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Executive summary

Note by the Secretariat

Addendum

Contents

	<i>Page</i>
II. Executive summary	2
Bosnia and Herzegovina	2

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II. Executive summary

Bosnia and Herzegovina

1. Introduction: Overview of the legal and institutional framework of Bosnia and Herzegovina in the context of implementation of the United Nations Convention against Corruption

Bosnia and Herzegovina signed the United Nations Convention against Corruption on 16 September 2005 and ratified it on 26 October 2006.

According to the Dayton Agreement, Bosnia and Herzegovina is a State consisting of two entities, each with a high degree of autonomy: Republika Srpska and the Federation of Bosnia and Herzegovina. In addition, the District of Brčko operates as a single administrative unit under the sovereignty of Bosnia and Herzegovina. From the constitutional standpoint, the current system is a highly decentralized federal system where each entity has its own constitution, president, government, parliament and judiciary.

The criminal legislation and legislation on criminal proceedings are adopted for the State, entity and the Brčko District level. Each of them has their own criminal code and criminal procedure code. Entity and Brčko District laws are applied solely before the courts of the entities and Brčko District, while the legislation at the State level is applied before the Court of Bosnia and Herzegovina.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

The provisions on active bribery are contained in article 218 of the Criminal Code of Bosnia and Herzegovina, article 381 of the Criminal Code of the Federation of Bosnia and Herzegovina, article 352 of the Criminal Code of Republika Srpska and article 375 of the Criminal Code of Brčko District. Passive bribery is dealt with in article 217 of the Criminal Code of Bosnia and Herzegovina, article 380 of the Criminal Code of the Federation of Bosnia and Herzegovina, article 351 of the Criminal Code of Republika Srpska and article 374 of the Criminal Code of Brčko District. The definition of national public officials is provided in article 1 (3) of the Criminal Code of Bosnia and Herzegovina; article 2 (3) of the Criminal Code of the Federation of Bosnia and Herzegovina; article 147 (3) of the Criminal Code of Republika Srpska; and article 2 (3) of the Criminal Code of Brčko District, respectively. These provisions are worded in identical terms.

The offer of a bribe is only explicitly mentioned in the text of article 352 of the Criminal Code of Republika Srpska. The element of “undue advantage” is implemented as “gifts and other benefits”.

Concerning active bribery, third-party beneficiaries of the advantage are covered in the Criminal Code of Bosnia and Herzegovina but not in the other criminal codes. In the passive form of bribery, the criminal codes specify that the beneficiary of the advantage may be “another person”.

Trading in influence is criminalized in articles 219 and 219a of the Criminal Code of Bosnia and Herzegovina. Article 382 of the Criminal Code of the Federation of Bosnia and Herzegovina and article 376 of the Criminal Code of the Brčko District cover trading in influence only in its passive form. Article 353 of the Criminal Code of Republika Srpska criminalizes both the active and passive form.

Article 21 of the Convention against Corruption is implemented through the definition of the bribe taker, which includes “responsible persons”. According to article 1 (5) of the Criminal Code of Bosnia and Herzegovina, article 2 (6) of the Criminal Code of the Federation of Bosnia and Herzegovina and article 2 (5) of the Criminal Code of Brčko District, a “responsible person” means a person in a business enterprise or other legal person who has been entrusted with certain powers. This definition does not, however, cover employees. The relevant articles in the Criminal Code of Republika Srpska are articles 267 and 268, which seem to lack provisions for third-party beneficiaries.

Money-laundering, concealment (arts. 23 and 24)

The main provisions criminalizing money-laundering are found in article 209 of the Criminal Code of Bosnia and Herzegovina, article 272 of the Criminal Code of the Federation of Bosnia and Herzegovina, article 280 of the Criminal Code of Republika Srpska and article 265 of the Criminal Code of Brčko District.

Bosnia and Herzegovina applies an “all-crimes” approach to money-laundering, meaning that proceeds may derive from any criminal conduct, and that even trying to conceal the origins of property would lead to a completed offence (as opposed to an attempt). The offender himself may also be the perpetrator of the predicate crime, thus self-laundering is also a criminalized form of conduct (and punished even more severely).

Pursuant to article 9 of the Criminal Code of Bosnia and Herzegovina, predicate offences committed outside Bosnia and Herzegovina can entail liability for money-laundering inside Bosnia and Herzegovina. If the offence is proven outside Bosnia and Herzegovina, it does not have to be proven in Bosnia and Herzegovina again.

