



# SIGMA

**Support for Improvement in Governance and Management  
in Central and Eastern European Countries**

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## **DRAFT FOR DISCUSSION**

**Report on the Review of the Services of the Council of Ministers**

**Bosnia and Herzegovina**

**November 2002**

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<sup>1</sup> *This document has been produced with the financial assistance of the European Community. The views expressed herein are those of SIGMA and can therefore in no way be taken to reflect the official opinion of the European Community.*

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**Note:** The research for this review was carried out immediately prior to the October 2002 elections in Bosnia Herzegovina. Further adjustment to this report can be made after this draft is reviewed and discussed in a planned visit by the consultant to Sarajevo in early 2003.

## **I. Introduction: purpose and conduct of this review**

### **I.1 Purpose of this review**

The purpose of this review is to assess the organisation and functioning of the Services of the Council of Ministers (CoM) at the State level in Bosnia and Herzegovina (BiH), and to propose recommendations in order to:

- improve the structure, the capacity, and the performance of the Services of the CoM;
- improve overall coordination in the system of collective decision-making; and
- increase the capacity of the CoM to adopt and deliver coherent policy outputs.

The context for this review is rather unusual. While it is true that each country and each government is different, the structure and position of the Council of Ministers in BiH is clearly unique. There are multiple reasons for this unique (and uniquely difficult) situation, and these have been identified and discussed in a number of reports and documents in recent years. The reasons include the newness of the State as an institution, the complex constitutional architecture, the legacy of the war, and the role of the international community (especially the OHR) in the governance of BiH.<sup>2</sup> The authors of this study conclude that given the extent of problems in BiH's institutions, "it is very difficult for any newly elected government to deliver concrete benefits to its electorate. With so few constructive options available, there is a constant temptation for politicians from all parties to resort to symbolic or identity issues, avoiding any substantive policy agenda".<sup>3</sup>

This report seeks to make a contribution to the reform and development of the services of the Council of Ministers, without in anyway assuming that such reforms will resolve the fundamental problems of governance in BiH. Rather, the purpose is more modest: to give the Council of Ministers some tools that it may use to help it define and deliver a concrete and coherent policy agenda. The choice to take steps toward acting as a government (in the traditional sense) would be a political choice, and it would inevitably be burdened by political and constitutional complexities. At the State level, there are certainly debates about the possibility and desirability of moving in this direction. But regardless of the political decisions that may be taken in the future, the Council of Ministers needs an effective administrative support system to assist and facilitate its evolving role.

The methodology for this review is based on the approach used to assess organs supporting the Prime Minister and the collective functions of the Government in countries of central and Eastern Europe. The approach has been developed and used over the years by a number of international and bilateral development institutions, including the World Bank, the United Nations Development Programme, SIGMA, and the UK Department for International Development. The approach consists of collecting information by carrying out interviews, reviewing official documents and analyzing the information within a general theoretical context to develop conclusions and recommendations.

In terms of the theoretical framework, a central assumption of the approach is that the analysis should focus on the constitutional framework and conditions present within the country being studied. While international best practices might provide general guidelines, every country should develop the central administrative institutions that match its legal framework, cultural

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<sup>2</sup>For a good recent summary see Marcus Cox et. al., Bosnia and Herzegovina Governance Assessment (Preparatory Study), May 2002

<sup>3</sup> Ibid. p. 13

traditions, and national priorities. Specifically, the starting point of the approach is that the administrative bodies that support the Prime Minister and the Government should perform a specific set of functions and activities that derive from the roles and responsibilities assigned to them by the constitution and the laws. Thus, in the case of BiH, the functions that the Services of the CoM should perform need to be derived from the responsibilities of the CoM and its Chair.

It is important, however, not to take a minimalist interpretation of the responsibilities of decision-makers or of the support they need from the administrative organ(s) established to serve them. Rather, these responsibilities should be viewed in a broad systemic context. Decision-making in democratic parliamentary systems (including semi-presidential systems) is predicated on the performance of a dual role by all members of the Council of Ministers. Ministers are normally assigned personal responsibility for a policy area (finance, foreign affairs, European affairs, etc.), and in the performance of this responsibility they are supported by their individual Ministries. In addition, they come together regularly in the sessions of the Council of Ministers, where they discuss proposals from other Ministers, make decisions, and are required to take collective responsibility for the CoM programme, and for specific decisions. In performing their collective role, specifically in coming together as the Council of Ministers, they are assisted and supported by the central organ.

Normally, in parliamentary systems, the apex of the decision-making process is the weekly session of the Council of Ministers, chaired by the Prime Minister. In these systems, the weekly session exists to achieve the following:

- To take a strategic view: establishing the overall Government objectives, setting priorities among them, and allocating resources to these priorities;
- To take major decisions on behalf of the Government, ensuring that all Ministers are committed to them;
- To take coherent decisions: that is, decisions that are lawful, for which financial and staffing resources have been identified, and in which the different interests of Ministers have been identified and conciliated; and
- To take collective responsibility for the performance of the Government.

In the case of BiH, it is clear that the role and responsibilities of the Council of Ministers are more limited than is normally the case for Governments in parliamentary systems. Similarly, the role of the Chair of the CoM is more limited than that of a Prime Minister. Nevertheless, our review of the central documents, especially the Law on the Council of Ministers and the Rules of Procedure suggests that there are significant similarities to other parliamentary systems, and that the methodology used in other countries in the region is easily adaptable to the situation in the BiH.

## I.2 Conduct of this review

The review will be conducted in two phases. The first phase consisted of a review of relevant documents and reports, and a mission carried out by two SIGMA experts (Anke Freibert, Michal Ben-Gera) who visited Sarajevo in 22-27 September 2002. In Sarajevo, the experts carried out an extensive series of interviews, including:

- The heads of the five services of the CoM (the Office of the Chairman, the Administrative Service, the Legal Service, the Financial Service, and the Information Service), as well as the Head of Protocol of CoM;
- The Secretary-General of the Presidency;

- The Secretary of the House of Representative; and
- Officials from five of the six Ministries that currently exist at the BiH State level.

