Open Society Fund Bosnia & Herzegovina

Strengthening Accountability of the Parliaments in Bosnia and Herzegovina in Supervising and Harmonizing Legislation

Jasmina Ivanović

Abstract

Many key reform processes in Bosnia and Herzegovina (BiH) suffer from inconsistent harmonization of legislation across different levels of government (the State, the Entities, the Cantons in the Federation). Similarly, the constitutional courts have no mechanisms to enforce their decisions. Executives are frequently late in implementation critical bylaws and making appointments.

These phenomena are endemic across levels of government and configurations of ruling coalitions. They can be observed both on the level of the BiH State Parliament, and on the subnational levels, as in the case of the National Assembly of the Republic of Srpska (one of the two Entities in BiH) and the Canton of Sarajevo (within the Federation of BiH, the other Entity). The reform processes affected by them range from failure to comply with the decisions by the European Court on Human Rights in Strasbourg (the Sejdić-Finci case), failure to adjust entity symbols based on the BiH Constitutional Court decisions and to respect constitutional procedures (ethnic veto in RS), to the higher education reform harmonization, to such technical issues like introduction of electronic signatures and timely adoption of budgets.

The problem can be framed in terms of the lack of accountability of the parliaments on different levels for the legislative process and supervision of the executive. With weak and limited democratic tradition and history of executive dominance, the legislatures lack capacities, independence and information sources to develop policies, scrutinize programs, effectively legislate and oversee the executive. Developing the respective capacities, mechanisms and systems is a requirement for achieving a higher level of functionality of the country's institutional structure.

Authorizing higher levels of government to override lower level legislation in cases of delays and inconsistencies would dramatically improve implementation of reforms. Empowering legislatures to override executives in case of delays in setting up implementing agencies and/or adopting bylaws would greatly strengthen implementation.

Alternatively, or in a combination with that, legislative standards should be strengthened to provide default provisions that enter in effect if a lower level of government fails to comply with statutory deadlines. Finally, the constitutional courts (State and Entity) should be authorized to rule on compensations to the plaintiffs arising from untimely implementation of the court decisions that relate to validity of laws.

Table of Contents

Abstract 1

Introduction 3
Policy context 3
Problem definition 3
Intent and methodology 4
Methodology and limitations 4
Relevant concepts of accountability 5
Relevant concepts of harmonization 6

Problem description 7
Problem within its current policy environment 7
Parliamentary Assembly of Bosnia and Herzegovina (The State Parliament) 7
The National Assembly of Republic of Srpska 9
Canton Sarajevo 10
Causes of the problem 11

Policy options 13
Framework for analysis 13
Policy option SLB: strengthening the legislative branch 14
Policy option OR: Overrides 14
Policy option DF: Defaults 15
Evaluation of Policy Alternatives 15

Conclusions and Recommendations 17
Synthesis of major findings 17
Set of policy recommendations 18

Introduction

Policy context

Several key reform processes in Bosnia and Herzegovina (BiH) suffer from the lack of accountability of the parliaments in BiH (on the State, Entity and the Cantonal levels) in adopting, harmonizing and supervising legislation in a timely and regular manner. This affects the reform processes that are the part of the European agenda for BiH, but also has adverse effects on internal legislative harmonization within the complex and decentralized setup of the country.

This study is concerned with identification of the key systemic obstacles for timely and coherent implementation of the legislative (i.e. regulatory) part of the reform agenda: frequently missing executive bylaws that are necessary for putting laws into practice, inconsistent and late harmonization of lower-level legislation with countrywide legal frameworks, and slow or incomplete implementation of the constitutional court decisions. The policy goals and objectives presented in this study aim at drawing attention of the public and decision makers to the scope of the problem and at adoption of possible policy solutions.

Problem definition

Lack of capacity of the parliaments in BiH (especially on the sub-national levels) to effectively carry out tasks for which they are nominally (constitutionally) put in charge has been widely recognized.[1] This study focuses on the following important roles of the parliaments:

- Ensuring that the lower-level regulations are duly enacted within the mandated time frames;
- Timely implementation of decisions of the constitutional courts and
- Supervising the legislation and scrutinizing the executive especially when it comes to enactment of the necessary bylaws.

Ineffectiveness of the parliaments in all three roles has been repeatedly quoted as a stumbling stone of the key reform processes[2]. Although development of an effective parliamentary system is a challenge of practically all countries in the region that have been undergoing democratic transition[3], in that respect the situation in BiH is especially aggravated.

The current post-war constitutional setup of BiH has established several levels of government (the State, the Entities and the Cantons within the Federation of BiH), with their own independently elected parliaments and executives. Over the years, several major reforms, in the field of civil service, police, defense, local self-government, education, finances and telecommunications, have resulted in new laws on the State or Entity level, the effective implementation of which directly depends on adoption of lower-level regulations: either executive bylaws or compatible laws made by the parliaments on the lower government levels. Both the executive and legislative branches notoriously violate deadlines for enactment of such necessary regulation, and implementation of many key laws takes much longer than planned. The problem of missing bylaws is chronic. For instance, implementation of the BiH Electronic Signature Act (from late 2006) depends on bylaws regulating a wide range of technical parameters for electronic signatures and registration criteria for the certification authorities. The bylaws were drafted in

[1] Gergana Císarová Dimitrová. (2005) Democracy and International Intervention in Bosnia and Herzegovina. Central European Political Studies Review, Part 1, Volume VII, winter 2005/ ISSN 1212-7817

[2] Eureopean Commission. (2009) Bosnia and Herzegovina Progress Report 2009 (EC publiacation No. SEC(2009-1338). Retrived on 15 October from www.delbih.ec.europa.eu/docs/ProgressReport20092.pdf

[3] Daniel Smilov (Ed.) (2010) Open Parliaments: Transparency and Accountability of Parliaments in South-Eastern Europe. Friedrich Ebert Stiftung, 2010.

2008 and adopted late in 2009 by the responsible State Ministry. Even in the case of this highly technical and politically unproblematic issue, there were three years of implementation void (this did not require another decision by the State Parliament, or even by the State Government). As a result, the application of the law has remained fragmentary, and the Republic of Srpska (RS, one of the two Entities) has adopted its own electronic signature legislation in the meanwhile. The State Parliament was powerless to press the State executive on the issue.

The problem of lower-level legislation is even greater. Whereas missing or inconsistent bylaws can be attributed to the executive's overload or ineffectiveness, the lower levels of government often show open disregard for their legislative obligations where it suits them. For instance, the FBiH Local Self-Government Act of 2005, while directly applied to all other Cantons in the Federation of BiH (FBiH, one of the two Entities), has required the Canton Sarajevo to adopt its own local self-government legislation within 12 months. That has not happened by the time of writing this study, well into 2011, because the Cantonal government of Sarajevo has been reluctant to devolve a part of financing and decision making powers to local governments (the municipalities and the City of Sarajevo) to a degree comparable with other cantons.

