



## **61st Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations**

### *Summary*

This report covers the period from 16 October 2021 through 15 April 2022.

Systematic challenges to the Dayton architecture of Bosnia and Herzegovina (BiH), particularly its constitutional order, have intensified during the reporting period. Since October last year, the Republika Srpska (RS) entity authorities, headed by the Alliance for Independent Social Democrats (SNSD), which is led by BiH Presidency member Milorad Dodik, have intensified their activities aimed at unilaterally retaking State competences by the entity in the areas of defense, indirect taxes, and the judiciary, among others.

The entity's legislature, the RS National Assembly (RSNA), has endorsed policy acts obliging the RS authorities to implement them through various measures. These measures include the unilateral withdrawal of the RS from *transfer agreements* signed by the RS and the Federation entity in the past, and the adoption of comprehensive legislative undertakings, some of which have already materialized.

These actions undermine the constitutional responsibilities of the State and the institutions established to carry out such responsibilities, representing rollbacks of key reforms carried out under the General Framework Agreement for Peace (GFAP). These not only erode the fundamentals of the GFAP, but directly threaten to undo more than 25 years of progress in building up BiH as a State firmly on the path towards European Union (EU) integration.

Such undertakings follow the RS' willfully erroneous interpretation of the BiH constitutional framework based on a hypothetical "original Dayton", and the assertion that most constitutional competences exercised by the State-level institutions were "illegally usurped" from the RS through High Representative decisions, decisions of the BiH Constitutional Court, and other decisions of the State-level institutions, and that the State institutions should return

most competencies they assumed in accordance with their constitutional prerogative. It is deeply worrisome that RS political leaders claim that these undertakings, which clearly violate the GFAP, are in fact pursued to uphold and protect the Agreement, particularly the constitutional order as established by the BiH Constitution.

As the RS Government and the RSNA continue to adopt measures to fulfill their stated ambitions to return competencies, including by creating a parallel legislative and institutional RS framework to the existing framework of the State, chipping away at the State institutions, simultaneously representatives elected and appointed from the RS to those institutions either do not participate in decision-making or block decisions deemed not be in the interests of the RS. This has the effect of impeding the State's ability to function and exercise its constitutional responsibilities. As adopted legislative and other legal measures enter into force, they will one by one provide a legal basis to withdraw the RS from the constitutional order established under Annex 4 of the GFAP and withdraw the RS from civilian implementation of the GFAP as set forth under Annex 10.

The danger lies in the RS deconstructing the BiH constitutional framework, unchallenged, as the architecture of the State of BiH as set forth in the GFAP gradually disintegrates.

As the final interpreter of the civilian aspects of the GFAP, I reiterate, as I did in my November report, that the RS authorities are in grave violation of the GFAP and thus far appear undeterred from continuing to do so, despite the exhaustive efforts of my office and the international community to open dialogue and deescalate. Under these circumstances, shortly before finalizing this report, I decided that it was necessary under my authority as High Representative to issue two decisions aimed at supporting the institutional framework and upholding the rule of law. This may pave the way towards a constructive solution fully respecting the GFAP. These decisions are detailed later in this report.

There is turbulence not only in the RS. The lack of agreement mainly between Bosniak and Croat parties in the Federation on electoral reforms has prompted Croat parties to cast doubt on the holding of the 2022 General Elections, including by withholding financing of the Elections. Conducting free and fair elections is a GFAP requirement, and the minimum expectation of any nation that aspires to EU membership. Parties involved in the negotiations must back down from maximalist positions and redouble their efforts to find a way forward.

Moreover, this has contributed to the dysfunctionality in the Federation itself, where the Government from the 2014-2018 mandate is still sitting due to the failure to appoint a new one following the 2018 General Elections. In a supposedly democratic society, non-implementation of election results is unacceptable.

The blockade at the State level has resulted in the poorest legislative output of any prior mandate and forced the BiH institutions to operate under temporary financing for 16 months, with no State-level budget adopted in 2021, and so far not in 2022.

## **I. Introduction**

1. This is my second report to the United Nations (UN) Security Council since my arrival as High Representative for BiH in August last year. My report represents an impartial assessment of implementation of the civilian aspects GFAP, with factual information on developments and progress towards achieving previously established goals.

2. It is my duty to fulfill my mandate pursuant to Annex 10 to the GFAP and relevant decisions of the UN Security Council. Progress on the five objectives and two conditions (5+2 Agenda) set in 2008 as the agenda for BiH to transition from international oversight remain the obligation of the BiH authorities to fulfill. However, as my report indicates, the ongoing political crises and deadlocks in BiH, coupled in some cases with outright rejection of several of the objectives, have resulted in no progress in this regard – except Brčko District, where I recently visited to highlight such progress – and even some setbacks, despite my attempts to offer constructive solutions to all relevant stakeholders.

3. As previously noted, the 5+2 Agenda necessarily entails full compliance with the GFAP, and there are numerous shortcomings in that regard. I reiterate that the parties must fully comply with the GFAP, and I remain hopeful that they will take concrete steps on BiH's path towards the EU, in their own interests, in the interests of all BiH citizens, and in the interest of regional peace and stability, which, as recent global developments have reminded us, are more important than ever.

4. The international community in BiH remains engaged and committed to advocating dialogue and compromise

over discord and ultimatums.

## II. Political update

### A. General political environment / Challenges to the General Framework Agreement for Peace

5. There have been persistent challenges to the GFAP throughout the reporting period, with rhetorical challenges from the RS to BiH's viability as a state and its territorial integrity, predicting dissolution.<sup>[i]</sup> Additionally, with an agreement not yet reached on electoral reforms, Croat political representatives have suggested a "territorial reorganization" may be necessary, raising the specter of the wartime drive for a "third entity."<sup>[ii]</sup> All such rhetoric is destabilizing as it seeps into society and poisons relations between communities.

6. In this regard, I note that neighboring Serbia and Croatia consistently reaffirm their full commitment to BiH's sovereignty and territorial integrity in keeping with their obligations as GFAP signatories. In times of political instability, regional stability is crucial.

7. Genocide denial, the relativization of war crimes and glorification of war criminals reduced after the July 2021 imposition of amendments to the BiH Criminal Code by my predecessor. However, such practices have continued, with new reports coming in since November 2021 in the RS, and in neighboring Serbia. Several new murals of convicted war criminal General Ratko Mladić, or graffiti in his support, appeared in communities in the RS, and in Serbia's capital Belgrade.

8. The RS authorities still actively move to subvert the State of BiH, its competences and institutions, and thus the GFAP. On the one hand, representatives elected and appointed from the RS to the State institutions continue to paralyze those institutions by blocking their ability to work and decide. As a result, legislative output is non-existent, reforms – including those required to advance towards the EU – are stalled, international agreements are on hold, and there is no adopted State-level budget for the second year in a row.

9. This leads to the State's inability to carry out its responsibilities and provides a pretext for the RS leadership to portray the State as dysfunctional and impotent. In parallel, the RS authorities have proceeded with unilaterally withdrawing the RS from the constitutional, legal, and institutional order of the State and establishing a parallel RS framework forcing a unilateral takeover of State responsibilities which they substitute with a parallel RS framework. Both tactics serve the end goal of the *de facto* dissolution of the State of BiH.

10. The state of BiH alone is not equipped to respond to such attacks. The BiH Constitutional Court is seen as the logical response to such unconstitutional actions but, as pressure mounts on this institution, it will not represent a dissuasive response to a political crisis of such magnitude. These actions not only represent a direct attack against the constitutional order of BiH but would also create a clear conflict of laws and jurisdictions seriously affecting the functioning of State institutions, particularly their ability to enforce decisions on the RS territory.

11. In the previous period, the RS National Assembly adopted the *Law on Non-Applicability of the Decision of the High Representative Enacting the Law on Amendment to the BiH Criminal Code*, which represents not only a challenge by the RS authorities to the authority and powers of the High Representative under the GFAP, but also a rejection of the application of State-level legislation on RS territory, overstepping entity competence to directly challenge the authority and sovereignty of the State and its institutions. A request for review of the constitutionality of this law was submitted to the BiH Constitutional Court in late November.

12. Following the session of the SNSD Executive Board in Banja Luka on 8 October, after which SNSD President Milorad Dodik announced that RS teams of experts would work on a new RS Constitution and on defining new entity structures for defense, justice and finance matters and on a rejection of all "illegally" imposed decisions and laws of the High Representatives, on 18 October, the RS Government, with Mr. Dodik present, discussed the constitutional position of the RS and the return of competences to the RS, and followed through on that earlier announcement. The RS Government tasked expert teams to prepare a legislative package regarding the "constitutional protection of rights of the RS guaranteed in Dayton."

13. On 20 October, the RS National Assembly adopted the RS *Law on Pharmaceuticals and Medical Devices*, which was published in the *Official Gazette of the RS* on 28 December and will enter into force at the end of June 2022. This law challenges the competences and unimpeded functioning of the BiH Agency for Pharmaceuticals and Medical Devices and may be viewed as a trial balloon for the RS authorities' ambitions to unilaterally take over the

State's constitutional responsibilities in other areas. Under the BiH Constitution, the entities are obliged to comply fully with the Constitution and decisions of the State institutions.

14. The BiH Agency is the only institution in BiH authorized to ensure the safety and efficacy of pharmaceuticals and medical devices in BiH, and the only such agency established in accordance with EU Acquis as a requirement for BiH in the EU accession process. Rollback of this reform seriously threatens BiH's internal market, particularly the free movement of goods. It undermines the fulfillment of BiH's international obligations arising from international conventions relating to the trafficking of narcotic drugs and psychotropic substances and goes directly against public health safeguards and poses a dangerous and unnecessary risk to the lives and the wellbeing of all BiH citizens. The mandate of the director of the BiH Agency expired on 26 March, and officials from the RS in the State institutions have stated they would only support the appointment of a new director who would work towards implementation of the RS Law and realization of the RS Agency. This represents further interference in a State institution's discharge of its obligations.

