the replies to the questionnaire and the

issue of immunities had not been discussed over the last 2 or 3 years - as the GET was informed notably by the OHR representatives. It also appeared difficult for many practitioners encountered to provide precise information on this matter, some of them declaring in addition that "everybody enjoys immunities in this country or possesses an immunity card". No figures seem to be available either on the number of cases initiated against persons enjoying immunities. The GET was told that a number of procedures had recently been initiated against parliamentarians and judges for suspicions of corruption or abuse of office, all of them invoking immunities. The legal dilemma made the outcome of such cases difficult to foresee^{40, 41}.

i) At State level (BiH)

89. At State level, by virtue of the State Constitution⁴², only (State) parliamentarians - of both chambers - enjoy immunity.
90. A State law on immunity⁴³, revised in early 1999 extends the range of persons who may refer to immunity against civil and penal procedures: members of BiH Presidency, members of Parliament, Government ministers including their deputies, judges of Constitutional Court, governor and members of the Central Bank Governing Board (Art. 3), as well as "all officials and other persons employed by or authorised to represent institutions mentioned above shall have the right to immunity in the exercise of their duties (...)" (Art. 3a).
91. The law provides that "a criminal or civil action **shall be suspended** against the persons (...), or if initiated, further procedure shall be suspended, nor they may be arrested or detained, if they refer to the immunity, until the competent body decide on the removal of the immunity in each particular case." (Article 4).
92. Furthermore, the law provides that premises and buildings accommodating the institutions of Bosnia and Herzegovina specified in Article 3a. (see above) shall be inviolable and may not be subject to search, requisition, confiscation or expropriation, nor shall they be subject to any administrative or legislative measure of constraint without the approval by an institution accommodated in these premises and buildings (Article 4a).
93. Under Art. 5 of that law, the decision to waive the immunity lies within the competence of:
 - the Presidency for the Presidency members and persons employed by the Presidency, or authorized to represent it;
 - the Council of Ministers for the persons employed by the Council of Ministers or Ministries, or for the persons who are authorized to represent any of these bodies;

⁴⁰ The GET noted with interest that three months after the visit, a series of decisions of the HR, dated 6 October 2002, amended the system of immunities at State and Entities level. The information provided hereinafter is based on the situation at the time of the visit.

⁴¹ The authorities of BiH confirmed after the visit that, with the above decisions, the OHR had reduced the scope of immunities throughout the territory of BiH:

- At State level, only MPs of both chambers enjoy immunities
- Executive powers in the entire territory of BiH are not entitled to immunities anymore
- Immunities now only apply during the period of the functions.

⁴² Article IV, para 3 littera j provides that „Delegates and Members shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the Parliamentary Assembly”.

⁴³ The GET did some research on this issue given the superficial information available throughout the evaluation (questionnaire and meetings).

- the House of Peoples for its deputies and the persons employed by the House of Peoples, or for the persons authorized to represent it;
 - the House of Representatives for its members and the persons employed by the House of Representatives, or for the persons authorized to represent it;
 - the Parliamentary Assembly for the members of the Council of Ministers and Deputy Ministers;
 - the Constitutional Court for its judges and the persons employed by this Court, or the persons authorized to represent it;
 - the Presidency for the Governor of the Central Bank and members of the Central Bank Steering Board;
 - the Central Bank for the persons employed by the Central Bank, or the persons authorized to represent it;
 - the Council of Ministers for the persons employed by or authorized to represent other institutions of Bosnia and Herzegovina which are performing the activities falling within the competencies of Bosnia and Herzegovina.
94. The law contains no conditions for the lifting of immunity, apart from the indication of the bodies deciding it. Representatives of the OHR indicated that a recent decision of the Constitutional Court had partly filled the gap.

ii) Federation of Bosnia and Herzegovina (FBiH)

95. According to Art. IV.B 4 of the Constitution of FBiH, the President, vice-President, Prime Minister, and the other members of Government can neither be prosecuted nor charged with offences relating to corruption while performing their duty. Under Art. IV A 3.13 members of both Houses of Parliament enjoy immunity to the same extent. Art.IV. C. 2 covers the immunity of judges of BiH courts. There are no provisions on the lifting of immunities.
96. At cantonal level, the constitutions of the 10 cantons also provide for systems of immunities, but provisions on the lifting of protection remain rare. Such immunities are enjoyed by:
- The executive bodies, typically the Canton President (or Governor), prime minister (or Vice-President) and ministers: they cannot be subject to criminal prosecutions or be held responsible in civil proceedings for any act committed in the performance of their duties; sometimes, the consent of the Canton Assembly is required in case of detention;
 - Members of the Cantonal assembly enjoy the usual immunity protecting the freedom of speech and vote (non-liability) although the GET noted that the provisions are sometimes broader and/or misleading⁴⁴, at least in the light of the copies of the English versions that the GET examined;
 - Judges: typically, the immunity applies to all acts committed in performing their judicial function.
97. In principle, municipal statutory regulations are contained in municipal statutes and the GET did not go deeper into such details to verify the oral information provided on the spot. Probably, the only exception is the Constitution of the Una-Sana Canton, which foresees that members of the

⁴⁴ The Constitution of the Posavina Canton foresees that „Delegates to the Assembly shall neither be prosecuted nor held responsible in a civic proceeding for actions carried out in the performance of their duties“; Constitution of the Herzegovina-Neretva Canton: „A criminal procedure or civil suit cannot be raised against a representative in the Assembly. A representative also cannot be detained or punished in any way, because of an opinion expressed or a [vote] given at the Assembly without previous consent of the Assembly.“

municipal councils also enjoy immunities (to protect freedom of speech and vote, but the drafting is misleading here too).

iii) *Republika Srpska (RS)*

98. In **RS**, immunities are defined in this Entity's Constitution and enjoyed by:

- Assembly deputies (under Art. 73): they cannot be held criminally liable, detained or punished for opinions expressed or voting in the National Assembly. They cannot be detained without the permission of the Assembly, except in cases of commission of a criminal offence punishable by more than 5 years in prison. A criminal procedure can not be started against an Assembly member appealing on immunity without the Assembly's permission;
- The President and Vice-President (Article 86), members of Government (article 95) and Members of the Senate⁴⁵ (article 89): according to Articles 86 and 89, they enjoy the same immunity as Assembly deputies. It is the Government itself who seems to decide upon the lifting of its Members' immunity⁴⁶.

99. The GET found no information indicating that immunities in the RS are also enjoyed at local/municipal level.

Brcko District

100. As for the BD, immunities are foreseen by the Statute of the District for members of the District Assembly⁴⁷ stipulated only by constitutional regulations, and statutory regulations for municipalities at the lower level. There are no laws defining more precisely the scope of immunity, and the procedure for lifting it.

The special power of the High Representative

101. The HR has the power to suspend and to remove at any time with immediate effect any State or Entity level official considered to be uncooperative or obstructive, whether the official enjoys any form of immunity or not. As indicated earlier, a number of judges and prosecutors have been suspended thus in the context of the creation of the High Judicial and Prosecutorial Council; also (in the period January-July 2002) two heads of municipalities, the Federation Minister of Finance and one cantonal deputy minister of justice, have been dismissed and barred from any future public functions, and their salaries terminated.