While the functioning of the State institutions in BiH has been relatively well studied and reported on[4], especially within the EU-accession process, the setup and behavior of the parliaments and executives on sub-national level has been much less under scrutiny. Within the framework of the internationally sponsored reforms, the current problems of regulative harmonization have been addressed mostly by brokering agreements with the leaders of the key political parties behind the (institutional) scenes. However, the recurrent nature and similar features encountered in many cases of regulative harmonization in BiH suggests that the problem is systemic rather than incidental (e.g., in the process of public administration reform[5] [6]). Some preliminary studies in e.g. Sarajevo Canton[7] have revealed some insights related to local self-government and devolution of taxation revenue. This study intends to address the aforementioned issues in a systematic and comprehensive way, and aims at informing policy decisions on both the national and the sub-national levels of government.

[4] CCI, (2010) The Annual Monitoring Report on the Parliamentary Assembly of BiH for 2009 (Project Report 2010), Centers of Civic Initiatives (CCI), Tuzla/Mostar, 5 February 2010

[5] PARCO: Public Administration Reform Coordinator's Office (2010) The Annual Progress Report Action Plan One for 2009. Office of the Public Administration Reform Coordinator, Sarajevo

[6] Srđan Dizdarević, et al. (2006) Democracy Assessment in Bosnia and Herzegovina, Open Society Fund BiH, Sarajevo

[7] Centar za promociju civilnog društva (2009) Izvještaj o monitoringu javnih politika u Kantonu Sarajevo (Project Report) CPCD, Sarajevo

Intent and methodology

The overall goal of this study is to support development of BiH as an effective, decentralized, multi-ethnic parliamentary democracy with a higher level of effectiveness and accountability in the legislative process, by addressing common problems and obstacles to legislative harmonization that have frustrated reform efforts so far. The intent is not only to point to potential remedies in the current institutional setup, but also to be applicable to other cases of system decentralization that may result from a future constitutional reform. Besides, the study will try to quantify the impact of the lack of legislative harmonization on the key reform processes, especially when it comes from missing bylaws and inconsistent implementation on lower levels.

Methodology and limitations

The study concentrates on the laws and actions of the following parliaments: the Parliamentary Assembly of Bosnia and Herzegovina (i.e. the State parliament), the National Assembly

of RS (the RS Entity parliament), and the Assembly of the Sarajevo Canton (a Cantonal parliament). The data is collected for the period 2008-2010.

The choice of the Sarajevo Canton is motivated by the fact that this Canton is the most developed canton in FBiH with a high concentration of administrative, educational, business and other entities. The Sarajevo Canton is analyzed in the context of harmonizing with the FBiH and State legislation pertaining to education and local self-government, as well as relative to its compliance with budgetary planning regulations.

The National Assembly of RS is analyzed with respect to the implementation of decisions of the Constitutional Court of BiH, enforcement of its own Constitution, and constructiveness in legal harmonization when it comes to dispensation of government property.

The main sources for primary data collection include: the official bulletins with the published legislation; the official parliamentary rulebooks; decisions by the State and the Entity constitutional courts; official records from the parliamentary sessions; the parliamentary legislative programs; reports on parliamentary activity and legislative program fulfillment.[8]

[8] Unfortunately, the current legislation in Bosnia and Herzegovina is not available to the public free-of-charge via Internet. That is urgently needed both by the citizens and the policy researchers.

Relevant concepts of accountability

One way to define accountability is to quote Drewry[9]: *"For public administration, accountability is about the securing and maintenance of integrity in government, as part of what is now called 'good governance' a term that is used to carry accountability and other measures across both the public and private sectors".* For the specific purposes of this paper, parliamentary accountability addresses the concern that governments and their agencies should fulfill their responsibilities and, where problems occur or complaints arise, there should be mechanisms available to hold them to account for their actions or omissions.

[9] G. Drewry. The Executive: Towards Accountable Government and Elective Governence (2004), Jowell and D Oliver edition

In the context of Bosnia and Herzegovina as a developing country, we can quote Brian[10]: *"For many low-income countries, improving governance means breaking out of the trap of clientelism. Because clientelism (like all governance arrangements) is deeply intertwined with the structure and exercise of political power, this can be enormously difficult. Different societies find different ways to break free. As a result, their trajectories of governance reform vary with corresponding differences across countries as to which actors and accountabilities improve rapidly, and which lag."*

[10] L. Brian. Governance Reform - Bringing monitoring and action (2007), The World Bank

Clientelist governance characterizes countries with usually weak governance performance. In clientelist countries, formal and informal systems of authority work at cross-purposes, and the latter dominates the former. Political leaders use their control over patronage resources to maintain their power base; at the limit, they are captured by powerful private interests. Leaders can bypass or override checks-and-balances institutions and the public administration when these get in the way of their political goals. Systems are not transparent. Levels of corruption are generally high. Informal norms are, of course, also a reality in better-governed settings; however, they do not conflict as egregiously with the formal arrangements.

Here we can also distinguish between *accountability* and *responsibility*. For Matthew Flinders[11], the difference between them is that responsibility involves the added criteria of culpability.

[11] M.Flinders. The politics of accountability in the modern state (2001)

He explains: *"Whereas accountability involves the obligation 'to give a reckoning or account' responsibility also involves the 'liability to be blamed for loss or failure'."* Flinders defines accountability as *"the condition of having to answer to an individual or body for one's actions."* He defines responsibility accordingly as *"the condition of having to provide an account to an individual or body for one's action with the possibility of personal blame and/or sanctions for the content of that account".* The distinction is between *"providing an answer"* (accountability) and *"liability"* (responsibility)[12].

[12] M.V.Flinders. The politics of accountability: the enduring centrality of individual ministerial responsibility within the British constitution (2000), Disertation of University of Sheffield

Relevant concepts of harmonization

Harmonization of law aims at making a consistent whole of law. Harmonization refers to the inter-relationship between different laws[13]. Laws can be considered harmonized with each other when they:

[13] Wikipedia, The free encyclopedia: http://en.wikipedia.org/wiki/Harmonisation_of_law

- Meet all requirements for legality
- Do not contradict each other in any way, and
- Are sufficently complementary.

There are two categories of standards that apply to both new and existing laws:

- *National legal instruments and obligations.* These include the constitution, codes. laws, regulations, administrative orders, decrees, bylaws and curt ruling which change law.
- *International legal instruments and obligations.* These include treaties, conventions, multilateral agreements, rules of trans-national organizations, and applicable decisions of international tribunals and commissions.

