



# **MONITORING OF RESULTS IN THE AREAS OF TRANSPARENCY, ACCOUNTABILITY AND INTEGRITY IN PUBLIC ADMINISTRATION**

## **Public Administration Reform Monitoring (PARM)**

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## EXECUTIVE SUMMARY

Transparency International Bosnia and Herzegovina (TI BiH) is implementing the **Public Administration Reform Monitoring (PARM)** project in cooperation with the Centre for Investigative Reporting (CIN). The project is funded by the Embassy of Sweden/Swedish International Development Agency (SIDA) and the Government of Denmark. As part of this project, a monitoring survey has been carried out and a report has been prepared on the results achieved by the public administration in the areas of transparency, accountability and integrity. Monitoring included a total of twenty (20) institutions at all levels of government in Bosnia and Herzegovina (BiH).

The following institutions were included in the monitoring survey: Ministry of Justice, Civil Service Agency, Public Administration Reform Coordinator's Office (PARCO), Ministry of Defence, and Communications Regulatory Agency (state level, BiH); Ministry of Justice, Ministry of Education, Ministry of Finance, Tax Administration, Civil Service Agency (entity level, FBiH); Ministry of Finance, Ministry of Public Administration and Local Self-government, Ministry of Justice, Ministry of Labour, War Veterans and Disabled Persons' Protection, and Civil Service Agency (entity level, RS); Department for Administrative Affairs, Subdivision for Human Resources, Mayor's Office, Finance Directorate, and Department of Public Records (Brčko District).

The following methods were employed in the monitoring survey: desk research, interviews and filing formal requests for access to information in accordance with the Freedom of Access to Information Law for the purpose of collecting relevant information. Information was collected in January and February 2015, and relates to the results in 2013. Indicators used to determine the achievements of the selected institutions in the areas of transparency, integrity and accountability are as follows: the number of disciplinary proceedings; the number of lawsuits filed against the institution by institution's own employees and third parties; the number of citizens' requests for access to information and proactive transparency; the availability of detailed budget of the institution and reports on budget execution as an indicator of financial accountability; publicly available, adopted and implemented staffing plan; the number of temporary service contracts, how they are concluded and the scope of these contracts; the existence of a Public Procurement Plan and types of public procurement procedures used; adopted and implemented Integrity Plan; annual activity report as an indicator of accountability of the institution; the number of job competition procedures conducted and the number of staff recruited, as well as the manner and outcome of the selection. The aim was to use these indicators to determine the extent to which public institutions apply the standards of transparency, accountability and integrity prescribed by laws and regulations.

In spite of the differences between the institutions at different levels of government, the monitoring survey has revealed ***very limited results of the public administration with regard to standards in the areas of transparency, integrity and accountability.*** Thus, it has been found that:

- there was a large number of requests for access to information at all administrative levels, suggesting that **reactive paradigm still dominates in the area of transparency in BiH, i.e. public information is accessed primarily by means of filing requests for access**. The survey has also found that the institutions remain largely unfamiliar with the concept of proactive transparency and only modest efforts are undertaken to improve access to information held by public authorities;
- the **analysed institutions do not routinely publish budget data and budget execution information on their websites**. This is a major deficiency as it reduces the availability and visibility of such data, which speaks to the lack of financial accountability and transparency in the analysed institutions.
- in all analysed institutions at the state level and the level of the Federation of BiH (FBiH) there is a discrepancy between the number of positions envisaged under the official staffing plan and the actual number of employees, which means that the staffing regulations are not complied with and recruitments are made arbitrarily.
- of the total sample of twenty (20) institutions, only two institutions (one from the state level and one from the level of FBiH) have Integrity Plans in place. In the Republika Srpska (RS) only one institution is familiar with the concept of integrity plans. This shows that efforts to prevent irregularities and reduce corruption risks in the institutions remain woefully inadequate;
- the survey further identified irregularities in the implementation of the Freedom of Access to Information Law at all levels. The most common irregularity found in RS is the failure by information officers to respond to requests for access to information, and the most common practice is for requests to be decided promptly by managers of public authorities;
- very few disciplinary proceedings have been instituted by institutions at all levels. When this is put into context with other survey findings, the inescapable conclusion is that institutions do not pay proper regard to enforcing disciplinary liability and monitoring compliance with work assignments and official duties.

## 1. INTRODUCTION

Transparency is seen as an essential prerequisite for accountability of public administration and an expression of its democratic legitimacy, and, ultimately, lies at the very heart of good governance. On the one hand, proactive disclosure of public information such as regulations, budget and finance, activity reports, databases, etc. is based on the conception that “citizens have the right to know” how decisions are made in their name and what the outcomes and results of these decisions are. To this end, in addition to ensuring proactive disclosure, public authorities cultivate their public image by communicating with the public. On the other hand, every citizen has the right to request access to public information and public authorities have the corresponding obligation to make this information available. Such reactive transparency – or on-demand transparency – puts into operation a mechanism of legal procedure which seeks to ensure that information defined as public information actually reaches the public.<sup>1</sup> In addition to transparency, in recent years the focus has been on accountability as the modern standard in governance. Accountability allows citizens to participate actively in decision-making and policy formulation through public consultation, by giving their comments and opinions, and by controlling public authorities through active monitoring of their work. Active monitoring of public authorities is nowadays offering unimagined possibilities with the support of information and communication technologies and through increased activism of civil society organisations (CSOs).

In June 2014 TI BiH conducted a survey into citizens’ perceptions of public administration. The survey revealed that two thirds of citizens were not satisfied with the work of the public administration, and 80% believed that the institutions did not invest enough effort to curb widespread corruption.<sup>2</sup> In parallel, relevant reports of international and domestic institutions show that public administration reform is not carried out according to the planned schedule and has not produced expected results. Identifying bottlenecks and problems in the work of public institutions in relation to transparency, accountability and integrity is an essential step in creating policies to address and eliminate these problems, which can significantly contribute to the overall efficiency of the public administration and, consequently, increased confidence and satisfaction of citizens.

In order to contribute to better implementation of the PAR Strategy by providing independent monitoring of the results and effects of public administration reform, TI BiH has conducted monitoring in the areas of transparency, accountability and integrity of public administration in twenty institutions in BiH. The aim was to determine the extent to which public institutions apply the standards of transparency, accountability and integrity prescribed by laws and regulations. In order to do so, appropriate indicators were identified. Transparency indicators measure the existence of practice of preparing and disclosing relevant documents

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<sup>1</sup> Fifth Forum for Public Administration. Friedrich Ebert Stiftung, Public Administration Institute, [www.fes.hr](http://www.fes.hr)

<sup>2</sup> Perceptions of Public Administration in BiH (2014). Public Administration Reform Monitoring project – PARM. Sarajevo: Transparency International BiH

(reports, plans, etc.) that are essential for the work of the institution, as well as the institution's responsiveness to citizens in terms of proactive and reactive transparency. Accountability indicators show the extent to which vertical and horizontal accountability lines and mechanisms function within the institution. Also, these indicators show the extent to which the institution is accountable to other institutions to which it is by law obliged to report, or how institutions act towards the general public. Integrity indicators show the extent to which institutions recognise external and internal risks of irregularities, and the extent to which institutions act proactively to eliminate them.

## **2. METHODOLOGY AND ANALYSIS OF INFORMATION COLLECTED**

With a view to implementing the monitoring of the public administration reform, analysis was made of the work of institutions at the state and entity levels, as well as in Brčko District for 2013 because of the availability of data. The analysed sample included five institutions at the aforementioned levels of government, which were contacted with the aim of arranging meetings and ensuring collection of objective information.

It is important to note that an informative meeting was held with the representatives of all institutions, with the exception of the FBiH Ministry of Finance, and questionnaires were subsequently distributed, containing specific and precise questions relating to the identified indicators. Representatives of the FBiH Ministry of Finance refused to provide any information other than by replying to the request for information sent to them in accordance with the Freedom of Access to Information Law. Of the total of 20 institutions contacted, 17 responded to the call by submitting completed questionnaires or providing TI BiH representatives with all requested information in personal interviews. Of all the institutions included in the survey, only the Ministry of Justice of BiH did not respond to the said request. A meeting was held with the representatives of the Ministry, but they were unable to provide adequate information. The Government of Brčko District, specifically the Subdivision for Human Resources and the Mayor's Office found an excuse for failing to provide requested information in shared responsibilities among the institutions and the fact that other departments from the analysed sample had provided data relating to the their work as well.

Analysis of the transparency of institutions in BiH is greatly constrained by the fact that most institutions (at all levels) practice reactive transparency, disclosing very little public information or, alternatively, publishing it but in a largely opaque and inaccessible manner.

The next section will present the findings of the analysis of all data collected from the institutions across 11 defined parameters: disciplinary proceedings, lawsuits against the institutions, requests for access to information, budget, staffing plan, audit reports, temporary service contracts, public procurement, integrity plan, annual report, and recruitment. The reference year is 2013.

## 2.1. STATE LEVEL (BiH)

Five state-level institutions were analysed, as follows: Ministry of Justice of BiH, Civil Service Agency of BiH, Public Administration Reform Coordinator's Office, Ministry of Defence of BiH and Communications Regulatory Agency of BiH. Of these, only the Communications Regulatory Agency (CRA) was found to have initiated disciplinary proceedings in 2013, in one case. Sanctions imposed included a fine in the amount of 15% of the basic salary for a period of one month. Thus, of the total number of 673 employees in the analysed sample, disciplinary proceedings were instituted in only one case.

Two in three institutions at the state level did not have a single lawsuit filed against them in 2013. Of the five sampled institutions, one failed to provide information on the number of lawsuits, which is 20% of the total number of analysed institutions. The Ministry of Justice of BiH refused to answer questions about lawsuits brought against it by its employees or third parties.

Analysis further shows that **two institutions** did not have a single lawsuit filed against them by third parties or their employees, whereas the CRA had four lawsuits filed against it by third parties with regard to issues falling within the scope of the CRA's remit, and one labour dispute. The CRA noted that thus far not a single claim for damages lodged against it had been upheld in court and there had been no court rulings ordering the CRA to pay monetary claims of any kind and/or to reimburse the complainant for litigation costs. The Ministry of Defence of BiH had a total of 75 lawsuits filed against it, including eight suits brought by third parties and 67 brought by its employees. Interestingly, of the total number of suits filed against the sampled institutions at the state level, only 33% were settled.

Of the five analysed institutions, only the Ministry of Justice of BiH refused to disclose information on the number and nature of requests for access to information and their outcome. The remaining institutions have responded to all the requests and submitted the requested information. In 2013 PARCO received four requests for information, and the Ministry of Defence of BiH received the largest number of requests of all analysed institutions.