15. In its 8 December Communiqué, the Peace Implementation Council Steering Board - PIC SB (minus the Russian Federation) deplored "the actions taken by the RS ruling coalition, which seriously challenge the Dayton framework and damage stability in BiH and the region," also stating that "announced measures - if followed through - would roll back 26 years of peace implementation reforms, also important for the EU accession process." Regarding the announcement of measures to unilaterally withdraw the RS from agreements on the transfer of competences to the State in the fields of defense, indirect taxation, and the judiciary, among others, the PIC SB underlined, "there can be no unilateral withdrawal from transfer agreements from the entities to the State."<sup>[iii]</sup>

16. On 10 December, the RSNA adopted the *Declaration on Constitutional Principles* and four sets of conclusions, each endorsing submitted policy acts, including the *Information on the Transfer of Responsibilities from the RS to the BiH State-Level*, which contends that in the last 25 years, RS responsibilities have been transferred to the State through High Representative decisions, BiH Constitutional Court decisions, BiH Parliamentary Assembly laws and bylaws by the BiH Council of Ministers (CoM) and other State-level bodies, through conditionality exerted by international organizations and EU bodies, and through entity agreements. The information contains an analysis and presents an overview of the legislative activities which since 1997 led to the "transfer of responsibilities from RS to the State level" and contains two charts illustrating such "transfers," including 128 State-level laws and 112 bylaws and decisions of the BiH CoM.

17. By virtue of the 10 December conclusions, the RSNA not only endorsed the policies in the relevant *Information* acts but also determined the obligation for the RS Government to prepare for adoption by the RSNA a comprehensive set of laws in the relevant areas within next six months, each with provisions to render the corresponding State-level laws as non-applicable in the RS on the day of their entry into force. The adoption of the RSNA Conclusions on the unilateral withdrawal of the RS from transfer agreements on the High Judicial and Prosecutorial Council (HJPC), the Indirect Taxation Administration (ITA), and defense, signed by both entities between 2003 and 2005, confirmed the intent of the RS authorities under SNSD to unilaterally opt out of these three reforms, effectively withdrawing from the GFAP and the constitutional and legal order of the State.

18. In February, members of the BiH House of Representatives submitted five requests to the BiH Constitutional Court requesting the resolution of constitutional disputes between BiH and the RS caused by the adoption of acts adopted by the RSNA on 10 December. It is unclear when the Court will deliberate on these requests.

19. On 10 February, the RSNA adopted the proposed *RS Law on Immovable Property used for Functioning of Public Authority* and the draft *Law on the RS HJPC*. The latter item was adopted in the first reading and was put to public debate in the period of 60 days. The adopted Draft Law currently envisages that it will enter into force one year following publication in the *Official Gazette of the RS*. It remains to be seen whether this provision would remain when the proposal of the Law is put into procedure for final adoption.

20. The same day, PIC SB Ambassadors (minus the Russian Federation) issued a joint statement underlining that "moves by the RS authorities to introduce a Law creating a parallel HJPC represent a clear attempt by the entity to unilaterally assume the constitutional responsibilities of the State, which would represent a violation of the constitution and legal order of BiH." The Ambassadors also noted, "The adoption of an RS Law on HJPC would be incompatible with BiH's European integration process, constituting an unacceptable interference in the independence of the judiciary and signaling a backsliding of the whole country on European standards in rule of law."<sup>[iv]</sup>

21. The RS *Law on Immovable Property used for Functioning of Public Authority* entered into force on 14 April. The Law represents the unilateral attempt of the RS to regulate ownership rights over State Property assets and is unconstitutional. It violates relevant decisions of the BiH Constitutional Court and precludes an acceptable and sustainable resolution of the issue of State Property – a key requirement of the 5+2 Agenda. Additionally, it violates the Laws on the Temporary Prohibition of Disposal of State Property (Disposal Ban), pursuant to which any legal instrument disposing of State Property contrary to these Laws shall be null and void. Upon entry into force, the Law would create legal chaos and uncertainty in property relations, including vis-à-vis future investments in RS.

22. The continuously escalating political crisis, the most serious in the post-war period, has undoubtedly raised tensions in the country and poisoned the atmosphere, as evidenced by the multitude of interethnic incidents that occurred around the January Orthodox holidays and the repeated decisions of RS authorities to observe the “RS Day” on 9 January. I have publicly deplored the RS authorities’ continued disregard for the final and binding decisions of the BiH Constitutional Court, which established that the designation of 9 January as RS Day is incompatible with the BiH Constitution.

23. From 6 to 9 January, incidents of hate speech and threats against Bosniaks were registered in Bijeljina, Doboj, Višegrad, Prijedor, Foča and Nevesinije in the RS, and in Brčko District. At RS’s main event in Banja Luka, Milorad Dodik stood with convicted war criminal Vinko Pandurević. The day after the 9 January event, hundreds of protestors gathered in front of the OHR in Sarajevo and thousands in capitals around the world to call on the international community to react to the continued destructive behavior of the RS authorities. I addressed the protestors and spoke with some of them, who were scared and frustrated. They know from history that in the current dynamic the potential for a political crisis to become a security crisis is very real, and the international community must respond appropriately.

24. In that regard, I welcome the introduction in January of sanctions by the United States (US) Treasury Department against Mr. Dodik for his “destabilizing and corrupt activities” and against RS media outlet “Alternativna TV” as Dodik’s “personal media station.”<sup>[v]</sup> Likewise, I welcome the EU’s decision to postpone disbursement of the second tranche of its macro financial assistance (MFA) to BiH due to the failure of the BiH authorities to deliver on commitments they took on when signing the MFA agreement. Further, I commend the EU Parliament’s adoption in February of amendments to the its annual report on the Foreign Affairs Committee calling for targeted sanctions against Dodik and his associates for “his corrupt practices, continued destabilization of the country and undermining of Bosnia and Herzegovina’s sovereignty and territorial integrity.”<sup>[vi]</sup> Lastly, I applaud the recent introduction by the UK of sanctions against Mr. Dodik and RS President Željka Cvijanović (SNSD) for their “attempts to undermine the legitimacy and functionality of the State” and “undermining the hard-won peace” in BiH.<sup>[vii]</sup>

25. However, I must express my disappointment and alarm at recent comments by the Russian Ambassador to BiH, who appeared to threaten BiH sovereignty. In a local media interview on 17 March, the Ambassador said, “If [BiH] decides to be a member of any alliance, that is an internal matter. Our response is a different matter. Ukraine’s example shows what we expect.”<sup>[viii]</sup> It is unacceptable for an ambassador and a member of the PIC SB to use the example of a war being perpetrated in another country as a “warning” to his host country. Recent developments in Ukraine are stark reminders of the importance of preserving peace and stability. I must also report that, following its announcement on 28 July 2021 to suspend its participation in PIC SB meetings, the Russian Federation announced, on 17 February, to suspend its mandated contribution to the budget of my Office.

26. The destabilizing RS policies naturally impacted the functionality of the State-level authorities, as intended. BiH went through the whole of 2021 without an adopted budget and 2022 does not look to be any different, as the BiH institutions remain on temporary financing in Q1 and Q2, so far. The legislative output of the BiH CoM and the BiH Parliamentary Assembly remains the lowest of any previous mandate of these institutions.

27. In October, I addressed the BiH House of Representatives and encouraged the elected members to work towards solutions to the crisis. I have also submitted proposals to resolve the issues of State Property and the issue of genocide denial, but to no avail yet.

28. The efforts to reform several aspects of the electoral rules through amendments to the BiH Election Law and limited constitutional changes have unfortunately failed to yield results and remain an issue of contention primarily between the main Croat party, the Croatian Democratic Union of BiH (HDZ BiH) and the main Bosniak party, the Party of Democratic Action (SDA), although the outcome is of concern to all parties. I commend the tireless efforts

of the EU and US facilitators to broker an agreement between parties on this issue. I believe that these efforts will not be in vain as the obligation of BiH to bring its constitutional and legal framework in line with the European Charter for Human Rights, the relevant Constitutional Court decisions and the recommendations of ODIHR and GRECO remains, and this issue will need to be addressed in the future.

29. The failure to reach an agreement is another missed opportunity, as it could have created a new dynamic as BiH endures serious challenges to its constitutional order. It also could have ensured the removal of discrimination from the election to the BiH Presidency and the BiH House of Peoples and on the adoption of rules to better combat electoral fraud, through the so-called integrity package. Discussions also focused on the functionality of the Federation, considering the need to ensure that authorities can be formed in an entity which has yet to appoint its executive three and a half years since the last General Elections. Indeed, the parties came close to an agreement on several issues discussed but the political courage to take the extra step needed to reach a compromise so close to the elections was not found. As of the time of this report, there is still sufficient time for the parties to agree on a package and adopt it through the BiH Parliament. It is, however, unlikely that the entire package of necessary reforms will be adopted without pressure by the international community, which now strongly encourages the parties to adopt the integrity package.

30. The absence of an agreement does not call into question in any way the 2022 General Elections, which will be held in the first week of October under the same rules as in 2018. However, the lack of agreement on electoral reform will make the organization of the elections more challenging. Most Croat parties continue to condition their participation in these elections on changes in the manner of electing the members of the BiH Presidency. These parties have long requested the adoption of a rule that ensures that one of the members of the tripartite Presidency “legitimately” represents the Croat constituent people.

