

RECOMMENDATIONS FOR IMPROVING THE LAW ON CONFLICT OF INTEREST BIH

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INITIATIVE FOR MONITORING
THE EU INTEGRATION OF
BOSNIA AND HERZEGOVINA

www.eu-monitoring.ba

Sarajevo, March 2021

ISSN: 2303-6079

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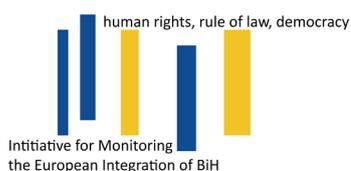
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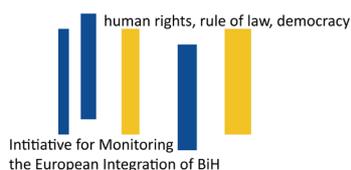


Human Rights Papers Edition of Sarajevo Open Centre

Publication number: 59

Title:	Recommendations for Improving the Law on Conflict of Interest BiH
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Editor:	Dajana Bakić
Proofreading:	Mirnes Sokolović
Translation:	Jasenska Kapetanović
Layout and design:	Lejla Huremović
Publisher:	Sarajevo Open Centre (www.soc.ba) on behalf of the Initiative for Monitoring the EU Integration of Bosnia and Herzegovina (www.eu-monitoring.ba)
On behalf of the Publisher:	Emina Bošnjak

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LIST OF ABBREVIATIONS

APIK – Agency for the *Prevention* of Corruption and Coordination of the Fight against Corruption

A-SDA – Party of Democratic Activity (political party)

BD – Brčko District

BiH – Bosnia and Herzegovina

CDCI – *Commission* for Deciding on Conflict of Interest

CEC – Central Election Commission

CLC – *Constitutional-Legal Committee*

DF – Democratic Front (political party)

EU – European Union

FBiH – Federation of Bosnia and Herzegovina

Foundation PLC – Foundation Public Law Centre

GRECO – Group of States against Corruption

HDZ 1990 – Croatian Democratic Union 1990 (political party)

HDZ BiH – Croatian Democratic Union of Bosnia and Herzegovina (political party)

HR PA BiH – House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina

NB – Independent Bloc (political party)

OG – Official Gazette

OHR – Office of the High Representative

OSCE – Organization for Security and Co-operation in Europe

PA BiH – Parliamentary Assembly of Bosnia and Herzegovina

RS – Republika Srpska

SBB – Union for a Better Future (political party)

SDA – Party for Democratic Action (political party)

SDS – Serb Democratic Party (political party)

SNSD – Party of Independent Social Democrats (political party)

TI BiH – Transparency International in Bosnia and Herzegovina

INTRODUCTION

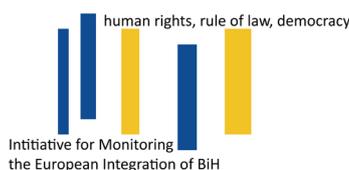
Legal Framework on Conflict of Interest in BiH

The first law regulating the issue of conflict of interest in Bosnia and Herzegovina entered into force in 2002¹; it was drafted under the significant influence of the international community, and it stipulated a wide range of limitations for the public office holders in BiH, and the Law was implemented by the Central Election Commission for all office holders in BiH, until the adoption of entity laws.

Since 2008, when the entity law and Brčko District Law on Conflict of Interest were adopted, there have been four laws in Bosnia and Herzegovina the content of which refer directly to this area: the Law on Conflict of Interest in the Institutions of Bosnia and Herzegovina, the Law on Conflict of Interest in the Government of the Federation of Bosnia and Herzegovina, the Law on Prevention of Conflict of Interest in the Government of Republika Srpska and the Law on Conflict of Interest in the Institutions of Brčko District of Bosnia and Herzegovina.²

The definition of conflict of interest according to the aforementioned laws stipulates that it arises in situations in which the elected officials, public office holders and advisors have a personal interest which affects or can affect the legality, transparency, objectivity and impartiality as to the exercise of the public duty. However, the remaining regulations which stipulate incompatibility, as well as the rights and obligations of office holders differ at different levels, which leads to an unequal position of the elected officials, public office holders and advisors, depending on the government level at which they exercise public duties.

In the period between the adoption of entity laws in 2008 and 2013, that is until the adoption of amendments to the Law on Conflict of Interest in the Institutions of BiH, the Central Election Commission was responsible for the application of laws at the level of BiH, Federation of BiH, and Brčko District, while the *Commission for Determination of Conflict of Interest* in the *Government Institutions of RS* was and still is responsible in *Republika Srpska*.



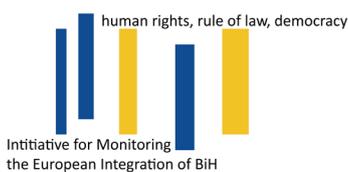
Civil society organizations and international organisations have warned since

- 1 Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina, OG BiH 13/02, 16/02, 14/03, 12/04, 63/08, 18/12, 87/13 and 41/16.
- 2 Official Gazette of BiH, No. 13/02, 16/02, 14/03, 12/04, 63/08, 18/12, 87/13 and 41/16, Official Gazette of Federation of BiH, No. 70/08, Official Gazette of RS, No. 73/08, Official Gazette of Brčko District of BiH, No. 43/08, 47/08 and 3/15

the beginning about the deficiencies in the legal framework itself and the need for the harmonisation with the relevant international standards. This primarily referred to the fact that not only that the legal framework is not harmonised, but that the laws at all levels do not extend to all the public office holders (such as e.g. CEOs of public enterprises and public institutions), that the regulations on financial reports/asset declarations are scattered throughout different legal acts and that there is no control over their accuracy, that the limitations have not been stipulated properly, particularly regarding the ownership of private companies which are doing business with the state, and, finally, that the sanctions are not proportionate to the potential gain or harm to the institutions, as well as that there are no mechanisms of reversing acts/decisions made in a situation of conflict of interest.

