

ESI Evaluation Bosnia and Herzegovina

Explanation:

In its 18 May 2009 assessments of progress in roadmap implementation by the five Western Balkan countries, the European Commission used six distinct phrases to describe progress with regard to meeting the requirement in each of the four blocks (document security; illegal migration; public order and security; external relations and fundamental rights). ESI has allocated numbers from 1 to 3, as well as colours (green, yellow, red), to these phrases and applied them to individual requirements:

Commission's assessment per block: "meets the benchmarks" and "generally meets the benchmarks", applied to an individual requirement:
"meets the benchmark" and "generally meets the benchmarks" ("1" and colour green)

Commission's assessment per block: "meets a large majority of the benchmarks" and "meets the majority of the benchmarks", applied to an individual requirement:
"meets a large majority of the various aspects of the benchmark" and "meets a majority of the various aspects of the benchmark" ("2" and colour yellow)

Commission's assessment per block: "on the right track, but..." and "does not yet fully meet"
"on the right track, but..." and "does not yet fully meet the benchmark" ("3" and colour red)

Sources and abbreviations:

- The main source for ESI's evaluation was the 18 May 2009 assessment by the European Commission (the "Commission") of Bosnia and Herzegovina. All sentences below the title "**Commission Assessment**" are direct quotes from the 18 May 2009 assessment; the quotes are otherwise not marked and no quotation marks are used.
- On occasion the European Commission's first assessment of Bosnia and Herzegovina's progress from 24 November 2008 has been quoted. These quotes are identified as "**2008 Commission Report**"
- Especially in cases where Bosnia and Herzegovina received particularly critical evaluations by the Commission, or where particularly important visa roadmap requirements were examined, the reports of the EU National Experts were considered. Again, all information used from these reports is direct quotes and they are identified as follows: "**EU National Experts**". There is one EU expert report on Bosnia and Herzegovina's performance regarding the requirements from *block 1* of the roadmap, three reports regarding different requirements from *block 2*, three reports regarding the country's performance regarding *block 3* requirements, and one meeting report on *block 4* requirements (abbreviated in the table as "**Block 4 Meeting Report**"). While the EU experts examined the state-of-affairs as regards Blocks 1 to 3 on the ground, the Block 4 requirements were discussed in a meeting.
- In order to make reading easier, ESI has marked critical remarks by the Commission or by EU National Experts as follows: "[**criticism:**]" Sections where the reports *explicitly* requested further action from BiH are marked as: "**To do**"
- "ESI has summarised its own evaluation regarding individual requirements under the heading: "**ESI evaluation**"
- "In the column on the right, we estimate the time it will take to fully implement the requirement, provided the political will and resources are there:
Short-term = until approx. autumn 2009
Mid-term = early 2010
Long-term = mid-2010 and later

No.	Roadmap requirement	Assessment	ESI evaluation
I. Requirements related to the correct implementation of the Community Visa Facilitation and Readmission Agreements			
	A. Readmission Agreement: BiH has to take the necessary measures ensuring effective implementation of the Community Readmission Agreement (specific actions to be taken, see roadmap).	Commission Assessment: “The readmission agreement with the European Community is being implemented.”	1
	B. Visa Facilitation Agreement: BiH shall closely cooperate with the European Commission to support the EU Member States' implementation of the Visa Facilitation Agreement (specific actions to be taken, see roadmap).	Commission Assessment: The visa facilitation agreement is not mentioned in the assessment.	
II. Requirements on Document Security, Illegal Migration, Public Order and Security and External Relations			
1.	BLOCK 1: Document Security; Passports/travel documents, ID cards and breeder documents	Commission Assessment: <ul style="list-style-type: none"> • “Bosnia and Herzegovina has made good progress towards achievement of the block 1 benchmarks.” • “A majority of municipalities have installed software and have digitalized their registry books. Significant progress has therefore been made in the area of security of breeder documents.” • “The introduction of a new centralized passport issuing system is scheduled for July 2009 and ten- 	3-

		<p>ders for the production of issuing machines and biometric passport booklets have been awarded.”</p> <ul style="list-style-type: none"> • “A further assessment will be necessary once the personalization and distribution of biometric passports under the new system is operational.” • “In the meantime, further efforts are required to ensure the security of breeder documents in all BiH municipalities, establish training programmes and effective anti-corruption strategies for officials dealing with passports and visas and ensure systematic reporting of lost and stolen travel documents to Interpol.” • “It appears that Bosnia and Herzegovina <u>does not yet fully meet all the benchmarks</u> specified in block 1 of the Roadmap, inter alia due to the introduction of biometric passports foreseen only in January 2010.” 	
1.1	<p>BiH should: issue machine readable biometric travel documents in compliance with ICAO and EC standards; and gradually introduce biometric data, including photo and fingerprints;</p>	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • [Late start of passport issuance:] “Bosnia and Herzegovina has proceeded with preparations for the introduction of a new centralized passport issuing system foreseen for July 2009 and <u>the issuance of biometric passports in a test phase from July 2009 and generalized from January 2010.</u>” • “Tenders for the production of biometric passport booklets and passport issuing machines have been awarded.” • [Assessment of conformity delayed:] “The security features of the new passports and their <u>conformity with ICAO and EC standards will need to be assessed once their production has begun.</u> Bosnia and Herzegovina already since 2003 issues biometric ID cards, whose security features are in conformity with ICAO and EC standards.” • [Unacceptable validity period of old passports:] “Non-biometric machine-readable passports issued until the end of 2009 are to remain in circulation until the end of their five-year validity period.” • “It is important to ensure that passports issued before the establishment of the centralised passport issuing system in July 2009 are phased out. A legal framework and administrative procedure needs to be put in place accordingly.” • <p><u>The EU national experts:</u> [The assessment gives some interesting additional details.]</p> <ul style="list-style-type: none"> • [Regarding the new machine readable biometric passports:] “<u>Further assessment</u> on developments in the field of issuing and use of machine-readable biometric travel documents is <u>needed</u> as part of a second evaluation mission <u>after the final introduction of biometrically enhanced passports.</u>” • “The members of the field mission believe that, under the central responsibility of the Agency for Identification Documents, Data Registers and Data Exchange of Bosnia and Herzegovina (ID-DEEA), good progress is possible. “ 	3+

		<ul style="list-style-type: none"> • “It should be noted that IDDEEA is well aware of the main shortcomings in the system: (1) data contained in the civil register cannot be taken as absolutely accurate, (2) breeder documents in the identity chain are the weakest link in the system, (3) standards must be applied by all processing authorities, (4) officers must be constantly checked and required to learn.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Final implementation of machine readable passport is still only in the mid-term; a full assessment of security features of new passports is still outstanding; lastly, the system is also flawed in terms of setting an unacceptably long validity period for old passports. 	
1.2	adopt and implement administrative measures ensuring the integrity and security of the personalisation and distribution process;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “A number of laws, bylaws and regulations have been adopted to prepare the introduction of the new passport issuing system.” • “A 2008 law established the Agency for Identification Documents, Data Registers and Data Exchange of Bosnia and Herzegovina (IDDEEA)” • “The personalisation of ID cards is fully centralised within the IDDEEA's premises in Banja Luka, a secure building with recorded video surveillance. Staff work according to a shift system and have clearly designated roles, with sectionalised access authentication applicable for all employees. Blank documents are stored in a single safe and stocks are checked at the end of each shift. The distribution of ID cards is carried out by designated staff with specific training.” • “IDDEEA staff responsible for the personalisation of ID cards are carefully selected and trained by contractors. The number of additional shifts, or staff to be recruited, for the personalisation of passports will depend on the demand for the new biometric passports.” <ul style="list-style-type: none"> • To do: “The personalization and distribution of passports under the new system will need to be assessed once it is operational.” • To do: “The same secure and reliable procedures as are currently followed for the personalization of ID cards should also be followed for passports.” <p><u>The EU national experts:</u></p> <ul style="list-style-type: none"> • “...preparations [for new biometric passports] are in progress and were checked, as were the adoption and implementation of the necessary laws, amendments to these laws, by-laws and other related regulations.” • “Personalization of the new ID cards is carried out centrally in the building of IDDEEA in Banja 	<p>3+ Assessment of the personalisation and distribution system was not yet possible</p>

		<p>Luka. Personalisation of the new biometric passports will be carried out in the same building.”</p> <ul style="list-style-type: none"> • “This building is highly protected and all the security measures are designed to prevent any surreptitious or forced entry by an intruder. ... The current situation concerning the centralised personalisation of ID documents seems to be secure and reliable, and” • <u>“if a similar concept is applied to the new biometric passports as well, there will not be any doubts about the security and integrity of the whole personalisation process of travel documents.”</u> • “IDDEEA staff responsible for the whole personalisation process is selected very carefully,” [and are adequately trained] <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Personalisation of ID documents appears to be satisfactory; personalisation of passports cannot be fully evaluated until production begins towards the end of 2009. The organisation entrusted with personalisation, IDDEEA, appears to be a professionally and well-run” 	
1.3	<p>establish training programmes and adopt ethical codes on anti-corruption targeting the officials of any public authority that deal with visas, passports;</p>	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “Training and ethical codes on anti-corruption in the area of document security are currently governed by the entities of Bosnia and Herzegovina (and at cantonal level within the Federation).” • [criticism:] “The professional training of officials dealing with document security <u>lacks a sufficiently structured and dedicated framework.</u>” • [criticism:] “Moreover, <u>ethical codes are often symbolic and fail to integrate concrete anti-corruption measures</u> into the daily management.” • “The IDDEEA, by taking over central responsibility for document security in Bosnia and Herzegovina, has also set itself the objectives ... of applying the same ethical standards across all entities.” • “The IDDEEA's success in meeting these objectives will need to be assessed.” <p><u>The EU national experts:</u></p> <ul style="list-style-type: none"> • “BiH, whether referring to the Federation of BiH or the Republika Srpska or the District of Brčko, <u>does not possess a structured and dedicated framework for either the professional training of officials and awareness raising on the fight against corruption,</u> or for proper checks on their activities.” • “The reliance on officials’ experience, the absence of a proper anti-corruption plan which incorporates relevant measures into daily management, and the current regime of twice-yearly inspections are the sign of a <u>lack of proper attention to the prevailing issues.</u>” • “These reservations can be lifted if the IDDEEA Agency succeeds in meeting the objectives it has 	<p>3 Responsibilities divided between Entities and, in the Federation, the Cantons,</p>

