

GLOBAL FORUM ON  
**TRANSPARENCY AND EXCHANGE OF  
INFORMATION FOR TAX PURPOSES**

Peer Review Report on the Exchange of Information  
on Request

**BOSNIA  
AND HERZEGOVINA**

2024 (Second Round)



# **Global Forum on Transparency and Exchange of Information for Tax Purposes: Bosnia and Herzegovina 2024 (Second Round)**

PEER REVIEW REPORT ON THE EXCHANGE  
OF INFORMATION ON REQUEST

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## Reader's guide

**The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum)** is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 160 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

### Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

## **Consideration of the Financial Action Task Force Evaluations and Ratings**

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, Annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

## More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and <http://dx.doi.org/10.1787/2219469x>.



## Abbreviations and acronyms

|                                |  |
|--------------------------------|--|
| <b>2016 Terms of Reference</b> | Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015        |
| <b>AML</b>                     | Anti-Money Laundering  |
| <b>AML/CFT</b>                 | Anti-Money Laundering / Countering the Financing of Terrorism                                    |
| <b>AML Law</b>                 | Law no. 13/24 on Prevention and Combating of Money Laundering and Financing Terrorist Activities |
| <b>APIF</b>                    | Agency for Intermediary, Information and Financial Services                                      |
| <b>BAM</b>                     | Bosnia and Herzegovina Convertible Mark  |
| <b>BARS</b>                    | Banking Agency of the Republic of Srpska   |
| <b>BDTA</b>                    | Tax Administration of the Brčko District   |
| <b>BD</b>                      | Brčko District   |
| <b>CDD</b>                     | Customer Due Diligence   |
| <b>DTC</b>                     | Double Taxation Convention   |
| <b>EOI</b>                     | Exchange of Information  |
| <b>EOIR</b>                    | Exchange of Information on Request   |
| <b>EUR</b>                     | Euro   |
| <b>FBA</b>                     | Banking Agency of the Federation of Bosnia and Herzegovina                                       |
| <b>FBiH</b>                    | Federation of Bosnia and Herzegovina   |
| <b>FDBD</b>                    | Finance Directorate of Brčko District of Bosnia and Herzegovina                                  |
| <b>FIA</b>                     | Financial Intelligence Agency  |

|                                |   |
|--------------------------------|---|
| <b>FID</b>                     | Financial Intelligence Department   |
| <b>FMF</b>                     | Federal Ministry of Finance   |
| <b>FTA</b>                     | Tax administration of Federation of Bosnia and Herzegovina  |
| <b>GDP</b>                     | Gross Domestic Product  |
| <b>Global Forum</b>            | Global Forum on Transparency and Exchange of Information for Tax Purposes                               |
| <b>JSC</b>                     | Joint Stock Company   |
| <b>LLC</b>                     | Limited Liability Company   |
| <b>MONEYVAL</b>                | Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism |
| <b>MOU</b>                     | Memorandum of Understanding   |
| <b>Multilateral Convention</b> | Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010                       |
| <b>MFRS</b>                    | Ministry of Finance of the Republic of Srpska   |
| <b>MFT BiH</b>                 | Ministry of Finance and Treasury of Bosnia and Herzegovina  |
| <b>RS</b>                      | Republic of Srpska  |
| <b>RSTA</b>                    | Tax Administration of the Republic of Srpska  |
| <b>Standard</b>                | Standard of transparency and exchange of information on request   |
| <b>TIN</b>                     | Taxpayer Identification Number  |
| <b>USD</b>                     | United States dollar  |

## Executive summary

1. This report presents the Global Forum's analysis of Bosnia and Herzegovina's compliance with the standard of transparency and exchange of information on request (the standard) and concludes that Bosnia and Herzegovina is rated as **Largely Compliant** with the standard. This conclusion is based on an assessment of Bosnia and Herzegovina's legal and regulatory framework in force as at 30 July 2024 and its practical implementation, including in respect of exchange of information (EOI) requests received and sent during the review period from 1 January 2020 to 31 December 2022. Bosnia and Herzegovina joined the Global Forum in 2018 and hence, the current report is the first assessment of its compliance with the standard.

### Determinations and ratings

| Element  | Determination on the legal framework | Rating              |
|--|--------------------------------------|---------------------|
| A.1 Availability of ownership and identity information | Needs improvement                    | Partially Compliant |
| A.2 Availability of accounting information             | Needs improvement                    | Largely Compliant   |
| A.3 Availability of banking information                | Needs improvement                    | Largely Compliant   |
| B.1 Access to information                              | In place                             | Largely Compliant   |
| B.2 Rights and Safeguards                              | Needs improvement                    | Largely Compliant   |
| C.1 EOIR Mechanisms                                    | In place                             | Compliant           |
| C.2 Network of EOIR Mechanisms                         | In place                             | Compliant           |
| C.3 Confidentiality                                    | In place                             | Largely Compliant   |
| C.4 Rights and safeguards                              | In place                             | Compliant           |
| C.5 Quality and timeliness of responses                | Not applicable                       | Compliant           |
| <b>OVERALL RATING</b>                                  | <b>Largely compliant</b>             |                     |

*Note:* The three-scale determination are in place, in place but certain elements need improvements, not in place. The four-scale ratings are Compliant, Largely Compliant, Partially Compliant, and Non-Compliant.

## Transparency framework

2. Company and tax laws in Bosnia and Herzegovina, governed at the sub-State level, ensure the availability of legal ownership and identity information of relevant entities and arrangements in line with the standard, except for foreign companies being tax resident or foreign partnerships carrying out business in the Brčko District (BD).
3. In relation to the availability of beneficial ownership information of relevant entities and arrangements, the anti-money laundering (AML) legal framework requires the AML-obliged persons to identify the beneficial owners of their customers. The AML legal framework is the main source of beneficial ownership information in Bosnia and Herzegovina, although this information may also be available in the Company Register for the domestic and foreign legal persons registered in the Republic of Srpska (RS).
4. Regarding accounting information, Accounting and Auditing Laws place necessary requirements of maintaining reliable accounting records with underlying documentation for all relevant entities. This also includes foreign companies and partnerships carrying out business activities in Bosnia and Herzegovina. These accounting requirements are effectively supervised by the tax authorities through their tax audit activities.
5. The banking and AML laws require the availability of banking information, including all records pertaining to bank accounts, related financial and transactional information and beneficial ownership information of all bank accounts.

### ***Key recommendations***

6. This report issues recommendations on aspects of the legal and regulatory framework and on the implementation of this framework, which need improvements.
7. The availability of legal ownership information of foreign companies and foreign partnerships is not always ensured in Bosnia and Herzegovina, in particular in the BD (Element A.1). Furthermore, in practice, it is not ascertained that the legal persons qualified as “inactive” comply with their obligations to keep and report legal ownership and accounting information (Elements A.1 and A.2)
8. With regard to beneficial ownership information (Elements A.1 and A.3), several deficiencies are identified in the AML framework. On the method of identification of the beneficial owners, the threshold of 25% for determining the control through ownership may not be relevant to identify the beneficial owners of partnerships or co-operatives, considering their specific organisation which does not necessarily rely on the amount of contribution of their members.

Regarding the update of beneficial ownership information, although the AML-obliged persons must update this information when they are aware about a change and update their Customer Due Diligence (CDD) regularly, there is no specified frequency in the legal and regulatory framework for these updates. Moreover, they are not obliged to identify the beneficial owners of their low-risk customers. The AML framework also does not ensure a full coverage of the relevant legal persons and arrangements since it does not cover in all cases the legal persons in the BD or the foreign trusts administered by a trustee which is not an AML-obliged person. In practice, although the implementation of the beneficial ownership requirements by banks and the supervision of this implementation is reliable, the implementation of the CDD requirements by the non-financial AML-obliged persons, such as attorneys, notaries or accountants, and their supervision by the relevant authorities are both uneven.

9. In the RS, the legal persons registered since 2019 must provide their beneficial ownership information at the time of the registration in the Company Register and update this information. Nevertheless, this obligation contains deficiencies in the definition of beneficial owner and there is no mechanism ensuring an update of the information on a periodic basis. It is also not clear whether the legal persons registered before 2019 have an obligation to provide their beneficial ownership information. In practice, this obligation to report beneficial ownership information at the time of registration is not supervised (Element A.1).

10. Regarding accounting information, it is not clearly established that the underlying documentation of accounting records would be available in all cases after a legal person ceases to exist. Moreover, it is unlikely that the accounting information on a foreign trust with a non-professional trustee in Bosnia and Herzegovina, not subject to any accounting requirement, would be available (Element A.2).

11. Finally, in case of an AML-obliged person that ceases to exist or to operate, including a bank established in Bosnia and Herzegovina or a branch of a foreign bank ceasing to operate in Bosnia and Herzegovina, it cannot be ascertained that the records of this person, including beneficial ownership and banking information on its customers, would be available in Bosnia and Herzegovina in practice (Elements A.1 and A.3).

## Exchange of information in practice

12. The legal and regulatory framework of Bosnia and Herzegovina for the access and exchange of information requested by EOI partners is generally in place, though the need for improvements has been identified.

13. Bosnia and Herzegovina's domestic laws provide for wide access powers. The three competent authorities have direct access or sufficient powers

to obtain information, including to process EOI requests, regardless of the absence of a domestic tax interest. There are legal obligations and processes in place that allow the competent authorities to directly access or to require information from different sources and these must respond in a timely manner.

14. However, in the case of beneficial ownership information, all three competent authorities rely on the AML framework to access such information, but it is unclear if this is possible in practice as the scope of the secrecy emanating from the AML Law has not been tested yet.

15. Finally, there are legal gaps in terms of the professional secrecy that affect all three competent authorities, as the attorneys have broad protection of attorney-client privilege that goes beyond what is prescribed by the standard. It covers more types of communication than only for the purposes of seeking and providing legal advice or use in legal proceedings. However, this has also not had any effect on obtaining information in practice, as attorneys have never been a source of information so far.

16. Bosnia and Herzegovina has an extensive EOI network covering 149 jurisdictions through the multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention) and 38 Double Taxation Conventions (DTCs).

17. The Multilateral Convention was signed by Bosnia and Herzegovina in November 2019 and entered into force in January 2021. The three competent authorities are adequately staffed and have appropriate resources to respond to requests in a timely manner.

18. Despite a complex organisation (and a recent reorganisation) due to the three different competent authorities, the EOI in practice is effective as most of the answers to the requests received during the review period were provided within 90 days and there was no negative feedback received from peers. Bosnia and Herzegovina received 91 requests during the period under review and, although there were instances of needs for clarifications or requests that were declined, these were resolved in a timely manner and peers were satisfied. Bosnia and Herzegovina has a more limited practice of sending requests, with nine requests sent during the review period. Peers did not report any issue with these requests.

### ***Key recommendations***

19. The access powers may be limited by the scope of professional secrecy. In addition, competent authorities are unclear if they would be able to gather information from AML-obliged persons directly or from other sources of information. Therefore, Bosnia and Herzegovina receives recommendations to ensure that competent authorities have effective access powers to respond to EOI requests (Elements B.1 and C.4).

20. It is unclear that competent authorities of the FBiH and the BD have a consistent practice in relation to the obligation of prior notification, including not notifying the taxpayer when a treaty partner so requests. Therefore, monitoring is recommended to ensure that appropriate exceptions to the prior notification of the person concerned by an exchange of information request are applied in practice (Element B.2).

21. Regarding the confidentiality of exchanged information, it is not certain that the competent authorities of the BD would ensure that the information would not be shared with the public prosecutor for a criminal non-tax case. In addition, the information that is disclosed to taxpayers and third parties in the RS includes the fact that the request is for EOI purposes, including identifying the requesting party (Element C.3).

22. Bosnia and Herzegovina replied in a timely manner in most cases, but it failed to provide status updates to its partners for cases where an answer was not provided within 90 days. Although the timeliness of answers improved during the last year of the review, i.e. from the reorganisation of the competent authority functions, the sending of status updates has not been tested during that year (Element C.5).

## Overall rating

23. Bosnia and Herzegovina is rated Partially Compliant on Element A.1, Largely Compliant on Elements A.2, A.3, B.1, B.2 and C.3 and Compliant on all other elements. Bosnia and Herzegovina is therefore rated overall Largely Compliant with the Exchange of Information on Request (EOIR) standard on a global consideration of its compliance with the individual Elements.

24. This report was approved at the Peer Review Group of the Global Forum on 22 October 2024 and was adopted by the Global Forum on 20 November 2024. A self-assessment report on the steps undertaken by Bosnia and Herzegovina to address the recommendations made in this report should be provided to the Peer Review Group in accordance with the methodology for enhanced monitoring as per the schedule laid out in Annex 2 of the methodology. The first such self-assessment report from Bosnia and Herzegovina will be expected in 2026, and thereafter, once every two years.



## Summary of determinations, ratings and recommendations

| Determinations and ratings  | Factors underlying recommendations  | Recommendations   |
|---|---|---|
| Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities (Element A.1) |   |   |
| <b>The legal and regulatory framework is in place but needs improvement.</b>  | Foreign companies and partnerships must operate in Bosnia and Herzegovina through a registered branch and such a branch must be registered where a foreign company is resident in Bosnia and Herzegovina for tax purposes or where a foreign partnership carries out business in this territory. Although the legal ownership information of these relevant foreign companies and partnerships is available in the Federation of Bosnia and Herzegovina and the Republic of Srpska, the same information would not be available in the Brčko District. In practice, no foreign company or partnership is operating in the Brčko District. | Bosnia and Herzegovina is recommended to ensure the availability of legal ownership information of all foreign companies resident for tax purposes and of identity information of relevant foreign partnerships in the Brčko District, in line with the standard. |
|   | The information on beneficial ownership of relevant legal persons and arrangements is available under the anti-money laundering law. For the determination of the beneficial owners of the legal persons, the identification of the natural persons holding a control through means other than ownership is not simultaneous to the identification of natural persons holding 25% or more of ownership. While this approach is acceptable for companies, it may affect the identification of the beneficial owners of partnerships or co-operatives, the features of which would make the threshold of ownership not appropriate.         | Bosnia and Herzegovina is recommended to ensure that the identification of beneficial owners of partnerships and co-operatives is made in accordance with the standard.   |

| Determinations and ratings | Factors underlying recommendations   | Recommendations   |
|----------------------------|--|---|
|                            | <p>The anti-money laundering framework applicable in all parts of Bosnia and Herzegovina is the key source of beneficial ownership information. However, this framework contains some legal deficiencies.</p> <p>First, this framework does not ensure the availability of beneficial ownership information in all cases, since there is no obligation for legal persons in the Brčko District to use the service of an AML-obliged person in Bosnia and Herzegovina on an ongoing basis.</p> <p>Second, for low-risk customers, the beneficial ownership information may not be available as simplified customer due diligence does not require the collection of this information.</p> <p>Third, while beneficial ownership information needs to be updated in cases of change and certain circumstances, there is no specified frequency for updating beneficial ownership information under the legal framework, posing risks that the beneficial ownership information may not be up to date in all cases.</p> <p>Lastly, the identification of the beneficial owners of a foreign trust is ensured only when the trustee is an AML-obliged person or is engaged in a relationship with an AML-obliged person on behalf of the foreign trust.</p> | <p>Bosnia and Herzegovina is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant legal persons and arrangements, in line with the standard.</p> |
|                            | <p>In the Republic of Srpska, the legal persons registered since 2019 must provide their beneficial ownership information at the time of the registration in the Company Register and update this information. Nevertheless, the definition of beneficial owner is not fully in line with the standard since it does not contain the determination of the beneficial owner through a control by means other than ownership or the backstop position to identify the natural person holding the position of</p>   |   |

| Determinations and ratings              | Factors underlying recommendations   | Recommendations  |
|---|--|--|
|   | <p>senior manager. It also does not consider the joint ownership to determine the 20% ownership threshold provided in the law. In addition, although this information must be updated in case of an event triggering a change, there is no obligation to report beneficial ownership information on a periodic basis or obligation for persons in the ownership chain to report such changes. It is also not clear whether the legal persons registered before 2019 have an obligation to provide their beneficial ownership information.</p>  | <p>Bosnia and Herzegovina is recommended to ensure that the beneficial ownership information held by the authorities is accurate, adequate and up-to-date and available for all relevant legal persons, in line with the standard.</p> |
| <b>EOIR Rating: Partially Compliant</b> | <p>The Federation of Bosnia and Herzegovina, the Republic of Srpska and the Brčko District have a process to identify economically inactive taxpayers and there is a non-negligible proportion of inactive legal persons in Bosnia and Herzegovina. Although the changes in legal ownership information should, in principle, be reported in the Company Registers (and Registers of Securities) and to the tax administrations as well as updated at the level of the legal persons, the effectiveness of this reporting or update by inactive companies, partnerships and co-operatives in practice cannot be ascertained.</p> | <p>Bosnia and Herzegovina is recommended to ensure that up-to-date legal ownership information on inactive companies, partnerships and co-operatives is always available, in line with the standard.</p>                               |
|   | <p>The implementation of the Customer Due Diligence requirements, including the identification of the beneficial owners of the customers, by the non-financial AML-obliged persons relevant for EOIR and their supervision by the relevant authorities are both uneven.</p>  | <p>Bosnia and Herzegovina is recommended to ensure an appropriate supervision of all AML-obliged persons on the beneficial ownership requirements provided for by the AML Law.</p>   |
|   | <p>When an AML-obliged person ceases to exist or to operate, all the records held by this person are in principle handed over to the person taking over the activity and maintained by the competent archive. Nevertheless, it is not ascertained that this is always done in practice.</p>  | <p>Bosnia and Herzegovina is recommended to ensure that beneficial ownership information is retained in line with the standard, including after the AML-obliged person ceases to exist or to operate.</p>                              |

| Determinations and ratings   | Factors underlying recommendations  | Recommendations   |
|--|---|---|
|  | Although beneficial ownership information should be available for the legal persons registered since 2019 in the Republic of Srpska, as this is a required information for their registration, there is no specific supervision on the accuracy and update of this information.   | Bosnia and Herzegovina is recommended to properly monitor and supervise the obligation of the relevant legal persons to provide their beneficial ownership information.             |
| Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (Element A.2) |   |   |
| <b>The legal and regulatory framework is in place but needs improvement.</b>   | It is not guaranteed that the accounting information on a foreign trust with a non-professional trustee in Bosnia and Herzegovina would be available, considering that the non-professional trustees are not subject to any accounting requirement.   | Bosnia and Herzegovina should ensure that accounting records of foreign trusts that are administered by resident non-professional trustees are available in line with the standard. |
| <b>EOIR Rating: Largely Compliant</b>  | The Federation of Bosnia and Herzegovina, the Republic of Srpska and the Brčko District have a process to identify the economically inactive taxpayers and there is a non-negligible proportion of inactive legal persons in Bosnia and Herzegovina. Although all the obligations of these persons are maintained during the inactivity period, it is not ascertained in practice that those inactive legal persons would comply with their obligations to keep and report accounting information. In addition, the inactive status of the companies, partnerships and co-operatives would not prevent the legal persons to keep on their activity, in particular abroad, since this status is not public and is determined for internal purposes of the tax administration only. | Bosnia and Herzegovina is recommended to ensure that accounting information on inactive companies, partnerships and co-operatives is always available, in line with the standard.   |

| Determinations and ratings   | Factors underlying recommendations   | Recommendations   |
|--|--|---|
|  | Although there are mechanisms to hand over the accounting records of terminated companies, including to the Archives, it is not ascertained that this is done in practice in all cases.  | Bosnia and Herzegovina is recommended to ensure that accounting information of all relevant legal persons is available for at least five years in line with the standard, even in cases where the legal person ceases to exist. |
| Banking information and beneficial ownership information should be available for all account-holders (Element A.3) |  |   |
| <b>The legal and regulatory framework is in place but needs improvement.</b>                                       | Under the anti-money laundering law, for the determination of the beneficial owners of the legal persons being bank account holders, the identification of the natural persons holding a control through means other than ownership is not simultaneous to the identification of natural persons holding 25% or more of ownership. While this approach is acceptable for companies, this may affect the identification of the beneficial owners of partnerships or co-operatives, the features of which would make the threshold of ownership not appropriate. | Bosnia and Herzegovina should ensure that the identification of beneficial ownership information of account holders which are partnerships or co-operatives is made in accordance with the standard.                            |
|  | For low-risk customers, the banks can apply simplified due diligence under which the beneficial ownership information does not have to be collected. Moreover, while beneficial ownership information needs to be updated in cases of change and certain circumstances, there is no specified frequency for updating beneficial ownership information under the legal framework, posing risks that the beneficial ownership information may not be up to date in all cases.  | Bosnia and Herzegovina should ensure that adequate, accurate and up-to-date beneficial ownership information on account holders is available in line with the standard.   |

| Determinations and ratings   | Factors underlying recommendations  | Recommendations   |
|--|---|---|
| <b>EOIR Rating: Largely Compliant</b>  | In case of a liquidation of a bank established in Bosnia and Herzegovina, all the records of the bank are in principle handed over to the person taking over the activity and maintained by the relevant archive. Nevertheless, it is not ascertained that this is always done in practice. In addition, if the bank is purchased by a foreign bank or if a branch of a foreign bank cease to operate in Bosnia and Herzegovina, the relevant banking information would be handed over to the foreign bank and would no longer be available in Bosnia and Herzegovina.                  | Bosnia and Herzegovina should ensure that banking information is retained in line with the standard including for at least five years after a bank ceases to exist or a foreign bank ceases operations in Bosnia and Herzegovina. |
| Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (Element B.1) |   |   |
| <b>The legal and regulatory framework is in place.</b>   | In the Federation of Bosnia and Herzegovina, the Republic of Srpska and the Brčko District, the definition of the professional secrecy or legal privilege of attorneys is broad (not limited to giving legal advice or related to legal proceedings), which has potential for rendering the exchange of information ineffective, especially when beneficial ownership information is requested. The materiality of the gap is nonetheless limited.  | Bosnia and Herzegovina is recommended to ensure that the application of legal professional privilege of attorneys does not limit or prevent it from responding to an EOI request.   |
| <b>EOIR Rating: Largely Compliant</b>  | The competent authorities of the entities are unclear on whether they would be able to gather information from AML-obliged persons directly.<br>The Tax administration of Federation of Bosnia and Herzegovina considers that they could request the information to an AML-obliged person using the powers granted by Articles 8 and 14 of the Law on Tax Administration but this has not been tested in practice.<br>The tax authority of the Republic of Srpska considers that the information would potentially be available to them at the Agency for Intermediary, Information and | Bosnia and Herzegovina is recommended to ensure that competent authorities effectively apply their access powers to obtain beneficial ownership information to respond to EOI requests.   |

| Determinations and ratings  | Factors underlying recommendations   | Recommendations   |
|---|--|---|
|   | <p>Financial Services, however, this is not the case because of the gaps on the beneficial ownership definition used in that entity. Finally, the competent authority of Brčko District considers that such information would not be available to them as there is no local source responsible to maintain it and in such a case, the BD would use the inter-administrative co-operation.</p>  |   |
| <p>The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (Element B.2)</p> |  |   |
| <p><b>The legal and regulatory framework is in place but needs improvement.</b></p>   | <p>There is no explicit exception to the notification of the concerned taxpayer established in the tax laws of the Federation of Bosnia and Herzegovina and the Brčko District. However, authorities explained that, if requested by the partner, they would not notify the taxpayer because the treaty relationship, including the exchange of information requests, would supersede their domestic regulations. This legal interpretation is nevertheless not documented in an internal regulation and there is no relevant experience in this regard. In addition, the absence of prior notification during the review period in practice appears to depart from the obligation of prior notification since no treaty partner requested an exception to such a notification. Therefore, it is uncertain that competent authorities would have a consistent practice in relation with the notification procedure, including on the exception to notify the taxpayer when a treaty partner so requests.</p> | <p>Bosnia and Herzegovina is recommended to ensure that notification procedures do not unduly prevent or delay effective exchange of information in practice and that competent authorities are able to exempt prior notification to a taxpayer when it is requested by a partner jurisdiction.</p> |
| <p><b>EOIR Rating: Largely Compliant</b></p>  |  |   |

| Determinations and ratings  | Factors underlying recommendations   | Recommendations   |
|---|--|---|
| Exchange of information mechanisms should provide for effective exchange of information (Element C.1)   |  |   |
| <b>The legal and regulatory framework is in place.</b>  |  |   |
| <b>EOIR Rating: Compliant</b>   |  |   |
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners (Element C.2)  |  |   |
| <b>The legal and regulatory framework is in place.</b>  |  |   |
| <b>EOIR Rating: Compliant</b>   |  |   |
| The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (Element C.3) |  |   |
| <b>The legal and regulatory framework is in place.</b>  |  |   |
| <b>EOIR Rating: Largely Compliant</b>   | It is unclear if the Tax Administration of the Brčko District would be able to protect the confidentiality of exchanged information in case it is requested by a prosecutor in a criminal non-tax case. This is based on the duty of public authorities to collaborate in criminal investigations and the fact that prosecutors may not concede that the provision of Bosnia and Herzegovina's exchange of information agreements override domestic rules on disclosure to public prosecutors. This has not yet happened in practice, but the tax authorities considered that they would not be able to deny access to such information. | Bosnia and Herzegovina is recommended to ensure that all exchanged information with the Brčko District is treated in accordance with the respective treaty under which it was received, and to monitor the application of the measures implemented. |

| Determinations and ratings   | Factors underlying recommendations   | Recommendations   |
|--|--|---|
|  | In the Republic of Srpska, the tax administration discloses to third party information holders the name of the foreign tax authority which has made the relevant EOI request, while this is not necessary for gathering the requested information. This is not in accordance with the standard.  | Bosnia and Herzegovina is recommended to not disclose to third parties information that is not needed to obtain the information requested.  |
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (Element C.4) |  |   |
| <b>The legal and regulatory framework is in place.</b>   | The definition of the professional secrecy or legal privilege of attorneys is broad (not limited to giving legal advice or related to legal proceedings), which has potential for rendering the exchange of information ineffective, especially when beneficial ownership information is requested. The materiality of the gap is nonetheless limited.   | Bosnia and Herzegovina is recommended to ensure that the application of legal professional privilege of attorneys does not limit or prevent it from responding to an EOI request. |
| <b>EOIR Rating: Compliant</b>  |  |   |
| The jurisdiction should request and provide information under its network of agreements in an effective manner (Element C.5) |  |   |
| <b>Legal and regulatory framework</b>  | This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.   |   |
| <b>EOIR Rating: Compliant</b>  | During the time the Ministry of Finance and Treasury of Bosnia and Herzegovina was the competent authority, it did not have the practice of providing status updates to partners. Since 2022, all competent authorities have committed to provide status updates when needed. However, at the time of the review, this was only reflected in the internal manual of Republic of Srpska and the other two competent authorities did not have one put in place yet. Nevertheless, the Federal Ministry of Finance maintains a tool that assists the EOI Unit to track the progress and monitor requests and utilise the OECD Model Manual on Exchange of Information for Tax Purposes to guide their operations. | Bosnia and Herzegovina is recommended to provide status updates to EOI partners within 90 days in all cases where it is not possible to provide a response within that timeframe. |



## Overview of Bosnia and Herzegovina

25. This overview provides some basic information about Bosnia and Herzegovina that serves as context for understanding the analysis in the main body of the report.

26. Bosnia and Herzegovina is situated in South-East Europe and its official languages are Bosnian, Serbian and Croatian. The currency is the Convertible Mark (currency code: BAM).<sup>1</sup>

27. The jurisdiction is organised into two “entities” – the Federation of Bosnia and Herzegovina (FBiH) and the Republic of Srpska (RS); and one district – the Brčko District (BD). These entities and the district have a high degree of autonomy in terms of legal systems and of political and administrative organisation. Respectively, their main cities are Sarajevo (the capital of Bosnia and Herzegovina), Banja Luka and Brčko city.

28. In 2022, the total population of Bosnia and Herzegovina was 3.4 million, of which approximately 64.2% lived in FBiH, 33.4% in RS and 2.4% in BD. The BD occupies about 1% of the total area of Bosnia and Herzegovina while FBiH and RS share the remaining area almost equally. The per capita Gross Domestic Product (GDP) in 2022 amounted to USD 7 141.<sup>2</sup> Bosnia and Herzegovina’s key exports include electrical energy, electric conductors, building structures and furniture, mostly to Germany, Austria, Italy and its neighbouring countries.

### Legal system

29. Bosnia and Herzegovina is a parliamentary democracy with a combination of different government systems due to the autonomy of the entities and of the district. Under the Constitution of Bosnia and Herzegovina, the supreme legislative authority is the bicameral parliament, which comprises two chambers: the House of Representatives and the House of Peoples. All

1. One Euro (EUR) is worth 1.96 BAM (as at May 2024).

2. [The World Bank data](#). The GDP Data are in constant 2015 USD.

legislation requires the approval of both chambers. The State has powers in specific determined area,<sup>3</sup> including foreign and international policies, whereas the entities and the BD have powers in all the residual areas. The FBiH and RS have their own Constitution while the competencies of the BD are defined by the Brčko District Statute.

30. The Head of the State is held by three-member joint Presidency elected by popular vote. The Chair of the Presidency rotates every six months. The Head of the State together with the Council of Ministers from the executive branch of the government. The Chairman of the Council of Ministers is appointed by the Presidency for a four-year term and confirmed by the House of Representatives.<sup>4</sup>

31. The judicial branch consists of the Constitutional Court and the State Court. The Constitution of Bosnia and Herzegovina is the highest legal act. Although not clearly stated in the Constitution of Bosnia and Herzegovina, international agreements supersede domestic law as the entities and BD are obliged to provide all the necessary assistance to the government of Bosnia and Herzegovina to enable it to comply with Bosnia and Herzegovina's international obligations (Article III.2.b). At the same time, the Constitution provides that the general principles of international law are an integral part of the legal order of Bosnia and Herzegovina and its entities (Article III.3.b). This is in line with provisions in the Constitution of the FBiH (Article VII.3). The RS and BD do not explicitly establish that the international agreements prevail over their legislation but it is the common interpretation within the jurisdictions.

### ***Specificities of the Federation of Bosnia and Herzegovina***

32. The FBiH is administratively divided into 10 cantons, each with its own constitution, government, parliamentary assembly and judiciary. These cantons are in turn subdivided into municipalities and cities. The Federation Parliament acts as the supreme legislative authority in the entity. It consists of the House of Peoples and the House of Representatives, with respectively 80 delegates and 98 members, who jointly appoint the President and the Vice-President of the FBiH. In turn, they form the executive authority together with the Government, which consists of the Prime Minister of FBiH and 16 Ministers.

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3. Foreign policy, foreign trade policy, customs policy, monetary policy, finances of the institutions and for the international obligations, immigration, refugee and asylum policy and regulation, international and inter-entity criminal law enforcement, establishment and operation of common international communications facilities, regulation of inter-entity transportation, air traffic control.
  4. Sigma OECD report: available online at [5kmk17zq70r8-en.pdf \(oecd-ilibrary.org\)](https://www.oecd-ilibrary.org/docserver/5kmk17zq70r8-en.pdf).

33. The judicial functions in the FBiH are carried out by the Constitutional and Supreme Courts, which are the highest judicial powers in the entity, and courts of first and second instance under the authority of the cantons. FBiH has a civil law system. The legal hierarchy of laws in the FBiH has the Constitution on top, followed by the “Vital national interests” laws<sup>5</sup> adopted by a majority of each caucus represented in the House of Peoples; the Laws adopted by simple majority of both Houses, the Government decisions in accordance with the Law on Government and orders, decrees, regulations, instructions, standing rules and other by-laws.

### ***Specificities of the Republic of Srpska***

34. The RS is administratively divided into 64 self-government units (municipalities and cities). The Government is headed by the Prime Minister of RS and consists of 16 Ministers. This entity also has its own Constitution, and its legal system is based on civil law and counts 20 basic courts and 6 district courts. The Supreme Court is the highest judicial instance, and the High Commercial Court is the court of second instance. The legal hierarchy of laws in the RS is similar to that of the FBiH.

