



## **BiH Anticorruption Strategy**

**2015 - 2019**

**Sarajevo, December 2014**

## 1. Introduction

Corruption is a serious problem in the modern society, which in different shapes and proportions it is omnipresent, even in the economically powerful, democratic and organized countries. As the factors that affect the status and extent of corruption are diverse, such as historical, social, cultural, political, etc., so are the consequences of corruption in the life of the common citizens and the whole society numerous and serious. Corruption negatively affects economic flows which cause unpredictable costs for investors who are discouraged to make future investments, it causes the growth of the gray economy and reduction of government revenues arising from unpaid taxes, and it increases administration costs, costs of goods and services and reduces productivity. This phenomenon, in the social sense, influences changes in the system of values, especially rationalization, and even justification of illegal behaviour. In the political sense it undermines the legitimacy and reputation of government institutions, threatens the achievement of the principles of rule of law and causes distrust of citizens in the government and political instability by increasing the gap between the elites and ordinary citizens.

Corruption represents a particular danger for countries in transition, in which democratic, institutional and systems of values are not yet sufficiently developed. In such countries, inadequate legal and political mechanisms do not provide sufficient guarantees for the effective control of disposal of public authorities, the abuse of which corruption actually represents. Bosnia and Herzegovina (further BiH) as a country in transition, has recently undertaken certain systematic activities in fighting corruption. According to the "Governance Indicators" of the World Bank, BiH is slightly below the middle on the scale of over 200 countries and territories, and holds a similar position at the Corruption Perception Index of Transparency International, which ranks nearly 180 countries<sup>1</sup>. According to these and other indicators, Bosnia and Herzegovina is ranked lower than the Western European countries, and also lower than most countries in the region.

Accession to the European Union is a strategic priority for Bosnia and Herzegovina. The fight against corruption is one of the key challenges of rule of law in most countries in the enlargement process of the European Union, which includes also BiH, and it is related to issues of respecting fundamental rights, work of the Justice bodies, justice and Home Affairs. Since the fight against corruption requires attention at an early stage of the EU accession process, and that the opening of the respective chapters is based on credible results, Bosnia and Herzegovina needs to show determination in taking concrete, comprehensive and sustainable activities in countering corrupt practices.

In Bosnia and Herzegovina, so far, several strategic anticorruption documents have been adopted, both at the state and entity levels and Brcko District of Bosnia and Herzegovina (further BD BiH), as well as at the lower levels of government. Former strategic documents have not been adequately implemented, which is concluded in the Progress Report for Bosnia and Herzegovina (attachments to the statements of the Commission to the

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<sup>1</sup> Economy Rankings, <http://www.doingbusiness.org/rankings>, 19. November 2014.,

Global index of corrupt (CPI)ion perception 2013

[http://www.mc.rs/upload/documents/saopstenja\\_izvestaji/2013/CPI/Srbija-CPI-2013.pdf](http://www.mc.rs/upload/documents/saopstenja_izvestaji/2013/CPI/Srbija-CPI-2013.pdf), 19. Noveber 2014

European Parliament and the EU Council) for the past few years. Inside of them, the overall engagement of BiH is evaluated only as an "early stage of the fight against corruption".<sup>2</sup>

Fight against corruption is a long and difficult process without quick and simple solutions. It is necessary to implement continuous activities, which is why it is essential that for the purpose of upgrade and continuity of the Strategy for the fight against corruption 2009.- 2014 and the Action plan for its implementation, activities in the field of strategic fight against corruption are continued, respectively that the Anticorruption Strategy (Strategy) and its implementing instrument - Action Plan (Action Plan), for the period 2015. – 2019 are developed.

## **2. General principles and strategic priorities in Bosnia and Herzegovina**

Having in mind the increasingly prominent social awareness and commitment to successful and engaged fight against corruption, international obligations of BiH in this regard and standards that the country should meet on the road to European integration, the Strategy for the fight against corruption 2015-2019 (further Strategy) and the Action Plan for the implementation of the Strategy (further Action plan) predict enforceable, clear and concrete objectives, that take into account all the specifics of the administrative system and society in BiH.

They are an upgrade and continuity of the Anti-Corruption Strategy and accompanying Action Plan (2009-2014) and are in line with international standards, obligations of the country from the ratified anticorruption conventions with the domestic legislation, but also based on good domestic and international practices. The fight against corruption cannot be viewed in isolation from other related strategic and reform processes in the country, in the field of foreign affairs, public administration reform, security and internal affairs, justice and finances.

Therefore, the Strategy and Action Plan are aligned with the appropriate processes, as well as with the development and sectoral strategies at both national as well as at other levels of government in Bosnia and Herzegovina. This seeks to consolidate consensus on the necessity of a coordinated, comprehensive and systematic acting against corruption, which will strengthen the criteria for joining the European community, but also improve the quality of life for all citizens in BiH. In outlining of the Strategy, the so called „integrated approach“ was applied, treating all important areas of the fight against corruption – prevention, repression and coordination. This implies the soundness of anti-corruption activities on the facts, and it is characterized by transparency, impartiality and professionalism, inclusiveness, comprehensiveness, comparability and a focus on performance, which are the principles of the fight against corruption advocated by the United Nations. Special attention in the development of this Strategy has been devoted to the experiences in the implementation of the BiH Anti-Corruption Strategy 2009-2014 and the corresponding Action Plan – through identification of its strengths and weaknesses. The Strategy, besides the clearly defined vision, strategic objectives, principles and risks in the implementation, determines the normative and institutional framework for the fight against corruption, priority areas and

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<sup>2</sup> Working document of the employees of the Commission, Progress report of BiH for 2013., [http://komorabih.ba/wp-content/uploads/2013/11/izvjestaj\\_napredak.pdf](http://komorabih.ba/wp-content/uploads/2013/11/izvjestaj_napredak.pdf), 19. November 2014

programs for the implementation of the Strategy, including mechanisms for monitoring and evaluating its implementation.

In outlining of the Strategy, special attention was paid to the specifications of the political and social structure of BiH, due to the existence of several levels of government, as well as the ability for the “Entities, Brcko District and Cantons to develop their own strategies to combat corruption and action plans in accordance to the general principles set forth in the National Strategy for the Fight against corruption”<sup>3</sup>.

In order to avoid negative overlap with the responsibilities of the entities, BD and the cantons, the Strategy and Action Plan are not oriented towards the sectors, considering the fact that these levels of government have specific responsibilities in the sectoral areas (home affairs, justice, health, education, etc.). The Strategy and Action plan are directed towards the highest strategic measures relating to the areas of prevention, detection, prosecution, coordination, repression, improvement of the legislative framework, capacity building of institutions, trainings and rising of public support for the fight against corruption. Such an orientation of the Strategy and Action Plan allows increasing of the fight against corruption to a higher level than the sectoral, which takes place at the levels of entities, Brcko District (BD) and cantons, and thereby enables a strategic, balanced and sufficiently broad framework for harmonization of strategies and Action Plans on those levels of the government.

In order to secure coordinated implementation of the Strategy at the BiH level, according to the Article 22 of the Law on the Agency (further Law on the Agency), it anticipates the following general principles for the fight against corruption:

#### 2.1 Defining corruption

The term corruption is defined in the international acts in several ways, which can cause different interpretations and practices in the implementation of this Strategy.

The Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (hereinafter: the Agency) defines corruption as *any abuse of power entrusted to a civil service or person holding political position at state, entity, cantonal, BiH Brčko District level, city or municipality level, that may result in private gain. Corruption, in particular, may include direct or indirect requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe.*

Because of the narrow conception of corruption given by this definition, for the purposes of this Strategy as a broader framework one of the most comprehensive and most complete definitions of this kind was taken, and it is found in the Civil Law Convention on Corruption of the Council of Europe<sup>4</sup>. The Convention indicates various manifestation forms of corruption that are sanctioned by the norms of the criminal legislation in BiH. According to the Convention, "corruption "means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or putting it in the appearance, which perverts prescribed derivation of a duty or behaviour required of the recipient of bribes, illegal use or the person to whom it is put in the appearance.

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<sup>3</sup> (Provided for under Article 22 of the Law on the Agency, Official Gazette No 103/09, 58/,13)

<sup>4</sup> (Strasbourg, 04.11.1999. came into force 01.11.2003., came into force for BiH 01.11.2003.; published „Official Gazette BiH“ No: 36/2001)

Institutions and individuals to be participating in the implementation of the Strategy should be aware that corruption exists if purposeful distortion of principles of impartiality occurs in decision making for the purpose of gaining an advantage. Defining corruption is important because of the need to differ corruption from the cases when biasness in decision making and the consequent discrimination are the consequence of partiality and favouring and not an intention to realize a gain for oneself or for others, and from the cases in which the harmful decision is the consequence of the lack of information or knowledge on the side of the decision maker.

## 2.2 Fight against corruption in the public sector

Although corruption may appear in any part of the society where decisions are made, the most harmful consequences of corruption are in the public sector, including also holders of public authority positions. Having in mind the broadness of the public sector in BiH at various government levels, as well as its particular responsibility to citizens who finance it, it is the duty of this sector to demonstrate by example readiness to fight corruption and through national strategic documents fort obligations for the participants of this sector in prevention and repression. The starting point of the Strategy is that the strategic priorities will primarily be directed towards fight against corruption in the public sector, in the institutions across all government levels in BiH.

This includes, inter alia, strengthening of public sector institutions that need to fight corruption as well as adoption or amendments to regulations, in order to reduce the number of opportunities for corruption to appear or to allow easier detection and prosecution, as well as implementation of prevention activities. Focusing attention on the public sector does not preclude the application of preventive and repressive measures against corruption in the private sector, particularly in those areas where there is an interaction between the public and private sector. Research on corruption in BiH shows that most of this type of criminal activity takes place in the misuse of authority in the public sector, and in the interaction between the public sector and the private sector or citizens on the other hand. For the majority of the businesses see this kind of corruption as a bigger problem than the one that comes in relationships between private companies.

## 2.3 Reduction of the regulatory and distributive role of the public sector

The scope of corruption in the public sector is directly dependent on the scope of activities in the sector (organization of social relationships in the regulations, intervention in the market, reallocation of wealth within the society, etc.). Consequently, reduction of the regulatory or distributive role of the public sector, as one of the effects will result in the reduction of number of opportunities for corruption. That does not mean that the institutions of the public sector, for the sake of fight against corruption, will waive its regulatory role or decision making, but that there is a need for such activities to be undertaken when necessary or based on established policies, with awareness of occurrence of corruption and with control mechanisms reducing such risks to minimum, as one kind of corruption prevention.

Due to branching of the public sector in BiH, there is a tendency that the regulatory functions of the government increase even when not necessary, either in order to justify the existence of the institutions and use of the budget revenues, whether to set barriers to

business that can be overcome by corrupt mechanisms. Due to the weakness and lack of competitiveness of the economy in Bosnia and Herzegovina, jobs that are concluded with the authorities have a great importance for financial performances and sustainability of many parts of the private sector, which motivates corrupt behaviour. Although social and other similar payments in BiH are relatively low, compared to developed countries, the need of members of socially vulnerable groups are great even for this aid, which creates a strong incentive for corruption in order to achieve participation in the distribution of budget funds.

#### 2.4 Encouraging moral scorn and unacceptability of corruption

Moral scorn and non-acceptance of corruption, both on collective and individual level are the most powerful and most efficient anticorruption means which requires at the same time the least institutional resources invested. But, due to process of creation of ethical values that were distorted during a long period of time, it is not reasonable to expect changes to happen in a short-term but it is certain that serious results in the fight against corruption are hard to achieve without the public support.

Consequently, the process of strengthening of moral values should be included in the creation of anti-corruption measures by incorporating of desired behaviour into the legislation and education system, its promotion by the holders of public authority and pointing out the positive examples and measures that will convince the citizens that they can influence and contribute to prevention of corruption.

Therefore, it is necessary, by raising public awareness about the manifestations, ways of prevention and consequences of corruption to enable the inclusion of the whole society into this fight. Citizens of Bosnia and Herzegovina as a principle strongly condemn corruption and its manifestations, but judging by the polls and indicators from the criminal statistics, more rarely are willing to report such crimes<sup>5</sup>.

#### 2.5 Reducing benefits and increasing the risk of corruption

Participants in corruption, unlike perpetrators of other criminal offenses, act rationally, weighing possible gains, legal and moral sanctions that they may face, and likelihood of revelation or punishment to happen. Therefore, the purpose of anticorruption measures should be change of the relationship between the benefits and risks of potential participants in corruption – reduction of gain that they may count on, and higher likelihood that they will be revealed and punished. This implies also emphasizing the criminal sanctions that those who engaged in corruption will mostly suffer from, with the emphasis on property seizure and other gain obtained in such way.

Achievement of this objective may involve changes to the normative framework for the fight against corruption, implementation of prevention measures, as well as essential improvement of activities of the authorities for law enforcement. In Bosnia and Herzegovina, despite so far undertaken measures, the probability of detecting and punishing corruption is very low; making this illegal activity still seems very profitable. In addition, in BiH there are very few convictions for corruption criminal acts which are rarely accompanied by deducting of the full value of generated illicit gains.