		<p>set itself: (1) application of the same standards for all authorities within the three entities (2) continuous strengthening of the competences of officials at all levels (entities, ministries, municipalities), (3) improvement/strengthening of existing plans, (4) strengthening of controls, with complete reports produced on their completion for distribution to the Ministry of civil affairs.”</p> <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • BiH fails to meet requirements with regard to anti-corruption measures and training in the personalisation process. The expert report [see below] implies an adequate awareness of the problem by IDDEEA. However, the body faces difficulties of implementation in the three BiH entities.” 	
1.4	report to Interpol/LASP data base on lost and stolen passports;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • [criticism:] “Reporting to the Interpol database on lost and stolen passports is currently not sufficiently developed.” • “There are plans for reporting to be centralised via the IDDEEA and data to be automatically transmitted to Interpol by the Interpol National Central Bureau (NCB) in Sarajevo.” • “The new system will need further assessment once implemented.” <p><u>The EU national experts:</u></p> <ul style="list-style-type: none"> • “<u>Uploading of LASP in the INTERPOL ASF database takes place manually.</u>” • “<u>No information is entered on stolen blank documents as these are not registered in a national database.</u>” • “The three entities [sic] collect the information [on LASP] in the same way. The citizen reports the loss or theft of the passport to the local police station, which informs the responsible Ministry. The data are entered into a database ... From there the data are sent to the BCN [National Central Bureau of Interpol] Sarajevo, from where they are entered manually in the Interpol system (ASF Lyon). <u>The standardised forms are not being used yet.</u>” • “In two months (May/June 2009) they expect to operate the Interpol ‘Push and Pull’ system with the appropriate software being provided. <u>It is also necessary to acquire more computer hardware to go with the new software. Data will then be entered in a single database located at the IDDEEA, from where the data will be replicated into the database located in the NCB Sarajevo and uploaded into the Interpol system.</u>” • “All police stations are apparently connected to the database, as well as 62 municipalities with direct access. Some 80 municipalities work with other private network connections.” • “Currently, 11 border crossing points are connected; the rest will follow successively.” 	3+

		<ul style="list-style-type: none"> • “There are no statistics available on the number of requests in the ASF database.” • “Summary: Since 2002 some 2,500 lost and stolen passports of Bosnia and Herzegovina have been uploaded in the INTERPOL ASF database manually. No information is entered on stolen blank documents as these are not registered in a national database. Since 2004 information has also been entered from the Republika Srpska.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Requirement is not sufficiently fulfilled and shows significant gaps. It is unclear when the new system will be operational. 	
1.5	ensure a high level of security of breeder documents and ID cards and define and implement strict procedures surrounding their issuance.	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “Further efforts are required to ensure the security of breeder documents.” • “Registry books are correctly processed in line with usual standards.” • [criticism:] “<u>Breeder documents</u> (e.g. birth certificates) <u>are issued at numerous locations under separate legal regimes without uniform conditions</u>, procedures or sufficient security features.” • “Staff employed in civil registration offices are <u>trained but insufficiently sensitised against corruption</u>.” • “In 2008, this gave rise to <u>a number of identity thefts</u>, which has become a case for investigations by the BiH Prosecutor Office in close cooperation with SIPA and the Ministries of Interior and IDDEEA.” • “A project is currently ongoing to verify the data of all registry books and enter it into a central database to be managed by the IDDEEA.” <p><u>The EU national experts:</u></p> <ul style="list-style-type: none"> • ESI comment: the report closely resembles the Commission’s evaluation, but provides some interesting details: • “In Bosnia and Herzegovina it is an obligation for citizens to register and deregister permanent or temporary residence and any change of home address.” • “According to our findings the <u>employees in the registration offices</u> are trained in the current procedures, but <u>not all have knowledge of detecting document fraud, and not all are corruption proof</u>.” • “As to the main task concerning breeder documents, it can be noted that the Registers are kept in accordance with common standards. However, <u>a wide range of breeder documents are currently issued</u>.” 	3

	<ul style="list-style-type: none">• <u>“CIPS / IDDEEA staff is well trained in IT matters, but in undeveloped municipalities training for employees is not affordable. Currently, 87 % of Registrar’s Offices are linked to the network and 63 % of these Offices work with computer databases.”</u>• “Thanks to assistance under a US and Swedish financed programme (Governance Accountability Programme – GAP) all registry books will be entered in a ‘virtual’ central database and subsequently verified by the registry officials.”• “By the end of 2010 all registry books will be in the database and will most probably have been verified.”• To do: “Certifying their legality by using a centralized database, unique personal identification numbers and biometric data checks would be a good step in the right direction.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none">• BiH’s preparedness is very low regarding this requirement. There are very serious incidents of identity theft and fraud. A lot needs to be done!	
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2	BLOCK 2: Illegal migration, including readmission	<ul style="list-style-type: none"> • “Some progress has been made in the fields of border management, asylum and migration.” • “In the area of border management, new laws have been introduced to align existing laws and regulations with EU standards, the Border Police services have been reinforced and a new IBM Strategy and Action Plan were adopted. However, adoption of the law on border control is still pending and further efforts are required in implementing the IBM Strategy and Action Plan.” • “Further efforts are also required to optimise human resources in the Border Police, to reduce the number of Border Crossing Points and improve their infrastructure as well as to establish functional databases.” • “Bosnia and Herzegovina's asylum system is largely in line with international and EC standards and the authorities are committed to further improving standards.” • “In the area of migration management the Law on Movement and Stay and Asylum was adopted in April 2008 and a number of bylaws have since been adopted for its implementation. The National Returnee Reintegration Strategy is under review. Further efforts are required to provide a sustainable migration management structure and improve coordination between relevant administrative bodies.” • “The readmission agreement with the European Community is being implemented.” • “It appears that Bosnia and Herzegovina <u>does not yet fully meet all the benchmarks</u> specified in block 2 of the Roadmap. Further progress remains to be made in particular in the areas of border and migration management.” 	3-
2.1	Border management		
2.1.1	BiH should: adopt and implement an updated National Integrated Border Management Strategy and Action Plan with clearly defined responsibilities of border management;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 report: “Bosnia and Herzegovina has made some progress as regards the implementation and update of the national Integrated Border Management (IBM) strategies and the related action plans in line with EU standards.” • 2009 report: “The draft Law on Border Control has been presented to parliament several times, but its adoption is still pending;” • “A new IBM Strategy and Action Plan were adopted in June 2008, and their implementation supervised by the State Commission for IBM.” • “These strategic texts provide an adequate basis for future development of the border management system and focus in particular on strengthening internal border police coordination, as well as inter-agency and international cooperation.” 	3+

		<ul style="list-style-type: none"> • To do: “The signing of MoUs on cooperation in border management with relevant agencies at central, regional and local level should now be a priority.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Strategy is there, relevant law awaits adoption – however, when this will happen is unclear; as a next step implementation is needed 	
2.1.2	adopt and implement legislation governing the movement of persons at the external borders, as well as the law on the organization of the border authorities and their functions in accordance with the updated National Integrated Border Management Strategy;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 Report: “Significant efforts have been made regarding the introduction of new laws and regulations taking into account EU standards.” • “The new <u>Law on the movement and stay of aliens and asylum</u>, the <u>Law on Border Police</u>, the <u>Law on supervision and control of crossing the state border</u> and the <u>Law on police</u> have been adopted. The new <u>Law on border control</u> is in the parliamentary procedure.” • 2009 Report: “The draft Law on Border Control has been presented to Parliament, but its adoption is still pending.” <p><u>The EU national experts:</u></p> <ul style="list-style-type: none"> • “The main relevant pieces of legislation in the field of border management are the <u>Law on Movement and Stay of Aliens</u>, the <u>Law on Police Officers</u>, the <u>Law on State Border Service</u>, the <u>Law on Supervision and Control of Crossing of the State Border</u> and relevant by-laws.” • “The <u>Law on Border Control</u> has been several times to the Parliament but it <u>has not been promulgated</u>. Several implementing regulations will be passed according to the Law on Surveillance and Control of Crossings of the State Borders. The current preparation of these regulations was not mentioned. <u>A need to draft by-laws to the newly revised Law on Movement and Stay of Aliens and Asylum</u> was highlighted.” <p><u>ESI Evaluation:</u></p> <ul style="list-style-type: none"> • Bosnia and Herzegovina has adopted important laws; however, one key piece of legislation is still missing. Some by-laws also still need to be drafted to existing legislation. 	2-
2.1.3	take necessary budgetary and other administrative measures ensuring efficient infrastructure, equipments, IT technology at the external borders;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “The Border Police has a hierarchical organisational structure with a clear chain of command between the central level, the 6 regional-level field offices, the 17 Border Police Units and the BCPs. Its structure therefore in principle allows for centralised management, and flexible and targeted dis- 	3

		<p>tribution of resources in line with strategically defined priorities.”</p> <ul style="list-style-type: none"> • “The Border Police currently employs 2,127 persons and the staffing level is at 83%.” • [criticism:] “Due to the large numbers of BCPs, <u>human resources cannot be adequately focused</u> on high-risk areas.” • [criticism:] “A <u>comprehensive human resource strategy has not yet been developed</u>. Nevertheless, recruitment methods are thorough and adequate, and Border Police officers were found to be professional and fully aware of their duties.” • [criticism:] “Risk analysis is currently limited and at central level focuses on collecting relevant statistical data <u>without drawing the appropriate operational conclusions</u>.” • [criticism:] “<u>Situational awareness of the border police is also inadequate</u> and [to do:] “there is a need to improve the reporting system, in particular by ensuring an efficient flow of information from central level to regional and local level.” • [criticism:] “The planned Joint Risk Analysis Centre is not yet operational but has the potential to address some of these shortcomings by strengthening inter-agency information sharing and coordination on risk analysis.” • “Border surveillance is managed at the regional level and conducted on the basis of monthly risk analysis.” • [criticism:] “There are 89 BCPs of which 34 are limited to local border traffic. A number of secondary roads also cross the border without any controls; attention should be paid to rectifying this situation.” • To do: “The filling of vacant posts should therefore be a priority, in particular at regional level.” [especially because of high number of BCPs, which need to be adequately manned] • To do: “There is a need to strengthen strategic planning and operational coordination by the central level in order to develop an integrated border surveillance system.” • To do: “It is also necessary to modernise surveillance equipment and devices for border surveillance.” • To do: “Further efforts are required to improve infrastructure at BCPs, which should be fenced off and placed under CCTV surveillance.” • To do: “Regarding equipment at BCPs, basic document examination devices for first-line checks are available but there is a need to purchase integrated document readers and equipment used to detect persons hiding in vehicles. BCPs continue to lack electronic access to central databases and the Border Police does not have an internal IT system for electronic transfer of data.” 	
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		<p><u>EU national expert:</u></p> <ul style="list-style-type: none"> • “BiH authorities <u>do not have a reliable method to verify the length of stay for aliens in the country.</u> This <u>database should have been established already by June 2005,</u> although it is still not functioning.” • “<u>The Border Police do not have an internal information system</u> in which it could store all the border security related information and transfer the needed parts with other authorities. <u>In this sense, a basic tool for processing and sharing data is lacking.</u> The Border Police have nevertheless established a database where certain data, mostly reports, are stored. At the moment, 2,000 reports were stored at regional and central level into one central database. Rights to be used this database by the local level have not been given and there are no direct connections to other authorities.” • “<u>A secured radio-communication system is also lacking.</u> The system like TETRA was mentioned to be introduced in the future.” • “It is necessary to assess the current situation of the facilities, equipment and IT-connections at the different border crossing points, formulate standards for their rearmament and based on that, prepare a multiannual plan to fill the lacks. The most important international border crossing points should be constructed and equipped in a manner and up to the level to meet the stipulated conditions and standards.” • “<u>As regards the infrastructure at the visited BCPs, those were not properly fenced and CCTV cameras did not exist.</u> The neighbouring area of BCPs was not equipped with any kind of alarm systems and the areas were not under constant control in order to find out possible attempts to bypass the border checks. If technical surveillance system will be set up one day, the border crossing points and vicinities are certainly the spots where to begin this work.” • To do: “Common Conceptual approach to border management demands that <u>each border police officer should be connected to vertical and horizontal data flow as a user and producer of information.</u> The <u>efficient prevention of cross-border crime requires that the risk analysis system is considered as a natural part of operative work</u> at all levels of managing border surveillance and border checks. “ <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • The list of critical remarks is long, as well as the outstanding requirements to fulfil. 	
2.1.4	establish training programmes and adopt ethical codes on anti-corruption targeting the border guards, customs and	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 report: “The Border Police adopted an Ethical Code and all employees have been briefed on it. However, the Border Police has no specific anti-corruption training programme.” 	2+