### ***Specificities of the Brčko District***

35. The BD is a separate administrative unit with its own Statute. The district has a civil legal system where the Constitution of the Bosnia and Herzegovina and Statute of BD are the highest acts. Judicial authority is performed by the Basic Court and Appeal Court of BD.<sup>6</sup> The legal hierarchy of laws in BD is similar to that of the FBiH and RS.

## **Tax system**

36. In Bosnia and Herzegovina, direct taxes are regulated and enforced by the entities and the BD. Indirect taxes are regulated and enforced at the State level. The conclusion of agreements on double taxation is conducted in accordance with the Law on procedure for concluding and executing international agreements at the State level.

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5. Refers among other things, to the rights of constituent peoples to be adequately represented in legislative, executive and judicial bodies; to identify with one of the constituent peoples; to education, religion, language, promotion of culture, tradition and cultural heritage; to territorial organisation, a public information system, and other issues treated as of vital national interest if so claimed by two-thirds of one of the caucuses of the constituent peoples in the House of People.
6. Bosnia Herzegovina in Figures, 2020, Agency for Statistics of Bosnia and Herzegovina, [NUM\\_00\\_2020\\_TB\\_1\\_EN.pdf \(bhas.gov.ba\)](https://www.bhas.gov.ba/NUM_00_2020_TB_1_EN.pdf).

### ***Tax system in the Federation of Bosnia and Herzegovina***

37. Regarding the tax system in the FBiH, the Parliament is responsible to adopt laws on taxes or otherwise secure the necessary financing. The Federal Ministry of Finance (FMF) is the competent authority that carries out administrative, professional tasks in the field of direct taxation, tax systems and policies. The Tax Administration of Federation of Bosnia and Herzegovina (FTA) is an executive body operating within the FMF. The FTA is responsible for the implementation of legislation and collection of all types of taxes in the FBiH. Taxation of corporate income and personal income is regulated on the entity level by the Law on Corporate Income Tax and Law on Personal Income Tax, whereas property, inheritance and gift tax and real estate transfer tax are regulated on the cantonal level.

38. FBiH residents are subject to tax on their worldwide income. Tax residency is attained based on the place of residency and the centre of vital interests for natural persons and based on the place of registration, the main place of management and control of business operations for legal entities. Non-residents who carry on business through a permanent establishment in the FBiH are subject to personal income tax on income earned from such permanent establishment. The Law on Corporate Income Tax applies to the profit of legal entities having their place of business registered in the Registry of business entities in the FBiH, and to entities whose effective place of management and supervision of operations is headquartered on the territory of the FBiH.

### ***Tax system in the Republic of Srpska***

39. In the RS, taxation is regulated at the entity level by the Law on Corporate Income tax of RS, the Law on Personal Income tax of RS and the Law on Property tax of RS. The Law on Tax Procedure of RS governs the organisation and competences of the Tax Administration of the RS (RSTA), rights and obligations of taxpayers, the tax procedure, payment of tax liabilities, regular and enforced collection of tax liabilities, as well as other forms of termination of tax liabilities, tax audit, special audit, legal remedy procedure and supervision in the tax field in the RS. The Law on Tax System governs the establishment and maintenance of a Register of tax and non-tax charges paid in the RS. RSTA is a body within the Ministry of Finance of the Republic of Srpska (MFRS). The RSTA is responsible for the implementation of legislation and collection of all types of taxes in the RS.

40. RS residents are subject to tax on their worldwide income. Tax residency is attained based on the place of residency and the centre of vital interests for natural persons and based on the place of registration, the main place of management and control of business operations for legal entities. The Law of Corporate Income Tax applies to the profit of legal

entities having their place of business registered in the Registry of business entities in the RS, and to the entities whose effective place of management and supervision of operations is headquartered in the territory of the RS. Non-residents who carry on business through a permanent establishment in the RS are subject to corporate income tax on income earned from such permanent establishment.

### ***Tax system in the Brčko District***

41. In the BD, taxation is regulated by the Law on Corporate Income Tax of BD, the Law on Personal Income Tax of BD and the Law on Property tax of BD. Tax incentives, reliefs and tax base or rates in the territory of BD can be introduced, abolished and changed only by law issued by the Assembly of BD. BD considers as residents those legal persons that are registered within the local courts and local Tax Administration. BD residents are those who reside in the territory of the District continuously or intermittently for 183 or more days in any tax period or residence in the District and on the basis of performing non-independent activities outside the District area, it earns income from the District budget. Residents are subject to tax on their worldwide income. Income tax is imposed on natural persons and legal entities in the same way as done in the FBiH and RS. The Tax Administration of the BD (BDTA) is a body within the Finance Directorate of Brčko District (FDBD). The BDTA is responsible for the implementation of legislation and collection of all types of taxes in the BD.

## **Financial services sector**

42. Bosnia and Herzegovina is not an international or a regional financial centre and its financial sector focus is in providing services to the domestic market.

43. The regulatory and supervisory authorities for banking, insurance and capital markets, are established at entity, rather than at the State level and have their jurisdiction at entity level. Banks and insurance companies registered in each entity often have branches in the other. Though, the Central Bank of Bosnia and Herzegovina operates at the central level. Further, the Deposit Insurance Authority is a central level authority but with few enumerated powers.

### ***Financial sector in the Federation of Bosnia and Herzegovina***

44. The financial services sector in the FBiH is dominated by the banking sector. The banking sector is supervised by the Banking Agency of the FBiH (FBA) and consists of 13 commercial banks, 13 microcredit

organisations and 4 leasing companies. Together they held approximately 92% of the total assets of the financial services sector in 2022. The Insurance Supervision Agency of the FBiH supervises 12 insurance companies, which account for 5.5% of the total assets of the financial services sector. The remaining 2.5% of the assets are held by the capital markets which consists of 18 investment funds, supervised by the Securities Commission of the Federation of Bosnia and Herzegovina, and the Sarajevo Stock Exchange. In 2021, the percentage of the financial sector's activities in the GDP in FBiH was 3.8%.

### ***Financial sector in the Republic of Srpska***

45. The financial services sector in RS is supervised by the Banking Agency of the RS (BARS) and it consists of 8 banks and 14 microcredit organisations in RS. In 2022, this sector held 93% of the total assets of the financial services sector of RS. Further, 50 organisational units of banks, 112 microcredit organisations and 3 leasing providers headquartered in FBiH are in operation in RS. In addition, as of 31 December 2022, 14 insurance companies, 10 branches of insurance companies based in FBiH and 2 voluntary pension funds held 5% of the financial services sector in RS. The insurance sector is supervised by the Insurance Agency of RS. The securities market, supervised by the Securities Commission of the RS, consists of 15 investment funds in RS which held 2% of the financial services sector in RS in 2022. The total realised turnover on the capital market of RS was 5.5% of GDP in 2022.

### ***Financial sector in the Brčko District***

46. BD is competent for organising its own financial space. However, as the BD does not have its own Banking Agency, the entities' Banking Agencies are in charge of issuing licences and permits to banks and other financial organisations. There are no headquarters of banks located in BD, but only branches and sub-branches of entity registered banks.

## **Anti-money laundering framework**

47. The Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) framework is at State level and defined by Law No. 13/24 on Prevention and Combating of Money Laundering and Financing Terrorist Activities (AML Law). This law determines measures and responsibilities for detecting, preventing and investigating money laundering and financing of terrorist activities by the State Investigation and Protection Agency (Financial Intelligence Department), the AML-obliged persons, other governmental bodies and legal persons with public authorisations. The AML law is

complemented by regulations, recommendations, government decisions and orders, and is applied in the FBiH, RS and BD.

48. Financial organisations and intermediaries in the financial services sectors of the FBiH, RS and BD are, among others, liable for the application of the AML Law. Their supervision is carried out by the supervisory authorities of the financial sector of the corresponding entity.

49. The three supervising authorities in the financial sector for the AML/CFT area in FBiH are the FBA, FBiH Insurance Supervisory Agency and FBiH Securities Commission. The Banking Agency of the FBiH has signed the Memoranda of Understanding/Co-operation with the regulatory bodies of several states, including the regulators of the states where the founders of the banks operating in the FBiH are headquartered.

50. In the RS, besides the BARS, the Insurance Agency of RS, the Securities Commission of the RS, and the RSTA supervise the AML/CFT area.

51. The BD does not have specific authorities responsible for AML/CFT matters and no AML-obliged persons are registered or licensed in this district.

52. In terms of other AML-obliged persons (attorneys, notaries, accountants or advisors for instance), the supervisory authorities vary according to the entities. For the notaries, supervision is the responsibility of the FBiH Notary Chamber and the Ministry of Justice of the RS, depending on where the notary is established. For the attorneys, the Bar association of FBiH and the Bar association of the RS, depending on where the attorney is established. For the accountants, accounting firms, auditors, auditing firms and financial workers, supervision is carried out by the FBiH Administration for Inspection Affairs and the Administration for Inspection Affairs of the RS. In the FBiH, 4 033 accountants, 113 notaries and 1 345 lawyers were registered in 2022. In the RS, 6 683 accountants were registered in 2023 (the statistics for other relevant non-financial AML-obliged persons were not provided).

53. Bosnia and Herzegovina's compliance with the international AML/CFT standard was examined by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) in 2015. This evaluation concluded that Bosnia and Herzegovina was Partially compliant with Recommendation 5 (now Recommendation 10 on Customer due diligence), Recommendation 12 (now Recommendation 22 on Designated Non-Financial Business and Professions – Customer Due Diligence), Recommendation 33 (now Recommendation 24 on the transparency of legal entities). No rating was issued on Recommendation 34 (now Recommendation 25 on the transparency of legal arrangements) since the

concept of trusts was not known under the laws of Bosnia and Herzegovina. In the period afterwards, relevant laws in FBiH<sup>7</sup> and RS<sup>8</sup> were enacted to address the recommendations.

54. The 4<sup>th</sup> round of Mutual Evaluation of MONEYVAL in 2020 recognised the steps taken to address some recommendations.<sup>9</sup> Moreover, Bosnia and Herzegovina is currently under review for the 5<sup>th</sup> round, which MONEYVAL started in October 2022 and the on-site visit took place in February 2024. The report is scheduled for discussion and adoption at the 68<sup>th</sup> plenary meeting of MONEYVAL in December 2024.

## Recent developments

55. As mentioned above, Bosnia and Herzegovina updated its AML Law in 2024, which is analysed in this report.

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7. Banking Law of the FBiH, Law on factoring in FBiH, Insurance law in FBiH; as well as amendments to the Investment funds law and to the Securities Market law.
  8. Amendments to Law on Factoring, Law on Internal Payment Transactions and Securities market law.
  9. 4th Round Mutual Evaluation of Bosnia and Herzegovina – Exit Follow-Up Report Submitted to Moneyval: <https://rm.coe.int/moneyval-2020-22-bih-3rdfollowupprep-final/1680a00efa>.

## Part A: Availability of information

56. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of banking information.

### A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

57. Information relating to identity and legal ownership information of legal persons and arrangements is generally available due to obligations under the company laws and tax legislations of the FBiH, RS and BD. The beneficial ownership information is mainly provided by the AML Law of Bosnia and Herzegovina as well as by the Law on Business companies of the RS.

58. All relevant legal persons must register in the relevant Company Registers held at the level of the FBiH, the RS and the BD. For this registration, they must provide their articles of association which include information on their founding members. They also provide this information in the registration form and must update it within 30 days following a change. In addition, they must keep internally a register of shares / members. The legal ownership information must also be provided to the relevant tax administration at the time of the tax registration as well as in the annual tax return. These tax requirements include foreign companies which are tax resident in the FBiH and the RS as well as foreign partnerships carrying out business there, but similar requirements are not explicitly applicable in the BD.

59. The availability of legal ownership information is not closely monitored or supervised by the authorities in charge of the Company Registers, except that a registration of a legal person would not be valid if this information is not provided. In contrast, the tax administrations regularly conduct audits to check the tax registrations by the legal persons as well as tax

audits, during which accuracy of legal ownership information is checked. In addition, since the legal rights attached to the shares of the company are triggered by the registration of the name of the members in the register of shares / members, the legal ownership information contained in such register is assumed to be up to date. However, a non-negligible proportion of taxpayers are considered as “inactive” by the tax authorities due to non-compliance with filing obligations and the obligation to update legal ownership information by inactive legal persons cannot be ascertained in practice due to a limited supervision. Therefore, the availability of legal ownership information is required but not ensured in practice for such inactive legal persons.

60. With regard to beneficial ownership information, the AML Law recently enacted in 2024 requires AML-obliged persons to gather beneficial ownership information as part of the customer due diligence (CDD) measures. Nevertheless, this requirement contains deficiencies in respect of the standard. On the method of identification of the beneficial owners, the threshold of 25% for determining the control through ownership may not be relevant to identify the beneficial owners of partnerships or co-operatives, considering their specific organisation which does not necessarily rely on the amount of contribution of their members. Regarding the update of beneficial ownership information, although the AML-obliged persons must update this information when they are aware about a change and update their CDD regularly, there is no specified frequency in the legal and regulatory framework for these updates. Moreover, they are not obliged to identify the beneficial owners of their low-risk customers while applying simplified customer due diligence. In practice, although the implementation of the beneficial ownership requirements by the banks and the supervision of this implementation is reliable, the implementation of the CDD requirements by the non-financial AML-obliged persons, such as attorneys, notaries or accountants, and their supervision by the relevant authorities, are both uneven. Finally, the AML framework does not ensure a full coverage of the relevant legal persons and arrangements since it does not cover in all cases the legal persons in the BD or the foreign trusts administered by a non-professional trustee.

61. Finally, in the RS, the legal persons registered since 2019 must provide their beneficial ownership information at the time of the registration in the Company Register and update this information. Nevertheless, this obligation contains deficiencies in the definition of beneficial owner and there is no mechanism ensuring an update of the information on a periodic basis. It is also not clear whether the legal persons registered before 2019 have an obligation to provide their beneficial ownership information. In practice, this obligation to report beneficial ownership information at the time of the registration is not supervised.

62. The conclusions are as follows:

**Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement**

| Deficiencies identified/Underlying factor  | Recommendations  |
|--|--|
| <p><b>Foreign companies</b> and partnerships must operate in Bosnia and Herzegovina through a registered branch and such a branch must be registered where a foreign company is resident in Bosnia and Herzegovina for tax purposes or where a foreign partnership carries out business in this territory. Although the legal ownership information of these relevant foreign companies and partnerships is available in the Federation of Bosnia and Herzegovina and the Republic of Srpska, the same information would not be available in the Brčko District. In practice, no foreign company or partnership is operating in the Brčko District.</p>  | <p>Bosnia and Herzegovina is recommended to ensure the availability of legal ownership information of all foreign companies resident for tax purposes and of identity information of relevant foreign partnerships in the Brčko District, in line with the standard.</p> |
| <p>The information on <b>beneficial ownership</b> of relevant legal persons and arrangements is available under the anti-money laundering law. For the determination of the beneficial owners of the legal persons, the identification of the natural persons holding a control through means other than ownership is not simultaneous to the identification of natural persons holding 25% or more of ownership. While this approach is acceptable for companies, it may affect the identification of the beneficial owners of partnerships or co-operatives, the features of which would make the threshold of ownership not appropriate.</p>  | <p>Bosnia and Herzegovina is recommended to ensure that the identification of beneficial owners of partnerships and co-operatives is made in accordance with the standard.</p>   |
| <p>The <b>anti-money laundering</b> framework applicable in all parts of Bosnia and Herzegovina is the key source of beneficial ownership information. However, this framework contains some legal deficiencies.</p> <p>First, this framework does not ensure the availability of beneficial ownership information in all cases, since there is no obligation for legal persons in the Brčko District to use the service of an AML-obliged person in Bosnia and Herzegovina on an ongoing basis.</p> <p>Second, for low-risk customers, the beneficial ownership information may not be available as simplified customer due diligence does not require the collection of this information.</p> <p>Third, while beneficial ownership information needs to be updated in cases of change and certain circumstances, there is no specified frequency for updating beneficial ownership information under the legal framework, posing risks that the beneficial ownership information may not be up to date in all cases.</p> | <p>Bosnia and Herzegovina is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant legal persons and arrangements, in line with the standard.</p>  |

| Deficiencies identified/Underlying factor  | Recommendations  |
|--|--|
| <p>Lastly, the identification of the beneficial owners of a foreign trust is ensured only when the trustee is an AML-obliged person or is engaged in a relationship with an AML-obliged person on behalf of the foreign trust.</p>   |  |
| <p>In the Republic of Srpska, the legal persons registered since 2019 must provide their beneficial ownership information at the time of the registration in the Company Register and update this information. Nevertheless, the <b>definition of beneficial owner</b> is not fully in line with the standard since it does not contain the determination of the beneficial owner through a control by means other than ownership or the backstop position to identify the natural person holding the position of senior manager. It also does not consider the joint ownership to determine the 20% ownership threshold provided in the law. In addition, although this information must be updated in case of an event triggering a change, there is no obligation to report beneficial ownership information on a periodic basis or obligation for persons in the ownership chain to report such changes. It is also not clear whether the legal persons registered before 2019 have an obligation to provide their beneficial ownership information.</p> | <p>Bosnia and Herzegovina is recommended to ensure that the beneficial ownership information held by the authorities is accurate, adequate and up-to-date and available for all relevant legal persons, in line with the standard.</p> |

### Practical Implementation of the Standard: Partially Compliant

| Deficiencies identified/Underlying factor  | Recommendations  |
|--|--|
| <p>The Federation of Bosnia and Herzegovina, the Republic of Srpska and the Brčko District have a process to identify economically <b>inactive taxpayers</b> and there is a non-negligible proportion of inactive legal person in Bosnia and Herzegovina. Although the changes in legal ownership information should, in principle, be reported in the Company Registers (and Registers of Securities) and to the tax administrations as well as updated at the level of the legal persons, the effectiveness of this reporting or update by inactive companies, partnerships and co-operatives in practice cannot be ascertained.</p> | <p>Bosnia and Herzegovina is recommended to ensure that up-to-date legal ownership information on inactive companies, partnerships and co-operatives is always available, in line with the standard.</p> |

| Deficiencies identified/Underlying factor   | Recommendations   |
|---|---|
| The <b>implementation of the Customer Due Diligence requirements</b> , including the identification of the beneficial owners of the customers, by the non-financial AML-obliged persons relevant for EOIR and their <b>supervision</b> are both uneven.                                     | Bosnia and Herzegovina is recommended to ensure an appropriate supervision of all AML-obliged persons on the beneficial ownership requirements provided for by the AML Law.                       |
| When an AML-obliged person <b>ceases to exist</b> or to operate, all the records held by this person are in principle handed over to the person taking over the activity and maintained by the competent archive. Nevertheless, it is not ascertained that this is always done in practice. | Bosnia and Herzegovina is recommended to ensure that beneficial ownership information is retained in line with the standard including after the AML-obliged person ceases to exist or to operate. |
| Although beneficial ownership information should be available for the legal persons registered since 2019 in the Republic of Srpska, as this is a required information for their registration, there is <b>no specific supervision</b> on the accuracy and update of this information.      | Bosnia and Herzegovina is recommended to properly monitor and supervise the obligation of the relevant legal persons to provide their beneficial ownership information.                           |

### ***A.1.1. Availability of legal and beneficial ownership information for companies***

#### ***Legal Ownership and Identity Information***

63. The different types of companies that can be established in Bosnia and Herzegovina are provided for by the Company Law of the FBiH, Law on Business Companies of the RS and Law on Companies of the BD. The following companies can be established in Bosnia and Herzegovina:

- **Joint-stock company** (JSC, *akcionarskog društva*) is a company founded by one or more founders (natural person or legal entity) with a capital divided by shares. A JSC can be open or closed. In the FBiH, the minimum share capital of a JSC is BAM 50 000 (EUR 25 500). Open JSC must be either banks or insurance companies, or companies with a minimum capital of BAM 4 million (EUR 2.04 million) and at least 40 shareholders. Their shares are issued by means of public offering. In the RS, the minimum share capital is BAM 20 000 (EUR 10 200) for a closed JSC and BAM 50 000 (EUR 25 500) for an open JSC. In the BD, the minimum share capital of a JSC is

BAM 15 000 (EUR 7 650). As at 31 December 2022, 511 JSCs were registered in FBiH, 533 in the RS and 12 in the BD.

- **Limited liability company** (LLC, *društva sa ograničenom odgovornošću*) is a company founded by one or more members (natural person or legal entity) and with a minimum share capital of BAM 1 000 (EUR 510) divided into contributions (i.e. membership interest). Members of LLCs are liable for the membership interest contributed. As at 31 December 2022, 28 489 LLCs were registered in FBiH, 16 439 in the RS and 1 816 in the BD.

64. Foreign companies conducting business in Bosnia and Herzegovina operate through a branch/representative office, which must be registered with the relevant competent court. As at 31 December 2022, 43 foreign companies had a registered branch in FBiH, 798 in the RS and none in the BD. All the foreign companies resident for tax purposes operate through a branch.

65. The legal ownership and identity requirements for companies are found mainly in the Company Laws and Tax Laws. The AML Law provides for requirements to identify the beneficial owners of the companies, which information can contain part of the legal ownership information. These AML requirements are analysed under the section on Beneficial ownership information. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies.

#### Companies covered by legislation regulating legal ownership information<sup>10</sup>

| Type                             | Company Law | Tax Law | AML Law |
|----------------------------------|-------------|---------|---------|
| Limited liability company        | All         | All     | Some    |
| Joint stock company              | All         | All     | Some    |
| Foreign companies (tax resident) | Some        | Some    | Some    |

#### Companies Law requirements – Articles of associations

66. In the FBiH, the JSCs and LLCs must be formed by articles of associations which include the full name or company name and addresses of the founders as well as, for the JSCs, the number of shares subscribed by each of the founders and, for the LLCs, the number and amount of founder's membership interest (Articles 108 and 306, Company Law of the FBiH). The

10. The table shows each type of entity and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” means that the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. “Some” means that an entity will be covered by these requirements if certain conditions are met.

articles of association are drafted by a notary and signed by all founders, or their proxies with a certified written authorisation.

67. Nevertheless, the founders of an open JSC may not purchase all the shares of the JSC at the time of the signature of the articles of association, and they can agree on a number of remaining shares that can be purchased through public offering (after founding). In such a case, the JSC must publish a report on the total amount and number of subscribed and paid shares, which contains, among others, the full names and addresses of the subscribers of shares.

68. In the RS, the same information must be included in the articles of association of JSCs and LLCs (Articles 180 and 101, Law on Business Companies of the RS), except that for the JSCs, the number of shares subscribed by each of the founders is not required to be included.

69. In the BD, the same information as that required under the legal framework of the FBiH must be included in the articles of association of JSCs and LLCs (Article 5, Law on Companies of the BD).

### **Registration with Company Registers**

70. In Bosnia and Herzegovina, a company (either JSC or LLC) becomes a legal person upon its registration into the relevant Company Register.<sup>11</sup> According to the authorities of Bosnia and Herzegovina, the legal personality of a company is key to carry out business in practice, in particular to conclude any contract. The Company Registers in Bosnia and Herzegovina contain legal ownership and identity information in line with the standard for companies formed in Bosnia and Herzegovina.

71. In the FBiH, the registration of the company is made in accordance with the Law on the Registration of Business Entities of the FBiH. The registration is made with one of the ten relevant competent courts, based on the location of the seat of the company. The general information (“general ledger”) kept by the Company Register is publicly available and includes the full name and residence of all the founders/owners of the company, the percentage of participation of the founder/owner in the capital of the company, the identification number of the company and its tax identification number (see paragraph 85) and the full name and position of the authorised representative (Article 13, Law on Registration of Business entities of the FBiH). Each competent court permanently maintains documents for each individual registration as well as a ledger, and the municipal court of Sarajevo compiles these ledgers into one general ledger.

11. Article 4, Company Law of the FBiH, Article 8, Law on Business Companies of the RS, Article 4, Law on Companies of the Brčko District.

72. The registered companies must report all changes of data of importance for legal transactions of the companies within 30 days from the date of such change, including information on the new members<sup>12</sup> or changes in the amount of shares or interest (Article 7, Company Law of the FBiH and Articles 33 and 67, Law on Registration of Business entities of the FBiH).

73. In the RS, the legal persons are registered in the Company Register (the Unified Register of Accounts of Business Entities). The process for registering a company is carried out with one of the six district commercial courts, through an application to the Agency for Intermediary, Information and Financial Services (APIF) which provides for a one-stop-shop system. The application for registration can be submitted electronically. The APIF forwards the application and all the relevant attachments to the relevant district commercial court, without performing specific verification on the information submitted. When the application is received by the district commercial court, a check of formal and material conditions is carried out, including whether the necessary information is provided. The legal ownership and identity information is maintained by the APIF in electronic form and by the district commercial courts in both electronic and paper form. This information is publicly available.<sup>13</sup>

74. The information publicly available includes the information on the founders of the company and their percentage of participation in the capital of the company (Article 20, Law on Registration of Business Entities of the RS). There is an obligation for the companies registered in the RS to update the information entered into the Company Register within 30 days of the change, including the changes in the legal ownership information (Articles 46 and 72, Law on Registration of Business Entities of the RS).

75. In the BD, the process of registration is conducted in practice through a one-stop-shop system, which is nevertheless still in a testing phase. The registration process can be made in-person or electronically and is carried out by the Basic Court of the BD, which is also the authority

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12. In the FBiH, RS and BD, the Companies laws require the legal persons to report the “changes of the founders”. Although the “founders” of a legal person never change, all the authorities have explained that the term “founders” should not be understood as limited to the original members but as a general term referring to all types of owners of legal persons (shareholders, partners, etc.), including the persons who became members after the registration of the legal persons. In addition, they confirm that the term “changes of the founders” must be interpreted as “new members”. These interpretations are supported by other provisions of the Companies laws, which refer for instance to the increase or reduction in number of founders (Article 39(6), Law on Registration of Business entities of the FBiH, Article 52(6) of the Law on Registration of Business Entities of the RS and Article 39(6), Law on Registration of Business Entities of the BD).
13. <https://apif.net/>.

in charge of managing the one-stop shop. The Basic Court performs basic checks on the application, such as the proof of identity of founders that are natural persons, and the Court registry extract for founders that are legal persons and the certification of their articles of association by a notary. The legal ownership information which must be entered in the Company Register includes the name (full name or company name) of the founders/owners of the company and their percentage of participation in the capital of the company (Article 12, Law on Registration of Business Entities of the BD). The changes in legal ownership information must be reported to the Basic Court within 30 days (Articles 33 and 70, Law on Registration of Business Entities of the BD). This legal ownership information is publicly available.<sup>14</sup>

76. All of the legal ownership and identity information required to be held in the Company Registers of the FBiH, RS and BD must be kept on a permanent basis by the authorities in charge of maintaining these registers. This is reflected in the legal framework of the FBiH and the RS<sup>15</sup> and in the practice of the FBiH, RS and BD.

77. In practice, the different electronic court registers of companies are gathered in a national public searchable database.<sup>16</sup>

### **Companies Law requirements – Information held by the companies**

78. In the FBiH, the LLCs have the obligation to keep a register (register of members) containing the information on their legal owners, more specifically their name (full name or company name) and address, the type and amount of the contracted membership interest and the paid amount and special rights and responsibilities arising from the membership interest (Article 318, Company Law of the FBiH). This register must be established within eight days following the registration into the Company Register and kept during the life of the company. All changes must be reported promptly<sup>17</sup> in this register as well as in the Company Register (Article 319, Company Law of the FBiH). In the case of a transfer of membership interest in a LLC, this transfer has a legal effect for the company and third parties from the date of registration in the register of members, held by the company.

14. <https://skupstinabd.ba/index.php/ba/zakon.html?lang=ba&id=/Zakon%20o%20registraciji%20poslovnih%20subjekata>.

15. Article 61 (2) of the Regulation on keeping the register of business entities in the FBiH, Article 89 of the Law on Registration of Business Entities of the RS.

16. The link to the integrated electronic register is: [https://bizreg.pravosudje.ba/pls/apex/f?p=186:20:7610264188295064::NO::P20\\_SEKCIJA\\_TIP:KAKO\\_RADI](https://bizreg.pravosudje.ba/pls/apex/f?p=186:20:7610264188295064::NO::P20_SEKCIJA_TIP:KAKO_RADI).

17. The authorities of FBiH explained that the practical interpretation of “promptly” in the context of the Company Law is usually interpreted as within 8 days, which is a period which allows for the necessary administrative processes while maintaining the urgency required by the term “promptly.”

Nevertheless, the members and the LLC have an interest (in addition to the obligation) to update the Company Register to avoid potential litigations with third parties. The JSCs do not have a similar explicit obligation to keep a register of shareholders. They have however the obligation to provide the relevant information to the Registry of securities (see paragraph 82).

79. Similarly, in the RS, the LLCs must keep at all times a “book of shares” at their main office, which includes the name (full name or company name), place of residence, tax reference number and amount of contributions of all the members (Article 169, Law on Business Companies of the RS). All changes made in the book of shares<sup>18</sup> must be reported by the LLC to the Company Register. The version of the book of shares that is no longer up to date (after a change) must be kept for at least five years. For the LLC, a company member is the person registered as such in the LLC’s book of shares, whereas in relation to third parties a company member is a person registered as such in the Company Register (Article 115; Law on Business Companies of the RS). Therefore, the member has an interest that both the book of shares and the Company Register be up to date to enforce the rights attached to the membership. The directors of the LLC are liable for the validity of the data entered into the book of shares (Article 114; Law on Business Companies of the RS) and the sanction described in paragraph 106 can be applied for any failure in that respect. Regarding the JSCs, they must register the issued shares and identity of each shareholder in a book of shareholders: name – full name or company name – address, tax identification number and bank account number (Article 201, Law on Business Companies of the RS).

80. In the BD, the up-to-date legal ownership information of LLC is maintained in a register of members maintained at the registered office of the company and containing the identity of the members and the amount of their contributions (Article 434, Law on Companies of the BD). The rights attached to the membership interest are enforced based on the information contained in the register of members but, as in the FBiH, there is an interest to update the Company Register to provide legal certainty to these rights. The legal framework does not prescribe a specific retention period for maintaining the register of members, but the BD authorities expect that all versions of this register be kept at all times by the LLC, as a consequence of the retention requirement of the Law on Accounting and Auditing of the BD (see paragraph 217). The JSCs do not have a similar explicit obligation to keep a register of shareholders. They have however the obligation to provide the relevant information to the Securities Commission (see paragraph 84)

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18. Pursuant to Article 123 of the Law on Business Companies, a transferor and a transferee of an interest must notify the company immediately of the transfer, change of membership and the time of the transfer, for entry into the company’s book of shares.

## **Companies Law requirements – Information held by Registers of Securities**

81. In respect of JSCs, each entity and the BD require the submission of shareholder information to the respective securities register. This obligation is in addition to the obligation to report to the Company Registers the legal ownership information in relation to the founders and new members replacing the founders, as described in the relevant section above (paragraphs 70 to 77).

82. In the FBiH, the JSCs must register into the Register of Issuers of securities (article 122, Company Law of the FBiH), maintained by the FBiH Securities Commission, and provide to the Registry of Securities the data on its shareholders within 30 days of the registration in the Register of Issuers (Article 188, Company Law of the FBiH). The Registry of Securities registers and keeps permanently securities issued by the JSCs in electronic form, as well as up-to-date data on securities, including their rightful owners (i.e. legal owners), and all transactions relating to transfer of ownership or change of status of securities (Articles 184 and 190, Law on Securities Market). The rights of shareholders are exercised based on the information maintained by the Registry of Securities.