III. ANALYSIS

a1. General anti-corruption policy

102. The level of corruption is connected with the recent dramatic history of the country. Corruption undoubtedly existed in Bosnia-Herzegovina before 1992, but the 1992-1995 war even increased conditions for its penetration of all spheres of the economy and society. Each country in transition is at great risk of corruption. But in the case of BiH, that danger is multiplied by the fact that BiH is

⁴⁵ An advisory body comprising 55 members appointed by the President of the Republic, and whose sessions are convened and chaired by him.

⁴⁶ Art 95, para 2: „The immunity of the members of the Government shall be decided upon by the Government”

⁴⁷ Art. 28: „Councillors shall not be held criminally or civilly liable for any act carried out, opinion expressed or vote cast in performance of their duties.”

simultaneously undergoing a transition from war to peace, from a centrally controlled economy to a free market one, and from a socialist style government to a "new democracy". The establishment of criminal centres of power and influence, strong politicisation of a number of authorities, the lack of accountability and transparency are a substantial heritage of the communist era and the war; these factors are not easy to tackle. These problems have caused huge material damage and, what is even more devastating, have strongly affected the morale of the society. The country's complicated structure and the scarcity of resources increase the country's difficulties to face these challenges. In addition, multi-ethnicity seems to be a major problem: it needs to be taken permanently into account at managerial level (e.g. in terms of proportional staffing) and occasionally, there has been some unwillingness of Bosnians, Croats and Serbs to work with each other.

103. There was a high level of candour and understanding among most government officials about the seriousness and pervasiveness of the corruption problem. Many of the policy makers and law enforcement officials that the GET met were aware of and generally accepted the conclusions of the international and NGO community, i.e., the World Bank, Transparency International, and the Stability Pact, that corruption is a major impediment to economic development and political stability in BiH. Nevertheless, there was not a widely shared understanding of what is meant by the term "corruption." Interestingly, these practitioners sometimes mentioned that there are no legal provisions to deal with corruption; on other occasions, it was said that there are provisions in many different legal acts but coherence is lacking. Also, a number of officials the GET met appeared to be more concerned about governmental actions that were "corrupted" by political considerations as opposed to actions that were corrupted by a bribe, a conflict of interests or some misuse of government resources. Although the GET and GRECO view the phenomenon of corruption broadly, it is important not to dilute the concept to the extent that it loses its usefulness. In the legislative arena, for example, political considerations may be an entirely appropriate, and even an essential, aspect of a healthy and vibrant democracy. The GET was concerned that many officials labelled political opponents as "corrupt" merely because they are influenced by political views with which the official disagrees. But if "corruption" becomes a synonym for political differences, the fight against corruption easily degenerates into a purely political issue. In the process, there is a danger that the opportunity to advance important, politically neutral anti-corruption reforms (i.e. strengthening preventive measures) will be lost.
104. At the same time, on several occasions, the GET heard doubts expressed by FBiH and RS representatives about the reality of strong connections between corruption and organised crime, whereas the latter's power and intense activities were often emphasised. This attitude can easily lead to an underestimation of the importance of combating corruption, and to omitting the idea, that organised crime activities can be dealt with most efficiently by cutting their financial resources and links with corrupt State officials.
105. The GET was impressed by the number of anti-corruption studies and action plans that have been completed. Although some attempts to implement these action plans and to enhance the coordination among various authorities have failed, there are positive signs that things are changing progressively. The fact that the anti-corruption plan at State level has not been finalised after several years is an indicator of the existence of cooperation and coordination problems.
106. The GET also welcomes the initiatives taken by the OHR to raise awareness on anti-corruption standards and related issues (anti-corruption campaign, basic principles for public life etc.), and to provide guidance and orientation to anti-corruption policies (drafting of strategies etc.). It appears that the OHR has essentially unchecked authority to mandate changes in government

organization, policies, and personnel. It therefore has the ability to direct implementation of anti-corruption reforms, and in some areas it has done so aggressively. Apart from the number of legal texts imposed by the OHR (including legal provisions of constitutional value without this being foreseen in either the State or Entity constitutions), the GET noted also the number of officials dismissed for obstruction or lack of cooperation by the High Representative at State/Entity/cantonal/municipal level, including judges. This form of supreme (and sometimes expedite) disciplinary control may probably be necessary on certain occasions. However, the GET cannot but express some concerns since some of those removed or suspended enjoyed a high degree of legitimacy (as democratically elected persons) or are otherwise constitutionally protected (judges). The current practice could cause a negative feeling among the population. Perhaps greater consultation with BiH bodies in this process would enhance the perceived legitimacy of the decisions. Consequently, the GET observed that the OHR could make its "disciplinary" decisions after a thorough, multilateral hearing involving local bodies and based on well-explained motives.

107. It is likely that the OHR will continue to be a powerful force for positive change, breaking through traditional political and ethnic barriers to reform. What is less clear is whether in the long run, there will be local buy-in to OHR imposed reforms, or whether institutions and appointments made by OHR will be rejected as illegitimate. The challenge for OHR is to lead more by consensus and persuasion, and less by fiat, so that when the time comes for control of BiH to revert back to its own leaders, positive reforms will not be reversed, but rather readily adopted and carried forward by home-grown officials. This point is likely to become crucial, as the GET had the feeling that the legitimacy of measures imposed was sometimes undermined, and at least at present, not given full attention in practice by current practitioners.
108. Without judging in any way the respective merits of centralised or federal State models, the GET believes that the development of a stronger national government with a centralized, national capacity to enforce anti-corruption laws, would substantially improve efforts to combat deeply ingrained local corruption. The GET therefore believes that it could be useful – apart from the OHR specialised departments - to set up a central mechanism (working group, committee etc.) in order to coordinate all activities against serious crime, including corruption. It could help avoid overlapping of current activities, make them more systematic and co-ordinated within the entire BiH territory and foreign/neighbouring countries. It is quite possible that such a role could be played by the newly established Prosecutorial Office of BiH (State level), if entrusted with adequate competencies. Doing domestic research and compiling better data on the nature and extent of serious crime and corruption could be a further task of this central mechanism. All these remarks are also valid at sub-national level and in order to enhance the inter-agency cooperation at Entities' level, similar coordination initiatives seem to be needed. **The GET therefore recommended the establishment or designation of a body responsible for the enhancement of country-wide anti-corruption activities. This body could also be in charge of international cooperation aspects and research activities on the phenomena, modus operandi and importance of criminal activities (including corruption). This mechanism should be complemented at the level of the Entities by adequate cooperation mechanisms involving the Entities' police, tax authorities/financial police, Customs, border guards etc.**

a2. Legal aspects

109. Overall, the reform of the criminal legislation has reached different stages in BiH and it has been delayed for several years now. The GET found the framework for the criminalisation of corruption in the FBiH and RS quite developed as regards traditional offences connected with public

functions, but lacked all provisions foreseen by modern international instruments on corruption. The GET was also informed that provisions on „effective regret“ (connected with active bribery) are being used very rarely in practice. Some discrepancies remain in certain fields (e.g. criminalisation of private sector corruption and money laundering). At first sight, the Criminal Code of Brcko District seems to better fit with international standards.