Harmonization on the national level starts with the principle of supremacy (hierarchy of law). The basic principle of supremacy is that each and very different kind of law must be in conformity with other laws which are equal to or above it in the hierarchy. There are three requirements for harmonization in the national context:

- New laws and bylaws must comply with pre-existing laws of superior status.
- New laws and bylaws should not contradict pre-existing laws of equal status and
- New laws and bylaws should rescind or amend any non-compliant pre-esiting laws of inferior status.

Harmonization of law with international standards is conceptually similar to harmonization on the national level and involves the internal consistency of a unitary legal system and relationship between two entirely different systems.

However, full harmonization is a challenging obligation. A country that joins the Council of Europe and ratifies the European Convention for the Protection of Human Right and Fundamental Freedoms must import and extend to its citizens a complete regime of legal rights, developed over decades. These rights can be enforced through national courts, which must modify their practices, or at the European Court of Human Right in Strasbourg, which has appellate jurisdiction. Membership in the EU entails transposition of the entire *Acquis Communautaire.*

Problem description

Problem within its current policy environment

As reported by OSCE: *"Efficient and effective parliamentary government is essential for Bosnia and Herzegovina's transition from peace implementation to full integration into Euro- Atlantic structures. The Parliamentary Assembly of Bosnia and Herzegovina plays a central role in leading the country toward successful fulfillment of accession requirements, particularly in harmonizing legislation. As state-level responsibilities increase during this process, one of the Mission's primary goals is increasing the Assembly's capacity in order to fulfill the requirements for Euro-Atlantic integration processes."*[14]

However, in practice, the workload of parliaments (they are typically in session for less than one working month per year) is inadequate for effective performance of their legislative and supervisory roles and responsibilities.

[14] Organization for Security and Co-operation in Europe, (2009), OSCE in Sarajevo, Annual Report 2009

Parliaments have no effective means to check and ensure that the executive is implementing legislation (e.g., by adopting the necessary bylaws, setting up agencies, allocating the required resources, appointing personnel) in a timely and responsible manner, as required by law. Especially, parliamentary standing committees do not practice regular and systematic review of implementation of the key reform laws in their area.

Legislative agendas on different levels of government are not synchronized when it comes to implementation of the key cross-level reforms. This cannot be entirely attributed to political tensions, since the same problem appears when the same political parties are in government on the higher and the lower levels. For this, the case of the Sarajevo Canton is indicative, because the governing coalitions have had roughly the same political party structure on the Federal, the Cantonal and the local levels (the municipalities and the City of Sarajevo), yet the interests and the regulations on these three levels are sharply confronted resulting in a stalemate when it comes to the devolution of finances and decision making rights to local self-government.

In this study we argue that the legal voids that arise from untimely or patchy implementation of laws on the lower levels of government, as well as from local improvisation of the missing higher-level bylaws, can be significantly reduced by a system of defaults and overrides that are triggered by non-compliance with the legally established deadlines.

Parliamentary Assembly of Bosnia and Herzegovina (The State Parliament)

Parliamentary Assembly of BiH consists of two chambers: House of Representatives and the House of Peoples. Its function as the highest legislative body in the country consists of making laws, approving budgets and determining the source and amount of revenue for the state institutions of BiH and the international obligations of BiH. All decisions need to be adopted in both Houses of Parliament. The House of Representatives has 42 directly elected members elected, while the House of Peoples consists of 15 members appointed from the Entity parliaments (5 Bosniaks, 5 Serbs and 5 Croats).

	Laws			Bylaws			Ratifications
	Adopted laws (A+B)*	Laws in procedure (A+B)	With-drawn laws / bills (A+B)	Adopted bylaws (A+B)	Bylaws in procedure (A+B)	Withdrawn bylaws/ bills (A+B)	
2008	39	25	34	8	no data	no data	81
2009	70	17	41	25	1	1	98

A – Proponents: Council of Ministers BiH and Presidency of BiH

B – Proponents: individual delegates, parliamentary groups, and committees.

As shown in the above table, year 2008 was a bad year in terms of the number of enacted laws and decisions. The number of laws in the process together with the number of withdrawn bills is higher than the number of adopted laws. According to the annual report[15] , the average time for passing laws with adjustments in both houses was about one month. In 2009, the number of adopted laws and decisions almost doubled.

The BiH State Parliament has a modest legislative throughput in comparison to the Croatian Parliament[16] and the National Assembly of Serbia[17]. Besides, the real problem occurs when harmonizing bylaws and other regulations at lower levels, which is often a requirement and a stumbling block for European integration. Comparative data on the legislative throughput is given in the following table:

	Parliamentary Assembly of BiH	Croatian Parliament	National Assembly of Republica Serbia
Mandate	2006 - 2010	2008 - present	2008 - present
Adopted laws	335	582	572
Rejected bills	123	38	no data

Remark: the mandate of the current (sixth) Croatian Parliament lasts until 2012. The same applies to the National Assembly of the Republic of Serbia.

In the context of the Parliamentary Assembly of BiH, the most notable problems, in the light of this study, can be exemplified with the following cases:

- **Implementation of the "Sejdić-Finci" ruling by the European Court of Human Rights.** This court has ruled on 22 December 2009[18] that the provisions of the Constitution of Bosnia and Herzegovina that regulated the election of the members of the Presidency of BiH are contrary to the European Convention of Human Rights, since it prevents persons of nationality other than Bosniak, Serb and Croat for running for that highest office. Although the ruling itself does not specify the period for implementation, timely implementation has been seen as a key condition for BiH's full membership in the Council of Europe, as well as the forthcoming process of EU Accession. The BiH Parliament is in charge of amending the Constitution in line with the ruling, but more than one year on, nothing has been done on this issue, except delegating the task to the Council of Ministers.

- **Failure of cooperation with the Council of Ministers and Entity parliaments:** The European Commission's report of 2010 on progress of BiH notes that although some progress has been made in terms of administrative capacity of the Parliament, it still has week cooperation with the Council of Ministers and the Entity parliaments.[19]

[15] Official web page of Parliamentary Assembly of BiH: http://www.parlament.ba/sadrzaj/1/30/4.html

[16] Official web page of Hrvatski sabor: ww.sabor.hr/infodok

[17] Official web page of National Assembly f Republica Serbia: http://www.parlament.gov.rs/content/cir/akta/zakoni.asp

[18] Ruling 27996/06 by the European Court of Human Rights. http://www.echr.coe.int/

[19] Eureopean Commission. (2010) Bosnia and Herzegovina Progress Report 2010. Retrived on 15 January 2010 from www.delbih.ec.europa.eu/files/docs/2010progresst2.pdf

- **Failure to implement bylaws and appointments:** The EC Progress Report 2010 also repeatedly mentions appointments that were not made by the Council of Ministers (BiH Executive), such as the appointment of the head of the Indirect Taxation Authority, State Commission for Communications, and the Agency for Electric Energy Transmission. Besides, many laws, such as the Law on Electronic Signature, adopted in November 2006, which were intended to act as the enablers of electronic commerce and provision of electronic administrative services to citizens, were practically put on hold for nearly three years before the respective State ministry adopted the necessary bylaws.

