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**ADVISORY PAPER: COMMENTS ON THE ANTI-CORRUPTION STRATEGY AND PLAN
(MTDS) OF BiH**

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1 GENERAL

This paper is a follow-up to a workshop which took place in February 2005 in the framework of the Council of Europe-led PACO Impact project. The workshop primarily discussed with relevant stakeholders from the Bosnian administration regional lessons learned from the work of anti-corruption agencies; but it also touched upon the up-coming review of the existing national 'Strategy for Combating Crime and Corruption', which is part of Bosnia's Medium-Term Development Strategy (MTDS) for the period from 2004 – 2007.

In preparing this review, which is expected to be finalized by May 2005, the BiH Council of Minister's Unit for Economic Planning and Implementation of the Medium Term Development Strategy requested the PACO Impact Secretariat at the Council of Europe to provide comments and suggestions on three documents¹:

1. The Strategy for Combating Crime and Corruption/part of the Medium-Term Development Strategy (MTDS) 2004 – 2007;
2. The Progress Report on the implementation of the measures from the MTDS of BiH (PRSP) for the period from August 2003 to November 2004 (part related to the Strategy for Combating Crime and Corruption);
3. The Action Plan of the MTDS of BiH for the period from December 2004 to December 2005, where it relates to the Strategy for Combating Crime and Corruption.

The paper will comment on the above three documents in that order; it will also look at the Action Plan that was initially part of the MTDS. At the end, there will be a number of recommendations for consideration by the Bosnian authorities.

Two of the three documents have been submitted to the PACO Impact Secretariat in the local language version and in an English translation. There are some differences, however, between the English translation of the Progress Report and the original text. Comments in this paper are made on the basis of the more comprehensive local language version. Specific comments have also been made in track changes on the Progress Report and the Action Plan for 2004 – 2005.

2 INTRODUCTION

The 'Strategy for Combating Crime and Corruption' is part of the BiH Medium-Term Development Strategy (MTDS), which covers the period from 2004 to 2007, and which was adopted by the BiH Council of Ministers in 2004. The Strategy is complemented by an Anti-Corruption Action Plan, which specifies measures to be taken in pursuit of the objectives set out in the Strategy.

The Strategy provides an overview over corruption in BiH. It raises broad concerns about good governance and the progress in reducing corruption through investigation and prosecution and strengthening the judiciary and law enforcement agencies. Further, it stresses the impact that public sector service corruption has on the equality of access to the health and education sectors and how it contributes to a rise in poverty. The Strategy also sets out objectives for reforming the public administration and improving the fiscal system, as well as for improving the business climate and transparency in the privatization process.

¹ The text of these documents is available at <http://www.eppu.ba>

The Action Plan outlines legislative reforms and other measures in the relevant sectors, and assigns responsibilities to the institutions in charge of advancing these reforms. It also provides timelines for their implementation.

The elaboration of the Strategy and Action Plan was coordinated by the MTDS/PRSP Unit, an integral part of the Council of Ministers' Economic Planning and Policy Unit (EPPU). A broad stakeholder consultation, including representatives of civil society/NGOs was part of this process.

The EPPU is in charge of monitoring the implementation of the MTDS, including the 'Strategy for Combating Crime and Corruption'. Working Groups have been established – comprising representatives of the relevant line ministries and NGOs - that should contribute to the formulation, assessment and revision of the Action Plans.

The MTDS and its Anti-Corruption Strategy was the first policy document of this type in BiH, and represent an achievement in itself. However, a year into the Strategy's implementation, this is an opportune moment to take stock of achievements and to rectify a number of problems that have been identified in relation to the Strategy and the Action Plan(s).

Broadly three problems can be identified at this stage:

Firstly, the scope of the Strategy and its Action Plan is narrow in its focus on the adoption of a repressive legal framework. Preventive and educational/public awareness activities are underrepresented, although it is a combination of the three – repressive, preventive and education measures – that form the building blocks of any comprehensive and successful anti-corruption effort.

Secondly, the activities/measures in the Action Plan do not consistently tie up with all the objectives set out in the Strategy.

Thirdly, both Strategy and Action Plan suffer from a lack of reliable baseline data, success indicators and benchmarks, and have no medium to long-term mechanism to measure and evaluate success.

3 COMMENTS ON THE STRATEGY FOR COMBATING CRIME AND CORRUPTION 2004 – 2007

Need for Revision of the Strategy's Baseline Data/Need for Stronger Evidence from the Ground

Any serious policy debate has to be informed by a sound analysis of a representative body of up-to-date, empirical data; this touches upon two weaknesses of the Strategy, i.e. a) how recent the data is on which the Strategy is built, and b) what the sources of this data are.

The Strategy relied – even at the time of its adoption in 2004 – on outdated data, primarily from 2002. And this set of data had not come from sources within the administration, but primarily from data compiled by the Bosnian chapter of Transparency International (TI). Though Transparency International is certainly a highly relevant and qualified voice in the fight against corruption, and its survey results provide a crucial input into the policy debate, its activities cannot replace efforts by the administration to understand the scope and scale of the problem, in order to facilitate the subsequent design of policy reforms.