Concealment is criminalized according to article 232 of the Criminal Code of Bosnia and Herzegovina, article 300 of the Criminal Code of the Federation of Bosnia and Herzegovina, article 246 of the Criminal Code of Republika Srpska and article 294 of the Criminal Code of Brčko District.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The domestic provisions which correspond to article 17 of the Convention against Corruption are contained in articles 221-223 of the Criminal Code of Bosnia and Herzegovina, articles 384-386 of the Criminal Code of the Federation of Bosnia and Herzegovina, articles 348-350 of the Criminal Code of Republika Srpska and articles 378-380 of the Criminal Code of Brčko District. The criminal codes go beyond the Convention in that the beneficiary of these offences (most typically fraud) can be anyone, even legal persons, or other entities. The criminal codes also provide for the confiscation of the obtained financial gain.

Article 19 of the Convention against Corruption is implemented through the provisions of articles 220, 224 of the Criminal Code of Bosnia and Herzegovina, articles 383, 387 of the Criminal Code of the Federation of Bosnia and Herzegovina, articles 347, 354 of the Criminal Code of Republika Srpska and articles 377, 381 of the Criminal Code of Brčko District. Causing damage or obtaining an advantage are also elements of the crime, while the Convention against Corruption defines these elements only as motivation. Therefore, the conduct specified in Convention against Corruption would only be an attempt in Bosnia and Herzegovina. The Criminal Codes of Republika Srpska and Brčko District are in line with the Convention on this point, as causing damage or gaining advantage is an additional element of the crime, which leads to a more severe punishment.

Bosnia and Herzegovina has considered criminalizing illicit enrichment, but decided not to implement article 20 of the Convention because of constitutional problems (presumption of innocence). However, unexplained wealth deriving from criminal activity is subject to extended confiscation.

Obstruction of justice (art. 25)

Article 25 (a) of the Convention is implemented through provisions in articles 241 and 236 of the Criminal Code of Bosnia and Herzegovina; articles 349 and 366 of the Criminal Code of the Federation of Bosnia and Herzegovina; article 343 of the Criminal Code of Brčko District. These provisions concern obstruction of justice and tampering with evidence. Article 25 (b) of the Convention is implemented through articles 241a and 241b of the Criminal Code of Bosnia and Herzegovina; articles 358-360 of the Criminal Code of the Federation of Bosnia and Herzegovina; articles 369, 387, 387a and 388 of the Criminal Code of Republika Srpska and articles 352 and 353 of the Criminal Code of Brčko District (“obstructing an official person in the execution of official duties” and similar offences).

Liability of legal persons (art. 26)

Bosnia and Herzegovina and its entities have introduced criminal liability of legal persons (chapter XIV, articles 122-144 of the Criminal Code of Bosnia and Herzegovina; chapter XIV, articles 126-146 of the Criminal Code of the Federation of Bosnia and Herzegovina; chapter XIV, articles 125-146 of the Criminal Code of Republika Srpska; and chapter XIV, articles 126-148 of the Criminal Code of Brčko District). The codes distinguish between punishment (fine, seizure of property, dissolution) and security measures (publication of judgement, ban to perform business activity). In addition, it is compulsory to confiscate the proceeds gained by the legal person as a result of committing the crime. The provisions in place guarantee a wide and proportionate range of dissuasive consequences. However, in practice there are only a small number of cases at the entity level. In parallel with criminal investigations, financial investigations have also been instigated in Republika Srpska. The investigations resulted in orders for a temporary and permanent confiscation of property of large value.

The law on minor offences and administrative law (inspections) are also used against legal persons. The liability of the company is separate from the liability of the offender, and vice versa. The prosecution of the legal person will not affect the liability of the offender, and the legal person may be found liable for a crime, despite the fact that the offender cannot be prosecuted.