The first of these examples is the failure of the Parliament to act on fulfilling its obligation arising from international treaties - by amending the constitution. This is *not* the constitutional responsibility of the Council of Ministers, although it is reasonable to expect its help and cooperation. The second example is a typical case of a lack of cooperation and synchronization between the State level and the lower levels (in this case the Entities), and the result is partial or a complete lack of implementation of the key reform laws. The third example shows that the State Parliament cannot hold the State Executive (the Council of Ministers and the Ministry of Communication and Transport) responsible for not implementing legislation.

The National Assembly of Republic of Srpska

National Assembly of Republic Srpska is the highest legislative body of the RS, one of two entities in BiH, composed of eighty-three directly elected members.[20]

	Laws			Bylaws		
	Adopted laws	Laws in procedure	Withdrawn laws/bills	Adopted bylaws	Bylaws in procedure	Withdrawn laws/bills
2008	89	12	no data	5	-	no data
2009	106	45	no data	5	-	no data
2010	63	24	no data	1	-	no data

[20] Official web page of Nacional Asembley of Republic Srpska: http://www.narodnask-upstinars.net/cir/pas/sazivi.htm

Given the fact that the Parliament of the FBiH and the RS National Assembly are the legislative bodies in the two entities in BiH, it may be interesting to compare the number of adopted laws and bills under consideration in the period since 2008. - 2010.

	Parlament FBiH	NS RS
Adopted laws	93	258
Bills under consideration	52	-

Although more efficient than the Federal Parliament, the following three examples show the problems with the National Assembly of the RS in the light of this study:

- **Failure to adopt new Entity insignia.** The NS RS still did not implement the ruling by the Constitutional Court of BiH, which has invalidated the earlier RS insignia as ethnically biased, and mandated adoption of new ones. This is clearly an instance of non-implementation of the constitutional court decisions.

- **Failure to act according to the Entity Constitution.** For more than eight years, the Constitutional Court of RS has acted contrary to the provisions of the RS Constitution

when it comes to deciding in cases of ethnic veto, moved in the special chamber of the NS RS, practically rendering that mechanism for preventing ethnic discrimination through legislation useless. However, NS RS did nothing to enforce these provisions, which are widely considered "imposed by foreigners" and contrary to the idea of Serb dominance in the Entity. Only recently enough minority members brought the case to the attention of the BiH Constitutional Court.

- **Preempting State legislation on government property.** In midst of the stalled political negotiations on how to regulate the status of (pre-war) government property, the NS RS has passed its law which effectively preempts a State level solution and has brought the political negotiations (lead under the international sponsorship) to a halt.

It should be noted that RS has enjoyed a high level of political cohesion, since it had practically one party in government since 2006, instead of a wide coalition, which is more typical of BiH. Also, the decision-making mechanisms on the State level ensure that the State laws must be practically pre-approved by any politically coherent RS government. Therefore, the RS government could operate relatively unimpeded and the usual lack of legislative effectiveness in the case of NS RS did not show in this period. However, the same pattern of parliament's lack of capacity, accountability, as well as overdependence on the executive *are also latently present there,* since the rules and the institutional setup has remained the same as elsewhere, which can be attested by parliamentary minorities whose mouth has been effectively shut, and, in the case of ethnic minorities, whose constitutional rights were systematically violated.

Canton Sarajevo

Canton Sarajevo is one of the ten cantons in the Federation. It has an Assembly as a legislative body composed of 35 directly elected representatives. Responsibilities of the Sarajevo Canton Assembly include the adoption of the Constitution KS, legislation and regulations in the exercise of the Cantonal competencies. It determines policy and delivers programs for the development of Canton, adopts the Cantonal budget and laws on taxation and other sources of revenue, elects representatives to the FBiH House of Peoples, and appoints the Cantonal Prime Minister and the Executive[21].

[21] Ustav Kantona Sarajevo

Year	Activity			
	Adopted laws	Laws in procedure	Adopted bylaws	Days In session
2008	23	15	65	12
2009	21	12	85	9
2010	13	6	86	6

The Sarajevo Canton has a budget that is sizeable to that of the Federation. As a seat of government it also enjoys a special significance, and as the richest part of the country it is often a test-bed for different reforms.

From the point of view of our study, we will look at the following problems in the context of the Cantonal Assembly:

- **The Law on Higher Education.** The Framework Law on Higher Education for BiH was adopted on 30 July 2007, with the deadline of one year for harmonization of all cantonal

higher education legislation. Sarajevo Canton has done that task on 22 December 2008., i.e. with 6 months delay, but another complication was non-adoption of the State bylaws regulating academic titles, which were mandated by the Framework Law. Therefore, the Canton had to adopt its own, local bylaw, which may lead to future incompatibilities with other local regulations from other cantons and entities.

- **The Law on Local Self-Government.** The Federal Law on Local Self-Government was adopted on 12 September 2006 with provision that the Canton of Sarajevo is to adopt its own Law on Local Self-Government within twelve months. At the moment of writing this study (May 2011) the Cantonal law is still not in place. Some pre-drafts have circulated in December 2009 and January 2010, and there is the current promise of a draft text by June 2011.

- **Failure to adopt budgets on time.** Since 2006, the Canton has failed to comply with the regulations that govern adoption of the budget. That regulation requires the Cantonal Executive to submit the budget proposal for the next year by November 1. The Assembly is supposed to adopt the budget by December 31. If for any reason the Assembly fails to adopt the budget until December 31, an extraordinary temporary financing can be provided until March 31. However, budget proposals were never submitted to the Assembly before the end of November, and in three out of four cases that happened after December 31, and in two out of the four cases, the budget proposal came as late as in March.

The first two examples are typical cases of failing to harmonize cantonal laws with the higher (State and Federal) law, way past the statutory deadline. The third case shows inability or unwillingness of the Cantonal Assembly to hold the executive accountable for planning and submitting budgets outside the legally stipulated time frame.

Causes of the problem

As a step towards viable complete or partial solutions to the problem of the lack of legislative accountability in BiH, we start by identifying the key factors of the problem and the causal relations that have maintained the problem over the past decade and half.[22]

In the previous subsection, we have given several indicative examples of our problem. However, it should be noted that the absence of progress in these and other related cases does not simply happen in an atmosphere of indifference. Quite contrary, our insight into minutes from the legislative sessions shows that each of these issues has been repeatedly the object of discussions, objections, questions to the executive, initiatives and resolutions. While lack of political will within the local ruling coalitions certainly explains one part of inactivity, it should be noted that these objections, resolutions and initiatives, do not come only from the opposition benches: in fact, they regularly draw support across the political spectrum. Their ineffectiveness, therefore, comes from other sources, namely:

- **Inability to effectively monitor, analyze and formulate policies.** The legislatures have neither staff nor budget dedicated to this task. Also, even the major political parties seldom launch legislative initiatives, and most of the legislative debate is reactive and concentrated on fragmentary and incremental changes in the current legislation – more than

[22] A more detailed exposition of the causal model is given in the Appendix A.

