

ASSESSMENT OF THE LEGISLATIVE PROCESS

BOSNIA AND HERZEGOVINA

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Based on an unofficial English translation of the legislation by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and OSCE Mission to Bosnia and Herzegovina and series of online interviews with interlocutors.



EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

This Assessment provides an analysis of the legislative framework and practices related to lawmaking in Bosnia and Herzegovina (hereinafter “BiH”) to ensure their compliance with international human rights and democratic governance standards and OSCE human dimension commitments. The overall goal of the assessment is to promote greater legislative quality and efficiency of the lawmaking process to ensure democratic and enforceable legislation in all fields and provide recommendations on how to improve the overall quality, effectiveness, and transparency of the legislative procedure.

For this purpose, ODIHR has reviewed the legislative process from a legal, policy and practical perspective, as lawmaking is not an isolated matter and always requires a combined effort of various state actors and a meaningful interaction with those whom the laws aim to serve.

The legislative procedures in BiH (state and entity levels) are not fundamentally different from the procedural rules existing in many other states. Given their capacity to organize the legislative process in a timely and adequate manner, as well as in the interest of the people, these legislative procedures are not intrinsically incompatible with the democratic lawmaking standards. At the same time, the complex constitutional framework, the political context, as well as the legal and/or legislative culture and tradition are the principal challenges for making qualitative legislation in BiH.

Therefore, apart from suggesting how to ameliorate existing rules governing the legislative process in the state, these recommendations also address the issue of the complex constitutional framework. Given that main shortcomings in the lawmaking process in the country are not due to existing rules but to the way in which they are implemented (or not implemented), the recommendations focus primarily on the relevant practical improvements.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further improve the lawmaking process in BiH:

A. Laws on lawmaking in general: The regulations governing the different aspects of the lawmaking process would much benefit from revision (in particular, identifying as many aspects of regulatory impact assessment (hereinafter “RIA”) as possible, provisions on meaningful consultation, ex-post evaluation of laws, which should methodologically be linked to the ex-ante assessment, etc.). The general experiences and best practices developed and used during the Covid-19 pandemic worldwide in terms of organizing sittings, meetings, discussions, voting procedures, and oversight may also be considered and should be addressed in the existing rules. As for the formal drafting rules, an online manual on “legistics/legislative technique”, which should be updated when necessary, could enhance the formal quality of drafts. An online-accessible summary of the rules could be helpful for information and awareness-raising purposes. It is also advised that parliamentary Rules of Procedure (hereinafter “RoPs”), in particular in the Federation of BiH (hereinafter “FBiH), should set specific rules on public debate as a basis for a predictable and coherent practice on consultations.

B. Cooperation: Cooperation should be promoted between the executives and the parliaments of the state and its two entities in order to commit themselves to a joint program of reforms. At the state level, it is advised to increase the cooperation between the two chambers of the Parliament, between the Government and the

Parliament, and between the Parliament and the Constitutional Court. In the FBiH, without prejudice to the autonomy of parliamentary chambers, the two chambers should closely cooperate in practice, and the relevant RoPs should be organized in a way that facilitates such an intense cooperation. Otherwise, the bicameral Parliament cannot effectively perform its constitutional tasks. Cooperation between the various parliamentary committees and the role of the Joint Committees of both chambers in the Parliament of the FBiH could be strengthened. This also applies to the cooperation between the House of Representatives (hereinafter “HoR”) and the House of Peoples (hereinafter “HoP”), between the HoR and the Government, and between the Houses and the cantons. The institutions of Republika Srpska (hereinafter “RS”) should better cooperate with the state and the FBiH in order to harmonize the laws and to open negotiations regarding the possible transfer of additional responsibilities to the state in accordance with the Constitution BiH (Art. III 5 b) in order to adopt the necessary laws in the interest of the citizens.

- C. Adequate time of legislative proceedings:** It is advised to reconsider the deadlines and their precise prescription in the parliamentary procedures in order to facilitate informed decision-making and involvement. Deadlines should be set where they are missing in order to establish a statutory standard for different proceedings. Introducing more and clearer deadlines for procedures would make the process more structured and foreseeable and also ensure that valuable time is not lost in adopting important legislation. The Constitution of the FBiH provides for tools for addressing delays in the lawmaking process, for example, by authorising the Prime Minister to convene a joint conference. The activation of this clause is based on a political decision, but it might be considered more frequently when the quality of the legal system requires such a step.
- D. Urgent/emergency/simplified procedures:** The definition of “emergency”, which is one of the legal basis for an accelerated procedure, should be reconsidered in order to avoid the abuse of these accelerated procedures. An appropriately qualified majority for the use of emergency procedures is also recommended.
- E. Legal initiative:** Additional human resources and expertise should be allotted to MPs and committees inter alia through the support given by the State administrative body (hereinafter “SAB”) and by the legislative-legal sector of the BiH Parliamentary Assembly (hereinafter “BiH PA”). MPs’ awareness regarding the possibility to get access to the expertise of administrative bodies and the legislative-legal PA sector should be raised, and the experts should get appropriate training in order to provide adequate expertise to MPs in a proactive manner. Civil society organizations (hereinafter “CSOs”) should be encouraged to propose in a transparent manner to the Government and to MPs draft laws in a proactive manner. In the RS, all stakeholders, including CSOs and citizens, should be better informed about their right to be involved in lawmaking.
- F. Policy-making and RIA:** Costs of draft laws at the state level are recommended to be presented in a more detailed manner. Financial means for RIA need to be planned in the budget; and the creation of a research centre could be considered, along with more targeted training, increase of the staff and the approval of the RIA strategy. In the FBiH RIA should not be considered as a mere formal “filling in” activity in the governmental phase of legislation. Resources should be allocated to

the chambers of the FBiH Parliament to conduct RIAs on amendments to proposed bills and draft laws proposed by MPs. During the deliberations, more weight needs to be given to the explanatory memoranda. At the state and the entity levels (in particular in the RS) RIA needs to be used to primarily assess a draft law's impact on harmonization inside BiH, on the EU integration process, and on the implementation of the relevant European Court of Human Rights (hereinafter "ECtHR") case law.

G. Gender, diversity and other related issues: Without challenging the adequacy of the legal framework regarding vital national interests, the lawmakers should consider developing a workable mechanism to ensure effective protection of vital national interest whilst preventing possible misuse of the relevant procedures for blocking a normal lawmaking process. In this respect, RIA could be considered as a valuable tool to assess draft laws' impact on vital interests of the constituent peoples, other minorities, and gender equality to make the process less politicized and more guided by the principles of equality and equity. Continued efforts need to be taken to increase women's representation. Given the disparities in the implementation of legislation on gender equality in the decentralized structure of the country, the legislation and policies to achieve equality of women and men at the state and entity levels need to be fully harmonized. In all official languages, emphasis should be given to the correct use of gender-neutral language in legislative acts and other official publications. The awareness of the impact of gender-biased language on social and power structures should be raised. Terminological knowledge and training, as well as the wider use of terminological tools, such as terminological databases, would have a positive effect and would lead to a better linguistic quality of the laws. Parliamentary services should be enabled to assist linguistic needs adequately. It is advised to ensure that laws also address the concerns of women and minority groups, as well as vulnerable or marginalized groups. Human, technical and financial resources of the institutional gender mechanisms should be strengthened for monitoring and assessing the impact of legislation on gender equality. Increased involvement of CSOs, in particular women's organizations, in the development of legislation, policies and programmes on gender equality, at the state, entity, district and cantonal levels should be considered. Further attempts should be made to bring about the implementation of the ECtHR judgment in the case *Sejdic and Finci v. BiH*¹ regarding ethnicity-based restrictions on candidacy and voting rights to push for democratisation reforms in the BiH pre-accession and accession process. Human rights and gender considerations need to be taken into account, among others, when reconsidering the rules on RIA and involved agencies and bodies, as well as when actually conducting RIA at all levels.

H. Legislative planning: BiH should benefit from the experiences of other OSCE participating States (hereinafter "pSs") in their policy and legislative planning exercises and develop more long-term planning of key legislative initiatives, including in the FBiH. RS should observe its own plans, as well as understand and explain the reason for the occasional failure to observe them. If the reason is not political, the planning methodology could be reexamined.

¹ ECtHR, *Sejdic and Finci v. Bosnia and Herzegovina*, Applications nos. 27996/06 and 34836/06), judgment of 22 December 2009.

I. Legal drafting: More attention needs to be given at the state and entity level to the importance of well-prepared drafts and drafting expertise. In this respect, initial and continuous training should be enhanced in ministries and in the parliamentary secretariats. Simultaneous preparation of primary and related secondary legislation could be beneficial for overcoming the challenge of not-implemented laws, in particular, in the RS.

J. Committees: It is recommended to reconsider the composition of parliamentary working bodies. The proportional representation certainly has its democratic advantage, but it could be detrimental to minority rights (i.e., that of the parliamentary opposition). Sometimes, parity structure is advised to be followed, especially in the case of committees whose main function is providing oversight over the executive. The state and entity levels could benefit from the reconsideration of how to increase efficiency and transparency, which could also increase participation and democracy. E.g., they could set deadlines for the publication of proposals and other materials of the committee and plenary sessions – which needs to be observed. Enough time should be provided for committees to debate on draft laws, as well as enough time between committee debate and plenary debate in order for plenary MPs (not members of the competent committee) to read the committee’s recommendations and draft text including the proposed amendments. Strengthening the status of rapporteurs could also be considered by recognizing their specific role by the respective RoPs. It would be beneficial for the quality of lawmaking in the parliamentary process if human resources (including legal experts either in-house or out-sourced) could be allocated to committees. Committees should organize public hearings and consult stakeholders, including CSOs while examining draft laws or exercising oversight on the implementation of voted laws. At the state level blockages in the lawmaking process could be better avoided if the role of negative opinions of committees and the majority needed for the decision in the Joint Committee would be revisited. In the RS committees’ activities should be made public by using websites, in particular. The same applies to the materials of the committees’ sessions in the FBiH. Certain meetings could be opened to the public and/or broadcast. It is advised that in the FBiH information about the scheduled sessions of the working bodies of the chambers as well as materials on the lawmaking projects should be publicly available. For proper implementation of the hearings and involvement of experts in the parliamentary lawmaking process, especially when an MP initiates a bill, a separate line needs to be created in the budget of the Parliament. The practice of non-observing time limits set in the RoPs of RSNA should be addressed, and rights of MPs and opposition groups need to be ensured.

K. Public Consultations: The need to consult draft laws and policies derives from the overall need for transparency and good governance in public institutions and for allowing individuals and the wider public, including competent CSOs, to participate in public affairs. Consultations could be necessary both in the pre-parliamentary phase during policymaking (as early as possible on each policy option), as well as during the parliamentary process. In the parliamentary phase, it is still important to conduct consultations, especially when the Government is reluctant to organize meaningful consultations or when the issue is controversial. Therefore, it is advised to take advantage of parliamentary RoPs in this respect and organize consultations in the parliaments more actively at all levels. Consultations

need to be planned, coordinated, and conducted in a timely manner. Crowdsourcing legislation is an often used governmental practice in many jurisdictions, from which the state and entity levels could benefit. When regulating consultations and implementing these rules, more inclusive participation should be a priority. Existing power relations need to be counterbalanced. The involvement of, e.g., vulnerable and marginalized groups should also be facilitated; during the process, jargon-free language should be used. When organizing consultations, a child/youth-friendly and age-appropriate approach is needed. Also, attention should be given to the use of safety mechanisms, such as data protection and safe and accessible spaces, etc. To this end, a meaningful consultation also requires, for instance, initial research on consultees and stakeholders and trying to understand them, as well as timely circulation to consultees of explanatory documents and options. A meaningful consultation can result in an informed response and presupposes a more reliable governmental responsiveness, which should include much more than mere confirmation of receipt. It should indeed include an analysis and evaluation of the submitted views which should be made public. The organization of online consultations needs to be driven by the same approach and principles that are adjusted to the specificities of the online sphere. Online consultation should not increase existing inequalities. Opening up the consultation as early as possible for the public, especially for CSOs, including those whose interests are not in line with the governmental interest, remains a challenge. Therefore, the awareness of political parties should be raised regarding the role and position of civil society, including trade unions, representatives of the business community, local governments, academia, etc., in these processes. The involved actors need to get appropriate training and information on budgeting or lawmaking. More publicity should be given to the online platform to receive more comments. In the FBiH and RS awareness needs to be raised on consultation and its importance in the lawmaking process. The way of how the consultation is organized in the entities is advised to be revisited by observing standards. In the FBiH the cooperation with the cantons, with adequately set deadlines, could be improved, which would help to eliminate blockages in the process.

L. Verification: It is advised at the state level to bring about reforms aimed at strengthening of the factual autonomy of the existing special unit (now it is the Secretariat of the Council of Ministers) for verifying the constitutionality of the drafts developed in the ministries, and their legality, observance of drafting rules, and harmonization with EU regulations, etc. For instance, to consider additional staffing and define ministerial obligation to observe this unit's recommendations. For the FBiH it is recommended to reconsider the competences of the relevant committees, especially the committee dealing with EU integration.

M. Parliamentary Oversight: Parliamentary oversight, in terms of following up on the implementation of laws and policymaking activities of the ministries, in the competent parliamentary committees could be strengthened at all levels by applying a more substantial approach to this activity. A proper legislative framework which procedures for submitting complaints within the scope of the 2018 Oversight Act BiH should be considered. Priority should be given to providing access to information about a possible breach of the 2018 Oversight Act to those institutions and persons that exercise oversight function. In return, they have to be bound by the law on secret information as well. It is recommended for

the FBiH to consider the introduction of its own oversight law. For an adequately conducted oversight in the RS, rules and deadlines could be revisited.

N. EU integration: Harmonization with the EU acquis (and other international obligations, including the judgments of the ECtHR) at the state level is lagging behind. Suggestions made by the EU in this regard and the lack of capacity to address these issues should be properly considered. This would also require proper planning and implementable legislative programs. In the parliamentary process, it could be considered to request the members of the Directorate for European Integration to be present during the committee discussions. FBiH should develop a program for harmonization, taking into account the list established by the EU Commission in its 2021 country report.² The reconsideration of the competencies of the relevant FBiH parliamentary committees is also advised so that they could verify the level of harmonization. For the harmonization of laws and for ensuring their enforceability, secondary and implementing legislation should be prepared along with the laws. It is also advised to review the actual phase of harmonization and act accordingly in terms of planning further legislative actions to resolve the lack of progress in the areas which were defined by the EU Commission.

O. Publication and accessibility of adopted laws, parliamentary openness: The publication of legislation is the condition for its applicability and a commitment to making legal texts available for everyone. Online versions of all legislation in effect regardless of the date of adoption, should be available free of charge on reliable, ideally official online platforms, which should utilize recent technological advancements to enable users to access related legal information. An online forum for authentic versions of the Official Gazettes and laws in effect (in consolidated and/or codified versions) needs to be developed. The use of technology could increase openness and transparency and could facilitate more involvement. Therefore, its more robust use could also be recommended. Consolidated versions of legal acts, i.e., both primary and secondary legislation, need to be prepared right after the adoption of an amendment. Night sessions hinder transparency and accessibility because they prevent both MPs and general public from following debates. Therefore, they should be avoided to the greatest possible extent. Also, in the RS, more attention needs to be paid to the commitment regarding the democratic lawmaking process in terms of parliamentary minority rights, transparency, and openness in the RSNA.

P. Role of the Constitutional Courts: When it is legally possible for a parliamentary committee, a speaker, an MP or a Government to consult the Constitutional Court in case of doubts on a draft law, this possibility should be encouraged in order to improve the constitutionality of laws, including their observance of the constitution, the relevant ECtHR case law, and the requirements set by EU integration process. It needs to be ensured that the decisions of the Constitutional Court are not left ignored and unimplemented by the political branch. The Constitutional Courts could benefit from the case laws of other constitutional courts, Court of Justice of the EU (hereinafter “CJEU”) and the ECtHR, concerning the semi-procedural review of the law.

² [Bosnia and Herzegovina 2021 Report](#), 19/10/2021 European Commission

TABLE OF CONTENTS

I. INTRODUCTION	12
BACKGROUND	12
SCOPE AND AIM OF THE ASSESSMENT	12
METHODOLOGY	13
INTERNATIONAL STANDARDS ON DEMOCRATIC LAWMAKING	15
II. THEMATIC ANALYSIS	18
RULES ON LAWMAKING IN GENERAL	19
<i>A. State and Entity Levels – Rules on Lawmaking in General</i>	19
<i>B. Bosnia and Herzegovina– Rules on Lawmaking in General</i>	19
<i>C. Federation of Bosnia and Herzegovina– Rules on Lawmaking in General</i>	22
<i>D. Republika Srpska – Rules on Lawmaking in General</i>	24
COOPERATION	26
<i>A. Bosnia and Herzegovina – Cooperation</i>	26
<i>B. Federation of Bosnia and Herzegovina – Cooperation</i>	27
<i>C. Republika Srpska – Cooperation</i>	28
ADEQUATE TIME OF LEGISLATIVE PROCEEDINGS.....	28
URGENT/EMERGENCY/SIMPLIFIED PROCEDURES.....	29
LEGAL INITIATIVE	30
<i>A. Bosnia and Herzegovina – Legal Initiative</i>	30
<i>B. Federation of Bosnia and Herzegovina – Legal Initiative</i>	31
<i>C. Republika Srpska – Legal Initiative</i>	32
POLICY-MAKING AND REGULATORY IMPACT ASSESSMENT	33
<i>A. General Observations - Policy-making and Regulatory Impact Assessment</i>	34
<i>B. Bosnia and Herzegovina – Policy-making and Regulatory Impact Assessment</i>	34
<i>C. Federation of Bosnia and Herzegovina – Policy-making and Regulatory Impact assessment</i>	36
<i>D. Republika Srpska – Policy-making and Regulatory Impact Assessment</i>	36
GENDER AND DIVERSITY	37
<i>A. General Observations - Gender and Diversity and Other Related Issues</i>	38
<i>B. Bosnia and Herzegovina – Gender and Diversity</i>	41
<i>C. Federation of Bosnia and Herzegovina – Gender and Diversity</i>	42
<i>D. Republika Srpska – Gender and Diversity</i>	43
LEGISLATIVE PLANNING	43
<i>A. General Observations – Legislative Planning</i>	43
<i>B. Bosnia and Herzegovina – Legislative Planning</i>	43

<i>C. Federation of Bosnia and Herzegovina – Legislative Planning</i>	44
<i>D. Republika Srpska – Legislative Planning</i>	44
LEGAL DRAFTING	44
<i>A. Bosnia and Herzegovina – Legal Drafting</i>	44
<i>B. Federation of Bosnia and Herzegovina – Legal Drafting</i>	46
<i>C. Republika Srpska – Legal Drafting</i>	47
COMMITTEES	48
<i>A. General Observations – Committees</i>	49
<i>B. Bosnia and Herzegovina – Committees</i>	49
<i>C. Federation of Bosnia and Herzegovina – Committees</i>	50
<i>D. Republika Srpska – Committees</i>	50
PUBLIC CONSULTATIONS	51
<i>A. General Observations – Public Consultations</i>	51
<i>B. Bosnia and Herzegovina – Public Consultations</i>	51
<i>C. Federation of Bosnia and Herzegovina – Public Consultations</i>	52
<i>D. Republika Srpska – Public Consultations</i>	54
VERIFICATION	55
<i>A. Bosnia and Herzegovina – Verification</i>	55
<i>B. Federation of Bosnia and Herzegovina – Verification</i>	56
<i>C. Republika Srpska – Verification</i>	56
PARLIAMENTARY OVERSIGHT	57
<i>A. General Observations – Parliamentary Oversight</i>	57
<i>B. Bosnia and Herzegovina – Parliamentary Oversight</i>	57
<i>C. Federation of Bosnia and Herzegovina Parliamentary Oversight</i>	58
<i>D. Republika Srpska – Parliamentary Oversight</i>	58
EU INTEGRATION	58
<i>A. Bosnia and Herzegovina – EU Integration</i>	59
<i>B. Federation of Bosnia and Herzegovina – EU Integration</i>	60
<i>C. Republika Srpska – EU Integration</i>	60
PUBLICATION OF AND ACCESS TO ADOPTED LAWS, PARLIAMENTARY OPENNESS	60
<i>A. Bosnia and Herzegovina – Publication of and Access to Adopted Laws, Parliamentary Openness</i>	60
<i>B. Federation of Bosnia and Herzegovina – Publication of and Access to Adopted Laws, Parliamentary Openness</i>	61
<i>C. Republika Srpska – Publication of and Access to Adopted Laws, Parliamentary Openness</i>	62

ROLE OF THE CONSTITUTIONAL COURTS.....	63
III. RECOMMENDATIONS.....	63
RULES ON LAWMAKING IN GENERAL.....	64
<i>A. General Recommendations – Rules on Lawmaking</i>	64
<i>B. Recommendations for Federation of Bosnia and Herzegovina - Rules on Lawmaking</i>	65
COOPERATION	65
<i>A. General Recommendations - Cooperation</i>	65
<i>B. Recommendations for Bosnia and Herzegovina – Cooperation</i>	65
<i>C. Recommendations for Federation of Bosnia and Herzegovina – Cooperation</i>	65
<i>D. Recommendations for Republika Srpska – Cooperation</i>	67
ADEQUATE TIME OF LEGISLATIVE PROCEEDINGS.....	67
URGENT/EMERGENCY/SIMPLIFIED PROCEDURES.....	67
LEGAL INITIATIVE	68
<i>A. General Recommendations – Legal Initiative</i>	68
<i>B. Recommendations for Republika Srpska – Legal Initiative</i>	68
POLICY-MAKING AND RIA	68
<i>A. General Recommendations – Policy-making and RIA</i>	68
<i>B. Recommendations for Bosnia and Herzegovina – Policy-making and RIA</i>	69
<i>C. Recommendations for Federation of Bosnia and Herzegovina – Policy-making and RIA</i>	69
<i>D. Recommendation for Republika Srpska – Policy-making and RIA</i>	69
GENDER AND DIVERSITY	69
<i>A. General Recommendations on Gender and Diversity and Other Related Issues</i>	69
<i>B. Recommendations for Bosnia and Herzegovina – Gender and Diversity</i>	70
<i>C. Recommendation for Federation of Bosnia and Herzegovina and Republika Srpska – Gender and Diversity</i>	71
LEGISLATIVE PLANNING	71
<i>A. General Recommendations – Legislative Planning</i>	71
<i>B. Recommendations for Bosnia and Herzegovina - Legislative Planning</i>	71
<i>C. Recommendation for Federation of Bosnia and Herzegovina – Legislative Planning</i>	71
<i>D. Recommendation for Republika Srpska – Legislative Planning</i>	72
LEGAL DRAFTING.....	72
<i>A. General Recommendations – Legal Drafting</i>	72
<i>B. Recommendation for Bosnia and Herzegovina – Legal Drafting</i>	72
<i>C. Recommendation for Federation of Bosnia and Herzegovina – Legal Drafting</i>	72
COMMITTEES	73
<i>A. General Recommendations – Committees</i>	73
<i>B. Recommendations for Bosnia and Herzegovina – Committees</i>	73

<i>C. Recommendations for Federation of Bosnia and Herzegovina – Committees</i>	74
<i>D. Recommendation for Republika Srpska – Committees</i>	74
PUBLIC CONSULTATIONS	74
<i>A. General Recommendations – Public Consultations</i>	74
<i>B. Recommendations for Bosnia and Herzegovina – Public Consultations</i>	75
<i>C. Recommendations for Federation of Bosnia and Herzegovina – Public Consultations</i>	75
<i>D. Recommendation for Republika Srpska – Public Consultations</i>	76
VERIFICATION	76
<i>A. Recommendation for Bosnia and Herzegovina – Verification</i>	76
<i>B. Recommendation for Federation of Bosnia and Herzegovina – Verification</i>	76
PARLIAMENTARY OVERSIGHT	76
<i>A. General Recommendations – Parliamentary Oversight</i>	76
<i>B. Recommendations for Bosnia and Herzegovina – Parliamentary Oversight</i>	76
<i>C. Recommendation for Federation of Bosnia and Herzegovina – Parliamentary Oversight</i>	77
<i>D. Recommendation for Republika Srpska – Parliamentary Oversight</i>	77
EU INTEGRATION	77
<i>A. Recommendations for Bosnia and Herzegovina – EU Integration</i>	77
<i>B. Recommendations for Federation of Bosnia and Herzegovina – EU Integration</i>	77
<i>C. Recommendations for Republika Srpska - EU Integration</i>	77
PUBLICATION OF AND ACCESS TO ADOPTED LAWS, PARLIAMENTARY OPENNESS	78
<i>A. General recommendations – Publication of and Access to Adopted Laws, Parliamentary Openness</i>	78
<i>B. Recommendation for Republika Srpska – Publication and Accessibility of Adopted Laws, Parliamentary Openness</i>	79
ROLE OF THE CONSTITUTIONAL COURTS	79
ANNEX 1: Abbreviations	81
ANNEX 2: Laws and regulations on legislative matters analyzed	82
ANNEX 3: List of interlocutors	83
ANNEX 4: Questionnaires	84

I. INTRODUCTION

BACKGROUND

1. The following assessment is drafted based on the request by the OSCE Mission to Bosnia and Herzegovina (hereinafter “BiH”) on 29 January 2020 to conduct an assessment of the legislative process in BiH (hereinafter, “the assessment”). In its response of 28 February 2020 ODIHR confirmed its readiness to conduct the OS assessment.
2. The assessment provides an analysis of the legislative framework and practice in the process of lawmaking in BiH in the light of international standards of democratic lawmaking. It takes into account the state and the entity levels. The assessment is based on desk review (the collection and analysis of the relevant sources of law governing the lawmaking process in BiH listed in Annex 2) and information collected during the online interviews with some of the key stakeholders in December 2020 and January 2021. A follow-up round of online meetings took place in April-May 2022. While a physical visit would normally be part of such an assessment, due to the prevailing circumstances of the Covid-19 pandemic ODIHR and the OSCE Mission to BiH decided to conduct all meetings with stakeholders online in order to gather information and discuss issues pertaining to the legislative process.
3. Ms. Tímea Drinóczi, Mr. Yves Doutriaux and Mr. Luzius Mader were invited to support ODIHR in carrying out the assessment of the legislative process in BiH. Ms. Tímea Drinóczi is a Hungarian professor of law, currently a Visiting Professor - Faculty of Law, Federal University of Minas Gerais, Brazil; Mr Yves Doutriaux is a French State Councilor (French: conseiller d'État), former Ambassador and Permanent Representative of France to the OSCE and Deputy Permanent Representative of France to the UN; and Mr. Luzius Mader is a Swiss legal expert, Associate Professor at the University of Lausanne, former Deputy Director of the Swiss Federal Office of Justice.
4. ODIHR is grateful to all those who took the time to meet and share their knowledge and experience. In particular to the representatives and members of the legislative and executive bodies of the state and entity levels of Bosnia and Herzegovina and international partners (listed in Annex 3).