110. The enactment of the State Criminal Code and Criminal Procedure Code should contribute to a certain harmonisation of the Entities' legal system and a more efficient implementation of legal norms aimed at combating corruption. The GET was notably informed that the Entities are taking inspiration from the State instruments. The GET took note of proposals to abolish the institution of the investigative judge, and to strengthen the prosecutors' role. The GET was told that this would simplify and accelerate the penal procedure. However, the State criminal law would be of little use if it is to apply to State level only; in addition, there are risks that the superposition of an additional general criminal legal framework would lead to confusions and procedural complications. Given the country's size, the adoption of a single Criminal Code and Criminal Procedure Code would ideally be the better solution, although technically difficult to advise in particular as regards the latter. A consolidated criminal legal framework would also probably facilitate the country-wide cooperation and a unified approach when it comes to dealing with illegal business and criminal acts involving various Entities. The GET was told that the inter-Entity cooperation often needs to use inefficient quasi-diplomatic channels. **The GET recommended to speed up the process of reform of the criminal legislation and through that process to harmonise to the largest possible extent the criminal codes and criminal procedure codes.**
111. The prosecution time limits in the two Entities are comparable to common European standards and the way they are applicable does not seem to present any major obstacle to complete criminal proceedings. The GET noted in this connexion that every interruption of proceedings suspends the running of time.
112. The effort to counter economic crime cases is currently undermined by insufficient possibilities for the courts to have access to appropriate expertise: this is partly due to lack of financial means as regards access to expertise from the private sector and to inappropriate, statutory regulations as regards experts in the public sector (e.g. expertise from members of the financial police is not accepted as evidence by the courts). The assistance of competent experts is crucial for the proper handling of corruption-related cases by judicial bodies. The GET recalled that the fight against complex criminal phenomena such as corruption, requires that the authorities be assisted, during the different stages of procedure by financial experts, accountants etc. For these reasons, **the GET recommended to take the legal and financial measures necessary for the courts to have easy access to the expertise they require and to allow the use of that expertise as evidence before the courts.**
113. The GET further learned that many of the corruption investigations being pursued at Entity level involve foreign banks and financial transactions with multiple countries. Some prosecutors reported that they are generally frustrated by the lack of cooperation and lengthy delays they experience when they ask for international assistance in their investigations. There is no established tradition in this area, and prosecutors view the diplomatic procedures as unnecessarily complex, typically requiring the involvement of three Ministries. As seen above, the same can be said of the mutual legal assistance between Entity agencies, which functions mainly on the basis of good will. **The GET observed that there is an urgent need in Bosnia and Herzegovina to adopt legislation and accede to relevant European legal instruments in**

order to make mutual legal assistance smoother and faster, and to promote direct contacts between competent national and foreign agencies.

b. Institutions, bodies and services dealing with the prevention, investigation, prosecution and adjudication of corruption offences

b1. Police, Public Prosecution and Judiciary

114. A crucial problem that the police, prosecution and judges have had to face is that of their independence. Other authorities also have sometimes faced difficulties in carrying out their duties, and there have been some instances, for example, where tax inspectors were subject to threats and received little or no assistance from law enforcement agencies (whether or not some of the latter's staff have had links with criminal activities). When it comes to corruption cases in particular, it seems that local personal, political and ethnic relationships have frequently interfered with the ability of local law enforcement and judicial officials to detect, investigate, and prosecute corruption of local officials. The situation seems to have improved but the system must in any case cope with an ongoing bad perception among the public. In addition, the GET registered repeated criticism of the Law on amnesty which had been passed in the context of war crimes. It was heavily criticised by BiH experts for its scope has been far broader than its initial aim required, thus preventing proceedings and convictions in many economic crime cases (including corruption cases). More generally, the effects of the amnesty law appear to have contributed to an undermining of popular confidence in the rule of law. The GET therefore welcomes the steps which have been taken at the level of the police, prosecution and judges in order to remedy a number of weaknesses.
115. As far as the police is concerned, the creation of Directors and chiefs of the police, and the separation of managerial and operational tasks of the ministries of interior, as well as the creation of internal control bodies are positive first steps. Compromises had to be found with the Entities and local authorities and as a consequence, this reform needs to be continued, especially in the light of the controversies existing as regards the political influence on the local police.
116. The modernisation and professionalisation of the police has to a large extent been assured by international assistance, sometimes with a lack of consistency, though; for this reason, a clear overview of the achievements may be difficult. The police need to remain a sector of particular focus for anti-corruption policy makers, since it is the body in daily contact with the public and the one in charge of assisting other State agencies when this is needed to enforce decisions and the law. Codes of conduct/ethics are generally an important element of such policies.
117. **In view of the above, the GET recommended to continue the efforts to limit the political influence and to enhance modernisation of the police bodies at all territorial levels, especially at the lower levels, with the adequate institutional, legal, awareness-raising and other safeguarding measures.**
118. **The GET also recommended that all measures be taken to ensure that the police provides the assistance required by other authorities in accordance with statutory provisions and regulations.**
119. In spite of the high number of judges, many cases are dealt with significant delays, a situation caused by the heritage of the pre-war and post war context and an important backlog connected to a large extent with the resolution of individual disputes resulting from that war. Ethnic factors

have made the resolution of claims difficult. The backlog itself is a factor that could promote corruption, as frustrated litigants resort to corruption and other extra-judicial means to resolve their cases. In addition, there were some signals of the existence of close ties between judges and local politicians and entrepreneurs. As a consequence, the trust of the public in the independence and impartiality of the judiciary was weakened. The ongoing judicial reform carried out with the assistance of the international community seems to lead to tangible improvements. The challenge is now to change entrenched perceptions and attitudes, both internally within the judiciary and externally among political policy-makers and the general public. Without a political constituency for a fair and effective judiciary and public confidence in the integrity and professionalism of the courts (as well as in the media), many reforms will be vain.

120. Despite the controversy that could arise from the involvement of international judges and prosecutors among members of the State Court and PPO, and among members of the High Judicial and Prosecutorial Council (hereinafter HJPC)⁴⁸, it seems that the HJPC is an important step toward the assurance of a greater independence of the judiciary. It would guarantee that the selection of judges, prosecutors, and chiefs of courts and PPOs will be free of political influence and determined only by objective criteria, such as professional skills and moral values of candidates. The GET was informed that the adoption of ethical rules was at present one of the priorities; such initiatives deserve to be supported.
121. The GET also took note of the possibilities for the hierarchically superior prosecutors to take a case from a subordinated colleague if this could help a better handling of the case. In the case of BiH, the faculty for the OHR to transfer cases to Sarajevo when there are risks or evidence that it is not handled properly, is an additional safeguard. This possibility should probably be progressively transferred to the State or Entity Prosecutor General, including for corruption cases (in FBiH, such a possibility does exist, but it is limited to other types of offences).
122. The GET welcomes the current efforts aimed at developing an anti-corruption/economic crime specialisation at the level of the prosecution offices, including the initiatives concerning specialised State level bodies and the FBiH central and cantonal teams to deal with corruption-related cases. The recent restructuring of the prosecutorial and judicial system - with a reduction of PPOs and courts and consequently more prosecutors and judges at the level of remaining bodies - could allow a certain permanent specialization, including at lower levels.
123. **In view of the above, the GET recommended to continue the efforts to enhance the merit-based selection of members of judicial bodies at all territorial levels, including the lower ones, with the adequate institutional, legal, awareness-raising and other measures.**
124. **The GET further recommended that in order to restore faith of the public in the judicial system, efforts be made to inform the media about successfully handled corruption and other sensitive cases and to promote professionalism and ethical conduct among journalist. Measures should also be taken to improve access to official information by journalists and the public in general.**
125. Although the prosecutors interviewed on the spot had no negative personal experience with interferences in their work, the GET wishes to recall that the independence of prosecuting authorities remains a crucial issue when it comes to dealing with sensitive cases such as those involving corruption (particularly when senior officials are concerned).