#### 2.6 Reduction and regulation of discretionary powers

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<sup>5</sup> Countering corruption in Bosnia and Herzegovina: 2001-2011, <http://www.csd.bg/files/Full.pdf>, 19. November 2014

Since corruption is always tied to decision making process, this Strategy strives to as little as possible let the decision making process be the result of the free assessment of decision makers, i.e. of their discretion. Instead, it is necessary to design and implement decision making in a clearly defined procedure based on as precise as possible criteria and with highest transparency of the process towards the public.

For the achievement of this objective, amendments to the normative framework are necessary, in order to introduce decision-making procedures where they do not exist or are not accurate enough. It is necessary to review the level and the necessity of discretionary powers as an important segment of prevention of corruption and raising of public awareness about the risks of discretionary decision-making, as well as the ways for the civil society, the economy and the citizens to monitor whether those powers are used in accordance with the purpose for which they exist. Although there are efforts in BiH to limit the scope of discretionary decision-making, both in the context of certain parts of the Strategy for Public Administration Reform and in the context of the development of Integrity Plans, it has still not been limited to only necessary cases.

#### 2.7 Increasing transparency in decision making

Likelihood that corruption will appear or that it will remain is increased if the decision making process is not public.

Therefore, this Strategy strives to increase transparency of the decision making process, through enhancement of the normative framework and practice, as an important segment of the prevention of corruption and a prerequisite for participation of the entire society in combating corruption. The decision making process in BiH is still not illuminated enough, and problems arise at the level of adoption of regulations (absence of public debate or insufficient involvement of interested stakeholders), concealment of influence on decision making (lobbying), the absence of analysis and incomplete explanations. In addition, corruption is favoured by the general lack of transparency in the functioning of institutions and lack of freedom to access information.

#### 2.8 Increasing oversight and control over decision making

The level of monitoring and control in BiH, in general, is not satisfactory. Besides the problems arising from the fact that not in all cases there are prescribed deadlines for overseeing, or that there is no clearly defined authority that performs monitoring and control, nor volume control, the quality of monitoring is not always sufficient enough and comes down to formal approval of working reports, without consideration of all aspects of the work arising from the prescribed jurisdiction of institutions.

On the other hand, if the decision making process does not undergo supervision or control, and if there is no obligation to explain action / failure to action, the likelihood to reveal corruption is reduced. Therefore, this Strategy strives towards effective supervision and control over decision making, as well as towards reduction of number of situations in which the decision makers do not have to explain action / failure to action.

Achieving this goal involves strengthening the capacity of institutions that perform monitoring and control over adoption and implementation of legal regulations, improving the normative framework, and is also an important part of the prevention of corruption and another precondition for the effective participation of citizens in the fight against corruption.

#### 2.9 Interactivity and proactivity in prevention and repression of corruption

If the knowledge and awareness of all stakeholders in prevention of corruption of corruption, its causes, modalities and harmful consequences is higher, better are chances that corruption is reduced in practice and that number of stakeholders in prevention of corruption is increased. Therefore, this Strategy envisages other preventive measures for fight against corruption, including education about corruption issues, conducting in-depth surveys of existing situation, learning on the basis of identified patterns of corruptive behaviour and including as many stakeholders and individuals from public and other sectors in fight against corruption.

There is no successful fight against corruption if it is solely reactive, or if you are waiting for someone to report corrupt behaviour. It can be effective if it involves proactive approach. Such approach means that the observed patterns of corrupt behaviour are opposed by effective deterrent mechanisms, and also that they are used for the detection of corrupt activity even before it has been reported.

#### 2.10 Intensifying of detection and repression of corruption

If higher number of cases of corruption is revealed and properly punished and results of such actions are widely publicized, it can be expected that fewer cases will occur in future.

Therefore, this Strategy strives towards:

- Increased number of reported and examined cases including suspicion of corruption, through intensified work of the investigation authorities and encouragement of persons to share their suspicion with others;
- Reduction of cases of corruptive behaviour that are not subject to revelation and repression;
- Adequate sanctions for corruption, i.e. to dissuade potential participants from corruptive behaviour
- Development of mechanisms which will ensure compensation of damages caused by corruption to the damaged ones.

#### 2.11 Improving coordination in the fight against corruption

In order for the Strategy to lead to achievement of stated general principles, it is necessary to establish efficient mechanisms for its implementation and for coordination of work of relevant authorities, for monitoring of the implementation of the measures in the practice and periodic evaluation of the achieved results. Experience with the implementation and coordination of the Anticorruption Strategy 2009-2014 has not been successful enough, and coordination of the implementation of measures and activities of the Strategy and Action Plan, between institutions at all levels of government in BiH, was inadequate.

The Strategy, as a general framework for combating corruption in Bosnia and Herzegovina, includes goals and brings measures that are relevant and can be applied at all levels of government, without the negative overlap with the responsibilities of the entities, BD and the cantons. Identifying modalities and specific problems to be solved, starting from the principles, vision and strategic objectives of the Strategy at some levels of decision making, institutions or parts of the public sector, will be carried out within the framework of the Action Plan for the implementation of the Strategy 2015-2019., as well as specific



strategies and action plans that are adopted or modified for certain parts of BiH or sectors. Those strategies and plans will be adopted in line with the Constitution of BiH and according to legal responsibilities on the basis of the Strategy, or in accordance with it.

### 3. Vision

Corruption is a layered phenomenon whose obstruction requires a holistic approach, i.e. inclusion of as many social stakeholders as possible, who will, from their respective angles, contribute to the fight against corruption. The term *fight against corruption*, within the meaning of this Strategy, includes all measures and preventive activities in that field of implementation, law enforcement regulations, coordination of work of all institutions in BiH, strengthening of capacities and raising awareness of need and mechanisms of fight against corruption as well as standards and values not only in public sector but in the society as a whole.

Taking into account the aforementioned, the vision of this Strategy is to achieve the following final result following its application:

*Bosnia and Herzegovina, through building and improvement of the institutional and normative framework, activities of awareness raising about harmfulness of corruption, reducing tolerance to corruptive behaviour, prevention of corruption, its proactive detection and indiscriminate and effective prosecution, has been recognized for its convincing efforts and results to oppose corruption, achieve higher level of governance of law and increased trust of citizens in government institutions.*

### 4. Wider objective

The objective of this Strategy, taking into account strategic and reform processes at all levels of government in BiH, is to create general framework for a decisive and comprehensive fight against corruption, including establishment of the priority areas for action and certain starting commitments and manner of joint action.

Therefore, **the wider objective** of the Strategy is:

*Establish priorities in Bosnia and Herzegovina in the area of prevention of corruption and fight against corruption, principles and mechanisms of joint action of all institutions in BiH, as well as all segments of the society in that area and create, i.e. improve preconditions for reduction of real and perceived level of corruption and promote positive social values such as integrity, responsibility and transparency.*

### 5. Strategic objectives

From such formulated general objective arise following strategic goals, which in BiH should be achieved by the implementation of the Strategy:

1. *Establishment and strengthening of institutional capacities and improvement of the normative framework for fight against corruption;*
2. *Development, promotion and implementation of preventive anticorruption activities in the public and private sector;*

3. *Improvement of effectiveness and efficiency of the judicial institutions and bodies for law enforcement in the area of fight against corruption;*
4. *Raising public awareness and promotion of the need for the participation of the entire society in the fight against corruption;*
5. *Establishment of efficient mechanisms for coordination of the fight against corruption, as well as monitoring and evaluation of the Anticorruption Strategy.*

## **6. Principles**

Given the so called integrated approach of this Strategy, the complexity of the issue of corruption, its direct influence on respect of fundamental social values, rule of law and self-sustainable development, it is necessary to comply with the following principles in Strategy implementation:

- *Rule of law* – compliance with law of legal acts and all actions of legal entities. In undertaking anti-corruption activities, entities implementing strategy should base their actions on law so that their decisions are in formal and material compliance with appropriate legal acts at all government levels and with international commitments of BiH; in the process of issuing of legal acts, reduced risks of occurrence of corruption should be taken into account in their subsequent application and particular authorities that may conduct effective supervision and allocated funds for their implementation;
- *Fact-based* – planning, monitoring and assessment of fulfilment of anticorruption tasks should be based on facts. Already in the analysis phase and assessment of status and phenomenal forms, entities are under obligation to establish facts and based on them establish anticorruption measures. That, in particular, means taking into consideration of advantages and disadvantages of the work of entities implementing strategy as well as continuous revision and examination of fulfilment and adequateness of strategic objectives;
- *Good practice* – adjustment of anticorruption activities with good practices in the area of opposition of corruption in the country and other transition countries, learning from mistakes, identified patterns of corruptive behaviour and their causes in the system. There are numerous solutions to certain dimensions of the issue of corruption that should be taken into consideration and, depending on their applicability in BiH;
- *Comprehensiveness and inclusiveness* – coordinated inclusiveness of the highest number of stakeholders and influence on as many factors causing corruption as possible. Fight against corruption is neither a task for only some entities nor there exist individual factors causing corruption. All institutions and services in BiH, civil society organizations, professional associations and citizens within their competences should get involved in fight against corruption. Therefore, it is necessary, wherever possible and reasonable, to create partnerships and coalitions for fight against corruption; public sector authorities should enable other parts of the society to effectively influence fight against corruption, not only through protection of their rights, but also through participatory approach in decision making, timely

consideration of their initiatives and petitions and enabling of starting procedures for protection of public interest;

- Transparency and participative approach – timely familiarizing of the public with the decision and policy making in the institutions at all government levels in BiH, as basis for the decision and policy making and powerful means for prevention of corruption. All entities implementing this Strategy, in particular, government authorities and services are obligated to ensure appropriate mechanisms of communication and consultation with the public in decision making. For the sake of better transparency, cost-efficient and modern communication means should be used – publishing of decisions, data on planned and conducted activities and searched databases on activities of government authorities, especially in connection with public finance and management practice. In order to fulfil previous principles (comprehensiveness and inclusiveness), i.e. ensure support in implementation of activities of fight against corruption, it is of significant importance to ensure visibility of anticorruption efforts in the form of action plans and reports on implementation of such action plans;
- Impartiality and professionalism – political and other impartiality and competency for fulfilment of anticorruption tasks are necessary for a long and complex process like anticorruption. Opposition to corruption should be viewed as a part of work for general good and improvement of professionalism of administration and private sector, as well. There is no room for ideological, political and other negative influences. Also, it is necessary to work on improvement of knowledge, positions and skills for anticorruption;
- Orientation towards effect – determination of clear, measurable and feasible objectives. Efficiency of the strategic documents and anticorruption activity is questionable if objectives and purpose are not clearly set, realization is not possible to monitor and achievement is difficult or impossible. All these preconditions should be fulfilled by all entities of implementation in order to achieve optimum results for which indicators of achievement are available. Since a considerable number of anticorruption activities relate to public administration, public services and enterprises that should be citizens' service, final result and its measuring should be taken into account in definition and achievement of anticorruption and general activities of work of public administration.

## **7. Obstacles to successful implementation of the Strategy and Action Plan**

Every reform process, and, in particular, the fight against corruption, is demanding and it faces hurdles in its way to achieve required effects. In order to reduce their influence in the implementation of the Strategy, it is necessary to reduce or eliminate the following obstacles that can influence its successful implementation:

- Lack of political and other will – without wish and decisiveness of decision makers at political and administrative level, no undertaking of concrete and engaged anticorruption measures can be expected; instead, it will turn into a missed or last-minute action or selective action;
- Failure to fulfil international commitments – insufficient harmonisation of BiH legislation with international anticorruption documents and lack of application of

internationally recognized standards in that area disable use of confirmed and efficient anticorruption mechanisms;

- *Insufficient independence and competence of the implementing entities* – without appropriate knowledge, skills and freedom (within legislation), the action of the implementing entities against corruption can neither be efficient nor achieve necessary results;
- *Insufficient involvement of the implementing entities* – without sufficient involvement of all stakeholders in Strategy implementation, entirety of the anticorruption system is distorted, which unavoidably affects anticorruption effects;
- *Lack of financial and other resources* – lack of financial and other resources necessary for quality anticorruption action seriously affects the capacity of the system of anticorruption and disables the implementation of the demanding measures that are important for its prevention;
- *Complexity of the political system* – lack of continuity in anticorruption and lack of consensus in legislative and executive authorities regarding anticorruption, due to instability and complexity of the political system have extremely negative effect on anticorruption;
- *Lack of system and coordination* – even best envisaged anticorruption policies measures in the Strategy cannot be efficient if implemented sporadically, in a non-coordinated manner, fragmentally and without systematic activities and coordinated entities for implementation;
- *Lack of public support* – anticorruption is incomplete and inefficient without public awareness of harm that corruption does to a society and individuals, as a basis for better willingness of citizens to demand and support anticorruption activities and participate in them;
- *Unreasonable expectations for fast effects of anticorruption activities* – the more present corruption is, the greater is the wish of the citizens to oppose it and fast effects are expected in short time, which may result in lack of patience and weakened support of the public for anticorruption measures and activities.

## **8. Normative, institutional and social framework for the fight against corruption**

Each reform process, especially as complex as the fight against corruption, requires appropriate and effective framework for its implementation, containing normative, institutional and social components.

Due to the existence of several levels of government, the normative framework for combating corruption in BiH is complex, because there are numerous laws at all levels of the government regulating this area, which, in addition to the Law on the Agency, are the most important laws governing the following areas:

- Criminal legislation
- Public procurement
- Conflict of interest
- Financing of political parties
- Free access to information
- Electoral processes
- Prevention of Money Laundering
- Protection of persons who report corruption.