The most commonly requested information is:

- by natural persons – copies of labour-related documents and information on job competition procedures;
- by legal persons – copies of issued decisions for the purposes of legal proceedings and access to documentation relating to public procurement (bidding documents).

The average number of requests for access to information filed by natural persons is nine (the analysed sample is four institutions). The average number of requests filed by legal persons in 2013 is identical to that of the requests filed by natural persons.

When asked about proactive transparency, most institutions highlight the following activities:

- online communication with interested parties;
- building platforms aimed at facilitating communication with customers;
- open channels for reporting irregularities/corruption online;
- activity reports available online;
- well-organised and regularly updated web page, containing the most commonly requested data.

The availability of detailed budgets and budget execution reports is an indicator of the financial accountability of institutions. All institutions in the analysed sample cited the following as sources of information on the budget and budget execution reports:

- Law on Budget of BiH Institutions and International Obligations of BiH for Year 2013,<sup>3</sup>
- Report on Budget Execution of BiH Institutions and International Obligations of BiH for 2013.

Freedom of Access to Information Law (Article 20) provides for the dissemination of an indexed register, quarterly statistics, detailed annual reports, etc., but institutions do not put in any extra effort to make such information publicly available. Most representatives of the analysed institutions are not even familiar with the concept of proactive transparency. It is evident that whatever obligation the Law failed to regulate is not implemented or put in practice by institutions, especially in terms of ensuring quicker and easier access to documents containing detailed information about budgets, spending, budget execution, etc. In this analysis, at least **one of the five institutions** submitted rough estimates of actual expenditures vs. planned expenditures, rather than actual monetary amounts, which greatly complicates assessment and analysis.

Of the five analysed institutions at the state level, **only one institution** has a publicly available staffing plan. Other institutions cite the absence of a legal obligation in this respect as the reason for non-disclosure. Interestingly, a representative of a state-level institution noted that the staffing plan is revised whenever considered necessary.

In **each state-level institution** there is a discrepancy between the number of positions defined under the staffing plan and the actual number of employees. Inadequate staffing levels at key positions and poor information flow between departments increase the risk of failing to detect flaws in the work.

The report on the audit of the Report on Budget Execution of BiH Institutions for 2013<sup>4</sup> by the Audit Office is a good indicator of the accountability of institutions at the state level. Audit Office provides an assessment of financial operations within

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<sup>3</sup> Official Gazette of BiH, no. 100/12

<sup>4</sup> Report on the Audit of the Report on Budget Execution of BiH Institutions for 2013, No. 01/02/03-07-16-1-722/14, Sarajevo: Office for Audit of Institutions of FBiH, September 2014



the institution. It was found that **a significant number of recommendations** made in the audit reports **had not been carried out**. The recommendations were mostly related to public procurement, budget funds spent on temporary service contracts, as well as the ratio between funds budgeted and funds actually spent.

The number of temporary service contracts and the terms of reference defined under these contracts, especially when compared to the subsequent outcome of job competitions, can provide insight into the extent to which the integrity of the recruitment process has been ensured and whether there has been any abuse. In 2013 institutions at the state level concluded an average of 11 contracts each. Average amount allocated for the purpose of settling obligations arising from temporary service contracts is KM 31.152,85, an average of 0.982% of the approved budget funds of the analysed institutions.

The largest number of temporary service contracts was concluded by the Communications Regulatory Agency of BiH, as many as 29 in 2013. Also, it is important to note that, due to the inability to recruit and the simultaneous need for workforce, some institutions use temporary service contracts to hire staff to positions that are envisaged under the staffing plan. This is the case with the Civil Service Agency of BiH, where temporary service contracts for positions that are envisaged under the staffing plan make up 50% of the total number of signed temporary service contracts.

The most common scopes of temporary service contracts are as follows:

- cleaning of office premises, securing monitoring stations, translating, proofreading, expert testimony, advisory committee, volunteer work, project work;
- organisation of events to mark important dates and religious holidays;
- managing administrative and other tasks, project implementation activities, tasks related to the creation of information, making presentations, analytical work, preparing and organising meetings, preparation of information, proofreading and translation jobs, and tasks related to the review of drafted bidding documents;
- courier services, tasks related to the implementation of bidding procedures;
- tasks related to the drafting of particular legislation.

Of the five institutions analysed, **three** have procurement plans in place, but they are not publicly available.

The most commonly used public procurement procedures are as follows:

- Open procedure;
- Negotiated procedure without publication of procurement notice;
- Competitive request for quotations with and without publication of notice;
- Direct agreement.

In the analysed sample of state-level institutions, the most commonly used public procurement procedure is direct agreement and the largest amounts of budgetary resources go for procurement resulting from direct agreements. At the same time it

should be remembered that the direct agreement procedure is used for the procurement of supplies, services, or works whose value is equal to or below KM 3,000. Direct agreement is the procedure in which the contracting authority solicits a written proposal of price or bid from one or more suppliers, service providers or contractors and then negotiates or accepts that price, as the condition for final agreement. The total annual value of all purchases made under the direct agreement cannot exceed 10% of the total annual procurement budget of the contracting authority.<sup>5</sup>

**Only one** of the five surveyed institutions (CSA BiH) had an integrity plan in place as at the end of 2013.

Each institution prepares Annual Activity Reports along with a review of activities implemented and results achieved in a given year, but access to these reports remains limited, as is also the case with information on the budget and its execution. Information on the budget and its execution can be found in the Official Gazette or on the website of the Audit Office. State-level institutions, however, do not publish detailed budgets or relevant institutions' reports on their websites. Annual report is an indication of an institution's accountability and compliance with the law, as well as financial accountability in terms of prudent spending of budget funds made available to it.

Transparency of the recruitment process, its compliance with the staffing plan, and the method and outcome of selection is an indicator of accountability in the recruitment decision-making process. Pursuant to the decision of the Agency for Personal Data Protection in BiH, institutions are prohibited from disclosing personal data of candidates in the selection process. This means that only CSA BiH advertises vacancies and implements job competition procedures, while other institutions rarely relay vacancies advertised by CSA BiH. In 2013 each of the five analysed institutions recruited an average of five persons. All analysed institutions remain below their envisaged staffing levels due to budgetary and legal constraints.

Article 19 of the Law on Civil Service in the Institutions of BiH<sup>6</sup> regulates the manner and conditions of recruitment of civil servants. For example, in CSA BiH there was a case where people were hired on the basis of temporary service contracts for a position that is envisaged under the staffing plan, but since law prevents further recruitments CSA BiH had to fill the envisaged position in this way. The Audit Office<sup>7</sup> warns that it is necessary to find appropriate solutions for continuous engagement on the basis of temporary service contracts for legal and courier tasks, while taking into account the volume of Agency's regular activities and efficient use of budgeted funds. The fact that temporary service contracts are often renewed year after year shows that such jobs are not temporary and should not be performed in this way.

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<sup>5</sup> Rules on Direct Agreement Procedure ("Official Gazette of BiH", no. 53/06)

<sup>6</sup> "Official Gazette of BiH", nos. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10 and 40/12

<sup>7</sup> Financial Audit of the Civil Service Agency of BiH for 2013 (June 2014), p. 11

Temporary service contracts are an opaque way of hiring staff, which is unacceptable when it comes to the public sector.

Findings shown by individual institutions:

**MINISTRY OF JUSTICE OF BiH<sup>8</sup>**

- 237 employees.
- 2013 budget: KM 14,476,000.00.
- Temporary service contracts (KM 46,593): expenditure for contracts relating to translation and proofreading services (KM 25,884) and contracts concluded with judges and prosecutors for drafting legislation (KM 17,309).
- According to the Ministry, the total value of public procurement in 2013 was KM 697,532 (exclusive of VAT). Of the total amount, contracts concluded by open procedure make up KM 439,529, by competitive request KM 149,559, and by direct agreement KM 108,444 (amounts are exclusive of VAT).
- In 2013, four judicial police officers, one adviser to the minister and two civil servants were recruited, while employment was terminated for five employees.

**CIVIL SERVICE AGENCY OF BOSNIA AND HERZEGOVINA (CSA BiH)**

- 23 employees.
- 2013 budget: KM 1,178,000.00.
- budget execution as at 31/12/2013 was KM 1,114,141 (95%).
- In 2013 a total of 11 requests for access to information were received, of which eight were filed by natural persons and three by legal persons.
- Natural persons usually seek information on job competitions and disciplinary proceedings. Legal persons, on the other hand, seek access to information such as personal data of employees, performance appraisal reports, temporary service contracts, etc. All requests were responded to (10 were accommodated, one was denied and an appeal was lodged, but the appeal was also turned down).
- Staffing plan – Annex to the Rules on Internal Organisation of the Agency (published online on Thursday, 29 April 2010). Adopted in May 2005, implemented and has not been revised since.  
Activities were initiated to adopt the Integrity Plan in accordance with the guidelines of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption. It was recommended that the Agency continue to develop the Integrity Plan with the aim of preventing corruption and establishing a corruption risk management system.
- Contracted services were realised in the amount of KM 275,825. Significant expenses included consumables (KM 5,222), continuing professional development services (KM 82,190), net royalties (KM 48,995), net

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<sup>8</sup> They did not submit a completed questionnaire. Data collected from the laws, audit reports and online publications.

commissions of other institutions (KM 77,000) and net temporary service contracts (KM 20,480).

Two temporary service contracts (KM 20,480 net, KM 25,884 gross): Courier – position not envisaged under the staffing plan, and Recruitment Officer – position envisaged under the staffing plan but remains vacant.

- In 2009 the Agency began to develop the Public Procurement Plan. The Plan is not publicly available because “public disclosure is not mandatory”. Type of procedures for awarding contracts: competitive request, direct agreement.
- Integrity Plan adopted. It has been implemented and the annual report has been sent.
- There were no competitions for recruitment in 2013 and, consequently, there was no newly employed staff.

### **PUBLIC ADMINISTRATION REFORM COORDINATOR'S OFFICE (PARCO)**

- 36 employees.
- 2013 budget: KM 1,445,000.00.
- There were no requests for information by natural persons in 2013, whereas legal persons filed a total of four requests. The information sought related to:
  - PARCO's activities relating to the implementation of the Action Plan for the Fight against Corruption
  - Public procurement process for projects financed from the PAR FundAll requests were responded to and access to information was granted. There were no fines.
- PARCO's Annual Reports have been available on its website since 2008, as well as progress reports on the implementation of measures under AP 1 (RAP1)
- Staffing plan was adopted on 8 December 2005; however, it is not publicly available. Only the organisational chart was made publicly available. Staffing plan has been implemented; it has been revised three times, but not in 2013.
- Seven temporary service contracts were concluded in 2013. Expenditure for temporary service contracts as at 31/12/2013 was KM 25,168.