⁴⁸ Some BiH judges and prosecutors expressed certain doubts concerning the role of foreign judges and prosecutors in the ongoing reform process and the establishment of new institutions.

126. Another crucial problem is the lack, or inadequate distribution of human and material resources, which decreases the efficiency of investigations. The criminal police, in particular, is facing an important workload and it seems, in some instances, that their means are insufficient and that a balance between its staffing and that of other police departments needs to be reconsidered.
127. As far as the courts and PPOs are concerned, the fact that their budgets will be under the supervision of the High Judicial and Prosecutorial Council should create better perspectives since the former control by the ministries has been heavily criticized.
128. The GET also noted with approval that the OHR has recently taken bold steps to dramatically increase judicial salaries, on average four or five fold (from approximately 400 KM/month to a range of 1600 to 2500 KM/month). The OHR has also dismissed all 910 judges, reduced the number of judicial positions by approximately 50%, and is in the process of filling the new judicial positions with a combination of old and new judges. Although this dramatic reform is intended to reduce the vulnerability of judges to corruption, the GET expressed some concern about the possible consequence it could have for the guaranties of the full judicial independence. In this context, it hoped that in the future, such similar measures of wholesale dismissals will not have to be renewed. It is also unclear how the reduced number of judges will manage the already huge backlog of cases pending before courts in both Entities. The GET cautions that the disparity between judicial salaries and those of other government officials has already created cynical resentment among government officials who remain underpaid, particularly among prosecutors, law enforcement officials, and other actors in the legal system. The turnover caused by police staff who leave for the State Border Service, for instance, is revealing. The existence of this resentment could actually increase the corruptibility of non-judicial officials. While judicial reform is a logical top priority, **the GET recommended to look for ways over time to ensure that adequate remuneration is paid to police officers and prosecutors too.**
129. **The GET further recommended to look for ways over time to devote more financial resources to bodies responsible for investigation, and to provide them with better human and material resources.**

b2. Sources of information

130. The existing investigative methods are not sufficient for effectively uncovering and evidencing corruption-related offences, which are one of the most hidden forms of crime. The approach in BiH should be more offensive in this regard and solutions should be found at the same time to guarantee an adequate level of protection of human rights and freedoms. The introduction of provisions on the use of under-cover agents, wire-tapping, bugging, access to computer systems etc. would at the same time be useful for combating other forms of crime which are a matter of concern in BiH. **The GET therefore recommended to amend the criminal procedure codes and to include modern investigative techniques allowing to detect corruption and other forms of serious crimes, while assuring an adequate protection of European human rights standards.**
131. It appeared from the discussions that potential witnesses refuse to cooperate openly with the authorities due to fears of negative consequences for their position, or even more seriously, due to fears for their integrity where corruption schemes are connected with gangs or networks involving criminals but also State employees. The GET was fully aware of the working conditions for an official in a country like BiH (high unemployment, low salaries etc.). The GET believes that

witness protection measures could be a useful tool to reveal corrupt practices and obtain better evidence in corruption-related cases. In consequence, **the GET recommended to use witness protection law also in corruption cases, and to consider the usefulness of programmes on the protection of such witnesses after trial.**

c. Other anti-corruption measures and institutions involved in the fight against corruption

i) Preventive Measures

132. Most government officials met pointed to low salaries as a major contributor to corruption in BiH. The salary of ministerial rank officials is approximately 1,500 KM/month (approx. 750 Euros/mo). According to a recent Transparency International report, the average government salary in FBH is 460 KM/month (approx. 230 Euros/mo); and in RS, 368 KM/month (approx. 184 Euros/mo). These low salaries make government employees vulnerable to “corruption by need,” not just the “corruption by greed” that often characterizes corruption in developed countries. Both FBiH and RS officials reported that they do not have the resources to pay employees more, and that moreover given the current high rate of unemployment in BiH (as much as 50% in some areas), it is extremely difficult to justify an increase in government salaries.

133. The GET welcomed the adoption, shortly before the visit took place, of State legislation (the Law on conflicts of interests adopted in June 2002) providing for the disclosure of assets and obligation to file financial reports. It was noted that the mechanism is applicable to elected officials, staff in charge of executive functions and advisers to these high ranking officials. The fact that the entities have decided to implement this State legislation at their level, pending the adoption of entity-specific legislation is encouraging for the progressive harmonisation of the country’s anti-corruption system.

ii) Auditing Bodies and Institutions

134. The State Audit Office has been active and its reports have been made available to the Parliament and the public, (through the internet). It is also clear that the expertise and information of auditing bodies have been used to reveal criminal offences. It was clear to the GET that the ability of the State Audit Office to have a substantial impact is hampered by a serious lack of resources, notably in terms of staffing (9 professionals only, at the time of the GET’s visit). The GET was impressed to hear that despite these limited resources, the State Audit Office, in its first 22 months, produced approximately 25 reports, which have resulted collectively in dozens of administrative actions against State employees, including the dismissal of high-level officials. On the other hand, the GET was surprised that the State Audit Office has never made a corruption referral to any prosecutorial or law enforcement agency. A regular practice of making appropriate criminal referrals of violations uncovered by audits would emphasize the importance of the audit function and would facilitate cooperation with the State Audit Office during the audit.

135. Regular and professional auditing and the improved internal financial controls they promote are a critical component of an effective corruption prevention and detection strategy. **The GET recommended that more resources be devoted to the State Audit Office⁴⁹**; this is especially important as the institutions of the State government are still at their early stages of development, and there is a unique window of opportunity to instil a culture of fiscal integrity. **The GET also**

⁴⁹ Comments submitted by the authorities after the visit suggest that this should also apply to the Entities’ audit offices. It was also indicated that the RS National Assembly, by its conclusion of 10 April 2003, has invited the RS Government to provide additional funds for the work of the RS Audit office.

recommended that further rules and regulations be developed to govern public procurement at the State and Entity⁵⁰ level. Currently, public procurement is done largely at the discretion of government managers. The absence of standardized and transparent regulations and procedures creates opportunities for corruption by limiting the ability of State auditors to verify that public funds are being properly spent.