A number of general briefings were also held with the EU delegation, the OHR, and the EU Civil Service Project located in the Civil Service Agency.

Following the first mission, the consultants prepared a brief, documenting the mission and presenting initial analysis and general recommendations. The brief was translated and circulated to counterparts in BiH in late October 2002. The present report represents the end of the first phase, and is being submitted to counterparts in BiH for review and comments. The second phase of the review is planned for early 2003, when the consultants will again visit Sarajevo to discuss the report and assess options for follow-up.

The authors are grateful to all those who gave their time to be interviewed. We are particularly indebted to the staff of the EU Civil Service Project who gave us on-going support and assistance, arranged many meetings and provided written documents.

## **II. The legal basis of the decision-making system**

As was noted above, any assessment of the Services of the CoM should start from an analysis of the role and responsibilities of the CoM and its Chair. In BiH, the relevant legal basis is found in the Constitution, in the Law on the Council of Ministers and Ministries, and in the Rules of Procedure of the Council of Ministers. The Constitution includes only one paragraph concerning the Council of Ministers (Article V, paragraph 4).<sup>4</sup> The role of the Council of Ministers is further elaborated in the Law on the Council of Ministers and Ministries (April 13, 2000). The Law is very clear on the composition of the CoM, on the responsibilities of the Chair, and on the decision-making procedures both within Ministries and in the CoM itself. It establishes three Services of the CoM (Legal, Administrative, Material-Financial), and briefly specifies their tasks (Article 19). The other two Services (see below), are established directly by the Rules of Procedure.

The Rules of Procedure of the Council of Ministers of Bosnia and Herzegovina were approved by the CoM on February 28, 2002. This is a detailed document that follows the Law on the CoM very closely. It establishes the working procedures of the CoM, including the rules for preparation of decision items by proposing Ministries, the annual planning process, the conduct of the meetings of the CoM, and the recording and distribution of decisions. The Rules of Procedure also establish an additional Service (Information), and the Cabinet of the Chair of the CoM, and provide a brief sketch of their responsibilities. This document is

<sup>4</sup> Article V, Paragraph 4    **Council of Ministers**

The Presidency shall nominate the Chair of the Council of Ministers, who shall take office upon the approval of the House of Representatives. The Chair shall nominate a Foreign Minister, a Minister for Foreign Trade, and other Ministers as may be appropriate, who shall take office upon the approval of the House of Representatives.

(a) Together, the Chair and the Ministers shall constitute the Council of Ministers, with responsibility for carrying out the policies and decisions of Bosnia and Herzegovina in the fields referred to in Article III (1), (4), and (5) and reporting to the Parliamentary Assembly (including, at least annually, on expenditures by Bosnia and Herzegovina).

(b) No more than two-thirds of all Ministers may be appointed from the territory of the Federation. The Chair shall also nominate Deputy Ministers (who shall not be of the same constituent people as their Ministers), who shall take office upon the approval of the House of Representatives.

(c) The Council of Ministers shall resign if at any time there is a vote of no-confidence by the Parliamentary Assembly.

substantial, and much of what it includes is quite sensible, and in line with similar documents in many countries of central and Eastern Europe.

A strong message we received during our interviews was that there is a serious problem with the enforcement of the Rules of Procedure. As a result, sessions of the Council of Ministers are long (often lasting five hours), and the quality of deliberation and decision-making in the CoM sessions is not maximised. The main issues identified are:

- There is insufficient preparation of documents by the Ministries. The material provided often fails to analyse issues in sufficient depth, and the quality and completeness of Inter-Ministerial consultations is often insufficient;
- Ministries have very limited analytical and drafting capacity, so they are often unable to prepare documents according to the Rules;
- Many items are presented directly to the CoM without the time required for Ministers to assess proposals before the meetings;
- The CoM Services have insufficient authority and insufficient capacity to review and return material to drafters when it is poorly prepared; and
- The Legal Service of the CoM is not always given the opportunity to assess and advise on legal documents.

***Recommendation 1: The Council of Ministers should move quickly toward fuller enforcement of the existing Rules of Procedure. It should empower the Services of the CoM to act as guardian of the Rules of Procedures, and should seek their advice on whether or not items are ready for scheduling.***

***Recommendation 2: Ministries should be given advice and training in policy analysis and legal drafting, and should be provided with detailed instructions (based on the Rules of Procedure) on how material should be presented to the CoM.***

As noted, the Rules of Procedures contain many useful provisions, and form a good basis for the operation of the decision-making system. Nevertheless, our review of the Rules also reveals some important gaps, especially with respect to the services to be provided to the CoM in support of its collective responsibility to develop, agree, and implement coherent policy output. Our initial comments on the Rules of Procedures are included in Annex 1, and these could form a basis for reform in later stages of this reform process. **Our initial conclusion is that certain improvements in the Rules of Procedure would be helpful in order to provide more complete support to the CoM. Many specific suggestions are included in Annex 1.** With respect to the Law on the Council of Ministers, it is likely to need revisions if and when the role of the CoM or its composition is altered, but these are political decisions, and thus outside the scope of this review. **However, it is likely that Article 19 would need to be revised if a decision is taken to reform the Services of the CoM in line with our recommendations below and in Annex 2.**

***Recommendation 3: Detailed review and amendment of the Rules of Procedure should be undertaken in order to facilitate improvement of the services currently provided to the Council of Ministers. An initial review with numerous suggestions with respect to specific Articles is included in Annex 1 of this report.***

What follows, then, is an analysis of the services that are presently provided to the CoM, in the context of the CoM's responsibilities as established by law and regulation. Specific recommendations are included in the relevant sections.