SCOPE AND AIM OF THE ASSESSMENT

5. This Assessment provides an analysis of the legislative framework and practices related to lawmaking in BiH in light of international human rights and democratic governance standards and OSCE human dimension commitments at the state and the entity levels. The assessment aims to promote greater legislative quality and efficiency of the lawmaking process to ensure democratic and enforceable legislation in all fields. It tries to achieve this by making recommendations on how to improve the overall quality, effectiveness, and transparency of the legislative procedure.
6. The assessment’s approach is based on the consideration that, unless absolutely necessary, reforms are preferred to be conceived by respective authorities rather than handed down by the international community. International standards serve as a source of inspiration and are expected to be implemented with appropriate regard for the local

context. Any subsequent reform should be embarked upon only after a full process of consultation of the public. Only in this way can there be any confidence that the reforms will fit the specificities of the local legislative and political cultures and answer citizen interests.

7. The Assessment is made up of three main parts and 4 Annexes. This first introductory part outlines the background, the scope, aim, and methodology of the Assessment and reviews the international standards of democratic lawmaking. Part II includes the thematic analysis of the lawmaking, and the following Part III contains the recommendations. Drawing on the most important aspects of lawmaking, parts II and III each have 16 sections, starting with the analysis of laws on lawmaking (in general), which is then followed by the discussion on cooperation, legal initiative, policy-making and RIA, gender and diversity, legislative planning, legal drafting, committees, consultations, verification, oversight, EU integration, publication of laws, openness and access to information, and role of the Constitutional Courts. Part III formulates generally applicable recommendations for both the state and entity levels when similar challenges have been detected.
8. When this Assessment analyses the lawmaking process from the perspective of the EU integration process, it considers the relevant framework agreement between BiH and the EU. Thus, the Assessment analyses the extent to which the respective commitments related to lawmaking are complied with and makes recommendations to support this domestic effort.
9. ODIHR stresses that this Assessment is without prejudice to any description, analysis, or written and oral recommendations and comments on the related legislation and legislative process that ODIHR may have the opportunity to make in the future.

METHODOLOGY

10. For the purpose of this assessment, lawmaking is defined as the legislative process whereby laws are developed, drafted, consulted and discussed, scrutinized, amended, and eventually adopted and published, and later evaluated.
11. This assessment outlines a condensed version of the legislative process in BiH (state level), FBiH and RS (entity level) embedded in their respective constitutional orders. It focuses on norms that determine the functioning of the legislative process and provides a brief overview of the rules defining the legislative process as a whole at both the state and entity levels.
12. The assessment is based on a desk review of the legislation relevant to lawmaking and information collected during the online interviews with some of the key stakeholders in December 2020, January 2021, and April-May 2022, and received subsequently as answers to follow-up questions. It should be noted that the assessment covers the respective legislative framework which was in force in BiH till the end of 2021 and does not take into account possible subsequent amendments to the laws and regulations. At the same time ODIHR stands ready, upon request, to provide a follow-up assessment of the amendments to legislation pertinent to lawmaking that have happened after conducting the current assessment.
13. It goes without saying that the assessment of a legislative process cannot be limited to an analysis of the formal rules. It must also cover the practical application and

implementation of these rules, which depend very much on the overall institutional and political context as well as on the legal and legislative traditions. This is particularly true for a country such as BiH with a very complex institutional setting and a delicate and precarious political situation. Therefore, this assessment explores certain discrepancies between the law (formal rules) and its practical implementation in relation to how they affect the aspects of the legislative process at the state level and in the two entities.

14. The assessment process posed some methodological challenges. During many online meetings, participants tended to primarily explain the formal rules and were rather brief regarding the practice. Both the political situation and the institutional setting make the assessment of the legislative procedures very challenging. Especially in a multilevel country, a thorough assessment of the legislative procedures should take into account the theoretical and actual division of legislative powers between the different levels of government.
15. The assessment has considered only the state level and the level of the two entities, setting aside Brcko District as well as regional and local governments (cantons in FBiH and municipalities in the entire country). Nevertheless, from the point of view of a multi-tiered government, some of the political obstacles hindering legislative activities at the state level and partly also at the level of the entities could be addressed by local legislative activities. These local level initiatives could, to some extent, “compensate” the blockages appearing at the state and entity levels.
16. The assessment has not considered the legislative powers of the High Representative for Bosnia and Herzegovina (hereinafter “High Representative”). Although the High Representative has broad powers, which were used in the years following the 1995 Dayton peace accord³, there was a certain evidence of refraining from exercising his executive powers⁴.
17. Statistical data on the legislative activities at the different levels of government could have helped in the assessment, in particular, the data on the number of legislative acts (primary and secondary legislation) in force at the different levels, on the number of legislative acts adopted or enacted each year, on the total volume and the volume per subject matter of the legislative acts existing at the different levels, etc. Partial data was received from the BiH PA, FBiH, the Republika Srpska National Assembly (hereinafter “RSNA”) and Herzegovina-Neretva and Sarajevo Canton Assemblies in written form. Some data on the lack of legal initiatives from the BiH Government was also gathered during the online interviews. It should also be noted that the interviewees’ views reflect mostly on the legislative activity of the parliaments and governments in force at the time of conducting the assessment.

³ The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the [Dayton Peace Agreement \(DPA\)](#), Dayton Accords, Paris Protocol or Dayton-Paris Agreement, is the peace agreement reached at Wright-Patterson Air Force Base near Dayton, Ohio, United States, in November 1995, and formally signed in Paris on 14 December 1995.

⁴ See, e.g., regular reports of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations. For example see the last 3 reports: [S/2021/912](#); [S/2021/409](#); [S/2020/1052](#). Also, see: despite frequent challenges to the principles of the Dayton agreement, “*I have refrained from using my executives powers despite increasing calls from citizens to do so pursuant to the peace implementation council steering board policy advocating local ownership over international decision –making*”, §35 59th HR report April 2021, [S/2021/409](#). However, a due regard should be given that on 23 July 2021, right before his end of term, the High Representative of Bosnia and Herzegovina, Valentin Inzko, imposed a law, which bans genocide denial and the glorification of convicted war criminals. The law, which is an amendment to Bosnia’s Criminal Code, has been enacted by the High Representative using his “Bonn powers”, according to which he has the authority to adopt binding decisions and remove public officials in order to carry out his function to oversee the civilian implementation of the Dayton Agreement. This special set of powers had not been used in the past decade to not interfere with BiH’s sovereignty. Also the High Representative Christian Schmidt decided to use his “Bonn powers” to impose electoral law changes in force as of October 3 2022.

18. The assessment does not contain a comprehensive analysis on gender and diversity in the legislative process, as more disaggregated data concerning the representation of women at the level of entities and information on the representation of different ethnic groups in the parliaments, the governments, and the administrations would have been required.
19. It would be useful to provide more extensive accumulation of practice on parliamentary oversight implementation, verification process and the role of Constitutional Court in the lawmaking process. Given that this data has not been at the disposal of the experts during the assessment, the practical aspects of the aforementioned matters can be potentially followed-up within a wider, more comprehensive, full-scale assessment of the lawmaking process and practices in BiH.
20. Undoubtedly, the absence of direct personal contacts, i.e., the fact that the assessment is mainly based on online interviews, given the applicable COVID-related restrictions, constitutes a particular challenge and a practical obstacle for a completely comprehensive and thorough assessment.
21. Lastly, possible misunderstandings or misinterpretations of rules and procedures could be caused by errors in translation.
22. It is of high importance to be aware of the limitations resulting from these particular circumstances mentioned above.

INTERNATIONAL STANDARDS ON DEMOCRATIC LAWMAKING

23. International standards in the area of democratic lawmaking draw from many different international and regional conventions and other documents. Democratic lawmaking process is built on the key principles such as democracy, rule of law, human rights, equality and non-discrimination etc., and is interrelated with many rights and freedoms that OSCE pSs are legally obliged to uphold.
24. OSCE pSs are committed to building, consolidating, and strengthening democracy as the only system of government⁵ and have recognized it as an inherent element of the rule of law.⁶
25. OSCE commitments relating to lawmaking are principally concerned with the openness and inclusivity of the process of making laws. The 1991 Moscow Document requires that pSs formulate and adopt legislation “as the result of an open process reflecting the will of the people, either directly or through their elected representatives”⁷. The 1990 Copenhagen Document further provides that “[l]egislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability” and that [t]hose texts will be accessible to everyone.”⁸ Numerous other commitments on inclusiveness, in particular with respect to women⁹, and national

⁵ Preamble, [OSCE Charter of Paris for New Europe](#), 21 November 1990.

⁶ [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#), Copenhagen, 29 June 1990 (Copenhagen Document), para 3.

⁷ [Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow](#), 3 October 1991 (Moscow Document), para. 18.1.

⁸ [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#), Copenhagen, 29 June 1990 (Copenhagen Document), para. 5.8.

⁹ See, e.g., [the Concluding Document of Madrid, Second Follow-up Meeting, Madrid](#), 6 September 1983, Questions Relating to Security in Europe, Principles, where participating States stressed the importance of ensuring equal rights for men and women and agreed to take all actions necessary to promote equally effective participation of men and women in, among others, political life. See also para 40.8 of the [Moscow Document](#), where participating States committed to encourage and promote equal opportunity for full participation by women in all aspects of political and public life, including in decision-making processes, and para 5 of [OSCE Ministerial Council Decision No. 7/09 on Women’s Participation in Political and Public Life](#), Athens, 2 December 2009, where participating States were called upon to “develop and

minorities¹⁰, and persons with disabilities¹¹, give additional meaning to the “open” and “public” nature that the legislative process should have, “reflecting the will of the people”.

26. ODIHR is currently developing Guidelines for Democratic Lawmaking. These Guidelines aim to identify and highlight international standards and good practices relating to democratic and efficient lawmaking principles and procedures and to constitute a basis for the development of additional standards in this field.¹² It is envisaged that the Guidelines will address the areas of cooperation, legal initiative, policy-making and RIA, gender and diversity, legislative planning, legal drafting, the role of committees, consultations, verification, oversight, publication, accessibility, and transparency.
27. Beyond general human rights obligations, such as the right to participate in the conduct of public affairs (Art. 25 of the International Covenant on Civil and Political Rights (hereinafter “ICCPR”)¹³, CCPR General Comment No. 25¹⁴), freedoms of expression (including the right to seek, receive and impart information and ideas) and media, assembly and association¹⁵, the democratic lawmaking process draws on other sources as well, among others, the UN conventions and documents¹⁶, notably, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)¹⁷, the Convention on the Rights of the Child¹⁸, the Convention on the Rights of Persons with Disabilities¹⁹, the Aarhus Convention²⁰, the UN Convention Against Corruption (where public participation is seen as a means to prevent and combat corruption)²¹ and the UN General Assembly’s Declaration on Human Rights Defenders²².

introduce where necessary open and participatory processes that enhance participation of women and men in all phases of developing legislation, programmes and policies”.

¹⁰ See para 35 of the [Copenhagen Document](#), where participating States committed to respect the rights of persons belonging to national minorities to effective participation in public affairs, and Section III of the [Geneva Report of the CSCE Meeting of Experts on National Minorities](#), Geneva, 19 July 1991, specifying that when issues relating to the situation of national minorities are discussed within their countries, they themselves shall have the effective opportunity to be involved, in accordance with the decision-making procedures of each State. See also the [OSCE High Commissioner on National Minorities: Ljubljana Guidelines on the Integration of Diverse Societies](#), November 2012, in particular p. 28.

¹¹ See paragraphs 41.1 and 41.2 of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991 ([Moscow Document](#)); see also Guidelines on Promoting the Political Participation of Persons with Disabilities, page 27, available at: <https://www.osce.org/files/f/documents/b/6/414344.pdf>.

¹² Upcoming Guidelines on Democratic Lawmaking, OSCE/ODIHR, <https://legislationline.org/legalreviews?q=lang%3Aen%2Csort%3Apublication_date%2Ccountry%3A3%2Cpage%3A1%2Ctype_main%3A44>.

¹³ [International Covenant on Civil and Political Rights](#), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966.

¹⁴ Office of the UN High Commissioner for Human Rights: [CCPR General Comment No. 25: Article 25 \(Participation in Public Affairs and the Right to Vote\)](#), *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, Adopted at the Fifty-seventh Session of the Human Rights Committee, on 12 July 1996, par 5.

¹⁵ Articles 19, 21 and 22 of the [ICCPR](#) and Articles 10 and 11 of the [European Convention on Human Rights and Fundamental Freedoms](#)

¹⁶ Office of the UN High Commissioner for Human Rights: [Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs](#), 2018.

¹⁷ See Articles 7 and 8 of the [Convention on the Elimination of All Forms of Discrimination Against Women](#), adopted by the United Nations General Assembly on 18 December 1979. Article 7 states that States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: ... (b) [t]o participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; and (c) [t]o participate in non-governmental organizations and associations concerned with the public and political life of the country. Article 8 requires States Parties take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

¹⁸ See Article 12 of the [UN Convention on the Rights of the Child](#), adopted by General Assembly resolution 44/25 of 20 November 1989.

¹⁹ See Article 29 on participation in political and public life of the [UN Convention on the Rights of Persons with Disabilities](#), adopted by General Assembly resolution A/RES/61/106 on 24 January 2007.

²⁰ United Nations Economic Commission for Europe: [UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#), adopted on 25 June 1998.

²¹ United Nations Convention Against Corruption, adopted by General Assembly resolution 58/4 of 31 October 2003.

²² See [UN General Assembly: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#), adopted by the UN General Assembly at its fifty-third session on 8 March 1999.

28. Article 15 of the Council of Europe (hereinafter “CoE”) Framework Convention for the Protection of National Minorities²³ refers to the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.
29. Furthermore, the CoE in its 2017 Guidelines for civil participation in political decision-making²⁴, has likewise focused on this kind of “civil participation”. These 2017 Guidelines identify four main types of participation, ranging from least involved to direct involvement, namely information, consultation, dialogue and active involvement. The Guidelines also distinguish participation from political activities, i.e. direct engagement with political parties, and from lobbying in relation to business interests.
30. In its 2016 Rule of Law Checklist, the Council of Europe’s Commission for Democracy through Law (Venice Commission) stressed the principle of legality, and the ensuing need to recognize the supremacy of the law²⁵. The Checklist clarifies that this means ensuring the conformity of legislation with a country’s constitution, and the conformity of actions of the executive with the constitution and other laws. With respect to the lawmaking process, the Checklist notes that such processes need to be “transparent, accountable, inclusive and democratic”.
31. At the EU level, Article 11 of the Treaty on European Union (hereinafter “TEU”) obliges EU institutions to “give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action” and to maintain an open, transparent and regular dialogue with representative associations and civil society. Articles 1 and 10 of the TEU set the principle of transparency, which is the basis of participation and consultation of stakeholders and interest groups.
32. The new inter-institutional agreement between the European Parliament, the Council of the EU and the European Commission on Better Law-Making could also be a source of inspiration, among other documents.²⁶ Directive 2003/35/EC²⁷ provides for public participation in respect of the drawing up of certain plans and programs relating to the environment.²⁷
33. Additionally, the Organization for Economic Co-operation and Development has been instrumental in promoting the use of key tools that enhance the quality and process of lawmaking, including public consultations and RIA²⁸.

²³ [Framework Convention for the Protection of National Minorities](#), adopted on 10 November 1994 by the Committee of Ministers and entered into force on 1 February 1998. BiH ratified the Convention on 24 February 2000.

²⁴ [Council of Europe: Guidelines for civil participation in political decision making](#), adopted by the Committee of Ministers on 27 September 2017 at the 1295th meeting of the Ministers’ Deputies. Council of Europe Conference of INGOs: *Code of Good Practice for Civil Participation in the Decision-Making Process*, adopted on 30 October 2019

²⁵ [European Commission for Democracy through Law \(Venice Commission\) of the Council of Europe: Rule of Law Checklist](#), 18 March 2016, Benchmark A.5.

²⁶ See the Guidelines, and their different chapters, at https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en. See also the Better Lawmaking Agreement, adopted by the European Council on 13 April 2016 and published in the Official Journal on 12 May 2016, at <https://www.consilium.europa.eu/en/policies/better-regulation/>. It was signed on 13 April 2016 and entered into force the same day. The new EU inter-institutional agreement aims to improve the way the EU legislates and to ensure that EU legislation better serves citizens and businesses. Its purpose is thus to make sure that EU laws and policies are effective in achieving their objectives, with a minimum of administrative burdens.

²⁷ See Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programs relating to the environment. See also, on a more general note, European Commission: [Better Regulation Guidelines](#), 7 July 2017.

²⁸ Organization for Economic Development and Co-operation (OECD): *Citizens as Partners - Handbook on Information, Consultation and Public Participation* (2001). *Recommendation of the Council on Regulatory Policy and Governance*, 2012, Annex, 4.1., OECD: *Better Regulation Practices Across the European Union*, 2019, Chapter 3: Regulatory Impact Assessment Across the European Union, OECD: *Better Regulation Practices Across the European Union*, 2019, Chapter 4: Ex Post Review of Laws and Regulations Across the European Union

34. The BiH Constitution explicitly makes commitments to comply with human rights obligations. The Constitution is inspired by the Universal Declaration of Human Rights, the ICCPR, the International Covenant on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments that are listed in its Annex I. The FBiH Constitution is guided by, among others, the Universal Declaration of Human Rights, and another 22 human rights instruments are to be incorporated into the Federation's Constitution; these are mentioned in its Annex I. The constitutional organization of the RS is based *inter alia* upon the guarantee and protection of human freedoms and rights in accordance with international standards.

II. THEMATIC ANALYSIS

35. The BiH Constitution institutes a multi-ethnic system of government with an asymmetrical and complex governance structure. The Presidency is composed of three members, one from each of the constituent peoples: one Bosniak and one Croat from the FBiH, and one Serb from the RS. The head of state is the Chairperson of the Presidency, and the Government is led by the Chairperson of the Council of Ministers. The Parliament is bicameral and is composed of the House of Peoples and the House of Representatives.
36. BiH comprises four tiers of governance at the state, entity, canton (in the FBiH), and municipal levels. The FBiH consists of ten federal units, the Cantons, which have their own constitutions, parliaments, governments, and judicial powers. In total, there are eleven constitutions, governments, and legislatures in the FBiH (one entity and ten cantonal). Cantons operate under the laws of FBiH as a whole and hold both executive and legislative powers. They are further divided into 79 municipalities and cities, which constitute the local self-government units. The RS is a unique and indivisible constitutional and legal entity comprising one level of local self-government with 57 municipalities. State legislation directly applies to the Brcko District, and its fields of competence are nearly the same as those of the entities (including executive, legal and judiciary authorities).
37. The legislative process and the composition of lawmaking bodies, especially the parliaments, are very complex in BiH. At least in part this is due to the extraordinary institutional setting and to the ethnic divisions and the ways of including the constituent peoples along with others in the constitution of BiH.
38. The state structure, the lack of cooperation between the executives and parliaments, and the lack of effective cooperation between the state and the two entities of BiH do not favour the emergence of political parties in the traditional sense. The main political parties are ethnically based. All these elements also have a detrimental effect on the legislative procedure and the content of laws, as well as the limited number of adopted laws in comparison with citizen needs, the necessity of the ECtHR case law implementation and the EU integration process.

RULES ON LAWMAKING IN GENERAL

A. State and Entity Levels – Rules on Lawmaking in General

39. Where a law is found to be the best solution, it is important that it is developed following a proper procedure, as set out in the respective legal framework. Usually, some general rules on law-making are already contained in constitutions, including the different roles played by the government and parliament, and which bodies or persons have the right to legislative initiative. The vast majority of countries in the OSCE area likewise have legislation that regulates the hierarchy of laws, and either primary laws or secondary laws/rules of procedure for the Government and Parliament as far as the processing of draft laws is concerned. The regulation of drafting rules can be also laid down in soft laws (manuals, guidelines, etc.), and the states can choose what best suits their traditions and legal systems. The constitutions in BiH contain only a few fundamental provisions regarding the legislative procedures, such as which body has legislative power, vital interest procedures, and the adoption of laws by a simple or qualified majority. Other essential aspects of the lawmaking process are regulated by the RoPs of the parliaments.
40. Whilst different drafting methods and legislative solutions are used at different levels, the rules on lawmaking in general address the legislative process from the perspective of the policy cycle demonstrating that the state and entity levels have made considerable efforts to observe the international minimum standards of democratic lawmaking in their rules.
41. As one of the goal of lawmaking rules is to ensure uniformity in the legal system, in terms of drafting style, the structure of laws, etc., their legal nature needs to be clearly understood by the lawmakers. The primary weaknesses of the existing rules in BiH are that some of them remain quite general and that they are not really followed in practice. According to the RS RoPs, for example, there is no obligation for working groups to adopt their own rules of procedure, which suggests that there might be working bodies acting without rules of procedure.
42. In the lawmaking process as a continuing cycle all procedural steps are interconnected and all actors are aware of these steps, the responsibilities of other actors, and their type of involvement in the process. As a result, possible gaps, shortcomings and failures in the process can be realized and adequately addressed later on. However, in some cases at the state and entity levels there is a lack of awareness about respective and applicable rules and the practice of other bodies and agencies, even when they are supposed to collaborate during the legislative process.

B. Bosnia and Herzegovina– Rules on Lawmaking in General

43. The Constitution of BiH (state level) fixes the distribution of legislative powers between the state and the entities. It is the only examined constitution in the BiH that is silent on legislative initiatives. It enumerates a list of attributions, including lawmaking, that come under the state and the entities and provides that the RS and the FBiH have competence in all the fields that are not expressly assigned to the central Government. Only ten matters are the responsibility of the state, including, mainly international affairs, monetary policy, immigration, international and inter-entity criminal law enforcement, inter-entity and international communications, and transportation (Art. III, 1). Additional responsibilities can be assumed by BiH if agreed on by the entities (Art. III, 5) and if international obligations or agreements to which BiH is a party so demand.

44. The Constitution of BiH establishes the bicameral composition of the BiH PA (House of Peoples and House of Representatives) and lays down the powers and responsibilities of the Parliament, including the legislative powers (Art. IV, 4a). The Constitution clearly states that all legislation requires the approval of both chambers (Art. IV, 3c). As for the initiators of laws, the Constitution expressly mentions only the Presidency, which proposes the budget upon the recommendation of the Council of Ministers.
45. In a federal structure, according to the constitutional distribution of legislative powers between the centre (i.e., the federal, or in the case of BiH, the state level) and its units (the two entities), the central Government usually plays a strong role in lawmaking. In BiH, however, the situation is quite different. For constitutional, institutional and political reasons, lawmaking activities, especially in the past 11 years, are rare at the state level.²⁹
46. The Council of Ministers (government at state level) does not really play an active role in this field, and the political majority in the two chambers of the parliament is not very active either. Draft laws are mainly initiated by MPs belonging to the political opposition, and their chances to be adopted and enacted are very limited. This causes under-regulation in certain policy areas, even those that are the exclusive competence of the state, such as foreign policy.³⁰ Undoubtedly, a major part of legislative activities takes place at the level of the entities.³¹
47. At the state level, the pre-parliamentary drafting process is comprehensively regulated by rules and guidelines. The Uniform Rules for Legislative Drafting in BiH consist of rules on legislative drafting techniques, statement of reasons (explanatory memorandum) with a thorough description of each content element, the organization of legislative drafting, including rules on RIA, drafting process, consultation, and linguistic uniformity. Legislative drafters when drafting legislative acts in the institutions of BiH should mandatory apply these Uniform Rules together with its Annex and the Rules on consultation in the legislative process by. The Uniform Rules are recommended for use in the drafting processes in the lower levels of Government in BiH and the Office of the High Representative in BiH.
48. The parliamentary legislative process is regulated by the RoPs, from the very beginning of the submission of the bill, through its discussion in committees and the plenum, to its publication.
49. The two RoPs of the BiH HoR and HoP contain large parts of identical or nearly identical rules on the legislative process. The parliamentary legislative process, *sensu stricto*, is regulated by Arts 104-145 of the HoR RoP and Arts 94-135 of the HoP RoP.
50. The Extended Collegium of the HR (Speaker and the First and Second Deputy Speaker, and one representative from each caucus) and the Collegium of the HoP (Speaker and the

²⁹ According to the BiH Parliamentary Assembly, the number of adopted pieces of legislation is as follows: 1996 - 1998: 18 pieces legislation, 1998 - 2000: - 25 pieces legislation, 2000 - 2002: 63 pieces legislation, 2002 - 2006: 229 pieces legislation, 2007 - 2010: 166 pieces legislation, 2010 - September 2015: 88 pieces legislation, September 2015 - September 2018: 48 pieces legislation, 2018 - 2021: 13 pieces legislation. The total number of legislation adopted is 650, during 25 years.

³⁰ For instance, the first reference to the Law on Foreign Affairs date back to the 2009 Program of Work of the BiH Council of Ministers. See https://www.vijeceministara.gov.ba/akti/program_rada/default.aspx?id=7945&langTag=bs-BA at point 70., p.14.

³¹ From 2019 to Aug 17 2021, according to the official data of the FBiH government and the RSNA, 56 laws have been adopted in FBiH Parliament and 142 in RSNA. For RSNA, see <https://www.narodnaskupstinars.net/?q=ci/%D0%B0%D0%BA%D1%82%D0%B8/%D1%83%D1%81%D0%B2%D0%BE%D1%98%D0%B5%D0%BD%D0%B8-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B8>. For the FBiH Parliament, there is no such tracker but data could be accessed from the FBiH government website <http://www.fbihvlada.gov.ba/bosanski/zakoni/>. However, at this website, it is not entirely clear whether the FBiH tracker covers all legislation adopted or just those proposed by the government.

First and Second Deputy Speaker) shall elaborate a yearly work plan including issues and deadlines for their discussion in plenary sessions.