136. The GET was surprised that the Auditor's Office has not conducted any audits of State owned companies, especially in the light of the results of TI's perception study, which revealed that directors of State enterprises were perceived to be among the most corrupt officials in RS. The GET is aware that these companies are located at Entity level (and therefore under the supervision of Entity audit), but given the controversies, State and Entity audit capacities should perhaps be pooled in such cases.

iii) Customs and tax administration

137. Within the FBH Office of Tax Administration, new administrative steps are being initiated that should help prevent corruption. The GET learned that the geographic rotation of tax inspectors within FBH recently became available to managers within the Office of Tax Administration. The GET commends such a practice as an effective measure of reducing the vulnerability of tax inspectors to corrupt influences that may develop as a result of a permanent assignment in the same region. The RS Tax Administration Office has also recently stepped up its anti-corruption efforts as a result of new legislation that provides it with the authority to launch its own criminal investigations. This new authority has made it easier to pursue money laundering and other practices that conceal criminal corruption.
138. The GET was also positively impressed by the "four eyes" requirement, which are being implemented in the Customs Administrations of both FBH and RS. This commendable administrative practice deserves to be expanded to ensure that the opportunities for a vulnerable (i.e., poorly paid) employee to engage in unobserved corrupt conduct is limited.
139. The GET believes that the duality of Customs administrations is a serious problem, especially as it combines with heterogeneous taxes across the country and the absence of borders between the different Entities (including RS). This situation leads to huge opportunities for tax and duties evasion (and also for the laundering of proceeds of crime, as the GET was sometimes told). The importance of the public income collected through Customs is such that this major source of public income deserves a greater efficiency and an approach similar to the one that has led to the creation of the SBS. At the same time, it is clear that an adequate framework for cooperation and information exchange (data comparison etc.) between tax administrations is also needed. **Therefore, the GET recommended to envisage a consolidation of the Entities' Customs administrations and to set up an adequate mechanism for cooperation and information exchange between the Entities' tax authorities.**

⁵⁰ In addition to the information gathered during the visit confirming that public procurement is a sector at risk, the authorities of BiH indicated after the visit that in the RS, „the Law on Public Procurement of Goods, Services and on awarding of Contracts has been in preparation since 2000. (...) Its enacting is fully justified. Changes and amendments are to be expected this year aiming at more effective control of budgetary users concerning the management of the funds on the basis of public procurement, services and contracting”.

iv) *The ombudsman*

140. It seems rather strange that among the 500 complaints received by the Human Rights Ombudsman Office there were no complaints on corruption. The cases are treated as ones of maladministration⁵¹. The GET recalled that certain cases of maladministration can be explained by underlying corruption. For these reasons, **the GET recommended to examine the possibility of involving to a larger extent the Ombudsman in the fight against corruption and, in parallel, to promote awareness of the possibilities to complain to the Ombudsman about irregularities, maladministration and suspicions of corruption.**

v) *Other aspects*

141. Civil society is poised to play an important role in exposing corruption and generating and maintaining political pressure on government officials to take real action to address it. There are a large number of media outlets throughout BH, including more than 200 television stations, with a diverse range of political perspectives. The GET learned, however, that most of the journalists are relatively young and inexperienced. With training (supplied by the international community) and the passage of time, many of today's young journalists will likely mature into responsible and respected investigative reporters who will play a vital role in keeping government officials honest.

142. The GET was impressed by the detailed and professional perception study commissioned by the BiH chapter of Transparency International. Although perception studies are imperfect measures of actual corruption, a widely shared perception that corruption is serious and pervasive (which is certainly true in a number of important sectors of government in BiH) is a serious concern, not just because it is an indicator of actual corruption, but also because it promotes actual corruption. Individuals are much more likely to engage in corrupt behaviour if they believe (rightly or wrongly) that everybody else is doing it. Thus reducing the perception of corruption is a measurable way to have a real impact on the actual level of corruption.

d. **Immunities**

143. The current situation⁵² is unsatisfactory, particularly – but not only - in the light of the current controversies heard on the spot. The GET understands that ethnic factors may be a ground for politically motivated criminal procedures but as things stand, the extent of immunities – and the legal gaps - are likely to be a serious obstacle for the investigation, prosecution and adjudication of corruption-related offences. It may also give the impression, among the public, that the country's elite can act in total impunity. This may have a destructive impact on public confidence in the integrity of government.

144. First of all, the drafting of regulations is often misleading. The distinction between the protection of freedom of speech and votes (non-liability) and the protection from prosecution, arrest, detention (inviolability) is sometimes subject to confusion. Finally, the lack of precision does not allow to determine whether the immunity still applies after the person has left his/her functions for acts accomplished during that period. Also, the frequent protection from civil actions is rather

⁵¹ Information provided after the visit indicates that the number of cases is at present 1189 (June 2003), with some of them related to undue fees.

⁵² The GET's opinion is based on the situation at the time of the visit. It took note of the reform of October 2002 introduced by the OHR for the State and Entities level and considers without a thorough examination that the amendments are not sufficient: it remains unclear whether all previous constitutional provisions and other regulations on immunities – including the Law on Immunity PS BiH number 6/1999 – are definitely amended; the expression „non-liability“ immunity is used in the heading for provisions on inviolability etc.

surprising, as it would mean that one cannot be sued at all for damages resulting from negligence, gross error or deliberate misuse of powers. According to the GET's experience, the expression "acts committed in the course of duties" is - traditionally - not sufficiently clear and the same ambiguities can be observed in BiH (e.g. is the acceptance of moneys by a parliamentarian in exchange for presenting a bill shielded from penal actions for corruption? Are corruption-related acts committed by a local elected official on the occasion of procurement contracts not prosecutable?).

145. Secondly, the list of functions covered by immunities is extraordinary broad. At State level, immunities are enjoyed by heads of almost all State authorities and institutions. In addition, with the extension in 1999 of the system to the employees of State Ministers (who may invoke immunity against civil and penal actions (combination of art. 3a and 4), the total number of persons concerned could be very significant (theoretically, over 1000 persons). Furthermore, the GET wonders why the premises of such bodies are protected to such an extent. At least, it seems that the State level immunities are the only ones which require an approval for a preliminary investigation or search. In the FBiH, although the scope is more limited than at State level, the Entity's structure also leads to a high number of officials enjoying immunities (Federal, Cantonal and municipal levels), not taking into account judges. In the RS, the situation is less dramatic in this regard.
146. Thirdly, the procedure or conditions for the lifting of immunities often seems to be missing (the GET asked several times about details but it could get no satisfactory reply as this issue seems not to be regulated by law); the authorisation is also often not based on the separation of powers. This is crucial when it is the executive who decides on issues concerning other members of the executive.
147. For these reasons⁵³, **the GET recommended to review the system of immunities applicable at State and Entity level and make sure that the legal framework is clear, coherent, comprehensive, and understood by practitioners and the public at large.**
148. **The GET also recommended to limit the categories of persons covered by immunities from criminal proceedings.**
149. **Finally, it was also recommended to provide for clear conditions and procedures to be followed for the lifting of the immunities.**

IV. CONCLUSION

150. The GET wishes to underline that assessing the situation in a country such as Bosnia and Herzegovina is challenging. The Dayton peace agreement has consecrated the situation as it was at the end of the war, with an area (RS) where ethnic factors are not a constraint, and another area (FBiH) where ethnic considerations are to be taken into account at the various levels of the Entity's organisation and public management. A third area (BD) has recently emerged as a "third Entity", while the State authorities appear not to have the full ability to coordinate and push through changes in a coherent way. Given the limited size of the State, the current country organisation – and above all the legal and institutional framework which derives from it, is a permanent challenge. The OHR compensates the lack of central State capabilities to a large extent. The GET had the feeling that efforts need to be made to progressively transform the tutorship into a partnership, in order to instil a higher degree of legitimacy in the initiatives.