83. In the RS, the open JSCs must be registered with the Central Register of Securities, which permanently maintains their books of shareholders electronically (Article 201, Law on Business Companies of the RS and Articles 188 and 231(2), Law on Securities Market of the RS). The rights attached to the shares, such as the right to participate and to vote at the shareholders' meeting, are exercised based on the information held by the Central Register of Securities. They have effect against third parties from the date of entry into the book of shareholders held by the Central Register of Securities (Article 211, Law on Securities Market). Therefore, the book of shareholders should be up to date to allow the shareholders to exercise their rights.

84. Similarly, in the BD, the up-to-date legal ownership information of JSCs is kept permanently by the Securities Commission of the BD (Article 36(5), Law on Securities Market of the BD) and is the information based on which the shareholders exercise their rights.

## **Tax law requirements**

85. In Bosnia and Herzegovina, companies must register with the tax administrations of the FBiH, the RS and the BD. Through this registration process, the tax administrations obtain legal ownership information, which they keep permanently.

86. In the FBiH, during the process of registration with the competent court, the court requires the FTA to allocate a tax identification number (TIN) to the company (Article 74, Law on Registration of Business entities of the FBiH). This request from the Competent Court is sent to the registration and education division of the relevant cantonal tax office, through an XML file. Without the allocation of a TIN, the court cannot register the company in the Company Register. Once a TIN is allocated, the court can decide to incorporate the company. Then, the company must register with the FTA within five working days after the court registration (Article 17(1), Law on Tax Administration of the FBiH). To this end, the companies must fill in an application in electronic and material form. This application includes a form in which legal ownership information is reported, as well as supporting documents such as the registration decision of the court. After registration with the FTA, the company is entered into the Central Register of Taxpayers with an “active” status and the FTA delivers a taxpayer registration certificate to the company, which is an essential document, including to open a bank account in Bosnia and Herzegovina. If there are any subsequent changes to legal ownership information, companies must submit the details of such changes to the FTA within five days of the change (Article 17(7), Law on Tax Administration of the FBiH). In their annual tax returns, companies must report their legal ownership information to the tax administration (Article 20, Law on Tax Administration of the FBiH). In case of change in the legal ownership information during the tax year, the tax return form is designed to clearly identify the former and new member of the company. In addition and independently to this tax obligation, all updates reported by the legal persons to the Company Register are also automatically forwarded to the FTA.

87. In the RS, the information on the registration of companies is automatically provided through web service to the RSTA for it to allocate a TIN to complete the registration process with the district commercial courts (Article 12, Law on Tax Procedure of the RS). Further, any change in legal ownership is similarly communicated by the APIF to the tax administration.

88. In the BD, the registration process at the level of the BDTA is automatic through the one-stop shop and the TIN is automatically generated to the registered legal persons. The information on legal ownership and updates to it in case of changes are also communicated from the Basic Court to the tax administration.

### **Foreign companies**

89. The foreign companies must operate in Bosnia and Herzegovina through a registered branch and the authorities of the FBiH, the RS and the BD expect that a foreign company being resident for tax purposes in their respective territory register such a branch, either with the Company Register or with the tax administration.

90. In the FBiH, foreign companies which operate in the territory of FBiH must register a branch either with the tax administration if they intend to have activities in the FBiH for less than 12 months, or with the relevant court if their activities last more than 12 months. If a branch of a foreign company is registered with the Company Register, it is necessarily registered with the tax administration, since a TIN must be issued to this branch (Article 17(5), Law on Tax Administration of the FBiH). Whether the registration is made with the relevant court or with the tax administration, the foreign legal persons must provide their legal ownership information.<sup>19</sup> In addition, if they are tax resident in the FBiH, they must include their up-to-date legal ownership information in their annual tax return.

91. In the RS, the process of registration of the branches of foreign companies operating in the RS is similar as for domestic companies. They are registered by submitting an application to the APIF and the tax administration automatically allocates them a TIN for tax liabilities. The application to APIF must contain the founding act of the foreign company as well as the necessary information and documentation that serve to prove and verify the legal ownership of the foreign company (Articles 32 and 44, Law on Registration of Business Entities of the RS). Similar to domestic companies, foreign companies must report the changes in their legal ownership information to the APIF.

92. In the BD, the process of registration of a branch of a foreign company operating in the BD applies similarly to the process of registration of domestic companies, although in practice no foreign entity is operating in the BD. Nevertheless, there is no explicit legal obligation for a foreign company to provide its legal ownership information when it registers with the Basic Court and/or the tax administration, in addition to the information that may be available in the founding act of the foreign company. Thus, where a foreign company is resident in the BD for tax purposes, up-to-date legal ownership information would not be available with the authorities. For such foreign companies, there is no obligation to maintain up-to-date legal ownership information in Bosnia and Herzegovina.

93. Therefore, **Bosnia and Herzegovina is recommended to ensure the availability of legal ownership information of all foreign companies resident in the Brčko District for tax purposes, in line with the standard.**

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19. Article 15a of the Law on Registration of Business Entities of the FBiH and Law on Tax Administration of the FBiH.

### Companies that cease to exist

94. In the FBiH, the RS and the BD, the company ends on the date when its termination is registered in the Company Register. The cases where the company is terminated include:<sup>20</sup>

- expiration of the period for which it was established
- mergers, acquisitions and divisions
- ending the bankruptcy proceedings or rejecting the request to open bankruptcy proceedings due to lack of property
- termination based on a court decision
- decision of the assembly of the company.

95. The possibility to terminate a company by court decision is usually based on a request by an authority or any person having a legal interest, including the tax administration.<sup>21</sup> The circumstances that can lead to a request for terminating the company include the situation where the company has not been making revenues for more than two years or where the managing body of the company no longer meets or exercises its authority. In practice, the tax administrations have never requested the termination of a company on these grounds.

96. The termination of the company triggers the liquidation proceedings, except if the termination results from mergers, acquisitions and divisions. The termination status of a company is reported in the relevant Company Registers of the entities or the BD. The liquidation procedure requires the appointment of a liquidator.<sup>22</sup>

97. The legal persons may be relocated in another part (the two entities or the BD) of Bosnia and Herzegovina without being terminated. This is reflected in an official note in the Company Registers in which the legal person was initially registered (except in the Company Register of the BD<sup>23</sup>), mentioning that this person has changed its location in Bosnia and Herzegovina. However, if a company wants to relocate abroad, it must first be terminated in Bosnia and Herzegovina before going through an incorporation process in a foreign country.

20. Articles 72 and 73, Company law of the FBiH, Article 176 of the Law on Companies of RS, Article 88 of the Law on Companies of the BD.

21. Article 74, Company Law of the FBiH; Article 74, Law on the Registration of Business Entities of the RS; Article 88, Law on Companies of the BD.

22. Article 5 and 6 of the Law on Liquidation procedure of FBiH, Article 58 of the Law on Registration of Business Entities of the RS; Article 102, Law on Companies of the BD.

23. In the Company Register of the BD, the change of the address of the legal person informs of its relocation despite the absence of an official note.

98. In the FBiH, when a company ceases to exist, the principle is that the records held by this company are handed over to the legal entity which takes over its business. In practice, the tax authorities explained that the legal entity taking over the business is well identified by the authorities from the step of the liquidation. In all cases, including in the absence of a legal entity taking over, records of the company are handed over to the liquidator or bankruptcy administrator when the liquidation or bankruptcy proceedings are opened (Article 48(4), Law on Accounting and Auditing in the FBiH). Once those proceedings are completed and the company ceases to exist after being recorded as terminated in the Company's Register, the documents must be handed over, through the liquidator, to the Archive of the FBiH within 60 days from the date of cessation.<sup>24</sup> The checks performed by the competent archives authority when receiving the archival material from a terminated legal person focus on whether the archival material is in good order and listed. The records of the terminated companies are kept as long as the retention period initially applicable to the relevant records is not over.

99. In the RS, the records and archival material are also handed over to another legal person which is taking over the functions of the terminated entity. In such cases, the archival material is also submitted to the Archives of the RS (through the liquidator which keeps the records for the time of the liquidation proceedings), which checks whether the list of records matches with the actual records provided. In principle, the records are kept by the Archive for the remaining time of the retention period applicable to the relevant records. Nevertheless, the Archive of the RS has no obligation to take over private archival material. In addition, the obligation of the Archive to take over the records from the terminated legal persons is limited by the Archive's storage space and, for this reason, the Archive has not taken over the material of terminated legal persons for some time. In this case, it is not clear whether a person would be responsible for maintaining the records of the legal person that ceases to exist.

100. In the BD, the records and documents of a terminated company must also be handed over to the person taking over the activity. The liquidator must submit all the documentation held by the terminated company to the public Archive of the BD, with a list of the records submitted. The Archive of the BD keeps the records as long as the retention period initially applicable to the relevant records is not over.

101. In all cases, the last submitted legal ownership information of terminated companies is available permanently with the Company Registers (due

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24. Article 206 of the Bankruptcy Law in the FBiH and Article 37, Regulation on the Organisation and Manner of Performing Archival Work in the Legal Entities in the Federation of Bosnia and Herzegovina.

to the update obligations described in paragraphs 72, 74 and 75), the tax administrations (due to the updates made as described in paragraphs 85, 87 and 88) and/or the Security Commission (due to the obligations described in paragraphs 82 to 84), which ensures the availability of this information in line with the standard.

### **Nominees**

102. Bosnia and Herzegovina does not recognise the concept of nominee shareholders in its legal frameworks, but this concept is also not explicitly prohibited.<sup>25</sup> Although a situation of a person holding shares on behalf of another person may occur in practice, the person registered in the book of membership/book of shares would always be considered as the legal owner and would be solely entitled to dispose of their holding in the company. A person acting on behalf of a shareholder/member of a company must have an appropriate mandate. All the authorities, as well as representatives of banks, attorneys and notaries, interviewed during the onsite visit indicated not having encountered cases in practice of shares not directly held by the real legal owners.

### **Enforcement measures and limited oversight by the authorities maintaining the Company Registers**

103. The respective company laws of the entities and the BD provide for sanctions in case of failure to implement properly the company law requirements.

104. In the FBiH and the BD, the responsible person in a relevant court is punished by a fine of BAM 200 to BAM 1 000 (EUR 102 to EUR 510) if he/she fails to administer the general ledger of the Company Register in an orderly and up-to-date manner.<sup>26</sup> In practice, this sanction has never been applied.

105. In the FBiH, the failure to keep the book of shares/members can be subject to a fine with an amount between BAM 500 to BAM 200 000 (EUR 255 to EUR 102 000 – Article 367, Company Law of the FBiH).<sup>27</sup>

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25. An exception exists in the legal framework of the RS, where custodian banks are considered as nominee if they keep their clients' securities on custodial account, as per the legal authorisation (Law on Securities Market, Article 128). Nevertheless, in such a case, the banks are not considered as the owners of the securities.
26. Article 80, Law on Registration of Business Entities of the FBiH; Article 83, Law on Registration of Business Entities of the BD.
27. In accordance with the Law on Misdemeanours of the FBiH, if the rules provide for a range of fines, the amount of the fine is determined by the court, considering the

An open JSC issuing securities that does not submit to the Security Commission comprehensive ownership data and the changes in this data can be punished by a fine of BAM 15 000 to BAM 200 000 (EUR 7 630 to EUR 102 000).

106. In the RS, a JSC which does not register with the Central Registry of Securities commits an offence for which a fine of BAM 10 000 to BAM 50 000 (EUR 5 100 to EUR 25 500) is imposed (Article 296, Law on Securities Market of the RS). The LLCs which fail to maintain their book of shares are subject to a fine of BAM 5 000 to BAM 15 000 (EUR 2 550 to EUR 7 630 – Article 441(1)(z) of the Law on Business Companies of the RS) and their responsible persons are subject to a fine of BAM 200 to BAM 1 500 (EUR 102 to EUR 763 – Article 441(4) of the Law on Business Companies of the RS).

107. In the BD, the failure for the LLCs to maintain their register of members is subject to a fine ranging from BAM 500 to BAM 5 000 (EUR 255 to EUR 2 550) and their responsible persons are subject to a fine of BAM 200 to BAM 2 000 (EUR 102 to EUR 1 020 – Article 434 of the Law on Companies). An open JSC issuing securities that does not submit to the Security Commission comprehensive ownership data and the changes in this data can be punished by a fine of BAM 10 000 to BAM 50 000 (EUR 5 100 to EUR 25 500).

108. In general, the legal requirements for companies to maintain, submit to the relevant authorities and update the legal ownership information are not closely monitored or supervised by the authorities in charge of maintaining the Company Registers, except that this information must be provided for the registration of a legal person to be valid. This explains the lack of statistics on the compliance or non-compliance with these requirements related to legal ownership information. In addition, there is no particular annual reporting obligation with the Company Registers since the financial statements must be reported to other authorities, except in the RS.

109. Nevertheless, all the authorities met during the onsite visit indicated that the information available in the register of members/book of shares and in the Company Registers is reliable. In particular, the update of the information is required at the level of the company to trigger the rights of the new member/shareholder, but also at the level of the Company Registers to inform the third parties of the changes. This information of the third parties aims at avoiding any dispute over the liability of the members of the company. The Ministries of Justice of the entities and the BD also emphasised that the founding acts of the companies, including the articles of association, need to be certified by a notary. The role of the notaries includes the

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circumstances of the offence.

verification of the identity of the founders and representatives of the legal persons.

110. Supervision is more active by the different Securities Commissions, in particular to ensure that the stakeholders on the Securities Markets are sound and reliable. The supervisory activities include regular inspections of the book of shares maintained for JSCs, if needed.<sup>28</sup>

### Tax administrations supervision

111. In the FBiH, the FTA monitors compliance with the tax registration. The registration divisions in the cantonal tax offices can carry out checks in relation to taxpayers' registration applications, the audit divisions can perform control in the process of performing an audit, and the local tax offices (subdivisions of the cantonal tax offices) in the course of their ordinary operations can spot information changes and control whether, for example, the information in the tax returns corresponds to that entered in the Central Register of taxpayers.

112. A person violating any procedure for registration with the FTA or who does not register in a timely manner, can be subject to a fine between BAM 1 000 to BAM 10 000 (EUR 510 to EUR 5 100) (Article 81, Law on Tax administration of FBiH). For this offence, the responsible person in the legal person can also be subject to a fine of BAM 500 to BAM 3 000 (EUR 255 to EUR 1 530). The table below gives the number of audits in which the FTA applied this sanction. Although the type of issue encountered cannot be specified in detail, the statistics show that the proportion of audits where issues with the registration of taxpayers were found is low.

| Year | Total number of audits | Number of audits in which sanctions of Article 81 were imposed | Total amount of Article 81 fines (BAM) |
|------|------------------------|--|--|
| 2020 | 5 659                  | 42   | 35 500                                 |
| 2021 | 6 131                  | 41   | 35 000                                 |
| 2022 | 6 742                  | 31   | 18 500                                 |

113. The FTA can carry out ad hoc audits which are quick control – usually one day – for a specific aspect, e.g. registration or unlicensed business (for business requiring a licence). Although the number of targeted ad hoc

28. No statistics are available on this supervisory activity of the Security Commissions, except in the RS where the Security Commission reported having carried out, in 2022, 19 regular inspections and one extraordinary inspection (in addition to 17 reports on continuous monitoring).

audits on registrations is not available, the FTA reported the number of ad-hoc audits in which doing business without a licence was detected: 315 in 2020, 298 in 2021 and 264 in 2022. The temporary suspension of the business activities, by sealing the business premises, is the main consequence of an unlicensed activity (Article 66, Law on Tax Administration of the FBiH).

114. The FTA also clarified that consultation of the Company Register by the tax auditors is the first and mandatory step of the tax audit (see Element A.2). If the tax auditor finds a discrepancy between the information held by the tax administration or the entity itself and the information in the Company Register, he/she instructs the company to change the information in the Company Register. This situation is nevertheless rare considering that, according to the authorities, the companies have an interest to update their legal ownership information in the Company Register, to avoid litigation on the liability of their members.

115. In the RS, the tax administration is responsible for the procedure of registration and identification of taxpayers. The tax audit activity (see Element A.2) allows the tax administration to detect and control all potential changes in legal ownership that would not have been reported by the legal person. In practice, the tax authorities reported that the tax auditors have not found any failure of a company to report changes in its legal ownership to the Company Register of the RS. They consider that this is due to the need to declare this change for it to produce legal effect in respect of third parties and avoid litigation on the members' liability.

116. In the BD, the tax administration is monitoring compliance with the tax registration requirements, including by performing office and field tax audits (see Element A.2). During each audit, the tax administration clarifies all circumstances and facts relevant to the scope of the audit. If during the audit, the tax auditor discovers that the taxpayer is operating illegally, then this is a basis for temporary suspension of the taxpayer's business activities by sealing the business premises (based on the Law on Tax Administration of the BD).

### **Inactive companies**

117. Companies in Bosnia and Herzegovina that are economically inactive are identified by the tax administrations of the FBiH, the RS and the BD. The authorities in charge of maintaining the Company Registers do not exercise a specific monitoring of the inactive companies.<sup>29</sup>

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29. Although the Company Registers identify a population of "inactive companies", this consists of the companies registered but terminated.

118. The tax administrations of the FBiH, RS and BD keep records of taxpayers that do not perform business activities but have not been removed from the Company Register. This process of identification of inactive (or passive) companies has no legal basis and is an internal process of the tax administration. To determine this “inactive” status of the companies, the tax administrations apply a set of criteria, which include for instance the absence of activity in the bank accounts of the entity (income/expenditure) for two years and the lack of filing tax returns or financial reports for two years. Once one of these criteria is met, a tax auditor carries out an onsite visit to verify the presence of the taxpayer at the address known by the tax administration. If the taxpayer is not found at the known address, the company is marked as inactive (“passive”). Therefore, although the criteria set are a mix of absence of economic activities and non-compliance with the filing requirements, the objective of the tax administration is primarily to identify the companies that no longer have any activity.

119. The tax administrations detect the inactive taxpayers on a continuous basis and through different means: based on official records and tax audits, through exchange of information with other authorities, by contacting the persons who leased the business premises to the taxpayers, etc. The taxpayers marked as inactive remain under the continuous monitoring of the tax administrations and can be back to an “active” status in case of change of their situation in respect of the relevant criteria. On the other hand, an inactive taxpayer can also retain the inactive status indefinitely, without being de-registered from the tax databases.

120. In the FBiH and the RS, the inactive/passive status is only for internal (monitoring) purposes of the tax administrations and it does not trigger any legal consequence. Therefore, it does not suspend their tax obligations, in particular the obligation to file a tax return. In the BD, the “inactive” status of a taxpayer is not public but has stronger impact: once marked as “inactive”, the TIN of the taxpayer is “confiscated” and, as a consequence, the bank account of the taxpayer will be blocked. Although this confiscation of the TIN encourages the legal person having an economic activity to contact the tax administration for reactivating its TIN and reusing its bank account, it cannot fully prevent the legal person to carry out business or to hold assets, in particular abroad.

121. In the FBiH, as at 31 December 2022, 127 JSCs and 11 664 LLCs were identified as inactive, representing around respectively 25% and 41% of the total number of JSCs and LLCs. Nevertheless, the FTA clarified that around half of them are actually dissolved but not removed from the tax register since they still have tax liabilities. In the RS, 56 JSCs and 3 165 LLCs were identified as inactive at the same date, i.e. around 10.5% and 19% of the total number of JSCs and LLCs. In the BD, 1 439 taxpayers were inactive, corresponding to 79% of taxpayers (the statistics by type of taxpayers are not available).

122. Although a public authority or any person with a legal interest can request the termination of a company through a court decision, this option has not been used in practice (see paragraph 95). Nevertheless, in the BD, the tax administration also has the possibility to start a bankruptcy procedure if the inactive taxpayer still has tax debts and this procedure has already been used in practice.

123. The changes in legal ownership information should, in principle, be reported in the Company Registers and Registers of Securities (for JSCs) and to the tax administrations by the inactive companies. Although the authorities considered that the companies have interest to do so (see paragraph 109), as well as the shareholders of the JSCs to exercise their rights (see paragraphs 82 to 84), a change in legal ownership of an LLC has effect once it is entered into the register maintained by the company itself (see paragraphs 78 to 80). Considering that one of the criteria to identify an inactive company is its unknown address, this would limit the supervision activities of the tax administrations (described in paragraphs 111 to 116) and their ability to find the available and up-to-date legal ownership information on those inactive companies. Therefore, the effectiveness of this obligation to update legal ownership information by inactive companies cannot be ascertained in practice.

124. In conclusion, the FBiH, the RS and the BD have a process to identify the inactive companies and there is a non-negligible proportion of inactive companies in Bosnia and Herzegovina. Therefore, **Bosnia and Herzegovina is recommended to ensure that up-to-date legal ownership information on inactive companies is always available, in line with the standard.**

### **Availability of legal ownership information in EOIR practice**

125. Bosnia and Herzegovina received three EOI requests for legal ownership information. It answered these requests by using the appropriate source of information (Company Registers, tax administration or entities themselves) depending on the case. The peers were satisfied with the answers received.

### *Beneficial ownership information*

126. The standard requires that beneficial ownership information be available on companies. In Bosnia and Herzegovina, this requirement is implemented through the AML Law, which applies in all parts of Bosnia and Herzegovina. The Law on Prevention and Combating of Money Laundering and Financing Terrorist Activities<sup>30</sup> (the AML Law) adopted on 16 February 2024

30. Official Gazette of Bosnia and Herzegovina, 13/24.

at the State level is the main legal instrument providing for the availability of beneficial ownership information. This law repealed the previous 2016 AML Law which was not fully in line with the standard in respect of beneficial ownership requirements<sup>31</sup> and was applicable until the date of adoption of the new AML Law. In the RS, the Law on Registration of the Business entities also contains an obligation for the legal persons to provide their beneficial ownership information. Each of these legal regimes is analysed below.

### Companies covered by legislation regulating beneficial ownership information

| Type                             | Company Law | Tax Law | AML Law           |
|----------------------------------|-------------|---------|-------------------|
| Limited liability company        | Some        | None    | Some              |
| Joint stock company              | Some        | None    | Some              |
| Foreign companies (tax resident) | Some        | None    | All <sup>32</sup> |

### Anti-Money laundering Law – Definition and method of determination of beneficial owners

127. The AML Law defines the concept of beneficial owner of a legal person and provides for a methodology of identification (Article 4(p)):

p) “Beneficial owner of a customer” shall be understood to mean any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf the transaction is being conducted and includes at least:

1) In the case of a legal person:

1. Natural person(s) who ultimately owns or controls the legal person through direct or indirect ownership of a

31. For the determination of the beneficial owners, the previous AML Law set a threshold of 20% of ownership to identify a beneficial owner, but the step of the control through other means was restricted to the situations of provision of funds. There was no backstop step in the case where no beneficial owner was identified. In addition, no specific method was provided for to determine the beneficial owners of a legal arrangement. There was a specific definition of beneficial owner of foreign legal persons, but this definition was not in line with the standard. The AML Law and related regulatory guidance did not contain any specified frequency of update of the CDD measures and the identification of the beneficial owner was not required under the simplified CDD for low-risk customers.
32. Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR. (Terms of Reference A.1.1 Footnote 9).

sufficient percentage of shares or voting rights or equity interests in that entity, including through bearer shares or by exercising control in some other manner, with the exception of companies listed on regulated markets which are subject to disclosure requirements in accordance with BiH legislation which ensures adequate transparency of ownership information;

2. A natural person who has indirectly provided or is providing funds to a company and on that basis has the right to significantly influence the decision-making by the management bodies of the company when taking financial and operational decisions;

2) If no natural person from indent 1) of this point p) has been identified in that role, or if there is a suspicion that the identified natural person(s) is not the beneficial owner(s), and when all possible means have been exhausted to determine the beneficial owner, the natural person(s) in the most senior management position shall be considered the beneficial owner;

3) The indicator of direct ownership from indent 1) of this point p) that a natural person holds in a legal person is ownership of 25% or more business shares, voting rights or other rights on the basis of which that person exercises the right to manage the legal person, or ownership of 25% or more stocks;

4) The indicator of indirect ownership from indent 1) of this point p) is ownership or control by the same natural person(s) over one or more legal persons or trusts that individually or together have 25% or more business shares, voting or other rights based on which they exercise the management rights, or 25% or more stocks of that legal person;

128. This definition of the beneficial owner provides for the identification of all persons having either ownership control or control through other means<sup>33</sup> (Article 4(p)(1)1.). While there is a general exception to identify the beneficial owners of companies listed on regulated markets if they exercise their control through ownership, the natural person having the right to significantly influence the decision-making of a company by the provision of funds must be identified, including in the case of a listed company. The definition

33. According to Bosnian authorities, the “control through other means” is tantamount to the general terms “control in some other manner”. The more specific situation of the “right to significantly influence the decision-making” is only part of the control through other means.

also provides for a “default position” in the case where no beneficial owner meets the definition under the control through ownership or other means (Article 4(p)(2)).

129. The methodology sets a threshold of 25% of shares, voting rights or other rights to qualify the control through direct or indirect ownership for a legal person. Although the definition of beneficial owner refers to ownership “including through bearer shares”, the authorities of Bosnia and Herzegovina confirmed that the domestic legal entities cannot issue such shares (see section A.1.2) and that this term was included in the AML Law for harmonisation with international regulations and for the identification of the beneficial owner of foreign legal persons. Regarding the joint ownership control, the methodology explicitly covers the situations of joint control only for indirect ownership (Article 4, p, 4), while the standard prescribes the identification of natural persons having a joint control through direct or indirect ownership. In practice, the representatives of the AML-obliged persons appeared familiar with the concept of joint control. Bosnia and Herzegovina should ensure that the natural persons holding jointly 25% or more direct ownership rights should be identified as beneficial owners (see Annex 1).

130. The control through means other than ownership is covered by the “control in some other manner”. In addition, the AML Law requires in all cases, including for companies listed on regulated market, the identification of the beneficial owners having a right to significantly influence the decision-making based on the provision of funds to the company. Supervisory authorities of the AML-obliged persons have issued guidance, following the adoption of the new AML Law, on the meaning of the “control in some other manner”. Notably, the FBA and the BARS have both published new guidelines<sup>34</sup> explaining that this control can include, without being limited to, control through close family relationships, or historical or contractual associations; use, enjoyment or benefit from assets owned by the client; or responsibility for strategic decisions with significant influence on business practices or management of a legal entity in general. These guidelines are in line with the standard and ensure that the control through other means is not interpreted only as the right to significantly influence the decision making based on the provision of funds to the company, as it was the case under the previous AML Law. It should also be noted that in practice, the banks already had a broad interpretation of the “control through other means” by applying the policies of their group.

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34. Guidelines of the FBA for the identification of a beneficial owner, published in February 2024 and Guideline of the BARS for the identification of a beneficial owner, published in March 2024.

131. In addition to the definition of beneficial owner, the AML Law provides for a methodology to identify and take reasonable measures to verify the identity of the beneficial owners of the customers (Article 18(4)):

(4) The obliged entity shall identify and take reasonable measures to verify the identity of beneficial owners of customers that are legal persons through the following information:

a) the identity of the natural person(s) who are the beneficial owners;

b) the identity of the natural person(s) who exercise control over the legal person or arrangement in another way if there is doubt that the person(s) referred to in point a) of this paragraph are the beneficial owners, or when no natural person exercises control through equity interest,

c) the identity of the relevant natural person who holds the position of the most senior managing official if no natural person is identified in accordance with points (a) or (b) of this paragraph.

132. This methodology for the identification of the beneficial owners, through a “cascading approach”, is in line with the standard, although it is self-referring, considering that point (a) refers directly, for the first step of the methodology, to the definition of beneficial owner (Article 4, p)) which already contains the control through other means and a “backstop” option.

### **Anti-Money laundering Law – Customer Due Diligence requirements**

133. The AML-obliged persons under the AML Law include banks and other financial institutions, attorneys, public notaries, accountants, auditors, persons performing tax counselling services as well as trust and company service providers (Article 5), which may be the relevant service providers for EOIR. All AML-obliged persons in Bosnia and Herzegovina are established either in the FBiH or in the RS.

134. The AML-obliged persons must perform customer due diligence measures (Article 9, 2), f), AML Law) which include:

- identifying the customer and verifying the identity of this customer
- identifying the beneficial owner of the customer and taking reasonable measures to verify his/her identity, by using relevant information or data obtained from a reliable source
- and taking measures necessary to understand the nature of the customer’s business and the ownership and control structures of the customer (Article 11, (1), b), AML Law).

135. The AML-obliged persons must undertake these customer due diligence measures, including the identification of the beneficial owners of a customer, at the time of the establishment of the business relationship and each time there is a doubt regarding the veracity or adequacy of the previously obtained information about the customer or the beneficial owner (Article 12, (1), a and d and Article 15, (8), AML Law). If an AML-obliged person cannot properly identify its customers and their beneficial owners, it should not establish the business relationship with these clients and should report this situation to the Financial Intelligence Department (FID) (Article 14(4), AML Law). Similarly, the business relationship must be terminated and the situation reported to the FID if the AML-obliged person cannot identify the new beneficial owners in case of a change. The representatives of the banks interviewed during the onsite visit confirmed that they apply this provision in practice.

136. The AML-obliged persons must also continuously undertake measures of customer due diligence for all their customers on the basis of materiality and risk, and conduct due diligence on those relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of the data obtained (Article 12(2), AML Law). They must determine the scope and frequency of the update of the information held and of the renewal of their CDD measures to them to be appropriate to the money laundering risks. They must keep the documents, data and information held up to date, including when there is a change in the customer's circumstances (Article 11(1)(d) and (5), AML Law). Although there is no legal timeline for the AML-obliged persons to reflect the changes in their records, the supervisory authorities expect that they do it promptly, considering that the AML-obliged persons should insist that their clients submit the changes within eight days (Article 18(13), AML Law). Despite these provisions that aim at ensuring that the information is up to date in a case of change, the AML Law itself does not prescribe any specified frequency for updating the beneficial ownership information held by the AML-obliged persons, except in the case of a client which is a foreign legal person and for which the identification and verification must be repeated at least once a year (Article 18(8)), leaving the determination of such frequency to each AML-obliged person.

137. The representatives of the banks met during the onsite visit, as well as the authorities in charge of their AML supervision, confirmed that they frequently renew the customer due diligence, even in the absence of an event triggering a change in the data previously obtained. In this matter, the banks usually follow the policy of their group, but all representatives indicated that they update the information at least every year for the high-risk customers, and between three and five years for the medium and low risk customers. To ensure a continuous update of data, some banks also use

information systems comparing their data with other available data on beneficial owners to undertake more frequent update activities. Nevertheless, in the absence of a specified frequency for carrying out CDD to update beneficial ownership information in the legal framework, it remains uncertain whether and how the requirement to update this information would be implemented and enforced in practice.

138. The information to be gathered on the relevant natural persons identified as the beneficial owners of a customer includes their full name, place of residence, date of birth, citizenship, relevant identification number, type and number of the identification document, name of the issuing authority and the country of issuance of such identification document. To verify the identity of the beneficial owner and to gather this information, the representatives of the AML-obliged persons explained that they usually rely on an identification document and on any reliable public documentation. For more complex ownership structures or type of control, they request more documentation from their customers. There is no explicit obligation to maintain the information on the nature and extent of the control exercised by the beneficial owner. Nevertheless, the representatives of the AML-obliged persons informed that in practice, this information would always be available as a result of an analysis of the data and documentation obtained during the due diligence.

139. The AML Law now obliges the AML-obliged persons to collect the information on beneficial ownership pursuant to the registration certificate or an extract from the appropriate register, if their customer-legal person has an obligation to provide such information to a register (Article 18(10)). Since there is currently a beneficial ownership register in the RS only, this provision would mainly apply for foreign customers. The AML guidance makes it clear that using information from a beneficial ownership register only does not fulfil the duty to take appropriate measures to establish and verify the identity of a beneficial owner and that additional steps should be taken if the AML-obliged person is not certain that the person whose name is reflected in the register is the ultimate beneficial owner.<sup>35</sup>

140. For low-risk customers,<sup>36</sup> the AML-obliged persons can apply simplified due diligence, under which the beneficial ownership information does not have to be collected at all cases. Indeed, the customer data on the

35. For instance: Guidelines of the FBA for the identification of a beneficial owner and Guidelines of the BARS for the identification of a beneficial owner.