However, all the initiatives coming from the institutions went in a completely different direction. Having considered all the objections regarding the too rigid stipulations of the original Law on Conflict of Interest, and particularly regarding the sanction of *ineligibility of candidates* to stand for an office for those candidates for whom it was determined that they were violating the Law, there were many initiatives for the amendments of the Law, and most of them went in the direction of weakening the mechanisms, narrowing the limitations for the office holders and relaxing the criminal provisions and sanctions.

This culminated in the form of Amendments to the BiH Law in 2013, which resulted in the complete overturning of the system for prevention of conflict of interest. With these amendments, the competent authority for the application of regulations on conflict of interest for office holders at BiH level became the Commission for Deciding on Conflict of Interest, and not the Central Election Commission as before, and a new nine-member Commission was formed with three members from the House of Representatives of the Parliamentary Assembly of BiH and three members from the House of Peoples of the Parliamentary Assembly of BiH (at least 1/3 of these members coming from the opposition parties) whose mandate is linked to their parliamentary mandate, and three members from the management of the Agency for the *Prevention of Corruption and Coordination of the Fight against Corruption* (APIK). In order to reach a decision, there need to be at least two votes of the Commission members from each of the constituent peoples, which introduces the qualified majority, as well as a national consensus in decision-making, which proved to be an efficient mechanism for blocking the Commission's work and decision-making regarding individual cases. In this manner, this area and mode of operation was put under the direct control and influence of political parties

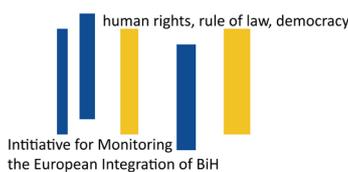


represented in PA BiH, and the Commission's work lost its purpose as its members are deciding on the conflict of interest of their colleagues, party bosses, and even themselves.

Apart from the amendments regarding the Commission, the sanction of ineligibility of candidates was removed (referring to the opinion of the Venice Commission and the protection of right to candidacy), and the non-binding sanctions of the proposal for compulsory retirement and call for resignation were introduced. A monetary sanction of salary deduction in the amount of 30% to 50% of Net monthly salary, which can last between one and 12 months (and even longer in extraordinary circumstances) was introduced, which is inappropriate considering the potential damage to the society and acquisition of illegal gain of assets of higher value. The Law stipulates that the sanctions can be avoided if the causes which led to the conflict of interest are eliminated during the procedure within a certain period, and that the Commission can stop the procedure in such circumstances or continue with the procedure, considering the elimination of causes as mitigating circumstances. Additionally, even after the sanction has been pronounced, there is an additional option for the Commission to give a 30-day extension to the public office holder to eliminate the causes leading to the conflict of interest.

These amendments made the institute for the prevention of conflict of interest for the public office holders at the level of BiH meaningless, and they also led to unforeseeable circumstances regarding the implementation of laws at the levels of FBiH and Brčko District, considering that the Central Election Commission is no longer competent for their application, and that, since 2013, FBiH has never adopted the Amendments to the Law or a new Law which would define the competent body for determining the conflict of interest. At the same time, the law was not applied in Brčko District, having in mind that following the adopted amendments the competence for its application was in the Election Commission of BD, for which these competences have not been stipulated in the primary, Election Law.

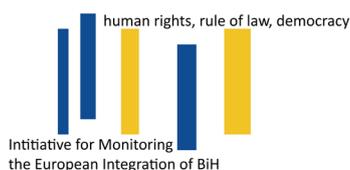
In addition to the implementation of the Law at FBiH and BD levels, the new concept of the Commission has led to problems and to the implementation of the Law at level of BiH. Namely, a hybrid body created by this Law, with a mixed Commission made from parliament members and APIK management, whose expert service went under APIK's wing, has led to administrative barriers in the implementation of the Law. The Commission did not have their own stamp, there were issues with the protocol and decision-making, and the work of the



Commission was almost completely blocked until the new amendments to the Law in 2016. The Commission for Deciding on Conflict of *Interest* held four sessions in 2015, adopting one decision on starting a procedure, 33 decisions on not starting a procedure, three opinions were provided on whether an act or an oversight constituted a breach of the provisions of the Law on Conflict of Interest, and three conclusions were made regarding the requests for access to information.³

With the aim of removing the obstacles for the implementation of the Law, in May 2016, an amendment was adopted, stipulating that the Commission shall use the stamp of the *Agency for the Prevention of Corruption and Coordination of the Fight against Corruption* for document authentication. At the time, Transparency International BiH warned that this amendment stipulating that the documents of one institutions are authorized with a stamp of another institution cannot be a long-term solution for the Commission's work, and that this decision is not based on relevant regulations, presenting an extremely unusual and inconceivable practice.⁴ With these amendments, the obstacles for the work of the Commission and Law's application were removed, however, in practice there was a blockade again when the case of Dragan Čović's conflict of interest was put on the agenda, which led to a practical suspension of work due to the lack of quorum, which showed in practical terms the harm of the stipulations regarding the national key of the decision-making process. This blockade lasted for almost three years, first due to the lack of quorum, then due to the stalling of the process of appointing the new members of the Commission, which lasted for two years following the General Elections in 2018. In the end, since it was founded, the Commission has spent more time under the administrative and political blockades, than in function.