So, it is important that the administration has information first hand, not least because it needs to be able to understand and address actual corruption as opposed to appearances, for example mismanagement perceived by citizens as corruption.

This issue needs to be addressed in a systematic way in the revised Strategy. The following questions should be considered:

- How will the administration go about establishing its own pool of data on corruption-related issues?
- What mechanisms will there be to up-date it?
- And how is this data going to be fed into the process of policy design?

Need for Benchmarks and Success Indicators to Capture Impact of Reforms

The problem of measurement and effective monitoring of the impact of anti-corruption reform is one of the most complex and challenging issues in the anti-corruption debate. It is difficult both to identify the baseline level of corruption, and subsequently, to measure changes in intensity and occurrence. It is equally difficult to attribute a decrease in either to any single policy measure or reform undertaken.

Measuring impact and success is a medium to long-term undertaking. Impact in many areas will be visible only when certain data and developments are registered and analyzed over several years. This means that assessments have to be replicated over time and findings have to be compared with each other in order to be meaningful.

It might turn out that not all of the collected data is relevant for a given exercise, or that not every methodological approach yields useful results and that over time, there will need to be refining or modification. However, measurement has to start at some point in order to allow any comparative basis at all.

The methodological challenge is to establish a plausible connection between the reform measures implemented in the priority reform areas, and a change, over a given period of time, in the baseline data and situation. A set of parameters needs to be established through which it would be possible to prove such a connection.

So, measuring the success of a one-off measure, such as the adoption of a certain piece of legislation is relatively straightforward: it is either adopted or it is not. However, this exercise must be about capturing the impact of this legislative reform, which proves ultimately more difficult than the process of passing the legislation. Information that could contribute to understanding the impact of legislative reform could be:

- How many citizens have sought redress in the judicial system referring to the new legislation?
- How many sentences have been issued?
- And how have the figures developed over a certain period of time?

Another way to collect evidence and to establish clear indicators for success to be measured over time is, for example, through public sector service delivery audits. Such audits can provide a detailed, realistic and country wide picture of the system leakage in key sectors, and, in co-operation with both the public and the government, propose remedies for the rectification of problems.

Where no connection between baseline data, implemented reform and final data emerges, either the reforms were insufficient or inadequate, or they were hampered by factors that had not been taken into account when designing the reform, or the parameters were wrongly established and need to be revised. A workable methodology that is best for the Bosnian context can only be designed locally, by Bosnian experts who, knowing the situation best, can come up with a

combination of qualitative and quantitative indicators and a realistic medium to long-term strategy to monitor data accumulated over several years.

Developing and Sustaining Evaluation Skills

Measuring impact and assessing success requires institutionalized evaluation skills. In order to successfully implement the Strategy, requirement should be addressed now, and such skills should be developed in the EPPU.

Also, as a matter of routine, impact assessment and monitoring of success should be up-stream considerations, i.e. at the time when reforms are being designed.

Extension of focus of Strategy to include preventive and educational aspects

As has been noted, the existing Strategy emphasizes repressive measures, to the detriment of equally important preventive and educational aspects. More thought should be given to such preventive and educational measures, which can take a variety of forms across the different sectors and contribute to the various objectives the Strategy is trying to achieve.

Inclusion of an Outreach Segment

The credibility of and support for policy reforms is influenced, *inter alia*, by how successful the government is in communicating these efforts to the public. Reaching out to the public is an obligation of any government - reforms are designed to benefit the public. But reaching out to the public is also an opportunity: explaining reforms will enhance their effectiveness, contribute to citizens' confidence in the transparency and accountability of the administration, and ensure public support for what the government is trying to achieve. The revised Strategy should include measures to systematically establish such an outreach element.

3.1 COMMENTS ON ACTION PLANS²

3.2 GENERAL ISSUES

Discrepancy between the Strategy Goals and the Measures in the Action Plan and Progress Reports

The Strategy lists 5 primary goals/objectives, two of which – ‘Strengthen citizens’ trust in governmental institutions: ensure equality in access to public services for all citizens’ (goal 1.3); and ‘Improvement of the business climate’ (goal 1.4) – are not visibly addressed either through completed measures in the Progress Report nor through planned activities in 2004 – 2005.

If this is due to the fact that these issues have been addressed through measures in other segments of the MTDS, a cross-reference would be helpful to understand that these goals still stand, and that their pursuit has not fallen between the cracks.

3.3 COMMENTS ON 2003 – 2004 PROGRESS REPORT AND ORIGINAL ACTION PLAN

Status of the Original Action Plan; its Discrepancy with the Progress Report

² Other specific comments within (both English and BiH versions) these texts are enclosed to this paper as well.

An immediate problem in commenting on the Progress Report is the discrepancy between the 71 measures to be taken in 2004 according to the Original Action Plan, and the information on 22 measures in the Progress Report. (The English version mentions even only 16 measures.)