51. Both RoPs contain a provision mentioning who may present a draft law (authorized initiators; Art. 104 HoR RoP; Art. 94 HoP RoP). The Presidency, the Council of Ministers, the members of the PA, the chambers' committees, each chamber before the other one, and a Joint Committee (with representatives of the two chambers) are such authorized initiators.
52. Pursuant to the HoR RoP (Arts. 105, 118), when drafting the proposal of a law, the Representatives can request professional assistance from the Legislative and Legal Sector of the Secretariat of the BiH PA, for harmonizing their drafts with the Uniform Rules BiH. They, along with the Caucuses (HoR), have this possibility throughout the legislative process, including when they consider submitting amendments to drafts. This assistance is available for Delegates and Caucuses (HoP) only in the process of submission of amendments (Art. 109 HoP RoP).
53. The HoP RoP states in Art. 96 that the proposed draft laws and other acts presented to the PA shall first be considered in the HoR. In other words, HoR has, in general, a priority. Exceptions are possible. There is no similar provision in the HoR RoP.
54. Under both RoPs, the bill is submitted to the Speaker, who forwards it to the Collegium, which decides on the competent committee, and sends the bill to the Constitutional-Legislative Committee. If the initiator does not address the deficiencies revealed by this Committee (e.g., non-compliance with the rules on explanatory memorandum) within the deadline set, the proposal is rejected.
55. In each chamber, bills are discussed in two plenary readings; thus, the parliamentary process has two phases. The first phase is before the competent committee, which discusses the bill provided that the Constitutional-Legal Committee established the harmony with the BiH Constitution and legal system. Then, the competent committee submits an opinion on "the principles" of the draft law. When the Constitutional-Legal Committee or the competent committee provides a negative opinion, and the chamber accepts it, the bill is automatically rejected. When the negative opinion of the competent committee is not accepted by the chamber, it requests that the committee prepares a new opinion. This procedure (of not accepting the negative opinion and asking a reconsidered opinion) could be repeated two times. If there is no agreement between the House and the committee, after this process, the legislative procedure ceases.
56. If the procedure continues, the first reading in the plenary focuses on the necessity of the law, its general principles, and conformity with EU acquis, based on the opinions of the mentioned bodies. The plenary can adopt or reject the bill and, if it is not considered to be complex, can decide on the second debate (without referring the bill to the second phase before the competent committee).
57. Before referring the draft law to the committee phase (second phase), public hearings can be organized.
58. During the second phase of the parliamentary process before the competent committee every representative, caucus, competent committee, initiator, and the BiH Council of Ministers may submit written amendments within 10 days from the day the bill was adopted in the first reading. When writing amendments, not only the MPs (of both chambers) but also Caucuses can request expert assistance from the Legislative and Legal Sector of the Secretariat of the BiH PA and other institutions of BiH.

59. The second reading in the plenary follows, in which amendments to the amendments can be submitted. If the plenum adopts the negative opinion of the competent committee, the bill is automatically rejected. Here again, if the House rejects the report of the competent committee altogether three times, the legislative procedure ceases. The plenary discusses the amendments and votes on the bill. In case of legal and/or technical error, the competent committee makes corrections, and the final vote is made on the corrected text.
60. The adopted bill is sent to the other chamber, which must adopt it with an identical text for the law to be considered adopted and sent for publication. If no identical texts are adopted, a Joint Committee is formed. This Committee tries to reach an agreement on an identical text. It is composed of three members from each chamber and decides by a majority of votes cast by all the members of the Joint Committee, among them all three constituent peoples, and the majority from each chamber. After this, each House adopts the report of the Joint Committee; otherwise, the bill is rejected. If the Joint Committee submits a negative opinion, and neither of the chambers adopts it, the Joint Committee revisits the issue. If the chambers do not adopt the report, the bill is rejected.
61. Once the identical text of the bill is adopted by both chambers, the Speaker takes action for its publication.
62. For constitutional amendments, public hearings must be organized in both chambers, where the same rules apply.
63. The Secretariat of the BiH PA provides all necessary administrative, technical and professional assistance to the special and independent bodies of the BiH PA (Art. 148 HoR RoP, Art. 138 HoP RoP).

C. Federation of Bosnia and Herzegovina– Rules on Lawmaking in General

64. Like at the state level, the FBiH has a Parliament composed of two chambers (House of Representatives and House of Peoples) having equal competencies in the lawmaking process but a different source³² of legitimacy. Legislative decisions require the approval of both chambers (IV, A, Art. 17).
65. Lawmaking activity in FBiH is described in practical terms to be electoral cycle oriented, i.e., it does not feature longer-term political thinking. It also means that the distance between the voters and their representatives has been becoming wider. These two characteristics hinder the success of vital reforms and channeling of grassroots initiatives.
66. The Constitution of the FBiH deals with the distribution of powers and responsibilities between the entity and the cantons. It distinguishes between exclusive responsibilities of the entity, shared or common responsibilities, and responsibilities of the cantons (including the responsibility for matters which are not clearly attributed to the FBiH).
67. Regarding the Government, the Constitution of the FBiH explicitly mentions the responsibility of the Prime Minister and the Ministers for proposing legislation (IV, B, Art. 7). According to Arts IV 15 and 16, when the Prime Minister decides that one House is unduly delaying the legislative process, a joint conference may be convened; when the President decides that the legislature is unable to enact necessary legislation, the parliament or one of its chambers may be dissolved.
68. The rules on legislative drafting of the FBiH express a high level of awareness of the quality of legislative drafting. Questions pertaining to drafting techniques (format, style,

³² Representatives are elected directly, while the delegates of the HoP are delegated based on a parity basis.

- amendments, consolidated text and corrigendum, explanatory memorandum), methodological steps for preparing draft legislation (a policy with options, pre-draft, draft), consultation (four types of consultation, identification of interested parties), publication and the accessibility of legislative acts are considered with the necessary sensibility.
69. The parliamentary legislative process, *sensu stricto*, is regulated by Arts 159-203 of the HoR RoP and Arts 151-200 of the HoP RoP. The two RoPs of the FBiH also contain large parts of identical or nearly identical rules on the legislative process with some minor drafting differences. Differences emerge due to the different rules on who can submit draft laws. Deadlines are shorter in the FBiH HoP. The FBiH RoPs contain non-identical rules on the explanatory memorandum to the ones prescribed by the Ordinance on the Rules on legislative drafting of the Federation of Bosnia and Herzegovina (hereinafter “Ordinance FBiH”).
 70. The work of both chambers is informed by the Work Programme that is prepared by the members and the secretariat’s staff of the chambers, consulted with the President and the Government of the FBiH, and adopted by the respective chambers. In practice, however, work plans are adopted irregularly and often with significant delay, i.e. mid-year, making them a mere formality. In reality, both houses rely heavily on the Government’s Work Programme.
 71. The parliamentary procedure in the FBiH, in both chambers, consists of two readings (reading of the draft law and reading of the proposed law), which can be preceded by a preliminary procedure on legislative initiatives and cooperation between the chambers in order to adopt bills with identical texts. It distinguishes between legislative initiative, draft law, and proposed law.
 72. In the FBiH HoR, legislative initiatives can be proposed by the assemblies of cantons, towns, and municipal councils as well as by citizens, companies, and other legal entities. In the FBiH HoP, the entitled actors are the chambers of commerce and other general associations and communities, political organizations, civic associations, and citizens. The legislative initiatives are to be submitted to the Speaker in both chambers.
 73. The legislative initiative is discussed by the relevant committees (in the HoR also by the Government), then reviewed by the Legislative Committee. If the House accepts the initiative, it decides on the method of preparation and the drafter. The House, during the preliminary debate, decides on the necessity of the law and its principles. For this, the drafter can submit the key points of the draft. After agreeing on the initiative, the House instructs the initiator to draft the law.
 74. Draft laws and proposed laws can be submitted by the Government/Prime Minister, MPs, caucuses, and committees of the respective chamber to the respective chamber. In the HoP, draft laws can also be tabled by the President and Vice-President of FBiH, cantonal assemblies, and town and municipal councils. They must be accompanied by an explanatory memorandum.
 75. According to the RoP, the draft law is discussed in the first reading, first in the committees, by the President and Vice-President and the Government of FBiH (if it was not the initiator), and then at the Legislative Committee. The responsible House, unless refusing the draft law, decides whether there is a need for a general debate and a debate on the details. All of this is done within 14 days (HoR) and 10 days (HoP). The accepted draft law, along with all the opinions produced during this reading, becomes the basis of the proposed law. After the adoption of the draft law, the House decides whether it

organizes a public debate on the draft law. Based on its result, the proposed law is submitted. The same process, with the same deadlines, is repeated in the second reading on the discussion of the proposed law. During this deliberation, amendments are discussed and adopted.

76. Amendments to the proposed law can be submitted eight days (HoR) and three days (HoP) before the actual session of the House. Only the initiator and the Government can submit amendments by the end of the debate, and only MPs can propose amendments to amendments (in their respective chambers). If the amendment brings considerable changes to either the text of the proposed law or its principles or entails considerable funds and use of funds, it is referred to further discussion to caucuses, committees, and the Legislative Committee. The committee responsible for financial and budgetary issues considers the impact of the amendments on the available funds. Furthermore, if the amendment is aimed at changing the underlying principles of the proposed law, or if the acceptance of amendments would result in a significant change in the text of proposed law and if the amendment envisages the use of funds, the HoP shall decide on the amendment after obtaining the opinion from the Government of the FBiH.
77. The voting is on the proposed law to which the adopted amendments are integrated. Voting is done separately if the initiator or the Government does not agree with an amendment.
78. The bill adopted by the HoR is sent to the HoP, which must adopt it with an identical text. If identical texts are not adopted, a Joint Committee is formed. This Committee tries to reach an agreement on an identical text. If it fails or if one of the chambers disagrees on the developed text, the bill is rejected.
79. The Prime Minister can decide whether any of the chambers unduly delays the adoption of the bill. If it is the case, the Joint Committee is convened by the Prime Minister as per Art. IV.A.15 of the FBiH Constitution, composed of upmost ten members from each House; which will, within timeframe of 10 days, determine proposal of the law acceptable for both Houses.
80. Once the identical text of the bill is adopted, the law is published.
81. All the actions that can be taken during the discussion of both the draft law (first reading) or the proposed law (second reading) are reserved for those who can initiate draft laws.
82. The RoPs of both chambers contain provisions on the authentic interpretation of laws, which is published in the Official Gazette of FBiH.
83. According to the RoPs of the two chambers of the parliament of the Federation, both have their own administrative services and also can form a joint administrative service (Art. 264 RoP HoP, Art. 268 RoP HoP).

D. Republika Srpska – Rules on Lawmaking in General

84. Legislative activities and procedures in the RS differ from those in the FBiH for two essential reasons: first, the Parliament of the RS is composed of one single chamber (unicameral system); and second, there is no cantonal level like in the FBiH. Therefore, in the RS, the legislative procedure at the parliamentary stage is less complex and cooperation with the Government easier.
85. In the RS, the legislative power is vested in the National Assembly (RSNA) and exercised by the RSNA and the Council of People of the Republika Srpska (hereinafter “RSCoP”)

(Art. 69). The composition of the RSCoP is based on parity. The RSCoP participates in the lawmaking process by giving an opinion when the vital interest of the constituent peoples is involved after the bill has been discussed and adopted by the RSNA (see below). It is not a second chamber and does not have procedures that are usually attributed to a second chamber (no planning of activity, discussion of amendments, consultation, gender mainstreaming, etc.). Nevertheless, laws and other regulations passed by the RSNA concerning the vital interest of any of the constituent peoples can only be promulgated after they have been adopted by the RSCoP.

86. Some interlocutors during online interviews expressed the view that the legislative process in RS is approached from a more formal than a substantive perspective. A particularity of the institutional setting of the RS is the existence of the RSCoP, which is not a parliamentary body, but it receives laws enacted by the RSNA if they refer to or are declared that they refer to a vital interest of the constituent peoples.
87. A draft law and a motion law has to contain the constitutional basis, the opinion of the Government (when the draft is not coming from the Government), the opinion of an authorized ministry “on the level of approximation with the legal system of the EU and Council of Europe”, the reasons for which a draft law is proposed, the explanation of its impact, the economic analysis based on which the Government estimates that it is necessary to conduct an RIA, information on whether consultations are done in line with the RS rules on participation of the public, the necessary financial means, etc.
88. The parliamentary legislative process, *sensu stricto*, is regulated by Arts 185-214 of the RoP RSNA. The procedure on vital interests is regulated by Arts 258-260, RoP RSNA.
89. The RSNA adopts its annual working plan.
90. The parliamentary procedure in the RS, similarly to that in the FBiH, consists of two readings. The enactment of a law is composed of the reading of the draft law and the reading of the motion law. This process can be preceded by a preliminary procedure on the initiative for the enactment of the law.
91. The President, the Government, or at least 3,000 voters can propose laws. The RSNA can also give the right of initiative for the enactment of law to municipal and city assemblies, economic associations, other organizations, associations, and citizens.
92. In the preliminary procedure, the initiative for the enactment of a law is submitted to the Speaker, then forwarded to the relevant committees (working bodies) and the Legislative Committee. Based on the opinions of these working bodies, the RSNA decides whether it can be proposed as a draft law.
93. In the first reading of the parliamentary legislative procedure, the draft law, to which an explanatory memorandum must be attached, is discussed by the relevant working bodies and the Legislative Committee. Based on the reports, the RSNA decides on its constitutional basis, compliance with EU law, reasons, and financial consequences, and the sources of funds required for implementation.
94. After this decision is made, the RSNA may decide on a public debate. Based on this report, the motion law, with the explanatory memorandum, is submitted to the RSNA, which conducts the second reading.
95. The motion law is sent to MPs (10 days before the session on the motion law is set), working bodies and the Government (if it is not the initiator). Amendments to the motion law can be submitted by authorized initiators of the law and working bodies to the Speaker of the NA, who sends it to MPs, the initiator and the Government (if it is not the

initiator). If it is needed during the discussion before the NA on the amendments, the Legislative Committee is involved. The NA votes on the amendments separately; if there is an agreement on the amendment, it becomes an integral part of the motion law. If there is a view that more consultation is needed or that the amendments significantly affect the motion law, upon request, the NA may postpone the voting on the motion law and amendments until the next session of the NA.

96. The adopted law is sent to the RSCoP and, after receiving its opinion (unless the RSCoP initiates the procedure for the protection of vital national interest), to the President for arranging the publication. The President can send the law back to the NA for re-consideration. The newly adopted law must be published.
97. The RoP of RSNA contains provisions on the authentic interpretation of laws, which is published on the Official Gazette of RS.

COOPERATION

98. Lawmaking should be seen as a collective activity needing cooperation between all actors involved. Good cooperation between parliament and government, as well as inside the parliament and with the independent and regulatory institutions facilitates a smooth, well-informed, and evidence-based lawmaking process.
99. Governmental bodies participating in lawmaking, as parts of the public administration, are regulated by acts on administration (BiH, RS) and administrative bodies (FBiH). Employees of these bodies are civil servants whose service relationship is regulated by respective acts on civil service. The functioning of these bodies is ensured by the budget. They have to work transparently, based on work plans, and have a reporting duty to the parliament.

A. Bosnia and Herzegovina – Cooperation

100. In federal structures, the efficiency of operation presupposes cooperation between different levels and branches of government. Cooperation is very limited between the two chambers and between the Government of BiH and the Parliament, as well as between the Parliament and the Constitutional Court.
101. Unlike most other governments, the BiH Council of Ministers practically does not actively use its right to initiate legislation. Given its inactivity, interinstitutional cooperation with the two chambers of the Parliament is not very important and the capacity of the administration to support lawmaking activities (of the Government or of the Parliament) is scarcely developed.
102. Cooperation and harmonization between the two chambers are missing, in spite of the existence of a Joint Committee for Harmonization and the interagency working groups formed on an ad hoc basis. An example of this was the deliberation on the electoral law when the Electoral Commission was involved³³. There is a “dispersion” of responsibilities between the numerous respective standing committees and standing Joint Committees in both chambers. Sometimes the RoPs are not properly observed and it

³³ The draft electoral law shows the consequences of the lack of cooperation between respective stakeholders including the Government and the chambers. Despite the judgment of the ECtHR in the case of *Sejdić and Finci v. Bosnia and Herzegovina* (<https://hudoc.echr.coe.int/fre/?i=001-96491>), BiH, up to now, has been unable to change its electoral law

happens that the two chambers follow different procedures without proper justification - in most of the cases, it is due to political reasons. The coordination among committees does not necessarily meet the standards of democratic lawmaking.

103. For a federation, cooperation with other levels is essential, but not well organized in BiH. The established cooperation mechanism (consulting the other levels of Government) is not effective due to the often overpoliticized nature of collaboration and the complex processes that have been established in the state of BiH. The cooperation mechanism required by the EU integration is nevertheless working and could be seen as a good practice (according to the interviewees).

B. Federation of Bosnia and Herzegovina – Cooperation

104. The inter-ministerial procedures of drafting laws and assessing draft laws submitted to the chambers by other initiators is organized in an appropriate manner and function satisfactorily.
105. The cooperation between the Government of FBiH and the chambers of the Parliament works quite well, in particular, the cooperation between the HoP and the Government. The reason is reportedly the relative political pressure the Government puts on the HoP when an identical text of the bill has to be adopted. The HoP has better cooperation with CSOs than with the HoR.
106. The cooperation between the various parliamentary committees and the role of the Joint Committees are relatively weak. The same is true for the coordination between the chambers. It was reported that in the last 10 years, the Speakers of the chambers have not engaged in discussions over legislative matters which could be of interest for both chambers.
107. The two chambers are, formally, on a completely equal standing. In other words, they formally have the same rights and competencies. In practice, much importance is given to the independence or autonomy of the two chambers. During the online meetings (see “Methodology” of the Assessment), independence was emphasized several times, and more autonomy was attributed to the HoP as compared to the HoR. In practice, the HoP mostly has the lead in legislative matters. Its role is apparently more important with regard to legislative activities, i.e., it has more resources, and the cooperation between the Government and the HoP as compared to that between the Government and the HoR is closer. Also, the HoP adopts all the laws – in practice, the HoP often changes the law the HoR has adopted. It decides on vital interest and turns to the Constitutional Court of FBiH.
108. In comparison, the HoR is understaffed and lacks a proper support; it is not well organized (website included). One may assume that the leading cause for this situation is not budgetary but rather institutional and managerial.
109. As a result of the unsatisfactory coordination and cooperation between the two chambers, laws are adopted after excessive delays (i.e., it took 10 years for a law on the lawmaking procedure). There are no deadlines on plenary voting by a chamber once the other chamber has voted a draft law. It is in 2020 that the Joint Committee introduced by the Constitution and the FBiH RoPs has been established³⁴. Against that background, draft laws such as a law on auditing have been shelved for a long time by the HoP. The HoP

³⁴ Based on the interview with stakeholders

can raise national vital interest issues on any draft law, and it can block the procedure in case of the absence of harmonization by a Joint Committee. Despite the RoPs, it happens in practice that a bill adopted by one of the chambers does not reach the other chamber.

110. Government officials (from the General Secretariat and the Legislative Office) and representatives of the HoR and the HoP have emphasized the excessive duration of the legislative process, which is due to the various possibilities of blocking the legislative process: one chamber can block the other chamber, and cantons, which must be consulted when legislation is made in fields of shared competencies, do not always provide timely feedback to the Federation level bodies. It must be added that there is no agreed position in the cantons, from where the delegates of the HoP originate.

C. Republika Srpska – Cooperation

111. The Act on the Administration of the RS enumerates administration bodies involved with lawmaking, such as ministries with their respective responsibilities as well as features rules on the RS Secretariat for Legislation. The RS Secretariat for Legislation contributes to building, monitoring, and improving the RS's legal system by ensuring the compliance of laws with the legal system during their adoption process. It provides an expert opinion on drafts, ensures methodological harmony and normative-technical and linguistic validity, and fixes the final text of drafts. The Act on Administration of the RS also provides that involvement with interested entities, through the media, is obligatory in the pre-parliamentary phase when issues of rights, responsibilities, and legal interests of natural and legal persons are concerned.
112. The centralized and unicameral organization in RS is less complicated than at the State level and in FBiH. The RS executive and legislative branches proudly provided the assessment team with the statistics on the high number of adopted laws, including in regard to EU harmonization. Nevertheless, unimplemented laws pose a challenge, as described by the Government of RS and CSOs.
113. The cooperation between the RSNA and the Government, between the RSNA and the RSCoP, as well as within the Government, is described as smooth enough.
114. The organization of the RSNA is rather complicated. There are 20 permanent committees, several commissions, and working bodies. It is quite challenging to see how these different parliamentary bodies cooperate in an efficient way that ensures information-sharing and avoids duplication of work and how they could, for example, organize themselves to fulfil the legislative activities of the Parliament regarding its legislative tasks in relation to other institutions with lawmaking functions.

ADEQUATE TIME OF LEGISLATIVE PROCEEDINGS

115. Time needs to be allocated for considering any proposals, amendments, and motions – this is one of the fundamentals of evidence-based decision-making. In particular, deadlines within which laws need to be drafted, reviewed and verified, should not be too rigid, to allow for flexibility in cases of lengthy or complex draft laws, or prioritization of draft laws with greater political or legal importance.
116. For BiH, the RoPs usually have detailed provisions on the time frame (7, 10 days, 20 days, 15 days, etc.), but sometimes they use the expression “in a timely manner”.
117. Also, for many of the procedural steps to be made during the legislative procedure in BiH, the RoPs fix very short deadlines. For instance, it might be rather challenging to

make an informed decision about an amendment when it can be submitted 24 hours before the session (as in the BiH HoP). However, these deadlines are not absolute; they can be prolonged if necessary.

118. In the RoP of the FBiH HoR and the RSNA, there are no time limits for the distribution of materials relating to items on the agenda, though there are some deadlines for organizing public debates (see para. 75 supra). It could cause unreasonable delays in the procedure, but it could also mean that there is no time for preparation.
119. In the RS, however, sometimes deadlines are too long (e.g., before the Legislative Committee). Also, in the preliminary procedure, when the initiative for the enactment of a law is forwarded to the relevant committees (working bodies) and the Legislative Committee they have 90 days to give an opinion on the initiative.
120. In other cases, there are no explicit deadlines at all, for example, when it comes to the examination by the Government of the RS of proposals which were not initiated by the Government or when it comes to organizing public consultations.

URGENT/EMERGENCY/SIMPLIFIED PROCEDURES

121. Accelerated or simplified procedures can be used in the legislative process when needed, however, on an exceptional basis, because the urgency itself might be in conflict with the principals of democratic lawmaking. Where laws need to be passed urgently, the relevant provisions usually foresee reduced time limits for discussion in parliament, whilst democratic lawmaking means evidence-based legislation, broad deliberation, transparency, etc.
122. At the state level in both chambers, the initiator of the law can request, with a reasoned submission, a summary procedure for accelerating the legislative process, whereby the time otherwise allocated for the two phases of the process is shortened by 50 percent. Likewise, the accelerated procedure can also be requested if the bill itself is not complex or the bill has been given a high emergency status. This procedure reduces the two readings to one skipping also the committee stage at all. During only one plenary session MPs can vote without making any amendments to the emergency proposal.
123. Drafts originating with the Council of Ministers and marked as having EU accession related content are discussed in a summary procedure at the state level. Should an amendment be submitted to these kinds of drafts, the opinion of the Directorate for European Integration has to be requested.
124. In FBiH the summary procedure, which would skip the discussion of the draft law if the law is not complex in nature, can be requested before the end of the first reading. The emergency procedure is exceptional and can be used only if an immediate solution is needed or if the lack of regulation would have detrimental consequences. The responsible committees and the Legislative Committee discuss the request and justification; amendments can be submitted, in which case rules on amendments (described above) need to be observed. No deadlines are set for this process.
125. Conditions when emergency procedures can be proposed and used at BiH and FBiH levels are not properly established. One of the expert observations is that materials can be distributed on the day of the session, but it is rarely explained what the reason is for such “urgency”. The same applies to the summary procedure (both chambers of BiH and the FBiH).

126. Particularly in the BiH HoP, the rules on the emergency procedure are quite vague. The RoPs of the FBiH HoP also use the vague term “extreme urgency”. It is possible to decide that an issue is discussed only one time, and the time limit for discussion can be exceptionally limited. However, there are no guarantees or detailed rules to be found on what exceptionality means or in which cases it is possible to decide that an item on the agenda is discussed only one time. There is a continuous reference in the analyzed legislation to the explanation of urgency, but no detailed rules can be found as to what urgency means and what the explanation should contain (FBiH HoR).
127. In contrast, in the RS the emergency procedure can be proposed exceptionally when the failure to adopt the law urgently would cause adverse effects on human life and health, the safety of the RS and the work of agencies and organizations, and if it is in the general interest. It is also possible when the discussion is about a law that has been decided to be unconstitutional by the Constitutional Court of the RS.
128. During the online interviews, however, there were no issues raised about any abuse of emergency, summary, or urgent procedures.³⁵

LEGAL INITIATIVE

129. It is important to ensure that regardless of whether draft laws are authored by the Government or by parliamentarians or factions, the same standards of lawmaking apply to the right of legislative initiative, i.e. the right to draft and submit laws to parliament.

A. Bosnia and Herzegovina – Legal Initiative

130. At the state level MPs propose more laws than the Government of BiH, which is quite inactive. Save for the budget, it has proposed only a few bills in this term. In 2021, the Legislative and Legal Sector of the PA BiH registered 34 draft laws, among which 27 proposals arrived from the MPs and seven from the Council of Ministers. The main reasons for the lack of activity of the Government in the lawmaking process are not the inappropriate rules of procedure but the lack of political will in the form of active blocking decisions³⁶. There is a current practice that all drafts that the Government received are sent to the entity governments for consent, which could easily block the pre-parliamentary process.
131. Due to institutional and political reasons, the capacity of the two chambers to prepare draft laws and the cooperation with the Government are limited. Most draft laws initiated in one of the two chambers are prepared by MPs belonging to the political opposition. The quality of the submitted drafts could be improved³⁷. In 2021, the Legislative and Legal Sector produced altogether 106 opinions on the submitted draft laws.
132. The low quality of the drafts originating from the Council of Ministers is attributed to the fact that Secretariat of the Government is not considered to be an efficiently working agency to be able to guarantee overall high quality of drafts and compliance with the

³⁵ This used to be quite a problem as an analysis from 2014 describes that 70 out of 77 laws adopted in RSNA on that year were adopted under urgent procedure. Similarly, the FBiH Constitutional Court has struck down several pieces of legislation in the 2015/2018 period for the violation of regular parliamentary procedure.