31. In this context, the BiH Central Election Commission (CEC), tasked with organizing elections, has been thus far unable to secure the funds needed to conduct preparatory activities, due to the failure to adopt the 2022 budget of the BiH institutions. In the absence of an adopted budget, the BiH CoM may adopt a special decision to provide requisite funds to the CEC for the purpose of the conduct of 2022 General Elections. In early April, the PIC SB Ambassadors (minus the Russian Ambassador), the OSCE and I signed a letter to the BiH CoM Chair and Deputy Chairs urging them to do so without further delay.

32. As noted, the Federation Government from the 2014-2018 mandate remains in place, with no new Government appointed following the 2018 General Elections. The Government is reduced from 16 to 13 ministers, due to the deaths of two and the resignation of another. There is no agreement on appointing a new Government or replacing the missing ministers due to the stated position of HDZ BiH not to approve any appointments until an agreement on electoral reform is reached. Similarly, the 2018 General Election results are also not implemented in the Herzegovina-Neretva Canton, where the same Government from the 2014-2018 remains.

33. The perceived lack of rule of law in BiH, among other factors such as political instability, corruption, and nepotism, continues to drive young people in particular to leave the country for opportunities abroad. An estimated 170,000 persons left BiH in 2021. Reversing this trend must be a priority or BiH will lose its competitive capacity.

34. There have been some positive developments. In November, the Sarajevo City Administration opened a memorial at Kazani commemorating 17 mostly Serb residents of Sarajevo who were murdered by Bosniak members of the Army of the Republic of BiH in 1992-93.

35. In December, the Posavina Canton Assembly amended the Canton’s constitution affirming the constituent status of Serb people, Serbian and Bosnian as official languages, and Cyrillic as an official script, consistent with the Federation Constitution. This follows a similar move by Herzegovina-Neretva Canton in the previous period. Both cantons acted to implement the 2018 judgement of the Federation Constitutional Court, which found that the constitutions of three cantons did not conform with the Federation Constitution. Necessary changes remain pending in West Herzegovina Canton.

36. In Brčko, the District authorities agreed on the construction of a joint memorial for all civilian war victims later this year. The fact that it would only be the second such joint memorial in BiH underscores the neglected imperative for a meaningful effort at reconciliation in the country. To address this need, in December, I wrote to the Joint Collegium of Both Houses of the BiH Parliamentary Assembly to encourage parliamentarians to engage in a process involving civil society to take up the issue as a priority. Regrettably, the addressees have taken no substantial steps in this regard, but I will continue to press this issue in the forthcoming period.

## **B. Decisions of the High Representative during the reporting period**

37. Notwithstanding repeated calls by the PIC Steering Board to all authorities in BiH to refrain from taking unilateral actions that undermine the resolution of State Property, on 10 February the RSNA adopted the *Law on Immovable Property Used for Functioning of Public Authority*. The Law disregards several final and binding decisions of the BiH Constitutional Court and precludes an acceptable and sustainable resolution of the issue of State Property. Following exhaustive efforts by my office and our international community partners to appeal to the RS leadership to withdraw the legislation and participate in an institutional process to resolve the issue in a legal manner, without success, on 12 April, prior to its entry into force, I issued an *Order suspending application of the RS Law on Immovable Property Used for the Functioning of Authorities*<sup>[ix]</sup>, with the aim of protecting the property interests of all stakeholders and avoid any negative legal repercussions, until the BiH Constitutional Court reaches a final decision on this matter.

38. The same day, I issued a *Decision Amending the Law on the Temporary Prohibition of Disposal of State Property of BiH*<sup>[x]</sup>, better known as the State Property Disposal Ban. The Decision takes into account that pursuant to the BiH Constitution, as interpreted by the decisions of the BiH Constitutional Court, the State of BiH is the titleholder of entire State Property and has the exclusive responsibility to regulate the issue of State Property, including to enact legislation establishing a disposal ban applicable to all levels of authority in BiH. The purpose of these amendments is to include the principles and contents of relevant decisions of the BiH Constitutional Court.

39. Reaction to these decisions from Mr. Dodik suggests that the RS would not respect them.<sup>[xi]</sup> Failure to respect these decisions would further violate the GFAP. On the day of completion of this report, SNSD promoted a rally to be held in Banja Luka on 20 April to oppose these decisions and “fight for the RS.” As I noted in my remarks announcing these decisions, they do not diminish the status of the RS. Both entities have their place in the GFAP and will remain so, but that does not provide a basis for acting against the BiH Constitution.

## **III. European Union military mission in Bosnia and Herzegovina**

40. EUFOR-ALTHEA continues to play a vital role in safeguarding peace and security in BiH, enabling my office and other international organizations to fulfill our respective mandates. I welcome the UN Security Council’s adoption in November 2021 of Resolution 2604 (2021) extending the EUFOR-ALTHEA mandate for 12 months.

41. I also commend EUFOR-ALTHEA on its Reserve Activation 2022, which in February saw the deployment of an additional 500 reserve personnel to BiH as a precautionary measure, in the context of a deteriorated global security situation, as a demonstration of its commitment to preserving stability in BiH.

42. While EUFOR’s non-executive mandate (Supporting the Armed Forces of BiH collective and combined training) is vital, it is equally important that EUFOR retain its executive mandate and the capacity to deploy troops at short notice. The international military presence has significantly reduced due to defense reforms and the establishment of a singled BiH Armed Forces, which enabled the country to take the lead in preserving peace and security. Persistent rhetoric suggesting the undoing of such reforms and reestablishment of entity military forces warrant the vigilance of the international community.

## **IV. The Office of the High Representative**

43. The Office of the High Representative’s (OHR) total budget amount has been “frozen” at the same level since 2017. The term “frozen budget” is misleading, as it does not account for annually increasing costs, which in turn reduce available revenues each year. There are also the issues of nonpayers and those donors that have reduced their contributions. As a result, operating revenues reduce year by year by approximately 7 percent.

44. While the organization has faced substantial reductions to budgets and staff over time, the remaining tasks have not decreased proportionally. As the budgets decrease, it becomes exponentially more difficult to further reduce costs without cutting essential expertise. Staff reductions pose a greater risk for an organization such as OHR, which relies on its human capital, institutional memory, expertise, and longstanding contact networks.

45. Moreover, as previously noted, in February the Russian Federation suspended its contribution to the OHR budget (representing 1.2 percent of the total budget), placing additional constraints on operations. Given the current dynamic and the challenges ahead, the OHR must retain effective capacity to move the country forward and to eventually end the international oversight. To achieve this, resources must follow the mandate and the

organization must be supported politically and financially, with policy considerations regarding BiH being the basis for assessing the future resource requirements of the OHR. To achieve the goals of the organization, consideration should be given to a temporary increase in the budget.

## V. Reporting schedule

46. I submit this report in accordance with the requirement in UN Security Council Resolution 1031 (1995) for the High Representative to submit regular reports to the Secretary-General for transmission to the Security Council. Should the Secretary-General or any member of the Council require further information, I am at their disposal. The next regular report is scheduled for October 2022.

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[i] “BiH will not be able to survive for the same reason that Yugoslavia did not... We are talking about a different possibility, based on an evaluation that BiH will not be successful as a state. If this is the case, the best option is to go different ways in a civilized manner.”

*BiH Presidency member/SNSD President Milorad Dodik, 23 April 2022*

<https://www.elmundo.es/internacional/2022/01/19/61e7e820fdddf831d8b457a.html>

[ii] “The HNS and all its members will closely monitor the continuation of political negotiations on changes to the Election Law and limited constitutional reforms, as well as solutions to the overall political situation in BiH. If the process of deconstitution of the Croatian people continues, HNS will initiate all legal procedures and political steps for the new institutional and territorial organization of BiH on the principles of federalism and consociational democracy, which will ensure full constitutional equality of all three constituent peoples in BiH.”

*Conclusions of the Extraordinary Session of the Croat National Assembly in BiH, 19 February 2022*

<http://www.hnsbih.ba/zakljucci-izvanrednog-zasjedanja-hrvatskog-narodnog-sabora-bosni-hercegovini/>

[iii] <https://www.ohr.int/communique-of-the-steering-board-of-the-peace-implementation-council-30/>

[iv]

<https://www.ohr.int/joint-statement-by-the-ambassadors-of-the-peace-implementation-council-steering-board-3/>

[v] <https://home.treasury.gov/news/press-releases/jy0549>

[vi] [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0039\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0039_EN.html)

[vii]

<https://www.gov.uk/government/news/uk-announces-sanctions-under-bosnia-and-herzegovina-sanctions-regime-11-april-2021>

[viii]

[https://www.euractiv.com/section/politics/short\\_news/russian-ambassador-says-bih-can-join-nato-but-moscow-will-react/](https://www.euractiv.com/section/politics/short_news/russian-ambassador-says-bih-can-join-nato-but-moscow-will-react/)

[ix]

<https://www.ohr.int/order-suspending-the-application-of-the-law-on-immovable-property-used-for-functioning-of-public-authority/>

[x] <https://www.ohr.int/decision-enacting-the-law-on-amendments-to-the-law-on-the-temporary-prohibition-of-disposal-of-state-property-of-bosnia-and-herzegovina/>

[xi] “Our Official Gazette will publish [the Law]. It takes effect. All bodies in the RS are obliged to act accordingly. No decision of an individual, especially one like Schmidt, can stop it and will not stop it.”

*BiH Presidency member/SNSD President Milorad Dodik, 13 April 2022*



## **61<sup>st</sup> Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations - ANNEX**

### **I. Developments related to the 5+2 Agenda**

#### *Progress on objectives*

1. Apart from the continued positive developments and reforms in Brčko District, the BiH authorities have made no effort and consequently no progress in implementing the 5+2 Agenda, and as noted elsewhere in this report some have even worked against several of the objectives. I and my office remain engaged in offering constructive solutions and legislative paths towards fulfilling several objectives and invite all parties to contribute in this regard.