When it comes to Republika Srpska, the Law has not been changed since it was initially adopted in 2008, and it significantly differs from the existing laws at other levels.⁵ It is significantly milder and more liberal than the other laws regulating this area in BiH which leads, without a reason and justification, to the creation of different legal norms and practices in RS when compared to BiH, and it puts the public officials at different government levels in an unequal position. In 2010, the Commission for Determination of Conflict of Interest in the Government Institutions of RS started an initiative for amending the Law on Prevention of Conflict of Interest in the Government of Republika



³ Annual Report on the Work of Commission for Deciding on Conflict of Interest for 2015

⁴ <https://ti-bih.org/izmjene-zakona-o-sukobu-interesa-hitne-ali-moraju-biti-sveobuhvatne/?lang=en>

⁵ The Law on Prevention of Conflict of Interest in the Government of the Republic of Srpska, Official Gazette of RS, no: 73/08

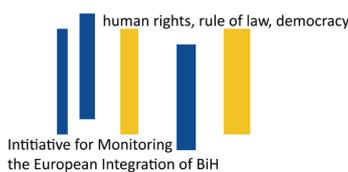
Srpska,⁶ which was delivered to the competent bodies of the National Assembly of RS. The Draft Law on the Amendments to the Law on Prevention of Conflict of Interest RS was sent to the public consultations in 2013, but the amendments still have not been adopted. In the justification of the Initiative, the Commission has pointed out that it is necessary to amend the Law so that it could be implemented and so that it would be made impossible for individuals to skilfully avoid conflict of interest, and thus that the Law needs to include prevention mechanisms, and suitable sanctions as well. In addition, under the project of offering technical support funded by the British Government, a draft of the new law was made, in collaboration with the Commission, and the amendments/adoption of the new law were included as one of the priorities of the Strategy for Fight against Corruption RS 2018-2022, where the RS Ministry of Administration and Local Self-Government is listed as the competent proposer of the law. However, on multiple occasions, including the debate in the National Assembly of Republika Srpska, the RS Government has sent a message that there is currently no will nor political consensus for its adoption.⁷

The differences in legal solutions can be summarized in the following manner, with RS Law stipulating:

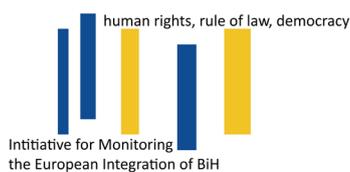
- A narrower circle of persons to whom the Law refers and a narrower circle of institutions regarding which the public officials can potentially have a conflict of interest;
- A narrower circle of incompatible functions (only members of supervisory boards and directors of public enterprises in RS);
- A shorter deadline for assuming incompatible functions following the end of term (only 3 months, compared to 6 months of limitation in the state law);
- Less restrictive prohibitions of providing personal services (a higher amount of the allowed contracts or deals between public enterprises or institutions of local self-government – BAM 30,000, compared to BAM 5,000 in the BiH law);
- A prohibition of engagement in associations and foundations financed from the budget or unit of local self-government in the amount higher than BAM 100,000 annually. Additionally, there is no formal obstacles for being an authorized person of associations and foundations financed from other sources at lower levels of government, apart from the RS budget;
- A higher value of a gift is allowed (BAM 300 in RS – BAM 200 in BiH)

⁶ Initiative for the Amendments to the Law. <https://www.sukobinteresa-rs.org/attachments/article/57/INICIJATIVA%20ZA%20IZMJENU%20ZAKONA.pdf>

⁷ “You harmonize first! Rešić admitted that the new law on conflict of interest is not happening” <https://srpskainfo.com/prvo-se-vi-usaglasite-resiceva-priznala-da-nema-nista-od-novog-zakona-o-sukobu-interesa/>



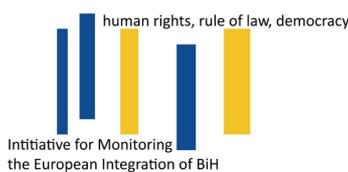
- The proscribed sanctions are much lower, in the amount of only BAM 500 to 1,500.
- Regarding Brčko District, the Brčko District Government has, in 2020, formed a workgroup, which has in collaboration with the international organisation representatives (OHR, EU Delegation, OSCE, the U.S. Embassy, Council of Europe) and TI BiH created a draft of the new Law, which will be submitted in the following period.