	other officials involved in the border management;	<ul style="list-style-type: none"> • 2009 Report: “The training system is centralised, and a Training Centre for the Border Police is operational. Training information on each officer is stored in a central database.” • To do: “The basic curriculum is adequate, although there is a need to organise more specialised trainings in accordance with a specific training strategy.” • To do: “There is also a need to conduct more trainings on anti-corruption issues.” <p>EU National Expert:</p> <ul style="list-style-type: none"> • “It was informed that alongside the common anti-corruption program the Border Police has also own anti-corruption program, so the Border Police is taking among other authorities efforts to suppress corruption.” • “Some dozen corruptive behaviours are detected and sanctioned annually within Border Police. Based on survey which has been carried out to find needs for training, it became clear that more training is needed for anti-corruption issues.” • “Reaching the zero tolerance needs still the persistent realization of the phenomenon, continuous training of the personnel as well as intervention in abuses of official position.” <p>ESI evaluation:</p> <ul style="list-style-type: none"> • Some improvements are there; further improvements are still necessary. 	
2.1.5	conclude a working arrangement with FRONTEX.	<p>Commission Assessment:</p> <ul style="list-style-type: none"> • “A working arrangement with FRONTEX is signed in April, 2009. Cooperation with neighbouring countries functions efficiently and cooperation agreements on common patrols have been signed with Serbia, Croatia and Montenegro (the latter also covering common border checks).” <p>ESI evaluation:</p> <ul style="list-style-type: none"> • Requirement appears to have been fulfilled. 	1
2.2	<i>Carriers' responsibility</i>		
2.2.1	BiH should: implement the Law on Movements and Stay of Aliens and Asylum of 2008,	<ul style="list-style-type: none"> • “Provisions on carriers' responsibility have been adopted, and so far the Border Police has dealt with 37 cases related to persons arriving via aircrafts.” 	1

	which defines carriers' responsibility defining sanctions.	<p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Bosnia and Herzegovina appears to comply with this requirement. 	
2.3	<i>Asylum policy</i>		
2.3.1	BiH should: implement the Law on Movement and Stay of Aliens and Asylum of 2008, which is in line with international standards (1951 Geneva Convention with New York Protocol) and the EU legal framework and standards;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “Bosnia and Herzegovina has continued with the implementation of the 2008 <u>Law on movement and stay of aliens and asylum</u>, whose provisions on asylum are <u>in conformity with international and EC standards.</u>” • “A draft bylaw on the new asylum procedure is being finalised and is expected to be adopted and enter into force in the near future.” • “A number of bylaws regulating the rights of recognised refugees are already in force, in particular regarding access to healthcare, education, employment and social protection.” • “Bylaws on travel and identification documents are still under preparation.” • <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • Bylaw on international protection: “In order to regulate the technical issues and the new asylum (international protection) procedure established in the new [Law on Movement and Stay of Aliens and Asylum] LMSAA the adoption of a new bylaw on asylum was necessary.” • “A <u>new bylaw on international protection was drafted</u> and will introduce and regulate novelties such as: the intention to seek international protection, a single procedure for the determination of refugee and subsidiary protection status, the abbreviated procedure for manifestly unfounded claims, the concept of a safe country of origin and a third safe country, the cancellation of the refugee and subsidiary protection status.” • “A week before the mission in BiH took place the Sector for Asylum within the Ministry of Security finished the draft of the new bylaw and submitted it for comments and recommendations to the Ministry of Human Rights and Refugees and the Ministry of Civil Affairs. Upon this submission the actual adoption procedure can be started. <u>The new bylaw on asylum is expected to be adopted and to enter into force in a relatively short period.</u>” • “Until the issuing of the new bylaw, the provisions in the bylaw on asylum of 2004 to the former LMSAA of 2003 are still in force in the extent that they are not in contradiction with the provisions in the new LMSAA.” • “<u>Other important bylaws ... that still need to be drafted and/or adopted</u> are the <u>bylaw on travel documents</u> and the <u>bylaw on identification and identification on documents</u> for persons under international protection. <u>Both bylaws are under preparation.</u> The activities on the first one are expected 	2+

		<p>to be completed within a couple of months.”</p> <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • With regard to asylum, the basics of the system are there; bylaws are now being drafted; definitely on the right track... 	
2.3.2	<p>provide adequate infrastructure and strengthen responsible bodies, in particular in the area of asylum procedures and reception of asylum seekers.</p>	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “Bosnia and Herzegovina has also made a significant financial investment in the asylum system and this is to continue in the coming years.” • “The authorities involved in the asylum system have sufficient capacity, given the relatively limited caseload (383 applications, concerning 1015 persons, since 2004).” • [criticism:] “There is however a backlog of pending cases both before the Ministry of Security (MoS)’s asylum sector (the first instance of the procedure) and the State Court of Bosnia and Herzegovina (appeal stage); these mainly concern people from Kosovo who applied for asylum after the withdrawal of their temporary protection status in 2007.” • “The MoS (Ministry of Security) and the Ministry for Human Rights and Refugees (MRRR), in cooperation with UNHCR and a local NGO, have provided training for its own staff and that of other relevant authorities such as the Border Police.” • “Two judges of the State Court of Bosnia and Herzegovina have likewise followed relevant training by UNHCR.” • “A temporary reception centre for new asylum seekers is located in Rakovica, Ilidza (Sarajevo). Basic facilities, food, healthcare, as well as education for both children and adults, are provided there. Construction of a new permanent centre in Trnovo, with significantly better conditions, is due to begin in May 2009 and is scheduled for completion by 2011.” • To do: “A sustainable solution for this group of persons needs to be found. The deadlines introduced by the new asylum procedures should shorten the length of procedures in future and these deadlines must be respected in order to avoid further backlogs.” • To do: “Further training, in particular on the novelties introduced by the new asylum procedure, should be provided to all relevant actors, including the Border Police and new staff of the MoS, MHRR and State Court.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Bosnia and Herzegovina appears to be compliant with most requirements within this section. It is 	1-

		believed that outstanding issues can be fulfilled in the foreseeable future.	
2.4	<i>Migration management</i>		
2.4.1	BiH should: set up and start to apply a mechanism for the monitoring of migration flows, defining a regularly updated migration profile for Bosnia and Herzegovina, with data both on illegal and legal migration, and establishing bodies responsible for collection and analysis of data on migration stocks and flows;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • [criticism:] “Agencies have <u>separate databases which are rarely inter-linked</u> and accessible to other relevant actors.” • [criticism:] “<u>Registers of foreigners currently remain paper-based</u> and currently no biometric data is stored in these systems.” • “However, the <u>Information System on Migration (ISM), due to be fully functional as of the beginning of 2010</u>, is expected to greatly improve this situation.” • “The gathering of data for both legal and illegal migration flows began relatively recently and its organisation is managed by the SFA (Service of Foreign Affairs).” • “Data collection forms on visa and residence permits are unified and in line with EU standards (Regulation 862/2007).” • [criticism:] “The office for statistics of the MoS has <u>received <i>limited</i> migration data from relevant authorities</u> so far.” • “However, thanks to the setting up of analysis units in most of the agencies, the first national Migration Profile was due to be finalised. Statistical information will also be forwarded to Eurostat.” <p>• To do: “Significant efforts are required to improve monitoring of migration flows by all the relevant authorities.”</p> <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • “<u>There is not a central database yet. All the institutions of the Ministry of Security</u> (Service for Foreigners’ Affairs, the Border Police, Federal and Local Police) <u>and the other institutions</u> dealing with migration have their own databases and systems and there is no opportunity to have a look in the database of another institution.” • “The headquarters of the Service for Foreigners’ Affairs reports every month, every 3 months, every 6 months, and every year to the Minister of Security. In all the meetings of the Service the figures are being discussed. Two times a month the director of the Service has a meeting with the Minister of Security. <u>The plans for the next year are described in the annual report. The police are not informed about these reports.</u> When they would be interested they would be able to get them.” • “<u>The three entities of Bosnia and Herzegovina have their own laws dealing with figures and data-</u> 	2-

		<p>bases on Labour. The institutions dealing with work permits are only able to check the database for their own entity. <u>The Ministry of Labour combines the figures of the three entities on state level.</u></p> <ul style="list-style-type: none"> • <u>“For political reasons there is not a central database yet, but there will be one in the future. It is not a matter of lack of money or means.</u> In the beginning of this year the authorities of the entities have agreed that de data should be harmonised. The Ministry of Foreign Affairs has a database for the visa and a department for migration flows and risk analysis with 9 employees.” • Migration profile: <u>“There is a significant progress in the registration of migration flows and the concept of the migration profile,”</u> • To do: <u>“but the coordination of the databases has to be improved.</u> That will be inevitable and necessary for monitoring the migration flows and the conception of the migration profile.” • <u>“The Information System for Migrations [ISM] has not already started to work.</u> It is now in a test phase, which will long up to the <u>real start in January 2010.</u> So there is some progress compared to the situation as described in the readiness report. The authorities have also developed a Rulebook for a Central Data Base.” • To do: <u>“There really is a need that the system will be implemented as soon as possible.”</u> <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Individual aspects of a migration monitoring system are there and have recently started their work; others are still missing; most significantly, the individual components of migration monitoring do not function yet as a system and are not linked. 	
2.4.2	adopt and implement a National Returnee Reintegration Strategy, including sustainable financial and social support;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “A national returnee reintegration strategy is developed, which covers key areas of returnee reintegration such as housing, property restitution, infrastructure, health care and employment.” • [criticism:] “Regarding the integration of migrants, a more proactive approach is required. Given that Bosnia and Herzegovina continues to face housing and employment problems for displaced persons, migrants do not benefit from financial and social support measures.” • [criticism:] “Regarding the applicability of returnee reintegration measures for nationals returned under the EC Readmission Agreement, there are problems regarding the respective competence between the Ministry of Human Rights and Refugees and the MoS. Priority should be given to the clarification of the division of competence between them and to the drafting and implementation of a reintegration strategy.” • “The implementation of the Readmission Agreement between the EC and BiH is continuing without problem.” 	3+