⁵³ See footnote 41

151. The fight against corruption and other forms of economic crime needs to remain a top priority of the country's authorities. Concrete results of that fight need to be achieved and broadly communicated to the public so as to disrupt the spiral of corruption and build respect for the rule of law.
152. Overall, the GET found many promising indications that progress against corruption is being made and is likely to continue: the GET met with competent and dedicated practitioners, positive results are visible, the working methods are in many instances quite developed. In addition, certain officials have taken clear commitments to refuse political interference in their work.
153. In view of the findings of the report, GRECO addressed the following recommendations to Bosnia and Herzegovina:
- i) **to establish or designate a body responsible for the enhancement of country-wide anti-corruption activities. This body could also be in charge of international cooperation aspects and research activities on the phenomena, modus operandi and importance of criminal activities (including corruption). This mechanism should be complemented at the level of the Entities by adequate cooperation mechanisms involving the Entities' police, tax authorities/financial police, Customs, border guards etc.;**
 - ii) **to speed up the process of reform of the criminal legislation and, through that process, to harmonise to the largest possible extent the criminal codes and criminal procedure codes;**
 - iii) **to take the legal and financial measures necessary for the courts to have easy access to the expertise they require and to allow the use of that expertise as evidence before the courts;**
 - iv) **to continue the efforts to limit the political influence and to enhance modernisation of the police bodies at all territorial levels, especially at the lower levels, with the adequate institutional, legal, awareness-raising and other safeguarding measures;**
 - v) **to take all measures to ensure that the police provides the assistance required by other authorities in accordance with statutory provisions and regulations;**
 - vi) **to continue the efforts to enhance the merit-based selection of members of judicial bodies at all territorial levels, including the lower ones, with the adequate institutional, legal, awareness-raising and other measures;**
 - vii) **in order to restore faith of the public in the judicial system, to make efforts to inform the media about successfully handled corruption and other sensitive cases and to promote professionalism and ethical conduct among journalist. Measures should also be taken to improve access to official information by journalists and the public in general;**
 - viii) **to look for ways over time to ensure that adequate remuneration is paid to police officers and prosecutors too;**

- ix) to look for ways over time to devote more financial resources to bodies responsible for investigation, and to provide them with better human and material resources;
 - x) to amend the criminal procedure codes and to include modern investigative techniques allowing to detect corruption and other forms of serious crimes, while assuring an adequate protection of European human rights standards;
 - xi) to use witness protection law also in corruption cases, and to consider the usefulness of programmes on the protection of such witnesses after trial;
 - xii) to devote more resources to the State Audit Office;
 - xiii) to develop further rules and regulations to govern public procurement at the State and Entity level;
 - xiv) to envisage a consolidation of the Entities' Customs administrations and to set up an adequate mechanism for cooperation and information exchange between the Entities' tax authorities;
 - xv) to examine the possibility of involving to a larger extent the Ombudsman in the fight against corruption and, in parallel, to promote awareness of the possibilities to complain to the Ombudsman about irregularities, maladministration and suspicions of corruption;
 - xvi) to review the system of immunities applicable at State and Entity level and make sure that the legal framework is clear, coherent, comprehensive, and understood by practitioners and the public at large;
 - xvii) to limit the categories of persons covered by immunities from criminal proceedings;
 - xviii) to provide for clear conditions and procedures to be followed for the lifting of the immunities.
154. Furthermore, GRECO invites the authorities of Bosnia and Herzegovina to take account of the comments made by the experts in the analysis part of this report.
155. Finally, and in accordance with Rule 30.2 of its Rules of Procedure, the GRECO invites the authorities of Bosnia and Herzegovina to report to it on the implementation of the above recommendations by 31 December 2004.

APPENDIX I
Selected provisions from the criminal codes

Federation (FBiH)

Article 201 Violating the Free Deciding of Voters

(1) Whoever, during elections or a recall vote or at a referendum, coerces a voter in the Federation by use of force, serious threat, bribery or by taking advantage of his/her poor material position, or in any other illegal way, to vote for or against a particular candidate or for or against a list of candidates, or for or against the recall, or for or against a proposal to be decided upon at the referendum, or not to vote at all, shall be punished by imprisonment for a term not exceeding one year.

(2) If the acts referred to in paragraph 1 of this Article have been committed by a member of election commission or some other person in the discharge of duty entrusted to him/her regarding the elections, vote or referendum, the perpetrator shall be punished by imprisonment for a term between three months and three years.

Article 260 Forming a Prejudicial Contract

(1) Whoever, acting as an agent or representative of a legal person which deals with an economic activity, forms a contract being aware of its prejudicial character to the legal person, or whoever forms a contract contrary to the authority vested in him/her, and thereby causes damage to the legal person, shall be punished by imprisonment for a term between three months and three years.

(2) If the person who committed an act referred to in paragraph 1 of this Article has received a bribe or if the damage exceeded 200,000.00 KM, he/she shall be punished by imprisonment for a term between one and ten years.

Article 358 Abuse of Office or Official Authority

(1) An official or responsible person who, by taking advantage of his/her office or official authority, exceeds the limits of his/her official authority or fails to execute his/her official duty, and thereby acquires a benefit to himself or to another person, or causes damage to a third person or seriously violates the rights of another, shall be punished by imprisonment for a term of between six months and five years.

(2) If a property gain acquired through the commission of an act referred to in paragraph 1 of this Article exceeds 3,000 KM, the perpetrator shall be punished by imprisonment for a term between one year and ten years.

(3) If a property gain acquired through the commission of an act referred to in paragraph 1 of this Article exceeds 10,000 KM, the perpetrator shall be punished by imprisonment for not less than three years.

Article 359 Embezzlement in Office

(1) Whoever, with intention of acquiring unlawful property gain for himself or another, appropriates money, securities or other movables entrusted to him/her by virtue of his/her office or his/her position within a State body or a legal person, shall be punished by imprisonment for a term between six months and five years.

(2) If a property gain in the amount exceeding 3,000 KM has been acquired as a result of the act referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for a term between one year and ten years.

(3) If a property gain in the amount exceeding 10,000 KM has been acquired as a result of the act referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for not less than three years.

Article 360 Fraud in Office

(1) An official or responsible person who, in the course of performing his/her duty, with the intention of acquiring an unlawful property gain for himself or another, by submitting false accounts or in some other way deceives an authorized person into making an illegal disbursement, shall be punished by imprisonment for a term between six months and five years.