In addition to the law, fighting corruption at different levels of government in BiH is also determined by the existing or future strategies and action plans for their implementation, which under the Law on the Agency should be in accordance with the general principles set out in the Strategy.

Because of the large number of institutions, which at the appropriate level of government have a jurisdiction, the institutional framework for fighting corruption in BiH is also complex and includes the following institutions:

- Parliamentary Assembly of BiH (PS BiH)
- The Council of Ministers and state institutions
- The Agency and bodies for combating corruption at the entity level, BD and the cantons
- Parliament of BiH Federation (PF BiH) and the National Assembly of Republika Srpska (NS RS)
- Entity governments and institutions
- Assembly of Brcko District BiH
- The government and the institutions of Brcko District BiH
- Legislative bodies of the cantons
- Governments and institutions of the cantons
- Public companies and institutions in BiH.

In addition to the normative regulations and functioning of public institutions, all other segment of the society which are, or should be, interested in reducing the harmful effects of corruption have a very important role in the fight against corruption:

- Political parties
- The private sector and other forms of its mergers
- The media
- Universities and other academic and educational institutions
- Associations and civil society organizations
- Citizens

- International Organizations

A successful fight against corruption requires highest level of cooperation and coordination between all the listed institutions and social actors, and their role in this process is addressed in more detail in the corresponding strategic objectives of the Strategy.

## **9. Strategic objectives and programs for their implementation**

Although presented separately, all strategic objectives are closely related because the expected effects can only be achieved if all objectives are treated with equal importance. Enforcement of preventive and repressive measures depends on the strengthening of institutional capacities and normative framework for combating corruption too. Raising public awareness and participation of the society in the fight against corruption increases the number of reported cases of corruption and the achievement of these objectives depends on the efficiency of the mechanism for coordination of anticorruption activities.

Strategic objectives are developed through the strategic programs, from which the measures for their implementation derive, which are made operational through the Action Plan, with well defined activities, the perpetrators of those activities from different sectors, performance indicators, deadlines and planned resources.

### **9.1 Establishment and strengthening of institutional capacities and improvement of the regulatory framework for the fight against corruption**

The fight against corruption, as an integral part of establishing and maintaining the rule of law, implies the existence of clear and comprehensive rules to be used for prevention and for detection and punishment of corruption, but also the existence of well-organized institutions. Those institutions should have clear tasks, necessary powers, resources, knowledge and skills to fulfil set goals and integrity, necessary to fulfil the norms. Institutional framework in BiH for combating corruption is not fully finalized, and some institutions of great importance to the fight against corruption do not have sufficient capacities.

Basic legislative framework for combating corruption exists, but it needs to be improved both through harmonization with international standards, as well as within the country, removing norms and procedures that increase the risk of corruption and introducing policies that will reduce the risks. Common result to improved standards and strengthened institutions should be the successful implementation of high quality anti-corruption laws, which, by common assessments of domestic and foreign actors, are considered as the biggest problem in BiH<sup>6</sup>.

### **Institutional capacities**

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<sup>6</sup> National Integrity System Study Bosnia and Herzegovina 2013., <http://ti-bih.org/wp-content/uploads/2012/12/TIBIH-NIS-Web-FIN.pdf> 19. November 2014

There are multiple bodies and institutions in Bosnia and Herzegovina which, based on their statutory, play a role in the fight against corruption, which, based on their positions and responsibilities may be divided into two groups.

The first group consists of institutions and bodies that have one common feature - to coordinate activities in the fight against corruption, and includes the Agency and bodies for prevention of corruption, that are or need to be established at the entity level, cantons and BD BiH.

The second group consists of bodies and institutions with specific responsibilities in the fight against corruption from the legislative, executive and judicial authorities at all levels in BiH, especially in the area of passing legislation, prevention, control, surveillance, detection, proving and prosecution of corrupt behaviour.

#### 9.1.1 Bodies for coordination of the fight against corruption

Agency for the Prevention of Corruption and Coordination of the Fight against Corruption is responsible for the development of the Strategy and Action Plan for the Fight against Corruption of BiH, coordination and supervision of their implementation, giving opinions and instructions regarding their application, and coordination of the work of public institutions in preventing corruption and conflict of interest.

Furthermore, the Agency has the jurisdiction to prescribe a uniform methodology for data collection on property status of public servants, analyze submitted data for identification of corrupt activity and to act on the received applications with indications of corrupt behaviour. The Agency is responsible for coordination of the work of institutions with public jurisdiction in preventing corruption, monitoring the effects of preventive anti-corruption laws and regulations, and giving instructions regarding their application and initiation of activities related to amendments to the existing laws and their harmonization.

At the level of the entities, cantons and BD BiH the establishment of bodies for prevention of corruption is foreseen, with jurisdiction of coordination of anticorruption activities at the appropriate level of the government. In addition, where there is a need, establishment of such bodies at the local levels of the government should be enabled, or specifically at the level of towns and municipalities, even though they are not specifically mentioned in the Law on Agency. The Law on the Agency foresees the obligation of development of anticorruption policies in the entities, BD BiH and cantons, possibility to determine a new or existing governing structure that will be in charge of prevention of corruption, development and implementation of the strategies for the fight against corruption and action plans at the appropriate level, and the obligation of those bodies and institutions at all levels of the government to cooperate with the Agency. In that way, timely and efficient implementation of coordinated politics would be ensured.

Resolutions from the Strategy retain a framework and anticipate additional development of modalities of cooperation and coordination, based on past experiences, to make it more efficient and more consistent. Bearing in mind the constitutional and legal powers, the role of bodies and institutions at entity level, BD and cantons, and existing or future strategic documents for the fight against corruption, is particularly important when planning anti-corruption activities in certain sectors of society (e.g. education, health), whereby the implementation of the Strategy will ensure that these activities are based on the same principles and in line with the general legal framework.

Improvement of the work of institutions, performing the most important tasks in the fight against corruption, and regulations by which they act involves appropriate institution capacity, standardization of activities, improvement of knowledge and skills and appropriate resources.

Strategic programs:

1. Determination of bodies for prevention of corruption at the levels of the government where it has not been done yet with the development of mutual cooperation and coordination between all bodies for prevention of corruption
2. Provision of administrative, financial and institutional capacities of bodies for prevention of corruption in BiH in line with their jurisdiction

9.1.2 Institutions at all levels of BiH with anticorruption jurisdiction

At the level of legislative and executive power are institutions that play the key role in the fight against corruption in BiH. Those are the Parliamentary Assembly BiH, Council of Ministers BiH and other state institutions, Parliament of the Federation BiH and National Assembly of Republika Srpska, entity governments and institutions, the Assembly of Brcko District BiH, Government and institutions of Brcko District BiH, legislative bodies of the cantons, cantonal governments and institutions and public companies and institutions in BiH.

Particularly important and direct role in the fight against corruption have authorities for repressive actions against corruption such as the Court BiH, the Prosecutor's Office BiH, Ministry of Security and the constituent administrative organizations part of this ministry (the State Investigation and Protection Agency, the Directorate for Coordination of Police Bodies of BiH, Border police of BiH), courts in the FBiH, the Federal Prosecutor's Office and Federal Police Administration, courts and prosecutor's office in the RS and the Ministry of internal Affairs of RS, police and Municipal Court in BD BiH, the Prosecutors Office BD BIH and corresponding institutions at the cantonal level (courts, prosecutors and ministries of internal affairs).

Ministry of Security BiH and its administrative organizations, ministries of interior of the entities and cantons, police of BD BiH have the authorization to undertake operative activities in discovering the perpetrators of corruption and other crimes. Besides that, they are responsible for prevention of corruption within the institutions themselves. Cooperation between police agencies in BiH, but also with the international level, is the prerequisite for efficient work. Equally important is that the police services achieve good cooperation with other institutions, especially with those that through their work can access data that points to committed acts of corruption.

The Ministries of Justice, at the various levels of government, have an important role primarily in creating of legislative framework to timely respond to the challenges in the fight against corruption, but also other related illegal behaviour. In order for such a role to properly be carried out and thereby ensure the implementation of relevant international standards and legal certainty, it is necessary that they cooperate with each another and with other bodies that can provide them with the necessary information.



Prosecutors play a crucial role in the prosecution of perpetrators of criminal acts, because the decision on whether the prosecution will be carried out depends on their determination and skills, whether all suspects will be encompassed and whether good evidence will be presented to the court. In order for their work to be successful, a good cooperation is needed especially with the police, but also with all other bodies that have information or knowledge about specific issues.

Audit institutions in BiH do not have a repressive but preventive role which has a great importance in the fight against corruption. The task of auditing institutions in BiH is to take a proactive role in the prevention of corruption, which includes support to development of policies and strategies of institutions in preventing corruption; raising awareness and accountability in the use of public money; impact on the transparency of all proceedings of public authorities, presenting the results of audit institutions in BiH parliaments, public disclosure of audit reports and recommendations and to encourage cooperation with other institutions.

Their findings, conclusions and reports of inspection and audit services should be a good starting point for a criminal investigation. For that to happen, it is necessary to establish regular information exchange.

Finally, in the context of the implementation of comprehensive policies to fight corruption, it is necessary that these bodies have adequate cooperation with the authorities for fighting corruption on the different levels of government and with the Agency for the Fight against Corruption.

#### Strategic programmes:

3. *Ensuring adequate institutional capacities with anticorruption jurisdictions.*
4. *Improve cooperation and coordination between institutions with anticorruption jurisdiction in BiH and bodies for prevention of corruption at the appropriate level of the government*

#### 9.1.3 Human resources management

To enable the bodies and institutions to fulfil their tasks of combating corruption, one of the prerequisites is that they have adequate resources, both human as well as material. Although the number of employees may be an indicator of institutional competency to respond to legal obligations, there are other, equally important factors that influence this. These are, on the one hand, the expertise of employed personnel, and on the other, their distribution and organization at work. To meet the criteria of expertise, it is necessary to ensure that recruitment and promotion are in all aspects consistent with the demonstrated knowledge, commitment and results. To achieve an adequate structure of employees and, to the fullest extent, take advantage of their capabilities, it is necessary that laws on systematization of working positions are well designed and, above all, that these acts are not adjusted to the existing situation, but that recruitment is performed on the basis of pre-defined needs.

In this regard, it is necessary to correctly estimate the number of executives based at the analysis of tasks that institutions need to perform and planned workload, which again should reflect the optimum level of fulfilment of the obligations arising from the legislation and policy acts. Functional analysis and the implementation of integrity plans can contribute to the achievement of these objectives. The question of material and human resources of

the institutions is multiply connected. As the employees need tools to operate, which is why they have to be purchased, the same funds for the work can reduce the number of employees needed (e.g. software control that may to some extent replace the visits of inspectors). Analysis of resource needs should be checked by the competent supervisory authorities and publicly available.

Strategic programmes:

5. Improvement of professionalism of public administration through the establishment and implementation of transparent and measurable criteria for the recruitment and shifting in the public service.
6. Harmonization of the development of curricula for training in all public institutions in BiH in the field of prevention of corruption and coordination of the fight against corruption.

9.1.4 Independence of conduct and support to anticorruption authorities and institutions

A successful fight against corruption involves non-selectivity in treatment of institutions, apropos the implementation of legal regulations equally for all participants, which is not possible in the conditions where they are exposed to inappropriate internal and external, political and corruptive pressures, threats and influences.

Selection of managers of public institutions should be conducted on the basis of clearly laid down criteria and conditions and upon completion of the competition procedures, along with a detailed explanation of the decision. In addition to personnel policies, subject to political influence in institutions is also daily work, particularly in the areas of public procurement, licensing and other fields that can be used to generate benefits or influence. Even when the institution is exposed to the pressures, or when the pressure is applied at the manager or to a concrete officer, it is their duty to refuse illegal orders and endeavour to fulfil their tasks in accordance with their assigned jurisdictions and current legislation.

The current situation in BiH is unsatisfactory in this regard, although the public sector is formally separated from politics. In reality, the political will and the lack thereof are several factors that influence the success of the reforms, the implementation of adopted legislation, including the functioning of institutions. On the other hand, the institutions themselves could do more within existing competencies, capabilities and support to achieve more of what they are responsible for.

Strategic programmes:

7. Securing expertise and professionalism of senior civil servants through the consistent application of the criteria for selection.
8. Reducing opportunities for political and other influences on the work of employees in public institutions.

9.1.5 Financial and other resources of anticorruption bodies and institutions

Lack of financial and other resources, required for successful fight against corruption and fulfilment of other legal obligations of institutions, seriously affects the capacity of the system to combat corruption and precludes demanding measures that are important for its

prevention. Financial needs of the public sector in BiH are larger than funding possibilities from the current income, which negatively effects the funding of anti-corruption activities. However, this is one of the areas where savings are not profitable. On the contrary, we should consider ways to finance the work, especially of those institutions that are directly involved in exposing corruption and other related violations and to connect it with the financial results achieved or with the extent of public funds which are subject to their control. In addition, for political reasons, or lack of support in some cases, unjustified withholding of funds for anti-corruption institutions occurs.