Participation and attempt (art. 27)

Article 27 (1) of the Convention is implemented in articles 29-31 of the Criminal Code of Bosnia and Herzegovina; articles 31-33 of the Criminal Code of the Federation of Bosnia and Herzegovina; articles 23-25 of the Criminal Code of Republika Srpska; and articles 31-33 of the Criminal Code of Brčko District (co-perpetration, incitement, accessories). The general rule about attempt is regulated in article 26 of the Criminal Code of Bosnia and Herzegovina; article 28 of the Criminal Code of the Federation of Bosnia and Herzegovina; article 20 of the Criminal Code of Republika Srpska; and article 28 of the Criminal Code of Brčko District. An attempt is punishable if the maximum sentence for the offence is three years or more. Preparation is punishable under the same conditions.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The range of punishment for corruption crimes makes it possible to take into account the gravity of the relevant offences.

According to the four criminal codes, the President, members of Parliament and members of the Government enjoy immunity for any act carried out in the course of their official duties. Investigations can be launched even if the person still enjoys immunity and all investigative steps prior to interviewing the subject can be undertaken. Only for questioning the subject and other coercive measures, the lifting of immunities is required. Immunity can be lifted by a parliamentary commission.

The law provides for mandatory prosecution (legality principle) in Bosnia and Herzegovina. According to article 38 of the Criminal Procedure Code of Bosnia and Herzegovina, prosecution can be abandoned if there is insufficient evidence or on the basis of a judgment of the Constitutional Court or the European Court of Human Rights in Strasbourg. A decision to abandon prosecution is not subject to appeal, except if the prosecutor committed an offence (e.g. corruption) in making it.

Rules on bail and parole are comprehensively regulated in the various criminal codes.

Article 30 (6) of the Convention is implemented through the Law on Civil Service in the Institutions of Bosnia and Herzegovina (article 58 on preventive suspension) and corresponding provisions in the laws of the other entities.

Bosnia and Herzegovina has established procedures for the disqualification of persons convicted of corruption offences from holding public office.

Bosnia and Herzegovina can apply disciplinary and criminal sanctions simultaneously.

Bosnia and Herzegovina law promotes the reintegration into society of persons convicted of offences (article 117 of the Criminal Code of Bosnia and Herzegovina on rehabilitation, and corresponding provisions).

Plea bargaining was introduced 11 years ago to accelerate cases, shorten the time and costs of proceedings and catch the “big fish”. Since then, plea bargaining has been widely used at the Court of Bosnia and Herzegovina. In the Federation of Bosnia and Herzegovina it is also widely used in practice. Plea bargaining does not

represent an exception to the principle of mandatory prosecution. It only concerns the sentencing. Cooperating offenders can be protected as provided for in article 32 of the Convention.

Protection of witnesses and reporting persons (arts. 32 and 33)

There is a special law on the protection of witnesses under threat and of vulnerable witnesses in all four jurisdictions.

A new law on the witness protection programme in Bosnia and Herzegovina provides for efficient protection of witnesses before, during and after criminal proceedings, in order to enable the witnesses to testify freely and openly in criminal proceedings. However, the restrictions on bringing witnesses testimony before the Court of Bosnia and Herzegovina seriously limit the application of the law. Moreover, the scope of the law is limited to certain crimes.

Currently, witnesses testifying at the State level are protected by the State Investigation and Protection Agency. At entity level, witness protection is the responsibility of the law enforcement authorities.

On 1 January 2014, the Law on the Protection of Whistle-blowers in the Institutions of Bosnia and Herzegovina came into effect. However, the law covers only the State level. A similar bill is before the Parliament of the Federation of Bosnia and Herzegovina, and Republika Srpska is also expected to draft a bill soon, as was mentioned in its anti-corruption strategy. Central responsibility for whistle-blower protection rests with the Agency for the Prevention of Corruption and the Coordination of the Fight against Corruption.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The domestic legal framework on freezing, seizing and confiscation can be found in a number of articles in the four criminal codes and other acts, such as the criminal procedure code, the Law on Enforcement Procedure before the Court of Bosnia and Herzegovina and the Law on the Confiscation of Proceeds of Crime of Republika Srpska. Article 73 of the Criminal Procedure Code of Bosnia and Herzegovina, for instance, governs temporary seizure of property and arrest in property, article 74 of the Criminal Code of Bosnia and Herzegovina forfeiture (confiscation), article 110 of the Criminal Code of Bosnia and Herzegovina the basis of the confiscation of material gain, and article 110a of the Criminal Code of Bosnia and Herzegovina extended confiscation.

The confiscation system is value-based, article 111 of the Criminal Code of Bosnia and Herzegovina; article 115 of the Criminal Code of the Federation of Bosnia and Herzegovina; article 95 of the Criminal Code of Republika Srpska and article 115 of the Criminal Code of Brčko District.