		<p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • “<u>There is some progress on this subject.</u> The draft of the revised strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement (upon the reintegration of returnees) is in parliamentary procedure now. The Ministry of Civil Affairs is one of the participants in the preparations of the Revised Strategy.” • “<u>There is a main concern about the right to damage compensation to displaced persons, refugees and returnees,</u> because of the fact that the <u>amount of money needed for the compensation is tremendous and not affordable.</u>” • “The Republic of Bosnia and Herzegovina is interested in high-educated people, but when they have studied abroad the citizens of Bosnia and Herzegovina as well as the foreigners have to validate their diplomas and that is not so easy. <u>Often the diplomas are not acknowledged.</u> Fewer conditions for the validation of diplomas from abroad may have an attractive power on well-educated citizens of Bosnia and Herzegovina, who live abroad and well-educated foreigners to look for a job in Bosnia and Herzegovina.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • The strategy is still under drafting; the reintegration of returnees appears to be ad hoc, without coordination, not proactive. 	
2.4.3	define and apply a methodology for inland detection and take measures improving the capacity to investigate cases of organised facilitated illegal migration;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “Regarding the fight against non-organised forms of illegal migration, the SFA (Service of Foreign Affairs) is the main responsible authority and it coordinates both inland detection and concrete actions, such as expulsion of illegal migrants.” • “Besides, the BP (Border Police) leads joint patrols of the borders with Croatia, Montenegro and in the near future with Serbia.” • “Concerning organised forms of illegal migration, the Criminal Investigation Office (CIO) and the State Investigation and Protection Agency (SIPA) are the main responsible actors.” • [criticism:] “Although the organisational structure has been established, there is [1] a lack of cooperation among the authorities involved in fighting illegal migration and [2] a lack of a legal framework for efficient sharing of information.” • “A Memorandum of Understanding (MoU) is in place but is not applied in practice.” • “A national structure for inland detection has been set up [criticism:] but risk analysis is underdeveloped because of the lack of systematic and regular exchange of information between national 	3+

services and law enforcement agencies.”

- **To do:** “A clear division of competences among all the actors [CIO and SIPA] should be considered as a priority.”

EU National Expert:

- “Service for Foreigner Affairs (SFA) is responsible for inland detection and expulsion of illegal migrants. Their 16 field offices are covering the all territory of Bosnia and Herzegovina. In the framework of organized facilitated illegal migration, all other law enforcement agencies; Border Police, State Investigation and Protection Agency (SIPA) and local Police are involved in the inland detection, but not as their responsibility.”
- “According to the intelligence and gathering of information’s SFA is planning periodical inspections on risk areas. The need for such inspections is being calculated through the local risk analyses that are send to the Ministry for Security. Inspections are being conducted in cooperation with local Police or by themselves; the SFA has all the rights for conducting such inspections by [itself]. ... Based on the reality that the SFA employees are mostly former employees of the local Police or Border Police, their cooperation is mostly based on personal connections. There is no legal obligation for cooperation between any law enforcement agencies, only a memorandum of understanding for exchange of information’s. Therefore the real cooperation is different in all three entities, from excellent cooperation, to no contacts. No joint IT based database of foreigners is in place yet. The Migration Information System is being on the test faze for almost two years and not operational.”
- “According to the information’s from the field offices a group of services can be coordinated on the national level, where representatives of all law enforcement agencies are exchanging information’s an can make plans for joint actions. But in reality this is effectively used only in international cases, when one of the services is conducting international operation. In other cases all of the services are recognizing a lack of real cooperation and exchange of information. It seems that they rather lean on responsibility of other law enforcement agency than them self (sic.), meaning it is their job to do it, not ours. There was no case yet of involvement of labor agency in this joint group. Illegal labor of illegal migrants is not yet recognized as a joint problem for illegal migration, due to the fact of very high (40 %) unemployment rate in Bosnia and Herzegovina.”
- “The responsibility for inland detection is mostly on SFA and this is a hard mission for 183 employers to conduct their duties. Lack of systematical and regular exchange of information’s and co-operation between national services and local law enforcement agencies represents a gap in inland detection methodology. The national structure is set up, but is working without legal obligation, especially when it is recognized by all services that current understanding of cooperation is not sufficient, due to the lack of exchange of quality information’s.”

		<p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Most individual elements of the structure have been set, but do to a lack of coordination they don't function as a system; this is only partly due to the lack of formal arrangements. Even in cases where MoUs exist, cooperation is not good. Since the relevant services appear to be centralised, the lack of cooperation does not seem to be motivated by entity or narrower ethnic politics. 	
2.4.4	implement the Law on Movement and Stay of Aliens and Asylum of 2008, which defines the issues of admission and stay of third country nationals, defining rights and obligations for the persons concerned (including family members of third country nationals);	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “The <u>Law on Movement of Foreigners</u> has been in force since 2008 and is largely in line with relevant EU standards.” • [among other issues it also] “regulates conditions for the entry and stay of foreigners for any purpose and defines issuance procedures for granting temporary and permanent residence permits.” • “Separate systems for issuing residence and work permits are established.” • “The new legal framework is being implemented and seven of eight planned by-laws already entered into force.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • This aspect of Block 2 requirements appears to have been implemented quite well. 	1-
2.4.5	ensure effective expulsion of illegally residing third country nationals from its territory.	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “The <u>expulsion</u> of illegally residing third country nationals is regulated by the Law on Movement of foreigners and is <u>in line with EU standards.</u>” • “The return procedure is coordinated by the SFA (Service of Foreign Affairs). All persons who cannot be removed immediately or whose identity needs to be established are hosted in the detention facility near Sarajevo.” • “The conditions in the centre are appropriate. Only male migrants are detained at the moment; women, minors and vulnerable groups are still hosted in IOM facilities. This situation should change once a new building in the same centre will be finished, by the end of 2009.” • “Regarding statistics on removals, of the 198 illegal migrants accommodated in the detention facility between July 2007 and March 2009 190 were successfully removed.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Appears to be well implemented, minor further improvements are still needed. 	1-



3	BLOCK 3: Public order and security	<p>“Some progress has been made towards achieving the benchmarks under block 3.”</p> <p>“The general legal framework for the fight against organised crime and corruption is in place. With the exception of the area of trafficking in human beings, where recently a new strategy and action plan were adopted and are being implemented, in all other areas of this block revised strategies and action plans are under preparation or pending adoption.”</p> <p>“Alignment of the domestic legal framework with European and international standards is under way in a number of areas.”</p> <p>“Some successful international cooperation activities of law enforcement bodies in the fight against organised crime can be noted.”</p> <p>“However, across all areas considerable improvements are necessary for a more effective fight of organised crime and corruption.”</p> <p>“The <u>main obstacle to effective repressive activities remains the lack of inter-agency coordination and information exchange</u>. The implementation of a systematic exchange of data between different existing police data bases would be crucial.”</p> <p>“Implementation of the existing legal and policy framework needs to be considerably improved, in particular in the areas of anti-corruption and fight against financial crimes, including via the use of special investigative means.”</p> <p>“The alignment of the domestic legal and policy framework with European and international standards and its harmonisation between state and entity levels also need to be pursued, in particular in the areas of anti-corruption and confiscation of assets.”</p> <p>“Personal, technical and financial capacities of responsible authorities need to be strengthened for an effective execution of their tasks, including regarding the implementation of the two police laws of 2008, to sufficient resources need to be allocated.”</p> <p>“International law enforcement cooperation efforts with Europol need to be stepped up.”</p> <p>“In the area of personal data protection, some progress in setting up the oversight body is noticeable, but the proper implementation of the legal framework is not yet ensured.”</p> <p>“Bosnia and Herzegovina has made some progress in the area of public order and security, but it appears that it does not yet fully meet the benchmarks under block 3.”</p>	3-
3.1	Preventing and fighting organised crime, terrorism and corruption		
3.1.1	BiH should: implement the 2006 Strategy to fight organised crime and corruption (in particular	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “The <u>analysis on the progress with implementation of the 2006 strategy for combating organised crime and corruption</u> has been adopted by the Council of Ministers in December 2008.” • “The document lays down a gap analysis which <u>confirms limited achievements</u>.” 	3+

<p>cross-border aspects) by adopting and implementing the foreseen action plans including a timeframe and sufficient human and financial resources;</p>	<ul style="list-style-type: none"> • To do: “The details of the future strategy for fight against organised crime 2009-2012 should be developed within a 3 months period after the decision to form a working group, which was adopted in mid-April.” • To do: “Further <u>harmonisation of parallel criminal law frameworks</u> within the country and alignment of the domestic legislation with international standards, including the UN Protocol against illicit manufacturing and trafficking of firearms <u>has been drafted and is in procedure for adoption.</u>” • To do: “There are country-wide <u>plans</u> and ongoing projects <u>aiming at overcoming the absence of inter agency cooperation</u> in the area of law enforcement [criticism:] but no efficient system is in place yet.” • “A decision to form a working group mandated to propose an adequate model for the exchange of information among different existing police registries was adopted in the end of February.” • [criticism:] “The lack of prompt information exchange between agencies constitutes a major obstacle to the effective fight against organised crime.” • “A wide-range of training activities has been provided to the key players in preventing and fighting organised crime.” • [criticism:] “As of today the number of qualified national trainers is still low.” • To do: “The nationally managed trainings need to be significantly improved and better coordinated across entity and national levels.” • [criticism:] “Harmonised statistics on trends in organised crime are not available.” • [criticism:] “Statistics provided point to a limited number of convictions for organised crime.” <p>EU National Expert 1:</p> <ul style="list-style-type: none"> • “Implementation of the 2006-2009 Strategy for the Fight against Organized Crime and Corruption is poor , since it is not binding for entities and as there is no authority responsible for its implementation; international recommendations / standards (GRECO; UN-Convention against Corruption).” <p>EU National Expert (Ribic):</p> <ul style="list-style-type: none"> • “Strategy of Bosnia and Herzegovina for Fight against Organised Crime and Corruption has been adopted ... 15 June 2006.” • “Strategy implementation period is 2006 – 2009.” • “The Strategy defines: risk factors, principles of the fight, general and special goals, as well as implementing authorities responsible for prevention and fight against all forms of organised crime and corruption.” 	
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		<ul style="list-style-type: none"> • “Due to <u>complexity of Bosnia and Herzegovina administrative structures, the implementation involves numerous institutions and agencies at all levels of authority, and the implementation of the Strategy is compulsory for all.</u>” • “<u>Some institutions and agencies never undertook any activities nor have they delivered any reports on the results of the implementation of the above Strategy</u> (see the Analysis of the progress of implementation of strategy of BiH for fight against organized crime and corruption, Ministry of security, 2008).” • “This document is a reflection of the need for Bosnia and Herzegovina to, as soon as possible, start full-scale fight against organised crime and corruption.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • There are a number of initiatives concerning key requirements, but these initiatives are in their initial phases. Harmonisation and coordination with regard to all these initiatives is also necessary! 	
3.1.2	adopt and implement an updated National action plan to combat trafficking in human beings and ensure sufficient human and financial resources;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “The findings of the gap-analysis for harmonising domestic legislation with the Council of Europe Convention against trafficking in human beings need to be implemented.” • To do: “One of the key issues to be addressed is that the policy and legislative framework at entity and Brcko district level remain non-harmonised as regards the criminal offence of trafficking in human beings.” • “Available examples point to a good level of cooperation among domestic law enforcement agencies, prosecutors and NGOs active in the field.” • “Capacities for protecting victims of trafficking, like shelters, are adequate across the country.” • “Witness protection equipment in the court and prosecution office of Bosnia and Herzegovina is of a good standard.” • “The decreasing number of indictments and convictions for trafficking in human beings could be explained by the falling trend of human trafficking of victims of foreign origin.” • “On the other hand, the number of domestic trafficked victims is on the rise and adequate actions have been taken to cope with this new phenomenon.” <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • “The new (third) <u>State Action Plan</u>, for the period 2008-2012 ... is also <u>based on a detailed assessment of the situation and trafficking trends in BiH</u>, but is also incorporates ... cooperation of all the 	1-