Similar as with estimation of needed human resources, the height of necessary financial resources should rest on objective assessments. This implies the analysis of the tasks that the institution in question should do and planned workload, which in turn, should reflect the optimum level of fulfilment of the obligations arising from the laws and strategic acts. Procurement of funds for the work should be performed when it is needed; when it is certain that it will be used and not depending on the current status of the approved budget. In addition, procurement needs to be planned several years in advance, based on long-term work plans.

For the implementation of the Strategy and the Action plan, necessary resources for the implementation of each activity in the institutions that will be responsible for their implementation should be provided. These budget users should incorporate and separately show funds that they need in order to implement the Strategy and Action Plan and, in the explanation of their financial demands, warn about the possible consequences of such disapproval of the budget. Relevant Ministries of Finance, Government, Council of Ministers and the legislative houses should make every effort to provide the resources needed for such an important reform activity as the fight against corruption. Along with the funding from the budget, opportunities provided by timely planning and the interest of donors to assist the work of state bodies in the fight against corruption should be used also, either directly or in conjunction with civil society projects. Even if all fund are not approved, public authorities shall endeavour to within the available / obtained funds meet the tasks of the highest priority, and thus clearly point to the benefits that the society can expect from them.

#### Strategic programmes:

9. Ensure financial resources for the implementation of the strategies and the accompanying action plans for the fight against corruption at all levels in BiH

##### 9.1.6 The legal framework for combating corruption in BiH

Construction and permanent improvement of the normative framework for the fight against corruption is one of the most important measures that connects and defines all other anti-corruption activities. The laws regulate and their quality determines many key issues of prevention of corruption. For example, what will be the citizens' rights and the obligations of the authority with regard to public information, what will be the obligations of officials in terms of resolving conflicts of interest, etc?

Likewise, in the field of repression, it will depend on the law to determine which kind of behaviour can be punished and what kind of means the investigating authorities can apply

in discovering and proving corruption. The normative framework is important for coordination issues of fighting corruption and achieving cooperation among the organs. Some activities will be performed on the basis of an agreement, but the rules are necessary when such a willingness to cooperate does not exist or is not sufficient. Also, strengthening the role of the civil society and economy in the fight against corruption will also depend on the legal possibilities that are at their disposal.

Therefore it can be said that the fight against corruption, as an integral part of establishing and maintaining the rule of law, implies the existence of clear and comprehensive rules to be used either to prevent, or to detect and punish the perpetrators of corruption. The basic legal framework for combating corruption in BiH exists, but it needs to be improved, through harmonization with international standards and within the country, removing norms that increase the risk of corruption and adopting policies that will reduce the risks.

Improvements of the normative framework based on the Strategy goes towards the review of the provisions of existing legislation, taking into account the principles of the Strategy, analysis to which this Strategy is exposed to, analysis applications, as well as the need to harmonize with international standards. Another direction of improvement is going towards completing the legal framework legislation (e.g. Law on lobbying).

#### Strategic programmes:

10. Improvement of the normative framework in BiH for the fight against corruption, with the aim of more successful cooperation and coordination between judicial authorities and the law enforcement organs.
11. Enable the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption and other anti-corruption bodies to provide their opinions about the proposed anti-corruption laws

#### 9.1.7 Harmonization of anti-corruption legislation with the international standards

Bearing in mind the constitutional arrangement and the primacy of ratified international treaties over domestic legislation, in order to achieve the rule of law, it is necessary to fully provide and fulfil the international obligations of BiH, regardless of whether their (dis)respect is bound to certain positive or harmful consequences. Generally, the application of international standards is useful, because it leads to compliance with other countries, of which might depend the efficiency of the cooperation in the criminal justice matters. However, one should bear in mind that the international standards are not understood or presented wrongly for the needs of the domestic debates. Standards are, in most cases, at the minimum, or such that all signatories must adhere to and are acceptable even to the most sceptical. Therefore, the achieved level of comprehensiveness of anti-corruption regulations should not be reduced in order to "harmonize" with the international standards, or use the minimum standards as an excuse for not implementing further reforms, which clearly have been recognized as the need in the country.

Bosnia and Herzegovina has ratified several international conventions that are of importance to the fight against corruption, among which the Civil and Criminal Law Convention of the Council of Europe, as well as the UN Convention against Corruption. In addition, in the context of EU accession, the relevance of other documents, such as the

Resolution 97 (24) of the twenty guiding principles in the fight against corruption, Common rules against corruption in the funding of political parties and election campaigns, etc., will increase. Norms of the international conventions are not always fully elaborated in the domestic law. Moreover, the mere fulfilment of certain standards is questionable because it depends on the interpretation, how widely an obligation will be understood, especially when it comes to qualitative categories, such as "establishing effective mechanisms" and similar provisions.

It is known that the compliance of legislation and practice in BiH with the conventions is not complete, as reported in GRECO reports, reports of European Commission and other organizations (e.g. SIGMA) and international surveys of achievement of some international standards.

Strategic programmes:

12. The harmonization of the legal framework in Bosnia and Herzegovina with the obligations from ratified international conventions
13. Implement the recommendations of the relevant international institutions and organizations for the fight against corruption

9.1.8 Harmonization of anticorruption legislation at all government levels in BiH

The principle of legal security and rule of law is ensured, *inter alia*, by the harmonization of the country's legal system. There is incompliance of regulations in BiH which, in some cases, have adverse effect on fight against corruption. The first type of problem is the incompliance of the regulations within one level of government and their harmonization needs to be initiated and the relevant anticorruption bodies need to be coordinated. Another type of inconsistency are the differences in the provisions of the anticorruption law at BiH level on one hand and entity, BD and cantonal level of the anticorruption law on the other hand. Here are at least two situations - when the harmonization of these regulations is mandatory, because of the legal hierarchy in terms of the legal issues or when for such harmonization there is no legal obligation. Whether there is a legal obligation to harmonize or not, it is useful. In the context of the implementation of the Strategy, harmonization is particularly useful to facilitate coordination of activities, exchange of experiences and monitoring of the achieved results.

The need for harmonization of certain regulations within BiH has been identified in some sections of the Strategy.

Strategic program:

14. Improvement of prevention of corruption and the fight against corruption through the harmonization of anti-corruption legislation at all levels in BiH

9.2 Develop, promote and implement preventive anti-corruptive activities in public and private sector

Prevention is always a better option than repressive action in any area, including fight against corruption whereby even the possibility of harmful consequences is eliminated. Prevention may be implemented through activities which prevent or eliminate corruption

like, for example, the abolishment of obligation to obtain a permit for which possibility of bribe was created in the past, or, when this type of prevention is not possible, by reduction of possibility of corruption by clear and precise definition of the issuing of such permit.

When the acting of the civil servants is better regulated and when effective mechanisms of control and sanction exist, the probability to detect corruption and punish offenders is higher. Also, the more transparent the work of civil servants, the lower the probability to have corruptive behaviour unnoticed. Prevention of corruption at the level of the institutions encompasses the strengthening of control mechanisms and in general the culture of integrity, partly through the application of the code of conduct and relevant training. On the other hand, if there are factors with adverse effect on the application of the legal framework, including the lack of will, irresponsibility and lack of resources, the regulations will have no adequate effect.

Within this objective, the Strategy devotes special attention to prevention in the areas which in BiH turned to be the most problematic so far, and in those areas recognized as a standard part of anti-corruptive activities in the international documents and practices of successful reforms worldwide. These include publicity in the work of institutions, regulated financing of political parties, strengthening of ethics and integrity in public services, regulated processes of public procurement, efficient monitoring of the work of institutions and individuals, quality work of legislative bodies and transparent management of public revenues and expenditures.

#### 9.2.1 Publicity in work of institutions and access to information

Transparency in the work of public bodies is a necessary condition for the success of the anticorruption efforts. According to international conventions, in addition by ensuring public access to information under the control of public authorities, it is also realized by establishment and promotion of mechanisms for reporting corruptive behaviour, enabling comments to work of public institutions and, in particular, by publishing basic information on their scope, manner and their results.

In the BiH Progress Report 2013 (annex to the communication of the Commission to the European Parliament and Council) it is stated that public institutions still have unequal implementation of the laws on free access to information. Surveys conducted in this area demonstrate that the application of the Law on free access to information is at a very low level. According to the report of the ombudsman for human rights BiH for 2013, only few institutions nominated communication officers and submitted the guide and index registry of information under their control and submitted statistical reports in the area of access to information. On the basis of received complaints, ombudsman points out the issues in the implementation of the regulations, primarily in the form of delay in procedures, incorrect drafting of decisions upon the request for access to information, and setting conditions for access to information not stipulated in laws.

In addition to the existing regulations on free access to information, whose application should be ensured entirely as well as the norms regulating cases of not allowed access to information, the authorities should upon their own initiative and on the basis of the amended normative framework, publish as much information as possible proactively, i.e. even when nobody requests such information, in the form of browser-based databases

whenever possible. It is equally important to ensure that such information is updated and that the authorities are responsible for their accuracy and completeness.

Strategic programmes:

1. Reducing the possibility of corruption by improving the proactive transparency of institutions and improve the application of the Law on Free Access to Information (ZOSPI)
2. Improvement of the right to free access to information through more precise definition of the exceptions to the general rule of the Law on Free Access to Information (ZOSPI)

9.2.2 Financing of political parties

Political parties are the key element of the democratic societies and a tool for expressing citizens' political will. There are certain international standards in connection with their financing (e.g. Recommendations of the Council of Europe (Rec [2003] 4 on common rules of fight against corruption in financing of political parties and electoral campaigns); however, different countries have essential differences in the systems and practice.

Corruption is always related to the decision making process. Bearing in mind the power possessed by political parties in BiH, their influence on the functioning of public institutions and the process of decision making is obvious.

The area of financing of political parties necessary needs to be treated in the context of prevention of corruption

The situation of financing of the political parties and electoral campaigns in BiH is not satisfactory. Thus, the level of transparency of donations and reports on expenditures for activities is not in accordance with the international standards, and capacities of the control authorities are limited. The Group of states against corruption (GRECO) in the third round of the evaluation established the need for harmonization of the laws in BiH regarding the financing of political parties. Also, it was established that there existed room for manipulation in the area of cash donations and that the Central Election Commission BiH (CEC BiH) is unable to supervise the costs of the political parties outside the electoral campaigns.

At the end of 2012, the new Law on financing of political parties was enacted and introduced quite a few new things. In the CEC BiH reports on implementation of law, issues were underlined regarding the sources of financing (publishing activities and loans), especially unpredicted fines in case political parties fail to keep records on revenues and expenditures, fail to keep books except for membership fees of the physical and legal persons, or fail to submit financial reports within the timeframe prescribed by the CEC BiH. Also, little attention is devoted to unreported donations in kind to political parties such as printing services for election material, price discounts for advertising space, use of resources of public institutions and other types of support mostly for the purpose of elections.

Strategic programmes:

3. Increasing the transparency of collection and spending of funds of political parties in BiH through accurate financial reporting and follow-up reports

4. Introduction of the obligation for political parties to report in-kind donations in the same way as financial donations.

### 9.2.3 Ethics and integrity in the institutions

High ethical standards and integrity of the public officials and civil servants is the best, simplest and least demanding obstacle to corruption regarding the utilisation of the resources. However, regardless of the measures implemented, one cannot count on all officers to behave ethically, especially in situations when the corruption temptation is strong due to the value of the illegal gain or due to the absence of the control mechanism of quasi-ethical justification of such behaviour.

Respect of high ethical standards is in particular important in connection with the prevention of the conflict of interest, in the treatment of the users of the public sector services and business partners of the public institutions as the public sector is expected to respect and promote the highest ethical principles. Ethical principles, as provided in the UN and Council of Europe conventions should be codified in the laws and ethical codes. When the rules are precise, they facilitate the application of obligations and they also recognize the exceptions to the rules. It is equally important to familiarize the civil servants with the content of the code of conduct when hiring them. Also, they should be trained in the issues elaborated in the code of conduct, promoted in the communication with the staff and their mutual communication. The staff should be consulted regarding the enactment or amendment to the code of conduct. Respect of code of conduct is subject to internal and external control and the results of its application shall be published.

There are ethical codes in BiH and training programmes related to integrity and ethics. However, there is a need to compare them and harmonize them on the basis of the best existing experiences. The BiH Civil Service Agency does not have sufficient resources for the training of civil servants. Some training is conducted in cooperation with foreign donors; however, they lack sufficient cooperation and coordination with the state agencies. Expression of the needs for training is often missing as well as the continuity and coordination of their organization. Respect of ethical codes has not been attached appropriate significance. Ethical codes are not used sufficiently, in accordance with the relevant regulations for assessment of the quality of work or instigation of disciplinary responsibility and preventive checks of respecting of the codes are rare exception.

Thus, more significance should be attached to these codes. They should be promoted among the institutions and the public and citizens should be invited to confidentially point to violations of the rules by the civil servants and officials of the public institutions. Also, integrity should be closely monitored of those civil servants whose positions are exposed to risk of corruption and the relevant measures from integrity plans should be implemented.