Under the criminal codes of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina and Brčko District, the courts are responsible for the safekeeping of seized property, while in Republika Srpska an agency has been set up especially for asset management purposes. The draft amendment to the Federation of Bosnia and Herzegovina contains provisions on an agency for the management of confiscated assets.

A judge can order a bank to provide financial information. In some cases, a prosecutor may order this as well, but within 72 hours a court warrant must be obtained. An order is also available for the temporary suspension of a transaction (temporary seizure). There is no register of bank accounts for individuals in Bosnia and Herzegovina, although there is one for legal persons. Currently, there are about 50 banks that operate in the country. In practice, prosecutors send letters to all banks, and once they know if the individual concerned has an account at a specific bank, they ask for a court order.

The reversal of the burden of proof has not been implemented. However, the provision on extended confiscation contains a different standard of proof (sufficient evidence for reasonable belief).

The rights of bona fide third parties are protected under article 74 of the Criminal Code of Bosnia and Herzegovina, article 78 of the Criminal Code of the Federation of Bosnia and Herzegovina, article 62 of the Criminal Code of Republika Srpska and article 78 of the Criminal Code of Brčko District.

Statute of limitations; criminal record (arts. 29 and 41)

The period starts from the commission of the crime. The mere fact that the suspect is a fugitive would not be a reason for the suspension of the time limit. Concerning the interruption of the limitation period, all four codes contain a provision according to which the limitation period is interrupted if the offender commits an equally grave (or graver) crime before the limitation period elapsed (e.g. article 15(4) of the Criminal Code of Bosnia and Herzegovina).

In determining the sentence the court can take into consideration previous convictions only if the perpetrator is a citizen of Bosnia and Herzegovina living abroad.

Jurisdiction (art. 42)

Bosnia and Herzegovina has implemented the territorial principle (article 8 of the Criminal Code of Bosnia and Herzegovina) and the active and passive personality principle (article 9 of the Criminal Code of Bosnia and Herzegovina) for establishing jurisdiction. Bosnia and Herzegovina can prosecute its own citizens in lieu of extradition.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The legal system of Bosnia and Herzegovina offers possibilities to annul or rescind agreements or decisions adopted by the public administration that have been affected by acts of corruption. Article 200 of the Criminal Procedure Code of Bosnia and Herzegovina gives the court the power to annul certain legal transactions. The Criminal Procedure Code of Republika Srpska also allows the courts to annul certain legal transactions if a claim under property law is filed.

Article 195 of the Criminal Procedure Code of Bosnia and Herzegovina lays down the procedure for the satisfaction of a claim under property law.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Due to the highly federalized structure of Bosnia and Herzegovina, there is no agency that has the powers to investigate or prosecute acts of corruption on all levels. Likewise, there is no judicial institution with the authority to resolve competence conflicts within the whole territory of Bosnia and Herzegovina. The Agency for the Prevention of Corruption and the Coordination of the Fight against Corruption only has a preventive mandate, so strictly speaking it is not a body governed by article 36. The Agency also has a mandate to develop a methodology for asset declaration.

The State Investigation and Protection Agency is an operationally independent administrative organization within the Ministry of Security of Bosnia and Herzegovina, whose powers include prevention, detection and the investigation of criminal offences falling within jurisdiction of the Court of Bosnia and Herzegovina. The State Investigation and Protection Agency has over 850 employees working in 11 organizational units. It has a department for the fight against economic crime and corruption.

Judges and prosecutors are appointed by the High Judicial Council. The Court of Bosnia and Herzegovina has specialized chambers (three panels of three judges each) for organized crime, corruption and white collar crime. In Republika Srpska and the Federation of Bosnia and Herzegovina, specialized structures for organized and economic crime, including corruption, also exist or are being set up.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- The provisions on extended confiscation had the potential to constitute a good practice. However, this law has not been applied yet. Therefore, Bosnia and Herzegovina has been encouraged to make use of these provisions in practice;
- The existence of a High Judicial Council for the appointment of judges and prosecutors was identified as a good practice.