36. Several factors can be considered to categorise a customer as low-risk (type of transaction, product or services; geographical area, etc.) and the legal framework does not provide for a specific type of legal persons that can be considered as such. As an example, the entities that operate under stringent regulatory oversight could be considered as low risk. Additional guidance from the FBA and from the BARS

low-risk customers to be obtained and verified are limited to the identity of the person establishing the business relationship, or of the person for whom that relationship is established, and of the legal representative or proxy of the customers (Article 36). The absence of identification of the beneficial owners of legal entities that are low-risk clients is not in line with the standard.

141. The AML-obliged persons can rely on third parties to apply their obligations to identify the clients and their beneficial owners and to verify their identities, although the final responsibility for implementing the measures and activities of clients and real owner identification remains on the AML-obliged persons. For the reliance on third parties, the AML Law requires that the following conditions, which are in line with the standard, be met (Articles 23, 24 and 25):

- The third party can only be an AML-obliged person (financial institutions or auditors) applying a similar level of CDD requirements as provided for by the AML Law.
- The AML-obliged person cannot rely on third party's measures and actions done for the identification of a client without the presence of this client.
- The third party submits to the AML-obliged person, without delay and spontaneously, the data on the client needed to establish the business relationship as well as copies of identification data and other relevant CDD documents.

142. The representatives of the banks met during the onsite visit indicated that, to their knowledge, the reliance on third parties is not used in practice.

143. Considering the deficiencies identified in the AML framework, identified in paragraph 137 on the lack of specified frequency of update in the legal and regulatory framework and in paragraph 140 on the absence of requirement to identify the beneficial owners of low-risk customers, **Bosnia and Herzegovina is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information is available for all companies, in line with the standard.**

144. The AML-obliged person must keep all records and documentation related to customer due diligence, including on the identification of the client and its beneficial owners, for at least 10 years after the termination of the business relationship (Article 59, AML Law). If an AML-obliged person ceases to operate or to exist, the relevant records should be handed over to the person taking over the activity and to the competent Archive authority,

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indicates that simplified identification measures can be applied to State authorities, public enterprises, other AML-obliged persons and other low-risk customers.

as explained in paragraph 98 and seq. Nevertheless, if there is no person taking over the activity of the AML-obliged person, it is not ascertained that the records would always be provided to the competent archive in practice, especially in the RS where issues of storage space were reported. Therefore, **Bosnia and Herzegovina is recommended to ensure that beneficial ownership information is retained in line with the standard, including after the AML-obliged person ceases to exist or to operate.**

### **Anti-Money laundering Law – Coverage**

145. Regarding the coverage of the relevant legal persons, all authorities confirmed during the onsite visit that a legal person in Bosnia and Herzegovina needs to have a bank account in this jurisdiction. In the FBiH, this assertion is supported by legal requirements for all business entities in the FBiH, including all companies, to open an account with one of the authorised organisations, which are banks with registered office in the FBiH as well as the branches of the banks from the RS, and to keep all their cash funds in this bank account and make payments through it.<sup>37</sup> Corresponding provisions exist in the legal framework of the RS.<sup>38</sup> These obligations imply that legal persons registered in the FBiH and the RS must open and maintain a bank account in Bosnia and Herzegovina. In contrast, for the companies incorporated in the BD, there is no similar explicit legal requirement, despite the statement of the authorities that all these companies have a bank account in Bosnia and Herzegovina. Therefore, it cannot be ensured that in practice, all the legal persons in the BD would have an ongoing relationship with an AML-obliged person in Bosnia and Herzegovina. Since the AML legal framework is the only source of beneficial ownership information for companies incorporated in the BD, **Bosnia and Herzegovina is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information is available for all companies, in line with the standard.**

146. To identify the relevant bank holding the beneficial ownership information, the tax authorities of the FBiH and the RS can rely on the existing bank account registers (see Element A.3, paragraphs 242 and 243).

### **Implementation in practice**

147. Despite the deficiencies in the previous and new AML Law, the implementation of the CDD measures by the AML-obliged persons, including the identification of the beneficial owners of the customers, do not appear to widely depart from the requirements of the standard.

37. Articles 2, 3 and 6 of the Law on Domestic Payments of the FBiH.

38. Articles 3, 4 and 8 of the Law on National Payments Transactions of the RS.

148. This has been verified for the banks during the onsite visit, the representatives of which having showed an appropriate knowledge of the beneficial ownership requirements foreseen by the standard. They explained that most of the banks in Bosnia and Herzegovina are part of international banking groups established within the European Union and that the compliance office generally follows the internal policy of the relevant group. The implementation of those internal policies implies that some deficiencies of the AML Law are addressed in practice. For instance, the representatives of the banks confirmed that they always identify the beneficial owners of their clients, even in the context of simplified CDD.

149. Nevertheless, it cannot be ascertained that all AML-obliged persons have a similar practice.

### **Enforcement measures and oversight**

150. If the AML-obliged person does not apply the CDD measures properly, in particular if it does not identify its clients and its beneficial owners, does not verify their identity or does not collect all the required data, a penalty ranging from BAM 20 000 to BAM 80 000 (EUR 10 200 to EUR 40 800) can be applied (Article 100(2), b) to f)).

151. Noting that there are no AML-obliged persons established in the BD, the AML-obliged persons are supervised by the following supervisory bodies (Article 93), depending on where the AML-obliged person is established:

- for the banks, the FBA and BARS
- for the AML-obliged persons intervening on the securities market, the FBiH Securities Commission and the RS Securities Commission
- for the notaries, the FBiH Notary Chamber and the Ministry of Justice of RS
- for the attorneys, the Bar association of FBiH and the Bar association of RS
- for the accountants, the FBiH and RS administrations for inspection affairs.

152. The FBA conducts supervision of banks on a risk-based approach. This approach takes into account the estimated bank risk profile, the National risk assessment, information obtained from other institutions and the information available in the public media. From 2017 to 2022, the FBA conducted 89 banking supervisions (84 on-site supervisions and 5 off-site supervisions) in the AML area on the 13 commercial banks, including on CDD measures implemented. During these inspections, while the FBA did not identify any case where the bank failed to identify its clients, it

identified weaknesses in a small number of cases for the identification of the beneficial owners, in particular for obtaining updated identification documents of beneficial owners. These weaknesses were identified in 22 out of the 89 banking supervisions, in the 13 commercial banks. For these cases, the FBA ordered measures to eliminate the deficiencies and issued monetary sanctions against a bank and the responsible person in the bank. By means of the control of the activities undertaken in accordance with the ordered measures, it was established that the banks eliminated the identified weaknesses.

153. In the RS, the BARS conducted, for the period 2017-22, 32 onsite inspections, in addition to frequent offsite supervision (focused on the capacity of the banks, their internal policies, etc.), for a population of 8 banks and 15 micro-credit organisations. The offsite supervision is carried out every year, based on the information provided by all banks, including answers to a questionnaire containing AML aspects. If a serious deficiency is noted during the offsite supervision, a targeted onsite inspection can be initiated. The onsite inspections are comprehensive audits and the CDD requirements are systematically checked. The first step of the inspection is to review the internal policy and its compliance with the legal requirements. The completeness and accuracy of beneficial ownership records are checked through a method of sampling and also verifying updates of the documentation. In terms of results, the BARS did not note significant issues since most of the customers-legal persons have simple ownership structures. The sanctions issued were only written warnings for the lack of update of the documentation, and the issues noted were usually addressed when the bank was subsequently inspected. The statistics on these written warnings are not available.

154. The supervisory authorities of the banks showed an appropriate understanding of the requirements of the standard on the beneficial ownership requirements. Although the supervision of banks by the Banking Agencies follows a risk-based approach, a bank is usually inspected every two years. This frequency of supervision was confirmed by the representatives of the banks interviewed during the onsite visit.

155. Less information is available on the supervision carried out by the supervisory authorities of the notaries, attorneys or accountants, although the Ministry of Justice of the RS indicated having sent an AML questionnaire to all notaries and that 39 notaries were inspected, without major irregularities found. However, it is uncertain whether the beneficial ownership requirements were checked in all cases. Systematic supervision of other AML-obliged persons in the RS and the FBiH does not seem to exist. Considering that the implementation of the CDD requirements, including the identification of the beneficial owners of the customers, by the non-financial AML-obliged persons relevant for EOIR, and that their supervision by the

relevant authorities are both uneven, **Bosnia and Herzegovina is recommended to ensure an appropriate supervision of all AML-obliged persons on the beneficial ownership requirements provided for by the AML Law.**

156. Since the AML-obliged persons are the source of beneficial ownership information of the relevant entities, this information would be available with them even in the case of inactive companies (see paragraphs 117 to 124), for which they will have to apply appropriate measures for a continuous monitoring.

### **Companies Law requirements in the Republic of Srpska**

157. Since 2019, the Law on Registration of Business entities of the RS has required that the legal persons provide their beneficial ownership information to the Unified Register of Accounts of Business Entities, at the time of the registration and in case of any change to the submitted information (Article 32(1)(b)). More specifically, it obliges the legal persons to provide:

b) an extract from the appropriate register that establishes the identity of the founder of a domestic or foreign legal entity, and if the founder of the subject of registration is a foreign legal entity, an extract from the appropriate register for the founder's legal entity is also submitted if his share is 20% or more (beneficial owner), and for all legal entities founders whose share is 20% or more, up to the extract from the appropriate register in which it is possible to identify the ultimate owner – a natural person, certified by the competent authority of that country, with an apostille, and a certificate from the competent authority about the residence of the country from which the domestic or foreign natural person of the founder comes and proof of settled obligations based on direct taxes for the natural and legal person of the founder in the territory of the Republic of Srpska

158. This provision requires the identification of the beneficial owner as the natural persons who ultimately hold 20% or more shares of a legal person registered in the RS. If the beneficial owner of the legal person cannot be identified, the person authorised to represent the founder of a foreign legal person must provide a statement, in written form, in which he/she provides information about the beneficial owner (Article 32(4)). There is no additional guidance to assist the companies in identifying their beneficial owners. This definition of beneficial owner is not fully in line with the standard since it does not contain the determination of the beneficial owner by a control through means other than ownership or the backstop position to identify the natural person holding the position of senior manager. It also does not consider the joint ownership to determine the 20% threshold. In

addition, although this information must be updated in case of an event triggering a change, there is no obligation to report beneficial ownership information on a periodic basis or obligation on the beneficial owner to inform the legal person of the potential changes in his/her status of beneficial owner. Moreover, it is unclear whether the companies registered before 2019 have the obligation to report their beneficial ownership information, in particular in case of changes in their beneficial ownership information. Therefore, **Bosnia and Herzegovina is recommended to ensure that the beneficial ownership information held by the authorities is accurate, adequate and up-to-date and available for all relevant legal persons, in line with the standard.**

159. In practice, beneficial ownership information has been mandatorily collected by the APIF during the registration of legal persons since 2019. Therefore, this information should be available for all companies registered since 2019. The beneficial ownership information is kept only in written form at the competent district commercial courts. The authorities of RS could not report statistics on the number of legal persons for which beneficial ownership is available and, as mentioned above, it is uncertain whether this information has been collected for companies created before 2019. The competent authority of the RS explained that it considers this beneficial ownership information held by the APIF as a relevant source of this information.

160. Although the beneficial ownership information should be available for the companies registered since 2019, as this is a required information for the registration through the APIF, there is no specific supervision on the accuracy and update of this information. Therefore, **it is recommended that Bosnia and Herzegovina properly monitor and supervise the obligation of the companies to provide this beneficial ownership information.**

161. Although only the RS legal framework contains an obligation to report beneficial ownership information in a central register, the AML Law also contains a provision on the access and use of data from registers of beneficial ownership information (Article 85). This provision is not limited to the RS and therefore, does not exclude that the FBiH and BD could implement such a central register approach.

### **Availability of beneficial ownership information in EOIR practice**

162. Bosnia and Herzegovina did not receive any EOI requests for beneficial ownership information during the review period.

### **A.1.2. Bearer shares**

163. The legal and regulatory framework of the entities and the district of Bosnia and Herzegovina does not allow the issuance of bearer shares by the legal entities, either explicitly or by requiring the securities to be in dematerialised or registered form (Article 186, Company Law of the FBiH, Article 3 of the Law of the Securities Market of the RS, Article 139, Law on Companies of the BD).

### **A.1.3. Partnerships**

164. Partnerships in Bosnia and Herzegovina have legal personality and are treated as companies under the company laws, the tax laws and the AML Law. All registration requirements applicable to companies are equally applicable to partnerships.

#### *Types of partnerships*

165. The following partnerships can be established in Bosnia and Herzegovina:

- **General partnership** (*društva sa neograničenom solidarnom odgovornošću*) consisting of at least two members (natural or legal persons) jointly and severally liable for the partnership's liability.<sup>39</sup> Each member of a general partnership has, in principle, the right and responsibility to manage the partnership. On 31 December 2022, 11 general partnerships were registered in the FBiH, 6 in the RS and none in the BD.
- **Limited partnership** (*komanditnog društva*) consisting of one or more members (natural or legal persons) jointly and severally liable for the partnership liabilities with their entire property (general partners), and one or more members liable for partnership liabilities only up to the amount of their contributions as registered into the Company Register (limited partners). On 31 December 2022, one limited partnership was registered in FBiH, one in the RS and none in the BD.

#### *Identity information*

166. Partnerships are subject to the same registration requirements with the competent Company Registers as described under Element A.1 for companies (see paragraphs 70 and seq.) and to the obligation to report

39. Article 76, Company Law of the FBiH; Article 59, Law on Business Companies of the RS; Articles 7(3) and 59, Law on Companies of the BD.

all changes of data of importance for legal transactions of the partnerships within 30 days from the date of the change, including the changes of members or change in the amount of interest. The update of the information on the partners of the partnerships with the relevant Company Registers is necessary to be easily enforceable against third parties. As a result, updated identity and legal ownership information of partnerships would be available with the Company Registers. The tax registration requirements of companies also similarly apply to partnerships. In addition, as for companies, the founding acts of general and limited partnerships must contain the identity of the members and the amount of their contribution.<sup>40</sup> However, contrary to LLCs, the general and limited partnerships do not have to maintain a register of partners.

167. Foreign partnerships should in principle register a branch in the relevant Company Register to operate in Bosnia and Herzegovina, including if they have their place of effective management there. If foreign partnerships have their place of effective management in Bosnia and Herzegovina, without having registered a branch, they should still be registered with the relevant tax administration. As described under Element A.1 (paragraph 89 and seq.), although this registration requirement, and the corresponding update requirements, would ensure the availability of the identity information of partners in respect of relevant foreign partnerships in the FBiH and the RS, this information would not always be available in the BD in the absence of similar explicit requirements in BD (even though currently there is no partnership incorporated in the BD). Given this small gap in the legal and regulatory framework of the BD, **Bosnia and Herzegovina is recommended to ensure the availability of identity information of foreign partnerships, as required by the standard.**

168. Partnerships are liquidated in the same way as companies, as described in paragraphs 94 et seq.

### *Beneficial ownership*

169. The standard requires that beneficial ownership information be available on partnerships. As in the cases of companies, the AML framework obliges AML-obliged persons to gather beneficial ownership information of their customers through their CDD measures.

170. The same definition and method of identification of the beneficial owners applies to partnerships, as discussed above for companies (paragraph 127 et seq.) in line with the consideration of partnerships as equivalent

40. Articles 77 and 95, Company Law of the FBiH; Articles 50 and 87, Law on Business Companies of the RS, Article 5, Law on Companies of the BD.

to companies. The lack of consideration of the direct “joint” ownership control for identifying the beneficial owner (see paragraph 129) is also an issue for the identification of the beneficial owners of partnerships.

171. In addition, the “cascading” method to be applied may have an impact on the identification of the beneficial owners of partnerships, for which all general partners are indefinitely and jointly liable for the partnership’s debts, regardless of the amount of their contribution to the partnership. The principle is also that right to participate in the decision-making in partnerships does not take into account the amount of contribution of the general partners. Referring to a 25% threshold to determine the control through ownership may not be relevant for such cases, where all general partners (or beneficial owners of a legal person being a general partner) should be identified as a beneficial owner as having a similar control through ownership over the partnership. Therefore, **Bosnia and Herzegovina is recommended to ensure that the identification of beneficial owners of partnerships is made in accordance with the standard.**

172. Moreover, the deficiencies identified in the CDD measures (see paragraphs 137, 140 and 145) are the same when the customer is a partnership. These deficiencies relate to the lack of specified frequency of update of the beneficial ownership information in the legal and regulatory framework, the absence of requirement to identify the beneficial owners under simplified customer due diligence and the absence of an obligation for legal persons in the BD to engage an ongoing relationship with an AML-obliged person. In practice, the deficiency identified on the retention of the beneficial ownership information after an AML-obliged person ceases to exist or to operate (see paragraph 144) also applies in the case for beneficial ownership information of a partnership.

173. In addition, the company law requirement on beneficial ownership information in the RS also applies to partnerships, but with the same deficiencies identified in paragraphs 158 et seq.

### *Oversight and enforcement*

174. Regarding availability of identity and legal ownership information, the appropriate compliance activities carried out by the tax administrations of the FBiH, the RS and the BD, described in paragraphs 111 to 116, cover partnerships. The tax administrations also identify the inactive partnerships, with the same criteria as for inactive companies. As at 31 December 2022, one partnership was identified as inactive in the FBiH and 5 partnerships were identified as inactive in the RS. The deficiency noted in paragraph 124 on inactive companies also covers partnerships.

175. Regarding beneficial ownership information, the supervisory activities carried out by the Banking Agencies of the FBiH and the RS on banks and other financial institutions also cover the implementation of CDD measures when the customers are partnerships, including foreign partnerships that carry out business in Bosnia and Herzegovina, and ensure the availability of beneficial ownership information by those AML-obliged persons. As noted under Element A.1.1 (paragraph 155), the implementation of the CDD requirements, including the identification of the beneficial owners of the customers, by the non-financial AML-obliged persons relevant for EOIR, and their supervision by the relevant authorities are both uneven. This deficiency also concerns the cases where the customers of AML-obliged persons are partnerships.

#### *Availability of partnership information in EOIR practice*

176. Bosnia and Herzegovina does not distinguish between requests received on companies and partnerships and no peer reported having sent a request on a partnership (see paragraphs 125 and 162).

#### **A.1.4. Trusts**

177. Bosnia and Herzegovina does not recognise the concept of trusts, but there are no restrictions for a resident of Bosnia and Herzegovina to act as trustee of a trust formed under foreign law.

#### *AML requirements to maintain identity information in relation to trusts and implementation in practice*

178. The availability of identity information in relation to foreign trusts managed by a trustee resident in Bosnia and Herzegovina is available, if such a foreign trust engages an AML-obliged person in Bosnia and Herzegovina. The obligations of AML-obliged persons, as described in section A.1.1, apply in the case of a customer that is a legal arrangement, which includes express trusts, *fiducie*, *treuhand* and *fideicomiso* (Article 4, oo), AML Law).

179. The 2016 AML Law did not contain any guidance for the identification of the beneficial owners of legal arrangements, but the new AML Law provides for a specific method, which is in line with the standard, to determine the beneficial owners of the legal arrangements:

5) In the case of legal arrangements as defined in point oo) of this Article, the beneficial owner means a natural person who holds the following positions:

1. Settlers;
2. Trustees;
3. Protectors, if any;

4. Beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

5. Any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

180. Although the method of identification covers all the relevant natural persons involved in a foreign trust, it does not clearly provide for a guidance on the application of a “look through approach” when a position in a trust is held by a legal person or arrangement. Nevertheless, the representatives of the banks interviewed during the onsite visit showed a correct understanding of the method of the “look through approach” in such a case and they explained that they will follow the guidance of the Financial Action Task Force in this area. Bosnia and Herzegovina should monitor that the beneficial owners of foreign trusts are properly identified when a position in a foreign trust is held by a legal person or arrangement (see Annex 1).

181. However, the deficiencies identified in the section A.1.1 in the CDD measures (see paragraphs 137 and 140) are the same when the customer is a foreign trust. These deficiencies relate to the lack of specified frequency of update of the beneficial ownership information in the legal and regulatory framework and the absence of requirement to identify the beneficial owners under simplified customer due diligence. Moreover, in practice, the deficiency identified on the retention of the beneficial ownership information after an AML-obliged person ceases to exist or to operate (see paragraph 144) also applies in the case for beneficial ownership information of a foreign trust.

182. The authorities and representatives of AML-obliged persons met during the onsite visit reported that they were not aware of any situation of a foreign trust administered by a trustee resident in Bosnia and Herzegovina. If any, trustees of foreign trusts would likely be professionals covered by the scope of AML-obliged persons, such as banks, attorneys or trust and company service providers for instance. However, if a non-professional trustee or a professional trustee not being an AML-obliged person is used, the provisions of the AML Law would apply to such a person only if engaging in a relationship with an AML-obliged persons on behalf of the foreign trust. Consequently, the availability of beneficial ownership information for all foreign trusts managed by a resident trustee in Bosnia and Herzegovina as required under the standard is not ensured in all cases. **Bosnia and Herzegovina is recommended to ensure that accurate, adequate and up-to-date beneficial ownership information is available for all relevant legal arrangements (i.e. foreign trusts managed by a resident trustee), in line with the standard.**

### *Oversight and enforcement*

183. The supervisory activities carried out by the Banking Agencies of the FBiH and the RS on banks and other financial institutions cover the implementation of CDD measures when the customers are legal arrangements, including foreign trusts, and ensure the availability of beneficial ownership information by those AML-obliged persons. As noted under Element A.1.1 (paragraph 155), the implementation of the CDD requirements, including the identification of the beneficial owners of the customers, by the non-financial AML-obliged persons relevant for EOIR and their supervision by the relevant authorities are both uneven. This deficiency also concerns the cases where the customers of AML-obliged persons are legal arrangements, including foreign trusts.

### *Availability of trust information in EOIR practice*

184. During the review period, Bosnia and Herzegovina did not receive any request in respect of trusts. Peers have not reported having ever requested information regarding trusts from Bosnia and Herzegovina.

### **A.1.5. Foundations and Associations**

185. The legal frameworks in Bosnia and Herzegovina, in particular the Laws on Associations and Foundations of the FBiH, the RS and the BD, allow for the creation of non-profit associations and foundations.

- Associations are legal entities constituted by three or more persons for the promotion and realisation of common or general interest or purposes.
- Foundations are legal entities without their own membership and whose goal is to manage assets in the general interest or for charitable purposes.

186. As at 31 December 2022, 15 258 associations or foundations were registered in the FBiH, 9 478 were registered in the RS and 657 were registered in the BD.

187. The founding act of the associations and foundations includes the full names and addresses of the founders, name and address of the association or foundation, its basic purpose, and the full name of the authorised persons.<sup>41</sup>

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41. Articles 13 and 21, Law on Associations and Foundations of the FBiH; Articles 11 and 19, Law on Associations and Foundations of the RS and Articles 16 and 26, Law on Associations and Foundations of the BD.

188. Associations and foundations must register with the relevant authorities of their place of establishment: Ministry of Justice in the FBiH, district courts in the RS and the Basic Court in the BD.<sup>42</sup> They acquire their status of legal entity on the day of entry in the relevant register of association or register of foundation, maintained by the relevant Ministry of Justice. The application for registration in the association or foundation register is accompanied by (i) founding act and statute of the association or foundation, (ii) list of members of the management body, and (iii) name of the person authorised to represent the association or foundation.<sup>43</sup>

189. Associations or foundations are obliged to report to the Ministry of Justice a change in statute, name, seat, activity, person authorised for representation, members of the governing body, merger, separation or transformation and termination of the association or foundation, within 30 days from the day of the change.<sup>44</sup>

190. Associations and foundations do not make distribution to their members/founders. If an association or a foundation makes profit from an unrelated economic activity, it can use this profit only to achieve the goals established by its statute.<sup>45</sup> In addition, direct or indirect acquisition of profits or other benefits from the activities of associations or foundations, by founders, members of associations, members of management bodies, responsible persons, employees or donors, is not allowed.

191. If an association or foundation ceases to exist, its remaining assets are distributed in accordance with the decision of the competent body of the association or foundation or in accordance with the provisions of the statute. In absence of such decision, or if the foundation or association enjoyed tax, customs and other privileges,<sup>46</sup> or received budget donations or donations from citizens or legal entities in the total amount of more than BAM 10 000 (EUR 5 100) in the previous or current calendar year, the remaining assets

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42. Article 26, Law on Associations and Foundations of the FBiH; Article 25, Law on Associations and Foundations of the RS and Article 33, Law on Associations and Foundations of the BD.
43. Article 28, Law on Associations and Foundations of the FBiH; Article 26, Law on Associations and Foundations of the RS and Article 33, Law on Associations and Foundations of the BD.
44. Article 33, Law on Associations and Foundations of the FBiH; Article 31, Law on Associations and Foundations of the RS and Article 33, Law on Associations and Foundations of the BD.
45. Article 4, Law on Associations and Foundations of the FBiH; Article 4, Law on Associations and Foundations of the RS and Article 5, Law on Associations and Foundations of the BD.
46. Most of the foundations would be in position to enjoy tax privileges since they are not subject to income tax on their revenues from sponsorship or donation.

are allocated to other foundations or associations registered in the relevant part of Bosnia and Herzegovina, which perform the same or similar statutory activity.<sup>47</sup>

192. Considering the characteristics of associations and foundations as described above (non-for-profit nature, common and public interest purposes, absence of distribution of profits), they are not considered as relevant to the exchange of information for tax purposes.

### ***Other relevant entities and arrangements – Co-operatives***

193. The Laws on agricultural co-operatives of the FBiH, of the RS and of the BD allow for the creation of co-operatives, which are legal persons formed by associated members to satisfy their common, economic, social and cultural needs and goals through joint ownership and democratically controlled management. As at 31 December 2022, 348 co-operatives were registered in the FBiH, 207 were registered in the RS and 9 were registered in the BD.

194. The co-operatives must register in the FBiH, the RS and in the BD with the respectively competent courts, the APIF and the Basic Court. As business entities, they must provide, at the time of their registration, the identity of their members and the extent of their contribution. They must also report any change to this membership information within 30 days of the relevant change. They are also taxpayers which must register with the respective tax administrations and must provide to these administrations up-to-date information on their members. The co-operatives are also covered by the tax audit activities of the tax administrations. Although the deficiency noted in paragraph 124 on inactive companies also apply to co-operatives, the proportion of inactive co-operatives is low (two inactive co-operatives in the FBiH and none in the RS and the BD).

195. Regarding beneficial ownership information, since co-operatives are legal persons, its availability is ensured by the CDD measures of the AML-obliged persons. Nevertheless, the deficiencies identified in section A.1.1 in relation to the CDD measures under the AML Law also cover the co-operatives. These deficiencies relate to the lack of consideration of the direct “joint” ownership control for identifying the beneficial owner (see paragraph 129), the lack of specified frequency of update of the beneficial ownership information in the legal and regulatory framework (see paragraph 137), the absence of requirement to identify the beneficial owners

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47. Article 46, Law on Associations and Foundations of the FBiH; Article 42, Law on Associations and Foundations of the RS and Article 47, Law on Associations and Foundations of the BD.

under simplified customer due diligence (see paragraph 140) and the absence of an obligation for legal persons in the BD to engage in an ongoing relationship with an AML-obliged person (see paragraph 145). Moreover, in practice, the deficiency identified on the retention of the beneficial ownership information after an AML-obliged person ceases to exist or to operate (see paragraph 144) also applies in the case for beneficial ownership information of a co-operative.

196. In addition, the “cascading” methodology to identify beneficial ownership information may have an impact on the identification of the beneficial owners of co-operatives since their members have the same rights in the decision-making, whatever the amount of their contribution to the co-operative. Referring to a 25% threshold to determine the control through ownership may not be relevant for such cases, where all members should be identified as a beneficial owner as having a similar control through ownership over the co-operative. Therefore, **Bosnia and Herzegovina is recommended to ensure that the identification of beneficial owners of co-operatives is made in accordance with the standard.**

197. In addition, the company law requirement on beneficial ownership information in the RS also applies to co-operatives, but with the same deficiencies identified in paragraphs 158 et seq.

198. Regarding the supervision of the beneficial ownership requirements, the supervisory activities carried out by the Banking Agencies of the FBiH and the RS on banks and other financial institutions also cover the implementation of CDD measures when the customers are co-operatives and ensure the availability of beneficial ownership information by those AML-obliged persons. As noted under section A.1.1 (paragraph 155), the implementation of the CDD requirements, including the identification of the beneficial owners of the customers, by the non-financial AML-obliged persons relevant for EOIR and their supervision by the relevant authorities are both uneven. This deficiency also concerns the cases where the customers of AML-obliged persons are co-operatives.

199. Bosnia and Herzegovina does not distinguish between requests received on companies, partnerships and co-operatives and no peer reported having sent a request on a co-operative (see paragraphs 125 and 162).

## A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

200. All relevant entities must keep accounting records, including underlying documentation, in accordance with the Accounting and Auditing Laws requirements in the FBiH, RS and BD. Accounting information must be kept for at least five years and, in the event that an entity ceases to exist, are handed over to the relevant authorities in charge of the Archives and to the administrator of a liquidation. Nevertheless, it is not clearly established that the underlying documentation of accounting records would be available in all cases after a legal person ceases to exist.

201. With regard to foreign trusts administered or having a trustee resident in Bosnia and Herzegovina, it is expected that the professional trustees resident in Bosnia and Herzegovina keep this accounting information and present their accounting records separately to the records of the foreign trust. However, it is not guaranteed that the accounting information on a foreign trust with a non-professional trustee in Bosnia and Herzegovina, not subject to any accounting requirement, would be available.

202. The accounting obligations are properly supervised, in particular by the tax authorities through their tax audit activities. However, a non-negligible proportion of taxpayers has been considered as “inactive” by the tax authorities, notably due to non-compliance with filing obligations. The inactive legal persons can continue their activity, including abroad, and although all the obligations of these persons are maintained during the inactivity period, it is not ascertained in practice that those inactive legal persons would comply with their obligations to keep and report accounting information. The availability of accounting information and underlying documentation is required but not ensured in practice for such inactive taxpayers.

203. The conclusions are as follows:

### Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

| Deficiencies identified/Underlying factor   | Recommendations   |
|---|---|
| It is not guaranteed that the accounting information on a foreign trust with a non-professional trustee in Bosnia and Herzegovina would be available, considering that the non-professional trustees are not subject to any accounting requirement. | Bosnia and Herzegovina should ensure that accounting records of foreign trusts that are administered by resident non-professional trustees are available in line with the standard. |

### Practical Implementation of the Standard: Largely Compliant

| Deficiencies identified/Underlying factor  | Recommendations  |
|--|--|
| <p>The Federation of Bosnia and Herzegovina, the Republic of Srpska and the Brčko District have a process to identify the economically inactive taxpayers and there is a non-negligible proportion of inactive legal persons in Bosnia and Herzegovina. Although all the obligations of these persons are maintained during the inactivity period, it is not ascertained in practice that those inactive legal persons would comply with their obligations to keep and report accounting information. In addition, the inactive status of the companies, partnerships and co-operatives would not prevent the legal persons to keep on their activity, in particular abroad, since this status is not public and is determined for internal purposes of the tax administration only.</p> | <p>Bosnia and Herzegovina is recommended to ensure that accounting information on inactive companies, partnerships and co-operatives is always available, in line with the standard.</p>   |
| <p>Although there are mechanisms to hand over the accounting records of terminated companies, including to the Archives, it is not ascertained that this is done in practice in all cases.</p>   | <p>Bosnia and Herzegovina is recommended to ensure that accounting information of all relevant legal persons is available for at least five years in line with the standard, even in cases where the legal person ceases to exist.</p> |

#### A.2.1. General requirements

204. In Bosnia and Herzegovina, the accounting requirements are set in the legal frameworks of the FBiH, the RS and the BD, in their Accounting and Auditing Laws. The various legal regimes and their implementation in practice are analysed below.