Scopes of temporary service contracts were:

- cleaning services for a monthly fee of KM 600;
- managing administrative and other tasks for the PAR Coordinator for a monthly fee of KM 940;
- carrying out activities relating to the implementation of the Budget Management Information Systems (BMIS) project, activities relating to expanding the BMIS project in the part relating to the purchase of additional licenses and salary planning modules, for a fee of KM 1,178;
- drawing up information for the purposes of the PAR Coordinator, making presentations about PAR, analytical work on PAR and comparison of PAR in BiH and other countries, for a fee of 1,178 KM;
- preparation and organisation of meetings of the PAR Fund, preparation and organisation of voting of Management Board members of the PAR Fund in the written harmonisation procedure, drawing up information

about the PAR Fund and projects financed by the PAR Fund, for a monthly fee of 1,178 KM;

- proofreading and translation services for a fee of 500 KM; and
- in 2013 one person was hired on four occasions to perform a review of prepared bidding documents for a fee of KM 500 in March, KM 100 in July and KM 200 in September and December.
- There is a Procurement Plan in place – for public procurement for the purposes of the Public Administration Reform Coordinator’s Office, while no separate procurement plan was prepared for projects financed from the PAR Fund. A list of priority projects to be financed through the PAR Fund is prepared and revised on an annual basis. The Public Procurement Plan is not publicly available.
- Types of procedures used for awarding contracts were as follows: five procedures in 2013 for projects financed from the PAR Fund, one of which was the negotiated procedure without publication of notice, two restricted procedures, one open procedure and one competitive request for quotations.  
Five procedures through competitive request, and seven direct agreements – procurement for the needs of the Public Administration Reform Coordinator’s Office.
- Integrity Plan has not been adopted.
- Three job competitions were advertised (two public and one internal). Three new staff were employed, while two left the institution. All information about the job competition procedures, except the names of the candidates, is publicly available (pursuant to the decision of the Agency for Personal Data Protection in BiH, the Civil Service Agency of BiH and other institutions are prohibited from publishing personal data of candidates in the selection process).

#### **MINISTRY OF DEFENCE OF BiH (MoD)**

- 258 employees.
- 2013 budget: KM 291,068,000.00.
- There were no disciplinary proceedings.
- Eight lawsuits were brought against the institution by third parties, 67 lawsuits by its employees. Most of the lawsuits are still pending. Lawsuits have had an unfavourable outcome for the institution.
- In 2013 a total of 22 requests for access to information were filed by natural persons, and 12 by legal persons. Natural persons usually seek copies of labour-related documents for the purpose of accessing various rights. Legal persons, on the other hand, seek access to documents relating primarily to public procurement, specifically bidding documentation. Response rate was 100% (24 positive, 10 negative). There were no fines for infringements committed by the competent public institution.
- The budget of the institution is publicly available (in the Official Gazette of BiH); budget execution report is publicly available (via the Ministry of Finance and Treasury of BiH), staffing plan has been in place since 28 July 2006 and

has been implemented. It is not publicly available (the information was made available in accordance with the Freedom of Access to Information Law). It has been revised once.

- Audit reports: qualified opinion.
- Seven temporary service contracts were signed. The amount of funds used to finance the service contracts was KM 7,065.25. The scope of contracts: marking the dates significant for the Armed Forces of BiH (AF BiH), religious dates, etc. Instruction on the procedure for concluding temporary service contracts in the MoD and the AF BiH was issued by the defence minister.
- Procurement plan is in place and publicly available. The most commonly used procurement procedures: open procedure; negotiated procedure without publication of a procurement notice; competitive request for quotations with and without publication; direct agreement.  
44 public procurement procedures were initiated in 2013, and 232 public procurement contracts were awarded .
- Integrity Plan has not been adopted.
- Four job competitions were advertised in 2013 (3+1 trainee); 20 new staff were employed in the reference year (11+9 trainees). Information about the job competitions is publicly available.

#### **COMMUNICATIONS REGULATORY AGENCY OF BiH (CRA BiH)**

- 119 employees.
- 2013 budget: KM 7,843,000.00.
- One disciplinary proceedings – imposed sanctions: fine in the amount of 15% of the basic salary for a period of one month.
- Number of lawsuits lodged against the institution by third parties: four lawsuits relating to CRA's main scope of activity (one suit was rejected by the decision of the Court of BiH, one was dismissed as having no merit by the judgement of the Court of BiH, the remaining two lawsuits are pending before the Court of BiH). Number of lawsuits lodged against the institution by its employees: one labour dispute which is still pending before [text missing]. Thus far not a single claim for damages lodged against the CRA has been upheld in court and there have been no court rulings ordering the CRA to pay monetary claims of any kind and/or to reimburse the complainant for litigation costs.
- CRA received five requests for access to information filed by natural persons. The most commonly requested information concerns transmitters' locations, the number of Internet users, etc.  
Fifteen requests for access to information were filed by legal persons. The most commonly requested information included copies of various decisions issued by the CRA which were needed for litigation purposes, information regarding frequencies, information related to the operations of the CRA, etc. All requests for information were responded to in a timely manner. Also, all requests were accommodated (i.e. access to the requested information was granted).

- Staffing plan – Rules on Internal Organisation of the CRA were adopted in 2008 and were subsequently implemented. They are not publicly available, as disclosure is not mandatory. They were not amended or revised in 2013; otherwise, they are revised when needed.
- Number of temporary service contracts: 29. The amount of funds spent for the financing of temporary service contracts: KM 51,054
- Public procurement procedures initiated: two negotiated procedures, three open procedures, 21 competitive procedures and 133 direct agreements. Contracts awarded: two through negotiated procedure, six through open procedure, 21 through competitive procedure, and 28 through direct agreement.
- Job competitions advertised in the reference year: two for recruitment of staff and two for recruitment of trainees for a period of one year. In two of the competitions procedures were completed in December 2013 and January 2014, meaning that recruitments were not rendered effective until 2014. Employed: two persons of which one staff and one trainee; the remaining two persons as per competitions advertised in 2013 were employed in 2014.

**Conclusions:**

- *Only 33% of lawsuits against state-level institutions have been settled (completed).*
- *Of the total number of lawsuits brought against state-level institutions surveyed, 85% were lodged by employees.*
- *Of the five state-level institutions surveyed, only one has a publicly available staffing plan. Other institutions justify their non-disclosure by the lack of legal obligation in this respect.*
- *In each state-level institution there is a discrepancy between the number of positions envisaged under the staffing plan and the actual number of employees.*
- *According to the findings of the Audit Office, a considerable number of recommendations presented in previous audit reports have not been implemented.*
- *Based on collected data, it can be concluded that state-level institutions have not done much to prevent irregularities and eliminate bottlenecks, as only one of the five surveyed institutions (CSA BiH) had an integrity plan in place as at the end of 2013.*
- *The fact that temporary service contracts are often renewed year after year shows that such jobs are not temporary and should not be performed in this way. Temporary service contracts are an opaque way of hiring staff, which is unacceptable when it comes to the public sector.*

**2.2. FEDERATION OF BOSNIA AND HERZEGOVINA (FBiH)**

The following institutions at the level of FBiH were included in the monitoring survey: Ministry of Justice of FBiH, Ministry of Finance of FBiH, Ministry of Education and Science of FBiH, Civil Service Agency of FBiH and Tax Administration of FBiH.

Disciplinary proceedings were found to have been initiated in only one of the five institutions, namely the Tax Administration of FBiH – a total of seven proceedings in 2013. Four disciplinary proceedings resulted in: a 10-day suspension from work and suspension of salary, a 2-day suspension from work and suspension of salary, a suspension due to the initiation of criminal proceedings and written public reprimand. The remaining three disciplinary proceedings were stayed because of the statute of limitations, which is approximately 43% of the disciplinary proceedings initiated in this institution.

The number of lawsuits lodged by third parties against an institution can serve as an indicator for determining the degree of its compliance with the law on administrative procedure and labour law. Litigations against institutions may result in substantial losses to the budget of institutions; however, institutions in the observed sample did not incur any such losses in the reference year. Of the five institutions surveyed, **three institutions** had lawsuits brought against them by third parties, as follows: Ministry of Finance of FBiH, Ministry of Education and Science of FBiH and the Civil Service Agency of FBiH (CSA FBiH). The number of lawsuits lodged by third parties against the analysed institutions at the level of FBiH is 17, but the outcomes of these lawsuits are not yet known. At the same time, these institutions have the highest share of lawsuits lodged against them by employees, a total of 42. Of these, 34 had an unfavourable outcome for the institution (80.95%). The total number of lawsuits brought against the analysed institutions at the level of FBiH is 59, of which 71.19% were lodged by employees.

The extremely high number of lawsuits lodged by employees as well as their negative outcomes for the institutions indicate that the institutions do not comply with applicable labour legislation, which results in budgetary losses. Most of the institutions in the sample were not able to supply accurate data on the amounts of monetary compensation on this basis, what with the fact that litigations were still in progress and their outcomes were still uncertain, what with the decision by responsible individuals not to provide access to this information. For example, one lawsuit brought against the Tax Administration of FBiH by its employee alone resulted in a loss to the institution's budget to the tune of KM 4,662.93. This is but one example and, taken alone, it cannot serve as the basis for calculating the average amount of funds that need to be allocated for these purposes, but it can serve as an indicator of the lack of transparency of FBiH institutions. Of the five institutions analysed in this monitoring survey, only the FBiH Ministry of Justice submitted information on the total amount of claims resulting from lawsuits lodged against the institution by its employees. The total amount of claims is KM 220,734.71 exclusive of default interests whose amount will depend on the manner of execution.

The number of requests for access to information can be an indicator of proactive transparency, whereas the type and distribution of decisions taken on these requests is a reliable indicator of how transparent institutions are. Feedback information on the number and nature of requests for access to information as well



as their outcomes was collected from all five institutions. The information requested typically concern issues falling within the institution's scope of work as defined under applicable legal provisions. The average number of requests for access to information filed in 2013 by natural persons was 30, and by legal persons 82. The institutions responded to all requests. Based on the number of requests filed, it is evident that more effort need to be put in to increase transparency of the institutions at the entity level, because a lot of man hours are wasted on subsequent and individual communication of collected data rather than making the information publicly available and transparent before receiving the requests. Some of the most frequently requested information includes:

- by natural persons – information about the employment status of persons; information relating to the reports filed with the administrative inspectorate of FBiH; information relating to the register of civic associations; information about pardons; records of cash payments arising from old foreign currency savings; information about project grants; data relating to bidding procedures in which information seekers participate as candidates.
- by legal persons – information about the employment status of persons; information relating to the register of civic associations; additional information for the purposes of judicial investigations; proposed amendments to the budget; information about the funds raised for protection from natural disasters.