2.3. Challenges in implementation

While noting the efforts made by Bosnia and Herzegovina in the field of anti-corruption, the reviewers identified a considerable number of challenges in implementation and/or room for further improvement, and made the following recommendations, depending on the mandatory or optional nature of the relevant requirements of the Convention:

- Concerning articles 15 and 16 of the Convention:
 - Include third-party beneficiaries in the active bribery provisions of the Criminal Code of the Federation of Bosnia and Herzegovina, of the Criminal Code of Republika Srpska and of the Criminal Code of Brčko District;
 - If necessary, clarify that third-party beneficiaries include legal persons and entities;

- Ensure consistency between the provisions on bribery and trading in influence and therefore also include the term “offer” in the provision on active bribery (as is already the case for article 352 of the Criminal Code of Republika Srpska);
- Concerning article 18 of the Convention:
 - Consider criminalizing trading in influence in the legislation of the Federation of Bosnia and Herzegovina and Brčko District;
- Concerning article 19 of the Convention:
 - Consider removing the requirement of damage in article 220 of the Criminal Code of Bosnia and Herzegovina, article 383 of the Criminal Code of the Federation of Bosnia and Herzegovina;
- Concerning article 21 of the Convention:
 - Include third-party beneficiaries as recipients of the bribe in the active bribery provisions of the Criminal Code of the Federation of Bosnia and Herzegovina, of the Criminal Code of Republika Srpska and of the Criminal Code of Brčko District;
 - Include employees as possible perpetrators;
- Concerning article 23 of the Convention:
 - Ensure that the provisions on money-laundering are effectively enforced in practice;
- Concerning articles 31 and 40 of the Convention:
 - Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Brčko District should tackle the issue of managing confiscated assets and, in doing so, consider the establishment of dedicated asset management agencies;
 - Consider the introduction of a central register of all bank accounts;
- Concerning article 33 of the Convention:
 - Laws for the protection of whistle-blowers should be adopted at the entity level as soon as possible;
 - Consider providing for the protection of whistle-blowers in the private sector;
- Concerning article 36 of the Convention:
 - The legislation should provide for a clear division of competences, mechanisms to resolve competence conflicts and sufficient resources for the institutions;
 - Ensure equal pay for prosecutors and judges by returning to a harmonized system of laws on salaries;
 - Ensure the allocation of sufficient resources to the judiciary to allow them to effectively carry out their mandate;

- Ensure that performance assessment sufficiently takes into account the nature and complexity of the cases;
- Preserve the independence of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina and strengthen its role in the process of the preparation and adoption of its budget, as well as the budgets of the courts and prosecutors' offices;
- Consider broadening the mandate of the Agency for the Prevention of Corruption and the Coordination of the Fight against Corruption and strengthening its capacities;
- Concerning article 39 of the Convention:
 - Take steps in order to improve the cooperation between banks and the financial intelligence unit.

2.4. Technical assistance needs identified to improve implementation of the Convention

Bosnia and Herzegovina has requested the following types of technical assistance:

- Article 20: model legislation and legal advice on legislative drafting in the field of illicit enrichment;
- Article 31 (9): legal advice and model legislation on confiscation. Such assistance has been partly provided through the European Union Instrument for Pre-Accession Assistance project “European Union support to law enforcement in Bosnia and Herzegovina”;
- Article 33: a summary of good practices/lessons learned; legal advice; model legislation and on-site assistance by a relevant expert;
- Article 36: further focused training for judicial and law enforcement personnel. However, an analysis of the completed training of judges and prosecutors on the topic of corruption should be carried out first to establish in which way the implemented training has increased the quality of their work in corruption cases. Only then, on the basis of this analysis, an assessment of the needs for further training should be made.

3. Chapter IV: International cooperation

As a general point, the review team consistently raised the issue of the lack of practical examples of implementation and statistics. During the country visit, explanations were provided by the competent national authorities, which enabled the reviewers to gain a better picture of how the legal framework is implemented in practice. Moreover, it was reported that as far as the courts are concerned, a sophisticated information system has been introduced, so that it is now possible to obtain more detailed statistical information about all the court cases, including extradition cases.

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is regulated through the provisions (chapter III) of the Law on Mutual Legal Assistance in Criminal Matters of 2009, as amended in July 2013. Article 32 of the Law stipulates that the extradition of accused or sentenced persons from Bosnia and Herzegovina to a foreign State is carried out in accordance with that law unless otherwise provided in an international agreement.