#### Strategic programmes:

5. Reducing the opportunities for abuse of discretionary powers
6. Developing a culture of integrity and ethics in public institutions in BiH
7. Harmonize the methodology for development and implementation of plans for fight against corruption for public institutions in BiH and establish legal obligations for development of integrity plans in all public institutions in BiH



#### 9.2.4 Conflict of interests and declarations of assets

The conflict of interest always precedes corruption, but does not necessarily result in corruption and therefore, it is necessary to have and implement clear and comprehensive rules to reduce to minimum the number of cases of potential conflict of interest. In that sense, it is necessary to define the incompatibility between performing certain jobs, rules of exception from further decision making in case the conflict of interest emerged, rules of reporting property and gifts, checks and punishment for the violation of rules by managers and other officers who have an opportunity to ensure financial or other gain for themselves or for others, following the decisions they make.

At the end of 2013, the Law on Amendments to the Law on Conflict of Interest in the government institutions in BiH was enacted. The communication of the European Commission to the European Parliament and Council for BiH Progress, regarding the fulfilment of the conditions and objectives set by the European Union, states that the amendments of the legislation on conflict of interest do not guarantee the impartiality and efficient prevention of the conflict of interest and that they are not in compliance with the international standards. Another issue is the lack of compliance of the FBIH and BD BiH legislation with that of the state level. Another objection states that the term conflict of interest should be extended to any economic interest, debt and property, relations with profit and non-profit organizations, political parties and professional organizations, reporting of property (including its significant changes) by executive officials but also other public officials.

The reports of the Central Electoral Commission state a number of problems in the area of conflict of interest in the previous law, such as the various interpretations of the concept of gifts and failure to deliver declarations of assets. Conflict of interests is entrusted to the Commission on Conflict of Interest in the institutions of BiH, which in 2014 began operations. Among the priority measures to solve the problem, a greater transparency of data from the declarations of assets should be provided, removing obstacles related to the protection of personal data through their publication without identification numbers of applicants and address of the property.

#### Strategic programmes:

8. Improvement of procedures for determining conflict of interest through a system of collecting and verifying information about the property state, along with effective sanctions for false information in the declarations

#### 9.2.5 Public procurement and the private sector

Public procurement in BiH refers to a large number of entities in the country because there are about 2,500 public institutions, of which about 1,400 are registered with the Information System of Public Procurement Agency. According to the report of the Agency for the year 2012, the proportion of procedures that were performed by direct agreement and competitive request for proposals is about 13%, and about one-third relates to open procedures. The results of research of projects carried out in BiH show that there is no coordinated policy of public procurement nor approximately defined standards and characteristics of goods and services to be procured. The research has also shown that the personnel who carries out the procedures is numerically inadequate and poorly trained, and effective mechanisms to ensure their integrity do not exist. Similarly, the European

Commission states on issues concerning noncompliance of the legislation, the possibility of wide use of negotiated procedures and the lack of sanctions for non-disclosure of information about public procurement procedures.

International standards and good anti-corruption policy in public procurement can be achieved if the open procedure becomes dominant, if the conditions and criteria are formulated non-discriminatory, being verifiable and fully relevant to the subject of public procurement and to follow the principle of "value for money". Transparency in public procurement not only allows better control of the public, but also directly contributes to increasing of competition and cost savings. It is important to ensure that in public procurement professional staff of high integrity is engaged, which is why special attention should be paid to training programs and targeted checks of integrity of engaged employees, as well as measures in the field of prevention of conflicts of interest and reporting assets. Public procurement, as well as other forms of public expenditure, should be subjected to public scrutiny and authorities at all stages, from planning of budgets and determining what the money will be spent on, to implementation of contractual obligations.

In preventing corruption in public procurement, besides the state authorities, the private sector can play an important role. Although some of the companies encourage corruption in public procurement or participate in it directly or indirectly, most of the private sector undoubtedly has an interest for corruption in this area to be at a minimum. The main options for the private sector to influence the remedial actions are organized by business associations in order to protect the interests of its members, as well as individual action of firms whose interests are directly affected by stipulating discriminatory conditions and criteria, in violation of the rules on public access to information, procedures, evaluation of tenders and subsequent amendments of contract. Therefore, all institutions should encourage the economic operators to protect their appeal rights which have been violated by illegal public procurement. On the other hand, public institutions need to present to the private sector and the public the companies that fulfilled their contractual obligations and also those which did not.

#### Strategic programmes:

9. Continuous harmonization of the legal framework in the area of public procurement with international obligations and standards
10. Improvement of the legal framework for the active participation of the private sector in anticorruption activities

#### 9.2.6 Strengthening the supervisory functions of audit, inspection and other services

In order to effectively control the functions of audit, inspection and other services, it is necessary to ensure appropriate staffing and other capacities, appropriate scope of work they do, and to establish an adequate normative legal framework for their operation

A specific type of supervision, which is of great importance to the fight against corruption, is carried out by the audit offices. The Sigma Report (a joint initiative of the European Union and the Organization for Economic Cooperation and Development) for 2013 states that the appropriate by-laws governing the work of internal auditors have not been adopted. The laws governing the work of external audit offices and departments are not precise enough in defining authorization. Problems occur in jurisdictional issues, audit procedures, relations with the executive branch of government, especially in the final stages

of reporting, communicating findings and publishing and media promotion of audit reports. There are deviations from certain international principles and standards of Supreme Audit Institutions (INTOSAI). Also, omissions in the work of the very audit offices and agencies are concluded, such as the adoption of the annual audit plans without clear criteria, inadequate control statements, and also regarding the procedures for informing the authorities about the perceived illegality. Therefore, it is necessary to work on the implementation of activities with the aim of further improvement of independence of the Office, which would increase the credibility of these institutions in their preventive role in the fight against corruption.

Institutions that have been audited have an obligation to declare themselves about the findings and recommendations and to ensure the actions against them. Of particular importance is that the findings and recommendations from the reports with a caution or a negative opinion are submitted to the competent institutions for law enforcement at the appropriate level of the government.

Supervision of the work of employees and general processes in the public institutions is one of the cornerstones of a successful fight against corruption. The managers have particular importance, as well as internal control and audit bodies. The prerequisite for the exercise of this control are clear tasks for employees, and adequate occupancy rate of public services is of great importance. The results of this type of surveillance should be available to the supervisory institutions, and to some degree to the public.

#### Strategic programmes:

11. Strengthening the supervisory functions and the liability for failure to control in the area of conflict of interest, ethics and integrity, financial management, compliance with professional and other standards.
12. Strengthening human resources and other capacities, and the legal framework for improvement of the work of inspection and auditing services
13. Establishment of effective channels of communication of the inspection and auditing services with institutions for law enforcement in relation to findings that point towards possible corrupt behaviour

#### 9.2.7 Strengthen the role of the anticorruption legislative authority and its bodies

Legislative bodies have multiplied significance and an irreplaceable role in the fight against corruption, because they have the greatest power in adoption of regulations and oversight of the work of all executive authorities and other public institutions. Therefore, members of the legislative authorities must have the necessary expertise in the field of fight against corruption, which is particularly applicable to the members of the body responsible for supervising the realm of the executive power.

In the adoption of anti-corruption legislation, the legislature should take into account the country's international obligations from ratified conventions in this area, and ask for the opinion of the Agency and / or bodies to combat corruption at the appropriate level of the government. In addition, as for all other regulations, it is necessary to open up the process of making anti-corruption laws for professional public, academia and non-governmental organizations, as a guarantee of their quality.

Legislative organs and their bodies are the highest authority for the trial of the so called High profile corruption cases, or when there are indications that high-ranking officials

are involved in such activities. Given the fact that it can be expected that the executive power bodies could be either under pressure or biased when it comes to persons who have political influence or power, it is necessary to apply the institute of so called Public hearings. In this way, the highest quality of conclusions can be obtained, not only about the possible individual responsibility, but also about the reforms to be implemented, so that similar abuses would not happen in the future. An important surveillance mechanism that the assemblies have at their disposal, which is still underutilized, is reviewing of reports submitted to them by the independent bodies, which often point to problems in law enforcement, or to problems in the very regulations.

Performing such "roofing" supervisory powers of the organs and legislative authorities, as well as those associated with the ability to contribute to the improvement of the legal framework, are in close connection with the activities of the Agency and bodies for fighting corruption at other levels of the government, to give opinions on legislation containing anticorruption elements or containing risks for the occurrence of corruption, and why parliamentary procedures should be improved and a requirement of consultation and consideration of these reviews introduced.

#### Strategic programmes:

14. Education of representatives of legislative bodies in BiH with the aim of adoption of effective regulations and policies for combating corruption.
15. Strengthening the role of the supervisory commissions of the legislature aimed at more efficient monitoring of the institutions and prevention of corruption
16. Introduction of the obligation to conduct public hearings on legislation with the provisions of anticorruption.

#### 9.2.8 Collecting and spending of public funds

The subject of abuse in corruption is almost always, directly or indirectly, the funds of approved budgets or public assets at various levels of the government, as well as resources of funds, public institutions and public companies. Future public funds can also be the target of corruption, namely the ones that will be created only in the future and which a person prone to committing criminal acts of corruption succeeds to reach through conclusion of harmful contracts, issuance of government guarantees for jobs that will not be successful or involvement of clauses in contract that will lead to excessive compensation for damage to the other side.

Corruption can occur both in the distribution of expenses, as well as in revenue collection. In this sense, the key requirement to combat corruption is to ensure that there are no preferential economic entities or individuals at collection of taxes, at giving government concessions, at payment of the duties, at giving subsidies and other forms of state aid and public procurement procedures. To address these problems, the key measures are those that will provide transparency of information on planning and implementation of public revenue and public expenditure as well as any other engagement that creates an obligation for the public sector or public property. Transparency implies in particular the availability of information regarding the collection and spending of public funds, and includes the organization of public hearings during planning of the budget.

According to the estimates of international organizations on transparency of budgeting in Bosnia and Herzegovina, as well as on control over its expenditure, the situation is not favourable. Capacities and preconditions are rated very poor, and the supervisory role of the legislature moderate, resulting in irrational spending of public funds. Inadequate regulations contribute to that as reported by the offices and services for the audit of public institutions. Due to the absence or non-compliance with the rules for budget planning, budgeting is not done rationally, and spending beyond the possibilities, particularly in the areas of billing and payments of gross wages and salaries, travel expenses, expenses for postal services, the use of official vehicles and representation expenses, service contracts, capital expenditures and grants.

#### Strategic programmes:

17. Improve responsibility and rationality in planning, collection and spending of public funds, and improve the transparency of this process.
  18. Ensuring equal treatment of citizens and businesses in regard to collecting taxes, duties and other charges.
  19. Increasing the supervision over planning and execution of the budget and responsibility for violating the rules that regulate those processes.
- 9.3 Improvement of organizational activities of judicial authorities and law enforcement agencies in combating corruption

Another fundamental orientation in fighting corruption, in addition to prevention, is repression, which is based on state coercion and the possibility that the state stands behind the implementation of its rules by applying formal sanctions. It is not realistic to expect that all the members adhere to the prescribed rules, which is why it is necessary to establish mechanisms for verification of compliance. Repression cannot replace other forms and instruments of social control, but when prevention is missing or does not provide sufficient results, repression is an indispensable segment of the overall anti-corruption efforts and it can generate both protective and socio-ethical dimension of the fight against corruption (to promote positive social values and through sanctions indicates wrong conduct).

Prosecution of perpetrators of corruption and overseeing the implementation of these actions is also part of a successful anti-corruption system. All actors in these processes must act professionally and independently from any influence. The fight against corruption requires specific knowledge and skills, which must be constantly developed and improved. Due to such a prominent social role, law enforcement and judicial authorities should show even greater standards of probity than other public institutions, in accordance with the principles and values set out in Chapter 23 of the Acquis of the European Union - Judiciary and fundamental rights.

Progress Report for BiH for 2013 (Annex to the Commissions communication to the European Parliament and the Council) states that there was limited progress in the reform of the judicial system. As for the independence of judiciary employees, in the aforementioned report as well as in the Opinions about the legal security and independence of the judiciary in BiH of the Venice Commission for 2012, reasons to be concerned are expressed. Domestic as well as ratings of some international organizations (e.g. Global Integrity), in terms of the integrity of the judicial and police officers, is also very unfavourable. It is estimated that there is lack of convincing results in investigations and criminal proceedings in cases of high

rank, and that weakens the capacity to investigate criminal acts of economic and financial nature. Existing laws and their implementation mechanisms do not insure appreciation of complexity and importance of the cases. Judicial officers are required to attend trainings in a number of days. Almost every year, training is organized at the education centres, for training of judges and prosecutors on issues of importance for the prevention of corruption, and these topics are addressed in special vocational guidance and training of judicial and police officials. There is no data about the evaluation of what has been learned into practice, especially at the level of improving behaviour and results.

For all these reasons, within the framework of this objective, the Strategy pays special attention to issues of reporting and detection of corruption, collecting evidence for corruption, cooperation and coordination of the authorities, judicial proceedings and criminal policy and strengthening mechanisms for monitoring the implementation of these processes.

### 9.3.1 Reporting Corruption

In order for repressive measures to be applied, it is necessary for prosecuting authorities to come to the knowledge about the offense and the offender, as well as to valid proof, whereby in practice they often rely on information received from citizens, businesses, organizations or information already published in the media or in the reports other organs. The number of such reported cases is directly dependent on the confidence of the applicant that the institutions will act on the report and that for him/her there will be no negative consequences.