The fewest requests for access to information were filed with the Ministry of Education and Science of FBiH. The reason for this may be that the Ministry did a great job in terms of proactive transparency and decided to make most of the information publicly available or, exactly the opposite, that it did not put in place a mechanism whereby the information can be accessed (guide, guidelines, etc.), and the public is therefore not sufficiently aware of how it can access the data and information. Despite the statutory obligation to do so, institutions do not publish guides to facilitate access to information for citizens, and do not sufficiently promote the Freedom of Access to Information Law. Natural persons often do not know their rights, a fact that institutions use to maintain an exclusive right to the data and information they generate, even though this information is of public interest and constitute a public good. Another big problem when it comes to access to information is posed by unclear division of responsibilities between institutions in BiH, which complicates and slows down the process.

From the perspective of proactive transparency, representatives of two of the five institutions analysed in this survey cite the publication of the Access to Information Guide on their websites. However, this is just one in a series of legal obligations that institutions are supposed to meet.<sup>9</sup> Among the analysed institutions at the entity level, there are even those that are completely unfamiliar with the concept of proactive transparency.

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<sup>9</sup> Freedom of Access to Information Law of FBiH, "Official Gazette of FBiH", no. 32/01, Article 20

All institutions in the analysed sample cite the Official Gazette of FBiH as the source of information on the budget and budget execution. Institutions often report that the information on the budget and/or budget execution is available on their websites or the website of the FBiH Ministry of Finance. However, this has proved to be untrue, or, alternatively, the information might have been published in the past, but the practice of regular updating was subsequently discontinued. The fact that institutions do not publish budgets and/or detailed budgets through regular and free distribution channels makes them insufficiently transparent and responsive and calls into question their financial accountability. Reasons for this may include the poor computer literacy and lack of awareness among the public of how and where to access this information.

From the foregoing it follows that no institution at the FBiH level has made progress towards proactive transparency and financial accountability. What is more, even the applicable legal provisions are not complied with in full. The Freedom of Access to Information Law in FBiH<sup>10</sup> lays down a requirement for public authorities to publish an index register containing the types of information in the control of the public authority, the form in which the information is available, as well as where that information may be accessed, quarterly data/statistics, annual reports on the budget, etc. However, the FBiH institutions analysed in this monitoring survey do not comply with this legal obligation, especially insofar as it relates to publishing a simpler and easy-to-use set of documents containing information about the budget, spending, budget execution, etc.

Of the five institutions analysed at the level of FBiH, not a single one has a publicly available staffing plan, and only one institution has the organisational chart published on its website. The usual reason cited by the institutions for not disclosing this type of data is the absence of a legal obligation in this respect. In each FBiH institution analysed there is a discrepancy between the number of positions envisaged under the official staffing plan and the actual number of employees. This problem is particularly acute in the Ministry of Finance of FBiH. The Ministry's Rules on Internal Organisation and Staffing provide for 235 positions, whereas as at 31/12/2013 there were only 135 employees.<sup>11</sup> Inadequate staffing levels for key positions as well as poor information flow between departments increases the risk of errors in work and can affect the timely performance of duties and tasks falling within the competence of the institution. Also, a properly prepared and adopted staffing plan, which is publicly available and properly implemented, is an indicator of the accountability and integrity of decision-makers within the institution and outside it.

The audit reports of the Office for Audit of Institutions of FBiH (hereinafter: the Office) are published on the Office's website. When asked about audit reports, all FBiH institutions included in this analysis either provided the Office's information or suggested that the information should be available from the FBiH Ministry of

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<sup>10</sup> Official Gazette of the FBiH, no. 32/01, Article 20

<sup>11</sup> Office for Audit of Institutions of FBiH. Report on the audit of the financial statements of the FBiH Ministry of Finance for 2013

Finance. None of the analysed institutions in FBiH have published on their websites the audit report concerning their work, nor have they made the auditor's recommendations and observations available for public scrutiny. Audit reports for analysed FBiH institutions contain recommendations relating to public procurement, temporary service contracts with reference to the positions envisaged under the official staffing plan which are subject to this type of contracting, budget execution, etc. The Office conducted a performance audit of FBiH institutions, which concerned *inter alia* temporary service contracts, and estimated that the FBiH institutions could reduce costs and generate substantial savings which could be directed to other projects with the potential to create added value. In 2013 as much as KM 13,609,414 (in net terms) was allocated for temporary service contracts alone, an increase by KM 10,209,998 over the previous year when the amount allocated for this purpose was KM 3,399,416. However, it should be noted that the expenditure presented above includes expenses for temporary service contracts paid out through the FBiH Statistics Bureau to enumerators and instructors for the 2013 census to the tune of KM 10,640,283.<sup>12</sup>

The audit<sup>13</sup> found that the institutions at the FBiH level had failed to take all necessary measures to address inefficient public spending including allocations for temporary service contracts. Based on the above, the audit team noted:

- FBiH institutions had failed to reduce the expenses for temporary service contracts.
- There was no verification of the regularity or justification of concluded temporary service contracts.
- There were shortcomings in the planning of temporary service contracts.
- Temporary service contracts were often concluded with the same persons.
- Temporary service contracts were usually concluded independently by managers of FBiH institutions.
- There were no procedures in place to monitor the concluded contracts.
- FBiH institutions did not provide enough information about temporary service contracts.

The audit team of the Office for Audit of Institutions of FBiH found that the majority of FBiH institutions had failed to comply with the government's commitment to reduce wasteful public spending.<sup>14</sup> Some activities did manage to improve the process to a certain extent, but they did not contribute significantly to cutting the aggregate expenditure for temporary service contracts. There are no clear rules for the disbursement of funds for temporary service contracts, with the exception of the Decision on the Method of Determining the Amount of Remuneration for the Working Bodies Established by the Government of FBiH and the Heads of the FBiH Civil Service Bodies. Audit reports for individual FBiH institutions also indicate a

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<sup>12</sup> Office for Audit of Institutions of FBiH. Audit report on the execution of the FBiH budget for 2013. Sarajevo, July 2014

<sup>13</sup> Performance Audit: Expenditure of public funds from the FBiH budget for temporary service contracts. Sarajevo: Office for Audit of Institutions of FBiH, January 2014

<sup>14</sup> Performance Audit: Expenditure of public funds from the FBiH budget for temporary service contracts. Sarajevo: Office for Audit of Institutions of FBiH, January 2014

problem related to temporary service contracts, namely that institutions often use temporary service contracts to contract services that are envisaged under the official staffing plan as constituting an integral part of a specific position. For example, as regards the Ministry of Justice of FBiH, the audit could not find any justification for the expenditure to the tune of KM 24,000.00 (net) incurred under the temporary service contract for the provision of professional services in harmonising proposed legislation with the EU legislation, as well as internal and external communication between competent institutions in respect of the implementation of the Action Plan for Judicial Reform. The contracts were concluded for periods from 01/07/2012 to 01/07/2013 and from 01/07/2013 to 01/07/2014 (monthly net fee KM 2.000,00) even though the tasks of coordinating the implementation of EU integration-related strategies and policies were already envisaged as regular tasks of the Ministry under the Ministry's Rules on Internal Organisation and Staffing.<sup>15</sup>

Of the five analysed institutions in FBiH, **one institution**, namely the Ministry of Finance of FBiH, was found to have no procurement plan in place, while other institutions do have such plans in place but do not make them publicly available on the grounds that the law does not provide for mandatory disclosure. The public procurement procedures most commonly used by the FBiH institutions included in this survey were as follows:

- Open procedure;
- Negotiated procedure;
- Competitive request for quotations with and without publication of notice;
- Direct agreement.

In performing an audit of the financial statements of the Tax Administration of FBiH, the Audit Office found that the provision of Article 12, paragraph b) item 4 of the Public Procurement Law of BiH had not been consistently complied with in selecting suppliers for the supply and delivery of office supplies and stationery, namely, toners and cartridges. A total of KM 343,840.00 inclusive of VAT was spent for this purpose. Also, a violation of provisions contained in Articles 6 and 10 of the Public Procurement Law of BiH was found in the procurement of 30 computers (KM 55,053.00 inclusive of VAT) resulting from the failure to implement the appropriate procurement procedure. Further, a violation of the statutory time period for the conclusion of a procurement contract under Article 39 of the Public Procurement Law of BiH was found in the procurement of office supplies and accessories (toners and cartridges), maintenance services for licensed software and services relating to licence extension for one year-support for licensed software.<sup>16</sup> This is just one of the problems identified by the Audit Office in the area of public procurement. The list of irregularities does not stop here, however. For example, in 2013 the Ministry of Justice of FBiH conducted seven procurement procedures with the following outcomes:

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<sup>15</sup> Report on the audit of the financial statements of the Ministry of Justice of FBiH as at 31 December 2013, no. 03-10/14. Sarajevo: Office for Audit of Institutions of FBiH, May 2014, p. 2, paragraph 6.1.1.2.

<sup>16</sup> Report on the audit of the financial statements of the Tax Administration of FBiH for 2013, Paragraph 1, Item 8

- three contracts awarded through open procedure to the tune of KM 95,445.41 inclusive of VAT,
- one competitive request to the tune of KM 11,083.69 inclusive of VAT,
- three contracts by direct agreement to the tune of KM 15,364.78 inclusive of VAT.

(two procedures have not been completed because the number of eligible bids was below three and as such did not provide for genuine competition on the contract in question.)

Procurement by direct agreement made up 31% of total procurement spending, i.e. 21% of the original plan. This is in clear contravention of the Public Procurement Law, which stipulates that the total value of procurement by direct agreement must not exceed 10% of total procurement. It is important to note that, despite this legal provision, direct agreement remains the most commonly used public procurement procedure in the analysed sample of institutions in FBiH.

**Only one of the five** analysed institutions in FBiH (namely the Ministry of Justice of FBiH), had an integrity plan in place as at the end of 2013. Representatives of one of the institutions were not even able to provide an adequate response as to the existence of the Integrity Plan. Consequently, the observed trend of failures to prevent irregularities and eliminate bottlenecks in the system is replicated from the state to the FBiH level.

All institutions prepare annual activity reports, but access to them is limited. The same is true of information relating to the budget and its execution.

Pursuant to the decision of the Agency for Personal Data Protection in BiH, institutions are prohibited from disclosing personal data of candidates in the selection process. This means that only CSA FBiH advertises vacancies and implements job competition procedures on behalf of all other institutions, while other institutions rarely relay vacancies advertised by CSA FBiH. In 2013 in the five institutions included in this survey a total of 25 vacancies were advertised and 15 civil servants were employed. The largest number of newly employed staff was in the Ministry of Finance of FBiH – nine. All analysed institutions in FBiH remain below their envisaged staffing levels due to budgetary and legal constraints.