		<p>actors in the region The action plan has the victim protection in its centre.”</p> <ul style="list-style-type: none"> • “The <u>number of the open cases in 2008 regarding THB is smaller than the one registered in previous period [unfortunately the report gives no figures]. This phenomenon is explained by the tendency of reduction of the THB in the region.</u> While the foreign victims are less, the number of the domestic victims is increasing.” • “The practice is significantly changed, due to measures already taken by the authorities that led to the closure of a number of clubs and public houses in the country. As a consequence, <u>sexual exploitation has become sophisticated.</u> ... Also ... it is mainly serving the domestic market.” • “Child abuse is becoming a bigger problem;” • “There are seven safe houses all over the country that are well equipped and staffed with qualified personnel.” • “<u>There is good cooperation between different NGOs and various agencies</u> that are involved in preventing and fighting of THB;” • “<u>The victim-witness protection is assured due to judgement of all cases in the State Court which is well equipped.</u>” • “For the sake of victim’s protection, the possibility should be considered of developing a more responsible behaviour in media, which in the past have disclosed to the public details about victims or witnesses.” • “It has been noted that <u>entity and Brcko District criminal codes are not harmonised with the state criminal code.</u> Criminal offence of human trafficking as defined by the state criminal code does not have the same legal qualification in the entity criminal codes. This issue must be considered for revision and harmonisation.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Good level compliance; further harmonisation of entity and Brcko laws still necessary. 	
3.1.3	adopt and implement a national strategy for the prevention and fighting of money laundering and financing of terrorism, including necessary legislative measures based on an analysis of existing legislation; implement relevant leg-	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “The national strategy for prevention of money laundering and prevention of terrorism remains to be finalised.” • [criticism:] “Important international standards in anti-money laundering (FATF standards and MONEYVAL recommendations) have not yet been incorporated into the law on prevention of money laundering. In order to address these shortcomings, a new draft law on money laundering has been prepared. The draft law has been sent to the Council of Ministers for adoption.” • “The Financial Intelligence Department (FID) in the State Investigation and Protection Agency 	3+

	<p>isolation on confiscation of assets of criminals (including the provisions addressing cross-border aspects);</p>	<p>(SIPA) receives electronically reporting from banks on suspicious transactions.”</p> <ul style="list-style-type: none"> • [criticism:] “<u>Other entities</u> obliged to report to the FID are <u>not yet connected to the system.</u>” • [criticism:] “The very low number of suspicious transactions received indicates a low level of awareness towards money laundering in reporting entities.” • [criticism:] “No final convictions on money-laundering have been reported. During 2008 the FID temporarily applied only once the instrument of temporary suspension of a transaction on a suspicion of money laundering or funding of terrorist activities. No case was filed on financing of terrorism (in 2008).” • [criticism:] “Cooperation with relevant law enforcement agencies at entity level is insufficient.” • “International operational cooperation in the area takes place via the EGMONT’s secure internet system.” • [criticism:] “Regarding <u>legislation on confiscation of assets</u>, the adoption of dedicated legislation and the modification of the Criminal Code and Criminal Procedure Code in line with international standards <u>has not yet advanced.</u>” • [criticism:] “Furthermore, <u>laws at state and entity level are not harmonised</u> with each other.” • [criticism:] “The management of confiscated assets is not applied in a unified manner across the country. <u>There is no authority created for managing confiscated assets.</u>” • [criticism:] “The <u>level of training and expertise</u> on confiscation of assets across judiciary, prosecution and police <u>is low.</u>” <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • Responsible body: “Financial Intelligence Department (FID) in SIPA.” • “<u>the legislative framework concerning money-laundering has to be adapted in order to be in line with the FATF recommendations</u> or those by the MONEYVAL-Committee. To do so a Working Group with different subgroups, consisting of a.o. members from FID, ITA, Centralbank, Public Prosecutor and Justice, worked on amendments to the Law on Prevention of Money Laundering.” • “<u>These amendments still wait to be adopted</u>, [problem:] as I understood, <u>due to a lack of funds for the Working Group</u>. Therefore important pillars of an international standard in anti-money-laundering haven’t been integrated into BiH-law yet (no legal definition of funding of terrorist activities, no definition of beneficial owner, no elaborated system of customer due diligence and (as I understood) no harmonized legislation between state and entity level).” • “Another task of the a.m. Working Group was to <u>develop the National Strategy for Prevention of Money-Laundering and Financing Terrorism</u>. It was told that it is not completed yet but that the end of <u>drafting is envisaged for end of March 2009</u>. trust funds will be included as another 	
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obliged entity to report suspicion of money-laundering.”

- **Administrative and operational capacity regarding Money-Laundering:** “The FID is a department within SIPA (State Investigation and Protection Agency), which itself is divided into 4 more divisions ... In theory reports created by the analytical division should be forwarded to FID’s own investigative division, another investigative department within SIPA or to another Law Enforcement Agency (LEA). [But cooperation is only occasional.] As it is the case within the whole SIPA organisation there is also a general understaffing (39 posts with 25 filled) in FID.”
- [Reporting of suspicious transactions by banks:] “the device for reporting electronically to FID is in place and [now plans] to connect the electrical reporting tool to other obliged subjects.”
- “A rulebook listing special indicators of money-laundering was handed out to banks and I was told that banks organised training sessions within banks.”
- “But the low number of reports of suspicious transactions (138 in 2007 [needs to be verified!]) can be seen as an indicator that the general awareness towards money-laundering amongst bank staff and within BiH-banks is not on a high level.”
- “... [sanctioning of non-reporting of suspicious transaction] was applied once in 2004. This might also be seen as an **indicator that there is no functioning supervision over banks or other obliged subjects in place** in BiH.”
- “In case FID suspects a case of money-laundering or funding of terrorist activities ... [it] can issue an order temporarily suspending the transaction ... In 2008 there was only one case where an order like this was issued.”
- “... there is still a deficiency in international cooperation on a strategic level as e.g. meetings of EGMONT working groups or the MONEYVAL Committee can’t be assisted for lack of funds.”
- **National level cooperation:** “... cooperation between state level’s SIPA with other LEAs on state level (Border Police, ITA / Customs) was good but there is a **lack of recognition and therefore a lack of cooperation with LEAs on entity level.**”
- “When it comes to analysing the information contained in a suspicious transaction report the procedure doesn’t seem to be standardised: Additional information can be asked from the bank or from other agencies. But no systematic checking of data contained in other relevant databases seems to be in place.”
- **Administrative and operational capacity regarding confiscation of assets:** “Statistics on “confiscation of assets” are not quite clear as they just sum up the value of confiscated assets without explicitly showing whether cash or items of illegal origin were confiscated.”
- “...regulations in BiH Criminal Code (CC) and Criminal Proceeding Code (CPC) are still not yet in

line with international standards it is obvious that no financial investigation are carried out neither by police or by prosecutor.”

- “It should be the final goal of financial investigation to trace back the flow of illegal money in order to take away from a criminal everything gained through illegal activities.”
- “... BiH Ministry of Justice is aware of certain shortcomings in the present legislation ... **but no timeframe for passing new laws or amendments to existing law could be given.**”
- “The managing of confiscated items or assets is left to each court ... there is no unified procedure applied.”
- [no] “plans to build up a special agency for managing of confiscated assets.”
- “As far as I could assess courts and prosecutors in BiH don’t seem to have staff specially trained on temporarily seizure of items / assets and on confiscation although regulations on this are quite complex and require a certain experience and expertise.”
- **Implement legislation on confiscation of assets:** [only] “plans to provide in 2008 a one-day-training on confiscation of assets which can’t be more than raising awareness”
- “Within police forces no special training on this matter seems to be conducted.”
- “This might be due to the fact that regulations regarding seizure / confiscation are not yet harmonized on state and entity level and that a lack of cooperation between prosecutor and police stops them from exchanging information and expertise as well on a strategic as on an operational level.”
- “No information [on] ... operational cross-border cooperation aiming to confiscate illegal money or assets which are hidden abroad. ... there seems to be a general confusion about competencies on conducting these kind of investigation between police and prosecutor the legislative framework on confiscation / temporarily seizure is not clear and there is a lack of training and no specialisation within prosecutor and police.”
- **Investigation, prosecution and adjudication of reports of suspicious transactions for money-laundering:** “efforts on fighting money-laundering remain symbolic.”
- “Although there is special team within FID for terrorist financing no single case was filed in 2008. It was told that on this matter cooperation and exchange of information with intelligence services is good.”
- “Statistics ... indicate that [identified cases of] money-laundering is mostly linked to tax evasion as predicate crime which seems to be a quite narrow view on the phenomenon of money-laundering.”