INITIATIVE FOR IMPROVING THE LAW ON CONFLICT OF INTEREST

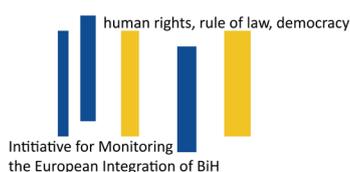
In order to improve the mechanisms for preventing the conflict of interest and the shortcomings of the law on conflict of interest, in 2016 Transparency International in Bosnia and Herzegovina has started an initiative for the adoption of the new Law on Conflict of Interest in the Institutions of BiH, which would serve as a model for other levels, and so that the harmonization process could finally begin at all levels, which is one of the key remarks in GRECO recommendations from the Fourth Evaluation Round for BiH. Namely, in the original draft TI BiH presented in May 2016, it was stipulated that the legislation at the levels of BiH, FBiH and Brčko District are integrated and that the competent body for the implementation is the Agency for the *Prevention of Corruption and Coordination of the Fight against Corruption*, which would also be competent for gathering and controlling the asset declarations. APIK was chosen as a logical solution, considering the warnings about the weak competencies of the Agency issued over the years, and considering that the regional agencies for fight against corruption are competent not only for the implementation of laws on conflict of interest, but also of other anti-corruption laws, such as laws on financing political parties, etc. However, following the presentation of this initiative, through the consultations with a wide circle of stakeholders, including the representatives of almost all parties in House of Representatives of PA BiH, the existing Commissions, international community, and APIK of course, a clear message was sent that there is no will nor willingness for increasing APIK's competencies, and that a separate body should be set up to implement the Law. After that, in the process of consultations with the representatives of PA BiH, the existing Commission, international community and similar, a new solution was offered: forming an independent Commission for Deciding on Conflict of Interest, following the Croatian model, with strict provisions regarding the transparency of appointing the members and ensuring the independence with the condition that members cannot come from political parties or government institutions.

Two years (2016-2017) were spent on ensuring the support for referral of the Law into the parliamentary procedure and consultations with all actors which were conducted by TI BiH in cooperation with the EU Delegation in BiH, OSCE, the U.S. Embassy, Council of Europe and others, which finally resulted in the creation of the final draft, which includes the following, as it was listed in the justification of the referred draft:



- Establishing an independent, professional body for the implementation of the Law, that is, the Commission for Deciding on Conflict of Interest, as a permanent, independent and autonomous body established by the Parliamentary Assembly of BiH, whose members are appointed by the Parliamentary Assembly of BiH, and which are chosen based on the public call for applications;
- More detailed defining and expanding the circle of persons the Law is applicable to, with the aim of a harmonized treatment towards all the public office holders;
- Introducing clear and uniform rules limiting the exercise of multiple public duties, and clear rules on exercising public duties, engagements and business activity of public office holders for the duration of their function and afterwards, in order to ensure impartiality of the decision-making process;
- Integrating and harmonizing the regulations on the property reports and conflict of interest, clear defining of competencies in regards to gathering, publishing and controlling by the Commission implementing the law;
- Introducing the availability and making it mandatory to file asset declarations annually, as well as establishing a system for ensuring the accuracy of data in the reports and publishing the registry of the public office holders and their property;
- Extending the scope and type of sanctions and introducing new mechanisms, such as nullifying the actions created in a situation of conflict of interest.

The Draft Law was referred to the procedure in October 2017 as an initiative of eight representatives of HR PA BiH at the time, who were from different parties: SDA, SDS, SDP, A-SDA, DF, Independent Bloc, SBB and HDZ 1990, which could have led to a broad support in the Parliament. However, the procedure of obtaining relevant institutions' opinions, and then of the adoption by the Constitutional-Legal Committee, and consultations in the House of Representatives lasted until the end of their mandate, making its way to the agenda in the final session of that mandate, during which there was not even voting on this issue.



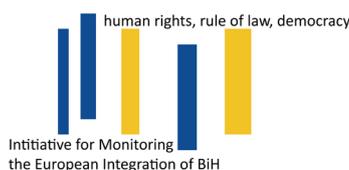
With the beginning of the new mandate, in June 2019, three representatives who were the signatories of the previous initiative (Saša Magazinović, Jasmin Emrić and Damir Arnaut) now took the role of proponents and referred the same draft into the procedure. The proposal was on the agenda of the House of Representatives only in January 2020, when it becomes obvious during the

consultations that the proposed solutions no longer have the support of certain parties which had initially supported it. The House of Representatives has then adopted the conclusion which asked of Council of Ministers of BiH to deliver the Bill on Conflict of Interest within 90 days. The House of Representatives asks that during the drafting of the Bill, Council of Ministers of BiH uses the representatives' proposal as a foundation, as well as opinions delivered by the institutions (Ministry of Justice, CEC and APIK).

However, considering that the Ministry of Justice responsible for the Bill has not made any moves nor published a draft until the deadline, the proponents have once more sent the same Bill, which was included in the agenda in July 2020, but due to the lack of entity majority it was referred to the harmonization to the Collegium of HR PA BiH, and it was only in September 2020 that it was adopted at first reading.