(2) If a property gain in the amount exceeding 3,000 KM has been acquired as a result of the act referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for a term between one year and ten years.

(3) If a property gain in the amount exceeding 10,000 KM has been acquired as a result of the act referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for not less than three years.

Article 361 Using Property of the Office

Whoever makes an unauthorized use of money, securities or other movables entrusted to him/her by virtue of his/her office or service in a State body or legal person, or without authorization confers these things to another person for unauthorized use, shall be punished by imprisonment for a term between three months and five years.

Article 362 Accepting Bribe

(1) An official or responsible person who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit for the doing within the scope of his/her official powers of an official act which ought not to be performed by him/her, or for the omission of an official act which ought to be performed by him/her, shall be punished by imprisonment for a term between one year and ten years.

(2) An official or responsible person who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit in order to perform an action which is within his/her scope of powers, which ought to be performed by him or to fail to perform an act which he/she may not perform, shall be punished by imprisonment for a term between six months and five years.

(3) An official or responsible person who demands or accepts a gift or any other benefit following the performance or omission of an official act referred to in paragraphs 1 to 3 of this Article, and in relation to it, shall be punished by imprisonment for a term between three months and three years.

(4) The gifts or any other benefits shall be confiscated.

Article 363 Giving Bribe

(1) Whoever gives or promises a gift or any other benefit to an official or responsible person for the doing within the scope of his/her official powers of an official act which ought not to be performed by him/her, or for the omission of an official act which ought to be performed by him/her, and whoever mediates in such bribing of the official or responsible person, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever gives or promises a gift or any other benefit to an official or responsible person in order for that person perform an action which is within his/her scope of powers, which ought to be performed by him or to fail to perform an act which he/she may not perform, shall be punished by imprisonment for a term not exceeding three years.

(3) The person who has committed acts described in paragraphs 1. and 2. of this Article who had given a bribe on request of the official or responsible person, but reported the deed before it being discovered or before knowing that the deed has been discovered, may be released from punishment.

(4) The gifts or any other benefits shall be confiscated, while in case described in paragraph 3. of this Article, they can be returned to the giver.

Article 364 Peddling Influence

(1) Whoever accepts a reward or any other benefit toward interceding that an official act be or not be performed, taking advantage of his/her official or social position and influence, shall be punished by imprisonment for a term not exceeding three years.

(2) Whoever by taking advantage of his/her official or social position, intercedes that an official act be performed which ought not to be performed, or that an official act be not performed which ought to be performed, shall be punished by imprisonment for a term between six months and five years.

(3) If a reward or any other benefit has been received in return for the intercession referred to in paragraph 2 of this Article, the perpetrator shall be punished by imprisonment for a term between one year and ten years.

Article 365 Violation of Law by a Judge

A judge or a lay judge of a regular court or body for offences who, with intention of obtaining benefit to another, or to harm another, passes an illegal act or otherwise violates the law, shall be punished by imprisonment for a term between six months and five years.

Article 367 Disclosure of Official Secrets

(1) An official who, without authorization communicates, conveys or in any other way makes accessible to another person information which constitutes an official secret, or who obtains such information with the intention of conveying it to an unauthorized person who is not supposed to have it, shall be punished by imprisonment for a term between three months and five years.

(2) If an act referred to in paragraph 1 of this Article has been committed out of greed or in respect of a particularly confidential information or for the purpose of disclosing or using the information abroad, the perpetrator shall be punished by no less than one year in prison.

(...)

(5) Provisions referred to in paragraphs 1 to 4 of this Article shall also be applied to a person who has disclosed an official secret after his/her function as an official person has ceased.

Article 369 Illegal Collection and Disbursement

An official or a responsible person who collects from another something which the latter is not obligated to pay, or in excess of what he/she is obligated to pay, or who delivers or pays less than required during a payment or a delivery, shall be punished by imprisonment for a term not exceeding three years.

Article 371 Unlawful Appropriation of Objects while Searching or Carrying Out an Execution

An official who, during the search of premises or persons, or while carrying out an execution, takes a movable object with the intention of obtaining illegal material benefit for himself or another, shall be punished by imprisonment for a term between one year and ten years.

Republika Srbska (RS)

Article 337 Abuse of Office or Official Authority

(1) An official or responsible person who, with intention to acquire non-property gain for himself or another or causing damage to a third person, takes advantage of his office or official authority to exceed the limits of his official authority or fails to execute his official duty, shall be punished by imprisonment term ranging between three months and three years.

(2) If a significant damage to property or rights of the third party have been seriously breached through the commission of an act referred to in paragraph 1 of this article, the perpetrator shall be punished by imprisonment term ranging between six months and five years.

(3) The official or responsible person who with intention to obtain property gain for himself or another, abuses his position or authority, and exceeds the limits of his authority or fails to perform his official duty,

shall be punished by imprisonment term ranging between six months and five years.

(4) If the property gain acquired through commission of the criminal offence described under paragraph 3 of this article exceeds 10.000 KM, the perpetrator shall be punished by imprisonment term ranging between one and eight years, and if the amount exceeds 50.000 KM, by imprisonment term ranging between two and ten years.

Article 338 Embezzlement in Office

(1) Whoever illegally appropriates money, securities, or other movables entrusted to him by virtue of his office, or generally while he is working in a State body or legal person shall be punished by imprisonment term ranging between six months and five years.

(2) If the property gain has been acquired as a result of an act referred to in paragraph 1 of this article which exceeds the amount of 200 KM, and the perpetrator had intention to acquire small value, the perpetrator

shall be fined punished by imprisonment term not exceeding one year.

(3) If the property gain has been acquired as a result of an act referred to in paragraph 1 of this article, which gain exceeds the amount of 10.000 KM, the perpetrator shall be punished by imprisonment term ranging between one and eight years, and if it exceeds the amount of 50.000 KM, the perpetrator shall be punished by imprisonment term ranging between two and ten years.

Article 339 Fraud in Office

(1) An official or responsible person who, in the course of performing his duty, with the intention of acquiring an unlawful property gain for himself or another, by submitting false accounts or in some other way deceives an authorized person into making an illegal disbursement, shall be punished by imprisonment term ranging between six months and five years.

(2) If a property gain in excess of 10.000 KM has been acquired through commission of the offence referred to in paragraph 1 of this article, the perpetrator shall be punished by imprisonment term ranging between one year and eight years, and if the gain exceeds the amount of 50.000 KM, the perpetrator shall be punished by imprisonment term ranging between two and ten years.

Article 340 Using Property of the Office

Whoever who makes an unauthorized use of money, securities or other movable entrusted to him by virtue of his office, or generally while working in a government body or a legal person, or without authorization confers these things to another person for unauthorized use, shall be fined or punished by imprisonment not exceeding three years.

Article 341 Accepting Bribe

(1) An official or responsible person who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit for the doing within the scope of his official powers of an official act which ought not to be performed by him, or for the omission of an official act which ought to be performed by him, shall be punished by imprisonment term ranging between one and eight years.