ESI evaluation:

		<ul style="list-style-type: none"> • Bosnia and Herzegovina’s preparedness is only <i>rudimentary</i> with regard to money-laundering. Reading through the long list of outstanding activities, one has the impression that it is only smaller proportion of deficiencies that are related to lacking inter-entity cooperation (this is however an initial impression only). 	
3.1.4	<p>adopt and implement a national drug strategy and national drug action plan; make the information on drug seizures and persons involved accessible at border crossing points; further develop cooperation and information exchange with relevant international bodies in the drug field;</p>	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “The national drugs strategy was adopted in the end of March 2009.” • To do: “The related action plan yet remains to be adopted.” • To do: “The <u>specialised law enforcement structures</u> at entity and national levels <u>require reinforced training and equipment.</u>” • [criticism:] “<u>Exchange of information and cooperation between domestic agencies are inadequate</u> in the fight against drugs trafficking. Some successful examples of international law enforcement operations against drug trafficking with the participation of agencies from Bosnia and Herzegovina are however noticeable.” • [criticism:] “Despite the high importance of Bosnia and Herzegovina as a transit country for illicit drugs, the <u>quantity of drugs seized at the borders is low.</u>” • “Implementation of EU standards for <u>sharing drugs-related information with the European Monitoring Centre for Drugs and Drug Addiction has started</u>” • To do: “but needs to be completed across the country.” • [criticism:] “Similarly, no improvements can be noted as regards the availability of drug-related information at border crossing points.” <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • “Due to its geographical position, BiH is mainly a transit country for narcotics.” • “<u>There is a working agreement of the BiH Border Police and Croatian Border Police for joint patrols and common policing;</u>” • “At the time of the inspection such <u>agreements with Montenegro and Serbian Border Police were on preparatory stage;</u>” • “There are specialized structures for preventing and fighting organized crime in its multiple forms at the state, entity and cantonal levels;” • “<u>The personnel that works within these departments have attended a number of courses, seminars and workshops inside BiH but also abroad, especially in Croatia, Austria and Germany;</u>” • “There is an <u>insufficient number of centers for drug addiction treatment, lack of prevention pro-</u> 	3+

		<p>grammes”</p> <ul style="list-style-type: none"> • “The <u>centralized system of sharing intelligence ... [between] law enforcement agencies in BiH is not yet operational across all police agencies</u>” • “There is exchange of intelligence ... but this exchange is ... based on personal connections and” [is not institutionalised.] • “There are examples of such cooperation between SIPA, FMOI, RSMOI and Border Police;” • “<u>There is also a noticeable good cooperation with external counterparts</u> such as neighbour countries, or at the regional level, as well with INTERPOL and SECI;” • “<u>Most of the special techniques are used by the specialized personnel at state, entity and cantonal levels;</u>” • [A positive example is operation] “IGMAN ... So far indictments were made, goods were seized and the operation is still ongoing;” • To do: “<u>The cooperation between police and prosecution, can and must be significantly strengthened;</u>” • To do: “logistics, technical equipment has to be further purchased and properly used by the trained and qualified personnel.” <ul style="list-style-type: none"> • From a further section of the report: “In the years 2006 and 2007, implementation [of a central database using mats from a CARDS 2005 project] did not proceed as planned and the donation was not used for the intended reason.” • “<u>In 2008 it was found that RS Police has developed its own system, similar to CIDA, which is operational and has been working for several months.</u>” • “In 2009, EUPM has inventoried all donations made by the EC CARDS on this project and concluded that it need only connect the system itself, with the server at the Ministry of Security and a Memorandum of Understanding between all police institutions of BiH.” • “<u>RS Police did not agree with the storage of obtained information in the server located in BiH Ministry of Security</u> (because there is no law at state level that obliges them to use these systems and to cooperate).” • “<u>RS Police has agreed however with the exchange of information by another server connection between their system and CIDA.</u>” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Bosnia and Herzegovina’s preparedness regarding this section of Block 3 is only marginally better than regarding money-laundering. Cooperation is insufficient between the different agencies, as 	
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		well as equipment and training. At first glance it would seem that insufficient cooperation is only partly due to non-cooperation between entities.	
3.1.5	implement the National Anti-Corruption Strategy and the respective action plan adopted in 2006; adopt and implement measures to strengthen institutional capacity, inter-agency coordination and which provide sufficient human and financial resources to anti-corruption efforts.	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “<u>Implementation of the corruption-related aspects of the 2006-2009 Strategy for the fight against organised crime and corruption is insufficient in many areas.</u>” • To do: “The new strategy for the fight against corruption 2009-2012 remains to be adopted.” • “A Decision to create a working group in charge of proposing a strategy to fight against corruption and the related action plan and of preparing a proposal of the Law on the Establishment of an anti-corruption body was adopted by the Council of Ministers in March 2009.” • [criticism:] “There is <u>no effective investigation, prosecution and conviction on suspects of high-level cases of corruption.</u>” • [criticism:] “<u>Coordination of anti-corruption efforts</u> at the state level <u>is lacking.</u> No overall survey and analysis of statistics on anti-corruption cases is available.” • “Progress has been made by adapting legislation to widen the application of special investigative means to corruption cases.” • [criticism:] “Nevertheless, the <u>existing available special investigative means</u> - such as interception of communications - <u>are not effectively</u> used in the fight against corruption.” • To do: “Cooperation between police and prosecutors needs to be strengthened. The judicial follow-up of cases of corruption is slow. Lack of convictions is in some cases attributed to the quality of evidence presented before the court.” • To do: “Enhanced trainings on financial investigations, economic crimes and prosecutor-police cooperation are required.” <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • “The National Strategy for combating Organised Crime and Corruption was adopted in 2006 ... Implementation of the strategy remains on a poor level as there is no national authority in charge of comprehensively implementing this strategy following an Action Plan.” • “Ministry of Security can only ask for information from other relevant institutions on the status of implementation and seems to be kind of powerless if this information is not provided.” • “<u>This lack of willingness in cooperation is intensified by the fact that on entity level similar strategies are carried out.</u> E.g. the government of the Republika Srpska (RS) has, in December 2008, adopted its own Anti-corruption strategy for the period 2009 – 2012.” 	3+

		<ul style="list-style-type: none"> • “Strategic goals in the field of anti-corruption which were not or partially fulfilled are a.o.: <ul style="list-style-type: none"> • “International cooperation and fulfilment of international obligations and harmonisation of BiH legislation with international legal instruments” • “Harmonisation of BiH legislation in the areas related to police service and equal status provided to BiH police officers” • “Establishing of special state-level body for combating corruption” [An institution like this is stipulated by Art. 6 of the UN-Convention against Corruption (UNCAC); “Preventive anti-corruption body or bodies”, which should be “granted the necessary independence”] • “Establishing of an efficient system at the state level for gathering data and keeping crime statistics in the area of corruption” • “Initiating procedure for adoption of a special law on “lobbying” or changes to the Law on Financing Political Parties or similar laws.” • “Consistent implementation of the Law on Public Procurement” • “Make amendments to the Criminal Code and the Criminal Procedure Code” • “Normatively and legally regulate the liability to give a statement on movable and immovable property of all officials and elected persons” • “Drafting, adopting and implementing the Codes of Ethics” • “... Different initiatives carried out by Ministry of Security to establish a Working Group for establishing this body were diluted, mostly for political reasons.” • “... According to a.m. anti-corruption strategy Central Election Commission (CEC) is a.o. responsible for implementing goal No. 8 with the Law on Conflict of Interest on state level. ... [implementation is deficient, with no cooperation with other bodies, no cross-verification of information, etc.]; no sanctioning ... in case the public official fails to submit the data form or submits incorrect data.” • “<u>The present Law on Conflict of Interest was drafted by OHR and has since then undergone a lot of amendments which make it complicated and not clear.</u>” • “... draft for a new Law on Conflict of Interest ... has already been given to the Council of Ministers. An upcoming problem might be to harmonize this new law with laws on entity level – especially in RS, who has its own Law on Conflict of Interest with its own Commission since 2008 in place.” • “CEC is also responsible for financing of political parties. According to the Law on Political Party Financing there is a limit for a legal or private person to donate not more than 8 average salaries (which are approx. EUR 2,500.00) to one political party. But it was reported, that there is still a kind of loophole” 	
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		<p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Both strategic direction and practical, operational cooperation are very weak with regard to the fight against corruption; previous anti-corruption action plan only partly implemented; new is not yet adopted; virtually no successful investigations into high-level corruption. 	
3.1.6	implement relevant UN and Council of Europe conventions as well as GRECO recommendations and other international standards in the areas listed above and on fight against terrorism.	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • [criticism:] “<u>Alignment with international standards</u> (including GRECO recommendations) is only very partial.” • 2008 report: “The country has made <u>some changes to the legal framework to align it with the UN Convention against Corruption</u> but legislation needs to be further adapted to international legal instruments.” • [criticism:] “<u>No plans</u> were reported <u>on the signature of the additional protocol to the Council of Europe Criminal Law Convention on Corruption.</u>” • “An <u>amended law on conflict of interest is awaiting adoption</u> and it should address shortcomings in the current law, such as lack of sanctions in case of missing or incorrect data submitted by public officials.” • “Different codes of ethics and conduct are in place and enforced across all law enforcement bodies.” <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • “<u>Only a small percentage of the latest GRECO recommendations has been completely fulfilled.</u> Progress has been reported on adapting legal provisions in order to apply the use of special investigative means in all criminal acts of corruption.” • “An issue always raised in GRECO recommendations and also integral part of UN Convention against Corruption is the establishment of the independent Anti-Corruption Body on state level, which is really needed in BiH in order to coordinate in a comprehensive approach anti-corruption policy.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Compliance with international standards and conventions in the field of anti-corruption, including GRECO recommendations, is minimal. Most importantly, a central GRECO recommendation, the establishment of an independent anti-corruption body, has not been implemented so far and there are no plans either to establish one! 	3+