#### *Accounting and Auditing Laws*

205. The Accounting and Auditing Laws of the FBiH, RS and BD apply to all relevant legal persons, including the relevant foreign legal persons, if they have their main office registered or if they produce income in the relevant part of Bosnia and Herzegovina.<sup>48</sup> These laws require these persons to maintain reliable accounting records and underlying documentation.

48. Article 3, Law on Accounting and Auditing of the FBiH, Article 3, Law on Accounting and Auditing of the RS and Article 3, Law on Accounting and Auditing of the BD.

206. In all Bosnia and Herzegovina, legal persons have a general obligation to keep their accounting records, prepare and present financial statements, and conduct audits of financial statements.<sup>49</sup> More specifically, the relevant legal persons must collect and compile accounting documents, keep books of accounts, prepare financial statements, maintain accounting records and documents providing sufficient, adequate and complete evidence of their transactions, in compliance with the financial reporting standards and basic principles of orderly accounting. The legal persons must also organise the collection and compilation of accounting documents and accounting records and preparation of annual financial statements to allow for business events, financial position and performance of the entity to be verified.<sup>50</sup>

207. The maintenance of the accounting records must ensure the control and accuracy of the entered data, the data keeping, the possibility to use data, the possibility to access the general ledger account turnovers and balances, and the possibility to have access to the details of operations by chronological order.<sup>51</sup> The accounting records include a journal, a general ledger and auxiliary records (analytical records kept for intangible assets, plant and equipment, investment in real estate, long-term financial investments, stocks, receivables, cash and cash equivalents, liabilities, capital, etc.).<sup>52</sup>

208. The accounting records are the basis for the preparation of financial statements, which must contain the balance sheet (report on financial status at the end of the accounting period), profit and loss report (report on total result for that period), cash flow statement (report on cash flows), the statement on changes in equity and the notes to financial statements.<sup>53</sup> The “small” legal persons and non-profit legal persons can present simplified financial statements, containing only the balance sheet, the profit and loss report and the notes to financial statements. The audit of the financial statements by an authorised auditor is mandatory for large and medium-sized entities and public enterprises in the FBiH, for large and public enterprises in the RS and for public enterprises in the BD.<sup>54</sup>

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49. Article 4, Law on Accounting and Auditing of the FBiH, Article 4, Law on Accounting and Auditing of the RS and Articles 12 and 36, Law on Accounting and Auditing of the BD.
50. Article 8, Law on Accounting and Auditing of the FBiH; Article 7, Law on Accounting and Auditing of the RS and Articles 12 and 14(2), Law on Accounting and Auditing of the BD.
51. Article 20(2), Law on Accounting and Auditing of the FBiH; Article 12(5), Law on Accounting and Auditing of the RS and Article 24(4), Law on Accounting and Auditing of the BD.
52. Article 16, Law on Accounting and Auditing of the FBiH; Article 11, Law on Accounting and Auditing of the RS and Article 20, Law on Accounting and Auditing of the BD.
53. Article 37, Law on Accounting and Auditing of the FBiH; Article 19, Law on Accounting and Auditing of the RS and Article 37, Law on Accounting and Auditing of the BD.
54. Article 57 and 60, Law on Accounting and Auditing of the FBiH; Articles 28 and 29, Law on Accounting and Auditing of the RS; Article 52, Law on Accounting and Auditing of the BD.

209. The financial statements must be provided annually by the legal persons to the Financial Intelligence Agency (FIA) in the FBiH, to the APIF in the RS and to the Finance Directorate in the BD. These authorities make this accounting information directly available to the corresponding tax administrations (except in the BD, where the process to making this information directly available to the tax administration is ongoing).

210. In principle, the accounting records must be kept at the premises of the legal person or with another legal person entrusted with keeping accounting records. The legal person entrusted can only be persons registered, in the relevant part of Bosnia and Herzegovina, for the provision of accounting services and that has all the necessary resources for the proper, high-quality and efficient performance of those services (i.e. an accountant). The information on the identity of the accountant is reported at the time of the tax registration as well as in the annual tax returns and then kept in the tax administration's registers. If the accounting records are kept electronically, the storage should ensure that the data are available for controls.<sup>55</sup>

211. In case of failure to comply with the accounting obligations, fines can be applied:

- In the FBiH, a fine ranging from BAM 5 000 to BAM 15 000 (EUR 2 550 to EUR 7 630) is imposed on a legal person if it fails to prepare and keep its accounting records in accordance with the law and a fine ranging from BAM 10 000 to BAM 50 000 (EUR 5 100 to EUR 25 500) is imposed on a legal person if it fails to prepare and present its financial statements (Article 127). Although the statistics on the application of these sanctions are not isolated, the FBiH authorities indicated that 53 fines were applied in 2022 for the aggregate group to which these fines belong.
- In the RS, a fine ranging from BAM 3 000 to BAM 15 000 (EUR 1 530 to EUR 7 630) is imposed on a legal person if it fails to prepare and keep its accounting records in accordance with the law and if it fails to prepare and present its financial statements (Article 64). The fines for failure to present the financial statements are applied by the RSTA and are described in paragraphs 227 and 228.
- In the BD, a fine ranging from BAM 5 000 to BAM 15 000 (EUR 2 550 to EUR 7 630) is imposed on a legal person if it fails to prepare and keep its accounting records in accordance with the law and if it fails to prepare and present its financial statements (Article 64). Approximately

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55. Articles 32, 34 and 48, Law on Accounting and Auditing of the FBiH; Article 10(4), Law on Accounting and Auditing of the RS and Article 32, Law on Accounting and Auditing of the BD.

300 fines per year are issued to both active and inactive companies for failure to prepare and/or to present financial statements.

### *Tax Law*

212. The tax laws provide for accounting obligations, that usually replicate the obligation of the accounting laws. In the FBiH, the Law on Corporate Income Tax prescribes that for the purpose of determining the tax base, all expenditures, income and capital gains/losses must be recognised in the amounts stated in financial accounts, which are in accordance with accounting regulations, including the Law on Accounting and Auditing (Articles 2 and 8). In the RS, the Law on Tax Procedure prescribes that books and records of the taxpayers include documentation pertaining to taxpayer's activities, transactions, payments, and income and expenditures, kept in accordance with tax regulations and regulations governing the field of accounting (Article 2(9)). In addition, in the FBiH, the RS and the BD, basic accounting information must also be provided with the annual tax returns of the taxpayers.

### *Trusts*

213. There are no obligations on foreign trusts with trustees resident in Bosnia and Herzegovina to hold accounting information in either the Accounting and Auditing Laws or the Tax Laws. Nevertheless, it is expected that the professional trustees resident in Bosnia and Herzegovina keep this accounting information and present their accounting records separately to the records of the foreign trust, in particular to have the accounting records organised in a way that permits the verification of the financial position and performance of the entity. The retention period of the accounting records maintained by the trustee of a foreign trust follows the same rules as the ones described in paragraph 217. The same accounting requirements would apply if the trustee of the foreign trust is an individual entrepreneur.

214. However, the non-professional trustees are not subject to any accounting requirement. In addition, although the non-professional trustee would be taxed as the owner of the assets and income of the trust (considering that the ownership of the assets of the trust is transferred to the trustee), there is no legal obligation to keep accounting information. as for professional taxpayers, as described in paragraph 213. Therefore, it is not guaranteed that the accounting information on a foreign trust with a non-professional trustee in Bosnia and Herzegovina would be available. **Bosnia and Herzegovina is recommended to ensure that accounting records of foreign trusts that are administered by resident non-professional trustees are available in line with the standard.**

### ***A.2.2. Underlying documentation***

215. The Accounting and Auditing Laws of the FBiH, RS and BD require that the business transactions (i.e. all economic and financial transactions) be recorded by the legal person and that original business documentation providing evidence of those transactions be kept. The underlying accounting documents must be documents in writing, in material or electronic form, and they must be prepared in place and time of the occurrence of the related business event.<sup>56</sup>

### ***Companies that ceased to exist and retention period***

216. The Accounting and Auditing Laws of the FBiH, the RS and the BD provide for the following rules on the retention period of accounting records by the legal persons:<sup>57</sup>

- The general ledger and the journal, as well as their underlying documentation, are kept for at least ten years in the FBiH and the RS and eleven years in the BD.
- The auxiliary books, as well as their underlying documentation, are kept for at least five years in the FBiH and the RS and seven years in the BD.
- Some specific documents must also be kept permanently, including the financial statements and audit reports.

217. The starting point of the retention period is the last day of the financial year to which the accounting records (or accounting documents) relate.

218. The Accounting and Auditing Laws do not contain any provision that explicitly requires the retention of accounting records and underlying documentation after a legal person ceases to exist. Annual financial statements provided to the relevant authorities (FIA, APIF and Basic Court) would be permanently available with these authorities, but other accounting information, such as underlying documents, would not be available.

219. As described under Element A.1 (paragraph 98 to 100), there are mechanisms available to hand over the records, including accounting records, of a terminated company. In the FBiH, RS and BD, the accounting records of a company that ceased to exist are in principle handed over

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56. Article 10, Law on Accounting and Auditing of the FBiH; Article 8, Law on Accounting and Auditing of the RS and Article 14, Law on Accounting and Auditing of the BD.

57. Article 49, Law on Accounting and Auditing of the FBiH; Article 22, Law on Accounting and Auditing of the RS and Article 33, Law on Accounting and Auditing of the BD.

to the person which takes over the activity of the company. If there is not such a person, the administrator of the liquidation/bankruptcy procedure is in charge of maintaining the records of the liquidated company, but only during the liquidation/bankruptcy procedure.<sup>58</sup> After the completion of this procedure, the accounting records must be handed over to the competent Archives. Nevertheless, it is not ascertained that this is always done in practice, especially in the RS where issues of storage space were reported.

220. As a result, accounting records, in particular underlying documents, of legal persons that cease to exist or cease operations in Bosnia and Herzegovina may not be available in all cases. Consequently, **Bosnia and Herzegovina is recommended to ensure that accounting information of all relevant legal persons is available for at least five years in line with the standard, even in cases where the legal person ceases to exist.**

### ***Practice, oversight and enforcement of requirements to maintain accounting records***

221. In the FBiH, the RS and the BD, the oversight and enforcement of the requirements of the Accounting and Auditing Laws are carried out by the tax administrations, mainly through their tax audit activity, during which the compliance with the accounting requirements is checked. This supervisory activity, associated to a relatively good compliance rate with the tax return filing obligation, ensures the availability of the accounting records in practice.

222. Nevertheless, as described under Element A.1.1 (paragraphs 117 to 124), there is a non-negligible proportion of inactive legal persons in Bosnia and Herzegovina. The inactive status of the legal persons, including companies, partnerships and co-operatives, would not prevent them to continue their activity, in particular abroad, since this status is determined for internal purposes of the tax administration only. Although all the obligations of these persons are maintained during the inactivity period, the non-compliance with the filing of the return or financial statements is one of the criteria to determine the inactive status. In addition, considering that one of the criteria to identify an inactive legal person is its unknown address, this would limit the supervision activities of the tax administrations (described below). Consequently, it is not ascertained that those inactive legal persons would comply with their obligations to keep and report accounting information. Therefore, **Bosnia and Herzegovina is recommended to ensure**

58. Article 48(4), Law on Accounting and Auditing of the FBiH; Article 19, Law on Accounting and Auditing of the RS and Article 32(4), Law on Accounting and Auditing of the BD.

**that accounting information on inactive companies, partnerships and co-operatives is always available, in line with the standard.**

### *Federation of Bosnia and Herzegovina*

223. The FIA provides every year to the tax administration all the financial statements submitted as well as the data on the legal persons which did not present their financial statements. Based on this information, the tax administration (cantonal tax offices) applied the fine foreseen in the Law on Accounting and Auditing. In 2021, 15 legal persons were fined due to the non-submission of their financial statements, which represents a very small proportion of the around 32% of entities obliged to submit financial statements and that did not comply with this obligation. Nevertheless, this 32% rate includes a significant part of legal persons which have already been identified as “inactive”.

224. In case a failure to comply with the requirements of the Law on Accounting and Auditing is noted during a tax audit, the tax administration also applies the relevant sanctions described in paragraph 212: 8 sanctions were applied in 2021 and 25 in 2022. In addition, the tax administration monitors the rate of compliance with the obligation to file the annual tax return, which was 63% in 2022, but 87% among the active taxpayers. In addition to the application of a fine, the non-compliance with the obligation to file the tax return and/or to submit financial statements are factors considered for the selection of tax audits.

225. The tax administration also checks the accuracy of the accounting records during its tax audits, as well as the availability of the underlying accounting documents. There is a wide variety of tax audits carried out by the tax administration, but the most relevant tax audits for the supervision of the accounting records are the risk-based audits and the comprehensive ad-hoc audits. The selection of audited taxpayers is usually based on a risk assessment and on defined criteria determined in an Annual audit plan (risk-based audits). A tax audit can also be planned based on information provided by external sources, mainly other public authorities (comprehensive ad-hoc audits). The statistics on the tax audits is summarised in the table below. As a consequence of the selection process, these tax audits are usually followed by a notification of additional tax assessment, which results from the analysis of the accounting records and the related tax treatment made by the taxpayer. The FTA reported an appropriate coverage rate by tax audits of around 6%, but this rate relates to all types of taxpayers (not only legal persons) and to all types of tax audits. The coverage rate of only risk-based and comprehensive ad-hoc audits is not known.

| Year | Risk-based audits | Comprehensive ad-hoc audits |
|------|-------------------|-----------------------------|
| 2020 | 523               | 905                         |
| 2021 | 645               | 1 056                       |
| 2022 | 578               | 1 178                       |

### *Republic of Srpska*

226. The APIF provides annually the tax administration with a report on taxpayers that have failed to submit regular financial statements but were legally obliged to do so. Based on this report, the tax administration issues minor offence reports to taxpayers and responsible persons, due to non-submission of financial statements. The issuance of minor offence reports can be followed by a request for initiating minor offence procedure, which is a procedure carried out at the level of the Court, usually for long-lasting failure and for which there is a damage for the budget.

227. The statistics on the minor offences reports and procedures in relation to the failure to submit the financial statements are reproduced below. The significant number of reports issued in 2022 results from a targeted action due to the failure to file the financial statements with the APIF, with a more systematic issuance of minor offence reports, while in 2020 and 2021, the minor offence reports were issued in the context of a tax audit only. The statistics on the initiation of minor offence procedure are nevertheless similar in 2022, demonstrating that the tax audits were selected to target the most significant failures.

| Year | Minor offence reports issued | Amount of the fine (BAM) | Requests for initiating minor offence procedure |
|------|------------------------------|--------------------------|---|
| 2020 | 44                           | 79 400                   | 5   |
| 2021 | 30                           | 52 500                   | 2   |
| 2022 | 1 180                        | 1 962 600                | 2   |

228. As mentioned above, the tax administration checks the accuracy and regularity of the accounting records during the regular onsite tax audits. In 2022, 4 091 regular onsite and desk tax audits were carried out. The audited taxpayers are targeted by a strategy established by a risk-management carried out based on the available information. Out of all conducted audits, 186 pertained to large taxpayers, representing a tax audit coverage rate of 18% whereas the rate among all taxpayers is 6% according to the RSTA. For unpaid portion of liabilities, following audits, the tax auditors issued decision documents on payment of liabilities for the total amount of BAM 36.84 million (EUR 18.79 million), while 378 minor offence reports were issued due to detected irregularities for the amount of BAM 1 013 146 (EUR 516 911).

229. The tax audit activity is in addition to the usual monitoring carried out on the compliance with the obligation of submitting the annual tax return. In 2022, 73% of taxpayers filed the tax return for corporate income.

### *Brčko District*

230. In the BD, the oversight activity of the tax administration starts with annual checks made on the submission of the tax return. In 2022, the tax return filing rate was 95%. For the remaining 5%, fines of BAM 1 000 to BAM 5 000 (EUR 510 to EUR 2 550, Article 76, Law on Tax Administration) were applied and, in most cases, were followed by the filing of the tax returns.

231. Then, the tax administration carried out tax audit activities according to annual and monthly audit plans prepared by the risk management office, based on the analysis of the information directly available within the tax administration, information obtained from other public services and information publicly available. The audit plan mixes desk and onsite tax audits and comprehensive and partial (targeted) tax audits. The accounting records are systematically checked during the comprehensive tax audits, while their verification in the context of a partial audit depends on the purpose of such an audit.

232. Annually, around 500 comprehensive tax audits and 200 partial tax audits are carried out on all taxpayers (and around 150 comprehensive tax audits and 20 partial tax audits of legal persons only) by 16 tax auditors. Considering that the tax audits focus on risky taxpayers, irregularities in the accounting records and/or in the tax treatments of the business operations are almost always noted in comprehensive tax audits.

### ***Availability of accounting information in EOIR practice***

233. Bosnia and Herzegovina received 14 EOI requests for accounting information, including underlying accounting documentation. It answered all these requests and the peers were satisfied of the answers received.

## **A.3. Banking information**

Banking information and beneficial ownership information should be available for all account holders.

234. Banking and AML laws generally ensure the availability of information relating to the holders of bank accounts in Bosnia and Herzegovina and the transactions carried out on these accounts. Information on the beneficial owners of bank accounts is also kept and verified by banks as part of their AML/CDD obligations.

235. However, these obligations contain deficiencies in respect of the standard. The threshold of 25% for determining the control through ownership may not be relevant to identify the beneficial owners of partnerships or co-operatives, considering their specific organisation which does not necessarily relies on the amount of contribution of their members. Regarding the update of beneficial ownership information, although the banks must update this information when they are aware about a change and update their CDD regularly, there is no specified frequency in the legal and regulatory framework for these updates. Moreover, they are not obliged to identify the beneficial owners of their low-risk customers.

236. In case of liquidation of a bank established in Bosnia and Herzegovina, all the records of the bank are in principle handed over to the person taking over the activity and maintained by the relevant Archive authorities. Nevertheless, it is not ascertained that this is done in practice and the Archives do not check whether the records handed over are exhaustive. In addition, if the bank is purchased by a foreign bank or if a branch of a foreign bank ceases to operate in Bosnia and Herzegovina, the relevant banking information would be handed over to the foreign bank and would no longer be available in Bosnia and Herzegovina.

237. In practice, the implementation of the beneficial ownership requirements by the banks appears satisfactory, despite the legal deficiencies. The Banking Agencies of the FBiH and RS conduct frequent inspections, including on the requirement of maintaining beneficial ownership information, and take enforcement measures if implementation issues are noted.

238. The conclusions are as follows:

**Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement**

| Deficiencies identified/Underlying factor   | Recommendations  |
|---|--|
| <p>Under the anti-money laundering law, for the determination of the beneficial owners of the legal persons being bank account holders, the identification of the natural persons holding a control through means other than ownership is not simultaneous to the identification of natural persons holding 25% or more of ownership. While this approach is acceptable for companies, this may affect the identification of the beneficial owners of partnerships or co-operatives, the features of which would make the threshold of ownership not appropriate.</p> | <p>Bosnia and Herzegovina should ensure that the identification of beneficial owners of account holders which are partnerships or co-operatives is made in accordance with the standard.</p> |

| Deficiencies identified/Underlying factor  | Recommendations  |
|--|--|
| <p>For low-risk customers, the banks can apply simplified due diligence under which the beneficial ownership information does not have to be collected. Moreover, while beneficial ownership information needs to be updated in cases of change and certain circumstances, there is no specified frequency for updating beneficial ownership information under the legal framework, posing risks that the beneficial ownership information may not be up to date in all cases.</p> | <p>Bosnia and Herzegovina should ensure that adequate, accurate and up-to-date beneficial ownership information on account holders is available in line with the standard.</p> |

### Practical Implementation of the Standard: Largely Compliant

| Deficiencies identified/Underlying factor  | Recommendations  |
|--|--|
| <p>In case of a liquidation of a bank established in Bosnia and Herzegovina, all the records of the bank are in principle handed over to the person taking over the activity and maintained by the relevant archive. Nevertheless, it is not ascertained that this is always done in practice. In addition, if the bank is purchased by a foreign bank or if a branch of a foreign bank ceases to operate in Bosnia and Herzegovina, the relevant banking information would be handed over to the foreign bank and would no longer be available in Bosnia and Herzegovina.</p> | <p>Bosnia and Herzegovina should ensure that banking information is retained in line with the standard including for at least five years after a bank ceases to exist or a foreign bank ceases operations in Bosnia and Herzegovina.</p> |

#### ***A.3.1. Record-keeping requirements***

239. To operate in Bosnia and Herzegovina, banks must be licensed with the FBA or with the BARS. In 2023, 13 commercial banks were licensed in the FBiH and 8 banks were licensed in the RS. There is no bank established in the BD.

#### ***Availability of banking information***

240. The availability of banking information is required by the AML Law and the Banking Laws of the FBiH and of the RS. The AML Law prescribes that a bank must keep information, data and documentation related to the business relationship established with the customer, conducted occasional transactions and customer due diligence measures, obtained in accordance with the AML Law, for a period of 10 years after the end of the business relationship or the date of the transaction (Article 92). In addition, the Banking Laws require that the banks keep documentation, data and records of

performed transactions, including payment orders and other documentation on opened accounts and payment transactions for at least 10 years since the account opening date and payment transaction effect date (Article 107, Banking Law of the FBiH; Article 132, Banking Law of the RS).

241. The information on the bank accounts opened in the FBiH by legal persons is registered in a Unique Register of Business Entities Accounts, maintained by the Single Registry of Accounts of Business Entities of the Central Bank of Bosnia and Herzegovina. The tax administration has access to the information contained in this database through a weekly retrieval. The banks must submit to the Unique Register, for each and every account opened by a business entity: (i) the name of the business entity, (ii) the account number, (iii) defined designation for the type of account, (iv) Information on blocking and unblocking of the accounts of the business entity, (v) form of organisation and business activity code of the business entity, (vi) date of opening and closing of the account, (vii) other necessary information. Similarly, the information on the accounts of natural persons in FBiH is maintained by the FIA in the Register of accounts of natural person in FBiH and the tax administration has access to this information.

242. In the RS, the banks must provide to the APIF similar information on the bank accounts opened. The APIF maintains the Unified Register of accounts of business entities (Article 5, Law on the Unified Register of Accounts of Business Entities). The banks must submit immediately any change to the data. In 2019, a bank accounts register (Register of Personal Accounts), maintained by the APIF, has been established for the bank accounts held in the RS by natural persons (Law on Amendments to the Law on National Payment Transactions).

### *Beneficial ownership information on account holders*

243. The standard requires that beneficial ownership information be available in respect of all account holders.

244. The AML-obliged persons, including the banks, should not open, issue or hold, for a customer, anonymous accounts, accounts in obvious fictitious names, anonymous passbooks or anonymous safe deposit boxes or other products and services that facilitate, either directly or indirectly, the concealment of the customer's identity (Article 40, AML Law). In addition, banks, similarly as other AML-obliged persons, are subject to the obligation to carry out CDD measures and to identify the beneficial owners of their customers (Article 9 and 11, AML Law). This obligation is examined under sections A.1.1 for companies, A.1.3 for partnerships, A.1.4 for foreign trusts and A.1.5 for other relevant entities.

245. Although the AML Law generally ensures the availability of information on the beneficial owners of bank accounts, several deficiencies are noted in the beneficial ownership requirements. Regarding the determination of beneficial owners, the “cascading” method to be applied may have an impact on the identification of the beneficial owners of partnerships and co-operatives, as described in paragraphs 171 and 196, considering their specific organisation which does not necessarily rely on the amount of contribution of their members. Indeed, referring to a 25% threshold to determine the control through ownership, as the first step of the method of determination of the beneficial owner, may not be relevant for those legal persons, where all general partners or members (or beneficial owners of a legal person being a general partner or a member) should be identified as a beneficial owner as having a similar control through ownership over the partnership. **Bosnia and Herzegovina is recommended to ensure that the identification of beneficial owners on account holders which are partnerships or co-operative is made in accordance with the standard.**

246. Moreover, for the determination of a control through ownership, the methodology explicitly covers the situations of joint control only for indirect ownership, while the standard prescribes the identification of natural persons having a joint control through direct or indirect ownership. Therefore, Bosnia and Herzegovina should ensure that the natural persons holding jointly 25% or more direct ownership rights should be identified as beneficial owners (see Annex 1).

247. The obligation to carry out CDD measures also contains several deficiencies. As explained under paragraph 137, although the beneficial ownership information must be updated if there is a change, there is no specified frequency of carrying out CDD to update beneficial ownership information in the legal framework, so that it remains uncertain whether and how the requirement to update this information would be implemented and enforced in practice. In addition, for low-risk customers, the AML-obliged persons can apply simplified due diligence, under which the beneficial ownership information does not have to be collected (see paragraph 140). Since the absence of identification of the beneficial owners of legal entities that are low-risk clients is not in line with the standard, **Bosnia and Herzegovina is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information on account holders is available in line with the standard.**

248. The AML-obliged persons can rely on third parties to apply their obligations to identify the clients and their beneficial owners and to verify their identities. The conditions of this reliance on third parties are in line with the standard (see paragraph 141) but in practice, the AML-obliged persons carry out their CDD measures themselves.

249. The AML-obliged person must keep all records and documentation related to customer due diligence, including on the identification of the client and its beneficial owners, for at least 10 years after the termination of the business relationship (Articles 59 and 92). In case of liquidation of a bank established in Bosnia and Herzegovina, all the records of the bank are in principle handed over to the person taking over the activity and maintained by the relevant Archive (see paragraphs 98 et seq.). Nevertheless, it is not ascertained that this is always done in practice (especially in the RS where issues of storage space were reported). In addition, if the bank is purchased by a foreign bank or if a branch of a foreign bank ceases to operate in Bosnia and Herzegovina, the relevant banking information would be handed over to the foreign bank and would no longer be available in Bosnia and Herzegovina. **Bosnia and Herzegovina is recommended to ensure that banking information is retained in line with the standard including for at least five years after a bank ceases to exist or a foreign bank ceases operations in Bosnia and Herzegovina.**

### *Oversight and enforcement*

250. The supervision of the requirements of the AML Law and of the Banking Laws is carried out, respectively, by the FBA and the BARS. The main objectives of supervision conducted by the Banking Agencies is the maintenance of trust in the banking system, preservation of its safety and stability, and depositor protection.

251. If a bank does not apply properly its CDD measures, in particular if it does not identify its clients and their beneficial owners, does not verify their identity or does not collect all the required data, a penalty ranging from BAM 20 000 to BAM 80 000 (EUR 10 200 to EUR 40 800) can be applied (Article 100(2), b) to f)). Sanctions are also available under the Banking Laws, ranging from the issuance of written order for elimination of irregularity noted to revocation of operating licence and forced liquidation, depending on the gravity of the identified deficiency (Article 156, Banking Law of the FBiH and Article 196, Banking Law of the RS).

252. The supervision carried out by the Banking Agencies of the FBiH and the RS is described in paragraphs 152 to 154 and is considered as appropriate to ensure the availability of banking information. From 2017 to 2022, the FBA conducted 89 banking supervisions (84 on-site supervisions and 5 off-site supervisions) in the AML area, including on CDD measures implemented. During the same period, the BARS conducted 32 onsite inspections.

253. During these inspections, while the FBA did not identify any case where the bank failed to identify its clients, it identified weaknesses in a small number of cases for the identification of the beneficial owners, in particular for obtaining updated identification documents of beneficial owners.

For these cases, the FBA ordered measures to eliminate the deficiencies and issued monetary sanctions against a bank and the responsible person in the bank. By means of the control of the activities undertaken in accordance with the ordered measures, it was established that the banks eliminated the identified weaknesses. The BARS did not note significant issues since most of the customers-legal persons have simple ownership structures. The sanctions issued were only written warnings for the lack of update of the documentation, and the issues noted were usually addressed when the bank was subsequently inspected. No statistic is available on the number of written warnings issued to the banks on this aspect.

### *Availability of banking information in EOIR practice*

254. Bosnia and Herzegovina received three EOI requests for banking information, including bank statements. It answered these requests and the peers were satisfied of the answers received.

## Part B: Access to information

255. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

### B.1. Competent authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

256. In Bosnia and Herzegovina, the two entities and the district have a separate competent authority. These three competent authorities have direct access or sufficient powers to obtain information and to reply to EOI requests, regardless of the absence of a domestic tax interest. There are legal obligations and processes in place that allow the competent authorities to directly access or to require information from different sources and these sources must respond to the competent authorities in a timely manner. In case of failure to provide the information requested, sanctions can be applied to the information holders.

257. However, in the case of beneficial ownership information, all competent authorities would rely on the AML framework to access such information, but it is unclear whether this will be possible in practice as the scope of the secrecy provision in the AML law has not been tested yet.

258. In addition, there are legal gaps in respect of the scope of professional secrecy that affect all three competent authorities, as the attorneys have broad protection of attorney-client privilege that goes beyond what is prescribed by the standard. It covers more types of communication than only for the purposes of seeking and providing legal advice or use in legal

proceedings. However, this has also not had any effect on obtaining information in practice, as attorneys have never been a source of information so far.

259. The conclusions are as follows:

### Legal and Regulatory Framework: in place

| Deficiencies identified/Underlying factor   | Recommendations  |
|---|--|
| <p>In the Federation of Bosnia and Herzegovina, the Republic of Srpska and the Brčko District, the definition of the professional secrecy or legal privilege of attorneys is broad (not limited to giving legal advice or related to legal proceedings), which has potential for rendering the exchange of information ineffective, especially when beneficial ownership information is requested. The materiality of the gap is nonetheless limited.</p> | <p>Bosnia and Herzegovina is recommended to ensure that the application of legal professional privilege of attorneys does not limit or prevent it from responding to an EOI request.</p> |

### Practical Implementation of the Standard: Largely Compliant

| Deficiencies identified/Underlying factor  | Recommendations  |
|--|--|
| <p>The competent authorities of the entities are unclear on whether they would be able to gather information from AML-obliged persons directly.</p> <p>The Tax administration of Federation of Bosnia and Herzegovina considers that they could request the information to an AML-obliged person using the powers granted by Articles 8 and 14 of the Law on Tax Administration but this has not been tested in practice.</p> <p>The tax authority of the Republic of Srpska considers that the information would potentially be available to them at the Agency for Intermediary, Information and Financial Services, however, this is not the case because of the gaps on the beneficial ownership definition used in that entity.</p> <p>Finally, the competent authority of Brčko District considers that such information would not be available to them as there is no local source responsible to maintain it and in such a case, the BD would use the inter-administrative co-operation.</p> | <p>Bosnia and Herzegovina is recommended to ensure that competent authorities effectively apply their access powers to obtain beneficial ownership information to respond to EOI requests.</p> |

### ***B.1.1 and B.1.2. Ownership, identity, accounting and banking information***

#### ***Authorities competent to exchange and access information***

260. The competent authority for EOI purposes has changed over time and depending on the underlying EOI instruments.

261. For the application of DTCs, the Ministry of Finance and Treasury of Bosnia and Herzegovina (MFT BiH) served as the sole competent authority for exchange of information (EOI) purposes to answer requests based on DTCs. Due to the absence of state-level jurisdiction over direct tax matters, the MFT BiH relied on the authorities of the two entities and the BD to access and collect the information necessary to respond to EOI requests. Consequently, the MFT BiH lacked direct access powers and could not independently prepare responses to EOI requests. This created an extra administrative layer that did not necessarily added value, as the MFT BiH could not control the accuracy and quality of information provided to respond to an EOI request. This was due to the lack of autonomous access powers to sources that would allow to verify the information provided.