#### *State and defense property*

2. RS authorities and representatives continue to openly dismiss and deny final and binding decisions of the BiH Constitutional Court related to State Property, which consistently reaffirm that BiH is the titleholder of such property and has the exclusive competence to regulate this matter. Asked about such decisions as they relate to agricultural land in an interview last year, RS Minister for Agriculture, Forestry and Water Management Boris Pasalic (SNSD) said that “nothing has fundamentally changed”<sup>[i]</sup> and agricultural land on RS territory continues to be registered under ownership of the entity. This clearly violates the BiH Constitutional Court decision from February 2020 (Case No. U-8/19), which explicitly established that a contested provision of the RS Law proclaiming agricultural land in the RS to be under ownership and possession of the RS does not conform with the BiH Constitution and shall cease to apply. Several BiH Constitutional Court decisions establish that the RS (or either entity) does not have the constitutional competence to regulate the issue of State Property, including ownership over agricultural land, and it is the exclusive responsibility of the BiH State and the BiH Parliamentary Assembly.

3. To reinvigorate the process of implementing the 5+2 Agenda, particularly the State and Defense Property Objectives, on 3 December 2021 I sent a letter to the Joint Collegium of both Houses of the BiH Parliamentary Assembly inviting the Speakers and their Deputies to take ownership of the process and establish an expert Working Group to formulate options for an acceptable and sustainable resolution of the issues of State and Defense Property. I offered the full assistance of my Office to support this process and expressed hope that the Parliament would convene the Working Group as soon as possible.

4. Despite strong lobbying efforts by the international community, the proposed Working Group has not been established, due primarily to the continued blockade by representatives from the RS. At its 9 March session, the Joint Collegium was to consider my proposal, but at the request of BiH House of Representatives Speaker Nebojsa Radmanovic (SNSD), the item was removed from the agenda, with the proposal to be taken up by the respective collegiums of each house. To date, neither collegium has discussed the proposal.

5. On 9 February 2022, the RS National Assembly adopted the RS Law on Immovable Property Used for Functioning of the Public Authority. On 23 March, the RS Constitutional Court rejected the admissibility of the Vital National Interest request of the Bosniak Caucus, clearing the way for publication of the Law, which happened on 5 April, and the Law entered into force on 14 April. The adoption of the RS Law followed public statements by Mr. Dodik, such as on 5 November 2021, in which he announced that the RS has already prepared a law that refers to rejection of the State Property Disposal Ban from March 2005. Dodik recalled that the RS previously attempted to adopt such a law, but its implementation was suspended by the High Representative in 2011, and in 2012 the law was subsequently declared unconstitutional and put out of force by the BiH Constitutional Court.

6. The most important provision of the short and somewhat vague RS Law is in Article 3, pursuant to which “Immovable property, which is considered to be owned by subjects of public authority in the RS, and which is used by those subjects for exercising their basic competences and functioning, shall, by virtue of law, be the property of these subjects.” The Law provides no definitions of specific categories of state or public property, but instead uses the vague descriptive term “immovable property.” While it does not mention State Property or the Disposal Ban, the scope of “immovable property” as defined by the Law encompasses a considerable portion of State Property assets covered by the Disposal Ban, i.e., subject to relevant decisions of the BiH Constitutional Court. Furthermore,

the Law does not include the BiH State or any BiH institutions in its definition of “subjects of public authority,” which consequently means that the State and its institutions are excluded as titleholder or owner of any “immovable property” encompassed by the Law, which herewith becomes the property of the RS public authorities.

7. The accompanying explanation of the Law is based on flawed and erroneous interpretation of the BiH Constitution, including through selective use of elements of the relevant decisions of the BiH Constitutional Court. The explanatory note repeatedly refers to the erroneous interpretation concerning the division of constitutional competences between the State and the RS, claiming that under existing provisions of the RS Constitution, the RS has the constitutional competence to regulate property relations, including the status of State Property. However, the BiH Constitutional Court rejected this very argument in its 2012 Decision.

8. The adopted RS Law is not about regulating property relations (such as adoption of the RS Law on In-Rem Rights, for example), but about determining ownership of the RS public authorities over immovable property, including State Property. However, the RS lacks the constitutional competence to regulate the legal subject matter of State Property, including Defense Property, as the BiH Constitutional Court made clear in several decisions that the matter is an exclusive competence of the BiH Parliamentary Assembly. Consequently, the RS Law conflicts with the BiH Constitution, as interpreted in numerous final and binding decisions of the BiH Constitutional Court concerning the State Property, and potentially violates the State Property Disposal Ban.

9. In conclusion, the recently adopted RS Law on Immovable Property, in conjunction with the consistent rejection by the RS of all relevant decisions of the BiH Constitutional Court and their refusal to participate in negotiating acceptable solutions create legal chaos and uncertainty in property relations in that entity. It represents another unilateral attempt by the RS to regulate ownership rights over State Property assets, which prevents an acceptable and sustainable resolution of the issue of State Property.

10. Most recently, referring to the issue of State Property, Mr. Dodik stated, “The BiH Constitution did not give the right of property to BiH. That is the constitutional right of the entities.”<sup>[ii]</sup>

11. On 19 February, SNSD published a video directed against the BiH Constitutional Court and its decisions concerning State Property. The narrator of the video says, “Harmful decisions for the RS continue. The BiH Constitutional Court of BiH wants to seize the forests, rivers, and agricultural land of the RS,” followed by the message that the RS should not give these away.<sup>[iii]</sup> The video represents a serious attack on the BiH Constitutional Court, as one of the central institutions of BiH under Annex 4 of the Dayton Peace Agreement, and an assault on the rule of law.

12. As the RS Law on Immovable Property Used for Functioning of Public Authority disregards several final and binding decisions of the BiH Constitutional Court and precludes an acceptable and sustainable resolution of the issue of State Property, on 12 April I issued an Order suspending application of the RS Law on Immovable Property Used for the Functioning of Authorities. The Order aims to protect the property interests of all stakeholders and avoid any negative legal repercussions, until the BiH Constitutional Court reaches a final decision on this matter.

13. Simultaneously, I issued a Decision Amending the Law on the Temporary Prohibition of Disposal of State Property of BiH, the so-called State Property Disposal Ban, to include the principles and contents of relevant decisions of the BiH Constitutional Court. The Decision takes into account that, pursuant to the BiH Constitution, as interpreted by the decisions of the BiH Constitutional Court, the State of BiH is the titleholder of all State Property and has the exclusive responsibility to regulate the issue, including enacting legislation establishing a disposal ban applicable to all levels of authority in BiH.

#### *Brčko District*

14. Brčko District (BD) institutions continued functioning, despite the political crisis and blockage of the BiH institutions. In this context, the Supervisor reminded representatives from the RS in BiH institutions of the obligations in the Final Award for the entities to respect and support BD as a unit of self-government under the sovereignty of BiH, subject to the responsibilities of the BiH institutions as formalized in BiH Constitution’s sole amendment. As a result, the RS political blockade at the BiH level has not applied to decisions by State institutions related to BD. Furthermore, in a joint public statement in December, the BD leadership, which is comprised of the same parties that constitute the BiH authority, announced that Brčko would not be instrumentalized in the BiH crisis but remain focused on its reform agenda. A few minor inter-ethnic incidents involving youth were

successfully managed through close cooperation between the leadership of the executive, legislative and police, serving as an example for BiH of responsible governance and commitment to coexistence.

15. To progress towards a joint recognition of suffering and pain sharing of all civilians in BD regardless of ethnicity, as encouraged by the Supervisor, BD authorities will construct a single memorial for all civilian war victims. The preparation of the central location has been completed with the selection of design of the monument as the only remaining step, with placement expected in Q3 2022. While a healthy step forward for Brčko, this would be only the second joint memorial in BiH.

16. The Brčko District Supervisor and the OHR continued to promote reforms aimed at advancing infrastructure development, economic growth, and the development of secure green energy sources while also strengthening good governance through improved fiscal discipline, accountability of public companies, anticorruption measures, and public administration reform in order for BD to meet the requirements of the Final Award.

17. Encouraged by the expert support from the OHR and its international partners, BD authorities focused on the practical implementation of reform legislation adopted in the previous period. The Law on Associations and Foundations will ensure transparent and merit-based financial support to the NGO sector, ending the misuse of this public funding element. The members of the BD Council of National Minorities, established last year under the BD Law on the Protection of Rights of National Minorities, were appointed in March, which with the two Assembly seats allocated for national minorities, improves the political, economic and social participation of national minorities in BD.

18. As a precursor for the implementation of the BD Law on Prevention of Conflict of Interest, the Commission for Deciding on Conflict of Interest in the BD Institutions was accommodated with office space, staff, and training, and began operations in February 2022. Its first action was to collect salary and asset declaration forms from public office holders that allowed for the establishment on 8 April of an online registry of elected and appointed public officeholders' finances. This will subject the political class to even more transparent criteria than that enacted online registry last year of the salaries of civil servants.

19. In October, the BD Assembly appointed the director and two deputies of the BD Anti-Corruption Office (ACO). The ACO is in the final steps of establishing its office and training its recruited personnel and is scheduled to begin operations in May.

20. Fulfilling all legal and technical preconditions for the full implementation of discipline and transparency measures introduced in the new Law on Budget allowed the 2022 budget to be adopted in December 2021, marking the first on-time adoption in a decade.