#### Findings shown by individual institutions:

##### **MINISTRY OF JUSTICE OF FBiH**

- 42 employees.
- There were no disciplinary proceedings.
- There were no lawsuits lodged against the institution by third parties. There were eight lawsuits brought by employees, concerning meal allowances, holiday bonuses, and jubilee awards for 2011 and 2012. All first-instance rulings are final and binding. Binding decisions were issued in all lawsuits. All lawsuits had an unfavourable outcome for the Ministry.

The overall amount claimed from the Ministry is KM 220,734.71 exclusive of default interest.

- 23 requests for access to information were filed by natural persons and 18 by legal persons.
- Staffing Plan is contained in the Rules on Internal Organisation of the Ministry of Justice of FBiH dated 4 September 2012. Regulation Amending the Rules on Internal Organisation of the Ministry of Justice of FBiH of 5 June 2013. Regulation Amending the Rules on Internal Organisation of the Ministry of Justice of FBiH of 4 October 2013. Staffing Plan is available to all employees; Rules on Internal Organisation available online on [www.fmp.gov.ba](http://www.fmp.gov.ba). Staffing Plan is partially implemented, currently in effect is the conclusion of the FBiH Government barring further employment.
- Qualified auditor's opinion.
- Five temporary service contracts were concluded. The amount of funds used to finance the service contracts was KM 33,350.00
- Public procurement plan is in place. It is not publicly available because disclosure is not mandatory under by the Public Procurement Law. Procedures used for contract awarding: open procedures, competitive request and direct agreements. In 2013 there were four open procedures with a framework agreement, one competitive request and 88 direct agreements. A total of seven contracts were awarded.
- Procurement by direct agreement made up 31% of total procurement spending, i.e. 21% of the original plan, which is in contravention of the Public Procurement Law, which stipulates that the total value of procurement by direct agreement must not exceed 10% of total procurement.
- Integrity Plan was adopted.
- In 2013, one vacancy was advertised for a trainee with university education for a fixed term contract under the Trainee Co-financing Programme of the Employment Bureau of KSD. One trainee was employed. The competition procedure was conducted by the Civil Service Agency of FBiH.

#### **MINISTRY OF FINANCE OF FBiH**

- 135 employees.
- There were no disciplinary proceedings.
- Third parties brought four lawsuits against the institution in 2013 plus four lawsuits were lodged in previous years but were still pending in 2013. Employees brought one lawsuit against the institution in 2013 plus there were four lawsuits lodged in previous years but still pending in 2013.
- Natural persons filed six requests for access to information and legal persons filed three requests. All requests for information were responded to.
- The staffing plan was adopted on 17 January 2013, implemented, has been revised.

- Rules on Internal Organisation and Staffing provide for 235 positions, as at 31/12/2013 there were 135 employees. This may adversely affect the timely performance of duties and tasks within the Ministry's remit.<sup>17</sup>
- Qualified auditor's opinion
- 75 temporary service contracts were concluded.
- The amount of funds used to finance the service contracts was KM 102,110.00.
- Scopes of the temporary service contracts: analyses, technical expert opinions, studies and proposals for solutions to specific problems, as well as performance of other tasks and activities that are necessary for better and efficient functioning of the Ministry.
- Expenditures for temporary service contracts for external experts were to the tune of KM 122,093 (net). Having examined the presented documentation, the Audit Office found that in 2013 the service contracts were concluded throughout the year for regular activities envisaged under the Ministry's Rules on Internal Organisation
- There is no public procurement plan in place. Procedures used for contract awarding: open procedure, negotiated procedure and competitive request. 14 public procurement procedures were initiated in the reference year, 14 contracts were awarded.
- Integrity Plan was not adopted.
- 20 vacancies were advertised for the recruitment of 20 civil servants. Nine persons were employed in the reference year.

#### **MINISTRY OF EDUCATION AND SCIENCE OF FBiH**

- 44 employees.
- 2013 budget: KM 8,778,734.
- There were no disciplinary proceedings
- In 2013 third parties brought five lawsuits against the institution and employees lodged 12. Ten lawsuits were completed, of which nine had an unfavourable outcome. Some of the lawsuits are still pending so it is still not possible to specify the amount of all monetary expenses.
- There were no requests for access to information filed by natural persons, and there was only one request filed by a legal person for access to information about a procurement procedure. Access to that information was granted. There were no fines for violations committed by the institution. Proactive transparency: information about activities of the Ministry and the Minister as well as all public calls for the allocation of funds and the results thereof are regularly published on the Ministry's official website.
- Staffing Plan was adopted in 2012. It is not publicly available. 44 of 50 positions envisaged under the Staffing Plan were filled as at 31/12/2013. Staffing Plan was not revised or amended in 2013.
- There were no temporary service contracts

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<sup>17</sup> Office for Audit of Institutions of FBiH, Report on the audit of the financial statements of the FBiH Ministry of Finance for 2013

- There is a public procurement plan in place. It is not publicly available (disclosure was not mandatory before the entry into force of the new Public Procurement Law). Procedures used for contract awarding: competitive request for quotations and direct agreement. In 2013 ten public procurement procedures were initiated. Nine public procurement contracts were awarded.
- Integrity Plan was not adopted.
- Two vacancies were advertised in the reference year, one person was employed.

#### **CIVIL SERVICE AGENCY OF FBiH**

- 56 employees.
- There were no disciplinary proceedings.
- Eight lawsuits against the institution were lodged by third parties and 15 by employees (collection of receivables arising from employment). The lawsuits are pending before the competent courts. Lawsuits brought by employees for collection of receivables arising from employment had a negative outcome for the Agency.
- There were 41 request for access to information filed by natural persons. The most commonly requested information related to bidding procedures in which information seekers participated as candidates. There were no requests for access to information filed by legal persons. In 2013, the Agency received a total of 41 requests for access to information in accordance with the provisions of the Freedom of Access to Information Law.
- Staffing Plan exists as part of the Rules on the Internal Organisation of the Civil Service Agency of FBiH No. 01-02-5-189/12 dated 21 May 2012 (V. 1458/2012 dated 05 November 2012). It is not available on the Agency's website. It was not revised or amended in 2013.
- Number of temporary service contracts concluded in 2013: six service contracts concluded with two persons (two contracts with one person and four contracts with the other). Those were contracts with cleaning ladies for the Agency's departments based in Mostar and Livno; one contract for building maintenance; 15 temporary service contracts with trainers for training under the Regulation on the Criteria for the Status of Trainers in the Implementation of Vocational Education and Training of Civil Servants in the Civil Service in FBiH
- The Agency has a public procurement plan in place, but it is not publicly available. Types of procedures used for contract awarding: competitive request for quotations, negotiated procedure and direct agreement. In 2013 a total of 29 public procurement procedures were initiated and 29 procurement contracts were awarded.
- Integrity Plan was not adopted.



## TAX ADMINISTRATION OF FBiH

- 1,250 employees.
- Seven disciplinary proceedings. Three proceedings were stayed because of the statute of limitations. Sanctions imposed: two-day suspension from work and suspension of salary; suspension due to instituted criminal proceedings; public written reprimand; ten-day suspension from work and suspension of salary.
- There were no lawsuits lodged against the institution by third parties. Six lawsuits were brought against the institution by its employees, of which five are still pending and one is completed. One lawsuit had a negative outcome for the institution, and the amount of all expenses (damages and legal costs) in lawsuits against the institution was KM 4,662.93
- The institution received 82 request for access the information filed by natural persons. Information requested: information about the employment status of persons. Legal persons filed a total of 392 requests for access to information. Information requested: information about the employment status of persons. 474 requests for access to information were responded to.
- Staffing Plan was adopted on 5 June 2013 and subsequently implemented. It is not publicly available.
- Six temporary service contracts were concluded. The amount of funds used to finance the service contracts was KM 16,200.00. Contracts were concluded for jobs that are not envisaged under normative acts and for temporary jobs.
- The institution has a public procurement plan in place, however, it is not publicly available. Types of procedures used for contract awarding: open procedure – 16; negotiated procedure without publication of procurement notice – 6; competitive request for quotations – 9; direct agreement – 20. In total, 51 public procurement procedures were initiated in 2013, and 51 public procurement contracts were awarded.
- The institution prepared its annual report, which was adopted by the Government of the Federation BiH. It is not publicly available because it was prepared in accordance with the Regulation on Strategic Planning, Annual Planning and Reporting in the FBiH Ministries, which does not provide for mandatory disclosure of annual reports.
- In 2013, one vacancy and one public competition were advertised and one consensual transition was completed. Four persons were employed. Information about the job competition procedure conducted is publicly accessible on the website of the Civil Service Agency

### **Conclusions:**

- *Approximately 43% of disciplinary proceedings became statute-barred. This begs the question of how efficient institutions at the FBiH level are in handling disciplinary proceedings, and whether that explains the comparatively small number of instituted disciplinary proceedings relative to the total number of employees in the sample.*
- *The survey shows that 71% of lawsuits against the analysed institutions at the FBiH level were those lodged by employees.*

- *Of 42 lawsuits, 34 had a negative outcome for the institution, which is 80.95%. These findings indicate non-compliance with the Labour Law by the institutions at the FBiH level.*
- *The survey reveals that one lawsuit lodged by an employee of the FBiH Ministry of Justice in 2013 alone caused the Ministry to sustain a loss to the budget to the tune of KM 27,591.84.*
- *Among the analysed institutions, there are those whose representatives are completely unfamiliar with the concept of proactive transparency.*
- *Institutions at the FBiH level do not comply with the provisions of the Freedom of Access to Information Law.*
- *Of the five analysed institutions at the FBiH level, none have a publicly available staffing plan, and only one has an organisational chart published on its website.*
- *In each analysed institution at the FBiH level a discrepancy was found between the number of positions envisaged under the staffing plan and the actual number of employees.*
- *Audit reports for analysed FBiH institutions contain recommendations relating to public procurement, temporary service contracts with reference to the positions envisaged under the official staffing plan which are subject to this type of contracting, budget execution, etc.*
- *Of the five analysed institutions at the FBiH level, one was found to have no procurement plan in place, while other institutions do have such plans in place but do not make them publicly available on the grounds that the law does not provide for mandatory disclosure.*
- *Contrary to the relevant legal provision, direct agreement remains the most commonly used public procurement procedure in the analysed sample of institutions in FBiH.*
- *Only one of the five surveyed institutions at the FBiH level had an adopted integrity plan in place as at the end of 2013, and representatives of one of the institutions were not even able to provide an adequate response as to the existence of the Integrity Plan.*

### **2.3. REPUBLIKA SRPSKA (RS)**

This section presents the results of an analysis of the information gathered from five institutions in the Republika Srpska (RS): Ministry of Justice of RS, Ministry of Finance of RS, Ministry of Labour, War Veterans and Disabled Persons' Protection of RS, Ministry of Public Administration and Local Self-Government of RS and Civil Service Agency of RS.