262. When depositing its instrument of ratification of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention), in September 2020, Bosnia and Herzegovina declared as competent authority:

- the Federal Ministry of Finance (FMF) for the territory of the FBiH
- the Ministry of Finance of the RS (MFRS) for the territory of the RS
- the Finance Directorate of Brčko District (FDBD) for the territory of the BD.

263. On 1 January 2022, Bosnia and Herzegovina implemented the same three-tier competent authority structure, corresponding to the two entities and the BD, for EOI requests based on DTCs. The MFT BiH delegated its competent authority powers to the FMF, the MFRS and the FDBD to streamline the processing of EOI requests and align the internal competencies to those established for the Multilateral Convention. The delegation of the responsibilities of the competent authority was made by Decision 10-17-1 of 26 November 2021.

264. However, as discussed above, even before the delegation of the competent authority role, each administrative unit operated autonomously when gathering the information to respond to a request. Before 2022, although the MFT BiH was the central authority, it functionally had the sole responsibility of receiving the requests, sending them to the appropriate authority within the entities and the BD, and then tracking and responding to

partners' requests. Since the time the delegation entered into force, that is no longer the case and the MFT BiH has no role in responding to EOI requests.

265. Each competent authority now operates autonomously as it has its own access powers.<sup>59</sup> In case they need to access information from another of the entities or the BD to provide information about someone located within their jurisdiction but for whom relevant information may be in the territory of the other entity or the BD (e.g. a bank account or accounting records in possession of an accountant), they co-operate through an inter-administrative request. This co-operation is governed by the general rules of tax co-operation within Bosnia and Herzegovina (Article 5 of the Law on Tax Administration of the FBiH, Article 13 of the Law on Tax Procedure of the RS and Article 15 of the Law on Tax Administration of the BD) and on a Memorandum of Understanding (MOU) signed between the tax authorities of the entities and the BD in June 2013. All competent authorities explained that this co-operation is usual for domestic matters and that it has been pursued in practice in a number of EOI requests as well.

266. The main legal sources discussed below are those related to the tax authorities, as they operate within the three jurisdictions as the main source of information for the competent authorities. The scope of access powers which can be used for EOI purposes by each competent authority is generally defined by the respective tax procedural laws of the entities and the BD.

### *Federation of Bosnia and Herzegovina*

267. The FMF relies on the available databases and the access powers of the FTA to collect most of the information related to EOI requests. Every time there is an EOI request, the FMF requests the information needed to the FTA that is responsible for preparing the response. Access powers of the FTA are outlined in Articles 7, 8, 9 and 14 of the Law on Tax Administration of FBiH (Chapter XII) and on Article 40 of the Law on Personal Income Tax.

268. Article 7 provides the general rights and obligations of tax employees and refers to the access powers set in the subsequent articles. These include the right to request information (pursuant to Article 8), enter premises (pursuant to Article 9) where books and records or other relevant items are or could be located, to inspect books and records, seize them or make copies.

269. Article 8 provides the right to request information to any person, taxpayer or third-party information holder, including statements and documentation

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59. There are no statistics available for 2021 and 2022 as the competent authority at that time did not maintain them. However, the access powers were the same as the competent authority relied on the entities and BD to gather the information requested.

such as books and records. The person has at least three working days to provide the requested information.

270. Article 9 provides employees of the FTA the authority to enter any property or premises where: 1) books and records or other items necessary for the implementation of tax laws are or may be kept or 2) any activity necessary for the implementation of tax laws is performed or could be performed. Access to business premises does not require any authorisation, while access to residential premises without the consent of the information holder requires an authorisation from the court. The process would entail the issuance of a search warrant by the Court (preliminary proceedings judge) upon a justified request that can be presented by the tax authority in writing, or orally when the delay would be detrimental to the success of the search (Article 72 of Criminal Procedure Code of the FBiH).

271. In addition, Article 14 establishes the obligation for taxpayers to furnish documents and other information requested by tax authorities for the enforcement of tax legislation. Finally, Article 40 of the Law on Personal Income Tax sets the obligation for natural and legal persons – including banks and other financial institutions – to provide information to the FTA on paid salaries and other income from employment, for the purposes of assessing or auditing declared income for a specific tax period.

272. In the exercise of powers to obtain information for the purpose of responding to a specific EOI request, the FTA does not need to invoke special procedures when the information is available in its database or directly accessible through databases of other public competent authorities. The FTA has direct access to internally maintained databases that include information on legal ownership, accounting records, financial statements and bank account numbers and other information on taxpayers (such as address, tax filings). These databases offer a broad source of information to the competent authority but will not include underlying documentation of accounting records or contracts for instance. In practice, these databases have been the main source of information to respond to EOI requests, considering that the requests received were mostly simple in nature.

273. When information requested is not readily available in the databases, the FTA uses its legal access powers. For example, they use the access powers to get the information from a taxpayer or from a third party that holds the information. In case there is a need to exercise powers provided by Article 9 to get access to the information, then, in practice, the FTA usually launches a formal tax inspection for this.

274. A tax inspection is the examination and determination of tax liabilities by inspectors or employees of the FTA (Article 64 of the Law on Tax Administration of FBiH). Inspectors or other authorised employees of the FTA may exercise any and all rights of the FTA discussed above, including:

the right to invite or require the taxpayer and other persons to give a statement and present documents and other information, and the right to enter premises where books and records or other objects are located or could be located. In case a tax inspection has already been conducted over that taxpayer, it is still possible to request information through the powers provided to the tax authority to request information. In addition, if there was a need to conduct another tax examination, this would still be possible, though certain conditions should be met, such as the existence of new facts or new evidence or if there was a procedural issue (Article 246 of the Law on Administrative Procedure).

275. In addition, at the request of the FTA, the federal and cantonal authorities responsible for internal affairs (police force) are obliged to provide the necessary assistance for the execution of tax activities and especially in cases of apprehension and other types of assistance when working in the field (Article 5(6) Law of Tax Administration of FBiH). This has not been used for EOIR purposes during the review period.

276. In 2022, the competent authority had to seek information from external sources (i.e. taxpayers and third parties) in 14 cases to respond to EOI requests (100% of requests received and not declined). In all cases, the information holder, taxpayer or third-party, submitted the information and the effectiveness of the access powers of the FTA was demonstrated.

### *Republic of Srpska*

277. After the MFRS was delegated the competent authority for EOI purposes, it functionally transferred the role to the RSTA for matters related to EOIR (Decision 06.05/012-643 of May 2022). The tax authority can access relevant information through its own databases that hold information on taxpayers and their tax filings, but it also has direct access to District Commercial Court's information and to APIF's databases that maintain legal and beneficial ownership information of legal persons incorporated in the RS.

278. The tax authority first consults its own databases and those to which it has direct access to check if the information requested is available. When the information is not available in those sources, it utilises its powers to access information through taxpayers or third parties.

279. The Law on Tax Procedure of the RS provides the main powers of the tax authority. Article 12 provides a variety of powers, such as the power to launch a tax audit or to request information to taxpayers and third parties. In addition, Article 13 provides for the power to receive information from other public authorities. Finally, Article 19 establishes the obligations of taxpayers to co-operate with the tax authority and to respond to requests coming from tax officials.

280. When the tax authority needs to gather information from an external source, it launches an informative tax audit under the grounds of an informative audit (Article 103 of the Law on Tax Procedure). The law defines it as “a control of data and facts upon the requests of other bodies, as well as persons having justified interest”. The need to respond to an EOI request is considered a justified interest. Article 23 of the Law on Tax Procedure of the RS provides the power to the RSTA to summon any person (not just taxpayer) for the purpose of taking statements or presenting documents and other books necessary for the implementation and execution of tax regulations if the RSTA considers that it has information or documentation that is important for the audit.

281. The tax audits are performed by auditors from the department of intelligence of the Tax Unit. Three investigators work in this Unit and all of them are allocated to work on gathering information to respond to EOI requests.

282. In 2022, the tax authority had to seek information from external sources (i.e. taxpayers and third parties) in one case to respond to an EOI request (out of a total of seven requests received and not declined). In this case, the information holder, taxpayer or third-party, submitted the information and the effectiveness of the access powers of the RSTA was demonstrated.

### *Brčko District*

283. For the BD, the competent authority was delegated to FDBD. However, in practice, the FDBD relies on the powers of the tax authority to access most of the information available in the BD.<sup>60</sup> This is done through the access powers provided by the Law on Tax Administration of BD.

284. The main legal powers of the tax authority are provided by Article 7(2) of the Law on Tax Administration of BD. This legal provision establishes the power to access information for tax purposes from taxpayers, third parties and public authorities. It also allows to require books and records when it is related to the enforcement of obligations provided by the tax law. Article 9 prescribes the obligation of taxpayers to provide information to the tax authority and not to obstruct the work of tax officials when performing their duties. Finally, Article 17 prescribes the powers of tax officials, such as the capacity to collect information from taxpayers.

285. The main sources to access information are also the internal databases of the tax authority and those that are maintained by other public

60. The tax administration is an organisational unit within the FDBD (Article 48(2) of the Statute of BD).

authorities, such as the Courts for legal ownership information or information on addresses of taxpayers. However, when requesting information to a taxpayer or a third party, the tax authority will have to launch a tax audit (Article 38 of the Law on Tax Administration of BD), although it has not had to do it during the period reviewed. This extends to requesting information to whoever may hold the information, even if it is not a taxpayer.

286. In 2022, the BD competent authority did not receive EOI requests. However, it had to seek information from external sources (i.e. taxpayers and third parties) in one case to respond to a EOI request related to indirect taxes in co-operation with the Indirect Tax Authority of BiH. The information holder, taxpayer or third-party, submitted the information and the effectiveness of the access powers of the Tax Administration was demonstrated.

### *Accessing beneficial ownership information*

287. In terms of accessing beneficial ownership information, neither the laws on access powers nor the AML Law restrict access to beneficial ownership information held by AML-obliged persons. The new AML Law does not establish a prohibition for AML-obliged persons to provide information or documentation gathered on the basis of the CDD process. Therefore, the powers provided by the tax legislation could be sufficient to access beneficial ownership information from an AML-obliged person and would not contradict the AML Law. Representatives of the banking sector and relevant supervisors consider that they can provide information to the tax authorities in case they are requested.

288. Nonetheless, during the onsite visit, the competent authorities of the entities were unclear on whether they would be able to gather information from AML-obliged persons directly and spontaneously referred to getting beneficial ownership information indirectly, through AML authorities (see below). When questioned about direct access, the FTA considers that it could request the information from an AML-obliged person using the powers granted by Articles 8 and 14 of the Law on Tax Administration and the RSTA considers that it could request the information from an AML-obliged person using the powers granted by Article 23 of the Law on Tax Procedure of the RS. However, the competent authorities of the entities and BD were not clear on the extent of their powers to access this type of information, or on which would be the appropriate source to utilise. The competent authority of the BD considered that as there is no AML-obliged person in the district (see paragraph 151), it would probably use inter-administrative co-operation (see paragraph 266).

289. None of the three delegated competent authorities have had experience during the review period in an EOI request that included the need to provide beneficial ownership information. However, instead of referring to

their general access powers, they consider that, in case of need, they would be able to access beneficial ownership information through the Financial Intelligence Department (FID) or through the AML supervisors of each sector.

290. The AML Law establishes the capacity of the FID to co-operate with the authorities competent for AML matters in Bosnia and Herzegovina, the FBiH, the RS and the BD on the prevention and investigation of money laundering, associated predicate offences (including tax crimes) and terrorist and proliferation financing matters, as well on co-operation and exchange of information with international partners in charge of such matters (Articles 4(aa) and 62(1)). In addition, Article 71 clarifies when the FID can share information with other competent authorities. The requests for information to the FID must contain: the legal basis for submitting the request, basic general data on the concerned natural or legal person and/or name and registered office of the legal person, a description of the suspicion for the criminal offence of money laundering, associated predicate crime or terrorist financing, as well as the level of urgency for the response to be provided by the FID (Article 71(3)).

291. In addition, the AML Law establishes the power of the FID to share information with foreign law enforcement agencies when the request specifies the grounds for a suspicion of money laundering and a predicate offence or terrorist financing and their specific connections with legal and natural persons, accounts, transactions and/or funds and acts of commission, provided that data protection equal to the protection stipulated under the legislation in Bosnia and Herzegovina is ensured (Article 77(1)).

292. Therefore, it is unclear whether the FID would in practice provide information to competent authorities upon a request related to an EOIR case that has no link with a potential criminal offence. FID authorities did not confirm that they would be able to provide beneficial ownership information upon the request of the tax authorities to respond to an EOI request and the matter has not yet been tested in practice. The AML Law refers to specific cases on which the FID could co-operate with competent authorities, but the EOI purpose is not listed. It would be possible for the FID to co-operate in case the request is related to a tax crime but the extent to which this would also be admissible for civil tax matters is uncertain.

293. In addition to relying on the FID or AML supervisors, the tax authority of RS considers that the information would potentially be available to them at the APIF, however, as discussed above (see paragraphs 157 to 160), the beneficial ownership information held by the APIF may not be appropriate due to the gaps identified under Element A.1 and in that case, the more accurate beneficial ownership information would be held by the AML-obliged persons. Finally, as discussed above (see paragraph 161), the AML law provide broad access powers to information from the beneficial owners' registries. However, these registries are not yet in place.

**294. Therefore, Bosnia and Herzegovina is recommended to ensure that the competent authorities effectively apply their access powers to obtain beneficial ownership information to respond to EOI requests.**

### *Accessing banking information*

295. With respect to banking records, tax authorities of the FBiH and the RS have relevant powers to access banking information under the tax laws and banking laws and they can provide such information to other jurisdictions under international EOI agreements. The Banking Law of the FBiH (Article 104) and the Banking Law of the RS (Article 128, paragraph 1, point 7) provide for exemptions to bank secrecy in case where tax authorities request banking information in written format.

296. There are no headquarters of banks located in BD. During the on-site visit, the BD competent authority confirmed that BD's tax officials can request and collect banking information of residents in BD or account holders of a bank account of a branch located in BD from the head office of relevant bank located in the FBiH or RS which has its branch in BD. However, they would have to do it through the competent authorities of the relevant entity (see paragraph 266).

297. In terms of the information that it is necessary for competent authorities to be able to access banking information, this includes the details of the account holder or the account number and relevant bank. If the EOI request does not contain all the necessary information, the competent authority would usually consult the Central Bank database first through the Single Register of Accounts of Business Entities (See part A.3) to gather any missing information on the bank of the account holder, and then request the information to the relevant bank.

298. All three delegated competent authorities can access banking information without impediments through the Central Bank and through banks themselves. The average time taken to relevant authorities varies from 15 days (RS) to 30 days (FBiH and BD). During the review period, the MFT BiH responded to two requests that included banking information when it was still competent authority (2020-21). In 2022, the FBiH responded to one request that included banking information, while the RS and BD did not receive any requests for banking information. No peer input identified issues on this regard.

### ***B.1.3. Use of information gathering measures absent domestic tax interest***

299. There are no legal provisions that could impede the use of information gathering measures in the absence of a domestic tax interest nor when the information is in possession or control of any person acting in an agency or fiduciary capacity, including nominees and trustees.

300. The tax laws of the FBiH, the RS and the BD provide for exception to the tax secrecy for providing information to foreign tax authorities in accordance with international treaties.<sup>61</sup> In addition, they envisage the international administrative assistance for tax matters and indicate that this assistance shall be based on international treaties or on reciprocity.<sup>62</sup>

301. Although the access powers described in section B.1.1 are not explicitly designed for EOI purposes, they can be used within the scope of the powers of each tax administration. Considering that the tax laws explicitly envisage the international assistance, this latter is considered as included in the scope of the powers of the tax administrations.

302. In addition, the authorities of the FBiH, the RS and the BD consider that since the DTCs and the Multilateral Convention provide for the exchange of information and prevail over domestic law, then access powers can be used for implementing the EOIR provision of the treaties. This interpretation combined with the explicit reference to international assistance in the tax laws confirms that domestic access powers can be used for EOI purpose. This is also confirmed in practice since the notices issued by the competent authority to taxpayers and third-party information holders in order to answer an EOI request have never been challenged.

### ***B.1.4. Effective enforcement provisions to compel the production of information***

303. Administrative and criminal sanctions are available in the RS and the BD for the breach of the obligation to provide information to the tax authority by taxpayers and third parties. There are no administrative sanctions available for competent authorities in the FBiH to consider before pursuing a criminal case. This entails that the FBiH can only rely on criminal sanctions, which entails a legal barrier to utilising potentially more effective and proportionate measures when a taxpayer or third party does not provide the requested information.

61. Article 3(4) of Law of Tax Administration of FBiH, Article 4(3)(3) of the Law on Tax Procedure of the RS and Article 4(4)(b) of the Law on Tax Administration of BD.

62. Article 6 of Law of Tax Administration of FBiH, Article 14 of the Law on Tax Procedure of the RS and Article 16 of the Law on Tax Administration of BD.

304. In the case of FBiH, the FTA can request the necessary assistance from the federal and cantonal authorities responsible for internal affairs (police force) for the execution of tax activities and especially in cases of apprehension and other types of assistance when working in the field (Article 5(6) Law of Tax Administration of FBiH). The FTA can impose penalties for tax offences, use justified force when necessary for the performance of their official duties and carry small firearms (Article 7 Law of Tax Administration of FBiH). In addition, preventing a tax official from performing an official act is a criminal act (Article 277, Criminal Code FBiH).<sup>63</sup> However, there are no administrative measures to enforce or sanction the failing to provide information or co-operate with FTA which is not considered a tax offence. The only exception is for the failure by a natural or legal person to provide tax documentation that must be maintained, such as a books and records, as per the request of the FTA that is penalised with a fine of BAM 2 000 to BAM 20 000 (EUR 1 020 to EUR 10 200) for legal persons and BAM 200 to BAM 2 000 (EUR 102 to EUR 1 020) for natural persons. There have not been issues in practice with access of information related to failing to provide information for EOI purposes. However, it is unclear if utilising a criminal proceeding avenue in case of such violation could be administratively onerous and might turn out not to be an effective measure to ensure compliance. Therefore, Bosnia and Herzegovina should monitor that effective and proportionate measures for failures in providing information are applied in the FBiH (see Annex 1).

305. The RSTA is competent to initiate misdemeanour proceedings or criminal proceedings against persons refusing to deliver information necessary for responding on a specific request for exchange of information in tax affairs. As mentioned above, Article 19 of the Law on Tax Procedure prescribes an obligation for all persons in the RS to deliver information requested by the Tax Administration. In addition, Article 112, point 2, paragraphs 3, 4 and 5 of this Law prescribe a fine ranging from BAM 2 000 to BAM 6 000 (EUR 1 020 to EUR 3 060) on a taxpayer, legal person or another entity for: hindering inspectors in performing the control, failure to participate in the control procedure, failure to provide requested notifications or failure to provide documentation necessary to perform the control, or hindering officials of the Tax Administration in conducting their duties.

306. The BDTA is competent to initiate misdemeanour proceedings or criminal proceedings against persons refusing to deliver information necessary for responding on a specific request for exchange of information in tax

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63. Article 277 Criminal Code of FBiH: (1) Whoever by force or threat of force prevents or tries to prevent a tax official from performing his official duty, or who in the same way forces or tries to force him not to perform his official function, shall be punished by a prison sentence of three months to three years.

affairs and can impose fines to natural and legal persons from BAM 5 000 to BAM 20 000 (EUR 2 550 to EUR 10 200, Article 74 of the Law on Tax Administration of BD).

307. In practice, there have been no obstructions reported during the review period and the competent authorities did not issue any sanctions.

308. In relation to powers on search and seizures, all tax administrations on the three units have such powers as part of a tax inspection as per the legal provisions discussed above. However, there is no experience of its use in EOI matters.

### ***B.1.5. Secrecy provisions***

#### ***Bank secrecy***

309. The Banking Law of the FBiH establishes that bank secrecy includes data, facts or information that shareholders of a bank and bank employees gather in the course of performing their tasks and duties, as well as professionals auditing the bank and other persons who have access to banking information because of the nature of their work, and whose disclosure to an unauthorised person would or could cause detrimental consequences for the bank and its customers (Article 102). In addition, Article 104 provides for the exemptions from bank secrecy, according to which the obligation to keep bank secrecy shall not apply if data is disclosed upon the written request of tax authorities, inspection, and other control authorities in accordance with the regulations governing their activities.

310. The FTA has a power to obtain banking information from a person/individual who is a taxpayer, including banks, in the following cases: a) data on transactions for income taxpayer and b) to inspect business books and records with the aim of determining and collecting data necessary for determining personal income tax (Article 40, Law on Personal Income Tax). It is not necessary to invoke special procedures, pursuant to Article 7 of the Law on Tax Administration of the FBiH and Article 40(2) of the Law on Personal Income Tax. At the request of the Tax Administration, banks are obliged to provide the information they have (see paragraphs 268 et seq.).

311. In accordance with Article 126 of the Banking Law of the RS, banking secrecy covers data, fact or finding which has become known to members of the bank bodies and committees, shareholders, and bank employees in the performance of operations and discharge of the duties within their competence, as well as persons of the company conducting an external audit of the bank and other persons which, due to the nature of their work, have access to this data, and whose disclosure to an unauthorised person would or could cause harmful consequences for the bank and its clients. Article 128(1)(7) lifts

bank secrecy if the information is disclosed upon written request of tax authorities, inspection, and other control authorities in accordance with regulations governing their work.

312. Finally, the BDTA also receives necessary information from competent financial institutions *ex officio*, without initiating special procedures under the Law on Tax Administration of the BD but in use of the co-operation allowed by the MOU signed among all Bosnia and Herzegovina's tax authorities, APIF and FIA in 2013. As discussed above, there are no banks headquartered in the BD and in practice the BD competent authority would request the information to the banks located in the entities. Although the legal powers of the BDTA allow the BD competent authority to request information directly from a bank located in one of the entities, there has been the experience that a bank in the RS did not respond to a request related to a domestic matter. Therefore, the BDTA has taken the approach of requesting the information through the tax administration of the entities to make the process faster and safer.

### *Professional secrecy*

313. Regarding legal professional privilege, Bosnia and Herzegovina's EOI instruments do not define "professional secrecy" and therefore, the definition provided in the domestic laws applies.

314. For the two entities and the district, the definition of professional secrecy or legal privilege of attorneys is broad, and their legal frameworks do not provide for an exception to enable the tax administrations to obtain information held by attorneys. The broad scope of professional secrecy for attorneys (not limited to giving advice or conduct of legal proceedings) has the potential for rendering the exchange of information ineffective when beneficial ownership information on their clients is requested from them or where they might be trustees of a foreign trust and are in possession of identity and accounting information of such trust. In addition, professionals met during the onsite visit considered that the scope of the professional secrecy would not allow them to provide any kind of information on their clients to the tax authorities.

315. In the FBiH, Article 5 of the Law on the Advocate Office of the FBiH stipulates that attorneys are obliged to keep everything entrusted to them by their client as an attorney's secret. In addition, the Ethical code of lawyer of the FBiH (Chapter VII) establishes that the attorney's secret applies to everything that the attorney learned as confidential from his/

her client or in another way while providing legal assistance.<sup>64</sup> The definition of legal assistance includes some aspects that may go beyond what the standard considers should be protected, as the drafting of documents such as contracts, which could for instance cover the preparation of articles of association of a company or of a trust agreement. In addition, this professional privilege encompasses all information at the knowledge of the attorney, including all files and records located in the attorney's office. The duty of confidentiality also exists in cases of knowledge of facts and circumstances entrusted by a party whose representation the attorney did not accept. An attorney may disclose facts and circumstances, which represent an attorney's secret, only in a certain type of procedure with the consent of the person from whom he/she learned it, given in written form, or if disclosure of the secret is necessary in criminal proceedings or proceedings of disciplinary responsibility of the attorney to prove his/her innocence.

316. In the RS, Articles 15 and 21 of the Law on Advocacy of the RS stipulate the duty of an attorney to keep the attorney's secret. Attorneys must maintain secret whatever clients, or their authorised representatives, have entrusted to them or whatever they have otherwise discovered or obtained in the matter of providing legal assistance,<sup>65</sup> in preparation, during the representation and after the termination of representation. The professional privilege, in addition to the attorney's knowledge, comprises all files, sound, computer, image and similar records, as well as the deposits of the parties that are in the law office. The duty to keep the attorney's secret does not end with the termination of the representation or the end of the procedure in which the facts and circumstances that constitute the attorney's secret

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64. Article 3 of the Law on the Advocate Office of the FBiH stipulates that the activity of advocacy include providing legal advice; drafting of various submissions (requests, lawsuits, petitions, petitions, appeals, etc.); drafting of various documents (contracts, wills, etc.); representation of the parties in all civil, administrative and other proceedings before all regular and other courts, other state bodies, arbitrations and legal entities; defense and representation of the defendant in criminal, misdemeanor and other proceedings in which the responsibility of physical and legal persons is decided; and provision of other forms of legal assistance to natural and legal persons in order to protect their rights and interests.
65. Article 3 of the Law on Practice of Profession of Lawyer in RS stipulates that providing legal assistance includes providing oral and written legal advice and opinions, drafting complaints, proposals and other initial submissions, requests, pleas, legal remedies, petitions and other submissions, drafting contracts, bequests, reconciliations, declarations, general and individual acts and other documents, representation and defence of individuals and legal entities, mediation for the purpose of closure of legal affairs or peaceful resolution of disputes or disputable relations, and performing other legal assistance activities in the name and for the account of a domestic or foreign individual or legal entity based on which rights are exercised and freedoms and other interests protected.

became known. The definition of legal assistance includes some aspects that may go beyond what the standard considers should be protected, such as the drafting of documents as contracts, which could for instance cover the preparation of articles of association of a company or of a trust agreement. In addition, the legal provision lists the activities in a way that allows for a broad interpretation, which may be read as not excluding other activities that the attorney may be conducting with the client.

317. Finally, in the BD the relevant legal provisions are those of the entities as it does not have specific regulations on advocates and those that do conduct professional activities within the territory of BD are members of the RS and the FBiH chambers.

318. During the review period there were no cases of requests where the professional privilege was an impediment for obtaining information. This may be related to the fact that the competent authorities do not consider attorneys as a main relevant source of information, including for domestic purposes. Although this limits the materiality of the deficiency on the broad scope of the professional privilege, **Bosnia and Herzegovina is recommended to ensure that the application of legal professional privilege of attorneys does not limit or prevent it from responding to an EOI request.**

319. Finally, there are no issues in terms of professional secrecy of notaries or accountants as these do not have to protect client's information to the extent that attorneys do, and there are sufficient exceptions in legislation to allow notaries and accountants to provide information to the Tax Authorities.

## B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

320. There are no prior or post notification provisions in Bosnia and Herzegovina (state-level). In the FBiH and the BD, there are notifications established in the tax laws before the provision of information to a partner jurisdiction. However, the details of what information is provided to the taxpayer is not established by regulations and depends on the practice of each tax administration. There is no post-exchange notification in any of the entities or the BD.

321. In addition, there are no explicit provisions in the FBiH and the BD establishing exceptions when the partner jurisdiction requests not to notify the taxpayer. However, the authorities consider that in practice they would

be able to hold the notification if requested by the partner as the treaty relationship provisions would supersede domestic regulations. Considering that this is not reflected in the internal regulations and that this exception to the prior notification has never been tested in practice, it is uncertain whether the competent authorities would have a consistent practice not to notify the taxpayer when an EOI partner so requests.

322. Finally, there are no appeal rights in any of the entities and the BD and there have not been any issues observed in practice with the notification procedures.

323. The peers did not raise any concern regarding the application of the rights and safeguards in Bosnia and Herzegovina.

324. The conclusions are as follows:

**Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement.**

| Deficiencies identified/Underlying factor  | Recommendations   |
|--|---|
| <p>There is no explicit exception to the notification of the concerned taxpayer established in the tax laws of the Federation of Bosnia and Herzegovina and the Brčko District. However, authorities explained that, if requested by the partner, they would not notify the taxpayer because the treaty relationship, including the exchange of information requests, would supersede their domestic regulations. This legal interpretation is nevertheless not documented in an internal regulation and there is no relevant experience in this regard. In addition, the absence of prior notification during the review period in practice appears to depart from the obligation of prior notification since no treaty partner requested an exception to such a notification. Therefore, it is uncertain that competent authorities would have a consistent practice in relation with the notification procedure, including on the exception to notify the taxpayer when a treaty partner so requests.</p> | <p>Bosnia and Herzegovina is recommended to ensure that notification procedures do not unduly prevent or delay effective exchange of information in practice and that competent authorities are able to exempt prior notification to a taxpayer when it is requested by a partner jurisdiction.</p> |

**Practical Implementation of the Standard: Largely compliant**

No issues have been identified in the implementation of the existing legal framework on the confidentiality of information. However, once the recommendations on the legal framework are addressed, Bosnia and Herzegovina should ensure that they are applied and enforced in practice.

### ***B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information***

325. Rights and safeguards (e.g. notification and appeal rights) should not unduly prevent or delay effective exchange of information. For instance, where notification rules are in place, it should permit exceptions from prior notification (notably, in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction) and time-specific post exchange notification (e.g. when such notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

#### *Notification*

326. At the state-level, there are no prior or post-exchange notification provisions in Bosnia and Herzegovina. However, as discussed above, even when the MFT BiH was the competent authority, it played a limited role in accessing information as it has no competence over direct taxes. When the MFT BiH acted as the competent authority for EOI purposes, it had to forward every request to the competent Ministry of Finance of the entities or the BD Directorate for action. Therefore, the regulations at the entity and BD level are relevant for the method of obtaining information and on any notification provisions and appeal rights.

327. The Law on Tax Administration of FBiH stipulates that a person to whom the information refers must be notified prior to the provision of information to a foreign country (Article 6(3)). The Law on Tax Administration of FBiH does not further specify the scope of the obligation to notify (e.g. which person should be notified – the person concerned with the foreign tax process and/or the information holder) or which information is required to be included in the notification to the taxpayer. In addition, it does not provide for explicit exceptions to this obligation to notify the taxpayers prior to the EOI. However, the authorities consider that if international treaties and other agreements in force in respect of Bosnia and Herzegovina and the FBiH do not require for notification, the provisions of international agreements (on avoidance of double taxation) must prevail over the provisions of domestic law because of the legal hierarchy and supremacy of treaty law established in the Constitution of FBiH.<sup>66</sup> None of the EOI instruments require prior or post notification but they do not prohibit it. According to the FBiH authorities,

66. The Constitution of the FBiH is the highest act, and laws and other regulations must be in accordance with the Constitution. International treaties and other agreements shall form part of the law of the FBiH according to the Constitution of the FBiH – VII. *INTERNATIONAL RELATIONS*.

this means that if the EOI partner which sends an EOI request based on the relevant international EOI provisions, asks that the persons subject to this request should not be notified, this request which is based on international provisions supersedes the domestic requirement of the notification. However, this position is not reflected in their internal regulation and has not been tested in practice. In addition, the FBiH has not put in place any measures to make EOI partners aware about its obligation to notify taxpayers neither of the possibility to request that the exception to this provision exists based on the implementation of EOI relationships. In particular, Bosnia and Herzegovina has not made any declaration under Article 4(3) of the Multilateral Convention to communicate that its authorities may notify the person subject to the EOI request before transmitting information.

328. In practice, the FBiH authorities have confirmed that during the review period no prior notifications were actually sent to subjects to EOI requests. On the other hand, they also confirmed they have not yet received any EOI request requiring that the taxpayer not be notified and, therefore, their interpretation on the precedence of the EOI requests over the tax law has not yet been tested. Considering that the scope of the obligation to notify the taxpayer prior to the EOI appears broad, the reason of the absence of notification, while there was no explicit request of exception from the EOI partners, is unclear. Although this absence of notification limits the materiality of the matter in practice, it also brings uncertainty on the consistent practice of the prior notification.