21. Acknowledging the importance of transparency, BD Assembly delegates from the parliamentary majority agreed to opposition parties having representation in Assembly committees. As of March, only one of the 18 Assembly committees has no opposition representative.

22. The OHR engaged with BD authorities and the international community to launch programs to promote EU-aligned standards of good governance and fiscal transparency, such as: 1) civil service reform, including through drafting a Law on Civil Service and a Law on Public Employees to establish transparent and merit-based hiring practices, performance evaluations, and promotion processes; 2) public administration reform to ensure coordinated, accountable, and transparent resources management and decision making; and 3) improved financial oversight of public-owned enterprises in BD through capacity-building and training.

23. In advancing its potential, BD took steps to strengthen its energy security by preparing a Law on Electricity, which the BD Assembly adopted in October. This established the framework for drafting legislation to stimulate investment in renewable energy sources and energy efficiency as core components of a modern, sustainable, green, EU-compliant energy sector. As a complementary measure, in the same period BD adopted a Sustainable Energy and Climate Action Plan. In compliance with the Plan, the District has already started to implement energy efficiency retrofitting of public buildings. On 12 April, the BD Government signed with the European Bank for Reconstruction and Development (EBRD) an investment agreement to support greener municipal services.

24. Additionally, a Draft Agreement with the EBRD on a EUR 6.5 million concessional loan for a project to ensure a sustainable, clean water supply for all communities in urban and suburban areas was approved by the BiH Council of Ministers (BiH CoM) in mid-December, with construction expected to commence in June. With the Supervisor's

assistance, BD has secured agreement to pursue negotiations for various infrastructure projects under the World Bank "Sava and Drina Rivers Corridors Integrated Development Program" with a funding ceiling of EUR 25 million.

25. Through the prioritization of transportation infrastructure projects, in cooperation with the State and entities, BD authorities are transforming the District into a multi-modal transportation hub that will connect BiH to the markets of the EU and Western Balkans and make the District a prime investment destination. The first of the three components of the hub, the EUR 10 million EBRD/EU-funded modernization of Brčko's Sava River port, saw the construction of a new plateau completed in March and a contract signed for a new crane to triple the port's handling capacity. The new rail and road access spurs aligned with the planned new highways and bridge will be built in the next 18-months following an agreement reached on 11 April between the BD government and best bidder. On 30 March, an agreement to renovate the bridge connecting BiH and Croatia through Brčko and its port was approved by the BiH CoM. Also, an agreement brokered by the Supervisor between BD, the two entities, and the State saw the respective public highway and design companies begin work in April to define routes through the District for the two highways that will intersect in the District connecting it and its port to all major cities in BiH and to Belgrade and Zagreb.

26. Based on impending transportation links, technical preparations to establish the first free economic zone in BD were completed this spring. The focus is agroindustry and construction should begin in June. This is part of a public-private initiative to improve the business environment and private sector opportunities via a EUR 250 million foreign direct investment over 10 years expected to create up to 4,000 private sector jobs. This is the first of nine projects of the investor. The next four projects, eco-tourism and walnut and hazelnut farming, construction of two business-residential facilities, and a free economic zone for heavy industry are in the phase of technical preparations. Politically, the focus on growth of the private sector, along with civil service reform, will over time neutralize patronage as an election tool as public sector jobs will no longer be the primary source of livelihood.

27. While progress on reforms is accelerating, the BD Supervisor's continued engagement and support of OHR expert assistance in cooperation with the international community remain crucial to seeing reforms through to achieve the sustainable status mandated by the Final Award.

28. Regrettably, as in previous years, the commemoration of 9 January as the "RS Day" on 10 January was held at a public monument in Brčko District by officials from the RS, organized on the basis of decision(s) by the RS authorities as part of the overall commemoration activity for the RS. Although no directives were given to BD public officials nor were BD public resources expended, the RS initiative interferes with the Final Award and the obligation of both entities not to exercise any authority within the District boundaries.

#### *Fiscal sustainability*

29. My office continued to follow, analyze, and report on developments and legislative actions relevant to fiscal sustainability, including monitoring and reporting to the PIC SB on the activities of the Governing Board of the BiH Indirect Taxation Authority (ITA), in which a member of my staff is the only international community representative, and the BiH Fiscal Council. The trends in both institutions continue to raise concerns over the ability of governments at all levels, particularly the State level, to ensure the unimpeded functioning of institutions and the discharge of their constitutional and legal obligations.

30. After several attempts, on 30 March the BiH Fiscal Council finally adopted the 2022-2024 Global Framework of Fiscal Balance and Policies, as a prerequisite for the preparation and adoption of a State-level budget for 2022. Previous attempts failed, due to a lack of support by the RS representatives in the Council, blocking the 2022 State-level budget process, which should have been completed by 31 December. This has forced the State institutions into the second consecutive year of temporary financing, which restricts both the funds available to the institutions and their scope of operations and activities, further undermining their ability to meet their responsibilities. On 12 April, the Collegium of the BiH BiH CoM agreed to have the State Budget prepared by 25 April. The budget was not adopted by the end of the reporting period.

31. My office continued to follow developments related to the single indirect tax system and its institutional structure, including activities of the ITA Governing Board. The Board held only two regular and two telephone sessions, with modest output that includes the adoption of indirect tax revenue allocation coefficients for the first two quarters of 2022 and the inter-entity debt settlement for the second half of 2021 obliging the RS to reimburse the Federation BAM 9.2 million.

32. The inability of the ITA Governing Board to regularly meet and decide on issues within its competence has resulted in the accumulation of outstanding issues, including the outstanding BAM 30 million debt of the ITA to the RS, based on a 2015 BiH Court decision. The attempted debt enforcement by the RS from ITA public revenue accounts caused financial damage to all indirect tax revenue beneficiaries, including both entities and Brčko District, recipients of value-added tax refunds and customs insurance depositors, prompting the BiH Court to suspend enforcement until June 2022 to allow time to identify an alternative source of funds. No solution has been identified thus far. Another longstanding dispute concerns the manner of distribution of accumulated road toll revenue reserves (over BAM 200 million) intended for highway and road construction. The lack of agreement not only blocks the intended use of these funds for highway and road construction but also financially damages the ITA as a State-level institution that neither decides on this matter nor benefits from these funds, due to BiH Central Bank charges on deposit accounts.

33. The failure to address those and similar issues with financial implications affects the unimpeded functioning of and confidence in the single indirect tax system and its State-level institutional structure. By extension, this provides a pretext for the RS to challenge the State's competence for indirect taxation and advocate the return of this competence to the entities, as demonstrated on 10 December, when the RSNA adopted the "Conclusion Concerning the Information on the Transfer of Responsibilities in the Field of Indirect Taxation." If pursued, this would roll back one of the most important reforms of the last 25 years, which safeguards the macroeconomic stability of BiH.

34. My office continued to follow other developments relevant to fiscal stability, including the adoption of budgets at all levels of government. Particular attention was paid to developments related to the BiH Central Bank, the guardian of BiH's monetary and financial sector stability.

35. Despite the BiH Central Bank carrying out its constitutional and legal responsibilities professionally, efficiently, and effectively, challenges to the institution have intensified. Recently, BiH Presidency member Milorad Dodik has renewed his calls to the BiH Central Bank to free up foreign currency reserves for entity budget purposes and put forward a legislative amendment to that end requesting its inclusion in the agenda of the 2 March BiH Presidency session. The request was not supported by the other members. If pursued, the proposal would seriously compromise the monetary and financial stability of BiH, with further negative socio-economic and political implications.

36. I continue to closely follow and inform international partners on matters relevant to the BiH Central Bank and its ability to function in the best interests of the entire country.

#### *Rule of Law Issues*

37. A professional judiciary free from undue political pressure and influence is key to developing a fair and democratic society. Since the enforcement of rule of law relies on the judiciary, and respect for judicial decisions depend on the perception of professionalism and expertise of judiciary. Amendments to the *Law on the BiH High Judicial and Prosecutorial Council* (HJPC) adopted by the BiH House of Representatives on 9 March, envision fundamental changes in manner of ensuring the integrity of judicial functionaries, addressing issues of conflict of interest, disciplinary responsibility, and the legality and transparency of decisions on appointments. However, on 24 March, SNSD delegates in the BiH House of Peoples voted against it, meaning that it remains pending in the first reading thereby delaying the introduction of crucial improvements in the BiH judiciary.

38. The SNSD position is no surprise, having in mind the current policies of the RS under its rule. On 10 December 2021, the RSNA adopted the *Conclusions Concerning the Information on the BiH Judicial Institutions*, envisaging the withdrawal of consent the RSNA gave to the RS Government in 2004 to sign the *Agreement on the Transfer of Certain Responsibilities of the Entities through the Establishment of the BiH HJPC*, pursuant to which the State-level single HJPC was established by the law passed by the BiH Parliamentary Assembly. Further, the RSNA tasked the RS Government to submit for adoption a new draft law on an RS HJPC. At the same time, the RSNA concluded that the State-level law on the BiH HJPC shall cease to apply in the territory of the RS as of the date of entry into force of the new RS HJPC law. On 10 February 2022 the RSNA adopted the Draft Law on the RS HJPC, with a 60-day public debate period, after which the Law should be considered again.

39. These recent moves by the RS are a clear attempt by the entity to unilaterally assume constitutional responsibilities of the State. The establishment of a single, State-level HJPC was a pivotal reform to modernize the BiH judiciary in accordance with European and international standards, fostering professionalism, transparency and

efficiency in the judiciary while advancing impartial, independent, and effective administration of justice throughout the country. The RS effort to establish a separate, parallel HJPC would undermine these advances and endanger the legal interests of clients of the RS judiciary. The appointment of judges and prosecutors by a parallel institution such as an RS HJPC would be unconstitutional, and their rulings could be challenged on that basis, to the detriment of legal certainty throughout the RS.