50% of the legislative agenda in all three cases in this study consisted of amendments to the existing laws – sometimes several times within a year or two within the adoption of the original law, and often on a short notice (the "urgent procedure"). The policy inputs are scarce and usually come from international monitoring applications and NGO sources. These sources are, however, essentially deficient: the former are mostly oriented to making BiH meet its international obligations, while the latter usually lack either depth or are (more frequently) restricted in regional coverage.

- While the executive suffers from similar handicaps when it comes to policies, it has a definitive edge over the legislative **in terms of technical capacity and administrative resources.** In fact, one of the reasons why the legislative initiatives usually bear no fruit is that even the task of framing a law is often too much for legislative committees, not to speak of individual members and political party groups. Their "initiatives" are often no more than *petitions to the executive* to take their suggestions into account, and if we know that the standard line by the executives in BiH is that they do not feel bound by parliamentary resolutions other than laws, the absence of action does not surprise.

- Coupled with this is the phenomenon of institutionalized **executive control over the legislative agenda** (with the sole exception of the State Parliament, whose rulebooks were rewritten by EU legal aid experts in 2000), inherited from the socialist times, which practically makes each step in the legislative process subject to vetting by the executive (which is not directly elected, but appointed).

These three factors in combination mean that, in spite of pressure on the legislatures to act, the low capacities and the level of executive control over agenda make more autonomous actions unlikely to succeed, and therefore the majority chooses to delegate or yield to the executive, often with some ritual, but powerless, show of rhetorical force. Considering that the membership in the legislatives is a relatively lucrative job, compared to the BiH average standard of living, and that the rewards do not depend on the legislative output, the only strong incentive for the legislature members to act more actively and responsibly would be a realistic chance *to succeed* and therefore build reputation, and for that to work, the three previously mentioned factors need to be reversed to a significant degree.

It is not the intention of this study to paint the executives on various levels in BiH in unreasonably dark colors. Although unelected and effectively free of parliamentary oversight, the executives in fact do run the country on the day-to-day basis, and in the course of that deal with the usual plethora of problems, crises and fires that need to be put out, often with very scarce organizational and financial resources.[22] Compared to the leisurely existence of parliamentary members, many ministers consider themselves the true bearers of the burden. The point here is that the executive is *necessary* a bottleneck in the legislative process, because it has to economize with its resources and assign them to *its top priorities*. And, in the situation where it can control the agenda and cannot be overruled or effectively called to account by the legislature, it would be unreasonable to expect the executive to offer the legislative more than what it can get away with. Therefore, the reversal of the three factors mentioned above is the only way to motivate the executive to behave differently.

It should be noted that besides increasing the policy making and administrative capacities by the legislatures and decreasing its dependence on the executive, two additional factors need to be considered:

[22] Why is this so is in an interesting story. At the outset, the American lawyers wrote the State and the Federal constitutions, assuming the usual presidential scheme of separate legislative and executive branches. In Cantons, for instance, there was a parliament for the legislative and a governor for the executive part. Instead of electing governors directly (which was not explicitly defined), the parliaments started to appoint them. Next, instead of heading the executives, the governors became separate from cantonal prime ministers and executives proper, and turned into lucrative posts. Finally, in 2002, the international community abolished the governors by decree, and we ended with elected but weak legislatures and unelected but independent executives. It is a sort of semi-presidential system without a president.

- There are typically many more bylaws and executive action points than laws, and the legislature needs to keep regular track on what needs to be done and when, and this has to be supported by regular reporting from the executive.

- The information about the prospects of successful implementation of laws needs to be shared by the executive with the legislature, so that the appropriate corrective actions can take place.

Policy options

Framework for analysis

Our analysis of policy options will address the following components:

- **Institutional setup, capacity and autonomy of legislatures:** This component is concerned with the ability of the legislatures on lower levels of government to perform tasks for which they are constitutionally accountable, in the context of harmonization with laws adopted on the higher levels. In particular, we deal with:

    - *Policy analysis capacities:* resources and facilities that allow members of a legislature, political party parliamentary groups, and committees to develop and evaluate policy proposals before shaping them into pieces of legislation.
    - *Technical capacities and legal services:* resources and facilities that members of a legislature, its committees and political party groups can use to draft and refine technically and legally sound bills and amendments for the proceedings of the legislature.
    - *Information and reporting:* the type, depth and regularity of reporting on the status of implementation of various adopted laws, as well as official assessments on costs, scope and effects of their implementation.
    - *Executive control over the agenda:* the mechanisms (mandated by the legislatures themselves in their rulebooks) given to the executive to freeze, sidetrack, and withdraw proposals.

- **The system of statutory overrides and defaults:** This component is concerned with mechanisms, either built into the legal structure, or included into practices of lawmaking, which allow

:

    - *Default provisions:* the provisions that entry into force in case the lower level does not comply with harmonization requirements in due time (e.g. does not perform harmonization or implement constitutional court decision).
    - *Higher-level overrides:* the authorization given to an authority at a higher level to perform the necessary legal adjustments in case the lower level does not comply with harmonization requirements in due time.
    - *Legislative overrides:* the authority of the legislature to promulgate the required bylaws should the executive fail to do so in due time.

Policy option SLB: strengthening the legislative branch

The basis for this policy option is a boost in the policy-making and the technical capacity of legislatures, combined with limitation of the executive control over agenda, and regular and transparent reporting.

The secretariats of the legislatures should be extended so that they can provide a reasonable level of professional legal and technical assistance to parliamentary committees, parliamentary groups and individual members on all issues of parliamentary procedure, for obtaining relevant regulation and information from ministries, and for drafting bills and amendments to be sent into the parliamentary procedure. The priorities are parliamentary subject committees, which need to meet and work on a more regular basis. Political parties usually already have some resources on their disposal, but some scheme of resource sharing should be provided for individual members as well. The assistance should include technical processing and technical review of text under strict code of non-disclosure to third parties. If the organizational capacities cannot cover these basic needs, some additional amount of money should be set aside in the legislature's budget (besides the usual honoraries paid to the members and political parties) to allow hiring or purchasing the required services.

Next, the reporting procedures should be enhanced. The ministries should be required to provide updates monthly, if possible, and at least quarterly, on the status of implementation of all laws from their sector, whenever an appointment of bylaw is pending. Also, the executive should report prior to each session of the legislature (i.e., monthly) on the status of all issues delegated to it by the legislature. Parliament members should have an open and quick access to ministers for obtaining any clarifications and additional information in this respect. Chairs should inform the legislature regularly (i.e. monthly) on all outstanding harmonization tasks and deadlines mandated by higher-level laws and constitutional court decisions.