There is no explanation of this discrepancy. (Even adding up the 22 implemented measures in the Progress Report with the 16 measures planned for the period from 2004 to 2005, the sum total is still not 71 measures.) It would be interesting to understand whether a de-prioritization has taken place – and if so, according to which rationale - or whether the initial Action Plan has been abandoned altogether and replaced by a different document.

For those measures that do re-appear from one document to the other, it is difficult to follow the dynamics that lead from the deadlines in the Original Action Plan to the ones in the Progress Report. For example, the 'Establishment of Sub-commissions for the Fight against Crime and Corruption' (measure 29) in the Entity and the State Parliaments was initially foreseen for the first half of 2004; in the Progress Report, the deadline has been moved to the 3rd quarter of 2004. In the Action Plan for 2004 – 2005, this measure (under point 5) has now been moved for implementation to the second quarter of 2005.

A number of measures in the Progress Report appear as not having been implemented. While some of them re-appear in the Action Plan 2004 – 2005, others do not, and it would be useful to understand from the report if and how those are now being followed up.

Intra-governmental Awareness and Co-ordination

The Progress Report on measure 17 (in the Bosnian language version) – the 'Formation of witness protection agencies on entity levels, and preparation of a program and mechanisms for witness protection' - gives rise to a concern about intra-governmental awareness, information sharing and co-ordination. The Progress Report states that this measure is not being implemented in the RS, and that the 'Federal Ministry of Justice does not know anything about this.'

This is surprising. The elaboration and implementation of the witness protection program is foreseen to be part of the tasks of SIPA, which operates under the State-level Ministry of Security, and which receives/is expected to receive specialized training on this subject through EUPM. This information seems not to have been available when the Progress Report was prepared. It points to confusion on who is in charge of reporting progress. There also seems to be a lack of sharing of information between the agencies and ministries involved, and questions as to how the implementation of this strategy is coordinated with other ongoing reform efforts.

It is also worrying that the same measure, with the same – wrong – ministries being named as the 'responsible institutions' gets transferred into the new Action Plan, with the deadline set for the second quarter of 2005. It would be interesting to understand on what basis these deadlines are being established. If the Federation Ministry of Justice does not know anything about this activity so far, and is not actually in charge of implementing it, who has then agreed on implementation by the second quarter of 2005? And, more importantly, is this the case for other deadlines and assignments of responsibilities too?

3.4 ACTION PLAN FOR THE PERIOD FROM DECEMBER 2004 TO DECEMBER 2005

Discrepancy between Initial Action Plan and Action Plan for 2004 – 2005

As mentioned in connection with the Progress Report, there is scope for clarification on how this Action Plan relates to the activities/measures in the Initial Action Plan that had been part of the

MTDS Strategy. The English version contains 16 activities to be undertaken, some of which are unimplemented measures from the previous period. The question remains as to other activities which were initially deemed necessary for the successful implementation of the Strategy.

Need for greater detail and clarity on the proposed activities

If this Action Plan is the sole working document, then the current presentation of many of the planned activities needs substantially more clarity and detail. Perhaps the activities are planned and outlined in other documents. Moreover, from the documents presented, it is not clear whether detailed plans for each activity exist, and if so how they are drawn up, how they are agreed with the responsible institution, how deadlines are set, what risks are anticipated and how success will be measured.

While adoption of legislative acts which have broad support can be relatively straightforward, other 'activities' listed in the document are much more complex. They merit an explanation on how they would be carried out against a realistic deadline and with a measurable outcome.

For example, the aim of activity 15 is to 'Ensure strict adherence to the code of conduct of the police'. Yet, it remains unspecified how this would be done. Activity 16 aims to 'Strengthen transparency in the work of public institutions'. Yet, it is not clear at all what measures will be taken to achieve such transparency. Further, the activity 16 simply replicates the aim of 'Strengthening transparency', which points to a confusion of concepts of project planning.

Lack of information on co-ordination with ongoing efforts by the International Community

Neither the Progress Report nor the Action Plan for 2004 and 2005 indicate how the proposed measures tie together or are coordinated with ongoing or planned reform efforts by the International Community (such as in the Rule of Law package led by the Office of the High Representative).

4 SUMMARY RECOMMENDATIONS

- Ensure continuity of policy documents: work on the basis of one document to be updated, instead of creating a multitude of documents that stipulate priority activities that are seemingly not followed through.
- Consider increasing efforts in, and seeking donor support for, collecting, processing and analyzing corruption-related data and for the development of in-house monitoring and evaluation skills. Data collection is a long-term effort and needs to be sustained.
- Consider increasing efforts in, and seeking donor support for, training staff charged with overseeing implementation of the anti-corruption strategy on key concepts of project planning and implementation.
- Rethink presentation of Action Plan - as the format stands now, a lot of information might not find its way into it, contributing to a sense of confusion over whether the EPPU is in the lead on the Strategy's/Action Plan's implementation.
- Introduce realistic deadlines, sub-measures, inputs/outputs/outcomes and risk indicators.
- Consider measures to improve intra-governmental co-ordination and co-ordination with the international community on priority activities; introduce relevant information into the documents.

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