³⁶ Sixtieth report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations on 22 October 2021, par. 13, available at: <https://reliefweb.int/report/bosnia-and-herzegovina/sixtieth-report-high-representative-implementation-peace-agreement>

³⁷ Based on the results of online interviews with the staff of the PA BiH conducted by ODIHR in April 2022

Uniform Rules³⁸. The reason is that each ministry does this verification separately and independently.

133. In the PA BiH, the Legislative and Legal Sector and a research sector help the MPs drafting their submission. However, in practice, initiators ask for this assistance fewer times than it would be needed, but they do comply with the recommendation of the Sector, otherwise, the law cannot proceed in the parliamentary process.
134. Sometimes the Legislative and Legal Sector receives ideas or rough materials for draft proposals, in which case the Sector prepares the draft or suggests amendments or makes suggestions. (As an example, the electoral law was mentioned.) As the text (and thus the drafting quality) could change during the sessions, due to the submitted amendments, immediate technical assistance is available without interrupting the session.
135. Even though MPs could seek technical assistance from the bodies of the Government, it has never happened in practice. One of the reasons is that opposition MPs tend to consider the Government agencies as belonging to the other political party, and that is why they would not trust the expertise they could provide.
136. It is uncommon to engage experts in the drafting process, mainly because MPs and committees are not aware of who, i.e., which experts, they could approach to get help. Even if MPs' political parties may give them technical support, the quality of the drafts remains poor. When it comes to assistance from political parties, e.g., for hiring staff assisting the MPs in drafting a law, financial resources are available in the state budget allocated to the work of caucuses, which can freely be used.
137. As was told during the interviews, the work of the members of the Council of Ministers of BiH lacks efficiency, having in mind the limited responsibility of the state compared with that of the two entities according to the Constitution. According to some respondents, there is a lack of political will among certain political parties at the state and the entity levels to adopt the necessary laws requested for the EU integration process in order to harmonize BiH legislation or in response to Constitutional Court rulings (example of school holidays) or ECtHR rulings. It is also rather indicative that the Government has not proposed any meaningful law on the pandemic³⁹, while the Ministry for Human Rights and Refugees (hereinafter "MHRR") has not been able to proceed with any draft law, for instance, on freedom of the media, and fight against hate speech, ombudsperson, and missing persons, as well prepare anti-discrimination and human rights strategic and programmatic documents.

B. Federation of Bosnia and Herzegovina – Legal Initiative

138. The executive branch is the most important actor concerning the initiatives for preparing legislative drafts. The administration has the necessary human resources and expertise, in particular, legal capacities and technical competencies. Thus, most draft laws are proposed by the Government. The quality of these drafts is generally low, even if the Government's Legislative Office requires correction before submission to the parliament⁴⁰.

³⁸ Based on the results of online interviews with the staff of the PA BiH conducted by ODIHR in April 2022

³⁹ On the other hand, it should be noted that the main measures regarding the pandemic have been needed in the domain of health, economy and public order and that most of these competences fall within the powers of the entities. Perhaps but that does not mean that a state coordinated approach would have been necessary as the High Representative put it in his 59th report (see <https://reliefweb.int/report/bosnia-and-herzegovina/fifty-ninth-report-high-representative-implementation-peace-agreement>).

⁴⁰ Based on the results of online interviews with the staff of the HoP and HoR FBiH and the Government of the FBiH conducted by ODIHR in April 2022.

139. HoR is more active in proposing laws, and more laws are adopted that have been initiated by the HoR than the HoP (70% to 30%). The quality of the drafts submitted by MPs could be improved⁴¹; there are sometimes drafts lacking an explanatory memorandum, the indication of financial resources for implementation, and an explanation of how the draft fits into the constitutional system. It has also happened that the draft is submitted only in one language instead of in all the three official languages. In these cases, the expert service of the HoR sends the draft back to them asking for a correction. However, the technical expertise of the public administration to draft correct laws is not sought, especially when opposition MPs submit drafts. MPs do not seek the assistance of the HoP either in drafting their bills. Moreover, they were reportedly not interested in organized training on drafting laws when it was offered to be organized. Nevertheless, there have been cases when they reach out to the international community for assistance.
140. MPs are more active in proposing amendments during the second reading of a bill.
141. When there are important laws on the agenda of the HoP, factions/MPs consult with different stakeholders through public debate and with the involvement of academia and experts. There is no particular line for it in the budget, and no resource allocated for hiring experts. Fractions/parties do this from their own budgets.
142. According to the written communication from the FBiH, during the period of 2018-2022, so far, 64 laws were proposed, and 50 were adopted.

C. Republika Srpska – Legal Initiative

143. The Constitution RS states that the Government, the MPs, the President of the Republic, or at least 3,000 voters also have the right to propose laws.
144. In the last two convocations of the RSNA, the following activities occurred:
 - 9th convocation (2014-2018)
 - The number of laws proposed to the RSNA at regular sessions: 162 proposals of laws [initiatives for the enactment of laws]; 115 draft laws. All laws were proposed by the RS Government, except six that were proposed by different caucuses and the Progressive Srpska Club.
 - The number of laws proposed to the RSNA at special sessions: 52 proposals of laws [initiatives for the enactment of laws]; 16 draft laws.
 - 10th convocation (2018-2021)⁴²
 - The number of laws proposed to the RSNA at regular sessions: 115 proposals of laws [initiatives for the enactment of laws]; 87 draft laws. All laws were proposed by the RS Government, except five that were proposed by a caucus or by individual MPs.
 - The number of laws proposed to the RSNA at special sessions: 9 proposals of laws [initiatives for the enactment of laws], 0 draft laws.
145. Citizens are not well informed about the possibility to initiate the enactment of laws. It could be one of the reasons why, so far, voters have initiated laws only in 5 cases, but only one of them was admissible.

⁴¹ Based on the results of online interviews with the staff of the HoP and HoR FBiH and the Government of the FBiH conducted by ODIHR in April 2022.

⁴² The assessment covered the period till the end of 2021.

146. The low number of draft laws initiated by the opposition in the RSNA is explained by the practice of the Legislative Committee, which usually gives a negative opinion on these drafts (e.g., the draft law on corruption). On the other hand, individual MPs, when drafting laws, can seek advice from the Secretariat of Legislation of the Government and ministries.
147. Thus, legislative initiatives and draft laws are nearly exclusively prepared by the Government. Therefore, essential parts of the legislative work are accomplished in the pre-parliamentary phase of the legislative process (policy development, drafting, public consultation, legal scrutiny, etc.), and in practice, the Government also plays a decisive role in the parliamentary phase. The executive branch has the necessary human resources and expertise at its disposal.

POLICY-MAKING AND REGULATORY IMPACT ASSESSMENT

148. Any state action, including laws, should start with an open-ended policymaking phase. During this phase, different solutions to a specific identified problem are debated and compared within different bodies⁴³. A good and evidence-based policymaking process enhances the content and coherence of laws. It also saves time, as the knowledge and conviction gained that a new law or amendment is necessary will inform consultations and help with the assessment process throughout⁴⁴. Especially when a certain legislative decision assumes expenditure of public financial and other resources, representatives of society must have the right to know on the basis of which data such decision was made.
149. In order to have laws and policies that adequately address the problem at hand and also work in practice, it is important to start out by assessing the impact of such laws and policies. Regulatory impact assessment (RIA) is both a tool and a process designed to help inform political decision makers on whether and how to regulate to achieve public policy goals⁴⁵.
150. RIA is usually defined as the comparison of different potentially positive or negative impacts of different solutions for an identified problem or challenge to make an informed decision on the solution that brings the most advantages while suffering the least disadvantages. Once a problem or challenge has been identified, this type of assessment usually moves on to a needs analysis and an outline of the assumed outcomes of a legal act and of non-legislative solutions (including the option of doing nothing), continues with a discussion on and determination of the most viable solution (ex-ante evaluation), and ends with the evaluation and monitoring of enacted legislation (ex-post evaluation). RIA also helps assess whether it is worthwhile for the state to become active in a certain field or not; if a proposed law or policy has no identifiable impact, then there is no need to undertake it. Moreover, even in cases where the legislative initiative does not receive immediate political support at the stage of its preparation, conducting RIA may provide necessary answers to boost such a support in future.
151. Therefore, RIA needs to be embedded in the entire lawmaking process, including the parliamentary phase, as major amendments could considerably affect the previously

⁴³ [Evidence-based Policymaking Collaborative: Principles of Evidence-based Policymaking](#), 2016.

⁴⁴ See Tanja Aitamurto, Hélène Landemore: *Five Design Principles for Crowdsourced Policymaking: Assessing the Case of Crowdsourced Off-Road Traffic Law in Finland*, *Journal of Social Media for Organizations*, Volume 2, Issue 1 (2015).

⁴⁵ [OECD: Better Regulation Practices Across the European Union](#), 2019, Chapter 3: Regulatory Impact Assessment Across the European Union. See also [OECD: Recommendation of the Council on Regulatory Policy and Governance](#), 2012, Annex, 4.1.

made calculations and, thus, the rationale of the submitted bill. On the other hand, bills submitted by MPs and other parliamentary actors should not avoid RIA either.

A. General Observations - Policy-making and Regulatory Impact Assessment

152. Despite the regulatory framework that observes the standards of policymaking and their integration into the legislative process, the practice is much different due to political and institutional reasons.
153. The rules provide for an explanatory memorandum, including references to costs, to be attached to the drafts. When the body deliberating on the draft is not satisfied with the explanation, it sends it back to the initiator or the drafter in each phase of the legislative process. The challenge here is that the requirements for the explanatory memorandum, in general, are not harmonized with the rules governing the drafting process in the pre-parliamentary phase and the ones on the RoPs of the parliaments.

B. Bosnia and Herzegovina – Policy-making and Regulatory Impact Assessment

154. The Annex attached to the Uniform Rules determines the impact assessment methodology in the process of developing a preliminary draft, or a draft or proposal of new or amended legislation in the executive institutions in Bosnia and Herzegovina. It also details the types of impact assessment; it names ex-ante RIA, ex-post and mid-term evaluation of laws, and prior RIA, for being included in the legislative plan, and full or comprehensive RIA for those drafts already in the legislative plan and for which the prior RIA determined potential significant fiscal, economic, social or environmental impacts. It also describes the impact assessment process, including inter-institutional and inter-governmental consultations as well as public consultations in the process. It enumerates the control bodies for essential verification of the assessment of fiscal, economic, social and environmental impacts and mentions the central coordination body. It prescribes the process for the review of the full regulatory impact assessment and the legislative draft and provides rules for the electronic system in support of impact assessment. It lists tools for comprehensive improvement of legislation quality and other matters related to impact assessment.
155. Conducting RIA is, basically, the task of the drafter. It renders professional development and training in impact assessment and legislative drafting as a right and duty of those involved in the process (see pars 229-230 infra).
156. Law projects (drafting a preliminary draft, draft or proposal of a legislative act - together, here: drafts) for which the prior RIA determined potential significant fiscal, economic, social or environmental impacts will first undergo a full RIA, which is conducted by the legislative drafting leader, who will then create a legislative drafting group. Impact assessment coordinators assist in conducting RIAs.
157. If full RIA is not foreseen, the drafting group is set up by the head of the BiH institution that leads the legislative drafting process. In complex cases, which require outside expertise as well, a responsible minister of BiH can set up an inter-institutional or inter-governmental drafting team composed of the civil servants from the institution that leads the legislative drafting process, other BiH institutions or relevant institutions from other levels of Government, representatives of civil society organizations, and prominent domestic or international experts, if needed.

158. Drafts are prepared based on the RIA reports, the consultation reports and documents (the consultation is conducted during the RIA process); they need to be sent to the control bodies (which verify legality, compliance with RIA methodology, the RIA results, etc.). All documents produced during the drafting process need to be submitted to the head of the BiH institution, along with the explanatory memorandum and the instruments for legislative alignment with the EU acquis.
159. The RoPs BiH contain non-identical rules on the explanatory memorandum to those prescribed by the Uniform Rules (BiH).
160. The explanatory memorandum attached to drafts, as determined by the Uniform Rules BiH, has to contain the constitutional and legal grounds for adopting the act, reasons for introducing the act and the explanation of the chosen policy option, the underlying principles, the compliance of legislation involving personal data processing with personal data protection standards, the alignment with European law, implementing and enforcement tools, explanation of the financial needs for implementing the act and financial impact of the law, explanation of possible economic, social and environmental impacts of the legislative act, description of the consultations conducted in the legislative drafting process, and the time schedule for the possible re-examination of the legislative act.
161. The drafter can deviate from these rules when the nature of a specific legislative act does not require these statements of reason. However, the institution responsible for adopting the act may decide that the explanation received is incomplete and can demand additional clarifications from the drafter.
162. Regardless of the Uniform Rules BiH, which are assessed to be very useful, including the forms attached to the Uniform Rules, they are not properly followed in practice. It is each ministry that decides on the need for RIA, and they have their own legislative drafting leader and impact assessment coordinator. Among many other bodies, the Directorate for European Integration and the Ministry of Finance must give their opinion on any draft law (including, upon request from the concerned chamber, on the draft law resulting from an MP initiative) respectively on EU harmonization and the cost of the law. It is the General Secretariat of the BiH Council of Ministers that conduct a final verification.
163. However, during the interviews, it was claimed that the RIA reports that the ministries submit to the General Secretariat of the BiH Council of Ministers are evaluated only formally, but even so, some shortcomings are often observed. It was added that the costs of draft laws are not detailed enough, that there is no systematic approach for RIA, and that there is a lack of input from independent experts. Without these opinions, the Council of Ministers cannot decide on the draft. It often happens that these opinions are missing and are not submitted. In this case, the legislative process is blocked. As it was vividly described by one of the interviewees: in the legislative process, anyone can block the process, either a single person or administrative body, for political or even for personal reasons.
164. One component of the low quality of RIA is said to be the lack of financial and /or human resources, which is a consequence of the allocation of legislative power, i.e., lower levels have broader competences than the center.
165. As said, RIA demands a comparative exercise weighing positive and negative impacts. It is not specifically mentioned in the RoPs, and when the draft is submitted by an MP, which represents large majority, RIA is usually not conducted as it is considered to be

the job of the Government in connection with drafts proposed by the Government. In this case, the observation of rules concerning RIA and the verification of observance with the rules are a mere formality. Therefore, RIA is not conducted in the chambers, and, as said earlier, there is no practice of getting support from administrative bodies to do this exercise.

166. The new rules requiring conducting ex-post evaluation of laws were introduced in 2017, so the first evaluation (on the indirect taxation law) is due in 2023. However, the introduction of this new rule, which demands new expertise, training, planning, human resources, etc., was not previously consulted with the affected public administration unit.

C. Federation of Bosnia and Herzegovina – Policy-making and Regulatory Impact assessment

167. The Rules on legislative drafting of the FBiH (Ordinance FBiH) require the assessment of the expected social, economic and ecological costs and benefits and demand that the drafter assess the impacts of policy options [Art. 75 (2) and (3)] but do not provide guidance on how to conduct impact assessments.
168. RoPs list the content of the explanatory memorandum of a draft law: constitutional basis, reasons for passing the draft into law, its principles, financial and other resources needed, explanation of legal solutions, and opinions of consulted bodies including opinions that the initiators did not adopt and the reason of the refusal of these opinions reasons. Such a list does not include the comparison of different potentially positive or negative impacts of different solutions in order to make an informed decision on the solution that brings the most advantages while suffering the least disadvantages.⁴⁶
169. For cost and benefit assessments, the opinion of the Ministry of Finance is required. The cost assessments of government-sponsored draft laws are not detailed and explained; RIA is not really done despite all the verification processes in the pre-parliamentary phase.
170. Explanatory notes are not discussed by MPs and are used only after the publication of the law, in particular for being able to interpret the law correctly.
171. Many laws are not or not entirely or incorrectly implemented in practice. At least in part, this is due to deficiencies of draft laws prior to their adoption and enactment as a result of lacking or insufficient RIA.
172. The partial RIA has been implemented since 2020. Since 2022, the Legislative Office reviews RIA (before it was done by the Secretary of the Government).
173. The need for conducting an ex-post evaluation of laws forms part of the legal system since 2020 but is not conducted in practice. There is an ongoing struggle with this exercise in the public administration.

D. Republika Srpska – Policy-making and Regulatory Impact Assessment

174. The RS rules on RIA conducted in the pre-parliamentary phase seem to change the logic of policymaking and RIA. The policy-making exercise is embedded in the RIA process, while it should be the other way around. The responsibilities of policymakers, ministers, and drafters are not clearly separated in the legislative process.

⁴⁶ See OSCE/ODIHR Assessment of the Legislative Process in the Republic of Armenia, 2014, par 14, available at: <https://www.osce.org/odihr/126128>.

175. The Decision of RIA in RS distinguishes between full and partial RIA, describes the methodology for both; makes the state administrative bodies responsible for conducting RIA and consultation and for developing and assessing policy options, the latter of which is considered to be the part of the RIA process; assigns the Ministry of Economy and Entrepreneurship to be the responsible governmental unit assisting in and verifying these activities; and, finally, facilitates the implementation by offering a table format in its Appendix to be filled in for showing the conformity and concordance of draft laws with EU law.
176. According to the RoP RSNA, drafters have to conduct RIA, which includes positive and negative impacts of a draft, its effect on the budget, and opinions of ministries and other institutions. Nevertheless, the RSNA considers RIA to be the responsibility of the Government.
177. The law is drafted after it has been assessed (RIA) and consulted. Rules on RIA have been improving because since 2018 (through an amendment of the law on the governmental RoPs), suggestions of the public and the answers given must be included in the materials accompanying the developed draft. Nevertheless, when RIA is not properly done, the Secretariat of Legislation of the Government returns the draft to the drafter, who has three days to address the comments. Given a quite limited time allocated for implementation of the comments, this rule could imply that the RIA activity is viewed only as a formal exercise.
178. No issues have been reported relating to the quality of the explanatory memoranda. This could mean that RIAs are adequately conducted. However, this conclusion contradicts the fact that many laws are not fully implemented or are not implemented at all, and to the very frequent amendments of laws, the lack of intelligibility of adopted laws, and their contradictions or conflicts with other laws. Another reason for these challenges could be that the Government does not prepare the implementing legal acts (secondary legislation) along with the draft laws. The reason for this is reportedly political: the Government allegedly does not want some laws, no matter how “good” they are, to be implemented and thus to induce real changes.
179. Ex-post evaluation of laws is done by the Government; RSNA does not get any reports on it; if ex-post evaluation of the legislation in force is done it appears in the explanatory memorandum of the submitted pieces of draft laws.

GENDER AND DIVERSITY

180. Across the OSCE region, international standards and national constitutions confirm the principle of equality before the law. One aspect of this is ensuring that laws apply to all persons equally, and do not disadvantage certain people due to their gender, nationality, citizenship, ethnicity, colour of skin, potential disability, religion, age or other characteristics. Apart from the substance of the legislation itself (the content of laws), gender and diversity aspects may be reflected in the form of legislation and in the process of lawmaking.
181. The form of legislation is basically how laws are drafted, and how gender and diversity aspects are reflected in the language used in laws. Taking into account gender and diversity aspects in the process of lawmaking essentially means bearing in mind the diverse, and potentially diverging interests of women and men, and of different minority groups during the process of preparing, drafting, debating a policy or law and adopting

legislation. This means that draft policies and laws need to undergo different assessments as to their potentially different impact on women and men, as well as other groups and need to be consulted with a wide array of CSOs representing different interests and groups.

A. General Observations - Gender and Diversity and Other Related Issues

Vital national interests

182. The vital interests of constituent peoples cannot be overlooked. It is ensured by the vital interest procedures, which entail diversity aspects as well.
183. Each constitution and the RoPs provide for a special parliamentary procedure for the protection of the vital interests of the constituent people. When the procedure of vital interest is invoked, a qualified majority is needed for the approval of the concerned law.
184. At the state level, for the determination of whether the bill concerns the vital interests of a constituent people, the decision of the majority of the Bosniak, Croat or Serb MPs present and voting in the BiH HoP are needed. If it is not supported, the BiH HoP assembles a Joint Committee composed of an equal number of delegates from each constituent people. If this Joint Committee is unable to resolve the issue, the Constitutional Court of the BiH decides on whether there was any irregularity during the procedures.
185. In the FBiH, laws in the fields that the Constitution declares as being of vital interest must be adopted by both chambers and require qualified majorities (IV, A, Art. 17a – 19). The FBiH HoP can agree on an amendment, and in this case, it sends the bill back to the FBiH HoR for approval. If there is no agreement on the amendment in the FBiH HoP, a Joint Committee is formed. The Joint Committee is composed on a parity basis and makes decisions by consensus. If no decision is made in this process, the bill is sent back to the initiator, who cannot submit the same draft law again. If the vital interest is claimed by a two-thirds majority in the FBiH HoP, the process is the same, except that the bill is not sent back to the initiator at the end of the unsuccessful Joint Committee session but to the Constitutional Court of the FBiH. The Constitutional Court decides on whether the bill concerns a vital interest of one of the constituent peoples. If it does, it is sent back to the initiator, who cannot submit the same draft law again. If, however, the Court finds that the law does not violate the vital national interest, it will be sent back to the HoP, which may adopt it with an ordinary majority.
186. In RS, any bill concerning a vital interest of the constituent people has to be discussed by the RSCoP. According to the Art. 70 of the RS Constitution as amended by Amendment LXXXII, the RSCoP may also initiate the procedure of deliberation under the vital national interest if more than one chairperson or co-chairperson believes that the law adopted by the RSNA violated the vital national interest of a constituent people. Adoption of such a bill requires the support of the majority of the constituent peoples in the RSCoP. The RSCoP can agree on an amendment, and in this case, it sends the bill back to the RSNA for approval. If there is no agreement on the amendment in the RSCoP, a Joint Committee is formed. The Joint Committee is composed on a parity basis and makes decisions by consensus. If no decision is made in this process, the bill is sent back to the initiator, who cannot submit the same draft law again. If the vital interest is claimed by a two-thirds majority in the RSCoP, the process is the same, except that the bill is not sent back to the initiator at the end of the unsuccessful Joint Committee session but to the

Constitutional Court of the RS. The Constitutional Court decides on whether the bill concerns a vital interest of one of the constituent peoples.

187. This process is, however, often misused due to the not-aligning political interests of the constituent peoples and the general wording of what constitutes a “vital (national) interest”.
188. In RS between 2015 and 2020, there were 37 cases in which the vital interests of one or more constituent people were violated. Reference to vital interest is viewed as a way to delay law implementation because the negative opinion of the RSCoP would trigger the procedure of the RS Constitutional Court, which, in most cases, has rejected the national vital interest argument. As per the written communication from the FBiH, in the mandate period 2018-2022, so far, there have been no requests for the protection of vital national interests in FBiH.

Gender equality

189. Gender mainstreaming and gender equality cannot be achieved unless women have equal representation in elected and professional bodies. The result of harmonizing the Election Law with the Law on Gender Equality in BiH from 2013 meant that that political parties became obliged to nominate at least 40 percent of women on electoral lists. Despite the improved opportunity, women’s representation remained low, at only 19.9 percent across all levels of Government (state and entity levels).⁴⁷ During the 2 October 2022 general elections, while the number of women candidates was in line with the 40 percent gender quota requirement, only 16.7 percent of the newly elected members of the BiH HoR, 28.6 percent members of the FBiH HoR and 16.9 percent members of RSNA are women. The authorities and political parties made insufficient efforts to promote women’s political participation. Only 7 percent of the candidate lists exceeded the minimum number of women required by law; women headed 22 percent of the candidate lists⁴⁸. The experts share the findings of the CEDAW Committee on the political representation⁴⁹ of women. In particular, the CEDAW Committee recommended adopting the amendments to the electoral law to increase the quota of women candidates on the electoral lists of political parties to 50 percent as well as to consider replacing the open list system with a zipper system for the nomination of candidates of both sexes on the electoral lists of political parties, ensuring that the first of every pair of subsequent ranks on the electoral lists is for a woman candidate, and introducing reserved seats for women in the parliaments of all entities.
190. Despite provisions of the 2003 Law on Gender Equality which obliges state and entity authorities to adopt temporary special measures to achieve balanced representation of women and men at all levels of public administration as well as quota requirements in election legislation, women remained underrepresented in elected and appointed offices. Among outgoing authorities, women held 22 percent of state-level Council of Minister’s positions and constituted 26 percent of members of the BiH HoR, 20 percent - of the BiH HoP, 27 percent - of FBiH HoR, and 22 percent - of RSNA. The outgoing president of Republika Srpska was a woman, as are only 4 percent of municipality mayors⁵⁰.

⁴⁷ NDI BiH Democracy Assessment in Bosnia and Herzegovina – Perspectives on the Democratic Transition, March, 2017, p 29.

⁴⁸ Bosnia and Herzegovina, 2 October 2022, general election, [ODIHR Election Observation Mission Final Report](#)

⁴⁹ UN Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of BiH, paras 29 (a) and 30 (a).

⁵⁰ Bosnia and Herzegovina, 2 October 2022, general election, [ODIHR Election Observation Mission Final Report](#)

191. Despite of the obligations of the GEA at the state level and Gender Centres at the entity level to monitor and ensure the implementation of the GEL and the BiH Gender Action Plan (hereinafter "GAP") (including introducing measures for achieving gender equality, adopting new or amending existing laws, implementing the BiH Gender Action Plan, collecting data, keeping records, and analyzing and presenting statistical data classified according to gender), the expert team did not receive the full information about gender mainstreaming in the drafting process and about whether a meaningful gender analysis of draft legislation is conducted.
192. As mentioned above (see para 18 supra), the assessment of how gender and diversity issues are addressed in the legislative procedure cannot be based only on the setting-up of special bodies having the task of examining such issues. More comprehensive data, however, have not been at the disposal of the experts during the assessment. The material received and the online meetings did not sufficiently elucidate this matter.
193. At the same time, there is evidence of insufficient human, technical and financial resources for monitoring and assessing the impact of legislation on gender equality, as well as a lack of systematic involvement of CSOs, in particular women's organizations, in the development of legislation, policies and programmes on gender equality, at the state, entity, district and cantonal levels⁵¹. Given that the disparities in the implementation of legislation on gender equality owe to the decentralized structure of the country, the legislation and policies to achieve equality of women and men at the state, entity, district and cantonal levels have still not been fully harmonized⁵².
194. It should be noted, however, that the Gender Equality Commission of the House of Representatives of the BiH PA, the Gender Equality Commission of the House of Representatives of the Parliament of the FBiH and the Committee for Equal Opportunities of the RSNA provide continuous support to harmonization of legislation and the process of introducing and applying gender equality standards. GEA, MHRR BiH and entity gender centers reported successful cooperation with said parliamentary commissions through joint collaboration on amendments of the laws and policies, reviews of regular reports on the gender equality situation, organization of thematic sessions and regular promotional activities.