Parliamentary rulebooks should be revised to allow more open access to agenda. In particular, the executive should not be allowed to block deliberations by not providing opinions (the usual practice) or by taking over the ownership of bills and initiatives and stalling them indefinitely. Whenever a rulebook requires an opinion or consent from the executive, a definite deadline must be established to prevent implicit indefinite postponement. Besides, the executive should give up the right to withdraw its own bills after being amended by the legislature.

Policy option OR: Overrides

This policy option is complementary to SLB. It introduces a system of overrides as a failsafe mechanism such that a failure to perform an action in due time authorizes another instance to make the necessary decision and thus prevent a blockade.

If a legislature on a lower level fails to harmonize its legislation (by adopting new laws, or repealing or amending the existing ones) with the higher-level law within the stipulated period of time, the executive on the higher level should be authorized to approach the respective constitutional court for a fast-track hearing to present an ordnance limited to the minimal set of interim provisions necessary for implementation of the higher-level law in the respective lower-level jurisdiction without precluding the final action of its legislature. When the constitutional

court rules that the proposed ordnance satisfies these requirements, it goes into effect for at least six months (if a shorter period of time is not stated therein) to allow for its implementation. After that initial period it can be replaced by the lower-level legislation.

A similar policy should be applied to implementation of constitutional court decisions. Provisions of a law found unconstitutional by the respective constitutional court automatically become ineffective. Additionally, if a legislature fails to comply with decisions of the respective constitutional court within the mandated period of time, the court should be authorized to determine a minimal set of mandatory measures that ensure just and effective compensation to those affected by non-compliance.

On the same level of government, the legislature that has authorized the executive to enact bylaws or make the appointments should enjoy the right to override the executive if it has failed to meet the deadline stipulated in the law. In those cases, the proposals of bylaws and appointments from subject committees, if present, should be considered before those by political party groups and individual members. The decisions made in that way should have the same authority as those made by the executive, and cannot be changed by the executive without consent from the legislature. However, this override only has a preemptory character and does not preclude any action by the executive and thus does not introduce the element of moral hazard in the sense of ensuring legality of operation.

Policy option DF: Defaults

This policy option is also complementary to SLB, but partly conflicts with parts of OR and is therefore presented as an alternative to it. Essentially, it requires strengthening the standards for writing legislation, and therefore does not require changes in constitutional provisions that regulate distribution of competences between different levels of government. That makes it easier to implement, but has a smaller scope.

All laws that require harmonization on lower levels of government should be required to contain "default provisions", which specify what happens if a lower level jurisdiction fails to comply with the harmonization requirements within specified deadlines. If possible, such default provisions should specify the way in which the higher-level law would be implemented with a minimum of additional regulation. A standard pattern for default provision can be developed and uniformly applied to all cases of harmonization, as a matter of good practice.

Evaluation of Policy Alternatives

In the following table we provide a comparison and an evaluation of the policy options: the *status quo*, a combination SLB/OR, and a combination SLB/DF. These three policy options are tabulated against common criteria, as well as against their expected effects on more accountable behavior of the legislatures, in terms of provided incentives.

Criterion	Policy Options		
	Status quo	SLB/OR	SLB/DF
Institutional setup, capacity and autonomy of legislatures			
Policy analysis capacities	Very small. The executive and OHR are the main suppli-ers of policy inputs.	Basic initial level, plus a prospect of further expan-sion due to the possibility of same-level override.	Basic initial level. Further develop-ment depends on adoption of good practices.
Technical capacities and legal services	Elementary servi-ces are available to committees. Political party gro-ups and individual members are not supported.	Improved, plus a prospect of further expansion due to the the possibility of same-level override.	Improved compared to the current level, and gradually expand-ing in perspective.
Information and reporting	Semi-annual and on demand; the latter takes weeks or months.	Up-to-date, as the executive needs to spread the good word and preempt overrides.	Improved, yet probably not so detailed.
Executive control over the agenda	Significant. Referring them to the executive for consid-eration can block bills.	Small, enough to address ur-gent needs and techni-cally sensitive questions.	Indirect. By shifting deci-sions from laws to bylaws, the exe-cutive can isolate sensitive issues from public consi-deration.
The system of statutory overrides and defaults			
Default provisions	Rarely ever present, es-pecially in the state-level frame-work legislation.	Rarely ever present, but de-sirable as a "softer solution".	Added to all frame-work legislation as a matter of good practice.
Higher-level overrides	Non-existent. If the lower level does not comply, the higher level usually cannot do anything.	In place. Higher levels can intervene with ordnances, and constitutional courts can regulate damage.	Non-existent. Cf. status-quo.
Legislative overrides	Not recognized.	Legislature can replace executive in making bylaws and appointments past due date.	Not recognized.
Expected results			
Incentive for legislatures to take responsibility for harmo-nization of laws.	Low. Lack of initiative can be justified with the lack of capacities and business of the executive.	Medium. The prospect of overrides may stimulate legislati-ves to delegate to the executive.	Medium, depending on the quality of the default provi-sions.
Incentive for legislatures to take responsibility for bylaws and appointments imple-menting their legislation.	Low. Lack of initiative can be justified with the lack of legal basis and information from the executive.	High, since the responsibil-ity cannot be indefini-tely shifted to the executive in the face of public exposure.	Medium. Lack of initiative can be justified with the lack of legal basis. However, changing the faulty laws is an obvious alternative.

Conclusions and Recommendations

Synthesis of major findings

Many key reform processes in Bosnia and Herzegovina involve cumbersome processes of harmonizing lower-level legislation (Entity or Cantonal) with higher-level (e.g. State or Entity) laws. Frequently, the deadlines are not respected and the reform processes tend to be delayed with the final result being a lower level of implementation effectiveness. There are currently no mechanisms that can be employed to remedy such violations of deadlines or call to responsibility those who are responsible. Similarly, decisions of the State and the Entity constitutional courts, which rule legal provisions unconstitutional and ask for alterations in the current legislation, are seldom implemented in the stipulated time frame. Again, there is no formal mechanism for penalizing those responsible for the breeches.

Another important problem for the reform processes in Bosnia and Herzegovina is that many laws are not implemented even on the same level because they depend on bylaws and appointments by the executive, but which fail to happen within the mandated period of time. As a consequence, institutions are not formed on time, the activities get stuck due to legal voids, and in many cases this additionally slows down the EU-accession process for the country.