It is therefore a priority for institutions to develop and establish effective systems for receiving applications, impartial treatment on them and to timely inform the applicant about the progress, and to inform all citizens about the way they can contact the institution, questions about corruption within the competence of the institution, the method and terms of conduct. It is equally important to establish measures for protection of persons who report corruption, which involves providing opportunities for the identity of the applicant to remain hidden, to further examine the case to the possible extent, based on the submitted information and evidence, that is, to avoid invoking of the applicant testify as a witness except when it is the only source of information about corruption, and the effective protection of an applicant who meets the requirements. Successful examples of reporting of corruption, which led to the final and binding judgment, should be promoted, and from cases that did not lead to a successful conclusion we need to learn and improve the system.

At the end of 2013, the Law on protection of persons who report corruption in the institutions of Bosnia and Herzegovina was adopted, according to which the key drivers of the implementation are The Agency and Administrative Inspectorate of the Ministry of Justice, and thereafter bylaws were also adopted.

Corruptive criminal acts are difficult to detect and prove. Most often they are executed in secret, so there are rarely witnesses, and the visible manifestations of the offense are missing too. Therefore, reporting of corruption is in close connection with the normative solutions - if a participant in the corruption has the ability to liberate from responsibility or gets considerably more lenient sentence if he or she reports the case, it can be expected that the number of reported cases will be higher and that persons prone to committing criminal acts of corruption would refrain from such behaviour because of

increased possibility of disclosure. Also, if the statutory penalty threatens not only proven case of bribery but also acquisition of assets whose origin cannot be explained by legitimate income, it would be easier to obtain knowledge about such a case of criminal liability.

In addition to reporting corruption as a criminal offense, it is equally important to build strong mechanisms for detection, prosecution and protection of applicants that report some other forms of violations of regulations that serve the prevention of corruption and whose violation could represent an entry for corruption. This is especially true for reporting violations of the rules on conflict of interest, financing of political parties, public procurement and other forms of disposal of the budget, as well as access to information.

#### Strategic programmes:

1. Ensuring appropriate mechanisms for reporting corruption of employees in public institutions, as well as monitoring procedures upon reports.
2. Promote reporting of corruption and encourage active participation of the citizens in the fight against corruption

#### 9.3.2 Detection of corruption

In addition to reporting, the main basis for the initiation of proceedings to sanction corrupt behaviour is the detection of corruption by law enforcement agencies, particularly the police and prosecutors, and in rare cases of inspection and audit services. Acting of the police and prosecution must be largely based on proactivity. Therefore, the indications for the existence of corruption must be examined on the basis of the observed patterns of corrupt behaviour, through preventive checks of integrity for persons working at positions where the risk of corruption is the largest, in the findings of the audit and inspection authorities, in the reports of the media and civil society organizations, as well as the findings of the operational work of the competent services.

Thereby, special attention should be paid to the principle "tracking the flow of money," especially in cases where individuals dispose with funds that have no basis in their rightful and reported income and paid tax, i.e., when it is obvious that they spend funds that they could not have, based on their legal and reported income. In this field, the activities from the Strategy will be closely associated with the activities from the Strategy for the Prevention of Money Laundering. Implementation of these measures involves enhanced cooperation between tax administrations, police, prosecutors, institutions for prevention of money laundering and the Agency and authorities for fighting corruption at all levels in BiH.

To avoid any possibility of arbitrary interpretation of duties of organs, the prescribed obligation should be imposed for inspection and audit offices to inform the police, prosecution, the Agency and authorities for the fight against corruption at the entity level, BD and cantons about the findings which indicate the existence of corruption, and also about all other cases in which violation of the rules has been observed, when reports of external auditors contain an adverse opinion or a qualified opinion, and when after a given deadline acting upon orders or recommendations of authorities is not obeyed.

On the other hand, it is necessary to foresee the obligation of the police and prosecution to, in a set deadline, review received materials and inform the public and the authorities for combating corruption about the findings.

#### Strategic programmes:

3. Strengthening the integrity of law enforcement authorities.
4. Improvement of detection of corruption through creation, strengthening and application of effective mechanisms and techniques for proactive approach to this process.

#### 9.3.3 Coordination and cooperation between the institutions in discovering and proving corruption

Cooperation between the institutions that are directly involved in detection and proving corruption is crucial for acquiring information about corruption occurrence, quality of evidence and prosecuting of corruption. This includes cooperation in information exchange, which is above all, timely provision of the required information to the police and the public prosecutor, enabling access to databases and similar, as well as assistance in the interpretation. It is not realistic to expect that the prosecutors and the police, despite the specialization in particular areas of crime, could have in their ranks experts in all fields, neither would employment of such professionals in many cases be purposeful. Such forms of cooperation could be regulated normatively, by prescribing penalties for withholding information or assistance, based on a memorandum of cooperation, or within specific mechanism that are created based on this Strategy and based on other strategic documents adopted at other levels of the government.

In addition to cooperation between institutions with different jurisdiction, it is necessary to establish effective cooperation and coordination between institutions with similar or same jurisdiction, that have different territorial jurisdiction, such as the police and the public prosecutor's offices at various levels of government in BiH. This is particularly important in complex cases of corruption and organized crime that transcend the entity, BD and cantonal jurisdiction.

The next level of coordination that needs to be developed is the one that takes place between the police and the prosecutor, since on the quality of their communication and the work in the stages of the process that they lead, depends largely whether people suspected of criminal acts, for which there is evidence, in the end will be convicted. Finally, it is necessary to ensure coordination between the police and the prosecutor's office on the one hand, and the authorities for combating corruption at the entity level, BD and Canton and with the Agency, on the other hand. Cooperation that the police and prosecutors will have with the Agency includes precise defining of the method of issuing recommendations and instructions of the Agency, forwarding them to authorities for combating corruption and institutions at the entity level, BD and cantons, as well as feedback on the taken measures and their effects.

#### Strategic programmes:

5. Establishing effective cooperation and coordination between institutions in BiH in discovering, proving and prosecution of corruption.
6. Harmonization of training programs in the field of prevention and coordination of the fight against corruption in the institutions with anticorruption jurisdictions.

#### 9.3.4 Collecting evidence for criminal offenses of corruption

The complexity of corruption, the fact that in most cases there are no direct witnesses other than the direct participants, low visibility of harmful effects, the possibility



for corruption associated with a violation of other laws to stay unnoticed because of the absence of the motives of perpetrators or due to the absence of synchronization between illegal acts and benefits for which it was undertaken, causes difficulties in proving corruption in the courts. Great difficulty in proving is the fact that most knowledge about corruption has the person that itself constitutes an illegal act, and therefore refrain from testifying in the courts or testify so that they shift a greater share of the responsibility to others. Difficulties are also created by the question of finding the relationships between causes and effect, especially in situations where the exchange of goods and services is not done simultaneously, but delayed, as well as those forms of corruption which represent trade of influence.

When collecting of evidence is not done well enough in the previous procedure, it can result in dismissal of charges or in milder sentences, which do not achieve sufficient effect in deterring from corruption. It is therefore necessary to raise the level of competencies of the personnel working on detection and treatment of cases of corruption, which is particularly applicable to the use of modern special investigative measures and to monitoring of movement of money through banking and other transactions. Particular attention should be paid to trainings in handling cases when corruption is detected by chance, that is, as a side effect to the exercise of some other offenses, which initially has been subject to the investigation.

Measures to detect corruption and evidence collection should be constantly improved, in line with the best international practices. Equal attention should be paid to standardization of procedures in these cases at all levels in BiH. In the process of raising the efficiency of repression of corruption, key role is played by close cooperation and coordination between the police and prosecutors, which should jointly review the reasons why some indictments could not be sufficiently supported by evidence, that is, why the court has so sentenced, and based on these findings create new procedures and recommendations for increasing the quality of treatment in the future. In addition to the review, which will be carried out by the police and the prosecution, it is necessary to provide and external oversight. This is especially important in cases where criminal charges have been dismissed, or when in the course of the proceedings the prosecutor withdraws the prosecution. Any such case should be examined from higher instances of prosecution, with it ought to be familiar and bodies that coordinate anti-corruption activities, and to some extent (when it does not threaten privacy and conduct of other procedures) this should be notified to the public.

#### Strategic programmes:

7. Specialization and additional training of judicial and law enforcement authorities in BiH, especially for the application of more advanced measures to prosecute perpetrators of corruption offenses.
8. More consistent application of extended financial investigations in cases of corruption.

#### 9.3.5 Prosecution of criminal offenses of corruption

Same as with proving, complexity of corruption and other mentioned problems may occur in connection with the conduct of the courts, which have the role to determine whether the indictment was substantiatedly evidenced, whether the accused is guilty and

what kind of punishment should be imposed. Criminal prosecution of corruption before the court brings some problems that are specific to that phase of the process. Thus, a problem may arise in the slowness in leading the procedure with multiple accused and witnesses, when the associated criminal offenses was carried out over a longer period, when besides the direct participants in the corruptive cases there are also other organizers whose role is harder to prove, or when the charges were based on the use of special investigative techniques, ie challenge the legality of the evidence obtained.

One of the most common problems, besides when it is a very simple case of giving and receiving bribes in money and material goods, is determination of the facts, because the necessary knowledge on financial transactions, good knowledge of specific legal procedures such as procurement, knowing the rules on resolving conflicts of interest among public officials and employees and other, in order for the courts to come to valid conclusions about the crime and the responsibility of the perpetrators.

To solve these problems, it is necessary to continually work on improvement of judges and thereby reduce possible negative corrupt impacts on judicial proceedings which could be achieved through the biased expert evaluation. Measures to create training programs that need to be aligned with international standards and best international practices should be provided, but also be unified for the courts at all levels of government, to the extent that it is justified, given their legal jurisdiction. Similarly, as with training for corruption cases, trainings for courts and other bodies which solving in misdemeanour proceedings cases related to violations of anti-corruption legislation should be planned and implemented .

#### Strategic programmes:

9. Improvement of efficiency of the courts in cases of corruption, with the establishment of objective norms for the operation, taking into account the complexity of the cases.
10. Improvement of efficiency of court procedures in cases of corruption through the establishment and use of a unique system for statistical analysis and reporting.

#### 9.3.6 The development and enhancement of penal policy for corruption criminal offenses

Data on crimes of corruption in BiH are not complete but show disturbing trends. The European Commission reports that there is still no effective legal and penal policy in the fight against corruption, and this conclusion is confirmed in the scientific and technical research, which found that the most common criminal sanction imposed in cases of corruption is suspended sentence, and that the widely applied powers of the courts are reduction of the sentences. Most of the penalties imposed are close to, or slightly greater than, the statutory minimum. If secondary sanctions are applied, they are mainly security measures of banning of activities or functions and the seizure of items, without the process of confiscation of proceeds. Such penal policy, which does not pay enough attention to successful fight against corruption - expropriation or compensation for what was illegally acquired, cannot produce adequate results in the general prevention, so that the efforts of the whole system remain fairly inconclusive.

Corruption is a phenomenon that causes serious harm to the society and penal policy must reflect this fact. In this way, besides the penological and repressive, the effect of general prevention are achieved, or deterrence from them in the future. The change in penal policy should first and foremost, precisely define the criteria for sentencing, and the ability to depart from them reduced. Among the criteria that should be taken into account, there is particularly the need to emphasize the height of the resulting benefits, or the value of the damage and the harmful effects of the position of the offender, the area of social work in which the offense occurred, as well as public trust in the institution where the function is performed. It is necessary to harmonize penal policy for corrupt criminal acts throughout BiH, both in terms of the amount and nature of the prescribed sanctions, and in terms of sentencing. In addition to possible legislative changes, guidelines for further actions can serve as well the decisions of higher judicial instances in these cases.

Special attention should be paid to removal of the main motivation for corruption, achieving of material benefits. This can be done through modifications of the practice and regulations, so that seize and forfeit become mandatory, and not just for material gain obtained from corruption and related income, but also other property of a convicted person, and also all related persons in whose ownership it was transmitted. In order for the activity of a permanent confiscation to be successful, it is necessary to take effective actions to find and seizure such benefits, which includes the work of professional investigators and the existence of mechanisms for the management of seized assets. In order to achieve these complex objectives, it is necessary to ensure the cooperation of judicial authorities at all levels in BiH, as well as their cooperation with the Agency, which in turn, should offer examples of good solutions in this field from other countries and proposals for reform.

#### Strategic programmes:

11. Improvement of the penal policy for corruption offenses with the aim of proactive deterrence from corrupt activities.
12. Developing an efficient system of identification, freezing and confiscation of property and any other benefits that the perpetrators and their related parties have gained through corrupt actions.

#### 9.3.7 Strengthening mechanisms for monitoring the work of judicial authorities

The courts are at the end of the proceedings of repressive measures against corruption and, as well as institutions acting before them, they can be exposed to corruption or pressure, in order for the suspect to go unpunished, to be milder punished or in order to avoid the measure of confiscation of property gain. The risk is even greater if parts of the court's decision depend on the 'beliefs of the judges, i.e., the importance they give to certain evidence, the degree of accountability of individual perpetrators and the estimated values of the various factors that influence the sentencing.