Gender-neutral language

195. The official languages of BiH as a state are not genderless languages. Rules prioritize coherence over gender-neutrality. The Law on Gender Equality in BiH defines what constitutes "discrimination in language" but does not contain any details on its implementation. Neither do any other legal measures in all three levels (BiH, FBiH, RS). "Discrimination in language" exists when only one gender is used as a generic term. The Ordinance (FBiH) prescribes that words shall be used only in one gender (masculine, feminine or neutral) (Art. 45). The Uniform Rules (BiH) provide for the use of a gender-neutral form of "a person". The respective provision contained in the Ordinance was deleted from the Uniform Rules ("In definitions, words have to be written in both their masculine and feminine form separated by a slash, and further, for the sake of ease of comprehension and readability, only one gender form is to be used."), and instead, it is required that i) "the terms given in the legislative act in one gender, for the sake of ease

⁵¹ UN Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of BiH, paras 12(c) and 18(c), available at: <https://www.ohchr.org/en/documents/concluding-observations/cedawcbihco6-committee-elimination-discrimination-against-women>.

⁵² Ibid, par 11 (b and c).

of comprehension, shall apply, without discrimination, to both masculine and feminine gender”, and ii) “drafters are obliged to insert the definition on this kind of terms in the introductory part of the legislative act”. In practice, the masculine form is more used, so the rules could not achieve their intended result: providing a gender-neutral legislative environment. In the FBiH, both forms of nouns are used, for instance, for the word “worker”. The technical rules on drafting in the RS do not contain any provisions on gender equality or on gender-neutral language.

196. It is the overwhelming opinion of the interviewees (both men and women) that the rules on the use of pronouns make sense because, first, it does not burden the text (with a formulation like “he/she”). The second reason is that the use of the masculine is the traditional usage of the language, and thirdly, there are linguistic differences among the three official languages in terms of using gendered expressions (eg, titles, professions).
197. In this respect it should be recalled, however, that gender blind language jeopardises inclusivity and sends out wrong messages⁵³. Gender neutral and inclusive language⁵⁴ is the acceptable standard of legislative expression that promotes legislative effectiveness, equality and inclusivity.

Multilingual lawmaking

198. It was reported that, due to the potential differences in legal terminology in different languages, there could be problems in the use of legal terminology, especially when the authorized initiators are MPs - thus not supported by drafting experts. Parliamentary services assist in linguistic issues when the draft is not submitted in all three official languages, but there could be shortcomings regarding the editing capacity.
199. Drafts and laws in BiH need to be identical in all three official languages. This is ensured by a two-stage language check: the internal linguistic check ensures the identical nature during the drafting process, while the Secretariat of the BiH HoP does the final check before the publication in the Official Gazette.

B. Bosnia and Herzegovina – Gender and Diversity

200. The Law on Gender Equality in BiH (hereinafter “GEL”) is directly applicable at all separate administrative levels or administrative jurisdictions in BiH. According to this Law, the obligations of the Gender Equality Agency (hereinafter “GEA”) at the state level and Gender Centres at the entity level are to monitor and ensure the implementation of the Law and the BiH Gender Action Plan. Furthermore, all other public bodies have a duty to take all appropriate and necessary measures to implement provisions prescribed by this Law and the BiH Gender Action Plan. They must do so by introducing measures for achieving gender equality, adopting new or amending existing laws, implementing the BiH Gender Action Plan, collecting data, keeping records, and analyzing and presenting statistical data classified according to gender. The GEA and Gender Centres receive requests, depositions, and complaints from citizens or groups that point to violations of the Law.

⁵³ Donald L. Revell, Jessica Vapnek, [Gender-Silent Legislative Drafting in a Non-Binary World](#) (2020) 48:2 Capital University Law Review 1-46; Office of the Parliamentary Counsel and the Government Legal Department (UK), [Guide to Gender-Neutral Drafting](#) 2019; Government of Canada, Department of Justice, [Legistics Gender-neutral Language](#); Ruby King and Jasper Fawcett, [The End of “He or She”? A look at gender-neutral legislative drafting in New Zealand and abroad](#) (2018) NZWLJ; Parliamentary Counsel (Australia), [Drafting Direction No. 2.1 English usage, gender-specific and gender-neutral language, grammar, punctuation and spelling](#), 2016; Office of the Parliamentary Counsel (UK), [Drafting Guidance](#), 2018

⁵⁴ European Parliament, [Gender-Neutral Language in the European Parliament](#), 2018; ‘European Parliament Resolution on Gender Mainstreaming in the European Parliament’ 2018/2162 (INI) (15 January 2019); Council of the European Union, ‘General Secretariat, Inclusive Communication in the GSC’ (2018); Jutta Marx and Jutta Borner, ‘Gender Mainstreaming in Latin American Parliaments: A Work in Progress’ (2011), 30 accessed 29 July 2019.

201. GEL in the Article 24 paragraph (4) states that authorities at all tiers of government are obliged, before submitting to the legal procedure, to submit all regulations and other acts within their jurisdiction to the opinion of institutional mechanisms for gender equality for harmonization with the GEL.
202. In the framework of harmonization of laws and policies with the GEL, GEA BiH, MHRR BiH and the entity Gender Centres reported continuously providing opinions on legal and other acts (draft laws, by-laws and other normative documents, strategies, plans and programs), before their submission to the legislative authorities⁵⁵.
203. According to the written communication from BiH, in the joint Collegium of both chambers, there is only one woman out of a total of 6 members. In the Council of Ministers, there are only two women ministers out of a total of 10 positions.
204. The Council of National Minorities as an independent body of the PA BiH still does not have any substantive role in the legislative process.
205. The principle consequence of the lack of implementation of the ECtHR judgment in the case of *Sejdic and Finci v. BiH*⁵⁶, is the human rights implications to Bosnian nationals, who are prevented by the Constitution from standing for High Office positions, whilst correct execution could assist in breaking down ethnic divisions in BiH by boosting political participation and representation and promoting social cohesion. Whilst the diversity concerns and violations which are occurring are of undoubted importance, it is the wider implications of failing to comply with the ECtHR ruling and continuing to miss deadlines, which could have the greatest effect on BiH in the long term.

C. Federation of Bosnia and Herzegovina – Gender and Diversity

206. Based on the Gender Equality Law, a Gender Centre has been set up, which participates in the development of draft laws in the pre-parliamentary phase, coordinates with the Gender Equality Committees of the chambers and with its counterpart in the RS. Gender equality is reportedly taken into account during the drafting process. The Gender Centre FBiH gives opinions on compliance with the provisions of the GEL on all submitted regulations and policies. The main areas of harmonization: labour and employment, public administration, health and social protection⁵⁷.
207. Within the Secretariat, a gender expert follows up on applying a gender perspective in this process to ensure that laws and policies are, to respond to the unique experiences of women and men, avoiding “one-size-fits-all” thinking. In the Legislative Office of the Government, however, there is no gender expert.
208. In the chambers, their respective Gender Equality Committee deals with the gender-equality context of draft laws. In the view of the HoR interviewees, gender mainstreaming is conducted. Nevertheless, it is not particularly described in the laws regulating the lawmaking processes. It is not clear whether, in practice, draft laws have been sent back to the initiator if the committee was unsatisfied with the gender mainstreaming and its documentation.

⁵⁵ CEDAW Committee, [Information received from Bosnia and Herzegovina on follow-up to the concluding observations on its sixth periodic report](#), dated 22 June 2022 par. 7.

⁵⁶ ECtHR, *Sejdic and Finci v. Bosnia and Herzegovina*, Applications nos. 27996/06 and 34836/06), judgment of 22 December 2009.

⁵⁷ Sixth periodic report submitted by Bosnia and Herzegovina under article 18 of the Convention, due in 2017, received on 19 April 2018, available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BIH/CEDAW_C_BIH_6_7313_E.pdf

209. Given the concerns raised in connection with the explanatory memoranda and RIA, the quality of gender mainstreaming is doubtful.
210. The Language Committees of the HoR check the adequate use of the three official languages in the laws, proposals, and documents. They do not have the mandate to follow up on the observation of the standards of gender-neutral language.
211. The language proofreading service in the HoR has not been functioning for years due to the lack of staff.

D. Republika Srpska – Gender and Diversity

212. A Council of National Minorities is established by the RSNA. This Council has an advisory function, including the legislative activities of the RSNA. Thus, both the consultation of the RS CoP and the setting-up of the Council of National Minorities are ways of taking into account ethnic diversity in the legislative process.
213. Based on the Gender Equality Law, a Gender Centre has been set up. The implementation of gender equality is weak, regardless of some progress that has affected the content of laws (e.g., Criminal Code). There is a relatively high level of awareness of gender equality issues, but it is still lower than in EU countries. The Committee of Equal Opportunities of the RSNA follows up the gender equality-related issues in the RSNA. It is unclear whether draft laws have been sent back to the initiator if this Committee was unsatisfied with the gender mainstreaming and its documentation.

LEGISLATIVE PLANNING

214. One very important element of proper lawmaking is adequate prospective legislative planning. Rather than reacting short-term to specific problems and thereby unnecessarily rushing the legislative process (leading to uneven results in terms of quality of legislation), more long-term planning of key legislative initiatives results in qualitatively better, more sustainable legislation.

A. General Observations – Legislative Planning

215. Parliaments at the state and the entity levels organize their work based on a work plan. Its consistency with the governmental legislative plans and programmes depends on the quality of the cooperation and coordination between the different bodies and the quality of the policy planning of the governments. They also develop their respective agendas, based on which they deliberate on the proposals.

B. Bosnia and Herzegovina – Legislative Planning

216. The legislative drafting planning process is to be done in accordance with the Decision on the Annual Work Planning, the Methodology for Monitoring and Reporting on the Work of Bosnia and Herzegovina Institutions (Official Gazette of BiH 94/14), and the Instruction on the Methodology for Annual Work Planning and Reporting of Bosnia and Herzegovina Institutions (Official Gazette of BiH 45/15). BiH institutions propose their Legislative Drafting Plan based on the prior RIA (which is made for drafts intended to be included in the legislative drafting plan of the BiH institution and the Council of Ministers), as an integral part of the annual work programme for the BiH institution and

the Council of Ministers. BiH institutions shall conduct prior consultations when developing the legislative drafting plan.

C. Federation of Bosnia and Herzegovina – Legislative Planning

217. Recently, a new practice of a yearly legislature program of the Government has been introduced, which is based on the plans of the ministries. It has been requested in particular by CSOs. The program is monitored by the Secretariat on a quarterly basis.

D. Republika Srpska – Legislative Planning

218. In the RS, there is strategic planning at the governmental level to ensure a short and mid-term planned foundation for developing policies, drafting regulations and assessing their impact, as well as for organizing and coordinating the work of the Government and the different administrative bodies. The Government organizes its legislative activity based on the annual plan, which is shared with the RSNA.

219. In 2020, 37 laws were planned in connection with EU harmonization, but only 30% of them have been adopted.

LEGAL DRAFTING

220. Legislative drafting means turning policy into law. Legislation represents the will of the legislature, but it is the legislative drafter who gives that will form and shape.

221. When laws are drafted, two main requirements need to be fulfilled: the drafters need to be aware of the proper drafting technique and style in use in the state, but also need to be aware of the matter that the law seeks to regulate. It is not always easy to combine these two requirements, as those proficient in legal drafting will not always be experts in all matters that need to be regulated.

A. Bosnia and Herzegovina – Legal Drafting

222. It is for each Ministry to prepare draft laws, secondary legislation, and the explanatory memoranda with the support of their coordinators and drafting groups. The Coordinators' and drafting groups' role is crucial, as their advice can help to ensure that the Council of Ministers' political members amend the draft text in a manner that is appropriate or which takes into account sufficiently legal aspects.

223. Draft laws and their materials are examined by a collegium composed of the Deputy Ministers before being sent to the Council of Ministers Secretariat, then to the Chair of the Council of Ministers who decides whether or not to put the draft on the CM agenda for its adoption. However, as the Council of Ministers is not functioning properly, it appears that, in practice, individual ministers alone sign "documents", with uncertain quality in the absence of a collective examination. Secondary legislation-making is processed in the same way as primary legislation.

224. The explanatory memorandum attached to drafts, as determined by the Uniform Rules BiH, has to contain the constitutional and legal grounds for adopting the act, reasons for introducing the act and the explanation of the chosen policy option, the underlying principles, the compliance of legislation involving personal data processing with personal

data protection standards, the alignment with European law, implementing and enforcement tools, explanation of the financial needs for implementing the act and financial impact of the law, explanation of possible economic, social and environmental impacts of the legislative act, description of the consultations conducted in the legislative drafting process, and the time schedule for the possible re-examination of the legislative act.

225. The drafter can deviate from these rules when the nature of a specific legislative act does not require these statements of reason. However, the institution responsible for adopting the act may decide that the explanation received is incomplete and can demand additional clarifications from the drafter.
226. In most states, the majority of the draft laws are prepared by the Council of Ministers and its administration. As the BiH Government practically never proposes draft laws, nearly all draft laws are initiated by MPs. Against that background, draft law quality is rather questionable, according to the chair of the Constitutional-Legal Committee (BiH HoR) and the Legislative and Legal Sector of the PA. In practice, MPs lack expertise, while, merely based on the BiH Uniform Rules, the expertise is available at the executive. Moreover, the RoPs provide for the possibility of requesting assistance not only from the specialized unit of the Parliament but also from other institutions of BiH (Art. 27 of the 2002 Law on the Administration of BiH, which states that “administration bodies shall be bound, upon request of the Parliament, to prepare proposals of laws”). This opportunity is not used (Cf. point 3 on Legal initiative).
227. Apparently, the possibility for MPs to request the professional assistance of the legislative-legal sector of the BiH PA is not used to all its possible extent. Nevertheless, one HoR MP considers that MPs sometimes can get assistance and support from the OSCE Mission or from CSOs on draft laws, like in the case of a recent law on conflict of interests. In practice, staff members of the political parties funded by the parties appear to be the main drafters of draft laws submitted by MPs. Such drafting activity is not contrary to democratic institution principles, as political parties are represented inside the Parliament and most of the MPs are generally members of political parties. However, given MPs’ constitutional responsibility, which is independent of their political party role, having in mind a certain lack of democratic practices inside parties, deputies should get adequate resources, trainings and independent expertise from the Parliament and, if necessary, the Government in order to draft good quality laws and explanatory notes including, if necessary, comprehensive RIA in the case of legislative initiatives and drafts prepared by MPs.
228. There are many civil servant training programmes. The Uniform Rules require training and revision of the efficiency of training of the personnel participating in the drafting process.
229. Participating in a yearly training is obligatory, but civil servants can choose in which one they would like to take part. This choice is personal and based on what kind of training is available, and not necessarily driven by the needs of the particular unit. These trainings are specialized ones; they do not focus on the general issues of democratic lawmaking, and convey more theoretical than practical knowledge.
230. As far as the MPs are concerned, as they come from different backgrounds, there is a view that a general training on lawmaking would be necessary from when they join the parliament. In the PA, such trainings existed, including the ones OSCE organized, but recently no training sessions have been organized. At the same time, as it was reported

to experts during interview with the representatives of the BiH authorities, sometimes MPs are not responding to training proposals.

B. Federation of Bosnia and Herzegovina – Legal Drafting

231. In accordance with established procedure draft laws in FBiH are developed by working groups in ministries, through inter-ministerial cooperation, with the involvement of the Ministry of Finance and Ministry of Justice; consultations take place.
232. In each Ministry, specialized drafting units operate, which include legal professionals who are specifically trained by the Civil Service Agency for legislative drafting. They can also get the support of independent consultants, or outsource the drafting to political parties. In principle, it is for each Ministry to prepare draft laws and explanatory material.
233. Draft laws have to be submitted to the Ministry of Finance and the Ministry of Justice in order to obtain their opinion.
234. Before submitting a draft to the Government, the General Secretariat verifies its compliance with the respective rules on lawmaking. The Legislative Office of the Government examines the constitutional and legal grounds, including harmonization with EU regulations of a draft law, and defines the legal obligations for the drafters. The opinions expressed in the inter-ministerial consultation process are not legally binding, and the Government is informed about negative opinions. The Legislative Office, which does not prepare draft laws itself, checks the rationale and the cost assessment of any draft law and the proper implementation of the Ordinance. Thus, the quality of the initial draft law can be improved through the filter of the Legislative Office. This is not the case for drafts discussed and adopted by the Parliament because the drafts are amended by the Parliament to a large extent.
235. When a preliminary draft or draft law is discussed in a meeting of the Government, the law drafter is obliged to briefly introduce the draft after which a general discussion is held, followed by a discussion on details. After fixing the content of the draft or of the proposal of the law, the law drafter is obliged to act upon the conclusion of the Government, incorporate the Government's remarks into the text of the law, and submit the amended text to the Secretary of the Government for submission of the draft or the proposal of the law to the FBiH Parliament for consideration.
236. The drafting process itself starts with defining policy and its key points, with possible options; the impacts of these options, in terms of budgets, other costs and benefits, and EU integration, need to be assessed. In this phase, the drafter identifies the possible interested parties with whom consultation could be conducted. After adopting the policy and its key points and selecting the preferred option, a pre-draft is prepared. Consultation on the pre-draft is organized, based on the decision of the authority responsible for the drafting on the question of whether there is a minimum obligation related to consultation or whether the draft has a significant impact on the public. If the minimum obligation is determined, online consultation is organized, whereby the text is made available on the website and online comments can be made for at least 10 days from the publication of the text. When the draft has a significant impact on the public, the public is informed about it on the website of the ministry and the Government, and the consultation lasts at least 30 days.
237. The minister decides what type of consultation is organized out of the four the Ordinance determines (information provision on drafts; consultation with citizens seeking their

comments; involvement of the representatives of the interested public; through partnership). When making this decision, it is necessary to take into account the time limits for the adoption of the legislative regulation; the possibilities of organizations and individuals to participate in the consultations; and the novelties and the technical complexity of the topic covered in the legislative regulation [Art. 83 (1)]. Based on the results of the consultation, the draft is finalized and sent to the Government, along with the verification of the head of the authority on the conducted consultation, explanation of why the consultation took place, its type, and results, including an explanation of the acceptance or rejections of the comments received from those involved in the consultation.

238. All the rules related to legal drafting describe the content of the explanatory memorandum that has to be attached to a proposal. The explanatory memorandum attached to draft laws has to contain the constitutional and legal grounds for adopting the act; reasons for introducing the act, based on the clear evidence of the existing problem, and the explanation of the chosen policy option; conformity with European law; implementation and enforcement tools; explanation of the financial needs for implementing the act and financial impact of the law; economic justification; description of the consultations conducted in the legislative drafting process; and time schedule for a possible re-examination of the legislative act.
239. These requirements, however, are not coherently established for the governmental and parliamentary phases of legislation and, thus, could hinder a uniform application. Human rights or gender considerations are not on the list of topics that the explanatory memoranda need to address and on which, consequently, RIA and consultation need to be organized.
240. MPs, when they draft laws, do not seek technical assistance from the public administration
241. Training of MPs and Parliament staffers is needed not only in terms of drafting rules but also in general, for instance on the RoPs. There is a little interest in training in the HoR, but there is a hope that there will be more when the new parliament is convened.

C. Republika Srpska – Legal Drafting

242. In the RS, the Government proposes to draft and coordinate the annual planning for the production of laws and other acts with the RSNA on the basis of its operational program.
243. The state administrative bodies (SABs) are responsible for the entire drafting process, for which they receive assistance from the Ministry of Economy and Entrepreneurship (methodological guidelines on RIA and experts, if needed).
244. Ministries and administrative bodies are drafting laws in accordance with the Government guidelines. Based on the rules on drafting techniques (2014), which changed the former rules, all laws are drafted in the same way. Ministries develop the draft laws. Depending on the content and nature of the law and the size of the ministry, sections and individual drafters within the ministry or inter-ministerial working groups draft the text.
245. Pursuant to the Decision of RIA RS, the preparation of the law starts with the determination and definition of the problem and is followed by the setting of objectives that the proposed regulation wants to achieve. The SAB establishes the baseline, i.e., describes in detail the current state of affairs, implements a process of interinstitutional consultations, carries out mandatory consultations, and proposes options, i.e., offers

alternative solutions for the defined problem. It selects potential options, analyzes and assesses the impact of every option, particularly from the viewpoint of cost and benefits, runs a comparative analysis of the proposed options, and decides on the most favorable option. It also defines mechanisms for monitoring, reporting, and evaluation. It is explicitly required that a SAB invite interested entities through the media and enable them to make their comments and suggestions in the process of the development of laws that regulate the issues of rights, responsibilities and legal interests of persons.

246. The Guidelines also help the SAB to decide if a draft has a significant impact on the general public. In such a case, the preliminary draft is shared with the stakeholders, or working groups are formed in which representatives of stakeholders are invited. They have 15 days to share their views. Stakeholders are legal persons, citizen associations, employer associations, the bar association, chambers of commerce and other chambers, representative trade unions, experts in specific fields, media, scientific and professional communities. In other cases, when the drafter considers the subject matter to be interesting for the public, the drafter and the coordinator publish the text of the draft on the website of their authority. Stakeholders have 8 days to submit their comments.
247. The drafter has to take all comments into account and explain the reasons for acceptance or rejection in the explanatory memorandum attached to the draft. Failure to do so empowers the Secretariat of Legislation to return the draft to the drafter, who will have 3 days to complete the explanations.
248. When the pre-draft is done, it is reportedly put on the website of the ministry, and the public is informed in a timely manner. The pre-draft is also sent to the Ministry of Economy and Entrepreneurship for RIA. The draft is finalized when all the materials, based on which the explanatory memorandum is developed, have been considered.
249. The RS Secretariat for Legislation, which assesses whether draft laws are in conformity with the Constitution RS and observe the rules of lawmaking, sends its opinion to the Government. This Secretariat checks if all the required consultations have taken place, and if not, it returns the draft to its author.
250. MPs, when drafting laws, can seek advice from the Secretariat of Legislation of the Government and from the ministries.
251. The Civil Servant Agency organizes the training of drafters.

COMMITTEES

252. Committees need to play an active role in the lawmaking process. Draft laws that have been submitted to parliament should be examined, at different stages of procedures, by relevant lead committees. Any exceptions to this rule must be transparent, narrowly defined, and extraordinary in nature⁵⁸. Committees are essential to ensuring that draft legislation undergoes proper scrutiny prior to a draft law undergoing a detailed review in plenary and thus need to have sufficient powers within legislative and other processes in parliament and resources to ensure that they can adequately fulfil this role.

⁵⁸ See, e.g., Commonwealth Parliamentary Association: Recommended Benchmarks for Democratic Legislatures, revised and updated in 2018, par 3.2.2.

A. General Observations – Committees

253. The composition of the committees in the parliaments at the state and the entity levels apparently follows the logic of proportional representation, which has its democratic advantage. Sometimes, however, a parity structure is advised to be followed, especially in the case of committees whose main functions are providing oversight over the executive.
254. There is a general obligation to publish proposals and other materials for sessions. However, it is unclear when exactly they have to be published, which could hinder meaningful participation in committee debates. Therefore, publication deadlines should be considered.

B. Bosnia and Herzegovina – Committees

255. There are three permanent committees in the House of Peoples of the BiH PA: the Constitutional-Legal Committee; the Committee on Foreign and Trade Policy, Customs, Transportation and Communications and the Committee on Finance and Budget. There are also temporary committees in the HoP that can be established upon the proposal of a representative or caucus for considering the enforcement or preparation of a certain act or issue; or investigative committees. The BiH HoR has six permanent committees (Constitutional-Legal Committee, Committee on Foreign Affairs, Committee on Foreign Trade and Customs, Committee on Finance and Budget, Committee on Transport and Communications, Committee on Gender Equality and Committee for the Preparation of the Election of the BiH Council of Ministers), as well as ad-hoc committees.
256. The committees of both chambers may establish sub-committees or working groups, e.g., for preparing draft laws.
257. Pursuant to the RoPs, the legislative procedure ceases when a negative opinion of the Constitutional-Legal Committee or the competent committee is repeated three times before the respective chamber. Accordingly, committee vetoes can practically block necessary reforms even if, in theory, the majority would be in favor of such a reform in the plenary session. The negative opinion on a bill can often be based on a political and not on a legal or constitutional assessment. In order to prevent the potential negative opinion of the committees, MPs often request urgent procedures. Thus, the use of unsatisfactory procedural means sometimes leads to the use of other unsatisfactory procedures.
258. Beyond this, the committees have a mainly formal role, and no substantial discussions take place in the committees, mostly due to the lack of time assigned for discussing an item on the agenda and to political reasons. Committees usually have one or two days before the plenary session for discussion. Most of the decisions, which should be taken by a committee, are made by agreements between 3 or 4 political leaders and MPs following the instructions of the political leaders.
259. Reportedly, national policies are discussed even in the committee stage, where expert and legal arguments are irrelevant, where only the vote (for or against) is essential. Independent experts are not involved in the work of committees even if it is requested by an MP because the majority does not support such requests.

260. Amendments are to be submitted during the committee phase of the parliamentary process. Only a few of these are submitted with the aim to improve the bill; mostly, the goal is to make it unacceptable during the following procedural steps.
261. The role of committee rapporteurs on draft laws is limited. First, they can only defend the position of their committee at the plenary session, while the RoPs do not mention their specific role before and during committee discussions. Second, their appointment is formal, and usually, the chairperson of the committee assumes this role. In order to better defend the committee position, the rapporteur should have been able to play a key role in the framing of this position.
262. The discussions are reported to be more vivid when there is media attention.
263. The Joint Committee established to reach an agreement on the identical text of the bill can also block the legislative process due to the qualified majority needed for decision-making.
264. The experts' observation is that during the first year of the pandemic, committees did not fulfill their tasks to the full extent.

C. Federation of Bosnia and Herzegovina – Committees

265. There are 21 committees in the HoP of the Parliament of the FBiH and 26 committees and commissions – in the HoR.
266. The HoR may, together with the HoP, establish standing or ad hoc joint committees composed of members of the HoR, delegates or experts, e.g., for the preparation and submission of the draft laws.
267. According to parliament officials, the functioning of the committees is not satisfactory. There is no quorum established, and no statements or information about their sessions are publicly available. Nevertheless, the negative report on the draft law of a committee does not bind the plenary, which is free to adopt another opinion. Thus, the process cannot be blocked.
268. Many committees in FBiH meet one or two times a year or not at all; they do not produce binding opinions as they have a mere advisory role.
269. Each Committee (there are many) has only one officer who provides technical expertise and directly cooperates with the chairperson of the respective committee.
270. According to the RoP HoR, in exceptional cases, some members of the public can be elected as members of certain committees and/or in working bodies, for example, in the case of the Youth Committee, the Language Committee and the Constitutional Committee.