In the total sample of 325 employees in the five institutions at the RS level which were included in this monitoring survey there were no disciplinary proceedings in 2013, and no lawsuit brought against the selected institutions by their employees. All analysed institutions at the RS level were found to have revised or amended their staffing plans, with the sole exception of the Ministry of Labour, War Veterans and Disabled Persons' Protection, where the last staffing plan was adopted in 2014, while

only the Ministry of Justice made its Rules on Internal Organisation and Staffing<sup>18</sup> available on its website. In other institutions there is no disclosure practice in this respect and Rules are published only in the Official Gazette of RS, which is mandatory under the Law on the Publication of Laws and Other Regulations of the Republika Srpska. However, this statutory obligation does not exclude other types of disclosure and availability. Furthermore, given their importance and public nature, laws and regulations should be made available in different forms in order to allow for the closest possible public scrutiny.

In 2013, the five institutions included in this survey received a total of around 109 requests for access to information filed by natural persons. The exact number could not be determined based on the data made available by the institutions<sup>19</sup> because there is no practice of keeping a record of received requests. The survey has shown that there is no practice of proper recording, classification and analysis of requests for access to information, i.e. such records are not kept separately, which confirms the commonly held assumption that freedom of access to information is not taken seriously.

Most requests for access to information filed by natural persons were found in the Ministry of Labour, War Veterans and Disabled Persons' Protection (50) and the Ministry of Finance, the latter of which, when requests filed by legal persons are counted in, received by far the most requests for access to information in 2013, a total of 261. The total number of requests for access to information filed by legal persons in all five institutions is 233. It is important to note that all the institutions found it hard to identify the most frequently asked questions in terms of how come the received requests had never been analysed and processed according to their content and the interest expressed in them [*translator's note: the original sentence does not make much sense*]. It was therefore difficult to ascertain the exact number of refusals to grant access to information. The commonly cited excuse for that was the large number of requests received, whereas some of the institutions openly admitted the lack of practice of record-keeping and monitoring of outcomes in the procedures for exercising the right of access to information. This has only confirmed how little importance is given by the selected institutions to responsiveness and transparency, as well as that received requests are not routinely analysed.

Procedures conducted upon receipt of requests for access to information are contrary to the provisions of the relevant Law<sup>20</sup>, which provides that each public authority should appoint an Information Officer who shall process requests made in accordance with this Law. Based on the information collected in this survey, all institutions, with the exception of the Ministry of Finance, handle the requests such that they send them to the organisational units to decide on them, or, alternatively, every request is ultimately decided by the Minister/Director, i.e. his/her approval is invariably sought. This is contrary to applicable regulations as it effectively cancels

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<sup>18</sup> <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/PPP/Pages/Splash.aspx>

<sup>19</sup> Data were collected through interviews with delegated relevant representatives of the institutions included in the survey.

<sup>20</sup> Freedom of Access to Information Law of RS ("Official Gazette of RS", No. 20/01), Article 19

the information officer's decision-making autonomy. In the Civil Service Agency the request handling process consists of multiple checks, starting with those performed by the organisational unit to which the request was first assigned based on the content of the request, then those performed by the joint collegium, and finally those performed by the Director before the reply is sent. Such a process suggests that the institutions are reluctant to disclose information and that the system of multiple checks is put in place to actually create conditions for non-disclosure, in particular when it comes to information that might be considered sensitive or controversial on certain grounds, as well as that decisions on disclosure of information are almost never taken without the prior approval of institutions' top managers.

The concept of proactive transparency is entirely unknown to all institutions included in this survey. Once its meaning had been explained, the institutions invariably stressed that extraordinary results had been achieved in that area, which mainly boiled down to such subjective and unsubstantiated assertions as: "Data are updated on a regular basis". No activities are undertaken to ensure simpler and clearer presentation of all types of information relating to the purview of the institutions. Perhaps the best indicator of opaqueness and lack of financial accountability is the fact that of the five analysed institutions only the Ministry of Justice of RS published separately presented information about its budget<sup>21</sup>, while the budgets of other ministries and the Civil Service Agency of RS can be found only as part of the integrated RS Budget on the website of the Ministry of Finance of RS and in the Official Gazette of RS. There seems to be no awareness that the public needs to be informed about the budget and its items, or that proactive transparency implies the availability of detailed budgets, increased budget visibility and accessibility, better presentation of budgets to the public and easy-to understand explanation of budgets' contents.

On ministries' websites sections called *Service* and *Citizens* are left empty. It is only the website of the Civil Service Agency of RS that has a separate *Frequently Asked Questions* section, but it is not operational. The above-described request handling process, coupled with the fact that requests are not recorded and classified, as well as the absence of analysis and monitoring, prevent institutions from setting up a meaningful section such as the most frequently asked questions, or to fill them with appropriate content. The fact that the concept of proactive transparency is unknown to institutions and that its perception boils down to the assertion about regular updates also attests to the disheartening state of transparency of institutions.

Of the five surveyed institutions in RS, **none** published information on budget execution, which again speaks to the profound lack of financial accountability, and the annual report was published only on the website of the Ministry of Justice. When it comes to the gaps and bottlenecks as identified in the annual reports, these are, according to available data, invariably related to inadequate staffing levels or to issues of technical assistance. It is noticeable that the bottlenecks concern questions

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<sup>21</sup> [http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/PPP/godisnji\\_plan\\_i\\_budzet/Pages/default.aspx](http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/PPP/godisnji_plan_i_budzet/Pages/default.aspx)

which the institutions cannot influence, and are therefore presented as problems that directly depend on the overall (economic) policy of the Government of RS.

In 2013, four persons were employed in the five analysed institutions, and the information about the job competitions was published in daily newspapers and online. Public procurement plans are not available for any of the institutions, which again is an indicator of the lack of transparency. All public procurement procedures initiated in 2013 were completed in the same year.

The same is true of audit reports, as these are not published on the websites of the analysed institutions. The survey further showed that the representatives of the institutions believed that it was not appropriate to publish the reports produced by other institutions even though those were reports related to their work.

During data collection, the institutions kept stressing that online disclosure was not legally binding, suggesting that no progress could be expected in areas of (proactive) transparency and integrity because the prevailing view was that everything which is not explicitly prescribed by law is forbidden. Very little is done to improve the presentation and availability of information, even in areas such as the legal framework that is closely related to the work and purview of the particular institution, and such behaviour is justified by the fact that such disclosure is not binding under the applicable legislation.

The concept of an integrity plan is entirely unknown to all institutions, except for the Ministry of Public Administration and Local Self-Government. According to the available data, no activities were undertaken in any of the institutions towards preparation and implementation of this document. This further indicates that the area of integrity is not recognised as important, and that no efforts are made to prevent potential irregularities.

#### Findings shown by individual institutions:

##### **MINISTRY OF FINANCE OF RS:**

- Number of employees: 151.
- 2013 budget: KM 7,796,000.00.
- In 2013 there were no disciplinary proceedings; one employee brought a lawsuit against the Ministry of Finance and lost it.
- In 2013 the Ministry of Finance received 261 requests for access to information. Unlike in other institutions, requests are handled and decided by the information officer, as stipulated under the Freedom of Access to Information Law.
- The most frequently requested information includes issues falling within the Ministry's remit as well as budget data, which further attests to the limited progress in the field of proactive transparency.
- The budget of the Ministry of Finance is not presented separately and can be accessed only via the integrated RS budget. Public procurement plan is not

publicly available, and audit reports are not published on the Ministry's website.

- Integrity Plan has not been adopted and implemented, and the survey has found that the very concept is unknown to the Ministry of Finance.
- The Ministry of Finance received the most requests for access to information in 2013 (261), the majority of which were various questions by media outlets.
- Audit Report for the Ministry of Finance for 2013 contains a qualified opinion. The objection concerned recruitment, i.e. the fact that the Ministry of Finance had concluded a fixed-term contract for a period exceeding 12 months.
- 54 public procurement procedures were initiated in 2013. The procedures used included direct agreement, competitive request, open procedure and negotiated procedure.

#### **MINISTRY OF JUSTICE OF RS:**

- Number of employees: 30.
- 2013 budget: KM 2,985,000.00 .
- Ministry of Justice received six requests for access to information in 2013. According to information collected in the survey, requests were decided by the Secretary of the Ministry, which is contrary to the Freedom of Access to Information Law, which stipulates that requests should be decided by the information officer.
- Information requested varied from issues related to employment, public procurement, jurisdiction of courts and competences of correctional institutions, to those relating to legal practice and notaries, specifically the competences of notaries. This shows that natural and legal persons seek information that should already be publicly available, such as information on competences of institutions.
- Public procurement plan and audit reports for the Ministry are not published on the website. The public procurement plan is not publicly available, while the audit report is available on the website of the Supreme Office for the Republika Srpska Public Sector Auditing.
- In 2013 **two** public procurement procedures were initiated (both were negotiated procedures).
- The audit report contained qualified opinion. The qualification concerned the amount allocated for *ex officio* defence, with recommendation that efforts should be made to reduce those expenses.
- Information on the Budget of the Ministry of Justice is published on the website. The Ministry is the only institution among those surveyed that publishes its budget information separately.
- In 2013 there were no disciplinary proceedings, no lawsuits brought by employees, and no temporary service contracts concluded.
- Integrity Plan remains an unknown concept, it was not adopted and implemented.

## **MINISTRY OF LABOUR, WAR VETERANS AND DISABLED PERSONS' PROTECTION OF RS:**

- Number of employees: 89.
- 2013 budget: KM 464,921,000.00.
- Public procurement plan is not publicly available.
- In 2013 a total of 28 public procurement procedures were initiated using open procedures and competitive requests.
- Information on the Ministry's budget and budget execution is not publicly available and can be accessed only via the integrated RS Budget, which is published on the website of the Ministry of Finance of RS.
- According to information gathered in the survey, no mentionable efforts were made to improve proactive transparency. Integrity Plan was not adopted or implemented.
- In 2013, the Ministry received a total of **60** requests for access to information. The monitoring survey found that the requests were not handled separately and were not decided by the information officer, contrary to the applicable provisions of the Freedom of Access to Information Law. The most commonly requested information concerned requests submitted for accessing certain rights in the field of war veterans and disabled persons' protection.
- One temporary service contract was concluded (in the amount of KM 4,800.00) for the performance of a short-term economic analysis. The decision on the conclusion of this contract was made independently by the Minister.