There are many mechanisms which can be applied in order to reduce such risks. It is, above all, the opportunity to review the decision in front of a higher court instance, the public conduct of the proceedings and public reading of the decision, and the duty to explain the decision. In addition, there are mechanisms that aim to provide a guarantee in terms of integrity and professionalism of the very bearers of judicial functions, such as norms of exemption in the cases of association with defendants and the defence counsel, reporting and control of property and gifts, as well as the duty to provide protection for judges in

cases when they are exposed to any kind of pressure. Integrity and professionalism are served by the rules on disciplinary responsibility of the judges for the quality and efficiency of their work. Most of the listed mechanisms exist in BiH, but need to be strengthened, especially in the direction of greater transparency of the data, in order to provide a chance for the interested public and the experts to get convinced about the consistency and efficiency of the courts.

Besides the judges, important roles in conducting court proceedings have the heads of judicial institutions and the judicial administration. Therefore, among the measures in this field, it is necessary to raise the level of transparency of procedures for the award of cases, fully computerize case management system, introduce supervision of downloading individual steps in the process, timely review complaints about the work of judges and introduce a precise timeframe where they are missing.

Strategic programmes:

13. Creation of conditions for supervision of the judicial authorities and institutions through publicly available statistical data on conduct in cases of corruption offenses.
14. Strengthening mechanisms of disciplinary and other forms of accountability of prosecutors and judges for improper conduct in the cases with elements of corruption.

9.4 Raising public awareness and promoting the need for the participation of the whole society in combating corruption

Although the role of the public sector is primary in the design and implementation of anti-corruption measures, it cannot be successful enough if not supported by other key stakeholders of the society. Active participation of other sectors and citizens not only gives democratic legitimacy to the fight against corruption, but also significantly lowers the costs, and also makes anti-corruption activities more sustainable and less dependent on the degree of the political will which for the achievement of these goals is carried by the power holders.

Civil society, which encompasses all the organizations and individuals who operate outside the government, has a significant, double, role in fighting corruption. On the one hand, through mobilization of public support for the implementation of anti-corruption reforms, pressure is put on the level of political and public authorities, to more closely pay attention to the interests of the citizens who through reporting of corrupt conduct and withholding of political support can clearly send the message that they are interested in a society with more justice and responsibility and are determined to take action in this direction. On the other hand, state authorities are often, due to lack of resources, competencies or other reasons, unable to meet the constantly changing demands of the modern life, in which case the civil society can help fulfil those functions.

United Nations Convention against Corruption particularly promotes the role of the civil society in prevention and combating corruption. This role may consist of promoting the contribution of the public in the decision-making processes, and increase the transparency of the procedures, ensuring efficient access to information, implementation of public information activities that contribute to non tolerance of corruption, as well as public

education programs, respecting, promoting, receiving, publishing and disseminating information related to corruption.

In this sense, the Strategy envisages a series of programs related to awareness rising among citizens and other members of the society about corruption, its modalities, causes, consequences and ways of opposing and strengthening of trust between the public authorities and other actors of the society. In addition, strategic programs specifically elaborate the role of individual actors, namely, the academia, media, industry, NGOs and the education system.

#### 9.4.1 Raising public awareness about the harmfulness of corruption

Although the citizens are generally aware of the dangers of corruption and treat it as a harmful phenomenon, they are still not familiar enough with all of its forms, causes, consequences, activities that are carried out by public authorities in the fight against corruption, the effects of these activities on the improvement of the situation, nor with the possibilities and ways to actively, as citizens, get involved in the fight against corruption. As a result, some forms of corruption are still partially accepted by many people as normal or as a fixed part of the reality. The measures planned or taken by the authorities are not sufficiently supported by the citizens, and even those opportunities that are available to the citizens to contribute to the fight against corruption are not being sufficiently used.

Corruption benefits only the direct participants in these illegal activities, while everyone else suffers from the damages in the amounts that exceed the gain which corrupt persons achieve. Therefore, there is a strong motive for citizens and others who suffer directly or indirectly from the damage to engage in activities that would minimize this damage. In order to do this, it is necessary to clearly visualize how this damage occurs, both on a general level, and on concrete examples, where it is the easiest to spot. It should be kept in mind that the damage is not always easy to measure in money (such as, for example, when due to corruption it is more expensive to pay to purchase some goods), but that it may be reflected in other ways (for example, damage to the security of people because of corruption related to public traffic, damage to human health because of corruption in the turnover of food, etc.).

Awareness raising activities should encourage the civil society, especially the media, academia and non-governmental organizations to become more engaged in researching of causes of damage that corruption causes and, through public relations, promote the findings and call for fight against corruption. It does not mean that the public authorities should not be involved in such research, especially in situations when they have access to relevant data. In order for awareness rising to be successful, the institutions themselves need to be open to the public and thereby enable access to information required for such research, and thus make it possible to access the right indicators of harmfulness of corruption. Besides enabling access to existing data in an easily searchable form, the authorities should, in some cases, introduce the practice of collecting, processing and publishing data to which currently not enough attention is paid or it is not done systematically.

Organizing public campaigns is one of the most effective means for mobilizing public support for anti-corruption efforts. However, one should bear in mind that this activity can be successful only if the campaigns have clear and well defined objectives and propose effective measures in terms of opposition. Campaigns organized by the civil society should,

to the greatest extent possible, be organized and conducted in partnership with institutions and public authorities, in order to encourage them to a higher level of transparency, opening towards the public and to send a clear message that they are ready to fight against corruption.

Strategic programmes:

1. Continuous and systematic public campaign on the causes, manifestations and consequences of corruption, with promotion of mechanisms of action against corruption.
2. Enabling the participation of civil society organizations in the activities of public institutions in the fight against corruption.

9.4.2 Strengthening of public trust in the institutions that fight corruption

One of the main preconditions for the citizens and their forms of association of civil society to engage in the fight against corruption is to be convinced that the institutions will actually do something against corruption if someone reports it, and that they will not suffer from adverse consequences for reporting corruption or involvement in the fight against corruption.

The first assumption for strengthening public confidence in the institutions is unconditional transparency of the authorities within the framework of objective legal restrictions. This involves the provision of all the required information in accordance with the Free Access to Information, but also the publication of most data on activities, organization and the use of resources proactively, that is, before anyone asks them, in a way that data is kept up to date and reliable. In some cases, it will also mean that institutions should draw up or combine documents or databases that currently do not exist.

Another prerequisite is establishment of a system of responsibility for what has been done and publishing information about it. In order for citizens to have confidence in the effectiveness of the institutions, information about how their tasks and work plans are performed in the practice must be available, such as the findings of the control, inspection and audit authorities, and how the institution responded to eliminate detected deficiencies and punished those responsible for omissions.

Transparency and accountability, however, are not sufficient enough for citizens to gain and maintain confidence. It is subject to constant reviews of each new case when a citizen addressed an institution, and when it needed to demonstrate in practice that the established mechanisms for dealing with initiatives, petitions and complaints of the citizens are functioning as prescribed and published. Promotion of successful examples of the cooperation with the citizens can contribute to the greater number of citizens involved in anti-corruption activities. For the same reasons, the public should be informed about the cases where the authorities have not fulfilled their obligations upon the citizen's appeals, but also present the data on the reactions of the supervisory authorities and measures taken against the responsible managers and officials who did not do their part of the job.

In this respect, secure communication channels with the institutions should be enabled for the citizens, through which they can, without fear of consequences (including measures to preserve the anonymity and security) point to corruption and other illegal and harmful emergence.

### Strategic programmes:

3. Development, application and promotion of accessible mechanisms for reporting corruption while ensuring confidentiality of complying with citizens' complaints.
4. Improvement of the system of objective informing of the public about the work of the institutions, along promotion of positive examples of treatment of cases of corruption.

#### 9.4.3 The role of the academic community in the fight against corruption

The academic community, due to the high concentration of expertise in all areas, can be a very important factor in the fight against corruption and is a potential that is underused. Academy of Sciences, universities, colleges and educators in general can make a valuable contribution to the clarification of corruption and the fight against it, and can propose effective measures for that cause.

Similar as with the citizens, a prerequisite for fulfilling this role of the academic community is an improved access and quality of information that would be subjected to serious analysis. Similarly, to the extent possible, the authorities of Bosnia and Herzegovina which have been cooperating with similar institutions from abroad should publish information about how to fight corruption and results in this field from other countries, i.e. a comparison with the situation in BiH. The academic community should strive to obtain such data as well, in partnership with the scientific institutions in the countries of the region and the world, in order to reach relevant conclusions on the implementation of the Strategy and Action plan, but also about potential methods for their amendment.

The authorities should allow the involvement of the academic community in the fight against corruption and initiate cooperation with it, which can be especially useful in areas where higher expertise for the evaluation of the collected data is required, particularly on issues for which public institutions do not have enough expertise. Cooperation implies an obligation for the public institutions to consider the analysis and proposals arising from the work of academies, scientific institutes and universities, addressed to them, but also an active interest in products of such work and scientific studies currently in progress.

Additionally, it is necessary to utilize scientific and intellectual reputation of the academic community, in order to intensify the harmful effects of corruption and promote anti-corruption measures by involving its representatives into analyzes performed by public institutions, or through cooperation in presenting the results of implemented anti-corruption activities.

### Strategic programmes:

5. The inclusion of the academic community and associations of intellectuals into designing and implementation of anti-corruption policies and mechanisms.

#### 9.4.4 Role of the media in the fight against corruption

The media have a special importance in the fight against corruption in all its segments, starting with rising of public awareness about the detrimental effects corruption through investigative journalism, which can lead to the disclosure of corruption cases, up to promotion of successful and unsuccessful activities in preventing corruption. In order for the media to fulfil this role, it is necessary to ensure the full application of regulations on free

access to information, and publishing a large number of information and searchable databases proactively, before the media or other entities request it.

The authorities must also ensure to not act discriminatory towards the media, meaning that that all should have equal access to information and to the holders of power and not privileged dissemination of information to the media or journalists who are close to the political option currently in power.

To exercise the role of the media, it is of particular importance to ensure an adequate legal framework for their operation, funding and independence, including, among other things, a full release of data on the ownership structure of the media, organised, on objective criteria based, transparent and controlled funding of media by public sector (both through direct payments, as well as through advertising) and public data about other major funders of the media so that the users of the media services could have an idea about the possible influence on editorial policy resulting from it.

Of equal importance is the development and strengthening of professional and ethical standards (including issues of corruption, conflict of interest and receiving gifts) within the media itself and self-regulatory mechanisms in situations where there is a violation of these standards, but also linking issues of respecting standards with providing state support to the media.

In order for the media to give their contribution to the fight against corruption, it is necessary to raise the level of awareness about corruption and the mechanisms and techniques for its detection, which is why it is necessary to encourage specialization and professional training of journalists who "cover" the subject of corruption, as well as other related topics that may point to corruption. Those are issues such as the influence on the process of legislative and other decisions, procurement, financing of political parties, planning and spending of public resources. It is particularly important to point out to the media and the journalists the importance of monitoring corruption cases from beginning to the end, that is, from discovery to binding verdict, the importance that, apart from the specific cases of corruption, should be paid to a system error that allowed corruption to occur, or that it has not been discovered earlier and monitoring of measures that authorities have taken to address these systemic problems.

On the other hand, the authorities should take an active attitude towards what the media are publishing, and promptly react to any case where the media information related to corruption is not accurate or complete, by publishing corrections and other data that show a complete picture of the problem at issue. When at the other hand, the media points to violations of the law and possible corruption, the authorities should react based on the articles itself, and not wait for criminal charges from the media or initiatives to launch some other proceedings.

Finally, the authorities, within their jurisdiction, shall ensure protection of media and journalists who report about corruption from potential harmful effects to which they are exposed.

#### Strategic programmes

6. Enabling the development of responsible and objective investigative reporting by improving the openness of institutions towards the media within the framework of the regulations.



## 7. Improvement of impartiality and objectivity of media reporting regarding the issues of corruption

### 9.4.5 The role of associations of economic sectors in the fight against corruption

Business entities can be victims of corruption, when they are unreasonably denied of the opportunity of business with the authorities because they have been corrupted by the competitors or due to direct solicit bribes as a consequence of unclear and unnecessary regulations, excessive discretion or exceeding authorization. On the other hand, economic entities can be the bearers of corruption as well, when attempting to achieve something that does not belong to them or pursue their interests to the detriment of the competition and budget. Business entities can also play a significant role in anti-corruption activities in many other ways, through supporting activities of non-governmental organizations and citizens, activities within the framework of international associations and active submission of proposals on how the fight against corruption in the country can be improved or its causes eliminated. Also, the active use of the opportunities that the private sector has at its disposal to protect their own interests can significantly contribute to the efficiency of the fight against corruption in general, especially in the area of public procurement.

In order for the private sector to fulfil this potential, it is necessary, through legislative measures and other policies, to encourage active involvement in the fight against corruption, and above all, as with other parts of society, to provide full access to information, adequate protection to persons reporting corruption and timely acting on petitions, initiatives and complaints of economic entities.

The special significance for strengthening the role of the private sector has chambers of commerce and other forms of association of economic entities. Public institutions need to provide an opportunity for chambers of commerce to share their problems associated with corruption, suffered damage because of the specific modalities of corruption. In order to collect necessary information, it is desirable to organize anonymous surveys, so that representatives of the companies would not deny information because of fear of adverse consequences. In addition, the chambers of commerce should be included in the planning of anti-corruption measures and activities, particularly in the area of public procurement, labour inspection and judicial authorities, procedures for issuing permits, planning and budget expenditures, the allocation of state aid and public-private partnerships.