Amendments

Meanwhile, the representatives of SNSD and HDZ BiH have referred to the Constitutional-Legal Committee a wide range of amendments – representative Snježana Novaković-Bursać has submitted 20 amendments, and representatives Borjana Krišto and Nikola Lovrinović 19. The proposed amendments moved directly in the direction of making the provisions of the Law weaker, and some of the proposed solutions presented a step back in regards to the existing Law, not only to the Bill the amendments referred to. Both sets of amendments were directed at establishing limitations of incompatibilities only for the functions at the same government level, which derogates even the existing solutions which also prescribe incompatibilities for e.g. public enterprises and certain functions at other levels. There was also an intention that the limitations in regards to the private enterprises refer only to the enterprises doing business with Council of Ministers, which would also in a way represent a step backwards in regards to the current law, which, although it narrowly defines the functions in private enterprises and it does not refer to ownership, still contains limitations for doing business with other levels of government. The Amendments also moved in the direction of weakening the limitations regarding functions in associations and foundations in relation to the current law, and relaxation of all provisions in the Bill relating to limitations for relatives. Additionally, they are also directed towards the weakening of the independence of Commission itself, through amendments of the provisions for the choice of members of Commission, and even the composition of the Commission. In total, 22 amendments were adopted by the CLC, which is why TI BiH publicly reacted warning that the



numerous amendments are making the Law weaker.

Damir Arnaut has, then, on behalf of the proposers referred additional amendments aimed at the removal of parts of the adopted amendments of HDZ and SNSD.

Finally, the Bill was adopted in January 2021 by the House of Representatives, in the form which included parts of HDZ and SNSD amendments, but with the removal of 6 amendments based on the amendments proposed by Damir Arnaut, with the amendment of Alma Čolo related to the removal of incompatibility of functions of close relatives in public institutions.

In the form in which it was adopted the Bill also presents an improvement in comparison with the current Law, noting that the adopted amendments have partially weakened the Bill, especially in regards to incompatibility and limitations following the end of term and additional engagements, especially in regards to the Commission's status. Namely, according to the adopted amendments of SNSD and HDZ, which are currently contradictory to one another and which are not harmonized with the other provisions of the adopted Bill, the Commission implementing the Law will be a part of APIK (the adopted amendment of SNSD stipulated the retention of the Commission's Office, i.e. Expert Service in APIK, while the amendment of HDZ fully stipulates the Commission within APIK). These provisions will once more cause problems with the implementation of the Law in both cases – if the Commission stays within the Parliamentary structure, and if the Office remains in APIK, once again there will be a hybrid institution with numerous administrative obstacles, and if the Commission is incorporated in APIK, it will imply further amendments of the APIK documents, which will further require the amendments to the Law on APIK and it will cause confusion regarding the status of the Commission, which can lead to further delays in the implementation of the Law.

The adopted Bill still awaits harmonization, considering that the adopted amendments have led to contradictions between different provisions, and it has yet to be included in the agenda for consideration in the House of Peoples.

Ministry of Justice Draft

Simultaneously with the House of Representative's adoption of Bill of Law on Conflict of Interest, Ministry of Justice still started the activities on drafting their own proposal, which has immensely complicated the entire process and efforts regarding improving the Law, due to the need to pressure and react to potentially harmful solutions on two different fronts.

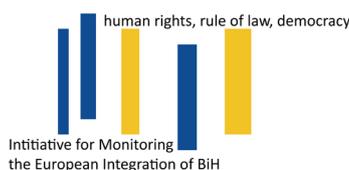
Although the first version of their Bill was presented by the Ministry of Justice representatives in September 2020, in a conference organized by TI BiH and Foundation PLC, it was published on the platform for e-consultations only in December 2020, in a heavily edited form, where even the original stipulations were relaxed, and also in certain segments the standard is set to an even lower level than the current ones. The Draft of Ministry of Justice greatly reflects the originally proposed amendments by HDZ and SNSD.

Instead of the current provision of the law that office holders cannot be a part of private enterprise management if the enterprise is doing business with "institutions financed from the budget at any level of government", Ministry of Justice proposes a prohibition only for the private enterprises which receive subsidies from the BiH budget or which do business with BiH institutions. This represents a vast space for using the political influence on institutions in order for the private entity in which a public office holder has a financial interest to benefit financially.

A step forwards was made in the part of the law which currently prohibits BiH office holders to be authorized persons of associations and foundations which receive funds from the budget at any level of government since the proposed prohibition refers only to the associations financed from BiH budget.

Additionally, if the Ministry of Justice Bill is adopted, not only that the blockades and political pressure on the Commission for Deciding on Conflict of Interest can continue in the future, but its independence is not ensured, since it is proposed that the future members can be members of political parties, but that they cannot be members of "a party's steering bodies in the period of six months before applying to the public call for applications for the membership in the commission".

Further, the Ministry of Justice Bill has stipulated very low sanctions, much lower than the potential gain from the situation of conflict of interest. In that

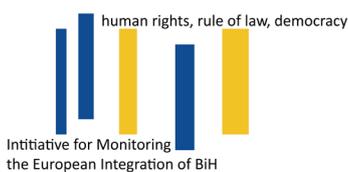


manner for example for violating the provisions on the engagement in private enterprises the proposed sanction is up to BAM 2,000, while the total range goes up to BAM 10,000. Certain provisions are also illogical, for example when an office holder for whom conflict of interest was determined continues violating the law, the commission issues “a prohibition of further violations of the Law”, and continues to issue sanctions.

In some parts, the law is improved in regards to the current solution, since it still includes the provisions on submitting asset declarations and control over them, but in any case, considering all the relevant standards for the prevention of conflict of interest, it sets much lower standards for the office holders integrity, than it is stipulated in the Bill adopted by House of Representatives.