### **III. Functions of the five Services of the Council of Ministers**

#### **III.1 Legal Service**

According to the Rules of Procedure, the Legal Service is “responsible for providing legal opinion regarding materials submitted to the Council of Ministers with respect to their methodological uniformity in preparation and in terms of their consistency with the BiH Constitution and laws, as well as for taking care of publication of the decisions in the official gazettes of Bosnia and Herzegovina” (Article 11). In addition, the rules specify that the drafters of all texts are required to consult with the Legal service, and to append its opinion to its transmission to the CoM (Article 27).

In general, the tasks of the Legal Service are defined appropriately, and can form the basis for sufficient legal review of material. In practice, as was noted above, legal review is not adequate, due primarily to the failure to enforce the rules that set time limits for submission of material to the CoM. This is a particularly serious problem given the limited capacity of Ministries to draft legal documents. It was often noted that not all Ministries have legal staff that can prepare legal texts of good quality.

The structure of the Services of the CoM also affects the role of this Service. While the responsibility to review drafts is assigned to the Legal Service, the decision to schedule items formally rests with the Administrative Service. Given that the two are separate services, not managed by a common General Secretary, the necessary cooperation and coordination between review and scheduling do not always take place. This issue will be discussed further in Section V of this report.

Another important issue is that the Legal Service is not involved in the early stages of the preparation of texts, and sees texts for the first time only when they arrive at the CoM for scheduling. As the procedures for preparation of material by Ministries develops, it would be useful to consider involving the Legal Service at an earlier stage, especially for major or complex legislative proposals. If the Service is familiar with the material, it might be able to warn of legal issues at an earlier stage, and it would be able to conduct the final review more quickly and efficiently. The practice of involving the legal service of the CoM in Working Groups that prepare major laws is common in many countries in the region.

***Recommendation 4:*** *It should be a priority of the CoM and its Chair to ensure that items that require legal assessment and advice are not scheduled for decision unless the review is carried out and the advice is appended.*

***Recommendation 5:*** *Consideration should be given to involving staff of the legal Service in the preparation of major legislation at the early design stages.*

#### **III.2 Administrative Service**

According to the Rules of Procedure, the Administrative Service is responsible for “preparation of meetings, keeping of records, taking notes, communicating and monitoring the enforcement of the decisions issued by the Council of Ministers, protocol services, security and legal-technical assessments as well as any other tasks assigned by the Council of Ministers, including distribution of documents and other materials among the Ministries, Parliament, Presidency and the Council of Ministers” (Article 11). As such, the Administrative Service is responsible for the basic logistical support for the CoM sessions.

Attached to the Service is the Protocol unit, responsible for organising official visits to BiH on behalf of all members of the CoM. It appears that the location of this unit within the Administrative Service is not entirely successful, and that at least two other alternatives are presently being considered. The first is to make this unit into a separate Service. In our view, the proliferation of separate and independent Services is not in the interest of the CoM; in fact, as we detail below, we rather believe that consolidation is a better option. However, should a secretariat of the CoM be established, it may make sense to make this a department directly under a secretary general. Another idea currently discussed is to unify the protocol unit of the CoM with similar units for Parliament and for the Presidency. We did not study this option in any detail, but given that the three protocol services often have to work together in the preparation of a visit, this approach might improve coordination and efficiency.

In addition, the Administrative Service is assigned tasks that, at least in theory, go beyond logistical support. The Service is responsible to prepare and consolidate the Proposed Work Program of the Council of Ministers (Article 16). Importantly, it is the task of the Administrative Service to return items to drafters if they were not prepared in accordance with this Rules of Procedure and do not contain the necessary opinions (Article 32).

In practice, the administrative Service lacks both the capacity and the authority to perform all these tasks. It has a very small and primarily junior staff, and this only allows it to perform the technical and logistical tasks, but not much more. In terms of ensuring the quality of preparation, it is noted that there are about 35 items for each weekly meeting of the CoM, and many arrive at the last minute. In some cases, the Service is aware of the items in an earlier stage, and is able to advise the Chair in time on their degree of readiness. But this is not normally the case, so many items reach the sessions without the necessary review and advice. In the case of the preparation of the Work Plan, the items are brought forward by the Ministries, and the Service does not have the capacity to assess relative priorities and inter-ministerial consistency. Its role in the preparation of the Work Plan is thus essentially technical.

**Recommendation 6:** *While the Administrative Service is able to provide logistical support, it lacks capacity to advise the CoM on the substance and quality of the material brought for their consideration. There is a need to strengthen the capacity of the Services of the CoM to provide Ministers with well-prepared items for decision.*

**Recommendation 7:** *Capacity to plan and harmonise the content of material for the CoM session may be built within a reformed Administrative Service, or in a new unit to deal specifically with policy coordination and planning. This issue is discussed further below.*

**Recommendation 8:** *Further consideration should be given to alternative organisational location of the protocol unit within reformed Service of the CoM.*

### III.3 Material-Financial Service

The Material-Financial service is a small unit (4 persons) that is responsible for the budget of the Services of the CoM. It is important to note that while each of the Services is independent in terms of its work and its personnel assignment (i.e., its systematisation), the budget function is common to all of them together, and all budget items are horizontal across all the 5 Services.

No serious issues have been identified in relation to the operation of this Service at this time. However, a number of issues are worth noting for future reference:

- There is at present no regular process for developing budget priorities for the Services of the CoM, and that the division of the budget between Services is rather informal. Given the size of the organisation, and especially the fact that the Services are managerially independent of one another, this is probably inevitable at the moment.
- This Service deals only with budget-related issues, not with other administrative and logistical matters such as personnel and IT. It seems that, in fact, these issues are not really dealt with at the moment, and in particular the lack of IT support for the CoM Services was mentioned to us a number of times.
- There are eight or nine agencies that are directly under the CoM (rather than a specific Ministry). It is not clear that the CoM has any support with respect to the budget or other affairs of these agencies.

In the future, if and when an integrated Secretariat is established for the CoM, the functions and capacity of the Material-Financial Service might need adjustment, but it is too early to make specific recommendations in this regard.