#### Strategic programmes:

8. Inclusion of associations of economic sectors into development of new legislation and politics for the fight against corruption.
9. Promotion of the adoption and application of codes of business ethics in business in order to prevent the occurrence of corruption in the relationship between the economy and the institutions.
10. Continuous implementation of trainings for chambers of commerce and other business associations in the field of fight against corruption.

### 9.4.6 Importance of civil society organizations in the fight against corruption

In Bosnia and Herzegovina, there are over 10,000 non-governmental organizations, of which half are active. The number and type of their activities varies, but most are those who do not have permanent employees or have very little. A number of them deal with the topics

that are related to the accountability and transparency of the public institutions, and there are examples of legislative and other initiatives that have been encouraged or developed in collaboration with institutions of civil society. Although there are examples of successful cooperation between government and civil society organizations, still a smaller part of their joint initiatives aimed at strengthening the accountability of governments, results in changes in regulations or practices.

Non-governmental organizations, as well as citizens' associations can also play a significant role in the fight against corruption. This role is especially significant when it comes to proposing anti-corruption measures, increasing public awareness of the harmful effects and various forms of corruption, monitoring the work of the institutions, training, supporting anti-corruption efforts of institutions or criticizes their absence or inadequate implementation. One more reason for the involvement of NGOs is the fact that BiH has a strong interest in donor assistance for civil society in the fight against corruption, which resulted in a number of projects that take place in this area. Therefore, public institutions need to demonstrate an active interest in NGO projects and their results, and utilize these resources as much as possible. This is particularly important in situations where the public institutions do not have sufficient resources to carry out their own monitoring implementation of anti-corruption policies and laws in general and their wider social effects, or when public institutions, due to the focus on the fulfilment of current tasks, do not timely notice the need to improve some normative or institutional solutions.

A prerequisite of successful work of NGOs in the field of monitoring is the availability of information, and in the field of advocacy open channels of communication between government and citizens, which particularly involves introduction of practices considering concrete initiatives that come from the NGO sector and improving the practice of public hearings before adopting laws and other important decisions. In order for the cooperation to be successful, it is essential that the authorities do not treat civil society organizations discriminatory, based on whether they are exposed to their criticism or praise, but to be determined exclusively by the quality of submitted and published analyzes and proposals. Criteria for cooperation and for support of the activities of non-governmental organizations should be objective and known in advance.

The interest for the activities of non-governmental organizations should move in the direction of getting acquainted with their programs, to ensure in that way that there is a minimum of unnecessary overlap or duplication of activities of NGOs or non-governmental organizations and authorities, as well as to achieve bigger and better effects with the funds. In this sense, models of cooperation with major donors should be established, particularly in defining the priorities and planning of support.

#### Strategic programmes:

11. Strengthening the role of civil society in the fight against corruption through participation in joint projects with public institutions.
12. Support to activities of civil society aimed at monitoring and researching opportunities for corruption and making recommendations for its prevention.
13. Ensuring transparency in funding of the non-governmental sector, particularly from the budget funds.

#### 9.4.7 The role of education and upbringing process in the fight against corruption

Achievement of long-term and sustainable results in prevention and the fight against corruption as well as in the process of strengthening of moral values of the society as barriers against corruption is inseparable from education and upbringing. In this process, the most important role has the family and the education and upbringing system, from pre-schools to universities. It is therefore necessary that the competent institutions for education at all levels of government devote considerable attention to issues of ethics in the preparation and implementation of curricula, in order to give young people the potential for the fight against corruption, the interest in public affairs, raising awareness about the good in general and familiarize with the benefits for the community that civic activism brings. In addition to the institutions, it is necessary to include other segments of the society in this process, such as civil society organizations, especially NGOs which through their projects can contribute to this plan.

The academic community should have a special role in this process that, in cooperation with educational institutions and non-governmental organizations, could help create appropriate programs for this purpose. The authorities, from their side for inclusion in the educational programs, should provide information on progress in the fight against corruption, on the preventive and repressive plan, which have been achieved thanks to the ethical treatment of individuals or due to the fact that the citizens were determined to give their own contribution to solving of social problems.

Strategic programmes:

14. Development, introduction and harmonization of programs of ethics and integrity in the educational process and in the thematic programs of public broadcasters in BiH.
15. Encouraging ethical behaviour in children and young people through supporting of extracurricular projects of the civil sector.

- 9.5 Establish effective mechanisms for coordination of the fight against corruption, and monitoring and evaluation of the implementation of the Strategy

The fight against corruption involves the engagement of a large number of actors of different character, which implies an inclusive and comprehensive approach, which can cause lack of systematic planning and lack of coordination between them. Such drawbacks can particularly come to the fore in unrelated acting in terms of time taken for certain actions and understanding of the meaning and manner of their implementation. Since not all anti-corruption actors are of equal strength, knowledge and breadth of insight into the problems, it is necessary that there are focal points for the implementation of anti-corruption policies and actions, which proved to be an essential part of successful programs around the world.

Efficient coordination, monitoring and evaluation of the implementation of the Strategy for the fight against corruption, in a situation where the anti-corruption activities include a large number of actors who therefore act at different levels and by different legal grounds, implies the need to initially determine the structure of the anti-corruption framework in BiH. This complexity means that it is necessary to clearly align competencies, communication, cooperation, and coordination between actors in the fight against corruption in BiH. A significant part of this process can be achieved through mechanisms and

forms of cooperation, which will be established between these institutions in relation to the implementation of the Strategy.

Due to the fact that international standards are constantly improving in the fight against corruption, that the way to fight corruption depends on the changes in the broader normative, social and economic milieu of the country and the fact that the Strategy envisages learning from good and bad experiences, mechanisms for periodic evaluation of application have been foreseen as well as the procedure to amend the Strategy and Action Plan.

#### 9.5.1 Forms of cooperation between institutions in the anti-corruption system in BiH

Based on the legal jurisdiction, the Agency is the central point of coordination in the fight against corruption in BiH, taking care for the consistent application of strategic programs, achievements of activities from the Action Plan and the provisions of the Law on the Agency, through the adoption of anti-corruption measures, recommendations and guidelines, providing opinions related to planned and implemented anti-corruption measures and regulations, launching initiatives for improvement and harmonizing rules and practices.

Central and coordinating role of the Agency, apart from its legal authorizations, is based on the fact that it is the only separate institution in BiH dealing exclusively with issues of fighting corruption. Although not fully staffed, the Agency is the institution with the largest permanent and professional capacity to combat corruption in BiH. Because of such position of the Agency, it can and should serve as an aid to other bodies and institutions at all levels of government, which have smaller capacities, and all this represents a good basis and an additional reason to strengthen cooperation and coordination with the Agency.

The Agency, in accordance with the legal responsibilities, leads the activities at a strategic level to fight corruption, which involves not only the right but also the obligation of the Agency to issue recommendations and emphasize the need to implement certain measures. In addition, the Agency through further instructions should explain how certain measures from the Strategy and Action Plans should be implemented and provide opinions assessing whether the measures planned by other authorities are in accordance with the Strategy and in line with the principles of the Law. Further, through their own initiative, the Agency, based on the observed good practices in the world, the region, or within BiH itself, proposes new anti-corruption activities or changes in the implementation of existing regulations and practices, as well as changes to the strategic acts.

Cooperation and coordination between the Agency and other bodies and institutions at all levels of government in BiH should be bidirectional, meaning that the Agency needs to be open to proposals and initiatives for improvement of the fight against corruption that come from the entity level, BD and the cantons. In this cooperation based on the Law on the Agency, the Agency shall respect sectoral responsibilities of authorities for fighting against corruption at the entity level, BD and the cantons and, whenever possible, maintain the highest level of strategic anti-corruption policies and measures, as described in the general principles of the Strategy.

The largest part of the cooperation between the Agency and authorities at entity level, BD and cantons, in the sense of the Law on the Agency, shall be in communication and coordination between the Agency and bodies for combating corruption at these levels. This

does not exclude the possibility that the Agency, based on its statutory powers, if necessary, directly addresses the institutions at these levels of government, but such a possibility will be used exceptionally, when cooperation and coordination with authorities for combating corruption is absent or is not effective.

On the other hand, authorities for prevention of corruption at the appropriate levels of the government, in addition to their legal jurisdictions, shall implement the measures, recommendations and instructions of the Agency and seek and obtain expert opinions from the Agency, to cooperate in the implementation of the initiatives of the Agency and suggest measures based on practices that could be applied at other levels of government to the Agency.

#### Strategic programmes:

1. Adoption and development of strategic documents for the fight against corruption in line with the general principles set forth in the Strategy.
2. Development, organization and implementation of harmonized programs for trainings for the fight against corruption for representatives of institutions with anti-corruption mandate in BiH.

#### 9.5.2 Implementation and monitoring of the implementation of the Strategy and Action Plan

In order to effectively implement the Strategy and the Action Plan, it is necessary to accurately predict the responsibilities and obligations of the bodies and institutions that play a role in this process. It is therefore necessary to define the various types of roles, depending on whether the authority is responsible for initiation, implementation or supervision of the processes.

In this sense, there are three types of roles that individual institutions will have in the process of implementation of the Strategy and the Action Plan. The first group consists of those bodies and institutions that through the Action Plan will be determined as the initiators and coordinators of the activities, second group consists of institutions to immediately implement the planned activities from the accompanying Action Plan, and the third group consists of bodies that will oversee the process of the implementation of activities.

The initiators and coordinators of activities are bodies or institutions that will ensure that the implementation of activities starts on time, to provide effective cooperation between the institutions responsible for carrying out the activities, and to inform authorities and institutions responsible for monitoring of the implementation of activities.

Implementers are institutions that directly carry out the activities, take care of the timeliness and quality of the activities and have an obligation to inform the institutions that coordinate the implementation of these activities.

The third role is related to the supervision and assistance in the implementation of the activities from the Action Plan and monitoring implementation of commitments from the plan and the effects of their implementation, in order to keep up to date records on the degree of implementation of activities from the Action plan.

A central role for monitoring of the implementation of the Strategy and Action Plan, by virtue of its legal authority, has the Agency, and to fulfil its duties well enough, it is

necessary that the Agency obtains all necessary and relevant information on the implementation of the Strategy and Action Plan. For this commitment it is necessary that the Agency develops a methodology for collecting and processing of data, to determine the degree of fulfilment of measures for the proper performance of both quantitative as well as qualitative indicators. Additionally, the Agency shall periodically inform the public and the Parliamentary Commission for the selection and monitoring of the work of the Agency on the degree of implementation of the Strategy and Action Plan.

In situations when noticed that an activity is not conducted, the Agency, in coordination with the authorities for combating corruption, has to identify the reasons for it, provide recommendations for solving the problems, but also to consider the need and possible ways for appropriate amendments to the Action Plan and the Strategy. In the same way, it needs to act when noticed that one of the approaches in the fight against corruption brings better results than expected, and that this practice should be extended to areas currently not covered by strategic acts. In this field, the Agency should work closely with the Council of Ministers and the Parliamentary Assembly, to request and receive support from them for overcoming the noticed problems, and for wider application of good practices.

#### Strategic programmes:

3. Development of standardized guidelines for collection and processing of data related to the implementation of strategic anti-corruption programs.
4. Collection and analysis of data on undertaken activities in BiH concerning the implementation of the strategic anti-corruption programs, evaluation of achievements, and periodical reporting to the competent authorities and the public on the results of these analyzes and evaluations.

#### 9.5.3 Evaluation of the effects of the implementation of the Strategy and Action Plan

Strategies and action plans are adopted to achieve the envisaged results and effects in a particular reform process, which would be difficult if effects of this process are not periodically evaluated. Therefore, monitoring and evaluation are integral parts of any serious strategic program. Certainty about success or bad results of anti-corruption activities cannot be concluded if there is no precise and reliable data about it.

While monitoring is a continuous activity of systematic collection of data on specific indicators, in order to inform the subjects of the implementation about the progress and achievement of objectives, evaluation is a systematic and objective assessment of an ongoing or finalized programs or policy. The purpose of monitoring and evaluation is not only collection of data about the progress or setbacks and implementation of activities in the field of fighting corruption, but also undertaking measures to eliminate or reduce disadvantages and identification of new elements that could be incorporated into existing or new strategic efforts.

Because of all this, the Agency should develop a methodology to assess the effects of the implementation of the Strategy and Action Plan, as well as to predict the dynamics and mode of application of this methodology and to inform the public and the Parliamentary Commission for the selection and monitoring of the work of the Agency about conducted evaluations.

Because of the real chance that conditions for the implementation of the Strategy and Action Plan could change, or for any other relevant reasons the need for additions or modifications to the text of the Strategy and Action Plan arises, it is necessary to predict in the Strategy how to change these acts. The law already foresees that the Agency is responsible for the development of the Strategy and Action Plan, which includes responsibility for amendments to these acts.

Strategic programmes:

5. Regular monitoring of the implementation of activities from the Action Plan for the Implementation of the Strategy and ensuring continuous functioning of the reporting system on the implementation of the activities from the Action Plan.
6. Assessment of the implementation of the Strategy and Action Plan and informing the public and the authorities about it.
7. Assessment of the need for revision of the Strategy and Action Plan in accordance with the results obtained after evaluating the implementation of these documents.

Radna verzija