40. In the Federation, legislation establishing a special prosecutor and court department for fighting corruption and organized crime, adopted in 2014, remains unimplemented.

#### *Denial of war crimes*

41. On 3 December 2021, I wrote to the BiH Parliamentary Assembly urging the enactment of legislation to address the denial of genocide and other war crimes, and glorification of the perpetrators of such crimes. I highlighted that I am prepared to withdraw the amendments to the BiH Criminal Code criminalizing such behaviors that were enacted by my predecessor in July 2021, as soon as the domestic process yields such legislation consistent with international standards. My letter has still not been considered in the Parliament.

42. RS representatives in the BiH Parliament proposed a *Draft Law on Abuse of Term Genocide* in urgent procedure, which prompted generally negative reactions from the Sarajevo-based parties represented in the Parliament. The Draft was rejected on 9 March 2022.

43. The need for a process to prevent instigation and spreading of hatred that could incite the repetition of crimes is made more urgent by the frequent glorification of adjudicated war criminals. Sadly, murals or plaques intended to glorify former RS Army commander Ratko Mladić, conclusively sentenced to life in 2021 for genocide, crimes against humanity and violations of the laws or customs of war, including terrorizing the civilian population of Sarajevo for nearly four years and killing more than 8,000 Muslim men and boys in Srebrenica in 1995, continue to reappear, even after such glorification has been designated as a criminal offense. It is up to the BiH Prosecutor's Office to deal with those cases.

## **II. Developments related to State-level institutions of Bosnia and Herzegovina**

### **A. Presidency of Bosnia and Herzegovina**

44. The BiH Presidency held only three regular sessions and officially four urgent sessions. The Presidency maintained regular protocol activities, receiving official diplomatic delegations, and making some official visits abroad. Presidency member Šefik Džaferović (SDA) has been BiH Presidency Chair since 20 March, assuming the position from Presidency member Željko Komšić (DF-Democratic Front) in accordance with the eight-month rotation between the three members.

45. The political turbulence in BiH remains most visible in the BiH Presidency, as the divergent positions of BiH Presidency member Milorad Dodik on the one side and members Komšić and Džaferović on the other are expressed daily on a range of issues. Most recently, members have differed over the Ukraine crisis, as Dodik boycotted a Presidency session after the other two members rejected a discussion of the issue. Dodik had protested the fact that BiH Ambassador to the UN Sven Alkalaj voted with 140 other member states in the UN General Assembly on 2 March to demand Russia end its military operations in Ukraine. Dodik advocated BiH neutrality on the issue, while the other two members condemned the aggression and warned of the risk of spillover to BiH.

46. Komšić and Džaferović also welcomed the 17 February adoption by the EU Parliament of amendments to the EU Foreign Affairs Committee, which condemned "the secessionist moves of the RS authorities" and called for sanctions against Dodik and his associates. The two members marked the 25 November BiH Statehood Day and the 1 March BiH Independence Day without Dodik, as the RS does not recognize those holidays.

47. The only issue around which there were no dissonant tones between Presidency members in public was BiH's EU path and the recent revival of appeals by BiH authorities to the EU to grant BiH candidate status and stabilize the situation in BiH. Presidency members repeated their commitment to intensifying activities on EU integration.

48. Dodik continued to effectively block the work and/or decision-making of the Presidency either by not attending sessions or by attending and voting against all agenda items, including adoption of agendas.

49. In the 31 March Presidency session, after previously blocking the engagement of helicopters of the BiH Armed Forces in firefighting in Herzegovina, Dodik relented and gave his consent, only after it was forecast that rain would extinguish the fires. However, when agenda items required the presence of BiH Minister of Foreign Affairs Bisera Turković (SDA), Dodik walked out over what he called Turković's "constant violation of the BiH Constitution." SNSD tweeted "We will not bear such a Muslim attack on the BiH Constitution!"<sup>[iv]</sup> Dodik subsequently called for an urgent RSNA session to invoke a Vital National Interest veto against five items adopted in his absence. With less than two-thirds majority support, the RSNA rejected the veto.

## **B. Council of Ministers of Bosnia and Herzegovina**

50. The BiH Council of Ministers (CoM) held only five regular and four urgent sessions, with very limited output. The CoM did not adopt a single piece of legislation, which is indicative of the extent of the blockade of the State and its legislative instruments.

51. After a period of non-attendance following the 30 July 2021 RSNA conclusions not to participate in decision-making at the State level, ministers from the RS-based parties made a limited return in November, voting against all agenda items. They subsequently attended to support items that impact health and the economy, which CoM Chair Zoran Tegeltija (SNSD) said does not contradict the RSNA conclusions.

52. The CoM adopted two decisions on temporary financing of the institutions of BiH and its international obligations for Q1 and Q2 2022, marking six straight quarters the institutions have been under temporary financing due no adopted State budget in 2021 and 2022. At the time of completion of this report a budget for 2022 was not adopted.

53. The BiH CoM reached no agreement on appointing members to the Communications Regulatory Agency Council or to the State Commission for Cooperation with UNESCO, among others.

54. The CoM did adopt various financial and loan agreements in different stages of the ratification process, in the areas of infrastructure, environment, public health, free trade, and science, and memoranda of understanding with various financial institutions. The CoM took some steps to address the effects of the Ukraine crisis by suspending or reducing customs tariffs on certain goods, and allocated BAM 300,000 in humanitarian assistance to the Ukrainian Red Cross.

## **C. Parliamentary Assembly of Bosnia and Herzegovina**

55. The BiH Parliamentary Assembly has been most affected by the consecutive political crises since its inauguration following the 2018 General Elections. This is reflected in its poor functionality and inability to exercise its legislative functions. The situation has been greatly exacerbated by the ongoing full or partial boycott or blockade of decision-making in the State institutions pursued by the RS-based parties.

56. The BiH House of Representatives (HoR) held only four regular sessions and one urgent session, not even meeting monthly, and usually without the participation of representatives elected from the RS. The BiH House of Peoples (HoP) fared even worse, holding only two regular and two urgent sessions.

57. After five months without a session, the BiH HoP held an urgent session on 29 November, at the request of five delegates (four from the Bosniak Caucus and one from the Croat Caucus) to discuss the reasons for blockade of the highest legislative body. SNSD seized the opportunity to propose several conclusions that in essence sought justification for the blockade and to blame the former High Representative's decision amending the BiH Criminal Code while calling for its annulment, challenging High Representative's mandate and authority, further challenging BiH Constitutional Court decisions on State Property and stating that property belongs to entities, calling on entities, cantons and Brčko District to come to agreement on apportionment of property. The HoP ultimately rejected the conclusions but did adopt a conclusion calling on dialogue between constituent peoples in BiH towards possible future solutions.

58. RS-based parties started attending sessions of the working bodies in March, although whether that will be a consistent pattern remains to be seen. SNSD attendance during House debates and or voting was restricted only to agenda items of their particular interest.

59. On 4 March, the BiH HoR held an urgent session devoted to the crisis in Ukraine, convened at the request of

four opposition parties. The RS-based parties did not attend and failed to join in public condemnation of the Russian Federation aggression against Ukraine.

60. In response to global economic issues that already affect BiH, opposition parties from the RS and the Federation in the BiH HoR launched and adopted on 9 March, urgent initiatives to amend and change the *Law on Value Added Tax* and the *Law on Excise Tax*, introducing differential rates on value added tax and reducing excise tax on fuel and its derivatives to zero for a period of six months. However, these initiatives are pending in the House of Peoples and in any case may be technically impossible to implement.

61. Also on 9 March, in the context of the Ukraine crisis, the Joint Collegium of Both Houses of the BiH Parliament agreed to request that EU candidate status be granted to BiH in an accelerated procedure. On 24 March, the HoP endorsed this conclusion, and the BiH HoR is expected to endorse the same text. However, notwithstanding this request, after the BiH HoR adopted on 9 March the *Law on Conflict of Interest* and amendments to the *Law on the BiH HJPC* and had earlier adopted amendments to the *Law on Public Procurement* – three key requirements from the EC Opinion from May 2019 – the House of Peoples subsequently failed to follow through on the next steps necessary for their adoption. The adoption of all three remains pending. In the reporting period, the Parliamentary Assembly adopted in full only a single piece of legislation, the *Law on Customs Violations*.

62. Also on 11 March, the BiH HoR considered the SNSD club's proposed *Law Banning Abuse of the Term Genocide* in urgent procedure, as an attempt to, in the words of SNSD representatives, deescalate the crisis. Sarajevo-based parties condemned this initiative as another attempt to relativize and deny genocide committed. The proposed Law was rejected.

63. Following failed negotiations on electoral amendments, and the inability of the Inter-Agency Working Group on electoral reforms to meet and deliberate due to lack of quorum, on 11 April representatives of six political parties in the BiH HoR submitted into parliamentary procedure the so-called "integrity package" of changes and amendments to the BiH Election Law. The package focuses on improvements to electoral system to help prevent election fraud and return integrity and voter confidence to the electoral process.

### **III. Developments related to the Federation of Bosnia and Herzegovina**

64. The Federation Government from the 2014-2018 mandate remains, with no new Government appointed following the 2018 General Elections and reduced from 16 to 13 ministers due to the deaths of two and the resignation of another in previous reporting periods. There is no agreement on appointing a new Government or replacing the missing ministers due to the stated position of HDZ BiH not to approve any appointments until an agreement on electoral reform, primarily between HDZ BiH and SDA, is reached. Additionally, Federation Prime Minister Fadil Novalić (SDA) and Deputy Prime Minister/Minister of Finance Jelka Miličević (HDZ BiH) are currently on trial over the controversial procurement of 100 ventilators early in the COVID-19 pandemic.