## **MINISTRY OF PUBLIC ADMINISTRATION AND LOCAL SELF-GOVERNMENT OF RS:**

- Number of employees: 44.
- 2013 budget: KM 7,253,000.00.
- In 2013 the Ministry of Public Administration and Local Self-Government received **six** requests for access to information. The most commonly requested information included copies of administrative inspector's minutes of the completed inspection or copies of administrative inspector's decisions. It is interesting to note that access was denied in two cases where information seekers were not persons to whom the requested minutes were related. This may indicate improper use of the institute of public interest test, as access to information of public character may also be requested by persons to whom the requested information does not directly relate.
- Budget information pertaining to the Ministry is not presented separately, and as such is not publicly available. The same is true of the information on budget execution, which indicates a complete absence of financial accountability.
- Public procurement plan is not publicly available, and audit reports are not published on the Ministry's website. In 2013 six public procurement procedures were initiated.

- Since 2012 the Staffing Plan has been revised twice. Such frequent changes give rise to suspicion that revisions are made in order to adjust the plan to suit individual interests.
- In 2013 the Ministry concluded one temporary service contract for the maintenance of software used to calculate wages – technical support, in the amount of KM 600.00.

#### **CIVIL SERVICE AGENCY OF RS:**

- Number of employees: 11.
- 2013 budget: KM 582,000.00.
- According to the information collected in the survey, of **nine** requests for access to information received, three were rejected on grounds of protection of personal data. The information sought pertained exclusively to documentation relating to public competitions. The practice is that access to this information is not given to persons who did not participate in the competitions, pursuant to the alleged recommendation of the Agency for Personal Data Protection. Such practice indicates a misapplication of the Freedom of Access to Information Law, which is *lex specialis*, and which provides that the public interest test must be applied in every case.
- Requests for access to information are decided at the session of the collegium and by the final decision of the director of the Civil Service Agency, contrary to the applicable provision of the Freedom of Access to Information Law (Article 19).
- The Agency's public procurement plan is not publicly available, and budget information is not presented separately.
- In 2013 there were no disciplinary proceedings and Staffing Plan was revised several times.
- The Agency concluded as many as ten temporary service contracts, and the total amount of funds spent on that basis was KM 15,000.00.

#### **Conclusions:**

- *None of the five analysed institutions have adopted and implemented the Integrity Plan, and the concept remains unknown to most institutions in RS;*
- *Audit reports are not published on the websites, and public procurement plans are not publicly available for any of the institutions analysed;*
- *In only one of the five institutions requests for access to information were decided by the designated information officer, as provided by the Freedom of Access to Information Law;*
- *It is noticeable that institutions deny access to information by automatically claiming exemptions from disclosure, without applying the public interest test and without taking account of the fact that free access to information in the control of public authorities is a statutory rule and that public interest factors must be taken into account when an exemption is claimed (such practice was observed in the Civil Service Agency and the Ministry of Public Administration and Local Self-Government).*



- *In 2013 the five institutions received a total of more than 340 requests for access to information. Most of the requests were received by the Ministry of Finance RS (261). The information sought varied widely, but a substantial number of requests related to questions of competences and jurisdiction, which only shows that institutions do not adequately present to the public even such basic information as their competences or jurisdiction, i.e. the legal framework that applies to them;*
- *The survey found that the concept of proactive transparency was entirely unknown or poorly known to the surveyed institutions, and that institutions do not to make efforts to adopt a proactive approach;*
- *Disciplinary mechanisms were not used in 2013. In every institution, with the exception of the Ministry of Labour, War Veterans and Disabled Persons' Protection of RS, the staffing plan was revised on multiple occasions, or at least once since its enactment, which gives rise to suspicion that the revisions are made to adjust the staffing plan to suit individual interests. Of the five institutions, only the Ministry of Justice of RS made its staffing plan available online on its website;*
- *Of the five institutions, only one institution published on its website separately presented information on its annual budget (Ministry of Justice).*
- *Based on the information gathered in this survey, the gaps and bottlenecks identified in the annual report concern the problem of understaffing, which is explained by the overall economic policy of the Government.*

#### **2.4. BRČKO DISTRICT OF BiH (BD)**

As regards the level of Brčko District of BiH (BD), the original plan was to do an analysis of the following institutions: Department of Administrative Affairs of the BD Government, Subdivision for Human Resources, Mayor's Office, Finance Directorate of BD and the Department of Public Records. Representatives of the Department of Administrative Affairs of the BD Government, the Finance Directorate of BD and the Department of Public Records supplied information on the indicators that were the subject of this analysis, while representatives of the Subdivision for Human Resources and the Mayor's Office did not provide such information, finding an excuse for their failure to do so in shared responsibilities among the institutions. In the end, the analysis included only the aforementioned three institutions of BD.

Of the three institutions included in this analysis, two instituted disciplinary proceedings in the reference year. The most commonly applied sanction was a written reprimand and there was also one fine.

According to the information obtained from the Department of Administrative Affairs of the BD Government, a total of eight lawsuits were brought in 2013 against the Department, one of which by third parties and seven by employees. In other departments and institutions of the BD Government there were no lawsuits or the number of lawsuits was not reported.

As regards requests for access to information, the most frequently requested information related mainly to the scope of work performed by the particular institution in accordance with the legal framework. Some of the most frequently requested information includes:

- by natural persons – applications to public competitions, public property, access to case files;
- by legal persons – access to bidding documents, public property, privatisation, information on property owned by natural persons (that information is required by banks).

The average number of requests for access to information filed in 2013 by natural persons in the analysed sample was 14, and the average number of requests filed by legal persons was 20. Of the total number of requests (103), 57.3% were filed by legal persons. The institutions responded to all requests.

As regards the aspect of proactive transparency, most institutions highlight the activities on the website of the BD Government, while some of the institutions are unfamiliar with the concept of proactive transparency.

All institutions in the analysed sample cite the Official Gazette of BD as the source of information on the budget and budget execution. Institutions often state that the information on the budget and/or budget execution is available on the website of the BD Government. When analysing this indicator, one should have in mind the centralised communication of all institutions within the BD Government. All institutions of the BD Government use a common website, which can be a limiting factor to ensuring greater transparency of institutions. Thus, certain information, including information on the budget and its execution, is located in one place, but there remains the question of quality, effectiveness, functionality and organisation of such a platform.

Staffing plans exist in the analysed institutions but are not publicly available. Institutions justify their failure to make the plans publicly available by the absence of legal obligations in this respect. Representatives of institutions said that the staffing plans had been revised and noted, interestingly, that revisions were made as per the needs of the managers of public administration bodies who were the proposers of the staffing plan. In 2013 alone, as many as 22 decisions amending the organisational plans/rules of government departments and institutions of BD were delivered to the Subdivision for Human Resources.

The Audit Office's recommendation for the Department of Public Records is that, when recruiting persons as per temporary service contracts, the Department should comply with the Budget Law of BD in respect of the cost-effective and transparent spending of budget funds.<sup>22</sup> Audit report for the Department of Administrative Affairs for 2013 is not publicly available, but, according to the report for 2012, the

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<sup>22</sup> Report on the audit of the financial operations of the Department of Public Records for the period 1 January – 31 December 2013, No. 01-02-03-13-261/14, Office for the Audit of Public Administration and Institutions in Brčko District

auditor's objection was that in concluding contracts for the provision of cleaning services, the Department had not complied with the provisions of the Law on Conflict of Interest in the Institutions of Brčko District of BiH, in respect of the incompatibility of involvement in a private company and serving as an executive officeholder. Furthermore, the contract was not signed before the start of services.<sup>23</sup> Based on the recommendations given in its reports, the Audit Office highlights as problematic the fact that, when concluding temporary service contracts, institutions of BD do not typically comply with applicable legal provisions (Budget Law, Law on Conflict of Interests), which could be an indication of a lack of financial accountability and integrity in the analysed institutions.

The analysed institutions of BD concluded a total of 37 temporary service contracts, whose total value is not known. The most commonly contracted services were tasks relating to conferring entity citizenship to the citizens of BD so that they could vote in the general election in October 2014. The total expenditure for temporary service contracts, commissions and other persons who are not employed on a full-time basis was to the tune of KM 127,076.63. In 2013 the Department of Public Registry overran the approved budget item for temporary service contracts, commissions and other persons who are not employed on a full-time basis by as much as KM 51,076.63, which is contrary to the Budget Law of BD, the Budget Execution Law of BD for Year 2013 and the Ordinance on the Method of Preparation of Requests for Drawing up the Budget of BD. The hiring of persons as per temporary service contracts was done for positions that were envisaged under the Organisational Plan without ensuring full transparency in the selection of service providers.<sup>24</sup> The Audit Office's recommended that it was necessary to ensure that temporary service contracts were not concluded and extended for tasks falling within the Department's scope of remit and that any increased workload within the Department of Public Records should be addressed through consistent application of the Law on Civil Service in Administrative Bodies of Brčko District of BiH.

BD Government keeps a record of public procurement on its website, but there was no publicly available procurement plan for 2013. Among the analysed institutions of BD the most commonly used types of public procurement procedures were as follows:

- Open procedure;
- Competitive request for quotations with and without publication of notice;
- Direct agreement.

In 2013, the analysed institutions initiated 77 public procurement procedures, of which number 63 public procurement contracts were awarded. The collected information shows that of 19 public procurement procedures initiated in the

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<sup>23</sup> Report on the audit of the financial operations of the Department of Administrative Affairs for the period 1. January – 31 December 2012, No. 01-02-03-13-319/13, Office for the Audit of Public Administration and Institutions in Brčko District

<sup>24</sup> Report on the audit of the financial operations of the Department of Public Records for the period 1 January – 31 December 2013, No. 01-02-03-13-261/14, Office for the Audit of Public Administration and Institutions in Brčko District

Department of Public Records, as many as six were cancelled (31.58%) because fewer than three bids had been placed or bids did not contain evidence of eligibility, and the procedure was consequently cancelled by the decision of the Procurement Review Body in Sarajevo.

As at the end of 2013, none of the analysed institutions had an integrity plan in place.

According to the information collected in this monitoring survey, each of the analysed institutions in the BD Government prepares annual reports along with a summary of activities implemented and results achieved in a given year, but none of them make their reports or plans publicly available on a regular basis, which complicates the analysis of their work.

Despite the fact that the Decision on the Temporary Suspension of Recruitment is still in effect, the five analysed institutions in BD advertised three job competitions and employed 15 new staff in 2013. According to representatives of the analysed institutions, all information about those recruitment procedures should be publicly available, but the official website of the BD Government does not contain that information and does not point to the location where the information can be found.

#### Findings shown by individual institutions:

#### **DEPARTMENT OF ADMINISTRATIVE AFFAIRS OF THE BD GOVERNMENT**

- 2013 budget: KM 5,237,264.16.
- One lawsuit against the institution filed by third parties, seven filed by employees.
- 43 requests for access to information filed by natural persons. The most frequently requested information: applications to competitions, public property.
- 40 + 17 (responded to by other authorities) requests filed by legal persons. The most frequently requested information: access to bidding documents, public property, privatisation. All requests were responded to.
- Staffing Plan exists, is not publicly available and implemented. Organisational plans/rules of the Government's departments and institutions were adopted in late 2007, but some of them have been revised since.
- Auditor's opinion: qualified for the whole Department.
- There is a public procurement plan in place. The plan is publicly available on the official website of the BD Government.
- 39 public procurement procedures were initiated in the reference year. Contracts were awarded and realised for all procurement procedures initiated.
- Three job competitions were advertised in 2013. A total of 15 new staff were employed.