As confirmed during the country visit, Bosnia and Herzegovina does not make extradition conditional on the existence of a treaty. Despite this, a number of bilateral agreements have been concluded. It was also stated that the Convention against Corruption can be used as a legal basis for extradition on the condition of reciprocity. However, no such requests have been received so far.

Article 33 sets the threshold for the identification of extraditable offences (imprisonment of at least one year if extradition is requested for purposes of prosecution and remainder of four months of prison sentence if extradition is requested for the enforcement of a sentence).

Dual criminality is foreseen as an absolute requirement for granting an extradition request (article 33, paragraph 2, and article 34, paragraph 1 (d)).

Article 34 sets out the requirements for extradition, including grounds for refusal of an extradition request such as the nationality of the offender, the political or military nature of the offence, the granting of asylum, death penalty and anticipated discriminatory treatment in the requesting State on the grounds of race, sex, national or ethnic origin, religious belief or political views. Corruption offences are not considered as political offences. The nature of the crime in question as an offence involving fiscal matters is not included among the grounds for refusal of extradition requests.

In relation to the extradition of nationals, article 40, paragraph 2, as amended in July 2013, provides for flexibility by making such extradition subject to the provisions of international treaties concluded by Bosnia and Herzegovina. If an applicable treaty envisages the extradition of nationals, then the procedure for their extradition shall be conducted in compliance with the Law. If the extradition of nationals is not possible, the relevant authorities of the requesting State shall be informed to forward a letter rogatory for transfer of prosecution to Bosnia and Herzegovina (article 40, paragraph 3, as amended in July 2013).

There is no ad hoc provision in the domestic law covering the issue of accessory extradition, as prescribed in article 44, paragraph 3, of the Convention against Corruption.

The extradition procedure is regulated by articles 35-53 of the Law. The detention of the person sought in extradition proceedings may last “up until the enforcement of the decision on extradition, but no longer than six months from the day of placing the person into custody” (article 39, paragraph 2 of the Law, as amended in July 2013).

As confirmed by the Bosnia and Herzegovina authorities, despite the six-month maximum length of extradition proceedings, approximately 50 per cent of

extradition cases are completed within 18 days, especially with neighbouring countries. Article 52 of the Law provides for a simplified extradition process. If no translation is involved, the simplified extradition process is completed within 24 hours.

Regarding the applicable evidentiary requirements in extradition proceedings, article 34, paragraph 1 (h), of the Law identifies as one of the extradition requirements the fact that “there is sufficient evidence for a suspicion that the sought foreigner committed a criminal offence or that there is a valid verdict”. It was noted that this provision introduced a “prima facie requirement of guilt” for allowing extradition. However, it was explained that this high evidentiary threshold only applies where extradition is granted in the absence of a bilateral or multilateral treaty, on the basis of reciprocity. The reviewers noted that on this point, the law could be aligned with the European Convention on Extradition.

The temporary surrender of nationals for purposes of prosecution on the condition of return to serve the sentence is not followed in practice. Conversely, the Bosnia and Herzegovina authorities reported that there were three cases of foreign citizens who had been temporarily surrendered to Bosnia and Herzegovina, in which an undertaking of reciprocity was provided.

The execution of foreign criminal judgments against a national of Bosnia and Herzegovina in lieu of extradition is possible through application of chapter VI of the Law, in particular article 62, paragraph 2.

Bosnia and Herzegovina is a party to the Convention on the Transfer of Sentenced Persons (1983). Chapters VII and VIII of the Law regulate the transfer of prisoners from a foreign State to Bosnia and Herzegovina and vice versa.

The transfer of criminal proceedings is regulated in chapters IX of the Law (articles 83-92). In addition, Bosnia and Herzegovina is a party to the European Convention on the Transfer of Proceedings in Criminal Matters (1972).

Mutual legal assistance (art. 46)

Mutual legal assistance is governed by the provisions of the Law on Mutual Legal Assistance in Criminal Matters, as amended in July 2013. Such assistance can also be provided in accordance with international treaties or agreements in force. Bosnia and Herzegovina is a party to the 1959 European Convention on Mutual Assistance in Criminal Matters and its Second Additional Protocol. The country has also signed a number of bilateral agreements in this field. In the absence of such treaties or agreements, assistance is provided pursuant to the Law on the condition of reciprocity. Mutual legal assistance can also be afforded in relation to offences for which a legal person may be held liable.