TI BIH has sent a series of comments and proposals for improving the draft using the platform for e-consultations, but has not received a response in almost two months if the proposals were adopted, nor a report on the conducted consultations.

In addition, the EU Delegation, the U.S. Embassy in BiH and the OSCE Mission have addressed a joint letter to the Ministry of Justice and issued a public reaction related to the proposed draft which clearly point that the proposals are not in line with the international standards, and the letter even emphasizes that the “The draft Law on Prevention of Conflict of Interest in BiH Institutions that the Ministry of Justice submitted for public consultation in December 2020 would do little to improve the mechanisms for preventing conflict of interest. It does not meet international standards and does not implement GRECO recommendations necessary to prevent corruption. Concerted efforts to draft a law lacking strong provisions indicates a lack of willingness by political actors to make the system of prevention of conflict of interest operational.”

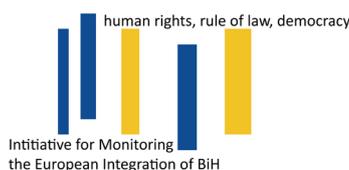


INTERNATIONAL RECOMMENDATIONS AND CONCLUSIONS

Within the Fourth Evaluation Round for BiH⁸, a Group of States against Corruption of Council of Europe (GRECO) conducted an analysis of the legal framework on the conflict of interest and asset declarations, among other things, and issued recommendations, including:

- Harmonization of the legal framework on conflict of interest at different levels
- Integrating the current requirements related to financial reporting of office holders in a single form of statement (considering that currently the financial reports are mandatory as stipulated in laws on conflict of interest, while asset declarations are submitted as stipulated in the Election Law); introducing the requirement of reporting the assets of close relatives and updating in case of changes in information which is to be reported during the term; and ensuring the publishing and easy access to this information, with considerations of privacy and safety of the Parliament members and their close relatives included in the requirement of reporting
- Integrating the system of publishing with the efficient control mechanism (including random checks) and introducing suitable sanctions for false reporting;
- Complete revision and proper articulation of the monitoring and implementing the regulations regarding conflict of interest, especially in the manner ensuring its independency and timely manner and establishing an efficient system of suitable sanctions
- Calling the parliaments of Republika Srpska, Federation of Bosnia and Herzegovina, and Brčko District of Bosnia and Herzegovina to take action in line with the recommendations published in this report segment.

In the first report on the implementation of recommendations, GRECO welcomed the referral of the Bill of Law on Conflict of Interest to the parliamentary procedure, deeming it progress in regards to the independence of implementation, establishing control over the asset declarations and harmonizing regulations.

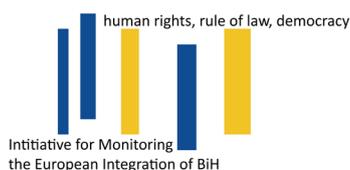


However, in the last report, published in December 2020, GRECO addressed the fact that the aforementioned Bill was not adopted, and that it can no longer be claimed that the recommendations were partially implemented. In concrete

⁸ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c4999>

terms, it is stated: “GRECO recommended harmonising the legislation on conflicts of interest throughout the national territory. 17. It is recalled that this recommendation was partly implemented according to the Compliance Report. The preparation of a draft law on conflict of interests, aiming to address shortcomings in membership and procedures of the Commission for Deciding on Conflicts of Interest (CDCI), was welcomed. However, the draft law had not been adopted and was still subject to parliamentary consultations. (...) According to the additional information provided by the authorities, the draft of the Law on Conflicts of Interest was included on the agenda of the third session of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, held on 16 January 2020. The House of Representatives then requested that the draft be submitted by the Council of Ministers of Bosnia and Herzegovina in the timeframe of 90 days to take into account proposals of the MPs and the opinion of the Central Election Commission. GRECO takes note of the information provided, i.e. the recent submission to the Parliamentary Assembly of the draft Law on Conflict of Interest. However, this information also shows that the same draft is not yet ready for discussion/ adoption by Parliament, nor has it been finally agreed by the Government, as the Council of Ministers also need to take into account further opinions from MPs and the Election Committee before the Parliamentary process can start. **In this situation, GRECO cannot maintain its previous conclusion that this recommendation has been partly implemented.⁹ GRECO concludes that recommendation iii has not been implemented.”**

When it comes to the recommendation that the advisory, supervisory and enforcement system regarding conflict of interest is completely reviewed and properly articulated, by ensuring its independence and timeliness, and by making it more efficient through an appropriate system of sanctions, GRECO reminded once more that, although the Bill was referred to the parliamentary procedure, it still has not been adopted. “GRECO recalls that this recommendation was partly implemented according to the Compliance Report: GRECO took note of the activities carried out by the Commission for Deciding on Conflicts of Interest (CDCI) and additional improvements envisaged under the draft Law on Conflicts of Interest, including improvements to advisory, supervisory and enforcement regime regarding conflicts of interest, reviewed composition of the CDCI, modalities of election of its members, their expertise, experience, administrative and investigative powers, as well as human and financial resources. However, these proposals were yet to be adopted and effectively implemented in practice. 33. The authorities report

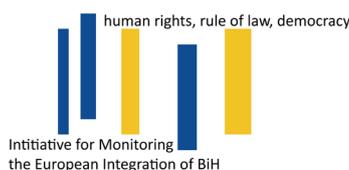


⁹ <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a0bb7e>

that the draft Law on Conflict of Interest has been recently submitted to the Parliamentary Assembly of Bosnia and Herzegovina, which in turn transmitted it back to the Council of Ministers for additional examination (see paragraph 18 above). No new information has been received regarding the activities of the CDCI. In view of the absence of further tangible progress regarding this recommendation, GRECO cannot conclude that this recommendation has been implemented satisfactorily.”