D. Republika Srpska – Committees

271. There are 22 committees in RSNA.
272. Before the discussion of a draft law by the plenary, it is deliberated by the Legislative Committee and one of the other 17 permanent committees. Representatives of interested associations can be invited by relevant committees. There is no publicity on committee debate. The Legislative Committee makes its decision within 90 days that is quite long.

273. Meetings of the working groups within the committees are convened if the majority of the members request it. It appears to be quite a restrictive rule given the fact that the right to propose a meeting is usually exercised by a numerical minority of the group, which is one of the manifestations of the respect of the rights of the political minority (Cf. eg, Art. 49 FBiH HoR RoP, Art. 46 FBiH HoP RoP).
274. In the RS, the invitation to the meetings of a working group has to be sent three days before the meeting. Just based on the regulations, it is not clear whether the materials have to be sent along with the invitation. In practice, it happens that submissions to the working bodies of the RSNA arrive just before the sessions begin.
275. In terms of openness the meetings with the representatives of the public and non-governmental organizations do not necessarily follow the regulations.
276. Committees reportedly have the resources permitting them to ask for technical support from independent experts in their work.

PUBLIC CONSULTATIONS

277. Consultations is one means of interacting with the public (in addition to information-sharing and participation, which means greater involvement), and involves interacting with interested or affected groups, to collect information that will facilitate the preparation of higher quality legislation. Consultations, especially if they start at an early stage of the policy and legislative process, may contribute other points of view, and help the legal drafters prepare a law that will ideally take into consideration the (possibly conflicting) interests of different stakeholders. They also help to improve the quality of laws, as unintended mistakes can be discovered and highlighted when individuals reflect on how a draft law will affect them.

A. General Observations – Public Consultations

278. Public hearings, public debates and thematic sessions can be organized during the parliamentary process with the purpose of public and experts engagement. Deadlines are determined, but the overall regulation tends to point in the direction of a rather restrictive involvement. .
279. No special consideration is given to the identification and proper outreach of actors/stakeholders potentially to be consulted in the public consultation or in the public hearing process, such as particularly vulnerable or affected persons, women, young persons, CSOs, and particular ethnic groups. At the level of entities, it is unclear whether those who are organizing the public involvement are required to provide feedback to the consultees, whether the amendments can be consulted and whether impact assessments can be properly conducted and attached to the amendments. Public engagement can be organized in both the governmental drafting phase and in the parliamentary stage (of the chambers) on an already adopted version of the draft. Public consultation concerning adopted drafts would practically restrict the possibilities of public participation.

B. Bosnia and Herzegovina – Public Consultations

280. During the legislative drafting process in the BiH institutions, the Rules on consultation in the legislative process set forth the process for conducting public consultations with

the interested public, including natural and legal persons. They require the appointment of consultation coordinators and moderators, describe the minimum standards for consultation and its types (consultation and additional consultation), and explain what “significant impact on the public” means, which requires mandatory consultation. They also demand consultation reports and the availability of all information produced during the process and verification of the findings.

281. Nevertheless, the pre-parliamentary consultation process seems to be mostly viewed rather as a formality, even though there are comprehensive and detailed rules in this respect at the state level. There is an online platform where the public can comment on draft legislation, but posted remarks are very rare. The public is not always aware of this possibility or consider that the real power lies with political parties rather than the Government or the Parliament.
282. Before referring the draft law to the committee phase, public hearings can be organized, which need to be announced on the website of the BiH PA. In both chambers, the competent committee is free to decide whether or not to organize public hearings to involve all the interested parties, relevant institutions, and individuals. They have 30 days for this consultation. When they submit their opinion on the bill, they attach the result of the public hearing.
283. Even if the RoPs of both chambers state that committees may conduct public or closed hearings, organize interviews with any institutions, request reports from any official, request assistance from independent experts, the use of such instruments is limited. After the amendment of the former rules, still quite a few consultations were conducted.
284. In 2017, the PA BiH implemented a public hearing as a joint activity with some CSOs on the amendments to the law on the protection of animals (due to the international obligation on the access to information on environmental issues). CSOs had challenged the omission of governmental bodies to organize public hearings and thus not respecting the Aarhus Convention. Therefore, the PA organized the public hearing. There is a separate budget line for performing the regular tasks of drafting laws; the money allocated here can be used freely for these purposes, including organizing public debates.
285. A list of experts is compiled by both chambers of the BiH Parliament based on competition, which could be considered to be a restriction. However, there is also an opinion that in practice the list does not always exist, which makes the process of hiring experts more difficult.
286. There are no uniform rules defining who is to be involved in the parliamentary public consultation processes. Furthermore, it is questionable if deadlines really guarantee adequate consultation, especially if stakeholders have not been informed earlier about the draft.
287. As already mentioned above, for constitutional amendments, public hearings must be organized in both chambers, where the same rules apply. This kind of public discussion is conducted by the Constitutional-Legal Committee, which cannot set a date within 30 days after submitting the proposal. The public hearing cannot be finished within less than 15 days.

C. Federation of Bosnia and Herzegovina – Public Consultations

288. There are four types of consultation foreseen in FBiH: information about drafts (one-way process); consultation with citizens seeking their comments (two-way process);

involvement of the representatives of the interested public (two-way process); and creating a partnership, as the highest level of cooperation (Art. 78). The Ordinance FBiH requires the FBiH authority to ensure resources in the budget to conduct consultation.

289. According to the relevant rules, each ministry website posts appeals to citizens calling for contributions on drafting projects and publishes explanations on the follow-up, including the reasons why citizens' proposals have been set aside. In general, despite the rules and the availability of technical means, public consultations are not really used. Even though the working drafts are published at the e-government site of the ministries, people rarely comment on them. It is assumed that more has to be done to convey the importance of consultation to the public which is generally aware of the e-government. On the other hand, people are not informed about the drafting process.
290. The head of the responsible authority decides which type of consultation is organized. However, while doing so, the time limits for the adoption of the legislative regulation must be taken into account. It appears that the previously decided adoption date of the law, i.e., mainly political considerations, determines the length of the consultation much more than the wish to organize consultation in a way that can produce meaningful results.
291. The result of the consultation needs to be considered, and explanations need to be given for accepting and rejecting views. The explanatory memorandum should inform appropriately about changes made as a result of the consultation, as well as justify why some of the results may not have been taken into account.
292. The rules concerning the actual public debates on draft laws during parliamentary phase are decided by each chamber on a case-by-case basis. The RoPs do not specify any framework in this regard, as almost every major decision on the public debate is to be decided by the majority of MPs (Arts 174-177 of the RoP HoR and Arts 165-170 of RoP HoP). They have discretionary power to decide on the way of publishing of a draft law or individual matter from the draft and collecting and sorting out opinions and proposals from public debate, scope and level of this debate, the required funds and sources, and the deadline within which a public debate is to be conducted.
293. The HoP determines more stakeholders who could be invited, including representatives of the HoR, companies, professional organizations, cantons, etc. The report is submitted to the responsible chamber and the initiator, who must take into account the result of the public debate when developing the proposed law. The initiator also has to explain why certain proposed solutions have been accepted.
294. The chambers seem to consider the consultation to be predominantly the job of the Government. Some explanation for this is that in accordance with RoPs these debates will take place rather late in the legislative process, i.e., at a moment when the fundamental decisions are already made and major changes difficult to obtain.
295. There is good cooperation with CSOs which can consult citizens on draft laws, as MPs have no officers to help them to prepare draft laws or amendments.
296. The involvement of the citizens and feedback mechanism in the HoP is based on personal contact: the contact information of one MP to whom questions and comments could be sent is provided; it is the MP's responsibility to answer these questions. In the HoR, the number of comments have increased as the public is more informed about how to contact an MP, and they can assess all materials that are uploaded or can follow events through the online streaming system.

297. When a draft law could have an effect on cantonal competencies, there are public debates at the level of the Federation and the level of the cantons, in particular when a constitutional issue related to vital interests could appear. The consultation of the cantons is also critical because, in most cases, the cantons are responsible for the application and implementation of the laws enacted by the FBiH. Therefore, it is essential to know their opinion regarding the practicability or enforceability of new legislation. However, this may result in or produce a certain risk of blockages in some cases. For instance, draft law projects have been abandoned even though some of them would be necessary, for instance, in the field of EU harmonization.

D. Republika Srpska – Public Consultations

298. In the RS, Guidelines for the administrative bodies of RS regulate citizen participation and consultation in lawmaking. They distinguish between subject matters that could be the interest of the general public, which is to be decided by the drafter and the coordinator, and that have a significant impact on the public, which are listed in the Guidelines. The technical issues of drafting are also regulated.

299. Depending on the area covered by a draft law, interagency working groups are set up, including representatives of ministries, independent agencies, municipalities, companies, citizens, academics, CSOs, etc. during the development of the pre-draft. According to civil society organizations, they are active in proposing draft laws, for instance, on disabilities, employment, professional rehabilitation, etc.

300. Many laws are submitted for consultation during the pre-parliamentary process of legislation. It happens, however, that the consultation is narrowed down to a relatively small circle of stakeholders. No consultations are organized on the policy papers as a result of policy-making or before any political decision has been made as to the content of a draft.

301. According to the law, ministry drafters must inform stakeholders via a website about the public consultations. Usually, there is no significant interest from the general public even though, according to CCI, younger generations are more proactive.

302. Since 2018, the drafters of the pre-drafts have to explain in the accompanying papers which suggestions they accepted or rejected and why.

303. The draft laws will be returned to the author in order to redraft them if the main outcome of the public consultation necessitates some changes. The RSNA decides if the draft law should be put to a public hearing in the case when the law governs issues that are of particular importance for the citizens and if it is necessary to consult the authorities, organizations, scientific and professional institutions, and interested citizens. Public debate can last for 90 days.

304. In practice, the working bodies of the RSNA organize expert discussions/hearings, the conclusion of which is sent to the plenary for consideration. Invitations to the expert discussions are published on the website; only invited organizations and experts, selected from the list of accredited stakeholders, can participate in the meeting. The report and the conclusion upon expert discussions are subsequently published on the website of the RSNA. The conclusions of the consultation are also to be published in the Official Gazette.

305. Also, public hearings can be organized by the committees of the RSNA after the first reading to obtain information about the proposal of an act in the parliamentary procedure.

306. Nevertheless, the public consultation is organized after the adoption of a draft law and before the submission of the motion law. It theoretically allows the initiator to improve the quality of the draft law based on the consultations, and the MPs can use these results when they submit amendments to the motion law. However, it must be noted too that consultations organized during the parliamentary phase are conducted when the most important decisions have already been made.
307. For the public hearings, the RoP sets a deadline of 90 days. Compared with other provisions regarding such deadlines for the different steps of the legislative procedure, this one looks quite generous.
308. Involvement of other non-parliamentary actors in the work of both the plenary and the working bodies is based on accreditation that is given for one year. The reasons for such a restrictive solution, however, are not entirely unclear.
309. As for the feedback, the transcript of the session is sent to the participants; the report indicates which of the proposals and opinions of the experts or other invitees have been accepted and why. RSNA follows up on the expert discussion when some new issue has been raised during the session that requires further consideration.
310. It is also unclear whether general public can efficiently participate at all in the work of working groups because, according to the rules, the President of the RSNA can exceptionally invite representatives of organizations, etc. In practice, citizens can inform themselves from the website of the RSNA, where they can find the draft laws and all the related documents with the contact information. They can enter into contact through email [no more detailed information was shared about how people can actually participate in this process, for instance, whether or not they receive feedback and what kind].
311. There is no specific budget line, but resources that appear in other budget lines can be used for expert discussion. The assessment team was told that there is no budgetary reasons for not organizing expert discussions.

VERIFICATION

312. Usually, once a draft law is prepared, it first goes through various verifications and channels for approval within the drafting body and is then circulated among the different ministries, and also the prime minister's office. In most cases, the initiators of a draft law need to consult, at a minimum, the ministry of finance on budgetary matters, and the ministry of justice on legal matters, to ensure a realistic allocation of funds to later implement the law, once adopted, and consistency with the constitution and other legislation respectively.

A. Bosnia and Herzegovina – Verification

313. As the Government is not active in proposing laws, the verification activity, which is made by the head of the institution and other bodies (Ministry of Finance and Treasury, the Ministry of Foreign Trade and Economic Relations, the Ministry of Civil Affairs, MHR, the Ministry of Justice, the GEA, the Agency for Prevention of Corruption and Coordination of Fight Against Corruption and the Personal Data Protection Agency, the Legislative Office of the Council of Ministers), and its importance at the pre-parliamentary phase of lawmaking is negligible.

314. In both chambers, the Constitutional-Legal Committee plays an important role in the legislative process (Art. 108 HoR RoP; Art. 99 HoP RoP). They examine if draft laws are in conformity with the Constitution and the legal system during parliamentary phase. It should be noted that often verification by the Constitutional-Legal Committee may block the process.

B. Federation of Bosnia and Herzegovina – Verification

315. Even though there are many bodies dealing with the coherence and the consistency of the drafts with different rules and with the EU acquis, the verification activity is not implemented sufficiently. The Legislative Office and the Secretariat verify the submissions developed by ministerial staff or by independent experts in terms of their legality, observance of drafting rules, and harmonization with EU regulations.
316. Unlike on the state level, on the level of FBiH, two distinct committees exist: the Constitutional Committee and the Legislative Committee (Art. 56 HoR RoP and Art. 54 HoP RoP). The Legislative Committee is an important actor in the legislative process as it considers all legislative proposals and draft laws and issues of legislative methodology and determines the consolidated texts of laws. Its negative opinion on the draft law is considered by HoR, which gives a preliminary opinion in in this respect. The HoP RoP does not include such a rule.
317. The Constitutional Committee can submit proposals to the Constitutional Court for review, which happens rarely. Additionally, the Constitutional Court can be consulted by 1/3 of the MPs of each chamber on any law or proposed law. If the Constitutional Court decides that a draft is not constitutional, which is frequent, the Parliament has to harmonize the law in order to make it compatible with the Constitution.
318. Regarding the EU integration process, it is observed that the Committee for European Integration is not explicitly involved in the verification process.

C. Republika Srpska – Verification

319. Like in the FBiH, there are many bodies dealing with the consistency of the drafts with different rules and with the EU acquis. The Legislative Office and the Secretariat verify the drafts developed either by ministerial staff or by independent experts in terms of their legality, observance of drafting rules, and harmonization with EU regulations.
320. In the RSNA, verification is done by the Legislative Committee. The draft is sent back to its author or initiator if the text or the explanatory memorandum is poor. The Legislative Committee has 11 members, including the chairman and the deputy chairman. Seven members are elected from among RSNA MPs; the other two members are external members. The Committee deliberates on the bill and draft of the law from the position of its compliance with the Constitution and the legal system. In case of a negative opinion of the Legislative Committee on the draft, the initiator and the Legislative Committee have to try to resolve the issue; if they fail, they submit their report to the RSNA.
321. The Committee on European Integration and Regional Cooperation deliberates based on the Table of Concordance concerning the harmonization of draft and motion laws with the EU acquis.

PARLIAMENTARY OVERSIGHT

322. Oversight in lawmaking, *sensu lato*, encompasses a system of constant scrutiny and discussion, from policy making to ex-post evaluation of laws, delivered by many actors, including those that directly participate in the lawmaking activity (parliaments, governments) and those indirectly giving inputs to drafts of policies/laws or bills and verifying their compliance with rules on lawmaking and constitutionality and coherence with international obligations. It also ensures that while developing policies and drafts, the competent bodies do not go beyond their scope and authority. This also implies a certain quality control that helps ensure that the regulatory tools that states have in place actually function in practice.
323. Parliaments also have a crucial role in oversight, mainly due to their constitutional role as the ultimate authority to approve legislation and their general oversight function over the executive. This latter form of oversight, *sensu stricto*, is one of the central roles of parliament, and it is regularly exercised in parliaments' daily tasks during questions, interpellations, investigative committee hearings, etc. During the legislative activity of the parliament, while it discusses and submits amendments to governmental draft laws, it also makes a kind of oversight, mainly over the political content of drafts. This parliamentary oversight in connection to lawmaking has two main functions: it ensures that the laws discussed in the parliaments have been properly prepared and that only those laws remain in the legal system that are indeed necessary. This activity assists the ex-post evaluation of laws, which, in turn, contributes to more evidence-based legislation.

A. General Observations – Parliamentary Oversight

324. In BiH and its entities after the adoption of a law, the parliamentary committees usually have the power to follow up on its execution and implementation. As a result of this activity, they can request the Government or administrative bodies to submit a report or a new proposal. In this way, the cyclic nature of the lawmaking process is formally observed. Even though it is important that the committees implement this task transparently ensuring that the public has information about their oversight activities, the parliamentary databases do not offer any related overview.

B. Bosnia and Herzegovina – Parliamentary Oversight

325. The Law on Parliamentary Oversight of Bosnia and Herzegovina was adopted in April 2018 and published in the Official Gazette of BiH 25/58. This law aims at introducing more meaningful and enforceable political responsibility, but its implementation faces political and budgetary challenges.
326. Based on the Law on Oversight of 2018, an Investigative Committee has been established. Public hearings were organized on the occasion of an inquiry of this Committee on the judiciary. It was the first case of implementation of the Law. According to the President of this Committee, satisfactory cooperation took place in this test case between the Committee and the bodies or persons required to testify.
327. Parliamentary committees of the BiH PA have conducted numerous activities of parliamentary oversight both through the standing and ad hoc investigative committees.

Around 24 of them have been founded for the preparation of some appointments and legislative texts, but 13 were of a purely investigative nature.⁵⁹

328. In the BiH PA, there were in total 27 public hearings between 2006 and 2010, 7 between 2010 and 2014, also seven between 2014 and 2018, and none since 2018.⁶⁰

C. Federation of Bosnia and Herzegovina Parliamentary Oversight

329. For the FBiH Parliament, it is much harder to determine the number and scope of the oversight activities due to the fact that relevant information is not uploaded to the parliamentary website in a consistent manner, but there were some hearings organized there as well. For example, in 2011, the FBiH HoR conducted a number of sessions dedicated to sectoral policies, e.g., volunteering, youth policies; at that time and in that particular matter, they managed to speed up the adoption process for the legislation.⁶¹ Furthermore, the joint parliamentary committee Audit Reports has been consistently organizing public hearings for some time now with the public companies to discuss audit reports.

D. Republika Srpska – Parliamentary Oversight

330. The oversight function of the working bodies of the RSNA is described as formal and non-systematic; nevertheless, the interviewees from the RSNA are satisfied with their oversight function.
331. The RSNA database⁶² (which covers only the 2018-2021 period) lists merely the public and expert hearings conducted in that period, in total, nine of them.

EU INTEGRATION

332. BiH is not a member of the European Union; it participates in the Stabilization and Association Process (hereinafter “SAP”). In December 2019, the EU Council adopted conclusions on the European Commission’s opinion of May 2019 endorsing the key priorities therein (such as democracy and functionality of the state, the rule of law, fundamental rights and public administration reform) as the conditions for BiH to fulfill in order to be recommended for the opening of accession negotiations.
333. In June 2022, the European Council also called on all political leaders of Bosnia and Herzegovina to swiftly implement the commitments set out in a political agreement reached on 12 June 2022 and to finalise the constitutional and electoral reform so as to allow the country to advance on its European path in line with the priorities outlined in the European Commission’s opinion. In December 2022, the Council underlined the

⁵⁹ <https://www.parlament.ba/Content/Read/72?title=Privremene/Adhockomisije>. Also, the role of the Defence and Security Committee and the Committee for Oversight over the Intelligence Agency which, for example, in 2016 conducted 40 field visits to different police and security agencies is worth mentioning (see their reports for past years at <https://www.parlament.ba/committee/read/42?mandateId=8&committeeMandate=212> and <https://www.parlament.ba/committee/read/43>). Additionally, the OSCE Mission to BiH has supported and tracked a number of activities conducted by the human rights committees of all three parliaments and has prepared an internal, unpublished report on that matter.

⁶⁰ <https://www.parlament.ba/Event/Category/6?MandateId=7&CategoryId=3>

⁶¹ The parliamentary committee for Audit Reports has been tracking the reports from the FBiH Audit Institution attempting to follow up on their recommendations, holding eighteen sessions in the past one and a half years and interviewing some of the representatives of the institutions that were audited (see <https://predstavnickidom-pfbih.gov.ba/bs/page.php?id=326>).

⁶² <https://www.narodnaskupstinars.net/?q=ci/%D0%B0%D0%BA%D1%82%D0%B8/%D1%98%D0%B0%D0%B2%D0%BD%D0%B5-%D1%80%D0%B0%D1%81%D0%BF%D1%80%D0%B0%D0%B2%D0%B5>

urgency for the country to move forward on its EU path, particularly via fulfilling the priorities in the opinion. On 15 December 2022 the heads of government of the EU member states confirmed the recommendation of the European Commission and granted BiH the status of a candidate on the way to the EU. Against that background, BiH has to take on the obligations of EU membership⁶³.

A. Bosnia and Herzegovina – EU Integration

334. Bosnia and Herzegovina is overall at quite an early stage regarding its level of preparedness and ability to take on the obligations of EU membership and needs to significantly step up the alignment with the EU acquis and implement and enforce the relevant legislation⁶⁴.
335. The opinion of the Directorate for European Integration on the harmonization of the draft law with EU legislation is requested from the initiator of a draft law and shall be obtained from the Government by the Collegium of the House when the initiator is an MP. The EU Twinning for the BiH Parliament (2014-2016) has proposed “a roadmap to guide and enhance the activities of the Parliaments (including entity Parliaments) in the coming period of the EU integration process”.
336. It is an obligation to consult the Directorate for European Integration to check the harmonization of any draft law with the EU acquis. Given the limited number of adopted laws, the EU Commission (6/10/2020) has established a rather long list of domains where there is no progress toward harmonization.⁶⁵
337. The online interviews identified some leading causes of blockages, including lack of political will by the main political parties at the state level as well as at the levels of the two entities and of the cantons. They reiterated that there is insufficient EU legal harmonization and implementation of the decisions of the Constitutional Court BiH and the ECtHR. Consequently, the Council of Ministers has not adopted any draft law over the last year (the Government has been in a caretaker function for most of the time), and it is for the Parliament, in particular for opposition MPs, to initiate draft laws. Against such a blocked background, the issue of the formal lawmaking procedure and its quality looks less critical. There is an important gap between the rather comprehensive formal RoPs of the chambers and their practical implementation.
338. Drafts originating with the Council of Ministers and marked as having EU accession-related content are discussed in a summary procedure. This regulatory background (summary procedure) raises doubts concerning whether the bill can properly be discussed. It is the opinion of the interviewees that the problem is not the summary procedure itself but the fact that sessions are scheduled to take place every 15 days and the way how the process of submitting amendments is organized. Therefore, to make sense of a summary procedure, more frequent sessions should be organized. New amendments should be submitted in advance before the session to enable submitting the amendment to the Directorate for European Integration.

⁶³ It means that it must align with the EU acquis and implement and enforce related legislation. Bosnia and Herzegovina 2021 Report, 19/10/2021 European Commission.

⁶⁴ Bosnia and Herzegovina 2021 Report, 19/10/2021 European Commission

⁶⁵ Bosnia and Herzegovina 2021 Report, 19/10/2021 European Commission

B. Federation of Bosnia and Herzegovina – EU Integration

339. There is no programme for harmonizing FBiH law with the EU acquis⁶⁶.
340. The opinion on EU harmonization of the Legislative Office is submitted together with the draft law to the Parliament. The Office also advises the initiators of laws on what would be in line with the EU acquis. A handbook concerning this activity is planned to be published soon.
341. In both chambers, there are Committees for European Integration which, however, do not have any responsibility to verify the level of harmonization – according to the HoP. In the HoR, this Committee fills in the questionnaire on the level of harmonization of the proposed law by using the categories of “not”, “somewhat”, or “fully” harmonized. According to the rules, these committees monitor the approximation of laws to the EU acquis and provide information regarding this aspect.

C. Republika Srpska – EU Integration

342. Legal drafters in RS are obliged to send their draft to the authorized ministry to check it against the requirements of harmonization with the EU acquis, the legal acts of the Council of Europe, and the annual plan. In the ministry, the tables provided by the relevant legal act are filled in.
343. According to the Secretariat for Legislation, many draft laws have been planned to be harmonized with the EU acquis, but law implementation is a challenge due to the absence of the adoption of the necessary secondary legislation. According to the information received during the interviews with representatives of authorities, RS institutions are more proactive in harmonizing their legislation with Serbia legislation than with the EU acquis.

PUBLICATION OF AND ACCESS TO ADOPTED LAWS, PARLIAMENTARY OPENNESS

344. Legislation needs to be publicly available to all. It is thus important that legislation is published and available, and that people know where to find it. Laws also need to be easily accessible and available free of charge via the Internet or an official bulletin.

A. Bosnia and Herzegovina – Publication of and Access to Adopted Laws, Parliamentary Openness

345. Though there is no separate Law on publication in BiH, this subject matter is generally covered in the Uniform Rules (BiH). These rules, however, do not have specific provisions for publication.
346. In general, all materials that have emerged during the parliamentary phase of the legislative process at the state level are available on the website of the BiH PA save for the materials of the committee for oversight of the intelligence agency.
347. Both RoPs give the authority to the Constitutional-Legal Committees, if so authorized by the plenary, to adopt the consolidated texts of laws. The confirmed official consolidated

⁶⁶ The annual plan of work of the FBiH Government states whether the laws that the Government intends to propose in the coming year require harmonization with the EU. Nevertheless, the annual plan of work of the FBiH government does not equal with a Program for harmonization with the EU acquis.

version of the law and other act is published in the Official Gazette of BiH. The unofficial corrected versions are prepared by the Expert Service of the Secretariat of the BiH PA each time amendments and addenda to the law or other act are adopted. These are published on the website of the BiH PA.

348. In the course of the current assessment it was not possible to clearly determine the exact legal source for the publication of the Official Gazette. The Official Gazette is available online for free of charge. Once the adopted law is published there, a reference is made on the website of the PA to the reference number of the Official Gazette where the law has been published. Laws adopted before 2013 are not available free of charge online, allegedly, because as the argument goes, they cannot be made available retroactively.
349. Consolidated version of laws are accessible on the website of the PA, in accordance with the Uniform Rules. Nevertheless, in practice, the Constitutional- Legal Committees do not do the consolidation of laws as often as they should, as their staff claims that the administrative bodies should assist them with this.