At the heart of the problem lies the lack of accountability by parliaments for the legislative process. Legislatures on all levels are systematically depleted of capacities necessary for analysis of policies, as well as for legal framing and technical preparation of bills. This applies to committees as well as to political party groups and individual members. Besides, the reporting from the executive is scarce and does not include a systematic overview of outstanding harmonization and implementation issues. Legislatures depend almost exclusively on the executive branch for framing new legislation, and, in return, the executive usually enjoys a high degree of control over the legislative agenda, up to the point of indefinitely stalling consideration of bills it does not feel comfortable with. Yet, the executive does not bear the responsibility for the legislation it effectively controls, and is driven by other considerations that maximize benefits and political control compared to utilization of its own scarce resources. In the current situation, neither the legislative, nor the executive accepts to be held primarily accountable for the outcomes legislative process.

If BiH is to become a functioning parliamentary democracy, the accountability of parliaments for harmonization and implementation of laws must be (re)affirmed. That can be achieved only if the system is changed to provide (currently lacking) incentives to legislatures to:

- Play a more active and responsible role in harmonization of laws, and
- Actively supervise, and, when necessary, override the executive to ensure timely implementation of laws through bylaws and appointments.

We propose replacing the existing ineffective systems and solutions that regulate:

- Institutional setup, policy making capacity, and autonomy of legislatures, and
- Statutory overrides and defaults across levels of government.

Set of policy recommendations

Compared to the *status quo*, we propose two variants for *strengthening the legislative branch*, one based on *overrides and failsafe mechanisms*, which is more ambitious but harder to implement, and a weaker one based on *statutory defaults*, which may be easier to put in place, possibly as an evolutionary step. Both variants call for:

- Strengthening policy analysis and policy making capacities of the legislatures on all levels in BiH, including an adequate level of technical capacities and legal services, to enable their committees, political parliamentary groups and individual members to scrutinize the existing and develop new policies, without the exclusive resort to the executive. This should be accompanied by adequate strengthening of legal and technical services to the committees, groups and legislature members, necessary for framing legislative proposals and initiatives.
- More frequent and systematic reporting from an executive to the respective legislative on the status of implementation of laws, as well as from the lower levels to the higher levels of government on harmonization of laws.
- Systematic revision of legislative rulebooks to remove at least the most rigid mechanisms that allow the executive to control the legislative agenda and block framing, consideration, and supervision of laws.

Furthermore, the *overrides and failsafes variant* calls for establishment of mechanisms that can be activated in the event of non-compliance with terms of higher laws, such as:

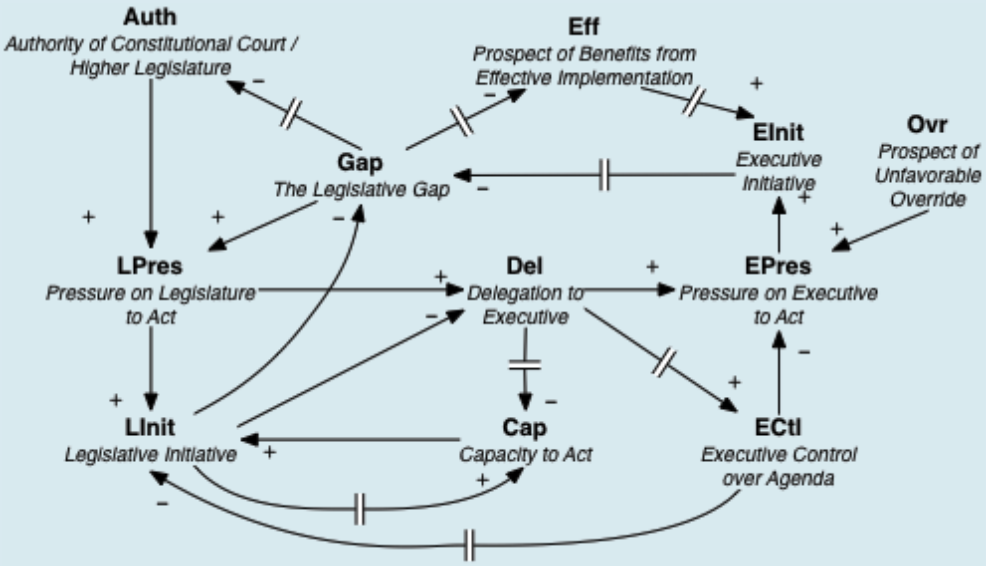
- Giving implicit authority to higher levels of government to enact ordnances applicable to lower level units that fail to harmonize their legislation and bring about bylaws and appointments within the required time frame.
- Implicitly authorizing legislatures should be given to override the executive by adopting bylaws and making appointments if the executive fails to do so within the statutory period of time.
- Authorizing the constitutional courts to rule *ex officio* on just compensations to those affected by failure of the legislature to implement constitutional court decisions, especially when time frame for implementation has been significantly violated.

The softer *statutory defaults variant* may requires, as a matter of good practice and legislative standards, all new laws to include *default* provisions that enter into effect if the executive or the lower level governments fail to comply with the provisions of the law, or when the statutory deadlines for harmonization or implementation expire.

Appendix A: The Causal Model

To develop the causal model of the legislative accountability dynamics, we use the technique of conceptual modeling used in the field of analysis of complex dynamic systems.

The following picture summarizes the causal relationships that describe the dynamics of the problem of implementation of constitutional court decisions or harmonization with higher-level legislation, in the context of entity/cantonal legislative and executive branches. The nodes in the graph denote relevant features (with abbreviated names in boldface). Arrows signify causal relationships. Positive polarity of an arrow (signified by "+") leading from node X to node Y means that an increase [decrease] in X causes Y to increase [decrease] more than it would otherwise be the case, all other factors being equal. Negative polarity (signified by "-") means that an increase [decrease] in X causes Y to decrease [increase] more than it would otherwise be the case, all other factors being equal. A double stroke on an arrow (such as on the arrow from Gap to Eff) signifies that a time delay exists between the cause and the effect.



The legislative gap (variable Gap on the diagram) represents the discrepancy between the current situation and the target set by the court decision or higher law, usually in the form of requirement to repeal, adjust or create new legislation. As the time passes, and especially after expiry of the mandated harmonization period, persistence of the gap starts to gradually deteriorate the prospect of effective implementation (Eff) of the goals that have motivated it. The gap is closed after the initiative to bring up new legislation for deliberation and adoption is taken by either the legislature (committees, cauci or individual representatives; PInit), or the executive (EInit). Prolonged existence of a gap deteriorates credibility of the authority of those who mandated it.