#### III.4 Information Service

The Information Service is not established by the Law on the CoM, but directly by the Rules of Procedure. According to the Rules of Procedure, the Service Information is “responsible for dissemination of information for the Council of Ministers, Chair, Ministers and Deputy Minister and the Ministries of Bosnia and Herzegovina” (Article 11). The Service is very small. Although the systematisation calls for 7 positions, there are only 2 persons in the Service at the present time.

The main activities of the Service are the organisation of a Press Conference after each session of the CoM, and providing some communications assistance to the Chair of the CoM, such as writing press statements. It appears that this Service works more closely with the Cabinet of the Chair than with the rest of the Services of the CoM.

At present, the Service clearly does not perform all the functions normally associated with such a Service. For example, there is no communications planning, and no process for coordination between the Service and Spokesmen of the Ministries (this function exists in 3 of the 6 Ministries). There is also no capacity to maintain the Website of the council of Ministers.

***Recommendation 9:*** *The capacity and competences of the Information Service should be increased to allow for better management and coordination of information and communications within the CoM and with the public.*

#### III.5 The Cabinet of the Chair of the Council of Ministers

The Cabinet of the Chair is established by the Rules of Procedures. According to the Rules, the main responsibilities of the Cabinet of the Chair of the Council of Ministers to carry out professional, administrative, technical, organisational and other tasks related to the work of the Chair of the Council of Ministers. This is, on the one hand, a very comprehensive mandate; on the other hand, it is quite unspecific.

In practice, given the central role of the Chair of the Council of Ministers, this Cabinet occupies an important position within the support for the CoM as a whole. This means that in practice, coordination of the agenda of the CoM, decisions on whether items are ready to

proceed to the session, issues involving conflicts between Ministers, and many day-to-day decisions go through this Cabinet. The tendency to rely on the Cabinet is further increased by the fact that the other Services are independent of one another, so there is no locus for management of the affairs of the CoM except this Cabinet.

There are a number of problems with this arrangement:

- Formally, the Cabinet is not responsible for the performance of the other Services of the CoM, and has no managerial authority over them;
- The staff of the Cabinet is entirely political, and as such it is replaced every 8 months when a new Chair is appointed; and
- There are no systematic processes in managing the work, and informal linkages also cannot develop in the brief period before Chairs are replaced.

It seems to us that it is a good idea to have a political Cabinet for the Chair of the CoM; it is also appropriate that personnel in a political Cabinet may be replaced along with the Chair. But it is equally important not to overload this Cabinet with functions that do not belong to political Cabinets. Normally, a political Cabinet would be staffed with a few advisers who are able to assist on political issues related to policy, communications, relations with party, etc. But a political Cabinet is not suited for providing the regular and continuous service that the CoM needs for managing the decision-making process. Such support needs to be systematic, permanent, reasonably neutral politically, and professionally managed. The Cabinet would ideally work closely with such a service for the CoM, but it should not be called upon to manage it.

***Recommendation 10: The Chair of the CoM should have a political Cabinet with personnel that may be replaced along with the Chair. The focus of this Cabinet should be to provide political advice, as well as personal support to the Chair such as management of his/her agenda and logistics.***

#### **IV. Functions that might be added in support of the Council of Ministers**

The areas in which the CoM and its Chair should receive support from the administration should generally be derived from the roles and responsibilities of the Council of Ministers and its Chair, as they are specified in the Law and in the Rules of Procedure. At present, it seems that there are a number of areas where the CoM's responsibilities are not supported. These are discussed briefly in this section.

##### **IV.1 Policy coordination, planning, and monitoring**

According to the Law and the Rules of Procedure, the CoM and its Chair are responsible for planning, harmonizing, and monitoring the policy and legislative output of the State. As was already noted, the Administrative Service does not presently have the necessary competencies and personnel to support the CoM in these tasks. In particular, the CoM does not receive support in assessing and harmonising the content of material brought to it for decision, and no support in establishing priorities within its work programme. We believe that this is a serious gap that is likely to adversely affect the capacity of the CoM to make high-quality and coherent decisions, to pursue a coherent development strategy that is linked to priorities and to the Budget, and to monitor the performance of Ministries in following-up on the CoM decisions and priorities.

**Recommendation 11:** *The Council of Ministers and its Chair should be provided with support in harmonising, planning, and monitoring the substance of its policy and legislative outputs. A new unit to perform these tasks should be established, either within the Administrative Service or as a stand-alone unit within a reformed Secretariat.*

**Recommendation 12:** *The preparation for introducing this capacity into the services of the CoM should begin in the short term. It will include developing terms of reference, amending the Rules of Procedures, and following these, hiring competent staff, and training them.*

**Recommendation 13:** *Staff in Ministries would also need to be trained regarding any new procedures that the work of this unit will require of them in the preparation and coordination of proposals.*

#### IV.2 Relations with parliament

The Rules of Procedure set extensive and detailed responsibilities for the CoM and individual Ministers with respect to their relations with Parliament. These responsibilities include submission of material, influencing the agenda, participating in sessions, representing the CoM, responding to questions, and reporting. Many of these areas require coordination, and it would seem the CoM could benefit from support in these areas, in order to ensure that the relationship is managed in an effective and coherent manner. This is a common practice in countries of OECD and Central and Eastern Europe, and often requires no more than one or two persons.

**Recommendation 14:** *The CoM should consider establishing capacity to assist it in coordinating its relations with the Parliament. As both houses of parliament have a Secretariat, staff performing this function would primarily deal with the Secretariats on behalf of the CoM and its Chair.*

#### IV.3 Relations with the Presidency

As is the case for Parliament, the Rules of Procedure set extensive and detailed responsibilities for the CoM with respect to its relations with the Presidency. The quality of this relationship is important for the policy and legislative system in BiH. The CoM would probably benefit from capacity to assist in the management of this relation and to liaise with staff in the General Secretariat of the Presidency.