65. In October 2021, Novalić sent a letter to the Federation President and Vice Presidents, in which he wrote that it is necessary to fill the missing ministerial positions in the Government as it no longer has the appropriate composition and national structure.

66. Nevertheless, the Federation Government meets regularly, holding 26 regular sessions and 11 extraordinary sessions. Both houses of the Federation Parliament met infrequently, with the House of Representatives holding just six regular and four extraordinary sessions and the House of Peoples only four regular and six extraordinary sessions. In terms of legislative output, only seven new laws and 13 amendments to existing laws were adopted.

67. The Collegiums of both houses of the Federation Parliament remain incomplete. The House of Representatives has failed to appoint a new deputy speaker from the ranks of the Serb people following a reshuffling of the parliamentary majority in June 2019, while the House of Peoples has not appointed the deputy speaker from the ranks of the Serb people since its inaugural session following the 2018 General Elections.

#### *Federation Constitutional Court Appointments Still Outstanding*

68. Since 2019, the Federation Constitutional Court has had four vacancies pending, due to the retirements of judges, leaving the Court with only five sitting judges of nine required under the Federation Constitution. All five must be present for quorum, and the adoption of decisions requires unanimity. Moreover, the Court's Vital National Interest (VNI) Panel cannot function at all, as it has only four judges, which is insufficient for quorum in the VNI



Panel. In October 2019, the BiH HJPC submitted to the Federation President and Vice President proposed candidates for three vacancies and it submitted proposed candidates for the fourth vacancy in February last year. Subsequently, the two Federation Vice Presidents submitted their final proposals to President Marinko Cavara (HDZ BiH) and urged him to forward the nominations to the Federation Parliament. However, Cavara has refused to proceed, blocking the appointment process, and leaving the Federation Constitutional Court dysfunctional.

#### **IV. Developments related to Republika Srpska**

69. SNSD continues to lead the ruling coalition in the RS. The RS Government held 22 regular sessions and one special session. The RSNA held three regular and nine special sessions.

70. In addition to the longstanding practice of the RS Government refusing to deliver session materials to the OHR, since October the RS National Assembly has prevented OHR staff from attending sessions, thus impeding my staff from carrying out the mandate of my office under Annex 10 to the GFAP, against obligations arising under Article IX of the GFAP and Annex 10 to the GFAP to fully cooperate with the High Representative and his or her staff. The legality of the existence of the High Representative and the OHR was publicly questioned.

##### *Srebrenica*

71. The Srebrenica Municipal Assembly continues to function despite frequent instability due to a political split within both Serb and Bosniak Caucuses, which has resulted in different factions of Serb and Bosniak parties in the majority and in the opposition. However, the same differences that have burdened interethnic relations in the postwar period persist, with Bosniak representatives calling on Serb representatives to accept international and domestic court rulings on the Srebrenica genocide, to no avail, while the wider local Serb community claims their war victims have not been acknowledged at all. These unresolved differences continue as sources of mutual frustration, burdening the community and hindering attempts at improving coexistence and reconciliation.

#### **V. Developments related to public security and law enforcement appointments**

72. The practice of improper political interference in operational policing has not diminished.

73. In Brčko District, the appointments of the police chief (May 2021) and deputy police chief (November 2020) to new mandates remain in effect, despite the appointments resetting the clock on their mandates as “first term” when they were nearing the end of their first and second four-year mandates, respectively, in contravention of established standards. The standard maximum appointment is two four-year terms. These appointments stem from damaging October 2020 changes to police legislation that are still being rectified. The status of the appointments of members of the Independent Board to new mandates remains unclear. In March, a Brčko District working group, in cooperation with OHR and other international community partners in BiH, completed the technical phase of preparing proposals of changes to the Brčko District *Law on Police* and *Law on Police Officials*.

74. On 22 and 28 February, and again on 15 and 29 March, the BiH Independent Board was unable to hold sessions due to lack of quorum. Consequently, the BiH Independent Board is unable to release vacancy announcements for the posts of SIPA Deputy Director, Border Police Director and Deputy Director, and Directorate for Police Coordination Director and two Deputy Directors, all whose mandates expire in May 2022.

75. On 22 March, the Federation Independent Board decided by majority vote to issue a new vacancy for the post of Federation Police Director after a period of legal uncertainty dating to 2019. The Federation Government, serving in technical mandate since 2018, failed to appoint a Federation Police Director based on the April 2019 list of candidates proposed by the Federation Independent Board in the first selection round. The mandate of the previous director expired in January 2019. The top-ranked candidate from the 2019 list filed a court case against the Federation Government for failure to complete the appointment process. The mandate of the Federation Independent Board overseeing the new selection process expires in May 2022.

76. In Herzegovina-Neretva Canton, the selection and appointment of a new Independent Board, initiated in May 2021 by the Assembly, has stalled. Herzegovina-Neretva Canton has not had a functioning Independent Board since March 2017 nor a duly appointed police commissioner since October 2018.

77. Posavina Canton authorities failed to insert a required provision in the relevant police law stipulated by the 2007 letter of the President of the U.N. Security Council on police denied certification by the former United Nations

International Police Task Force, despite repeated assurances from canton authorities.

78. In October 2021, changes to the Canton 10 Law on Internal Affairs and the Law on Police Officials were withdrawn from the adoption process in the C10 Assembly, including one provision lowering criteria for police commissioner candidates. The mandate of the previous commissioner mandate expired in November 2021.

79. In December 2021, the Zenica-Doboj Canton Assembly adopted a long-delayed separate police budget in line with its 2018 Law on Internal Affairs.

80. In December 2021, West Herzegovina Canton adopted changes to its Law on Police Officials, lowering criteria for police commissioner candidates, and, in March 2022, the West Herzegovina Government appointed a new police commissioner under the new rules.

81. In March 2022, the mandate of the Una-Sana Canton Independent Board expired. The procedure of selection and appointment of the new IB has not been completed due to the lack of candidates.

### *Intelligence*

82. The BiH CoM has not yet appointed the next Director-General of the Intelligence-Security Agency of BiH. The mandate of the current Director-General, who continues to serve in technical mandate, expired in November 2019.

## **VI. Economic Developments**

### *Economic trends*

83. In 2021, total exports and imports increased by 35.7 percent and 27.9 percent, respectively. Industrial production in December 2021 grew by 7.2 percent over the same month in 2020. The annual price level increase was 4 percent. Foreign direct investments in 2021 totaled BAM 869.9 million, 22 percent more than in 2020. The banking sector is assessed as generally stable and liquid. Preliminary data for 2021 shows a 136 percent increase in its profits over 2020, suggesting a post-pandemic recovery of the banks.

84. At the end of December, there were 375,804 unemployed persons, 9.1 percent less than December 2020. The average net salary of BAM 1,042 and average pension of BAM 421 remain significantly below the average price of the basket of goods of about BAM 2,200 for a four-member family, suggesting that even those with steady incomes struggle to make ends meet. Pensioners are particularly vulnerable. About 60 percent of pensioners in BiH receive the minimum pensions of BAM 207 in the RS and BAM 382 in the Federation and survive on BAM 3.5 – BAM 12 a day.

85. Another vulnerable category in BiH is youth. According to the Western Balkans Regular Economic Report for Fall 2021, the youth unemployment rate in BiH in 2020 was 36.6 percent. According to the 2013 census, slightly more than half a million young people, age 19 to 29, live in BiH. Although there is no precise data on how many have left the country in recent years, research shows that every other young person is considering leaving temporarily or permanently. A United Nations Population Fund (UNFP) survey indicates that 23,000 young people aged 19 to 29 will leave BiH in the next 12 months, adding to the already worrisome population outflow. The BiH Union for Sustainable Return and Integrations estimates that 170,000 persons left BiH in 2021, meaning nearly half a million people have left since 2013.

86. Moody's and Standard & Poor's credit ratings for BiH are B3 and B, respectively, both with stable outlook. BiH is in the ranks of moderately free countries based on the Heritage Foundation's 2022 Index of Economic Freedom, ranking 68<sup>th</sup> of 177 countries in the world and 36<sup>th</sup> of 45 countries in Europe. Dropping eight places from the previous report, BiH now ranks 90<sup>th</sup> of 165 countries in the 2021 Annual Report of the Fraser Institute's Economic Freedom of the World, which analyzes the size of government, legal system and property rights, sound money, freedom to trade internationally, and regulations. According to Transparency International's Corruption Perceptions Index 2021, BiH is 110<sup>th</sup> of 180 countries by corruption perception. Its score has dropped seven points since 2012.

### *Fiscal issues*

87. There were no delays in debt servicing and regular monthly budget payments in the reporting period. This was foremost due to the continued growth of indirect tax revenue, which accounts for most budget revenue for all levels of government. Collection in 2021 was the highest ever, totaling BAM 8.44 billion, a BAM 1.2 billion increase,

or 16.7 percent, over 2020.

88. Budget stability was also strongly supported by continued borrowing and international financial disbursements, including the first tranche of the EU Macro-Financial Assistance (MFA) of EURO 125 million, which was distributed in the ratio of 61.5 percent to the Federation, 37.5 percent to the RS and 1 percent to Brčko District. The State did not benefit from this assistance.

89. Preliminary data of the BiH Ministry of Finance and Treasury estimate BiH's overall public debt on 31 December 2021 at BAM 81 billion, which is 34.82 percent of BiH's GDP in 2021. Of this amount, foreign debt is BAM 9.69 billion (75.7 percent) and domestic debt is BAM 3.11 billion (24.3 percent).