Several factors combine in building up the pressure on legislature to act on harmonization (LPres): the gap itself (Gap), and the authority of the source of the harmonization (Auth). As the pressure on the legislative builds up, two kinds of actions can be taken. First, committees, cauci, or individual representatives in the legislature can take the initiative in their own hands (LInit), which is more likely when they have on their disposal sufficient capacity to act (Cap), in terms of research, drafting, and public hearing facilities, and when they can count that the executive will not

block the attempt using its mechanisms of agenda control (ECtl). Otherwise, the legislature can delegate the job of developing harmonization proposals to the executive, which is more likely in case of undeveloped own capacity to act (Cap) and excess executive control over agenda (ECtl). Delegating to the executive also tends to increase its control over agenda, since the legislature looses a degree of control over the content and timing of harmonization proposals. The pressure on the executive to act (EPres) rises with the level of delegation (Del), but is relieved if the executive, by means of agenda control (ECtl) can choose the convenient timing. Also, since the task of harmonization continues to sit with the legislature even in case of delegation, the executive is not "threatened" by the higher authority or the prospect of sanctions/override. Instead, in choosing among its priorities, the executive is more likely to choose things that have higher chance of effective implementation (Eff). However, the executive may be urged to act if However, the executive may be urged to act if there is a prospect of unfavorable override (Ovr) by other authority (the legislature or the higher authority mandating harmonization) if no action is taken in due time. Finally, harmonization initiatives developed by the executive often take some more time, since they have to complete their round in the legislature. Here we assume that the legislature and the government share the same view of political priorities and considerations, which is certainly the case in BiH where the executive is appointed by the majority in the legislature.

On the diagram, some variables are directly observed based on the available data: the number of laws to harmonize (Gap), the number legislative initiatives (LInit), the capacity of the legislature to act (Cap), the mechanisms of executive control over agenda (ECtl), the prospect of unfavorable override (Ovr), and the number of initiatives coming from the executive (EInit, Auth). Others can be deduced from them (Del), and the meaning of the rest (LPres, EPres, Eff) can be checked against usual perceptions of those involved.

Several observations based on the model can be inferred from its feedback structure. First, the level of legislative initiative (LInit) and the capacity of the legislative to act (Cap) comprise a positive reinforcing feedback loop that tends to amplify and sustain the increase/decrease trends over time. The feedback loop between Cap and the level of delegation (Del) also tends to reinforce the trends over time, by either going into "no legislative autonomy, full dependence on the executive", or "full legislative autonomy, no dependence on the executive" mode.

However, in the loop Gap®LPres→Del→EPres→EInit→Gap, any increase/decrease of one variable leads to a series of events that end (after a while) to a contrary (stabilizing) event. Thus, for instance, an increase in delegation leads to an increase in the pressure put on the executive, which leads to an increase in the executive initiatives, which (over time) decreases the legislative gap, which leads to decrease on the pressure put on the legislature, which finally leads to the decrease in delegation. Another commonsense stabilizing feedback loop is LInit→Gap→LPres→LInit: an increase in legislative initiative decreases the legislative gap, which leads to a decrease in the legislative pressure, which decreases the level of legislative initiative. These stabilizing feedback loops prevent the system from sliding chaotically to either extreme. In the former case, the controlling variable is the prospect of unfavorable override (Ovr), and in former the authority of the source of harmonization (Auth), as well as the inflow of harmonization requests that can be represented as an externally caused increase of variable Gap.

If, as is the case today, there is a little prospect of a higher authority imposing an unfavorable override, and if the executive has a very high level of control over the legislative agenda, the model predicts that, in the presence of legislative gaps, the level of delegation to the execu-

tive will rise, the capacity of the legislature to act on its own will plunge, and the dynamics of government initiatives aimed at harmonization will be driven by its view of the best timing and the benefits that the lower level would gain from the effective implementation of the higher-level legislative framework. Depending on the power of the higher authority, the legislature may maintain the pressure on the executive to come up with harmonization proposals, but will not be able to force it. That is exactly what is happening today. We should note that the behavior of the executive is usually dictated by the pressures of everyday running of the government that include not only policy, but also appointments and apportions, as well as with limited resources on its dispositions to meet the legislative requirements of harmonization mandated from above.

Assuming strong influence of the higher authority (Auth), and a simultaneous boost to the capacities (Cap) necessary for the legislature to develop and follow through its own initiatives (including services, infrastructure and facilities), and removal of mechanisms that allow the executive to control the legislative agenda and block proposals it does not like (ECtl), the model predicts a boost the legislative initiative and thus achieve greater level of legislative harmonization and constitutional court decision implementation. But, if the higher authority is less influential (such as in the case of relationship between the RS and BiH Parliaments, or between the Canton Sarajevo and Federal parliament in the matter of local self-government reform), the improvement of the situation cannot be expected without introducing the prospect of override by the higher authority (Ovr).

The same model can be also used for the case of the legislature supervising the executive to ensure that the necessary bylaws are timely set in place to enable effective implementation. There, we look at a single level of government, and therefore variable Auth stands for the authority of the legislature on the given level and not for the influence of a higher authority. Also, Ovr becomes the prospect of the legislature overriding the executive and imposing the missing bylaws if the executive fails to act in due time. Also, the arrow between EInit and Gap looses the delay, since the bylaws made by the executive do not need to go through the legislature before coming into effect.

Again, in the current situation with small legislative capabilities (Cap) and a high degree of the executive's control over the legislative agenda (ECtl), the dynamics of establishing the required bylaws primarily depends on the executive's assessment of benefits that can be reaped from implementation of the respective law, in comparison with other available alternatives. Therefore, the executive will make the required bylaws at a time of its own choosing, even if (as it frequently happens) the mandated deadline has expired. Lags in implementation will deteriorate the authority of the legislature that made the half-implemented laws and create the pressure on it to act. However, the only thing the legislature can do is to urge the executive.

Here again, on the basis of the model, we can conclude that a simultaneous boost in legislative capacities (Cap) and dismantling of executive control over agenda (ECtl), combined with a realistic prospect of override (Ovr) can unblock the process. However, two additional points should be noted. First, since there are usually many more bylaws than laws, the legislature needs to be actively aware (and reminded) of what bylaws are required and what is the state of their implementation – in other words, of the current legislative gap (Gap). Another thing is that any information that the executive may have about the prospects of effective implementation of laws should be shared with the legislature on a regular basis for a corrective action to take place.

Jasmina Ivanović has received a university degree in economy. Her interests lie in the public and corporate policy analysis. As a municipal councilor, she had an in-depth, first-hand experience in functioning and problems of the local governments. She has coordinated several policy research projects and participated in development of the studies and recommenadations. Her hobbies include photography, sports and cooking.

Open
Society Fund
Bosnia & Herzegovina

A *"Policy Development Fellowship Program"* has been launched by the Open Society Fund BiH in early 2004 with the aim to improve BiH policy research and dialogue and to contribute to the development of a sound policy-making culture based on informative and empirically grounded policy options.
The program provides an opportunity for selected fellows to collaborate with the Open Society Fund in conducting policy research and writing a policy study with the support of mentors and trainers during the whole process. Seventy three fellowships have been granted in three cycles since the starting of the Program.