**Recommendation 15:** *The CoM should consider establishing capacity to assist it in coordinating its relations with the Presidency. As the Presidency has a General Secretariat, staff performing this function would be the interlocutors with the General Secretariat on behalf of the CoM and its Chair.*

#### IV.4 Relations with the entities

The Rules of Procedure set substantial requirement for cooperation between the CoM and the entities. Article 88 (1), for example, says “The Council of Ministers shall cooperate with the Government of the Federation of Bosnia-Herzegovina and the Government of Republika Srpska in all issues, which are of interest for Bosnia-Herzegovina and the Entities. And Article 88(2) detailed some of this cooperation: “The co-operation referred to in the previous paragraph shall as a rule be carried out in writing or by organising joint meetings, obtaining opinions on certain issues and in other ways, as determined by the Council of Ministers.”

This relation is potentially very significant, and it may, at times, be difficult and require substantial effort. In most federal states (e.g., Canada, Germany), the administrative body serving the CoM provides significant services in this area. It is unlikely that the CoM in BiH can meet the requirement of the Rules of Procedure in this regard without at least some support from the administration.

***Recommendation 16: The CoM should establish capacity within its Services to assist it in coordinating its relations with the Entities.***

## V. The organization of the Services

It is generally understood by the management of all the Services of the Council of Ministers that the present organisation of the services is less than ideal. The Council of Ministers itself has already discussed the possibility of moving towards the creation of an integrated Secretariat of the CoM, and this view is also held by many outside observers and by donors. This theme runs through our entire report; there is no question in our minds that an integrated Secretariat is highly desirable. We understand some of the political difficulties that have led to the present structure, but we hope that these could be overcome in the interest of providing much better support to the CoM, its chair, and the overall system of decision-making.

There is nothing new in this. A model of a unified Secretariat exists in almost all countries in the region and in Western Europe. Such a Secretariat (which has different names such as Chancellery, General Secretariat, Government Secretariat, Cabinet office, etc.) provides a variety of services to the CoM and the Prime Minister (Chair of CoM) in an integrated and coordinated manner. In most countries, such a Secretariat provides logistical, planning, legal, policy coordination, monitoring and communications services to the CoM collectively and to the Chair of the CoM (normally the Prime Minister), and it is responsible for overall coherence of the collective decision-making system. Secretariats are normally headed by one senior manager, who is usually a very senior civil servant and sometimes a Minister.

The structure of the integrated Secretariat in BiH should be open for discussion in order to maximise the efficiency and effectiveness of the Secretariat in the local context and within available resources. Essentially, there are two basic options for moving toward a Secretariat model in BiH. The first is to create a new office of the Secretary or the Secretary-General of the CoM, to whom all the other Services (with the exception of the Cabinet) would report. The second is to transform the present Cabinet of the Chair into an Office that is responsible for all the Services.

At this point, it seems to us that the second option may be the more efficient one. This option would set up an Office of the Chair that is staffed by permanent civil servants, and headed by a senior civil servant, probably at the rank of a Secretary. The other services would report to this Secretary. In addition, each Chair could be entitled to appoint one or two political advisers to assist him/her during their Chairmanship period. But the main structure and functioning of the Office would be in the hands of civil servants who would set up ongoing systems, assist in coordination of the work of the CoM, and provide continuity and stability to the decision-making system.

The recommendations made throughout this report give an initial indication of the capacity that would be required in the Secretariat. In general, the Secretariat would need capacity in the following areas:

- to provide logistical support to the CoM, especially as related to its sessions;
- to coordinate strategic and work planning, policy, and monitoring;
- to review and advise on legal and legislative matters;
- to handle and coordinate communications and protocol;
- to manage the relations with parliament, the Presidency, and the entities; and
- to manage its own internal administration (budget, personnel, IT, etc.).

It should be emphasised, however, that the areas listed above do not imply that each of these should be a separate unit or sector within the Secretariat. The organisation of the Secretariat into units should await the decision to create an integrated Secretariat, as well as further discussion of the recommendations of this report with respect to new and reformed Services.

***Recommendation 17:*** *The CoM should move to create an integrated Secretariat to serve the CoM and its Chair. The Secretariat should be headed by a Secretary, and all the present Services, as well as new services that might be created would report to the Secretary.*

***Recommendation 18:*** *The Secretariat should have capacity to support the CoM and its chair in the following areas:*

- *logistical support to the CoM, especially as related to its sessions;*
- *coordination of strategic and work planning, policy, and monitoring;*
- *review and advice on legal and legislative matters;*
- *management and coordination of communications and protocol;*
- *management of the relations with parliament, the Presidency, and the entities; and*
- *management of its own internal administration (budget, personnel, IT, etc.).*

## **VI. List of recommendations included in this report**

**Recommendation 1:** The Council of Ministers should move quickly toward fuller enforcement of the existing Rules of Procedure. It should empower the Services of the CoM to act as guardian of the Rules of Procedures, and should seek their advice on whether or not items are ready for scheduling.

**Recommendation 2:** Ministries should be given advice and training in policy analysis and legal drafting, and should be provided with detailed instructions (based on the Rules of Procedure) on how material should be presented to the CoM.

**Recommendation 3:** Detailed review and amendment of the Rules of Procedure should be undertaken in order to facilitate improvement of the services currently provided to the Council of Ministers. An initial review with numerous suggestions with respect to specific Articles is included in Annex 2 of this report.

**Recommendation 4:** It should be a priority of the CoM and its Chair to ensure that items that require legal assessment and advice are not scheduled for decision unless the review is carried out and the advice is appended.

**Recommendation 5:** Consideration should be given to involving staff of the legal Service in the preparation of major legislation at the early design stages.

**Recommendation 6:** While the Administrative Service is able to provide logistical support, it lacks capacity to advise the CoM on the substance and quality of the material brought for their

consideration. There is a need to strengthen the capacity of the Services of the CoM to provide Ministers with well-prepared items for decision.