3.2	Judicial co-operation in criminal matters		
3.2.1	BiH should: implement international conventions concerning judicial cooperation in criminal matters (in particular Council of Europe Conventions);	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 Report: “<u>The main European and international Conventions</u> in the field of extradition, mutual legal assistance and other forms of legal and judicial cooperation <u>have been ratified.</u>” • 2009 Report: “The <u>draft law on international legal assistance in criminal matters is in Parliament for adoption</u>[. It] takes on board relevant international and European standards. The provisions foreseen by this specific law bring significant changes in the present system in mutual legal assistance.” • “<u>A Team for monitoring of criminal legislation of Bosnia and Herzegovina was established</u>, aimed at continuous monitoring of the national law to align it to accepted international standards and to ensure implementation.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Conventions are ratified and implementation is ongoing. 	2+
3.2.2	take measures aimed at improving the efficiency of judicial co-operation in criminal matters of judges and prosecutors with the EU Member States and with countries in the region;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 report: “The country faces <u>capacity problems related to dealing with new means of international cooperation</u>, such as video-conferencing.” • “2009 report: [To do:] “<u>Training needs</u> to be provided by the High Judicial and Prosecutorial Council <u>to judges and prosecutors on the foreseen new legislations.</u>” • To do: “Also, steps needs to be taken in order <u>to reinforce the qualified human capacity dealing with growing number of mutual legal assistance requests.</u>” <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • “The <u>Department for International Legal Assistance and Cooperation in Criminal Matters</u> has at the moment ... <u>only 7 employees</u>. Free positions are not filled in this Department in accordance with the Rule-book on Inner Organization and Systematization of Work Places in the Ministry of Justice of Bosnia and Herzegovina.” • “<u>There is a lack of judges which are dealing with organized crime cases.</u>” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Some cooperation in the judicial field can be noticed; capacities – including human resources – remain, 	3+

		however, low.	
3.2.3	develop working relations with Eurojust mainly through the Eurojust contact point.	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 report: “A contact person with Eurojust has been appointed, and the country is planning to open negotiations for a specific agreement on cooperation.” • <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • If it is only about appointing a contact person, the requirement might be considered fulfilled. Nothing else is mentioned with regard to further aspects of Eurojust cooperation. 	1
3.3	Law enforcement co-operation		
3.3.1	take necessary steps to ensure efficiency of law enforcement co-operation among relevant national agencies, especially border guards, police, customs officers, as well as co-operation with the judicial authorities;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 report: “The implementation of the two police laws (Law on independent supervisory bodies of police structure of Bosnia and Herzegovina and Law on the Directorate for Coordination of police bodies and agencies) of 2008 has started though so far only some Directors were appointed.” • “2008 report: “The two police laws adopted in April 2008 have the potential to strengthen police cooperation in the medium term.” • To do: “It is crucial to implement the police reform without any delay. The foreseen bodies need to have sufficient trained staff at their disposal.” • To do: “Further improvements of the function of the police system are required in order to address operational deficiencies, such as cooperation and information exchange among the different law enforcement authorities and better internal cooperation within a given agency.” • To do: “The ongoing project on the “Establishment of enhanced cooperation mechanism between the police and the public prosecutor’s office in Bosnia and Herzegovina” managed by the High Judicial and Prosecutorial Council needs to address several issues that can lead to more efficient cooperation among the different law enforcement authorities.” <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • <u>“Strengthening and development of inter-institutional cooperation in Bosnia and Herzegovina is a matter of urgent need.”</u> • <u>“The mechanism for inter-agency cooperation does not exist currently in Bosnia and Herzegovina.”</u> 	3+

		<ul style="list-style-type: none"> • “This is the reason that <u>Cooperation between the law enforcement agencies is insufficiently regulated</u>. Cooperation between the law enforcement agencies is based on framework / general legal solutions and some agreements / memorandums, but <u>in reality there is a small number of cases in which the co-operation take place.</u>” • “<u>Cooperation with judicial authorities is based on legislation</u>. Agreement on cooperation for implementation of the “Establishment on Enhanced cooperation Mechanisms between the police and prosecutors offices” is not signed yet.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Inter-agency cooperation is not good, though the legal basis for such a cooperation is sufficient. Non-cooperation appears to be only partly due to inter-entity or ethnic issues as even within agencies lacking coordination remains a problem. 	
3.3.2	improve exchange of information between national agencies by establishing appropriate and effective coordination mechanisms;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 report: [criticism:] “... primarily informal and ad hoc cooperation and information exchange among law enforcement agencies and serious legal and bureaucratic obstacles to the effective prosecution of criminals remain a weak point.” • 2008 report: [criticism:] “At present, the <u>new police reforms laws do not address issues</u> related to operational policing, such as the <u>fragmentation of telecommunications systems, databases, computer-based investigation or criminal analyses systems.</u>” • 2008 report: “... <u>plans for legal and institutional changes to enhance</u> cooperation and <u>information exchange</u> show the commitment to handle the issue as a priority.” • 2008 report: “<u>Such actions are however only likely to have an impact in the medium term</u>. The planned timing and concrete implementation of the proposed solutions need to be developed further.” • [criticism:] “<u>An existing communication network</u> linking competent authorities and a national criminal intelligence database <u>are not used.</u>” <ul style="list-style-type: none"> • To do: “The systematic exchange of information between law enforcement agencies needs to be sufficiently legally regulated.” • To do: “Further improvements of the function of the police system are required in order to address operational deficiencies, such as cooperation and information exchange among the different law enforcement authorities and better internal cooperation within a given agency.” <p><u>EU National Expert:</u></p>	3+

		<ul style="list-style-type: none"> • “In March 2009 authorities of BiH adopted the ... Decision [to form] a working group for preparing a proposal for ... the Exchange of Information Records from Police Registries in BiH, ... determining of seat for the Agency for support of police structure in BiH, Agency for education and professional upgrading of personnel and Agency for forensic examinations and expertise.” • “In addition, BiH CoM appointed the Director and Deputy Director of the Agency for support of police structure, Deputy Director of the Agency for education and professional upgrading of personnel and Director and Deputy Director of the Agency for forensic examinations and expertise.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Information exchange between national agencies remains deficient; the technical and legal infrastructure is still inadequate; even where technical means for cooperation and coordination have been established, they are not necessarily used; the problem has been noted by authorities, but improvement only likely in the mid-term. 	
3.3.3	reinforce regional law enforcement co-operation and implement bilateral and multi-lateral operational cooperation agreements, including by sharing on time relevant information with competent law enforcement authorities of EU Member States;	<p><u>Commission evaluation:</u></p> <ul style="list-style-type: none"> • 2008 report: “Gradually bilateral law enforcement ties with neighbouring states are being developed;” • “Some regional police cooperation agreements are in place and others are planned.” • “A limited number of data exchanges with EU Member States' authorities take place.” • 2009 report: “Positive examples of international law enforcement cooperation were noted in the fight against drugs trafficking, involving the SECI Centre and Interpol.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Some improvement is visible, but there is no overall system or network of operational cooperation in function. 	2-
3.3.4	improve the operational and special investigative capacity of law enforcement services to tackle more efficiently cross-border crime;	<p><u>Commission evaluation:</u></p> <ul style="list-style-type: none"> • 2008 report: “Some regional police operations with the use of special investigative means are reported.” • “2008 report: To do: “To enable further progress, necessary bylaws, rules and training for use of special investigative techniques need to be in place,” • 2009 report: “Special investigative means (e.g. surveillance and interception of communication) have been used more widely in 2008.” • [criticism:] “The <u>national system for intercepting communication</u> hosted by SIPA is not used by all law 	3+

		<p>enforcement agencies.”</p> <ul style="list-style-type: none"> • To do: “The draft law on changes to the use of special investigative measures needs to be adopted as a prerequisite for effective intelligence-gathering.” <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • “During the visit of the units who are dealing with special investigative measures I noticed that <u>all the units are well trained and well equipped.</u>” • “Since now they mainly used the system of BIH secret service for interception of communication. <u>The national system for interception of communications is still not operational due to some technical reasons.</u>” • “<u>A downsizing of budget in all police agencies, especially in the departments for fight against organized crime in all police authorities, could present huge problems in their line of work (special funds, money for technical equipment, etc.)</u> Budget for police agencies seemed to have been downsized for 2009 (not all numbers were available at the time of the visit).” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Some progress has been made since 2008; the current status remains however, inadequate, both in terms of training and equipment as well as regarding the legal basis of the use special investigative techniques. 	
3.3.5	take the necessary steps to prepare for the conclusion of an operational cooperation agreement with Europol with special emphasis on data protection provisions.	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • “The strategic cooperation agreement with Europol (in force since January 2007) is not yet effectively implemented by Bosnia and Herzegovina.” • “The future Directorate on international police cooperation - as part of the ongoing police reform - should have the structure to ensure smooth international cooperation of all types.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Agreement is there; implementation needs to improve; some structural are also still necessary. 	3+
3.4	<i>Data protection</i>		
3.4.1	implement the Law on Data Protection of 2006 on the protection of personal data including by establishing the Independent Data Protection	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • To do: “Despite some progress, the legal and administrative framework for establishing a fully independent Data Protection Agency of Bosnia and Herzegovina needs to be completed, including adequate staffing.” • To do: “The supervisory agency needs to become fully independent and fully operational, and proper 	3+

	Supervisory Agency;	<p>implementation of the rules for protection of personal data needs to be ensured in all sectors.”</p> <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • “A law on personal data protection is in place.” • “very limited progress has been made in the area of Agency for personal data protection.” • [Massively inadequate staffing:] “the agency should have 45 employees. At this moment only the director and three staff members are deployed. Ten civil servants should start their work in March, but they are still in recruitment procedure.” • “Plan of Agency for 2009, is to perform inspectorial supervision in all public institutions that deals with personal data (Ministry of foreign Affairs, Ministry of Security, Ministry of Civil Affairs, Agency for Identification documents, records and data exchange , Border police, State information and Protective Agency, Service for foreigners affairs and 13 ministries of interior.” • “According the Law of personal data protection, all public institutions, including above mentioned, are obliged to adopt sub-legal regulations and plan of personal data security that should include organizational and technical protective measures.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Some progress is visible, but there is no system of adequate data protection in place. Bosnia and Herzegovina needs to do a lot more to implement this requirement. 	
3.4.2	implement relevant international conventions, such as the Additional protocol of the Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data.	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • Not mentioned. <p><u>EU National Expert:</u></p> <ul style="list-style-type: none"> • “The constitution of BIH, in article 2 “Human rights and fundamental freedoms” guarantee rights and freedom for all persons within the country. Constitution defines that rights and freedom set forth in the European Convention for the Protection of human rights and fundamental Freedoms and its protocols shall apply directly in BIH. This convention shall have priority over all other law. Constitution of RS and constitution of BH Federation also guarantee fundamental rights and freedoms including of course, rights to privacy. All four Criminal codes (Bosnia and Herzegovina, Republika Srpska, BH Federation and Brčko district) recognize criminal offence “Unauthorized processing of personal data” 	Not mentioned by the Commission and the EU experts.