Assistance can also be afforded in respect of petty offences punishable with imprisonment or fines in accordance with the legislation of Bosnia and Herzegovina (article 1 (3) of the Law).

Dual criminality is not a condition for the provision of assistance. Thus, assistance can be afforded by the authorities of Bosnia and Herzegovina on the basis of the principle of reciprocity (article 12 of the Law).

The grounds for refusal of requests for mutual legal assistance are stipulated in article 9 of the Law, as amended in July 2013. Bank secrecy and the fiscal nature of the offences are not grounds for refusing mutual legal assistance requests.

The Ministry of Justice of Bosnia and Herzegovina is the central authority designated to deal with requests for mutual legal assistance. Exceptionally, national judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority, when such a communication is allowed under an international treaty. In urgent cases, requests for mutual legal assistance may be transmitted and received through the International Criminal Police Organization (INTERPOL). Bosnia and Herzegovina has not yet submitted a notification to the Secretary-General of the United Nations regarding the central authority and the acceptable languages for the submission of requests for mutual legal assistance.

For the execution of requests for mutual legal assistance, the national legislation is applicable. As an exception, at the request of a court or other requesting authority, a national judicial authority can comply with the letter rogatory in the manner cited in it, provided that this does not contradict the fundamental principles of the national legal system and it is also stipulated in an applicable international agreement. The length of mutual legal assistance proceedings depends on the complexity of the case.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Law enforcement cooperation is facilitated through the use of domestic legislation and the conclusion of bilateral and multilateral instruments on police cooperation, as well as through membership of INTERPOL. The Convention against Corruption could be used as a legal basis for cooperation, but no practical cases have been reported.

Joint investigations can be conducted through recently amended national legislation (article 24 of the Law on Mutual Legal Assistance in Criminal Matters). The only prosecutor's office that has reported on the formal establishment of joint investigations teams with foreign prosecuting authorities is that of Sarajevo Canton. Cases of joint investigations are related to crimes such as drug trafficking, but not to corruption.

Special investigative techniques such as undercover investigation and controlled delivery are authorized through the 2013 amendments of the Law on Mutual Legal Assistance in Criminal Matters. At the international level, the Police Cooperation Convention for Southeast Europe and bilateral agreements on police cooperation allow for the use of such techniques. However, the evidence obtained from such techniques cannot always and automatically be taken into account in court as it has to be "accompanied" by other evidence as well.

3.2. Successes and good practices

Overall, the following points are regarded as successes and good practices in the framework of implementing chapter IV of the Convention:

- Mutual legal assistance can also be afforded in respect of petty offences punishable by imprisonment or fines in accordance with the legislation of

Bosnia and Herzegovina and in cases where a decision of an administrative authority can result in proceedings before a court with subject-matter jurisdiction over criminal matters (article 1, paragraph 3, of the Law on Mutual Legal Assistance in Criminal Matters);

- Dual criminality is not required as a condition for the provision of assistance.

3.3. Challenges in implementation

With a view to enhancing international cooperation to combat offences covered by the Convention against Corruption, and depending on the mandatory or optional nature of the relevant Convention against Corruption requirements, it is recommended that Bosnia and Herzegovina:

- Explore the possibility of relaxing the strict application of the double criminality requirement, in line with article 44, paragraph 2, of the Convention;
- Notify the Secretary-General of the United Nations that the Convention against Corruption can serve as a legal basis for extradition on the condition of reciprocity (art. 44, para. 6 (a), of the Convention);
- Notify the Secretary-General of the United Nations of the central authority designated to deal with requests for mutual legal assistance and of the acceptable languages for the submission of mutual legal assistance requests (art. 46, paras. 13 and 14, of the Convention);
- Continue to devote efforts into putting in place a case management system with a database containing statistics and practical examples of and cases involving extradition and mutual legal assistance matters (arts. 44 and 46 of the Convention);
- Amend the national legislation in order to allow the use of evidence collected through special investigative techniques in court without the need for it to be “accompanied” by other evidence (art. 50, para. 1, of the Convention against Corruption).

3.4. Technical assistance needs identified to improve implementation of the Convention

Bosnia and Herzegovina has requested the following types of technical assistance:

- Summary of good practices and lessons learned in the area of law enforcement cooperation (art. 48 of the Convention);
- Capacity-building programmes for authorities responsible for cross-border law enforcement cooperation (art. 48 of the Convention).