**Recommendation 7:** Capacity to plan and harmonise the content of material for the CoM session may be built within a reformed Administrative Service, or in a new unit to deal specifically with policy coordination and planning. This issue is discussed further below.

**Recommendation 8:** Further consideration should be given to alternative organisational location of the protocol unit within reformed Service of the CoM.

**Recommendation 9:** The capacity and competences of the Information Service should be increased to allow for better management and coordination of information and communications within the CoM and with the public.

**Recommendation 10:** The Chair of the CoM should have a political Cabinet with personnel that may be replaced along with the Chair. The focus of this Cabinet should be to provide political advice, as well as personal support to the Chair such as management of his/her agenda and logistics.

**Recommendation 11:** The Council of Ministers and its Chair should be provided with support in harmonising, planning, and monitoring the substance of its policy and legislative outputs. A new unit to perform these tasks should be established, either within the Administrative Service or as a stand-alone unit within a reformed Secretariat.

**Recommendation 12:** The preparation for introducing this capacity into the services of the CoM should begin in the short term. It will include developing terms of reference, amending the Rules of Procedures, and following these, hiring competent staff, and training them.

**Recommendation 13:** Staff in Ministries would also need to be trained regarding any new procedures that the work of this unit will require of them in the preparation and coordination of proposals.

**Recommendation 14:** The CoM should consider establishing capacity to assist it in coordinating its relations with the Parliament. As both houses of parliament have a Secretariat, staff performing this function would primarily deal with the Secretariats on behalf of the CoM and its Chair.

**Recommendation 15:** The CoM should consider establishing capacity to assist it in coordinating its relations with the Presidency. As the Presidency has a General Secretariat, staff performing this function would be the interlocutors with the General Secretariat on behalf of the CoM and its Chair.

**Recommendation 16:** The CoM should establish capacity within its Services to assist it in coordinating its relations with the Entities.

**Recommendation 17:** The CoM should move to create an integrated Secretariat to serve the CoM and its Chair. The Secretariat should be headed by a Secretary, and all the present Services, as well as new services that might be created would report to the Secretary.

**Recommendation 18:** The Secretariat should have capacity to support the CoM and its chair in the following areas:

- logistical support to the CoM, especially related to its sessions;
- coordination of strategic and work planning, policy, and monitoring;
- review and advice on legal and legislative matters;
- management and coordination of communications and protocol;
- management of the relations with parliament, the Presidency, and the entities; and
- management of its own internal administration (budget, personnel, IT, etc.).

## **Annex 1**

### **Comments on the Rules of Procedure of the Council of Ministers**

This annex presents comments on selected Articles, deemed important for improvements to strengthen decision-making system and the Services provided to the CoM. Only Articles on which we comment are reprinted here, and the comments appear in bold and within square brackets at the end of the relevant Article or group of Articles.

### **RULES OF PROCEDURE OF THE COUNCIL OF MINISTERS OF BOSNIA AND HERZEGOVINA**

**(Only selected Articles are reprinted)**

#### **Article 5**

Council of Ministers

The Council of Ministers shall consist of the members of the Council of Ministers as specified in the provision of Article 3 of the Law on the Council.

**[Something more specific about the role of the CoM as a collective might be useful here, similar to the list provided in article 6 for the Chair of the CoM.]**

#### **Article 6**

Chair

1. The Chair shall, in accordance with the Law on the Council, represent the Council of Ministers and be responsible for:

- a) harmonising the work of the Council of Ministers;
- b) harmonising the constitutional relations of the Council of Ministers with work of the Parliament, Presidency and entities;
- c) convening sessions of the Council of Ministers;
- d) chairing sessions of the Council of Ministers;
- e) delivering specific materials for sessions, including minutes of previous session;
- f) proposing Agenda for sessions of the Council of Ministers;
- g) ensuring taking of minutes of sessions and registering of decisions of the Council of Ministers; and
- h) ensuring the co-operation between the Council of Ministers and entity Governments.

**[This is an excellent list. It should be used as a basis for deriving and specifying the support and the services needed for the Chair and the CoM.]**

- 2. The Chair shall sign decisions and other acts passed by the Council of Ministers, as well as proposals, opinions, statements and initiatives launched by the Council of Ministers and forwarded to the Parliament and the Presidency in accordance with decisions of the Council of Ministers.
- 3. The Chair shall be responsible for the transparency in work of the Council of Ministers.

**[It would be useful to specify this further, e.g., by linking it to press information to be supplied on the work of the CoM.]**

## **Article 7**

### Ministers and Deputy Ministers

1. Ministers and Deputy Ministers shall have the obligation, in accordance with the Law on the Council, to participate in the work of the Council of Ministers and in the work of working bodies and committees in accordance with the decision issued by the Council of Ministers, and to perform other assigned tasks. Ministers and Deputy Ministers shall have the responsibility to support and enforce the decisions and opinions of the Council of Ministers.
2. Ministers and Deputy Ministers shall have the right and the duty to monitor preparation of specific materials, be familiar with possible solutions and options, to propose consideration of individual issues from within the competencies of the Council of Ministers, initiate preparation of laws, other regulations and enactments to be proposed by the Council of Ministers, as well as regulations and other enactments to be adopted by the Council of Ministers.

**[The Service of the CoM should be assigned the right and duty to establish and monitor detailed rules for the preparation and presentation of items for the CoM on the basis of the relevant Articles of these Rules of Procedure, e.g., Articles 27 and 28.]**

3. Ministers and Deputy Ministers delegated to participate in the work of another body or committee, with the consent of the Chair, shall have the responsibility to act in accordance with the competencies, instructions and opinions of the Council of Ministers.

## **Article 10**

### Cabinet of the Chair

1. Council of Ministers shall establish the Cabinet of the Chair of the Council of Ministers to carry out professional, administrative, technical, organisational and other tasks related to the work of the Chair of the Council of Ministers.
2. The Chair of the Council of Ministers shall supervise the Cabinet of the Chair.