## **FINANCE DIRECTORATE OF BD**

- One disciplinary proceedings. No sanctions imposed.
- Staffing Plan is in place. Adopted in November 2007, implemented, is not publicly available. Note: it is revised according to the needs of individual bodies.
- Responsibility for auditing rests with the Office for the Audit of Public Administration and Institutions in Brčko District.
- One temporary service contract concluded. The amount of funds used to finance the service contract was KM 1,890.00. Scope of the contract: settling doubtful debts and resolving complaints on appeal, in the area of old foreign currency savings.
- Public procurement plan is in place and publicly available.
- Types of procurement procedures used: direct agreement, open procedure, negotiated procedure and competitive request.
- 19 public procurement procedures were initiated in 2013, and 11 public procurement contracts were awarded.
- Integrity Plan was not adopted.

## **DEPARTMENT OF PUBLIC RECORDS OF THE BD GOVERNMENT**

- Three disciplinary proceedings in 2013, one of which was stayed following the conclusion of the disciplinary committee. Sanctions imposed: one fine and one written reprimand.
- There were no lawsuits brought against the institution.
- One request for access to information filed by natural persons. Requested information: access to a case file.  
Two request for access to information filed by legal persons. Requested information: information about property owned by natural persons.
- Staffing Plan was adopted on 6 August 2013 and it was implemented, but was subsequently revised twice, on 9 January 2014 and 8 July 2014. Note: staffing plan is revised according to need.
- Audit reports for the institution are available. They are submitted to the Department, the Assembly of BD and the Prosecutor's Office of BD. Qualified opinion – there were no instances of major non-compliance with the applicable legislation and approved budget items.  
Recommendations: improve the effectiveness of the internal controls system; start the procedure for procurement of insurance services for employees in a timely fashion; ensure that temporary service contracts are not concluded and extended for tasks falling within the Department's scope of remit; appoint a person or commission to be in charge of reception and quality control of procured items; planning, preparation and management of capital projects should be carried out in accordance with the approved budget and the Law on Budget Execution.
- 36 temporary service contracts concluded. The amount of funds used to finance the service contracts was KM 75,000.00 in the last quarter of the year. Services contracted: tasks relating to conferring entity citizenship to

the citizens of BD so that they could vote in the general election in October 2014.

- Public procurement plan is in place and is publicly available. Types of procurement procedures used: direct agreement, competitive request and open procedure. A total of 19 public procurement procedures were initiated in 2013, of which 13 public procurement contracts were awarded and six public procurement procedures were cancelled because fewer than three bids had been placed or bids did not contain evidence of eligibility, and the procedure was consequently cancelled by the decision of the Procurement Review Body in Sarajevo.
- There were no new recruitments.

### **Conclusions:**

- *In two-thirds of the analysed institutions in BD there was at least one disciplinary proceedings initiated in 2013. The most common sanction was a written reprimand and there was one fine.*
- *Of the total number of requests for access to information received (103), 57.3% were those filed by legal persons.*
- *As many as 87% of lawsuits against the analysed institutions in BD were lodged by employees.*
- *Institutions often report that the information on the budget and/or budget execution is available on the website of the BD Government. When analysing the availability of information on the budget and/or budget execution, one should have in mind the centralised communication of all institutions within the BD Government. All institutions of the BD Government use a common website, which can be a limiting factor to ensuring greater transparency of institutions. Therefore, certain information, including information on the budget and its execution, is located in one place, but there remains the question of quality, effectiveness, functionality and organisation of such a platform.*
- *Representatives of one institution reported that the staffing plan had been revised, and that revisions were made as per the needs of the managers of public administration bodies who were the proposers of the staffing plan.*
- *The hiring of persons as per temporary service contracts was done for positions that were envisaged under the Organisational Plan without ensuring full transparency in the selection of service providers.*
- *The information collected shows that of a total of 19 public procurement procedures initiated in the Department of Public Records, as many as six were cancelled because fewer than three bids had been placed or bids did not contain evidence of eligibility, and the procedure was consequently cancelled by the decision of the Procurement Review Body in Sarajevo.*
- *According to the information collected in this monitoring survey, each of the analysed institutions in the BD Government prepares annual reports along with a summary of activities implemented and results achieved in a given year, but none of them make their reports or plans publicly available on a regular basis, which complicates the analysis of their work.*

### 3. RECOMMENDATIONS

Based on the data collected for all 11 parameters relating to the work of institutions in BiH (state level, entity levels and Brčko District of BiH), it is evident that the transparency of the institutions is not satisfactory, that there are practices indicating a lack of accountability, and that the observed level of integrity leaves much to be desired. For example, the fact that very few disciplinary proceedings were found to have been instituted by institutions at all levels, when viewed in the context of other results of this survey (frequent revisions of the staffing plans, lack of transparency and failure to make information of public interest available to the public) is more likely to suggest that the area of disciplinary liability and monitoring of compliance with work assignments and official duties is not given proper regard (as well as the fact that violations of these duties are not investigated) than be a reflection of lawful and proper conduct of the institutions. A significant problem observed in all of the institutions surveyed is that there is no practice of publishing information on budget and budget execution that is presented separately, except in the form of a notice in the Official Gazette, which is a clear indication of a lack of financial accountability.

The following are recommendations for urgently addressing identified problems. The recommendations are based on the parameters that were the subject of this monitoring survey and are given with the aim of ensuring transparency and accountability of institutions in BiH.

#### **Requests for access to information**

The existing freedom of access to information laws in BiH, along with other regulations, contain very few provisions relating to proactive transparency and therefore no normative activities are taken to further elaborate the principles of transparency. New legislation should contain special provisions relating to proactive disclosure, defining it as a statutory obligation that the public authorities need to meet under threat of misdemeanour prosecution.

The proposed standard<sup>25</sup> of proactive transparency is in line with the modern trend of employing a proactive approach to make as much information as possible public and available without delay, and refers to:

- institutional information (including information on internal regulations and powers),
- organisational information (including information on personnel and their contacts),
- operational information (policies, procedures, reports, etc.),
- decisions and other formal acts (with supporting documents),
- public services information (including guides, forms, etc.),
- budget information,

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<sup>25</sup> The proposed standard of proactive transparency according to Helen Darbishire, *Proactive Transparency: The Future of the Right to Information?: A Review of Standards, Challenges and Opportunities*, Washington: World Bank Institute, 2011, pp 21-22.

- open meetings information,
- information about decision-making and public participation,
- subsidies information,
- public procurement information,
- information on lists, registers and databases held by public authorities,
- publications and their price list,
- information about appeal procedures and mechanisms for resolving disputes,
- information about the right of access to information (guides, guidelines, contacts, etc.),
- minutes of parliamentary sessions, and
- judicial decisions.

***A request for access to information should be handled by the Information Officer in accordance with Article 19 of the Freedom of Access to Information Law. Public institutions should analyse the incoming requests and provide [answers to] the most frequently asked questions in order to reduce the total number of requests for information.***

Accessing information at all levels of government in BiH is difficult and one of the reasons is the unclear division of responsibilities between the institutions in BiH, which complicates and slows down the information collection process.

***Creation and publication of the index register should be mandatory for institutions at all levels of government in BiH. Index register should include the types of information that are in the control of a public authority, the form in which the information is available, as well as information on where one can access this information, which would ultimately facilitate the access to information process.***

#### **Disciplinary proceedings – Ethical liability**

This monitoring survey has showed that application of disciplinary liability mechanisms is entirely absent at some levels, and disciplinary committees, under applicable regulations, are formed from among the very bodies where disciplinary violations occurred, or the composition of the disciplinary committees is determined by the decision of the Civil Service Agency (FBiH) and the Mayor (BD).

***It would be advisable to set up an independent Ethics Committee which would be organisationally separate. It would have wide supervisory powers over public administration bodies, its decisions would be binding and it would have the authority to impose sanctions for violations of ethical duties. The Ethics Committee would also have an educational function (organisation of seminars for civil servants, workshops, publications, etc.). Special attention should be paid to the method of electing its members (e.g. it should include representatives of civil society and independent experts) as well as provisions regulating discretionary powers.***



### **Number of employees, staffing plans and temporary service contracts, lawsuits against institutions**

All levels of government suffer from understaffing as none of the institutions analysed in this monitoring survey have a full complement of staff as envisaged under their staffing plans. Most of the institutions at all levels of government in BiH have trouble filling positions, and consequently have to enter into temporary service contracts for performance of tasks falling within their scope of remit and which are envisaged under the applicable staffing plan to be performed by regular staff. Only one institution (out of 20 public administration institutions analysed in this survey) has made its staffing plan publicly available. However, even this institution was criticised by the Audit Office for its use of the mechanism of temporary service contracts for hiring persons to perform tasks envisaged under the staffing plan. The fact that temporary service contracts are often renewed year after year shows that such jobs are not temporary and should not be performed in this way. Temporary service contracts are an opaque way of hiring staff, which is an unacceptable practice in the public sector.

The survey shows that a large percentage of lawsuits against the analysed institutions were those lodged by institutions' own employees. This suggests that compliance with labour legislation and regulations continues to be a big problem for institutions in BiH.

***A stronger legal framework needs to be created which will encourage the preparation of more effective and transparent staffing plans and encourage recruitment of appropriate staff in order to reduce the number of inefficient and unproductive positions and create positions for tasks that are now routinely contracted under very costly temporary service contracts. Schematic view of the staffing plans and the Rules on Staffing should be available on institutions' websites.***

### **Public procurement, audit reports, annual reports, budget**

It is important to note that direct agreement remains the most commonly used public procurement procedure in the analysed sample of institutions in FBiH. The practice of creating and disclosing annual public procurement plans is found to be non-existent, making the whole procurement process opaque with institutions lacking accountability in the spending of public funds budgeted for these purposes. Individual, partial and occasional disclosure, as well as the simultaneous removal of information on procurement from the websites, raises doubts as to the transparency of the process and the overall integrity of institutions.

***It is highly recommended that institutions publish on their websites audit reports and public procurement plans, as well as all information about budget and budget execution, even though this disclosure is not stipulated as mandatory under the current legislation. Proactive disclosure would encourage institutions to be more accountable and responsive to the public and act in compliance with audit***

*recommendations, while presentation of separate budget information for each individual institution would contribute to greater financial accountability.*