329. The Law on Tax Procedure of the RS does not require the RSTA to notify the taxpayer of a request from a foreign jurisdiction before sending information to the foreign jurisdiction (Article 14).

330. Finally, Article 16 of the Law on Tax Administration of BD establishes a notification procedure in the case of an EOI request, without specifying what type of information would be provided to the taxpayer and without providing for an explicit exception to this notification. Nevertheless, the BD authorities explained that in practice they would not apply this provision if there were a request from the partner not to notify the taxpayer. As in the FBiH, the authorities consider that an EOI request, as the implementation of treaty law, would supersede the domestic law based on the legal hierarchy established in their legal system. Nevertheless, this position is not reflected in their internal regulations and has not been tested in practice because they have not received a request to except a notification. In addition, BD has not put in place any measures to make aware their treaty partners about its obligation to notify taxpayers neither of the possibility to request that the exception to this provision exists based on the implementation of EOI relationships.

331. Therefore, although the authorities explained that in practice, they would be able to not notify the taxpayer because the treaty relationship would supersede their domestic regulations, this position is not reflected in the internal procedures or regulations of the FBiH and BD. There is no relevant experience in practice in this regard as they have not yet received any EOI request requiring that the taxpayer not be notified. In addition, although the obligation of prior notification has not affected the effectiveness of EOIR in practice, due to the absence of such notification in practice, the discrepancy between the legal obligation and the practice of the FBiH authorities brings uncertainty on the consistent application in relation with the notification procedure.

332. Therefore, **Bosnia and Herzegovina is recommended to ensure that notification procedures do not unduly prevent or delay effective exchange of information in practice and that competent authorities are able to exempt prior notification to a taxpayer when it is requested by a partner jurisdiction.** In addition, Bosnia and Herzegovina should take steps to ensure that all EOI partners are informed of its notification procedures and the possibility to seek exception from prior notification (see Annex 1).

333. There is no obligation for a post-exchange notification in the entities or the BD, including for the cases where the prior notification has been waived at the request of the requesting partner.

334. Regarding the information disclosed to the information holder, Article 8 of the Law on Tax Administration of FBiH, on requesting information to a person, requires that a summons include its purpose. In practice, when gathering the information requested – whether from the taxpayer concerned or from a third party – the competent authority provides legal reference granting the access power, the reason for the requested information and description of the requested information. The FTA declared that the wording does not imply that they would disclose the information on the EOI request. In addition, the representatives of the banks indicated that they will never inform their clients when they receive a request from a tax administration. It is unclear if this approach would be followed by other potential third parties as there are no anti-tipping off provisions for EOIR purposes in the FBiH legal framework.

335. In RS, the amount of information disclosed by the RSTA when gathering the information from a third party (or the person subject to the EOI request) extends to the EOI purpose and the name of the requesting jurisdiction is equally disclosed (although this is not explicitly required by the RS legislation). Nevertheless, as it is not required by RS legislation, the RSTA could omit this information if requested by a partner. In addition, the representatives of the banks indicated that they will never inform their

clients when they receive a request from a tax administration. It is unclear what would be the approach of other potential third parties as there are no anti-tipping off provisions for EOIR purposes in the RS regulations. Although the information disclosed to the information holder by the RSTA has not impeded effective EOIR, Bosnia and Herzegovina should monitor that the person subject to an EOIR request is not unduly notified. (see Annex 1).

336. Finally, in BD when the information holder is a third party, the letter requesting the information would only refer to the legal provision on which the domestic request is done and not to the EOI request itself. There is no anti-tipping off provisions in BD.

### *Appeal rights*

337. There are no appeal rights to the person who is the object of a request for information or of the person who holds the information in the entities and BD. Although there are appeal rights for decisions taken by the tax administrations, these are only applicable to decisions on tax liabilities and the launch of special audits.

### *Judicial review*

338. There is no judicial review established in the entities or the BD for the provision of information based on a EOI requests.



## Part C: Exchange of information

339. Sections C.1 to C.5 evaluate the effectiveness of Bosnia and Herzegovina’s network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Bosnia and Herzegovina’s relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Bosnia and Herzegovina’s network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Bosnia and Herzegovina can provide the information requested in an effective manner.

### C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

340. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so.

341. Bosnia and Herzegovina has an extensive EOI network covering 149 jurisdictions through the multilateral Convention on Mutual Administrative Assistance on Tax Matters (the Multilateral Convention) and 38 Double Taxation Conventions (DTCs).

342. The Multilateral Convention was signed by Bosnia and Herzegovina in November 2019 and entered into force in January 2021.

343. When the Multilateral Convention applies to the relationship between Bosnia and Herzegovina and partners, the relationship conforms to the standard, and the present report does not assess the conformity of any other applicable instrument(s), as it is the responsibility of the requesting authority to refer to the Multilateral Convention when the other instrument(s) do not meet the standard. Therefore, the present report focuses on the three relationships that are based exclusively on bilateral agreements, with Algeria, Iran and Sri Lanka. All three do not fully meet the standard, but Bosnia and Herzegovina is considering starting negotiations for a protocol with these partners to amend the exchange of information article.

344. The conclusions are as follows:

**Legal and Regulatory Framework: in place**

No material deficiencies have been identified in the EOI mechanisms of Bosnia and Herzegovina.

**Practical Implementation of the Standard: Compliant**

No issues have been identified that would affect EOIR in practice.

*Other forms of exchange of information*

345. Bosnia and Herzegovina has not yet committed to implementing automatic exchange of information, in relation to the Common Reporting standard. However, during the review period, Bosnia and Herzegovina used spontaneous exchanges with its treaty partners. Bosnia and Herzegovina has also entered into two regional Agreements on Co-operation and Mutual Assistance. The first one on indirect taxation with Bulgaria, Serbia, Republic of North Macedonia (North Macedonia) and Montenegro, the second also on indirect taxation with Serbia, Slovenia and Montenegro.

**C.1.1. Standard of foreseeable relevance**

346. The standard for exchange of information envisages information exchange to the widest possible extent, but does not allow speculative requests for information that have no apparent nexus to an open inquiry or investigation (i.e. “fishing expeditions”). Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.

347. The Multilateral Convention and Bosnia and Herzegovina’s DTCs with Algeria, Iran and Sri Lanka contain articles for EOI purposes that provide for exchange of information that is “foreseeably relevant” or “necessary” to the administration and enforcement of the domestic laws of the contracting parties concerning taxes covered in the international agreements. The OECD Model Tax Convention recognises in its commentary to Article 26 that the term “necessary” allows the same scope of exchange of information as does the term “foreseeably relevant”. A majority of the DTCs that are in force in Bosnia and Herzegovina were signed before 2012 and use the word “necessary”. The competent authorities interpret the terms of “necessary” and “foreseeably relevant” in line with the standard.

348. Therefore, Bosnia and Herzegovina’s EOI instruments meet the standard of “foreseeable relevance”.

### *Clarifications and foreseeable relevance in practice*

349. Bosnia and Herzegovina’s competent authorities interpret and apply its EOI instruments in conformity with the standard of foreseeable relevance and adopt the practice of seeking clarifications where requests are not sufficiently clear.

350. The authorities understand the concept of foreseeable relevance and apply it to the requests received consistently. However, only the competent authority of RS has developed an internal EOI manual that contains a detailed explanation and directions of what is expected when considering whether a request meets the standard of foreseeable relevance. It follows the OECD Model Manual on EOI. The competent authorities of FBiH and BD explained that they would follow the template of the OECD Model Manual on EOI.

351. Three requests were withdrawn by the requesting partners during the review period after Bosnia and Herzegovina required clarifications. In two cases, clarification was sought because it was not stated for what purpose the information was needed or what was the basis for the requesting authority to consider that the information was available in Bosnia and Herzegovina. The third one had not been submitted by the competent authority of the jurisdiction. The competent authority contacted the requesting authority through email and official letter to clarify and supplement the request. In all three cases, new requests were received, and the competent authority responded to them.

352. Clarifications were also sought in another case, related to the lack of sufficient information on the taxpayer subject of the EOI request actually being located within the territory of Bosnia and Herzegovina and the lack of purpose of the requested information (see paragraphs 437 and 438).

353. Among the peers concerned and those who submitted peer-input, none raised concerns on those clarifications as not being in line with the standard.

### *Group requests*

354. The EOI instruments of Bosnia and Herzegovina do not impede the sending or the receipt of group requests (i.e. requests on a group of taxpayers not individually identified) as long as the foreseeable relevance of the information requested is sufficiently demonstrated.

355. Bosnia and Herzegovina authorities confirmed that, under its EOI instruments, there is no obstacle to respond to group requests. The tax authorities of the requesting jurisdiction could request information on a group of taxpayers that share certain characteristics without specifying the identities of the taxpayers in the request. Such group requests would follow the same process as the other requests, including the verification of foreseeable relevance. All competent authorities had a general understanding of the concept of group requests and are clear of the steps they should take in case they receive one.

356. The EOI Manual of RS does not provide specific guidance to the tax officials on the appreciation of the foreseeable relevance of group requests, including by making a reference to the relevant paragraph of the Commentary of Article 26 of the OECD Model Tax Convention. However, RS authorities mentioned that they would review it to include this. As discussed above, the other competent authorities do not have an EOI Manual but follow the OECD Model Manual on EOI.

357. Bosnia and Herzegovina did not receive nor sent any group request during the review period.

### ***C.1.2. Provide for exchange of information in respect of all persons***

358. For exchange of information to be effective, it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the standard envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

359. Bosnia and Herzegovina is a party to the Multilateral Convention, which covers the vast majority of its EOI network, and its EOI bilateral instruments with the three partners not covered by the Multilateral Convention, contain similar provisions to the OECD Model Convention, particularly stipulating that the exchange of information is not restricted to residents of the Contracting States. Therefore, Bosnia and Herzegovina's EOI agreements allow for exchange of information in respect of all persons.

360. During the review period Bosnia and Herzegovina did not receive any request of information with respect to persons who were not residents in Bosnia and Herzegovina nor in the requesting jurisdiction.

### **C.1.3. Obligation to exchange all types of information and C.1.4. Absence of domestic tax interest**

361. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person (see Article 26(5) of the Model Tax Convention). In addition, jurisdictions must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party, as set in Article 26(4) of the Model Tax Convention.

362. The Multilateral Convention explicitly allows for the exchange of all types of information and provides for an exchange of information even in the absence of a domestic tax interest in the concerned information in the requested jurisdiction.

363. The EOI agreements with Algeria, Iran and Sri Lanka do not include paragraphs 4 and 5 of Article 26 of the OECD or UN Model Tax Conventions. Bosnia and Herzegovina indicated that it would apply the reciprocity principle with these jurisdictions (Article 6 of the Law on Tax Administration of FBiH, Article 12(4) of the Law on Tax Procedure of RS and Article 16 of the Law on Tax Administration of BD). The absence of this language from the DTCs with Algeria, Iran and Sri Lanka which are non-Global Forum members and/or have not yet undergone peer reviews, may be a concern as these may have legal restrictions under their domestic laws to access banking information for EOI purposes or to exchange information in the absence of domestic tax interest. Therefore, these treaties cannot be considered as meeting the standard. Bosnia and Herzegovina expressed that they are considering negotiating protocols with these jurisdictions to address the gaps.<sup>67</sup>

364. During the review period, Bosnia and Herzegovina exchanged banking information or information for which it does not have tax interest, but did not receive a request from Algeria, Iran or Sri Lanka. Peers did not raise issues regarding restrictions due to absence of domestic tax interest or inability to access all types of information for EOI purposes.

365. Bosnia and Herzegovina should work with Algeria, Iran and Sri Lanka to ensure that the exchange of information with these partners is in line with the standard (see Annex 1).

67. The MFT has prepared Protocols that would amend the agreements with Iran, Sri Lanka and Algeria. The changes refer to the article defining the exchange of information. The proposals of the Protocol were sent to the competent ministries of finance of the entities and the Finance Directorate of the BD to obtain official opinions. This phase of the process is ongoing.

**C.1.5 and C.1.6. Civil and criminal tax matters**

366. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

367. All Bosnia and Herzegovina's EOI agreements provide for exchange of information in both civil and criminal tax matters. There are no dual criminality provisions in any of Bosnia and Herzegovina's EOI agreements.

368. During the review period, Bosnia and Herzegovina did not receive any request related to criminal matters. However, Bosnia and Herzegovina authorities confirmed that they would answer requests related to criminal tax matters, provided that the requirements foreseen by the relevant EOI instrument are complied with.

**C.1.7. Provide information in specific form requested**

369. In accordance with the standard, if, with respect to a request for information, the requesting party has specified the form in which it wishes the information to be supplied and the requested party is in a position to do so, the requested party must supply the information in the requested form.

370. There is no limitation in the EOI instruments of Bosnia and Herzegovina to provide the information in the form requested and Bosnia and Herzegovina confirmed that it would interpret and apply its EOI instruments in accordance with the standard, particularly in accommodating as far as possible the request of its partners to provide the requested information in a particular form. No such requests have been received to date.

371. Peers were generally satisfied with the form of information exchanged during the review period.

**C.1.8 and C.1.9. Signed agreements should be in force and be given effect through domestic law**

372. Exchange of information cannot take place unless a jurisdiction has EOI arrangements in force. Where EOI arrangements have been signed, the standard requires that jurisdictions take all steps necessary to bring them into force expeditiously.

373. The ratification procedure is regulated by the Law on Conclusion and Execution of International Agreements. The Ministry of Foreign Affairs of

Bosnia and Herzegovina delivers to the Council of Ministers a signed international instrument with the draft of the decision to ratify it. The draft of the decision is developed by the Council of Ministers of Bosnia and Herzegovina, which delivers it to the Presidency of Bosnia and Herzegovina. The Presidency of Bosnia and Herzegovina, in order to get previous consent for the ratification, delivers the concluded agreement to the Parliamentary Assembly of Bosnia and Herzegovina. When transmitting the text of an international agreement to the Parliamentary Assembly of Bosnia and Herzegovina, the Presidency of Bosnia and Herzegovina provides a detailed explanation from the Council of Ministers of Bosnia and Herzegovina about the need and the conditions for the conclusion of the agreement. Once the Parliamentary Assembly of Bosnia and Herzegovina has given its consent to the ratification of the international agreement, the Presidency of Bosnia and Herzegovina decides about its ratification. Decision of ratification is signed by the Presiding member of Presidency of Bosnia and Herzegovina.

374. At the time of the review, there were no negotiations ongoing on EOI arrangements nor treaties that had not yet entered into force.

375. It generally takes approximately one year between the signature of the agreement and the ratification of the treaty.

### EOI mechanisms

|   |     |
|---|-----|
| Total EOI relationships, including bilateral and multilateral or regional mechanisms        | 149 |
| In force  | 143 |
| In line with the standard   | 140 |
| Not in line with the standard   | 3   |
| Signed but not in force   | 6   |
| In line with the standard   | 6   |
| Not in line with the standard   | 0   |
| Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms | 3   |
| In force  | 3   |
| In line with the standard   | 0   |
| Not in line with the standard   | 3   |
| Signed but not in force   | 0   |

Notes: a. Algeria, Iran and Sri Lanka

b. The Multilateral Convention is not in force between Bosnia and Herzegovina and Gabon, Honduras, Madagascar, Philippines, Togo and the United States.

## C.2. Exchange of information mechanisms with all relevant partners

The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

376. Bosnia and Herzegovina has an extensive EOI network covering 149 jurisdictions through 38 DTCs and the Multilateral Convention. Bosnia and Herzegovina's EOI network covers a wide range of counterparties, including all OECD members and all G20 countries.

377. Bosnia and Herzegovina has a clear legal basis and internal process to consider, initiate or deal with potential proposals of new EOI agreements. As a consequence of having joined the Multilateral Convention, Bosnia and Herzegovina's current policy does not focus on initiating negotiations to enter into new bilateral EOI instruments, but it is still willing to enter into bilateral negotiations with any interested partner that is not participating to the Multilateral Convention.

378. No Global Forum member indicated, in the preparation of this report, that Bosnia and Herzegovina refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Bosnia and Herzegovina should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

379. The conclusions are as follows:

### Legal and Regulatory Framework: in place

The network of information exchange mechanisms of Bosnia and Herzegovina covers all relevant partners.

### Practical Implementation of the Standard: Compliant

The network of information exchange mechanisms of Bosnia and Herzegovina covers all relevant partners

### C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

380. Bosnia and Herzegovina EOI instruments contain confidentiality provisions for safeguarding all information exchanged under international agreements. In addition, Bosnia and Herzegovina, the entities and the BD laws and administrative procedures ensure that information received under an EOI mechanism is treated as confidential and is disclosed only to the extent permitted by the agreement. In practice, competent authorities have not encountered cases of breach of confidentiality in relation to EOIR and peers have not raised any concerns in this regard. Nevertheless, the Tax Administration of the RS discloses to the information holder the purposes and name of the requesting jurisdiction, while there is no legal requirement for such a disclosure.

381. All tax officials of the three tax administrations are subject to the obligation to maintain the “tax secrecy”, but the level of implementation of the confidentiality requirements in practice is uneven across the entities and BD. While the RS and the FBiH have implemented robust internal policies and have adequate human and technical resources to safeguard the confidentiality of information, the BD has a less developed framework.

382. Finally, there is uncertainty in the BD about the implementation in practice of the disclosure impediments as the competent authority considered that it would have to provide any information to the public prosecutor office in the framework of an investigation of a criminal case. Although this has not occurred in practice, it is unclear if this could include treaty-exchanged information.

383. The conclusions are as follows:

#### **Legal and Regulatory Framework: in place**

No material deficiencies have been identified in the EOI mechanisms and legislation of Bosnia and Herzegovina concerning confidentiality.

### Practical Implementation of the Standard: Largely Compliant

| Deficiencies identified/Underlying factor   | Recommendations  |
|---|--|
| <p>It is unclear if the Tax Administration of the Brčko District would be able to protect the confidentiality of exchanged information in case it is requested by a prosecutor in a criminal non-tax case. This is based on the duty of public authorities to collaborate in criminal investigations and the fact that prosecutors may not concede that the provision of Bosnia and Herzegovina's exchange of information agreements override domestic rules on disclosure to public prosecutors. This has not yet happened in practice, but the tax authorities considered that they would not be able to deny access to such information.</p> | <p>Bosnia and Herzegovina is recommended to ensure that all information exchanged with the Brčko District is treated in accordance with the respective treaty under which it was received, and to monitor the application of the measures implemented.</p> |
| <p>In the Republic of Srpska, the tax administration discloses to third party information holders the name of the foreign tax authority which has made the relevant EOI request, while this is not necessary for gathering the requested information. This is not in accordance with the standard.</p>  | <p>Bosnia and Herzegovina is recommended to not disclose to third parties information that is not needed to obtain the information requested.</p>  |

#### ***C.3.1. Information received: disclosure, use and safeguards***

##### *Obligations of confidentiality*

384. Bosnia and Herzegovina is a signatory to the Multilateral Convention, incorporating confidentiality provisions consistent with the established standard (Article 22). Its bilateral EOI instruments align with Article 26(2) of the OECD Model Convention and Article 8 of the OECD Model Tax Information Exchange Agreement, featuring comparable secrecy and confidentiality clauses. Consequently, these EOI instruments ensure that exchanged information is treated as secret in the same manner as domestic information, disclosed only to persons authorised by the agreements.

385. Bosnia and Herzegovina's domestic legislation strengthens the confidentiality of tax information, including data shared under international agreements. Legislation across both entities and the BD mandates the secrecy of taxpayer information, albeit with provisions for international exchange as detailed in EOI instruments. In all cases, the obligation to maintain confidentiality of this information applies to all tax officials and continues after the end of the employment of tax officials.

386. In the FBiH, the sanctions for breaches of confidentiality by Tax Administration employees are outlined in the Law on Civil Service (Article 55) and the Law on Non-Civil-Service Staff in FBiH (Arts. 55-69), delineating disciplinary and financial liabilities for violations of official duties. The Law on the Protection of Secret Data (Article 78) introduces fines (BAM 1 000 to BAM 5 000, EUR 510 to EUR 2 550) for responsible bodies failing to adhere to procedures related to the management of classified information from other states or organisations. These provisions include record-keeping, issuance of permits for access to classified data, and the establishment of systems for the secure storage and transmission of such information. Furthermore, they prescribe penalties (BAM 1 000 to BAM 5 000, EUR 510 to EUR 2 550) for unauthorised disclosure or mishandling of classified data, including the unauthorised transfer of data classification authority and the improper marking of documents. The FTA complies with these provisions and any breaches by their employees would entail potential disciplinary measures.

387. The RSTA has criminal measures available for breaches of official secrecy. Tax secrecy is prescribed by the Law on Tax Procedure as an official secret. Disclosure of an official secret is a criminal offence, prescribed by Article 323 of the Criminal Code. An official who unauthorisedly discloses, hands over or otherwise makes available information that is an official secret, or who obtains such information with the intention of passing it on to an unauthorised person, is punishable with a fine or imprisonment for a term not exceeding three years.<sup>68</sup> The RSTA may initiate disciplinary proceedings against an employee who disclosed an official secret, if the employee abused its official position or exceeded its authority.

388. The Law on Tax Administration designates tax secrecy as an official secret, with penalties for unauthorised disclosure specified in the Criminal Code. The Criminal Code of the BD (Article 382) criminalises the unauthorised disclosure of official secrets, imposing prison sentences for such breaches, with penalties varying based on the offence's nature and implications. An official who unauthorisedly discloses, hands over or otherwise makes available information that is an official secret, or who obtains such information with the intention of passing it on to an unauthorised person, is punishable with a fine<sup>69</sup> or imprisonment for six months to ten years.

389. Although the domestic law allows the tax officials to share information with other authorities when relevant for their missions, the international

68. According to Article 49 of the Criminal Code a fine cannot be less than BAM 300 (EUR 153), nor more than BAM 200 000 (EUR 10 200), and for crimes committed out of self-interest, it cannot be more than BAM 2 000 000 (EUR 1 200 000).

69. According to Article 47 of the Criminal Code of the BD a fine cannot be less than BAM 500 (EUR 255) and up to BAM 100 000 (EUR 5 100).

provisions of the EOI instruments supersede these domestic provisions, and then prohibit the disclosure of exchanged information to non-tax authorities. There have not been cases of information shared at the state or the entities levels beyond what is permitted by the tax treaties and authorities are aware of the need to comply with the provisions of the treaty law.

390. However, it is unclear if the BDTA would be able to protect the confidentiality of exchanged information in case it is requested by a prosecutor in a criminal non-tax case. This is based on the duty of public authorities to collaborate in any criminal investigations and the fact that prosecutors may not concede that the provision of Bosnia and Herzegovina's exchange of information agreements override domestic rules on disclosure to public prosecutors. This has not yet happened in practice, but the tax authorities considered that they would not be able to deny access to such information, including the request from the partner, if requested. Therefore, **Bosnia and Herzegovina is recommended to ensure that all information exchanged with the Brčko District is treated in accordance with the respective treaty under which it was received, and to monitor the application of the measures implemented.**

391. The entities and BD have dissuasive sanctions in their legislation against the disclosure of confidential information protected by tax secrecy. However, the RS and the BD do not have administrative fines that could be more proportionate to the negligent conduct that could allow the disclosure of confidential information and would have to initiate criminal proceeds, which may be more burdensome to conclude and enforce sanctions. Still, the fact that there are criminal sanctions should have a sufficient deterrent effect on the breach to confidentiality and demonstrates the seriousness of the potential offence for the authorities.

392. The Terms of Reference, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides that the information may be used for such other purposes under the laws of both contracting parties and the competent authority supplying the information authorises the use of information for purposes other than tax purposes. The competent authorities of Bosnia and Herzegovina reported that they have never received a request for authorising the use of information exchanged for a non-tax purpose nor have they sent such a request during the review period. With the exception of BD, as discussed above, the competent authorities of the entities explained that they would request authorisation from the partner jurisdiction before providing any exchanged information to a non-tax authority, including to a prosecutor, in case of being requested to do so as part of non-tax criminal proceedings.

### ***C.3.2. Confidentiality of other information***

393. The confidentiality provisions in Bosnia and Herzegovina's EOI agreements and domestic law do not draw a distinction between information received in response to EOI requests and information forming part of the requests. As such, these provisions apply equally to requests for information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction. Taxpayers or information holders do not have the right to inspect the EOI file containing all this information.

394. With respect to information disclosed to information holders, the information holder is informed by the RSTA in the letter seeking its cooperation that the information is requested for EOI purposes and identifying the requesting party (see paragraphs 335 et seq.). This does not appear to be necessary information to gather the requested information. **Therefore, Bosnia and Herzegovina is recommended to not disclose to third parties information that is not needed to obtain the information requested.**

### ***Confidentiality in practice***

395. FBiH and the RS have implemented the use of a “tax secret” stamp on all exchanged documents both for outgoing and incoming requests. However, adherence to confidentiality policies and the limitation of data use to tax purposes require clarification in BD (see paragraph 391). In addition, the BD's confidentiality measures are somewhat intuitive, reflecting the tax authority's lower development.

### ***Human resources***

396. No specific protocols exist for conducting background checks or monitoring staff access to sensitive information in the entities or BD. Nevertheless, specialised staff dedicated to EOI tasks are in place across both entities and BD. However, relevant staff have not yet received specific training on information security or on the protection of confidentiality. Processes for terminating access to confidential information upon employment cessation are in place, ensuring departing employees cannot access sensitive data or premises. These include the case where an employee changes position within the organisation, as there is a practice in all concerned institutions to remove access rights.

### *Physical and IT security*

397. The integrity of the EOI process is protected by sufficient access controls and security measures across the three competent authorities. Access to premises housing EOI files is strictly regulated, ensuring that only employees engaged in cases are granted entry. The protocols extend to the physical security of the facilities, which are monitored through video surveillance and guarded by security personnel. The enforcement of entry protocols, including security checks for employees and controlled visitor access upon prior notification, reinforces the safeguarding of sensitive information. Offices designated for storing EOI files are securely locked, further limiting access to authorised personnel only.

398. The regulation on office operations within the FBiH mandates that official documents, materials, and other sensitive items be stored in a locked compartment to prevent unauthorised access. This directive ensures the protection of confidential and strictly confidential documents, which are segregated from general documentation to preserve their confidentiality. The safe management of these documents, from storage to archiving, allows preventing potential unauthorised disclosure. In the competent authority (FMF), hard copies of confidential data received from taxpayers or EOI partners are kept in locker with a key. Only employees of the EOI Unit have a key to access these files.

399. However, the FMF does not have its own prescribed procedures regarding receiving, processing, archiving, retrieving, and disposing of hard copies of confidential data received from taxpayers or EOI partners, but it relies on the FTA to access, gather and provide the needed information that is requested.

400. In the FTA, confidential information is subjected to a specialised circulation procedure. This process includes the opening, assigning and registering of classified and/or confidential documents, which are then allocated to relevant personnel. The physical and electronic storage of these documents is secured within specially designated areas or server rooms, accessible only to authorised individuals. This layered approach to information security is reinforced by technical safeguards, including advanced fire protection, surveillance systems and controlled access mechanisms.

401. The FTA's commitment to information security management is further reflected by its use of hardware firewalls and digital certificates for authenticating external users, alongside structured access protocols based on job roles and competences. This systematic approach ensures that access to information is both necessary and appropriate to the employee's duties, reinforcing the integrity of the information security framework.

402. Therefore, the FBIH has active and efficient information protection systems and the possibility to identify any violation to the internal protocols.

403. The RS has implemented a comprehensive and structured approach towards protecting confidentiality of EOI related information, through the adoption of a Methodological Guide, which aligns with the guidelines of the Global Forum.<sup>70</sup> The guide advocates for a “clean desk policy”, emphasizing the importance of a meticulous and organised handling of EOI documentation.

404. Further strengthening the security framework, access to the RSTA premises is controlled through a front desk service. This service effectively prevents unauthorised entry, mandating that all visitors log their arrival with front desk personnel before gaining access to the building. This layer of security ensures that the flow of individuals within the premises is monitored and regulated, enhancing the overall security posture of the Tax Administration.

405. Complementing these physical security measures, the RSTA has implemented a Rulebook on Office Management, which outlines detailed procedures and processes for the receipt, processing, archiving, retrieval, and disposal of documentation. This rulebook is part of a broader governance framework that includes the “Information Systems Security Policy of the Tax Administration of the Republic of Srpska”. This policy delineates a series of security measures encompassing password policies, networking devices security, enrolment policy, email policy, and more, representing a holistic approach to safeguarding information at every level of the organisation.

406. Central to this policy is the fact that the Department for International Co-operation and Exchange of Information, along with other relevant organisational units granted access to EOI data, must maintain strict segregation of this information from other taxpayer data. This segregation ensures that information received in paper format is managed with the utmost confidentiality and security. Such documents are to be stored separately and returned to secure storage facilities – be it cabinets or binders – by the end of each workday, accessible only to individuals explicitly authorised to handle them. This process enhances the security and integrity of EOI data.

407. These measures reflect the RSTA commitment to security and efficiency in the management of EOI related information. Through the integration of methodological guidance, stringent access controls, comprehensive office

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70. “Model Manual on Exchange of Information for Tax Purposes” from 2021 and “Establishing and Running an Effective Exchange of Information Function” from 2020.

management policies, and advanced information security protocols, the RSTA demonstrated sufficient capacity for the management and protection of sensitive tax-related information related to EOI cases.

408. Finally, the BD employs stringent access controls and security measures to protect the premises where EOI cases are managed. Access is strictly limited to personnel directly involved in these cases, underscoring a commitment to ensuring that sensitive information is handled securely and responsibly. The premises are fortified through the implementation of video surveillance and physical security measures, creating a secure environment for the storage and management of EOI documentation.

409. Entry protocols are carefully enforced, with employees required to undergo safety controls to access the facility. Visitors face a controlled access policy, wherein entry is permitted only upon prior notification to and approval by security staff, ensuring that visitor access is carefully managed and restricted. This protocol extends to the limited availability of premises to visitors, further safeguarding the confidentiality of the information contained within. Additionally, the offices designated for the storage of EOI cases are securely locked, reinforcing the physical security measures in place.

410. However, the BDTA has not established specific procedures or processes for the receipt, processing, archiving, retrieval and disposal of documentation related to EOI, other than those general practices regulated by the legislation on the management of administrative documentation (Law on Office Management). This is a potential area for enhancement in terms of developing a more structured approach to managing EOI documentation, in all stages from receipt to disposal.

411. Moreover, the BD has not adopted the practice of maintaining electronic records for EOI, relying instead on physical methods of documentation. This approach may limit the efficiency and accessibility of information, highlighting an opportunity for the integration of digital record-keeping solutions to streamline the management of EOI cases and enhance the security and traceability of sensitive information.

412. In summary, while the BDTA demonstrates a strong foundation in physical security and controlled access to protect EOI documentation, there is a notable absence of detailed procedures specific to the handling of EOI cases beyond general office management practices. The incorporation of comprehensive processes for managing EOI documentation, coupled with the adoption of electronic record-keeping, could significantly bolster the efficiency, security and overall effectiveness of the EOI exchange process within the BD. Therefore, Bosnia and Herzegovina should further enhance its confidentiality policies to protect EOI related information (see Annex 1).

413. The structured approach across the entities, encompassing both regulatory compliance and methodological guidance, ensures the protection of sensitive EOI related information.

### *Labelling and handling of confidential information within the Tax Administration*

414. All competent authorities label the files that are created upon receiving a request as “tax secret” (FBiH, RS and BD) and it is only handled by authorised staff which are identified when holding the file and registered in an internal ledger. There are dedicated persons in all competent authorities that are responsible of receiving, registering and managing the administrative circulation of the files that are created to respond to EOI requests. Similar policies are applied for outgoing requests.