		<u>ESI evaluation:</u> <ul style="list-style-type: none">• Cannot be evaluated.	
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4	BLOCK 4: External Relations and fundamental rights	<ul style="list-style-type: none"> • “Bosnia and Herzegovina made good progress towards meeting the benchmarks under block 4, but some problems remain.” • “When it comes to implementation, some difficulties exist for vulnerable groups such as refugees, displaced persons, returnees, disabled persons and members of minorities.” • “In general, minority rights seem to be well ensured, both via legal provisions and via institutional arrangements. ... • “Citizenship is primarily acquired through descent from at least one parent with Bosnia and Herzegovina/entity citizenship. ... • “It appears that Bosnia and Herzegovina is <u>on the right track to meet the benchmarks</u> under this block.” • “Additional efforts should be concentrated on protection of minorities and fight against discrimination.” 	3+
4.1	<i>Freedom of movement of nationals of Bosnia and Herzegovina</i>		
4.1.1	BiH should: ensure that freedom of movement of citizens of Bosnia and Herzegovina is not subject to unjustified restrictions, including measures of a discriminatory nature, based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.]	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 Report: “The freedom of movement is guaranteed by provisions in the Constitution of Bosnia and Herzegovina. Unfair discrimination is prohibited in the Constitution.” • “The legal framework foresees special provisions targeting the impediment of return of refugees and displaced persons. “ • “As regards mechanisms for handling complaints ... different first instance institutions are presented. In case of non-satisfactory treatment of a complaint, a second level of institutions is available.” • “The country reports on cases of complaints falling into four categories related to obstacles to freedom of movement to minorities during 2007. However, an overview of follow-up given to these cases is not provided.” • [criticism:] “Information exchange between public institutions is not considered adequate in response to these complaints.” • 2009 Report: “does not mention FoM-issues, only states regarding the investigation of ethnically motivated incidents: • “No further information has been provided on the follow up given by authorities to ombudsman/NGOs reports on ethnically motivated incidents by law enforcement officers in the area of freedom of movement.” 	2-

		<p><u>Block 4 Meeting Report:</u></p> <ul style="list-style-type: none"> • “BiH has taken significant efforts to complete the return process and ensure its sustainability. As agreed in the framework of the Prud process, MHRR should prepare a programme and projects related to the implementation of the revised Strategy for the implementation of Annex VII to the DPA in the period 2009-2014. Currently there are 43,300 applications for reconstruction of housing units comprising 143 000 individuals. Approx. € 50 Mio have been earmarked for reconstruction of houses, incl. social infrastructure, by 2014.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Based on the 2008 Report, Bosnia and Herzegovina is close to fulfilling the relevant requirements regarding Freedom of Movement; however, <u>the lack of information on investigation of possibly ethnically motivated incidents is disappointing and raises some questions</u> regarding fulfilment of requirement. 	
4.2	<i>Conditions and procedures for the issue of identity documents</i>		
4.2.1	BiH should: ensure full and effective access to travel and identity documents for all citizens of Bosnia and Herzegovina including women, children, people with disabilities, people belonging to minorities and other vulnerable groups;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 Report: “In the area of access to travel and identity documents, it is reported that difficulties exist for refugees, displaced persons, returnees, disabled persons and members of minorities.” • The 2009 Report: [This report is more positive in its evaluation.] • “A very low number of cases related to difficulties with issuance of documents to vulnerable groups have been recorded (2 cases in 2008). These cases were linked to inefficiency of competent services and incorrect data and were solved after the reaction of the BiH Ministry of Human Rights and Refugees.” • “In all municipalities mobile teams exist so that each individual can ask for assistance and service at home address. ...” [These teams focus on the disabled and ill.] • “A <u>Roma census</u> covering 66 municipalities in BiH <u>is under preparation</u>. The framework plan is foreseen to be finalised by end of May 2009 and the census is to be carried still in the course of 2009. <u>Registration in civil registers is a pre-condition for obtaining ID cards and economic and social rights.</u>” <p><u>ESI evaluation:</u></p>	1-

		<ul style="list-style-type: none"> • There seems to be no evidence of persistent problems in this field; effort to register all Roma is positive and is likely to resolve some of the remaining problems. 	
4.2.2	ensure full and effective access to identity documents for IDPs and refugees.	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 Report: “Displaced persons and refugees are obliged to possess an identification document, ID or passport.” • 2008 Report: “Relevant laws require displaced persons and refugees to register in order to receive their respective status and related rights. Obtaining these documents can be cumbersome for them (e.g. destroyed documents creating need for retroactive or secondary registration, security risks, need to obtain original documents issued at place of birth with limited validity).” • 2008 Report: [criticism:] “No facilitated procedures for displaced persons and refugees seem to be in place (e.g. issuance of identification documents at a location different from the issuing authority).” • 2009 Report: [criticism:] “No statistics on access to documents for refugees have been provided [As mentioned in previous section, only few actual complaints have been registered in obtaining identification documents] <p><u>Block 4 Meeting Report:</u></p> <ul style="list-style-type: none"> • Not mentioned in the Block 4 Meeting Report. <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Evaluation is difficult as criticism raised in the 2008 report (cumbersome procedures for refugees and IDPs in obtaining documents) of the Commission is not directly addressed in the 2009 update. As mentioned in section “36” above, only 2 complaints were registered in 2008 concerning difficulties in obtaining documents; the mobile teams mentioned in the same section mainly appear to be focusing on disabled and sick individuals and not on IDPs and refugees. <u>It is disappointing that no statistics were provided regarding refugees’ access to documents.</u> 	2
4.3	Citizens’ rights including protection of minorities		
4.3.1	BiH should: adopt and enforce legislation to ensure effective protection against discrimination;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 Report: “The country reports on few complaints on discrimination linked to the issuance of identity documents and criminal offences linked to ethnic tensions in the context of the issuing process.” • 2008 Report: “Most cases of discrimination recorded (270) relate to other areas like right to work or judicial protection. No information is provided on follow-up given to these cases.” 	3+

		<ul style="list-style-type: none"> • 2009 Report: “A draft new comprehensive anti-discrimination law has been adopted by the BiH Council of Ministers and sent to parliamentary procedure.” • “The <u>scope and definitions of discrimination are adequate</u> and the role of the Ombudsman for Human Rights adequately reflects the requirement for establishment of an “equality body” required under Directive 2000/43/EC.” • [criticism:] “However, <u>several aspects of the law remain unclear or not in line with the relevant EC directives</u>, in particular as regards the broad scope of exceptions to discrimination.” • “A low number of cases of discrimination have been recorded.” • “The Ombudsman and the BiH Ministry of Human Rights and Refugees have the competence to deal with such cases. The immediate follow up by the Ministry appears to be adequate.” • [criticism:] “<u>Information on further follow up to these cases</u>, as regards police investigations, prosecution and court action, <u>has not been provided.</u>” • [criticism:] “The problems in phasing out of the Entity Ombudsmen offices have been delaying the effective merger and full operationality of the single Ombudsman Office.” <p><u>Block 4 Meeting Report:</u></p> <ul style="list-style-type: none"> • The implementation of the <u>Ombudsman Law, which was adopted in March 2006 and which provides for merging the three Ombudsmen institutions, was awaiting the appointment of the Ombudspersons.</u> Due to blockages the appointment procedure was completed only in December 2008.” • “<u>The next step towards a merger of the three Ombudsmen offices into a single one is phasing out of the Ombudsman offices in the Federation and the RS.</u> In the RS, the Law on closing down of the RS Ombudsman office was adopted by the RS Government on 26 February 2009” • “However, it has been withdrawn from the RSNA agenda several times. <u>In the Federation, the relevant law on phasing out has been adopted but the process of phasing out is delayed as the FBiH does not seem to be willing to progress on this issue as long as there is no progress in the RS.</u> The problems in phasing out of the Entity Ombudsmen offices have been delaying the effective merger and full operationality of the single Office.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Requirements are only partly fulfilled. Adoption of new law only happened recently – and this law is only partly in line with expectations. Enforcement according to the new law appears to be still further down the line. The actual number of reported cases is low; initial follow-up is rated as adequate. 	
4.3.2	implement the Law on citi-	<u>Commission Assessment:</u>	1-

	<p>zenship providing conditions and circumstances for acquisition of BiH citizenship;</p>	<ul style="list-style-type: none"> • “A State-level Law on BiH citizenship was introduced by the High Representative in 1997. In accordance with this law, the Entities adopted their laws on citizenship.” • “Citizenship is primarily acquired through descent from at least one parent with BiH/entity citizenship (ius sanguinis). Naturalisation is possible, but strict conditions are in place. Amendments to the BiH Law on Citizenship, which will facilitate naturalisation, are expected to be soon adopted.” • “An electronic data system that contains data of registry books is under development and is expected to allow exchange of data throughout the country.” [This is relevant for Breeder Documents.] • “The citizenship of BiH is lost by the voluntary acquisition of another citizenship unless a bilateral agreement is in place (provision frozen by the High Representative until 1 January 2013).” • “A bilateral agreement on dual citizenship is in place with Serbia and Sweden. An agreement with Croatia has been ratified by Croatia but the ratification by BiH is pending. The procedure for conclusion of an agreement with Montenegro is underway.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • This requirement appears to be fulfilled. Further changes are expected in the near future. 	
4.3.3	<p>ensure investigation of ethnically motivated incidents by law enforcement officers in the area of freedom of movement, including cases targeting members of minorities;</p>	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 report: “Regarding investigation of ethnically motivated incidents, the applicable procedures in the police administration are well described. <u>Three related cases are reported to have occurred during 2007.</u>” • “Available reports by the ombudsperson/NGOs are presented. No indications are provided regarding the follow-up given by authorities to such reports.” • 2009 report: “As regards ethnically motivated incidents, <u>a large number of incidents were registered in 2008.</u> However, it is difficult to categorise these incidents as there were other motives involved (such as stealing etc). No information on the follow up to these incidents has been provided.” • “No further information has been provided on the follow up given by authorities to ombudsman/NGOs reports on ethnically motivated incidents by law enforcement officers in the area of freedom of movement.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • The possible rise in registered cases of ethnically motivated incidents [see 2008 and 2009 reports 	2-

		above] might be simply an issue of improved reporting in 2009, or might show an actual increase such cases; <u>lacking information on follow-up is very disturbing!</u>	
4.3.4	ensure that constitutional provisions on protection of minorities are observed;	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 Report: “The protection of minorities beyond the Constitution is ensured via a law on the protection of national minorities, at state level and in both entities.” • “Rights granted to national minorities and related policy measures include the right for members of national minorities to councils of national minorities.” • “A council of national minorities is operational at state level and in Republika Srpska,” • “Members of national minorities also dispose of a right to be represented in local authorities.” • “This right does not exist at state level.” <p>• 2009 Report: “A constituting meeting of the National Minority Council in FBiH took place on 15 December 2008.”</p> <ul style="list-style-type: none"> • “There have been delays in the appointment of the members of the Council, which is still ongoing. The funding of the Council has not been ensured yet either.” <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none"> • Difficult to evaluate as it is not clear whether minorities shall have state-level representation; the Federation seems to be lagging behind the RS regarding implementation of this requirement. 	2
4.3.5	implement relevant policies regarding minorities, including Roma.	<p><u>Commission Assessment:</u></p> <ul style="list-style-type: none"> • 2008 Report: “A Roma strategy and action plan on the educational needs of Roma and members of other national minorities are in place.” • “Limited results in implementing the Roma strategy are reported, in particular regarding registration and schooling.” <p>• 2008 Report: “The financial resources for the implementation of the Roma Strategy were significantly increased.”</p> <ul style="list-style-type: none"> • “A large portion of the funds has been earmarked for the implementation of the Action plan on Roma housing, health and employment.” • “In the field of education, the relevant Action plan is under revision.” • “A Roma census covering 66 municipalities in BiH is under preparation. The framework plan is 	1-

		<p>foreseen to be finalised by end of May 2009 and the census is to be carried still in the course of 2009.”</p> <p><u>ESI evaluation:</u></p> <ul style="list-style-type: none">• Probably also as a reaction to criticism in the 2008 Commission report, efforts with regard to Roma policies appear to have intensified; it remains to be seen whether these projects will have a positive impact on the situation of minorities.	
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