The European Commission, in its Opinion on the BiH application for membership from May 2019, also mentions in particular the need for adoption and enforcing of the regulations on conflict of interest, and it specifically emphasises it as one of the 14 priorities, within priority 7. “Strengthen the prevention and fight against corruption and organised crime, including money laundering and terrorism”¹⁰. In the Analytical Report, along the Opinion, it is stated that there is a lack of independence of the existing Commission for Deciding on Conflict of Interest, as well as a lack of adequate enforcing at other levels. “As regards conflict of interests, the legal framework at all levels is weak as regards both the rules themselves and the way in which they are implemented. Legislation on the declaration of assets is fragmented and not harmonised across levels of government, making its implementation ineffective, including on the penalties imposed. To step up anti-corruption efforts, new legislation needs to be adopted at all levels on the declaration of assets and conflict of interests in line with international standards, in particular relevant GRECO recommendations. At the state level, the Law on conflict of interest in the governmental institutions of Bosnia and Herzegovina is not in line with international standards. In the Republika Srpska entity, legislation on conflict of interests is in place but needs to be aligned with international standards. The Federation entity has legislation regulating conflict of interests which is not implemented due to legal uncertainty on the institution in charge. Similarly, the Brčko District has legislation on conflict of interests in the public institutions but is not implemented.”¹¹

In the last BiH 2020 Report, however, the lack of progress in this area is emphasized: “The country made no progress in adopting a comprehensive law on prevention of conflict of interest, in line with international standards.”¹²



10 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-opinion.pdf>

11 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-analytical-report.pdf>

12 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf

CONCLUDING REFLECTIONS

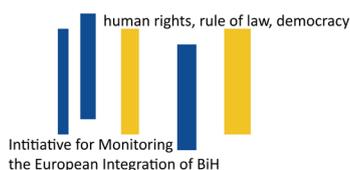
Regardless of the long-term warnings and recommendations, guidelines and attempts at pressuring the institutions to improve the legal framework in this area, we have mostly witnessed all types of attempts of the decision-makers to prolong the process or to relax the provisions as much as possible, even aggravating the current framework, displaying an open unwillingness for reforms. This was, in the end, pointed out in the letter the EU Delegation, OSCE and U.S. Embassy have addressed to the Ministry of Justice. On the other hand, this issue is one of the key priorities, meaning that the obstructions of the adoption of improved solutions is openly stippling path of BiH towards the European Union, which sends a message that there is no consensus nor willingness even regarding the issues of potential membership and will for joining.

Having considered this, as well as the analysis of the process which shows that there are attempts to destroy even the existing solutions under the disguise of the reforms, a significantly greater pressure and a clear message are needed, both by the EU and by the public in the country, that the adoption of any solutions, unless they are in line with the international and European standards, does not lead to fulfilling the priorities.

Basic recommendations for improving the Law on Conflict of Interest

Through the analyses of all laws on conflict of interest, as well as monitoring their implementation, there are some key points which clearly stand out and which need to be improved in the legal framework, the first and the basic step being the necessary improving of Law on Conflict of Interest in BiH institutions, in line with the published recommendations, and then, having this Law as a basis, entity laws need to be harmonized. In regards to the aforementioned, even before submitting the initiative for a new Law, TI BiH identified the following recommendations:

- Establishing an independent body/independent bodies which would be competent for the implementation of laws at the levels of BiH, FBiH and BDBiH;
- Harmonizing the legal framework in the area of preventing conflict of interest with the aim of eliminating the differences in regards to persons to whom the law refers and situations leading to conflict of interest;
- It is necessary to expand the circle of persons the laws refer to, that is, to



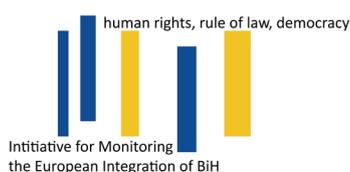
encompass all elected appointed assigned persons in the organs, bodies and enterprises established by the state;

- Provisions regarding exercising other public duties and the incompatibility of duties need to be adapted for all public office holders;
- Introducing clear and uniform rules limiting exercising of multiple public duties, regardless of the government level;
- Introducing provisions which would distinguish between exercising public and party duties, bearing in mind that this issue has not been adequately addressed in other laws;
- Defining, in detail, the limitations in exercising public duties, engagements and doing business of public office holders in the period of two years following the end of mandate, or function, with the aim of preventing the practice of using the influence office holder may still have in the government organs with the aim of gaining benefits;
- Introducing new provisions in regards to the reports the office holders submit on their financial state and assets, and which proscribe in detail the reporting deadlines, manner of gathering this data, publishing it and control by the Commission implementing the law;
- Defining in detail the limitations for incompatibility of engagements of office holders in private enterprises, with the aim of preventing the public office holders from being owners or having a financial interest in enterprises doing business with the state;
- Making asset declarations publicly available and introducing the obligation of annually submitting asset declarations, as well as establishing a system of checking the accuracy of data in the reports and publishing the register of public office holders and their assets;
- Increasing the monetary sanctions and introduce additional sanctions, such as removal from office and nullifying the actions created in a situation of conflict of interest.