(2) An official or responsible person who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit for a doing which is normally within the scope of his official powers or an official act which ought to be performed by him, or for the omission of an official act which ought not to be performed by him, shall be punished by imprisonment term ranging between one and five years.

(3) An official or responsible person who demands or accepts a gift or any other benefit following the performance or omission of an official act referred to in paragraphs 1 to 3 of this article, and in relation to it, shall be punished by imprisonment term not exceeding three years.

(4) The gifts or any other benefits shall be forfeited.

Article 342 Giving Bribe

(1) Whoever gives or promises a gift or any other benefit to an official to perform an act from within his competence that ought not to be done, or not to perform an act from within his competence that ought to be done, or who mediates in such bribing of an official or responsible person, or who mediates in such bribing of the official or responsible person, shall be punished by imprisonment term ranging between six months and five years.

(2) Whoever gives or promises a gift or any other benefit to an official for the doing within the scope of his official powers of an official act which ought to be performed by him, or for the omission of an official act which ought not to be performed by him, or who mediates in such bribing of the official or responsible person, shall be punished by imprisonment term not exceeding three years.

(3) The perpetrator of the offences described under paragraphs 1. and 2. of this article who had given a bribe on request of the official, but reported the deed before it being discovered or before learning that the deed has been discovered, shall be freed from punishment.

(4) The gifts or any other benefits shall be forfeited, while in case described under paragraph 3. of this article, it shall be returned to the giver.

Article 343 Illegal Influence

(1) Whoever accepts a reward or any other benefit for mediating in an official act be or not be performed, taking advantage of his official or social position, shall be punished by imprisonment term not exceeding three years.

(2) Whoever by taking advantage of his official or social position, intercedes that an official act be performed which ought not to be performed, or that an official act be not performed which ought to be performed, shall be punished by imprisonment term ranging between six months and five years.

(3) If the offence described under paragraph 2 of this article had been committed in relation with initiating or conducting criminal procedure against a person, the perpetrator shall be punished by imprisonment term ranging between one and five years.

(4) If a reward or any other benefit has been received in return for the intercession referred to in paragraphs 2 and 3 of this article, the perpetrator shall be punished by imprisonment term ranging between two and ten years.

(5) The award or property gain shall be forfeited.

Article 345 Disclosure of Official Secrets

(1) An official who, without authorization communicates, conveys or in any other way makes accessible to another person information which constitutes an official secret, or who obtains such information with the intention of conveying it to an unauthorized person who is not supposed to have it, shall be punished by imprisonment term ranging between three months and three years.

(2) The punishment defined under paragraph 1 of this article shall also be imposed on whoever, for the purpose of using them without authorization gets into possession of data kept as official secret or publishes them without authorization.

(3) If the offence referred to in paragraph 1 of this article was committed out of greed or in respect of particularly confidential information or for the purpose of disclosing or using the information abroad, the perpetrator

shall be punished by imprisonment term ranging between one and eight years.

(...)

Article 346 Illegal Collection and Disbursement

Official or responsible person who collects from another something which the latter is not obligated to pay, or in excess of what he is obligated to pay, or who delivers or pays less than required during a payment or a delivery, shall be fined or punished by imprisonment term not exceeding one year.

Article 350 Unlawful Appropriation of Objects while Searching or Conducting Execution

(1) Official who, during the search of apartments, premises or persons, or while conducting execution in judicial or administrative proceedings, takes a movable object with the intention of obtaining illegal material benefit for himself or another, shall be punished by imprisonment term ranging between six months and five years.

(2) If the appropriated object is of large value, the perpetrator shall be punished by imprisonment term ranging between one and eight years.

APPENDIX 2
Statistics on economic crimes in 2001

1) Federation of BiH (preliminary data)

2)

Cantonal prosecution	Total number of indicted persons	Dismissed requests	Investigation (Investigative judge)	Dismissed	Terminated	Indictment	Dismissed	Damages	Verdict	Imprisonment (persons)
Bihac	3361	364	1588	67	85	1508	141	2.497.000	1039	251
Odzak	296	12	131	17	-	166	4	477.980	80	6
Tuzla	5049	521	2625	201	24	2167	335	8.886.659	2040	348
Zenica	3907	391	1908	103	34	2194	134	4.448.000	2051	458
Gorazde	212	9	89	5	-	111	46	2.468.018	140	27
Travnik	83	-	144	86	-	13	2	7.800.000	3	3
Mostar	2394	243	1762	122	13	1075	74	*	902	256
Siroki Brijeg	298	19	312	25	1	224	11	156.964	181	45
Sarajevo	1134	45	2251	66	82	270	8	*	227	146
Livno	868	60	516	35	4	414	6	*	229	24
Total	17602	1664	11326	727	243	8142	761	27.734.621	6892	1564

* - these prosecution offices have not sent this information, so the total amount is not all-inclusive (complete).

- Prosecution offices in the Federation of BiH have received criminal reports on economic crimes against 13183 individuals in 2001, adding to the criminal reports against 4419 individuals from the previous years (Total of 17602 reports)
- Of those 17602 persons, criminal reports against 1644 persons were dismissed by the prosecutor.
- Investigative judges have worked on the cases against 11326 persons in 2001. And the investigative judges have dismissed the criminal reports against 727 persons. Processes against 243 were stopped.
- On the basis of indictment: 8142 were convicted in 2001, and out of these 8142, the court dismissed the indictments against 761 persons.
- Total amount of damages in 2001 was (according to incomplete data) 27.734.621 KM.
- The Court passed verdicts against 6892 persons. Of those 6892 persons, the Court pronounced punishment of imprisonment to 1564 persons.

2) Republika Srpska (data is of preliminary character)

County prosecution	Total number of indicted persons	Dismissed requests	Investigation (investigative judge)	Dismissed	Stopped	Indictment	Dismissed	Damages	Verdict	Imprisonment (persons)
Banja Luka	5879	1133	5081	388	81	2732	418	*	2178	312
Bijeljina	2921	213	2621	219	190	1904	284	*	987	283
Doboj	1917	207	1600	281	50	1066	218	*	744	130
S. Sarajevo	2487	213	1802	426	90	1095	131	*	637	130
Trebinje	1004	101	1001	106	5	539	59	*	503	151
Total	14208	1867	12105	1420	416	7336	1110	12.661.000	5049	1006

* - the information was not delivered for individual District Prosecution Offices, but only the aggregate number for the whole RS.

- The Prosecution of RS received criminal reports on economic crime against 11997 persons in 2001, adding to the 2211 criminal reports from previous years (Totalling to 14208 reports).
- Of those 14208 persons, criminal reports against 1867 persons were dismissed by the prosecutor.
- Investigating judges worked on cases against 12105 persons during 2001, and the investigating judges have dismissed criminal reports against 1420 persons. Procedures against 416 persons were stopped.
- On the basis of indictment: 7336 were convicted during 2001, and out of these 7336, the court dismissed the indictments against 1110 persons.
- Total damages in 2001 amounted to 12.661.000 KM.
- The Court passed verdicts against 5049 persons. Of this number 5049, the Court sentenced 1006 persons to imprisonment.