**[The short list of tasks is quite good, but, if taken seriously would suggest that this should not be a temporary political cabinet but a permanent Service, capable of providing on a permanent basis professional, administrative, technical, organisational and other tasks related to the work of the Chair of the Council of Ministers]**

## **Article 11**

### Services of the Council of Ministers

1. The Council of Ministers shall have four services.
2. Services of the Council of Ministers shall be:
  - a) Legal Service;
  - b) Administrative Service;
  - c) Material-financial service;
  - d) Information service
3. Legal Service shall be responsible for providing legal opinion regarding materials submitted to the Council of Ministers with respect to their methodological uniformity in

preparation and in terms of their consistency with the BiH Constitution and laws, as well as for taking care of publication of the decisions in the official gazettes of Bosnia and Herzegovina.

4. Administrative Service shall be responsible for preparation of meetings, keeping of records, taking notes, communicating and monitoring the enforcement of the decisions issued by the Council of Ministers, protocol services, security and legal-technical assessments as well as any other tasks assigned by the Council of Ministers, including distribution of documents and other materials among the Ministries, Parliament, Presidency and the Council of Ministers.
5. Material-financial Service shall be responsible for material and financial operation of the Council of Ministers.
6. Information Service shall be responsible for dissemination of information for the Council of Ministers, Chair, Minister and Deputy Minister and the Ministries of Bosnia and Herzegovina

**[There seems to be no logical reason why these should be 4 separate Services, and why they should not be linked to the Cabinet of the Chair. In fact, what is specified here is internally inconsistent. For example, the Material-Financial Service performs a horizontal activity across all the Services, and the Information Service is serving the CoM as a collective body and Chair (i.e., this function is not performed by the Cabinet). The logic seems to be that the services of the CoM should be coordinated to serve both the Chair and the CoM as a whole.]**

## **Article 12**

Establishment and supervision over the services

1. The Council of Ministers may establish other services necessary to exercise its rights and duties. The act establishing other services shall specify their scope of work, as well as the position and responsibilities of the heads of the services.
2. The Council of Ministers shall perform supervision over the work of the services formed by it, and shall consider reports on their work.

**[It is good that this article already provides the needed authority to set up additional services. For example, the current services do not include any capacity to assist the CoM in the management of the substance of decisions, to ensure policy coherence and coordination.]**

## **Article 14**

Work program

The Council of Ministers shall pass its annual work program, as a rule, by the beginning of a calendar year. The Work Program shall contain the most important tasks which the Council of Ministers should finalise during the year, persons who will prepare the material, deadlines for the consideration of the individual issues and, if required, brief explanations of the scheduled tasks.

## **Article 15**

### Proposal of the work program

Based on the BiH Constitution, the Law on the Council and other regulations which stipulate the rights and duties of the Council of Ministers, the Chair, the Ministers and the Deputy Ministers and other institutions and bodies of BiH shall propose the issues to be dealt with in the Work Program of the Council of Ministers.

## **Article 16**

### Consolidation of the proposed work program

The Administrative Service of the Council of Ministers (hereinafter: the Administrative Service) shall prepare and consolidate the Proposed Work Program of the Council of Ministers in line with the conclusions of the Council of Ministers and on basis of the proposals referred to in Article 15 of these Rules of Procedure.

**[Articles 14-16: These are important provisions, but it is not clear that they provide sufficient authority to the Administrative Service to prepare the Programme. The CoM needs support and coordination so that the preparation of the Programme is more than simple technical compilation of items put forward by the Ministries, but that, instead, it is internally consistent and in line with broader priorities. It is doubtful that the Administrative Service has the professional capacity to perform these tasks.]**

## **Article 17**

### Failure to execute the work program

If the Ministries or other institutions and bodies of BiH consider that they cannot perform a task foreseen in the Work Program of the Council of Ministers, or cannot do it within the deadline, they shall timely inform the Council of Ministers about that with an explanation of the reasons for failure to perform the set tasks.

**[The CoM would need analysis to assess the problem and the importance of the delay.]**

## **Article 22**

### Agenda for the regular session

1. The Chair shall establish the Agenda for the session of the Council of Ministers.
2. Ministers and Deputy Ministers shall prepare the Agenda.

**[1. And 2. seem to contradict one another (unless this is a problem of translation.)]**

## **Article 23**

### Not putting an item on the agenda of the regular session

The Chair may postpone the incorporation of a law or another regulation into the proposed Agenda of the session, if he establishes that the drafter failed to obtain the opinion of the Legal Service or of another body referred to in Article 27 of this Rules of Procedure.

**[The Chair should normally postpone such items. He also needs assistance in analysing the readiness of the material, as already mentioned in comment under article 21. In general, it is good that the Chair has this authority, to avoid unnecessary rigidities in the system. But there is a danger that this would become a common practice, and that**

**problematic laws would get through without proper preparation. ]**

## **Article 24**

### Materials for the regular session

1. An invitation for the session of the Council of Ministers, along with accompanying materials, shall be submitted to the Council Members and Deputy Ministers.
2. Materials for the session shall be submitted seven days, and at the latest three days, prior to the session of the Council of Ministers.

**[It is not clear if “submitted” in paragraph 2 refers to arrival in the Administrative Service or to the distribution to members of the CoM. If it refers to the former, three days may not be sufficient for proper review by the Legal Service. Possibly, 3 days should only be allowed for minor items, not for major laws.]**

3. Exceptionally, materials for the session may be submitted immediately prior to the commencement of the session of the Council of Ministers or at the session itself, in case of issues that require urgent decision thereon.