B. Federation of Bosnia and Herzegovina – Publication of and Access to Adopted Laws, Parliamentary Openness

350. The experts were informed that there is no separate Law on publication in FBiH, but this subject matter is generally covered in the Ordinance (FBiH). These rules, however, do not have specific provisions for publication.
351. As for the publication of documents produced in the parliamentary process, the RoPs contain more or less identical rules. The HoR Work Program shall be published as a special publication and posted on its website, while that of the HoP is to be published only as a special publication.
352. Drafts, proposals, and adopted acts may be published in their entirety in the daily press (HoR), electronically or in print (HoP) or as special publications.
353. If the draft law or an individual matter from the draft law is decided to be put to a public debate, the conclusions of the chambers must determine the way of publishing these documents. Laws, other acts, consolidated texts of the acts, and authentic interpretations are published in the Official Gazette of FBiH.
354. The website of HoP informs the public in which Official Gazette a particular law can be found. The Official Gazette of the FBiH is not available free of charge, but the online access of adopted laws is free of charge.
355. If a law or another act prescribes that the Legislative Committee (of either chamber) needs to develop the consolidated text of a law, the relevant administrative authority of the Federation delivers the proposed consolidated text to the Legislative Committee within the deadline it determines. During this process, the Legislative Committees of the two chambers collaborate in order to reach a correctly consolidated and identical text.
356. The experts found out that there is a problem with access to consolidated versions of the laws. Consolidated versions of laws are not accessible unless the consolidation process is requested, and the consolidated texts are adopted in a quite lengthy process. Therefore, it is difficult to find the law.
357. Night sessions are allowed at entity levels, which makes it difficult for both the MPs and public audience to follow the debate.

C. Republika Srpska – Publication of and Access to Adopted Laws, Parliamentary Openness

358. The publication of laws in the RS is covered in the Act on publication of laws and other regulations in RS, mainly concerning the Official Gazette RS.
359. On the website of the RSNA, the following documents are to be published: the work program; the draft laws to be consulted; and proposals and documents discussed at sessions of RSNA.
360. The website of the RSNA contains all the newly adopted and other laws [it is the “archive”] for free of charge. Once the law is published in the Official Gazette, all the information of the publication in the Official Gazette appears on the website of the RSNA along with the adopted text of the law.
361. In the Official Gazette of RS, the following documents are to be published: laws; authentic interpretations; decisions according to which the draft law is submitted to public consultation (this is also to be published in daily newspapers); and consolidated texts of the laws.
362. The Official Gazette is not available free of charge [interviewees mention that some of them available are free of charge].
363. As the RSNA has all the information necessary about the law (text and publication details), citizens can request the RSNA to send them the pieces of legislation they are interested in or need.
364. In the media of the RS, the following information must be communicated: the decision on submitting the draft law to public consultation (daily newspapers); and the draft amendment, if it is to be submitted to public debate. Proposals and acts of the RSCoP are available to the media pursuant to the Law on Freedom of Access to Information.
365. Acts of the RSCoP are made available on the website of the NA, on the notice board, and in the Official Gazette RS.
366. Consolidated versions of laws are drafted by the Legislative Committee NA when it is authorized. There is no rule defining when it must be authorized. However, it should be noted that consolidated versions of the law are not available on the website.
367. While the meetings of the collegium of the RSNA are open, there is no such rule for the meetings or the discussions of the Presidency. Minutes, however, have to be kept for these meetings. It remains unclear how minutes are kept in the case of discussions over the phone, which are allowed.
368. It would be relatively easy to have closed sessions of working groups given quite vague conditions for their initiating (Art. 51).
369. The interruption of a session can last for up to 60 days. It is unclear what can justify an interruption and who decides on the continuation (only the president of the Parliament or also other actors involved in the decision-making process, Art. 126). Moreover, 60 days is a rather excessively long term.
370. Secondary legislation is more difficult to be found online on the websites of the ministries.

ROLE OF THE CONSTITUTIONAL COURTS

371. The role of constitutional courts in the lawmaking is generally to determine whether a given law complies with the constitution, based on applications submitted by lower courts, constitutional organs, or individuals. Constitutional Courts may identify gaps in legislation, declare laws null and void, or remand them to parliament for revocation and revision, depending on their mandates. BiH appears to be reluctant in implementing some decisions of the Constitutional Court.⁶⁷ Until 2017, more than 80 Constitutional Court rulings had not been implemented.⁶⁸ According to the interviews, this situation has not improved.
372. The Constitutional Courts of BiH and FBiH may conduct procedural reviews of the legislation. However, in its practice, the Constitutional Court BiH has not decided on any cases in which the non-observance of procedural rules of legislation was claimed.
373. A limited number of requests from authorized initiators are submitted to the FBiH Constitutional Court for reviewing the lawmaking process. The Court outlined in its decisions that the RoPs of the chambers and cantonal legislative bodies deal essentially with the organization of lawmaking bodies and prescribe the work of those legislative bodies in a way that enables them to perform the functions entrusted by the Constitution. For these reasons, eventual actions (activity or act) of the authorities in the FBiH which are not compliant with the prescribed and adopted procedures undoubtedly and consequently lead to a violation of the FBiH Constitution.⁶⁹ The views of the Court expressed in the decisions are respected when it comes to the repeated procedure of passing the law, the procedure of appointing and dismissing individual members of the legislative bodies, and adopting new decisions that were adopted at a session convened contrary to the provisions of the RoPs. For instance, in the case of the discussion of the Labor Code in the HoP (2015), deadlines were not observed, and the Constitutional Court declared this law unconstitutional.

III. RECOMMENDATIONS

374. The legislative procedures in BiH (state and entity levels) are not fundamentally different from the procedural rules existing in many other states. Given their capacity to organize the legislative process in a timely and adequate manner, as well as in the interest of the people, these legislative procedures are not intrinsically incompatible with the democratic lawmaking standards. At the same time, the complex constitutional framework, the political context, as well as the legal and/or legislative culture and tradition are the principal challenges for making qualitative legislation in BiH.

⁶⁷ Danijel Kovacevic, Bosnia's Long History of Ignoring Constitutional Court Rulings, available at: <https://balkaninsight.com/2020/02/19/bosnias-long-history-of-ignoring-constitutional-court-rulings/>

⁶⁸ Emina Dizdarevic and Nedim Dervisbegovic, Bosnia's Constitutional Court to Rule on Movement Restrictions, BalkanInsight April 14 2020, available at: <https://balkaninsight.com/2020/04/14/bosnias-constitutional-court-to-rule-on-movement-restrictions/>

⁶⁹ Ruling No. U-19/12 from 28 August 2012, published in the Official Gazette of the FBiH, no. 93/12; Ruling No. U-29/15 from 17 February 2016, published in the Official Gazette of the FBiH, no. 20/16 and Corrigendum to the Ruling, published in the Official Gazette of the FBiH, no. 24/16; Ruling No. U-58/17 from 23 October 2018, published in the Official Gazette of the FBiH, no. 96/18; Decision No. U-8/19 from 27 February 2019, published in the Official Gazette of the FBiH, no. 16/19; Opinion No. U-30/19 from 24 September 2019, published in the Official Gazette of the FBiH, no. 73/19; Opinion No. U-3/20 from 11 February 2020, published in the Official Gazette of the FBiH, no. 15/20; and Ruling No. U-56/20 from 24 February 2021

375. To this end, the assessment of the legislative procedures in BiH shows that the main shortcomings are not due to existing rules but to the way in which they are implemented (or not implemented) in practice in the given complex setting. Therefore, the recommendations focus on practical improvements, as well. For these reasons, relevant and comprehensive information about the practical implementation of the existing formal rules is of paramount importance for the assessment. As such information is partly missing, some of the recommendations are rather tentative. They would require further examination.

RULES ON LAWMAKING IN GENERAL

A. General Recommendations – Rules on Lawmaking

376. It is recommended, mainly to the entities, to revise the regulations governing the different aspects of the lawmaking process and to consider, in this context, international standards. This would apply to the rules concerning cooperation between governments and parliaments at the state and the entity levels and between the state and its entities as well as between entities; as many aspects of RIA as possible; meaningful consultation; and ex-post evaluation of laws, which should methodologically be linked to the ex-ante assessment. However, improvements of the formal rules will not automatically lead to notable and immediate changes as long as the institutional and political context remains the same. Therefore, it is important to address not only the formal rules but also their practical implementation.
377. As the two RoPs of the BiH and FBiH HoR and HoP contain large parts of identical or nearly identical rules, it would have been possible, from the point of view of legislative technique, to unite these identical provisions in a single act covering both chambers and to complete the common provisions of this act by two distinct chapters dealing with the specific rules for both chambers. Instead of these two distinct chapters, it would also be possible to have two acts dealing only with the provisions specific to one of the two chambers.
378. It is advised to reconsider the rules and practices regarding emergency legislation in the light of general experiences developed and used during the Covid-19 pandemic worldwide in terms of organizing sittings, meetings, discussions, voting procedures, and oversight.
379. As for the formal drafting rules, an online manual on legislative technique, which is updated, when necessary, could enhance the formal quality of drafts. It could also serve as an instrument for checking the quality of draft laws and most important by-laws. For the sake of awareness-raising and providing comprehensive information on lawmaking processes, this kind of manual could also include information on the pre-parliamentary legislative process, i.e., instructions on compulsory consultations, RIA, etc.
380. Clear and detailed rules regarding public consultation are, indeed, of paramount importance. They need to address, among others, the following issues, keeping in mind that modalities have to be known by all interested political actors, civil servants, consultees etc.: On which subject is the consultation conducted? Who must be consulted? Who can be consulted? Who decides? In which form does the consultation take place and why? What are the deadlines for which activity? Who shares which kind of information how, and with whom? What kind of consequences will be attached to the consultation and why (adaptions of a legislative proposal, reasons why certain opinions are not taken

into account or introduced in a proposal)? An online-accessible summary of the rules could be helpful for information and awareness-raising purposes.

381. In order to have an overview of the legislative activity, it is recommended to collect and publish statistical data on the number of draft laws, voted laws, average delays between the proposal of a law and its adoption, etc.

B. Recommendations for Federation of Bosnia and Herzegovina - Rules on Lawmaking

382. It is advised that RoPs should not leave the decision-making on the details of public consultation to the discretionary power of the MPs/majority of the chambers but set specific rules on public debate that provide the basis for a predictable and coherent practice on consultation.
383. For the sake of intelligibility, accessibility, and transparency, it is recommended to examine the opportunity of keeping a clear distinction between hard and soft law rules within a single consolidated document.

COOPERATION

A. General Recommendations - Cooperation

384. Cooperation should be promoted between the executives and the parliaments of the state and its two entities in order to commit themselves to a joint program of reforms in the framework of BiH's commitment to preparing EU membership. Parliaments should implement their commitment (in the framework of the EU Twinning for the BiH PA and beyond) to have regular meetings of the speakers and of the sectorial committees in order to exchange information and coordinate their respective legislative activities regarding, in particular, the application for EU membership.

B. Recommendations for Bosnia and Herzegovina – Cooperation

385. At the state level, it is advised to increase the cooperation between the two chambers of the Parliament, between the Government and the Parliament, and between the Parliament and the Constitutional Court.
386. Existing examples for dealing with undue delays in the lawmaking process could be considered and followed, but it would require constitutional change as well.
387. The current form of bicameralism could be reconsidered: there have been suggestions to focus the role of the HoP on participation regarding vital interests procedures. Such a change, however, would require a constitutional reform that needs to be based on a wide social and political consensus.

C. Recommendations for Federation of Bosnia and Herzegovina – Cooperation

388. Autonomy and cooperation are not mutually exclusive. The autonomy of parliamentary chambers does not mean that the two chambers could or should not closely cooperate in practice and that the RoPs could and should not be organized in a way that facilitates intense cooperation. Otherwise, the bicameral parliament cannot effectively perform its constitutional tasks.

389. Cooperation between the various parliamentary committees and the role of the Joint Committees of both chambers could be strengthened. This also applies to the cooperation between the HoR and the HoP, between the HoR and the Government, and between the chambers and the cantons.
390. CSOs have unsuccessfully proposed so far that the legislative process in the FBiH should be shortened by, for instance, introducing more and clearer deadlines for procedures. This suggestion could be considered, but attention needs to be given to the fact that the practical working of the institutions (Government and Parliament) depends very much on the political culture and tradition of a country and only to a limited extent on formal provisions - be they constitutional or legal. As far as the duration of the legislative process is concerned, neither exaggerated speed nor unnecessary delay favor quality (of course, emergency procedures must be possible in case of real emergencies, and time needs to be ensured for a meaningful and inclusive discussion and deliberation).
391. Deadlines should be set for receiving the cantons' opinions. These deadlines should be accompanied by legal consequences if the cantons do not react in time. The absence of answers from cantons on a draft law, including issues related to vital interests, should allow for proceeding with draft laws. In this way, the procedure can continue, and blockages can be avoided. On the other hand, avoiding such "blockages" can also have negative effects (insufficient consideration given to practical implementation). The chosen solution needs to be considered carefully. It could also require a constitutional change (Art. III-3 and V of the state Constitution). The additional responsibilities indicated in Art. III 5 of the Constitution have not been assumed by BiH. This constitutional provision could be reconsidered with the aim of addressing this core issue.
392. In order to prevent the blocking of the legislative process, new rules should be developed. For example, time limits could be fixed for procedural steps. If these time limits are not respected, it should be possible to have the green light for continuing the legislative process. This would also demand changes in the mindset of elected officials, who would seek possibilities of avoiding the blocking of the lawmaking procedures and an awareness of the need for practical implementation of rules.
393. A solution proposed was to optimize the competences by transferring them between the state and the entity levels according to what really needed to be dealt with at the state level and what should indeed be decided at the entity level. For this, equal understanding and agreement are needed in the FBiH and in the RS (each entity needs to agree on the competences to be transferred). It appears that, at least partly, this has not been done so far due to the fact that the FBiH is ready to transfer more competences than the RS. The fundamental problem relating to the competences is that the BiH Constitution, unlike the constitutions in most federal states, contains very limited rules or principles for the distribution of legislative powers (Art. III).
394. The current form of bicameralism could be reconsidered: there have been suggestions to reduce the role of the HoP to participation in vital interests procedures. Nevertheless, this would require constitutional reform that needs to be based on a broad social and political consensus. Alternatively, the proper flow of information, cooperation, and coordination should be developed in the legislative process between the chambers. Perhaps, it could also be considered to separate more clearly vital interests procedures from the ordinary legislative process in order to avoid that the ordinary process is over-politicized.

395. It could also be useful to reconsider the practice of relaunching lawmaking procedures after a blockage. Proper cooperation and profound reconsideration of the blockages built in the lawmaking process could contribute to eliminating such obstacles.
396. The Constitution of FBiH provides for tools for addressing delays in the lawmaking process, for example, by authoring the Prime Minister to convene a joint conference. The activation of this clause is based on a political decision, but it might be considered more frequently when the quality of legislation or the functioning of the legal system as a whole requires such a step.

D. Recommendations for Republika Srpska – Cooperation

397. The institutions of RS should better cooperate with the state and the FBiH in order to harmonize its laws with theirs and to open negotiations regarding the possible transfer of additional responsibilities to the state in accordance with the Constitution BiH (Art. III 5 b) in order to adopt the necessary laws in the interest of the citizens, and in light of a possible EU membership and of better implementation of the ECtHR case-law.

ADEQUATE TIME OF LEGISLATIVE PROCEEDINGS

398. It is advised to reconsider the deadlines and their precise prescription in the parliamentary procedures in order to facilitate informed decision-making and involvement. If formal deadlines are fixed, they must be done in a way that makes meaningful cooperation possible. They also need to be accompanied by clear and substantial procedural sanctions in the case of non-observance.
399. Deadlines should be set where they are missing in order to establish a statutory standard for different proceedings.

URGENT/EMERGENCY/SIMPLIFIED PROCEDURES

400. Overall, states of emergency imply a situation marked by the need for quick reactions to live-endangering circumstances, be they due to a pandemic, a natural disaster, an extensive economic crisis, or due to a war or armed conflict, or large-scale simultaneous terrorist attacks. At the outset, when states of emergency are called out, announcements should be made on how the particular situation will impact the usual lawmaking process. While different forms of accelerated lawmaking, skipping some elements of a normal legislative cycle, may at times be necessary, exceptions to normal rules should be kept to a minimum. Taking into account also the challenges that the COVID-19 pandemic caused in the legislative process, the definition of “emergency”, which is one of the legal bases for an accelerated procedure, should be reconsidered in order to avoid the abuse of these accelerated procedures. An appropriately qualified majority for the use of emergency procedures is also recommended.
401. Essential elements of the legislative cycle can only be curtailed or dispensed with in cases where this is absolutely necessary, and such cases need to be justified properly. In this respect it is recommended to outline in the legislation at the state and FBiH levels clear criteria based on which the government or other bodies with legislative initiative shall be held to justify the need for accelerated lawmaking in detail, explicitly mentioning the

reasons why skipping some essential elements of the normal legislative cycle would be permissible. Bearing in mind the existing formulation allowing an emergency legislative procedure in the FBiH (can be used only if an immediate solution is needed or if the lack of regulation would have detrimental consequences), it should be taken into account that normally any law that is put forward for adoption should have been conceived because the lack of legislative regulation in a certain area will have detrimental consequence and therefore, could hardly be a proper argumentation for using urgent proceedings.

LEGAL INITIATIVE

A. General Recommendations – Legal Initiative

402. Additional human resources and expertise should be allotted to MPs and committees inter alia through the support given by SAB and by the legislative-legal sector of the BiH PA and other institutes of BiH.
403. MPs' awareness regarding the possibility to get access to the expertise of administrative bodies and the legislative-legal PA sector should be raised, and the experts should get appropriate training in order to provide adequate expertise to MPs in a proactive manner. The sense of a neutral and professional public administration would be the cornerstone.
404. CSOs should be encouraged to propose to the Government and to MPs draft laws in a proactive manner.

B. Recommendations for Republika Srpska – Legal Initiative

405. All stakeholders, including civil society organizations and citizens, should be better informed about their right to be involved in legal initiatives and lawmaking. RS could support awareness raising and capacity building.

POLICY-MAKING AND RIA

A. General Recommendations – Policy-making and RIA

406. RIA helps ensure good quality and knowledge-based legislation throughout the entire cycle of policy and lawmaking. Conducting RIA should be primarily a task of the governments, with a possible exception for RIA dealing with (important) amendments made during the parliamentary process, important bills submitted by MPs.
407. Impact assessments do not include only cost assessments but also social impact, environmental impact, or anti-corruption impact, examinations of benefits and other consequences. The rule of law and human rights, including gender and diversity impact assessments, are also important elements of RIA. Adopted legislation needs to be assessed and evaluated in order to see whether it adequately responds to its intended aim. The results of RIA should be published together with the draft law on official websites. In view of the possible EU membership, RIA should also assess the impact of policies and draft laws on the EU integration process and their compatibility with international commitments.
408. Coherency needs to be established between the rules on the explanatory memorandum required in the pre-parliamentary and the parliamentary phase of legislation.

409. Ex-post evaluation of laws needs more attention. Ex-post evaluation could be done through a government report to the Parliament after a certain time of implementation. This report could then be debated by competent parliamentary committees.

B. Recommendations for Bosnia and Herzegovina – Policy-making and RIA

410. Costs of draft laws are recommended to be presented in a more detailed manner.
411. Financial means for RIA need to be planned in the budget; and the creation of a research centre could be considered, along with more targeted training, increase of the staff and the strategic thinking about the RIA.

C. Recommendations for Federation of Bosnia and Herzegovina – Policy-making and RIA

412. RIA should not be considered as a mere formal “filling in” activity in the governmental phase of legislation.
413. Resources should be allocated to the chambers to conduct RIAs on amendments to proposed bills and draft laws proposed by MPs. The involvement of governmental bodies could be considered as well. It would, however, presuppose good cooperation between them (which is not the case everywhere) and that RIA is conducted properly during the pre-parliamentary phase.
414. During the deliberations, more weight needs to be given to the explanatory memoranda.

D. Recommendation for Republika Srpska – Policy-making and RIA

415. RIA needs to be used in the RS to primarily assess a draft law’s impact on harmonization inside BiH, the EU integration process, and the implementation of the European Convention on Human Rights and Fundamental Freedoms (hereinafter “ECHR”) and the relevant case law.

GENDER AND DIVERSITY

A. General Recommendations on Gender and Diversity and Other Related Issues

416. It is advised to ensure that laws also address the concerns of women and minority groups, as well as vulnerable or marginalized groups. It is essential for gender and diversity aspects to be mainstreamed throughout legislative process. The MHRR, GEA and Entity Gender Centers could play a significant role in this respect.

Vital national interests

417. Without challenging the adequacy of the legal framework regarding vital national interests, the lawmakers should consider developing a workable mechanism to ensure effective protection of vital national interest whilst preventing possible misuse of the relevant procedures for blocking a normal lawmaking process.
418. A solution could be that RIA assesses draft laws’ impact on vital interests of the constituent peoples, other minorities, and gender equality to make the process less politicized and more guided by the principles of equality and equity. “Inter-ethnic or non-ethnic” CSOs could be encouraged to be engaged when governments or MPs are in the

process of drafting laws. In this way, also citizens' interests, the EU integration process, the ECHR, and the related case law could be taken into consideration, not only vital national interests.

Gender equality

419. Continued efforts need to be taken to increase women's representation, where it is needed.
420. Human, technical and financial resources of the institutional gender mechanisms (primarily BiH GEA, Entity Gender Centres, BiH MHRR) should be strengthened, especially for implementing GAP, including monitoring and assessing the impact of legislation on gender equality.
421. Increased involvement of CSOs, in particular women's organizations, in the development of legislation, policies and programmes on gender equality, at the state, entity, district and cantonal levels should be considered.
422. Given the disparities in the implementation of legislation on gender equality in the decentralized structure of the country, the legislation and policies to achieve equality of women and men at the state, entity, district and cantonal levels need to be fully harmonized.

Gender-neutral language

423. In all official languages, emphasis should be put on the correct use of gender-neutral language in legislative acts and other official publications. The awareness of the impact of gender-biased language on social and power structures should be raised. To this end, the adoption and implementation of proper rules regarding the use of gender in legal texts could be considered.

Multilingual lawmaking

424. Measures should be taken in order to make sure that correct and accurate legal terminology is used in order to guarantee professional communication and legal certainty. Terminological knowledge and training, as well as the wider use of terminological tools, such as terminological databases, would have a positive effect and would lead to a better linguistic quality of the laws.
425. Parliamentary services should be enabled to assist linguistic needs adequately.

B. Recommendations for Bosnia and Herzegovina – Gender and Diversity

426. Gender and diversity mainstreaming does not appear to be properly embedded in the legislative processes. One of the practical realizations of this exercise is the use of RIA. To this end, human rights or gender considerations need to be taken into account, among others, when reconsidering the rules on RIA and involved agencies and bodies, as well as when actually conducting RIA.
427. It is also advised to assign a more substantive role for the Council of National Minorities under PA BiH in the legislative process.
428. Given the diversity challenge BiH faces, further attempts should be made to bring about the implementation of the Sejdic and Finci judgment regarding ethnicity-based restrictions on candidacy and voting rights to push for democratisation reforms in the

BiH pre-accession and accession process.⁷⁰ In this respect the procedure prescribed by Protocol No. 16 to the ECHR could be used, involving a possibility of BiH highest courts to request to the ECtHR an advisory opinion on principles questions relating to the application or interpretation of the rights and freedoms defined in the European Convention or protocols⁷¹.

C. Recommendation for Federation of Bosnia and Herzegovina and Republika Srpska – Gender and Diversity

429. Gender and diversity mainstreaming does not appear to be properly embedded in the legislative processes. One of the practical realizations of this exercise is the use of RIA. To this end, human rights or gender considerations need to be taken into account, among others, when reconsidering the rules on RIA and involved agencies and bodies, as well as when actually conducting RIA.

LEGISLATIVE PLANNING

A. General Recommendations – Legislative Planning

430. One crucial element of proper lawmaking is adequate prospective legislative planning. Rather than reacting to specific short-term problems and thereby unnecessarily rushing the legislative process (leading to uneven results in terms of quality of legislation), more long-term planning of key legislative initiatives results in qualitatively better, more sustainable legislation.

B. Recommendations for Bosnia and Herzegovina - Legislative Planning

431. BiH should benefit from the experiences of other OSCE pSs in their policy and legislative planning exercises and develop more long-term planning of key legislative initiatives.
432. One of the practical solutions could be that the BiH Government proposes a policy program on a mandate-basis (multiyear) based upon electoral promises and pre-election coalition agreement between political parties, including its costs and its impact assessment on environment, economic and social development, EU integration process, gender and diversity, human rights, etc. Once appointed, the Government could ask the PA to debate and perhaps to vote on its multi-year policy program. This method could mean a constitutional change or amending the RoPs but would definitely require a commitment to shaping the practice in this direction.

C. Recommendation for Federation of Bosnia and Herzegovina – Legislative Planning

433. FBiH could consider developing more long-term planning of key legislative initiatives, similar to the one mentioned at the state level.

⁷⁰ On 22 December 2009, the European Court of Human Rights (ECtHR) issued a decision stating that ethnicity based ineligibility to stand as a candidate is "...incompatible with the general principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms." See *Sejdić and Finci v. Bosnia and Herzegovina* (ECtHR 2009). See at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96491>. See also: <https://www.coe.int/en/web/execution/-/sejdic-and-finci-after10-years-of-absence-of-progress-new-hopes-for-a-solution-for-the-2022-elections>

⁷¹ On 9 March 2021, the Bosnia and Herzegovina ratified the Protocol No. 16 to the Convention on the Protection of Human Rights and Fundamental Freedoms, bringing the number of ratifications to 16. The Protocol will entry into force in respect of Bosnia and Herzegovina on 1 July 2021

D. Recommendation for Republika Srpska – Legislative Planning

434. RS should observe its own plans and when they cannot be observed it is important to understand and explain the reasons for the occasional failures to this. If the reason is not political, the planning methodology could be reexamined.