90. The financing of the State institutions remains hostage to the RS policy of undermining the functionality of the State and its key functions. The blockage of the State-level institutions and decision-making processes by representatives from the RS stalled the parliamentary adoption of the State budget for 2021. Due to the late adoption of the Global Framework of Fiscal Balance and Policies for 2022-2024, there is still no annual budget for 2022. Consequently, the State institutions were forced into restricted temporary financing throughout 2021 and in Q1 2022. The BiH BiH CoM adopted temporary financing for Q2 in March.

91. Under the BiH Constitution, the responsible authorities are obliged to ensure financing of the State institutions so they may fully discharge their constitutional and legal responsibilities. Extending temporary financing is only a stop-gap measure, as it restricts the amount of funds available to the State institutions and their scope of operations. It also makes them vulnerable to political calculations. Financing of the State institutions requires a sustainable solution.

92. The Federation institutions were restricted by temporary financing in Q1, while the 2022 annual budget was adopted by the end of March at BAM 5.59 billion, a 2 percent increase over the 2021 rebalanced budget. Budget stability was supported by the sustained growth of indirect tax revenues, continued domestic borrowing (mainly through the issuance of treasury bills and bonds), and recent IMF SDR and EU MFA disbursements. The budget shows a deficit of BAM 920 million, a 32 percent decrease from 2021, with plans to be covered by short-term domestic borrowing (BAM 250.0 million), long-term domestic borrowing (BAM 270 million), loans received through the State (BAM 300 million) and receipts from financial assets (BAM 100 million). The budget foresees BAM 271.3 million for gross salaries and allowances (an 8 percent increase), BAM 29 million for employee contributions (an 8 percent increase), BAM 120.9 million for expenditures for material and service (20 percent increase) and BAM 3.75 billion for current transfers (a 2 percent increase), include for social and veteran categories, pension funds, stabilization of the economy, and transfers to lower levels. The Federation debt payment totals BAM 849.1 million (a 15 percent decrease), of which foreign debt totals BAM 467.2 million.

93. All cantonal budgets for 2022 were adopted before the expiry of Q1 2022.

94. The RS continues to operate in a fragile financial environment, financing one-fourth of its regular budgetary needs through borrowing. The 2022 RS Budget - adopted on schedule before the end of 2021 - amounts to BAM 4.024 billion, BAM 8 million more than 2021. More than half of the budget funds are planned for pension payments and civil servants' salaries. The main budget beneficiaries are the RS Ministry of Education, the RS Ministry for Labor and Veterans, and the RS Ministry of Interior. The RS Government planned an increase of civil servants' salaries in 2022 by 5 percent of net monthly salaries up to BAM 1,000 and by 3 percent of net monthly salaries over BAM 1,000, while the average monthly pension shall be increased by 3 percent. The estimated RS debt as of end September 2021 amounted to BAM 6.1 billion, which was 51 percent of the estimated 2021RS GDP.

#### *Additional developments relevant to the GFAP*

95. BiH took no action to rectify its non-compliance with the EU requirements in the energy sector. Moreover, the Energy Community Ministerial Council concluded at its annual meeting in November that the country was in another breach under the Energy Community law. The latest breach relates to the intended replacement of a thermal power plant - Block 7- in Tuzla by the Sarajevo-based power company, and it is due to its financing that is characterized as illicit State aid. This adds to the non-compliance due to which BiH has been subject to sanctions by the Ministerial Council of the Energy Community - comprised of 28 Member States of the European Union (EU) and 6 European states and territories in the Balkans - since 2015.

96. The BiH Public Railways Corporation increasingly faces financial constraints due to dependence on entity

financial transfers. Its uninterrupted financing in 2021 was due mainly to the Federation meeting its payment obligations towards the Corporation, as the RS unilaterally and disproportionately decreased its financing share (from 40 to 20 percent) and fully settled its 2021 obligations only in 2022. The Corporation was forced to bridge the gap from its reserves and is now left with none and dependent fully on entity transfers. The uncertainty of financing poses a risk to the sustainability of the Corporation, which is the only State-level corporation established under Annex 9 of the GFAP. It also jeopardizes the only mechanism for a harmonized approach to the reconstruction of railway routes, which would benefit the railway companies of both entities, all citizens of BiH, and the country's economy.

97. Although the mandates of all members of the management and the management board of the BiH Electricity Transmission Company (TRANSCO) expired four years ago, the appointment of new members remains stalled. The Federation Government nominated its members to the TRANSCO management board in December 2020, but the BiH BiH CoM decided not to proceed with the appointments until the RS submits its nominees. Thus far, the RS has taken no action to that end. Further delaying these appointments could complicate decision-making on issues of relevance for the Company and electricity transmission in general. It could also provide a pretext for renewed challenges to the Company, which was established by the BiH Law Establishing the Electricity Transmission Company adopted by the BiH Parliamentary Assembly in 2004, following the June 2003 agreement of the entities on the establishment of a transmission company and independent system operator, concluded based on Article III (5) (b) of the BiH Constitution.

98. Another risk to TRANSCO stems from the revision initiated by the Mostar-based power company against the 16 August 2021 decision of the Higher Commercial Court of Banja Luka, which dismissed the lawsuit by the Mostar company claiming compensation for the transmission facilities invested in TRANSCO at the time of its establishment in 2006. Although dismissed in two instances, the lawsuit thus remains alive and as such a financial threat to TRANSCO as well as a threat to the ownership structure and the entity shares.

## **VII. Developments related to the return of refugees and displaced persons**

99. Annex 7 to the GFAP obliges authorities throughout BiH to “undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.” In this regard, minority returnees and their families still face certain challenges.

100. Incidents and provocations directed at minority communities surrounding Orthodox and RS holidays in January occurred in the RS municipalities of Bijeljina, Prijedor, Doboj, Foca, Gacko, Nevesinje, and in Brčko District. Incidents followed a similar pattern of persons walking or driving through Bosniak communities shouting insults, playing nationalist songs, and in some instances praising convicted war criminal Ratko Mladic. In Bijeljina, gunshots were fired, but no one was injured.

101. While local authorities for the most reacted promptly and appropriately, such incidents in the currently tense political climate, coupled with rumors of local populations arming themselves and concerns about the potential negative impact of the Ukraine crisis on stability in BiH, understandably raise fears among vulnerable groups for their security.

102. The RS Ministry of Education refuses to implement the 23 June ruling of the BiH Constitutional Court accepting the appeal from a group of Bosniak parents from the community of Konjević Polje in Bratunac in the RS, which supported their claim that Bosniak students were discriminated in the RS education system regarding the use of Bosnian language in the school administration. Additionally, the RS Supreme Court in 2019 ruled in favor of Bosniak parents from Vrbanjci near Kotor Varoš, also in the RS, and against the Ministry, regarding a dispute over the introduction of national group of subjects for primary school students. In response to a query in the RSNA, the Ministry said it would not implement the ruling since the original applicants had already completed their primary education, thus still not addressing the issue.

103. Some Bosniak returnee communities in the RS, such as Liplje near Zvornik and Janje near Bijeljina, have continued to protest and request the competent authorities to refer to their language as “Bosnian” in official records in the same way they refer to “Serbian” and “Croatian” for Serb and Croat students, rather than continue to use the term “language of the Bosniak people.”

104. At the same time, Serb returnee representatives from Glamoč in the Federation continue to report on the

persistent problem of the introduction of the national group of subjects and teaching of the Serbian language in local schools.

## VIII. Media developments

105. Since the previous report, the Free Media Helpline operating within the BH Journalists' Association registered 33 new cases of violations against journalists' rights and media freedoms, including one case of defamation, eight instances of political pressure and intimidation, four death threats, and several instances of online harassment, cyberattacks, and hate speech. Additionally, the BiH Print and Online Media Council reported 509 cases of complaints concerning hate speech on online media in 2021.

106. The BiH Public Broadcasting System (PBS) faces serious financial issues. Since 7 December 2021, the Federation Tax Authority has blocked the bank accounts of the State-level public broadcaster, BiH Radio-Television (BHRT), three times due to the debt deriving from unpaid social contributions, amounting to BAM 19 million. The blockade was lifted but showed that the financing of the system is very much dysfunctional and that BHRT is in financial terms insolvent as it cannot service its current obligations.

107. BHRT management claims that its debt is due to the decision of the RS public broadcaster Radio-Television Republika Srpska (RTRS) to deprive BHRT of 50 percent of the funds RTRS collects in the RS as defined by law. In 2019, the RTRS unilaterally decided to commence its own collection of RTV tax and stopped depositing it in the single system account. The Federation public broadcaster, Radio-Television Federation of BiH (RTFBiH) shares its collected revenue with BHRT, but this revenue is primarily collected in Bosniak-majority areas of the Federation. In Croat areas, the leading Croat party, HDZ BiH, has called on people not to pay the RTV tax and instead donate BAM 1 per month to the private broadcaster TV Herzeg-Bosnia. In March, I joined a letter with the EU, the US and UK embassies and the OSCE encouraging BHRT to address the competent authorities to resolve these issues and offered our support in engaging them if needed.

108. The appointment of the new Communications Regulatory Agency (CRA) Council has been stalled since November 2017. The most recent attempt of the BiH BiH CoM to agree on the list of candidates, on 24 February, failed. The CRA Council remains operational but with only five of seven members due to two resignations.

109. Despite the BiH State having allocated BAM 40 million for the digitalization process with three public broadcasters in BiH jointly acting as the implementing entity, the process is stalled as there is no progress in the tendering of digital equipment by the BiH Ministry of Communications and Transport, and no steps taken by the three public broadcasters to establish a joint legal entity.

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[iv] <https://twitter.com/SNSDDodik/status/1509471228498690053>