**[There is a need for clarity regarding who has authority to decide on this, what is the procedure, and on how the practice of direct submission to the meetings can be minimized.]**

## **Article 27**

### Obtaining opinion for the materials proposed

1. In the preparation of drafts and proposals of laws and proposals of decisions, instructions, conclusions and other regulations the drafter shall, before forwarding thereof to the Council of Ministers, have the obligation to harmonise the text, or obtain opinion from:
  - a) the Legal Service of the Council of Ministers (hereinafter: the Legal Service) with regard to their harmonisation with the BiH Constitution and the BiH legal system and methodological unanimity in drafting regulations;
  - b) the Ministry of Human Rights and Refugees with regard to the harmonisation with the regulations referring to the exercise of civil rights and freedoms and fundamental freedoms of the international humanitarian law;
  - c) the Ministry of Foreign Affairs with regard to the procedure of initiating, concluding and enforcing international contracts.
  - d) if the enforcement of the law, or any other regulation, demands financial means, the drafter shall be bound to obtain the opinion of the Ministry of Treasury of the BiH Institutions.
  - e) the Ministry of European Integration with regard to harmonisation of the legislation of Bosnia and Herzegovina with directives from the “White Paper – Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union” and procedures meeting the requirements of the relevant directives.
2. Regulations referred to in paragraph 1 of this Article shall entail the appropriate explanation and statements of the drafters in regard to the opinion of the Ministries and the Legal Service referred to in paragraph 1 of this Article. The opinions of the above mentioned Ministries and the Legal Service shall be attached to the regulations.

3. In case of other materials discussed or adopted by the Council of Ministers, the drafter shall be bound to obtain opinions of the relevant Ministries and other state administrative bodies in regard to getting the support related to justifiability of the materials. It shall also present the financial means for the production of the materials and the implementation of the proposed and outlined conclusions and actions.

**[This is a good Article, which provides a solid basis for drafter's obligations. But it is not clear how this is to be verified, and how the CoM can be assured that all the steps are appropriately completed. The present services of the CoM do not seem to have the competence and authority to ensure the enforcement of this Article.]**

## **Article 28**

### Explanation for the proposed materials

1. Draft law, or draft of a decision, instruction, conclusion or another enactment shall be prepared and forwarded in the form in which the law, or other enactment shall be passed.
2. The draft law, proposal of a decision, instruction, conclusion or other enactment shall be accompanied by the explanation that consists of:
  - a) constitutional basis for the adoption of the law, or legal basis for adoption of another regulation or enactment;
  - b) reasons for the adoption of the law, other regulation or enactment;
  - c) principles which should be the basis for regulating relations by the law, other regulation or enactment;
  - d) assessment of the required financial means, sources and method of securing the funds for the enforcement of the law, other regulation and enactment;
  - e) explanation of the proposed legal solutions;
  - f) method of implementing the law, other regulation or enactment (what regulations and which body and in what period should pass along with the thesis for the adoption of those implementing regulations, that is, measures and actions, which should be taken and in what period, as well as other pieces of information of importance for the enforcement of the law, other regulation or enactment).
3. If the alternatives for certain provisions are proposed there should be explanations for each proposed alternative.

**[Similar to comment as for Article 27. This is a good provision, but it is not clear if there is the right process for assuring the CoM of the quality of the supporting analysis. A fixed format for this information is a common practice in many countries, and may be useful in BiH.]**

## **Article 32**

### Incomplete materials

The materials that were submitted for consideration by the Council of Ministers but were not prepared in accordance with this Rules of Procedure and did not contain an opinion of the body and the service referred to in Article 27 of this Rules of Procedure, shall be returned to the drafter by the Administrative Service for completion, with designation of the deadline for such completion.

[This is a good provision, but it should be applied to Article 28 as well, and should be carried out as more than a simple technical check. The quality and depth of consultations should be assessed. It does not appear that the Administrative Service has the capacity to carry out policy analysis.]

### **Article 34** Extraordinary sessions

When required, the Council of Ministers may also hold extraordinary sessions. Extraordinary session of the Council of Ministers shall be convened at least 24 hours beforehand, upon the proposal of the Chair.

### **Article 35** Agenda of the extraordinary session

Agenda for the extraordinary session shall contain items proposed by the Chair.

### **Article 36** Materials for the extraordinary session

Materials for the extraordinary session shall be submitted at the session itself.

[Articles 34-36: Capacity to hold such sessions is important. But since this procedure bypasses the rules stated above, it may be a good idea to have specific rules that ensure that such sessions do not become substitute for normal business, and that unprepared items don't go through due to this procedure]

### **Articles 62-78** (Not reprinted here)

[Articles 62-78 specify an extensive set of interaction between the CoM and Parliament. It would seem to suggest that the CoM needs capacity to coordinate its relations with the Parliament. A unit in the Service of the CoM to manage and coordinate this relationship might be useful (it is common practice in many countries).]

### **Articles 79-85** (Not reprinted here)

[Articles 79-85 specify an extensive set of interactions between the CoM and the Presidency. It would seem to suggest that the CoM needs capacity to coordinate its relations with the presidency. A unit in the Service of the CoM to manage and coordinate this relationship might be useful, and can be combined with unit to coordinate relations with parliament (it is common practice in many countries).]

### **Article 87** Consultations with the entities

The Council of Ministers shall, as a rule, cooperate with the Entities through the Government of the Federation of Bosnia-Herzegovina and the Government of Republika Srpska.

## **Article 88**

### Method of consultations

The Council of Ministers shall cooperate with the Government of the Federation of Bosnia-Herzegovina and the Government of Republika Srpska in all issues, which are of interest for Bosnia-Herzegovina and the Entities.

The co-operation referred to in the previous paragraph shall, as a rule, be carried out in writing or by organising joint meetings, obtaining opinions on certain issues and in other ways, as determined by the Council of Ministers.

**[Regarding Articles 87 and 88, these seem of potentially high importance, as this type of relations normally are in Federations. Normally, the CoM would need to be supported with at least some administrative capacity to make this relation effective and fruitful. It is not clear if this is currently needed in BiH, but this issue is worth further discussions.]**