LEGAL DRAFTING

A. General Recommendations – Legal Drafting

435. Coherency needs to be established between the rules on the explanatory memorandum required in the pre-parliamentary and the parliamentary phase of legislation. Human rights and gender considerations need to be listed among the items that require assessment.
436. Initial and continuous training should be enhanced in ministries and in the parliaments for both civil servants and MPs on legal drafting. The importance of the quality of the law should not be underestimated; the principle should be that, in case of a complex matter, the burden for the interpretation and understanding of the meaning of the law should be borne by the administration when it drafts the law and not by the public once the law is published and implemented.
437. Simultaneous preparation of primary and related secondary legislation could be beneficial for overcoming the challenge of not-implemented laws. It does not necessarily mean that the pieces of secondary legislation are submitted and adopted simultaneously with their respective primary laws. The simultaneous preparation could involve only the preparation of the essential content of the secondary legislation and providing information about it without submitting a draft.

B. Recommendation for Bosnia and Herzegovina – Legal Drafting

438. More attention needs to be given to the importance of well-prepared drafts and drafting expertise. Therefore, drafters need to be adequately trained. One of the possible ways to do so is that MP drafters should get the support of experts and lawyers from SAB (Art. 27 2002 Law on administration BiH) and the legislative-legal sector of the PA. MP's awareness of such assistance should be raised, and civil servants at SAB or legislative-legal sector should be more proactive in offering their support to the drafters. Competent CSOs should be encouraged to provide their input to law drafters either inside the Government or among MPs.

C. Recommendation for Federation of Bosnia and Herzegovina – Legal Drafting

439. Using a hyphen when listing something in the text of law hinders proper referencing. The use of hyphens in this context needs to be reconsidered (see also paras 412-414 supra on the explanatory memorandum, RIA, etc.).

COMMITTEES

A. General Recommendations – Committees

440. The role and work of the parliamentary committees at all levels could be improved. With the necessary importance and competence they could better contribute to the solution of conflicts and to overcoming some of the existing political divides.
441. It is recommended to reconsider the composition of parliamentary working bodies. The proportional representation certainly has its democratic advantage, but it could be detrimental to minority rights (i.e., that of the parliamentary opposition). Sometimes, parity structure is advised to be followed, especially in the case of committees whose main function is providing oversight over the executive.
442. Strengthening the status of rapporteurs could also be considered. Their appointment and role are rarely mentioned even though in many parliaments (cf EU Parliament or France), the committee rapporteur has a paramount role in the parliamentary phase of legislation. Rapporteurs could be appointed by respective competent committees and would be in charge of reporting on a draft law and organizing appropriate consultations, and presenting their committee's position (adopted draft laws) to the plenary.
443. The state and the entity levels could benefit from the reconsideration of how to increase efficiency and transparency, which could also increase participation and democracy. E.g., they could set deadlines which need to be observed for the publication of proposals and other materials of the committee and plenary sessions. A specific role of the rapporteur of a draft law in the committee also could be recognized by the respective RoPs.
444. Enough time should be provided for committees to debate on draft laws, as well as enough time between committee debate and plenary debate in order for plenary MP's (not members of the competent committee) to read the committee's recommendations and draft text including the proposed amendments.
445. It would be beneficial for the quality of lawmaking in the parliamentary process if human resources (including legal experts either in-house and or out-sourced) could be allocated to committees. They could assist members in improving drafts through amendments and providing the rapporteur and committee members with additional information on the relevant issues in connection to the draft law. They could also facilitate the use of the right of amendment, including for the opposition, and the right of initiating a draft law.
446. Committees should organize public hearings and consult stakeholders, including civil society organizations while examining draft laws or exercising oversight on the implementation of voted laws.

B. Recommendations for Bosnia and Herzegovina – Committees

447. Blockages in the lawmaking process could be better avoided if the role of negative opinions of committees and the majority needed for the decision in the Joint Committee would be revisited. Parliamentary bodies should refrain from abusing their power, and procedures should cease to be misused. It is, nevertheless, more a question of political and legislative culture and interests than of formal legal rules.
448. The Constitutional-Legal Committee or the competent committees have an important job in ensuring the coherency of the legal system. The rules on their negative opinion, if not abused, could support their statutory role and could be in compliance with the principles

of democratic lawmaking and the way laws are made through a legally prescribed political process. BiH could also benefit from the pandemic-related experiences regarding the work of other parliaments (for instance, visio conferences, specific oversight committees to check the implementation of emergency powers allotted to the Government etc.)⁷². At the same time, the cases when there had been abuses of the pandemic in limiting lawmaking and oversight parliamentary functions, should be particularly avoided.

C. Recommendations for Federation of Bosnia and Herzegovina – Committees

449. It is advised that information and materials from the sessions of the working bodies of the chambers as well as materials on the lawmaking projects should be publicly available. It could also be considered, for the sake of transparency, whether or not the minutes of the meetings shall be made public. In this respect, however, transparency could be outbalanced by the consideration that, usually, the non-publication could favor compromises and consensus between different political parties.
450. For proper implementation of the hearings and involvement of experts in parliamentary lawmaking process, especially when an MP initiates a bill, a separate line needs to be created in the budget of the Parliament.

D. Recommendation for Republika Srpska – Committees

451. It is advised that information about the scheduled sessions of RSNA committees as well as materials of the sessions should be publicly available. The practice of non-observing time limits set in the RoPs should be addressed, and rights of MPs and opposition groups need to be ensured.

PUBLIC CONSULTATIONS

A. General Recommendations – Public Consultations

452. Governments should publish a clear policy on how open and balanced consultations will take place and may consider establishing a central office responsible for coordinating or supporting public consultations in governmental bodies.⁷³ These bodies could also check if line ministries have indeed organized consultations while preparing policies or draft laws.
453. Transparency of the end result of the process could also be increased. A way to achieve this could be to publish a synthesis of the opinions received from the public on a draft policy or law, including draft explanatory memoranda and RIA, on the governmental or parliamentary platform. The answer provided by the Government or the Parliament (rapporteur or committee), including the reasons why certain proposals are not taken into account, should also be published.
454. Consultations could be necessary during the parliamentary process as well. It is advised to take advantage of their RoPs in this respect and organize consultations more actively.

⁷²For more information see: OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic, available at: <https://www.osce.org/odihr/human-rights-states-of-emergency-covid19>

⁷³OECD: *Background Document on Public Consultations*, 2006, 1, 2, OECD: *Recommendation of the Council on Regulatory Policy and Governance*, 2012, Annex, 2.1.

455. It is advised to reconsider the process of consultation and to conduct it also for pre-drafts because, in the legislative process, consultations need to be organized in the pre-parliamentary phase during policymaking, as early as possible on each policy option. Consultations need to be planned, coordinated, and conducted in a timely manner.
456. In the parliamentary phase, consultation has its limitations due to how drafts are usually prepared, but it is still important. Its potential can increase when the government is reluctant to organize meaningful consultation or when the issue is controversial. Crowdsourcing legislation is an often used governmental practice in many jurisdictions, from which the state and the entity levels could benefit. Mostly, in these cases, as a result of this process, the outcome results from the correct representation of all the possible positions on the same issue and not from the correct democratic representation alone.
457. Therefore, when regulating consultation and implementing these rules, more inclusive participation should be a priority. Existing power relations need to be counterbalanced. The involvement of, e.g., vulnerable and marginalized groups should also be facilitated; during the process, jargon-free language should be used. When organizing consultations, a child/youth-friendly, age-appropriate approach is needed, and attention should be given to the use of safety mechanisms, such as data protection and safe and accessible spaces, etc. To this end, a meaningful consultation also requires, for instance, initial research on consultees and stakeholders and trying to understand them. A meaningful consultation can result in an informed response and presupposes a more reliable governmental responsiveness, which should include much more than mere confirmation of receipt. It should indeed include an analysis and evaluation of the submitted views. The organization of online consultations needs to be driven by the same approach and principles that are adjusted to the specificities of the online sphere. Given the digital divide, online consultation should not increase existing inequalities.
458. Opening up the consultation as early as possible for the public, especially for civil society organizations, including those whose interests are not in line with the governmental interest, remains a challenge.⁷⁴ Therefore, the awareness of political parties should be raised regarding the role and position of civil society, including trade unions, representatives of the business community, local governments, academia, etc., in these processes. The involved actors need to get appropriate training and information on budgeting and lawmaking.

B. Recommendations for Bosnia and Herzegovina – Public Consultations

459. More publicity should be given to the online platform to receive more comments.
460. A feedback mechanism is also advised to be set up.
461. The group of those consulted is recommended to be widened.

C. Recommendations for Federation of Bosnia and Herzegovina – Public Consultations

462. Awareness needs to be raised on consultation and its importance in the lawmaking process.
463. The cooperation with the cantons, with adequately set deadlines, could be improved, which would help to eliminate blockages in the process.

⁷⁴ [NDI BiH Democracy Assessment report](#), 26.

464. The way of how the consultation is organized is advised to be revisited by observing international standards. For instance, the rules that make the consultation at the parliamentary stage possible only after the first reading when the draft law has already been discussed and when the fundamental decisions have been already made and major changes difficult to obtain. It would be a good solution if the government consultation would be properly conducted and documented and if those consulted could mandatorily be reached out to during the parliamentary process if an amendment affects the rules on which opinions have been expressed⁷⁵.

D. Recommendation for Republika Srpska – Public Consultations

465. Except for the recommendation regarding the cooperation with the cantons, the recommendations concerning RS are the same as those mentioned for FBiH.

VERIFICATION

A. Recommendation for Bosnia and Herzegovina – Verification

466. It is advised to bring about some reforms to the existing special unit (now it is the Secretariat of the Council of Ministers) for verifying the constitutionality of the drafts developed in the ministries, and their legality, observance of drafting rules, and harmonization with EU regulations, etc. Some coordination among ministries and this unit could also be considered.

B. Recommendation for Federation of Bosnia and Herzegovina – Verification

467. It is advised to reconsider the competences and practical functioning of the relevant committees, to ensure the possibility for them to check the compatibility of the draft with laws (*lato sensu*).

PARLIAMENTARY OVERSIGHT

A. General Recommendations – Parliamentary Oversight

468. Parliamentary oversight, in terms of following up on the implementation of laws and policymaking activities of the ministries, and in the competent parliamentary committees could be strengthened by applying a more substantial approach to this activity.

469. For the entities, it is recommended to consider the introduction of their own oversight laws. The Law on Oversight at the state level could serve as an example once its challenges have been resolved⁷⁶.

B. Recommendations for Bosnia and Herzegovina – Parliamentary Oversight

470. A proper legislative framework which procedures for submitting complaints within the scope of the 2018 Oversight Act BiH should be considered. . Priority should be given to providing access to information about a possible breach of the 2018 Oversight Act to those institutions and persons that exercise oversight functions. . In return, they have to

⁷⁵ A due consideration should be given to the personal data protection in case if/when some consultees could have asked for anonymity.

⁷⁶ See also [OSCE/ODIHR Opinion on the Draft Law on Parliamentary Oversight of Bosnia and Herzegovina, Warsaw](#), 29 March 2017

be bound by the law on secret information as well. A full implementation of the Oversight Act 2018 should be promoted. It might be considered to strengthen the position of Secretaries (for instance, as civil servants), so that they can only be removed from their position based on cause. A possibility could be for the Secretariat's staff to be civil servants instead of political nominees. Alternatively, the possibility of submission of a complaint by individual representatives could also be considered.

C. Recommendation for Federation of Bosnia and Herzegovina – Parliamentary Oversight

471. It is recommended to consider the introduction of its own oversight law.

D. Recommendation for Republika Srpska – Parliamentary Oversight

472. For adequately conducted oversight, rules and deadlines could be revisited. It is recommended to consider the introduction of its own oversight law.

EU INTEGRATION

A. Recommendations for Bosnia and Herzegovina – EU Integration

473. Harmonization with the EU acquis (and other international requirements, such as the decision of the ECtHR) at the state level is lagging behind. Suggestions made by the EU in this regard and the lack of capacity to address these issues should be properly considered. This could result in a situation in which the current state of affairs and cooperation between the Executive and Legislative branches and between the respective parliaments of the state and its entities are improved, and more laws are harmonized. This would also require proper planning and implementable legislative programs.
474. In the parliamentary process, as new amendments can be submitted until the finalization of the session, which simply makes it impossible to deliver the amendment to the Directorate for European Integration, it could be considered to request the members of the Directorate for European Integration to be present during the committee discussions.

B. Recommendations for Federation of Bosnia and Herzegovina – EU Integration

475. FBiH is advised to develop an entity-level national program for harmonization, taking into account the list of about the 14 key priorities, which cover the areas of democracy/functionality, the rule of law, fundamental rights and public administration reform and established by the EU Commission in its 2021 country report.⁷⁷
476. The reconsideration of the competences of the relevant parliamentary committees is also advised so that they could verify the level of harmonization.

C. Recommendations for Republika Srpska - EU Integration

477. For the harmonization of laws and for ensuring their enforceability, secondary and implementing legislation should be prepared along with the laws.

⁷⁷ Bosnia and Herzegovina 2021 Report, 19/10/2021 European Commission, available at: https://ec.europa.eu/neighbourhood-enlargement/bosnia-and-herzegovina-report-2021_en

478. It is also advised to review the actual phase of harmonization and act accordingly in terms of planning further legislative actions to resolve the lack of progress in the areas which were determined by the EU Commission.

PUBLICATION OF AND ACCESS TO ADOPTED LAWS, PARLIAMENTARY OPENNESS

A. General recommendations – Publication of and Access to Adopted Laws, Parliamentary Openness

479. To ensure accessibility of law, it is recommended that amendments to laws are included in a consolidated legal text (ideally with reference to what was changed and when), so that everyone will be aware of an update of the law.
480. To further strengthen public and individual trust in the process and, by extension, in the law, decision-makers and the public institutions that they represent it is also suggested to keep the entire lawmaking process as open and transparent as possible and participants as informed as possible.⁷⁸
481. The publication of legislation is the condition for its applicability and a commitment to making legal texts available for everyone.⁷⁹ Online versions of all legislation in effect regardless of the date of adoption, should be available for free of charge on reliable, ideally official online sources, which should utilize recent technological advancements to enable users to access related legal information.⁸⁰
482. The entire process during which governments and parliaments debate policies and draft laws needs to be transparent. It is important that the people can see how the laws are made and that they are aware early on what the adoption of certain laws will mean for them individually. The different stages of the legislative process within Government and Parliament thus need to be publicized, as well as the background of legislation and the research, assessments, verifications, and consultations that take place prior to its adoption. Interest groups and stakeholders need to know how and where to submit feedback. During and after consultations on policies and draft laws, those participating in such consultations also need to be adequately informed as to which of their recommendations were introduced to the draft law and which were not (and why not).
483. It is thus recommended to provide more transparency during the processes and free of charge online access to all the information that could be necessary for properly executing the roles in the lawmaking process and regarding oversight.
484. An online forum for authentic versions of the Official Gazettes and laws in effect (in consolidated versions) needs to be developed.

⁷⁸ European Commission for Democracy through Law (Venice Commission) of the Council of Europe: Rule of Law Checklist, 18 March 2016, Benchmark A.5. Law-making procedures. The relevant questions asked by the Checklist to determine whether lawmaking procedures are transparent, accountable, inclusive and democratic are:

i. Are there clear constitutional rules on the legislative procedure?

ii. Is Parliament supreme in deciding on the content of the law?

iii. Is proposed legislation debated publicly by parliament and adequately justified (e.g. by explanatory reports)

iv. Does the public have access to draft legislation, at least when it is submitted to Parliament? Does the public have a meaningful opportunity to provide input?

v. Where appropriate, are impact assessments made before adopting legislation (e.g. on the human rights and budgetary impact of laws)?

vi. Does the Parliament participate in the process of drafting, approving, incorporating and implementing international treaties?

⁷⁹ Paragraph 5.8, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990.

⁸⁰ Irish Law Reform Commission: *Accessibility, Consolidation and Online Publication of Legislation*, 2016, par 3.02.; available at: chrome-extension://efaidnbmninnibpcajpcgicgclcfndmkaj/https://www.lawreform.ie/_fileupload/Access%20to%20Legislation%20Issue%20Paper%202016.pdf

485. The use of technology could increase openness and transparency and could facilitate more involvement. Therefore, its more robust use could also be recommended.
486. One way to practically address these recommendations is the setting up of an official online platform, which can be used for publishing the voted laws and adopted secondary legislation, including their explanatory memoranda and their RIA, where applicable, the outcome and feedback of consultations. Access to this platform should be free of charge. Consolidated versions could be published at the official online platform as well with reference to the successive laws that have amended the original text for the sake of better access by citizens and other addresses, e.g., companies, to the content of laws and by-laws. It would also assist implementation and judicial control. A similar methodology for achieving the same goal could be used to ensure transparency within the parliamentary process. Reports of committees and rapporteurs on draft laws, draft amendments, and the minutes of plenary debates could be published on an online parliament platform.
487. Consolidated versions of legal acts, i.e., both primary and secondary legislation, need to be formed right after the adoption of an amendment.
488. Night sessions hinder transparency and accessibility because they prevent both MPs and general public from following debates. Therefore, they should be avoided to the greatest possible extent.

B. Recommendation for Republika Srpska – Publication and Accessibility of Adopted Laws, Parliamentary Openness

489. More attention needs to be paid to the commitment regarding the democratic lawmaking process in terms of parliamentary minority rights, transparency, and openness in the RSNA. Rules are suggested to be developed for meetings and the discussions of the Presidency, including how minutes are kept. Regulations on closed sessions, including the initiation of this kind of session, the interruption of a session (who decides, how long it lasts) need to be reconsidered. Secondary legislation on the websites of the ministries is recommended to be more accessible.

ROLE OF THE CONSTITUTIONAL COURTS

490. When it is legally possible for a parliamentary committee, a speaker, an MP or a Government to consult the Constitutional Court in case of doubts on a draft law, this possibility should be encouraged in order to improve the constitutionality of laws, including their observance of the constitution, the ECHR and its relevant case law, and the requirements set by EU integration process. Such control by the Constitutional Court could also be enhanced for any constitutional change and amendments to the RoPs. Moreover, as international law is an integral part of the law of BiH and the entities, the principle of the primacy of ratified international treaties over the national law also prevails. As BiH has ratified a Stabilization and Association Agreement with the EU, which sets the “alignment of laws of Bosnia to those of the EU acquis”, the Constitutional Court should have the jurisdiction to settle disputes that arise between the entities, as well as between the state and its entities on the consistency of entity laws with the constitutions.
491. It needs to be ensured that the decisions of the Constitutional Court are not left ignored and unimplemented by the political branch. This could be done by setting financial or

other measures, but then, their implementation need to be ensured by, again, the political branch. In constitutional democracies, the final and binding-to-all nature of a Constitutional Court decision is unchallenged. The political branch needs to clearly commit itself to this idea of constitutionalism and the rule of law.

492. The constitutional courts could benefit from the case laws of other Constitutional Courts, CJEU and the ECtHR, concerning the semi-procedural review of the law. This means that the Constitutional Court checks whether the law has been adopted in a “due process”, as it is prescribed by law on lawmaking, i.e., whether or not consultation has been organized, RIA conducted, other actors involved, etc. The Constitutional Court would not assess the content reached by the political branch but the process. Thus, this semi-procedural review is more than just the establishment of the validity of the law. The mere review of the validity of law usually includes the examination of whether the competent body released the law, the law has been adopted in the prescribed process (generally focusing on the parliamentary phase and the existence of the required majority of votes) and published in the official journal, and it is not in conflict with another law being in a higher rank in the legal hierarchy.

ANNEX 1: ABBREVIATIONS

BiH: Bosnia and Herzegovina

BiH PA: Parliamentary Assembly, Bosnia and Herzegovina

BiH HoR: House of Representatives, Bosnia and Herzegovina

BiH HoP: House of Peoples, Bosnia and Herzegovina

FBiH: Federation of Bosnia and Herzegovina

FBiH HoR: House of Representatives, Federation of Bosnia and Herzegovina

FBiH HoP: House of Peoples, Federation of Bosnia and Herzegovina

Ordinance FBiH: the Ordinance on the Rules on legislative drafting of the Federation of Bosnia and Herzegovina

RS: Republika Srpska

RSNA: National Assembly, Republika Srpska

RSCoP: Council of Peoples, Republika Srpska

Decision of RIA RS: Decision on the implementation of the process of regulatory impact assessment in the procedure of regulatory drafting in the Republika Srpska

CoE: Council of Europe

CJEU: Court of Justice of the European Union

CSO: civil society organization

ECHR: European Convention on Human Rights and Fundamental Freedoms

ECtHR: European Court of Human Rights

GAP: Gender Action Plan

GEA: Gender Equality Agency

GEL: Law on Gender Equality

MHRR: Ministry for Human Rights and Refugees

pSs: participating States

RIA: regulatory impact assessment

RoP: rules of procedure

SAP: Stabilization and Association Process

SAB: state administrative bodies

ANNEX 2: LAWS AND REGULATIONS ON LEGISLATIVE MATTERS ANALYZED

- Constitution of Bosnia and Herzegovina
- Constitution of the Federation of Bosnia and Herzegovina
- Constitution of Republika Srpska
- Act on the Government of Republika Srpska
- Decision on the procedure of planning, monitoring, and reporting of the implementation of adopted strategies and plans of the Government of Republika Srpska and the state administrative bodies
- Rules on consultation in the legislative process (BiH)
- Uniform Rules for legislative drafting in the institutions of Bosnia and Herzegovina (Uniform Rules BiH)
- Ordinance on the Rules on legislative drafting of the Federation of Bosnia and Herzegovina (Ordinance FBiH)
- Guidelines for the administrative bodies of the Republika Srpska on citizen participation and consultation in lawmaking
- Rules on termination of application of rules for normative and legislative technique in developing legislation and other regulations in the Republika Srpska
- Decision on the implementation of the process of regulatory impact assessment in the procedure of regulatory drafting in the Republika Srpska
- Rules on drafting in the Republika Srpska
- Decree on the process for legislative alignment in the Federation of Bosnia and Herzegovina with the European Union's acquis
- The decision on the procedure for harmonization of the legislation of the Republika Srpska with the European Union's acquis communautaire and Council of Europe's practices and standards
- Rules on consultation in drafting legal provisions of BiH ("Official Gazette of BiH" No. 5/17)
- Rules of Procedures of both houses of Bosnia and Herzegovina
- Rules of Procedures of both houses of the Federation of Bosnia and Herzegovina
- Rules of Procedures of the National Assembly of the Republika Srpska
- Rules of Procedures of the Council of People of the Republika Srpska
- Act on publication of laws and other regulations in the Republika Srpska
- Law on parliamentary oversight of Bosnia and Herzegovina
- Law on the administration of Bosnia and Herzegovina
- Law on the administration of the Republika Srpska
- Law on political party financing of BiH, 2012

ANNEX 3: LIST OF INTERLOCUTORS

Online interviews have been conducted with the following interlocutors:

BiH

Interlocutors from the BiH PA:

Ms Alma Čolo, SDA, Chairperson of the HoR Constitutional-Legal Committee

Mr Damir Arnaut, NS, Chairperson of the Interim Investigative Committee on the State in BiH
Judiciary

Ms Gordana Živković, Secretary of the HoP

Mirza Imamović, Secretary of the Common Services

Mr Dževad Mahmutović, Deputy Minister, Ministry of Human Rights and Refugees of BiH,
Member of Council of Ministers of BiH

Ms Alma Salkic-Mijic, Expert Advisor for Legislative-Legal Matters and the EU Law
(replacing Mirjana Kutanjac, Head of Sector)

Ms Aida Kreho, Secretary of the Joint Committee on Human Rights

Mr Igor Bajic, Secretary of the HoR Constitutional-Legal Committee

Mr Zijad Hasic, Secretary of the HoP Constitutional-Legal Committee

Mr Amar Beslija, Expert Associate to the Joint Committee on European Integration

Mr Ante Batarilo, Associate to the Secretary General and Head of Administrative Service of
the Council of Ministers of BiH

FBiH

Interlocutors from the FBiH HoP:

Mr Aner Žuljević, MP

Mr Damir Džeba, MP

Mr Izmir Hadživdić, Secretary of the HoP

Mr Ivan Buda, Head of Cabinet of the HoP Speaker

Mr Mirsad Talić, Head of the Cabinet of the HoP Secretary

Mr Aldin Avdić, Head of the Service for Working Bodies and HoP CLAC Secretary

Ms Aida Hadžić-Salkić, Head of the European Integration Unit

Ms Alma Varaki, Secretary of the Information Committee

Interlocutors from the FBiH HoR:

Mr Ivan Milićević, Secretary of the PFBiH HoR

Mr Ismet Osmanović, MP, Chairman of the Constitutional Committee

Mr Adnan Efendić, MP

Ms Delfa Dejanović, MP

Interlocutors from the FBiH Secretariat of the Government:

Ms Edita Kalajdžić, Secretary of the Government of FBiH

Ms Kristina Marić, Senior Expert Associate, Legislative Office of the FBiH Government

Ms Andrea Merkez, Expert Associate, Legislative Office of the FBiH Government

RS

Interlocutors from the RSNA Service:

Ms Ljiljana Timotija, Assistant Secretary General and Head of the Legislative–Legal Department

Ms Dragana Markovic, Head of the Section for Normative Affairs and the Work of the working bodies and Secretary of the RSNA Committee on Constitutional Affairs.

Interlocutors from the RS CoP:

Ms Jovana Čarkić, Secretary of the RS CoP

Ms Aleksandra Dalšašo-Lepir, Secretary of the Legislative-Legal Committee

Interlocutors from the RS Government:

Ms Radana Daljević, Director of the RS Secretariat for Legislation

Ms Vesna Pilipović, Assistant Director of the RS Secretariat for Legislation

Ms Jelena Babić, Assistant Secretary General of the RS Government, in charge of sessions

Ms Smilja Ružičić, Expert Associate for co-operation with the RS National Assembly

CSOs

Interlocutors from CCI (Centar civilnih inicijativa):

Ms Lejla Dugonja Suljić, Project Manage, monitored work of PFBiH

Mr Željko Ninković, monitored work of RSNA and RS Government

International Community:

Ms Biljana Dragoje, Political Adviser, Representative of US Mission to BiH

Ms Sanja Stanojevic, Political Adviser, Representative of Office of the European Union/EU Delegation

Written answers to the follow-up questions were received from the following interlocutors:

Council of Ministers BiH

PA BiH

Constitutional Court of BiH

Parliament F BiH

The Cabinet of the Secretary of the F BiH Government

Constitutional Court of F BiH

RSNA

ANNEX 4: QUESTIONNAIRES

The Questionnaires used for the interviews (in a separate document)