ABOUT THE AUTHOR

Ivana Korajlić has twelve years of experience working with Transparency International Bosnia and Herzegovina, which resulted in a significant experience in developing and implementing anti-corruption programmes and approaches and rule of law. She is the author of numerous analyses, research and advocating initiatives in the area of fight against corruption within one of the most prominent non-governmental organizations in BiH and the only civil society organisation which is solely focused on fight against corruption and on rule of law.

A special thematic focus of her work and her knowledge is in the areas of: transparency, prevention of corruption, rule of law, financing of political parties and conflict of interest.



ABOUT THE INITIATIVE

The Initiative for Monitoring the European Integration of Bosnia and Herzegovina is an informal coalition of forty civil society organisations which contributes to monitoring the reforms and oversees the implementation of policies, rights and standards of the European Union, focusing on the issues of democratisation, rule of law, and human and minority rights. Learn more about the Initiative at: <https://eu-monitoring.ba/en/about-the-initiative/>.

Active member organizations:

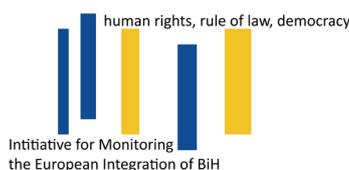
Aarhus Centre in BiH, Sarajevo
 Association for Democratic Initiatives, Sarajevo
 Association Network for Building Peace, Sarajevo
 Balkan Investigative Reporting Network in BiH, Sarajevo
 BH Journalists, Sarajevo
 Centre for Investigative Reporting, Sarajevo
 Centre for Political Studies, Sarajevo
 Civil Society Promotion Centre, Sarajevo
 Forum ZFD, Sarajevo
 Foundation 787, Sarajevo
 Foundation Cure, Sarajevo
 Helsinki Citizens' Assembly, Banja Luka
 Hope and Homes for Children, Sarajevo
 Kali Sara – Roma Information Centre, Sarajevo
 Land of Children, Tuzla
 MyRight – Empowers People with Disabilities, Sarajevo
 Oštra Nula, Banja Luka
 Sarajevo Open Centre, Sarajevo
 Transitional Justice, Responsibility and Remembrance, Sarajevo
 Transparency International in BiH, Banja Luka/Sarajevo
 TRIAL International, Sarajevo
 Vaša prava BiH (Your Rights BiH), Sarajevo
 Women to Women, Sarajevo
 Youth Centre Kwart, Prijedor
 Youth Initiative for Human Rights in BiH, Sarajevo
 Zašto ne (Why Not), Sarajevo

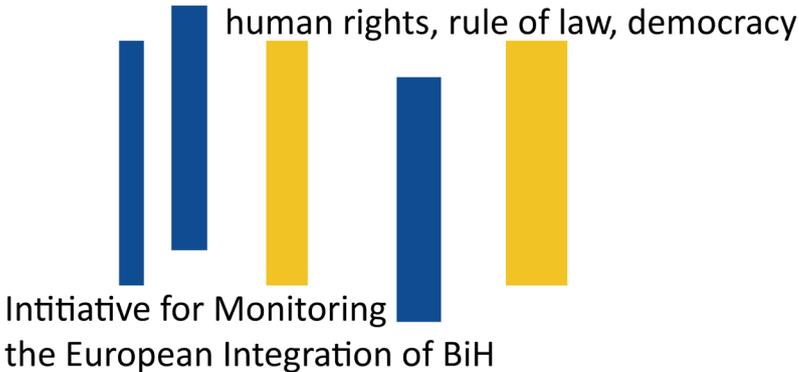
Coordinators of the Initiative:

Sarajevo Open Centre
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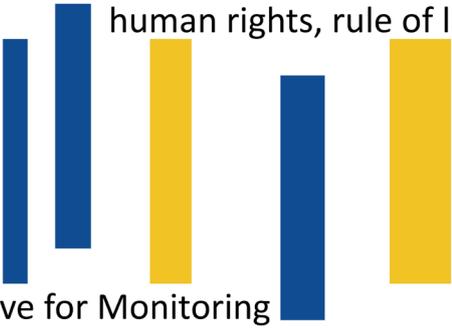
Supporting organisations:

ACIPS, Sarajevo; Association of Students of Tuzla University's Faculty of Law; Banja Luka Association of Queer Activists (BUKA), Banja Luka; Centre for Socio-Ecological Development, Banja Luka; Human Rights Centre of the University of Sarajevo; Crvena (Red), Sarajevo; European Research Centre, Sarajevo; Green Council, Sarajevo; Infohouse, Sarajevo; OKC Abrašević, Mostar; Perpetuum mobile, Banja Luka; Association PEKS, Tuzla; Vesta, Tuzla; Foreign Policy Initiative BiH, Sarajevo; Green Neretva, Konjic.





human rights, rule of law, democracy



Bar Color	Approximate Height
Blue	Medium
Blue	High
Yellow	Medium
Blue	Low
Yellow	Medium

Initiative for Monitoring
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