415. Although the information received from a foreign partner is not “treaty” labelled, the tax auditors, who are the main users, are usually aware of their obligation to request an authorisation before disclosing it to other authorities, except in the BD (see paragraph 391). In both the entities and the BD, auditors that deal with EOI requests are trained on the obligations related to the treatment of information, including confidentiality. Nevertheless, in the absence of a treaty-stamp on all exchanged information, the trainings may not be enough to ensure that this information will not be shared with a non-tax authority. Therefore, Bosnia and Herzegovina should ensure that all information received in the context of the exchange of information is identified as subject to the specific conditions of confidentiality provided for in the EOI instruments (see Annex 1).

### *Incident/Breach management*

416. State, entities and BD authorities informed that any incident or breach identified by an officer is required to be reported to the supervisor, who in turn reports it to a disciplinary commission. However, there are no formal procedures or policy available for management of breaches nor specific audits conducted to identify potential breaches or weaknesses in the systems. Bosnia and Herzegovina should put in place formal procedures for management of breaches to ensure the protection of exchanged information (see Annex 1).

417. In practice, no breach of confidentiality of information received from an EOI partner took place during the review period, and peers have not mentioned any issues in this regard.

*Mode of transmission of information*

418. During the review period, the predominance of ordinary physical mail as the mode of transmission for EOI responses and requests is noteworthy. However, the standard does not mandate a specific transmission method and no partner has yet identified issues with this approach. There have been no practical issues, but all competent authorities confirmed that if a physical mail would be returned due to an incorrect or incomplete address, they would verify with the partner about the correct address through email correspondence and retry the delivery. In addition, in the case of the FBiH and BD, they would also send the requested information through email if that is possible.

*Exchange of information in practice*

419. The absence of reported instances of improper access, use, or disclosure of confidential EOI-related information during the review period demonstrates Bosnia and Herzegovina's regulatory and operational frameworks in upholding the confidentiality of exchanged information. The entities and BD have demonstrated the effectiveness of the implemented safeguards, regulatory clarity, and the commitment of competent authorities in Bosnia and Herzegovina to maintaining the highest standards of confidentiality in EOI.

**C.4. Rights and safeguards of taxpayers and third parties**

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

**C.4.1. Exceptions to the requirement to provide information**

420. The standard provides that requested jurisdictions should not be obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege or information the disclosure of which would be contrary to public policy, as stipulated in Article 26(3) of the OECD Model Tax Convention.

421. Bosnia and Herzegovina's EOI instruments contain a provision equivalent to this exception.

422. The scope of the term "professional secret" for attorneys under Bosnia and Herzegovina's domestic laws which is applicable to its EOI agreements is broader than what is permitted by the standard (see Element B.1.5). However, the materiality of the gap is limited and there have been no cases where the competent authorities declined to provide information due to these limitations.

423. The conclusions are as follows:

#### Legal and Regulatory Framework: in place

| Deficiencies identified/Underlying factor  | Recommendations   |
|--|---|
| The definition of the professional secrecy or legal privilege of attorneys is broad (not limited to giving legal advice or related to legal proceedings), which has potential for rendering the exchange of information ineffective, especially when beneficial ownership information is requested. The materiality of the gap is nonetheless limited. | Bosnia and Herzegovina is recommended to ensure that the application of legal professional privilege of attorneys does not limit or prevent it from responding to an EOI request. |

#### Practical Implementation of the Standard: Compliant

No issues have been identified in the implementation of rights and safeguards available in the existing EOI instruments. However, once the recommendations on the legal framework are addressed, Bosnia and Herzegovina should ensure that they are applied and enforced in practice.

### C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

424. Despite a complex organisation (and a recent reorganisation) due to the three different competent authorities, the EOI in practice is effective as most of the answers to the requests received during the review period were provided within 90 days and no negative feedback was received from peers. Bosnia and Herzegovina received 91 requests during the period under review and, although there were instances of needs for clarification or requests that were declined, these were resolved in a timely manner and peers were satisfied. It has a more limited practice of sending requests, with 9 requests sent during the review period, and the peers did not identify any issue with these requests.

425. The previous unique competent authority (MFT BiH) did not have the practice in 2020 and 2021 to send a status update for cases where the information requested could not be provided within 90 days. The three delegated competent authorities since 2022 showed willingness and efforts to answer all requests in a timely manner and to provide, if needed, a status update within 90 days. Nevertheless, this practice of sending status updates has not been tested in practice.

426. Finally, the requests received by Bosnia and Herzegovina, the entities and the BD were in general quite simple (such as verification of the residence address of the taxpayer), and the three competent authorities reported an increase in the volume of EOIR after the peer review period (i.e. in 2023).

427. The conclusions are as follows:

### Legal and Regulatory Framework

This element involves issues of practice. Accordingly, no determination has been made.

### Practical Implementation of the Standard: Compliant

| Deficiencies identified/Underlying factor  | Recommendations  |
|--|--|
| <p>During the time the Ministry of Finance and Treasury of Bosnia and Herzegovina was the competent authority, it did not have the practice of providing status updates to partners. Since 2022, all competent authorities have committed to provide status updates when needed. However, at the time of the review, this was only reflected in the internal manual of Republic of Srpska, and the other two competent authorities did not have one put in place yet. Nevertheless, the Federal Ministry of Finance maintains a tool that assists the EOI Unit to track the progress and monitor requests and utilise the OECD Model Manual on Exchange of Information for Tax Purposes to guide their operations.</p> | <p>Bosnia and Herzegovina is recommended to provide status updates to EOI partners within 90 days in all cases where it is not possible to provide a response within that timeframe.</p> |

#### ***C.5.1. Timeliness of responses to requests for information***

428. In order for exchange of information to be effective, responses must be provided in a timeframe that allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time, the information may no longer be of use to the requesting jurisdiction.

429. Bosnia and Herzegovina received 91 EOI requests during the period under review (1 January 2020 to 31 December 2022). The requests received related to accounting information (14 cases), banking information (3 cases), ownership information (3 cases) and other types of information (72 cases). Information was sought in respect of both individuals and companies and in most of the cases was intended to confirm personal or legal information of resident taxpayers (such as addresses). The requests received can relate to more than one type of information.

430. The jurisdictions with which Bosnia and Herzegovina has had the most significant EOIR relationships include Serbia, Austria, Croatia, Slovenia and Belgium. These relationships are evaluated based on the volume of exchanged information. The competent authorities actively engage with these partners to ensure a smooth and effective EOIR process, employing a variety of communication methods such as email or post mail to facilitate exchanges.

431. Each competent authority within Bosnia and Herzegovina maintains a detailed log of EOIR requests, tracking dates of receipt, action, and final response. However, the state level and the entities and the BD have reported varying degrees of efficiency and timeliness in the provision of responses, reflecting differences in administrative efficiency and resource allocation particularly since the change in structure of competent authorities in 2022. Nevertheless, all competent authorities proved to have an understanding of the importance of providing timely responses, as soon as possible after receiving an EOI request.

432. The following table relates to the requests received during the period under review and gives an overview of response times of Bosnia and Herzegovina in providing a final response to these requests, together with a summary of other relevant factors affecting the effectiveness of Bosnia and Herzegovina's practice during the period reviewed.

#### Statistics on response time and other relevant factors

|   |             | 2020 |     | 2021 |     | 2022 |      | Total |     |
|---|-------------|------|-----|------|-----|------|------|-------|-----|
|   |             | Num. | %   | Num. | %   | Num. | %    | Num.  | %   |
| Total number of requests received                   | [A+B+C+D+E] | 43   | 100 | 27   | 100 | 21   | 100  | 91    | 100 |
| Full response: ≤ 90 days                            |             | 30   | 70  | 17   | 62  | 21   | 100  | 68    | 74  |
| ≤ 180 days (cumulative)                             |             | 42   | 97  | 24   | 89  | 21   | 100  | 87    | 95  |
| ≤ 1 year (cumulative)                               | [A]         | 43   | 100 | 24   | 89  | 21   | 100  | 88    | 97  |
| > 1 year  | [B]         | 0    | 0   | 0    | 0   | 0    | 0    | 0     | 0   |
| Declined for valid reasons                          |             | 0    | 0   | 0    | 0   | 0    | 0    | 0     | 0   |
| Requests withdrawn by requesting jurisdiction       | [C]         | 0    | 0   | 3    | 11  | 0    | 0    | 3     | 3   |
| Failure to obtain and provide information requested | [D]         | 0    | 0   | 0    | 0   | 0    | 0    | 0     | 0   |
| Requests still pending at date of review            | [E]         | 0    | 0   | 0    | 0   | 0    | 0    | 0     | 0   |
| Outstanding cases after 90 days                     |             | 13   |     | 7    |     | 0    |      | 20    |     |
| Among these, status update provided within 90 days  |             | 0    | 0   | 0    | 0   | 0    | n.a. | 0     | 0   |

*Notes:* Bosnia and Herzegovina counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about 4 persons in one request, Bosnia and Herzegovina count that as 1 request. If Bosnia and Herzegovina received a further request for information that relates to a previous request, with the original request still active, Bosnia and Herzegovina will append the additional request to the original and continue to count it as the same request.

The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

433. During the peer review period, the competent authorities demonstrated a commitment to promptly respond to EOIR requests. Most responses (74%) were issued within 90 days, reflecting an efficient processing system. However, the complex nature of some EOIR requests in 2020 and 2021 and external challenges such as the COVID-19 pandemic caused longer response-times and occasional delays. Notably, additional requests for clarification sent to partners were managed in a way that minimised impact on the overall timeliness of the EOIR process. On average, it took up to five days to check the validity of a request and seek clarification or additional information from the requesting jurisdiction.

434. Bosnia and Herzegovina at the state level (MFT BiH) reported overall adherence to a 90-day response timing during the review period, with occasional longer time-responses attributed to complex inter-entity communication channels (such as written correspondence) and the COVID-19 pandemic's impact on operational capacity. However, there was one case in which the response was provided after 180 days. The longer time in answering this request was mainly due to the need to request a clarification from the partner jurisdiction that took nine months to respond. The FBiH and the RS managed to respond all requests within 90 days during 2022. The BD did not receive requests during the review period.

435. Most of the requests dealt with during the review period were simple in nature, with most requests (79%) being related to validating information of resident taxpayers such as addresses or other personal or legal information. The second type of information that was mostly requested was accounting information (15%), followed by banking (3%) and ownership information (3%). During the review period, there were no requests that included the need to gather beneficial ownership information.

436. After clarifications sought by Bosnia and Herzegovina, two EOI requests were withdrawn due to the requests being made under unclear or incorrect legal basis and a third one because it was not submitted by the competent authority of the jurisdiction. In these three cases, Bosnia and Herzegovina responded to the fresh requests sent by the requesting jurisdictions under the correct legal basis and by the relevant competent authority. The peers concerned did not present any negative feedback on the withdrawn requests and in Bosnia and Herzegovina's view they were satisfied by the responses.

437. Apart from the above, clarifications were sought in one case, and this led to a slight delay in providing information. The clarification sought mainly related to the lack of sufficient information on the taxpayer subject of the EOI request supposed to be located in the territory of Bosnia and Herzegovina and the lack of purpose of the requested information.

### *Status updates and communication with partners*

438. During the time the MFT BiH was the competent authority, it did not have the practice of providing status updates to partners. Since 2022, all competent authorities have committed to provide status updates in case there would be the need for that. However, at the time of the review, this was only reflected in the internal manual of RS and the other two competent authorities did not have one put in place yet although they use the OECD Model Manual on Exchange of Information for Tax Purposes as a reference to guide their operations. In addition, the FMF maintains a tool that assists the EOI Unit to track the progress and monitor requests.

439. Bosnia and Herzegovina was able to provide a response within 90 days in 74% of the requests, and on all requests received since the change in the structure of the competent authorities. This demonstrates that the efficiency purpose of the restructuration of the functions of competent authorities since 2022 has been reached. In addition, although not formally included in all internal processes, all competent authorities were aware of the necessity to provide status update in case an information cannot be provided within 90 days. Although a status update was not provided when needed in 2020 and 2021, Bosnia and Herzegovina has taken the relevant measures to address this deficiency through the new structure of the competent authorities since 2022. Nevertheless, since the practice of sending status updates since the 2022 restructuration has not been tested due to the ability of the competent authorities to answer within 90 days in all cases in 2022,<sup>71</sup> **Bosnia and Herzegovina is recommended to provide status updates to EOI partners within 90 days in all cases where it is not possible to provide a response within that timeframe.**

### **C.5.2. Organisational processes and resources**

#### *Organisation of the competent authorities*

440. It is important that a jurisdiction has appropriate organisational processes and resources in place to ensure a timely response.

441. The decentralisation of EOIR responsibilities to entity-level ministries and the BD's finance directorate in 2022 marked a significant shift in Bosnia and Herzegovina's approach to international tax co-operation (see paragraphs 261 et seq.). Each authority now independently manages EOIR requests, which has implications for consistency, efficiency, and the overall effectiveness of Bosnia and Herzegovina's EOIR system.

71. The competent authority of the FBiH have indicated having an experience of sending status updates in 2023 and 2024, but this practice has not been assessed as it is outside the review period.

442. Bosnia and Herzegovina's EOIR practices, as reported by its various competent authorities, reveal a commitment to EOI but also highlight potential areas for further monitoring. The transition to a decentralised model of EOIR responsibility requires an enhanced inter-entity co-ordination, in particular in the context of an increasing number, diversity and complexity of information requested. This is intensified by issues such as very nascent staff training, variable resource allocation, and the need for better performance monitoring.

443. During the time it was the competent authority, the MFT BiH outlined a procedure where incoming EOIR requests were initially assessed for compliance with international agreements and the legitimacy of the requesting authority. There was a team of three professionals that were responsible of managing the requests received, forwarding them to the entities and BD and responding to the requesting peer. The EOI team conducted a preliminary check, within seven days of receipt, to ensure that only valid requests (i.e. requests that meet the requirements of the underlying EOI mechanism) were processed further. Subsequently, valid requests were distributed to the relevant tax administrations or finance ministries of the entities and BD for action.

444. The FMF, upon assuming EOIR responsibilities, instituted a dedicated team for EOI purposes responsible of managing incoming requests and a process to handle them. With the establishment of the Department for International Co-operation and Exchange of Information, the MFRS also further institutionalised its role in EOIR as of 1 January 2022. The responsibilities of these EOI teams include verifying that EOIR requests meet the requirements of the underlying EOI mechanism, including the standard of foreseeable relevance, and initiating the information collection process. This structured mechanism ensures that the EOI teams of the FMF and the MFRS adheres to a timely provision of information or status update submission, reflecting their alignment with EOIR standard. The competent authorities of both entities have legal powers to co-operate through an inter-administrative request in case they need to obtain information to respond to a request related to a taxpayer located within their jurisdiction, and they use this power in practice. The competent authorities of the entities confirmed during the onsite visit that they also communicate with each other about requests that relate to residents of the other entity and do their best to respond. They would also inform the competent authority of the BD if that request was of its competence. However, they would inform the partner that the request should be re-directed to the relevant competent authority.

445. In the FDBD, the focus is on determining the foreseeable relevance of incoming requests. An assigned officer evaluates whether the EOIR request pertains to a taxpayer within the BD. In the two situations mentioned in the previous paragraph, the FDBD uses the inter-administrative

co-operation to gather the information and provide a comprehensive response to the partner if the information is related to a taxpayer of BD but it is located or in possession of someone within the territory of the entities. In the second situation, the process in the BD is slightly different compared the entities. Before 2022, requests unrelated to district residents were redirected to the MFT BiH. Since the competent authority was delegated to the BD, this type of request would be responded by explaining that the request is not related to a BD resident or to a person with an evident link with the BD's territorial jurisdiction and, therefore, that it is not possible to be responded. The BD authorities would not inform the entity authority in parallel.

446. Further, as discussed above, the RSTA has an internal EOI manual that guides their operations and the FMF and FDBD utilise the Global Forum Model Manual on EOI for the same purposes. The lack of an internally issued EOI manual has so far not implied any challenges for FMF to respond to requests effectively. In addition, the implications of the lack of a EOI manual could not be tested in BD because of the absence of requests received. However, authorities met during the onsite visit had a sufficient understanding of the process and the main concepts needed to conduct their duties. Nevertheless, it is possible that the lack of a EOI manual may become an issue for effective EOI, for instance because of staff turnover or reasons related to the increase of workload or the complexity of requests. Therefore, Bosnia and Herzegovina should ensure that an EOI Manual, including domestic procedures to handle EOI requests in line with the standard, is available for all competent authorities (see Annex 1).

### *Resources and training*

447. The level of resources and specialised training for EOIR staff varies across the entities and BD, with a clear reliance on Global Forum resources for self-education. While the staff in the FBiH and RS is aware of their responsibilities and appear to have sufficient technical and material resources to conduct their duties, it is unclear if this would still be the case if the number and complexity of the EOI cases would increase. In addition, the resources and technical capabilities of the BD are less developed, however, they were sufficient for the level of requests received and the type of information that was requested to produce before becoming competent authority.

448. During the time when the MFT BiH performed the function of the competent authority, two expert advisors worked on information exchange tasks, and one more oversaw their work. Since January 2022, the entities and BD have put in place responsible teams within the competent authorities to perform functions related to EOI.

449. As of January 2022, the “Unit for international co-operation in tax matters” (newly formed Unit within the Department for tax policy, public revenues, and games of chance in the FMF) is authorised as a competent authority for the territory of the FBiH for exchange of information on request and spontaneous exchange of information. The Unit has two full time staff dedicated to managing EOI requests. In addition, the Unit relies on the tax administration structure to gather the information needed to respond to the requests. All staff working on EOI are trained and have relevant background in the matter. FBiH has the necessary financial, technical, and human resources for performing information exchange activities.

450. In the case of RS, the Department for International Co-operation and Exchange of Information within the RSTA (as a body within the MFRS) is authorised as a competent authority for the territory of the RS for exchange of information on request and spontaneous exchange of information. The Department has three employees solely dedicated to managing EOI requests. In addition, it relies on the Department of Intelligence of the Tax Unit to gather the information required to respond to a EOI request and three tax investigators work on these matters. All staff working on EOI is trained and has relevant background in the matter. The RS has the necessary financial, technical, and human resources for performing information exchange activities.

451. Finally, the BD has three staff allocated within the FDBD that have other daily tasks in addition to dealing in an ad-hoc basis with EOI matters. In practice, there is one employee who is a tax inspector that works in gathering information on cases and who is supervised by the other two individuals. All staff working on EOI is trained and has relevant background in the matter.

452. Therefore, Bosnia and Herzegovina should monitor that the level of resource assigned to the EOI matters is sufficient (See Annex 1).

### **Competent authority’s handling of the request and verification of the information gathered**

453. Across Bosnia and Herzegovina, the EOIR process includes a rigorous verification and cross-jurisdictional co-operation. While each entity has tailored its approach to align with local administrative structures and legal frameworks, there are established processes within each of the entities and the BD to manage the EOI cases and to verify the completeness of the information provided before sending a response to a peer. All competent authorities utilise a protocol number system to count EOIR requests, ensuring each request is treated individually regardless of the number of taxpayers involved. This method simplifies tracking. In addition, both entities and BD employ a database for tracking both incoming and outgoing

EOIR requests, recording the request numbers, dates, and jurisdictions involved. Each competent authority implements a structured approach to processing incoming EOIR requests, validating their legality, and ensuring the timeliness and quality of responses.

454. Upon receiving an EOIR request, the MFT BiH, during its tenure as the competent authority, would swiftly assign the request to the relevant subdivision within the Ministry. This procedure initiated the logging of the request, facilitating the officers' task of monitoring the progression against the deadlines established by the Ministry. The surveillance of these activities fell under the purview of department heads, to ensure the adherence to a stipulated deadline of seven days from the date of receipt to process the request preliminarily. In addition, this process would include monitoring the timing of the responses. However, it would not include the verification of the information provided as the competent authority had no powers on direct taxes.

455. In the FBiH, the FMF integrates technology into its process by utilising a Document Management System to electronically log all incoming requests. Each request, upon its arrival via the protocol of the Ministry or the minister's cabinet units, is accorded a reference or protocol number. It is then dispatched to the competent departments, where the assistant minister assigns the request to the heads of units for action. Unlike the MFT BiH, the FMF, guided by the Law on Tax Administration of FBiH, does not impose specific deadlines for information exchange requests but has not suffered any delays and was effective in the provision of information within 90 days.

456. However, upon receiving a request, the competent authority would confirm the request's origin, its legal basis, the type of information and taxation concerned, and the specific rationale for the request, including the assertion of the requested information's location within the jurisdiction. Fulfilling these criteria and establishing foreseeable relevance are prerequisites for forwarding requests to the FTA for information gathering. Once it is submitted to the FTA, the competent authority would maintain a register to check if there are any delays and would contact the responsible person in the FTA only in that case. The FMF's has a practice of reviewing FTA's responses before submission to the requesting country that further demonstrates its commitment to accuracy and completeness in the EOIR responses.

457. The FDBD and MFRS exhibit a similar commitment to the efficient handling of EOIR requests. In FDBD, each request is allocated a reference number and directed to the Tax Administration, eventually reaching the designated EOIR contact person responsible for compiling the response. The absence of a specific timeline or procedural guide in the FDBD is mitigated by the fact that the number of requests received is very low. In addition, the competent authority would monitor and closely follow the timing to respond

to the request. In case there is a delay, the competent authority would check with the responsible person within the tax administration.

458. The MFRS, on the other hand, follows a procedure where upon receipt, each request is logged, assigned a reference number, and forwarded to the competent organisational unit, reflecting an alignment with the standard for timeliness. The MFRS maintains a register that it uses to monitor the timing to respond to the requests and to register who is in possession of the file within the tax authority. In addition, the MFRS has a practice to closely monitor that its timelines are respected and that the responses are complete and in line with what was requested by the partner.

459. The validation of the EOIR requests' legitimacy is a key step in the process across the entities and the BD. This phase involves confirming the requesting jurisdiction's authority, ensuring the request adheres to the legal basis for information exchange, and assessing the detailed specifics of the request, such as the type of information and taxation involved, and the tax periods in question. The conditions for proceeding with an EOIR request include verifying the identity of the sending competent authority, establishing the request's foreseeable relevance, and ensuring that the information sought resides within the jurisdiction or under the control of a person within the jurisdiction.

460. In instances where EOIR requests are deemed unclear or incomplete, the entities have outlined their approaches to soliciting additional information from the requesting jurisdiction. The MFT BiH and FMF, for example, would actively engage with the requesting jurisdictions to obtain necessary clarifications, ensuring the requests meet all required criteria before being processed. The FDBD and MFRS also expressed readiness to seek further details to clarify any ambiguities, underscoring their commitment to fulfilling the EOIR requests comprehensively. This has only happened in practice during the reporting period in one opportunity, as discussed above.

461. However, the provision of status updates to requesting jurisdictions reveals varying practices among the entities and the state level. While MFT BiH acknowledged the absence of a formal system for sending status updates during its tenure as the competent authority, FMF and FDBD recognised the importance of informing requesting jurisdictions about delays or progress in processing EOIR requests. MFRS included in the methodological guide provisions for updating requesting jurisdictions.

462. In conclusion, the handling of EOIR requests within Bosnia and Herzegovina is marked by a commitment to procedural rigor, validation of request legality, and adherence to the standards.

**Practical difficulties experienced in obtaining the requested information**

463. Bosnia and Herzegovina did not face any practical difficulties in obtaining the requested information and the peers did not raise any concern in this respect. However, the information requested so far has been simple in nature.

*Outgoing requests*

464. There was a total of nine outgoing requests during the review period, two in 2020, five in 2021 and two in 2022. There were no requests from peers to provide clarifications on the requests sent nor any negative peer feedback received. In both the entities and BD, the tax officials working on a file would be the initiators and responsible for justifying that the condition of foreseeable relevance is attained. The competent authorities would check that all the conditions to send the request are there and request for clarifications if needed.

465. The RS adopted a methodological guide that includes the necessary steps to send requests to the EOI partner. The competent authority works in direct contact with auditors to prepare a request and checks that all necessary information is included. Once this has been verified, the competent authority sends the request to the EOI partner via encrypted email or via registered post if the EOIR partner insists on this channel of communication.

466. In the FBiH, the awareness and knowledge of prerequisites for sending a request is developing and it will further improve after the adoption of the internal Manual on Exchange of Information. However, authorities utilise the OECD Model Manual on Exchange of Information for Tax Purposes and if a request does not meet the requirements and conditions or foreseeable relevance is not established, the FMF requests additional information from FTA, before sending a request for information to the requested jurisdiction or informs the FTA that the exchange of information is not possible.

467. The BD has not had experience on outgoing requests and has not specified procedures.

468. Therefore, as reflected above (paragraph 447), Bosnia and Herzegovina should ensure that an EOI Manual is available for all competent authorities. Such document(s) would include domestic procedures to handle EOI outgoing requests in line with the standard.

***C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI***

469. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. There are no legal or regulatory requirements in Bosnia and Herzegovina that impose unreasonable, disproportionate, or unduly restrictive conditions. There were also no factors or issues identified in practice that have unreasonably, disproportionately, or unduly restricted the effective exchange of information.

## Annex 1: List of in-text recommendations

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, the circumstances may change, and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Elements A.1.1, A.1.3 and A.3:** Bosnia and Herzegovina should ensure that the natural persons holding jointly 25% or more direct ownership rights should be identified as beneficial owners (paragraphs 129, 180, 195 and 247).
- **Element A.1.4:** Bosnia and Herzegovina should monitor that the beneficial owners of foreign trusts are properly identified when a position in a foreign trust is held by a legal person or arrangement (paragraph 180).
- **Element B.1:** Bosnia and Herzegovina should monitor that effective and proportionate measures for failures in providing information are applied in FBiH (paragraph 305).
- **Element B.2:** Bosnia and Herzegovina should take steps to ensure that all EOI partners are informed of its notification procedures and the possibility to seek exception from prior notification (paragraph 333).
- **Element B.2:** Bosnia and Herzegovina should monitor that the person subject to an EOIR request is not unduly notified (paragraph 336).
- **Element C.1:** Bosnia and Herzegovina should work with Algeria, Iran and Sri Lanka to ensure that the exchange of information with these partners is in line with the standard (paragraph 366).

- **Element C.2:** Bosnia and Herzegovina should continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 379).
- **Element C.3:** Bosnia and Herzegovina should further enhance its confidentiality policies to protect EOI related information (paragraph 413).
- **Element C.3:** Bosnia and Herzegovina should ensure that all information received in the context of the exchange of information is identified as subject to the specific conditions of confidentiality provided for in the EOI instruments (paragraph 416).
- **Element C.3:** Bosnia and Herzegovina should put in place formal procedures for management of breaches to ensure the protection of exchanged information (paragraph 417).
- **Element C.5:** Bosnia and Herzegovina should ensure that an EOI Manual, including domestic procedures to handle EOI requests in line with the standard, is available for all competent authorities (paragraphs 447 and 469).
- **Element C.5:** Bosnia and Herzegovina should monitor that the level of resource assigned to the EOI matters is sufficient (paragraph 453).

## Annex 2: List of Bosnia and Herzegovina’s EOI mechanisms

### Bilateral international agreements for the exchange of information

|     | EOI partner                | Type of agreement | Signature   | Entry into force |
|-----|----------------------------|-------------------|-------------|------------------|
| 1.  | Albania                    | DTC               | 10-Jun-2008 | 10-May-2012      |
| 2.  | Algeria                    | DTC               | 09-Feb-2009 | 27-Oct-2010      |
| 3.  | Austria                    | DTC               | 16-Dec-2010 | 26-Oct-2011      |
| 4.  | Azerbaijan                 | DTC               | 18-Oct-2012 | 26-Dec-2013      |
| 5.  | Belgium                    | DTC               | 21-Nov-1980 | 26-May-1983      |
| 6.  | People’s Republic of China | DTC               | 02-Dec-1988 | 16-Dec-1989      |
| 7.  | Croatia                    | DTC               | 07-Jun-2004 | 22-Jun-2005      |
| 8.  | Cyprus <sup>72</sup>       | DTC               | 29-Jun-1985 | 08-Sep-1986      |
| 9.  | Czech Republic (Czechia)   | DTC               | 20-Nov-2007 | 12-May-2010      |
| 10. | Finland                    | DTC               | 08-May-1986 | 18-Dec-1987      |
| 11. | France                     | DTC               | 28-Mar-1974 | 01-Aug-1975      |
| 12. | Germany                    | DTC               | 26-Mar-1987 | 03-Dec-1988      |
| 13. | Greece                     | DTC               | 23-Jul-2007 | 12-Jul-2012      |

72. Note by the Republic of Türkiye (Türkiye): The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

|     | <b>EOI partner</b>   | <b>Type of agreement</b> | <b>Signature</b> | <b>Entry into force</b> |
|-----|----------------------|--------------------------|------------------|-------------------------|
| 14. | Hungary              | DTC                      | 17-Oct-1985      | 03-Jul-1987             |
| 15. | Iran                 | DTC                      | 27-Jul-1996      | 01-Jan-2021             |
| 16. | Ireland              | DTC                      | 03-Nov-2009      | 25-Jun-2012             |
| 17. | Italy                | DTC                      | 24-Feb-1982      | 03-Jul-1985             |
| 18. | Jordan               | DTC                      | 25-Jun-2007      | 01-Jan-2013             |
| 19. | Kuwait               | DTC                      | 28-Oct-2008      | 11-Feb-2016             |
| 20. | Malaysia             | DTC                      | 21-Jun-2007      | 30-Jul-2012             |
| 21. | Moldova              | DTC                      | 08-Dec-2003      | 17-Dec-2004             |
| 22. | Montenegro           | DTC                      | 26-May-2004      | 02-Jun-2005             |
| 23. | Netherlands          | DTC                      | 22-Feb-1982      | 06-Feb-1983             |
| 24. | North Macedonia      | DTC                      | 24-Sep-2013      | 02-Jun-2014             |
| 25. | Norway               | DTC                      | 01-Sep-1987      | 20-Aug-2008             |
| 26. | Pakistan             | DTC                      | 24-Aug-2004      | 07-Feb-2006             |
| 27. | Poland               | DTC                      | 04-Jun-2014      | 07-Mar-2016             |
| 28. | Qatar                | DTC                      | 21-Jul-2010      | 13-Feb-2012             |
| 29. | Romania              | DTC                      | 06-Dec-2016      | 18-May-2018             |
| 30. | Serbia               | DTC                      | 26-May-2004      | 02-Jun-2005             |
| 31. | Slovak Republic      | DTC                      | 02-Nov-1981      | 17-Apr-1983             |
| 32. | Slovenia             | DTC                      | 16-May-2006      | 20-Nov-2006             |
| 33. | Spain                | DTC                      | 05-Feb-2008      | 04-Jan-2011             |
| 34. | Sri Lanka            | DTC                      | 07-May-1985      | 22-Mar-1986             |
| 35. | Sweden               | DTC                      | 18-Jun-1980      | 16-Dec-1981             |
| 36. | Türkiye              | DTC                      | 16-Feb-2005      | 23-Apr-2007             |
| 37. | United Arab Emirates | DTC                      | 18-Sep-2006      | 30-Apr-2007             |
| 38. | United Kingdom       | DTC                      | 06-Nov-1981      | 06-Sep-1982             |

## Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).<sup>73</sup> The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention was signed by Bosnia and Herzegovina on 26 November 2019 and entered into force on 1 January 2021 in Bosnia and Herzegovina. Bosnia and Herzegovina can exchange information with all other Parties to the Multilateral Convention.

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Benin, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, People's Republic of China, Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus, Czechia, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Jordan, Kazakhstan, Kenya, Korea, Kuwait,

73. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention) which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, North Macedonia, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Türkiye, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Vanuatu and Viet Nam.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Gabon, Honduras, Madagascar, Philippines, Togo and United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

## Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and amended in 2020 and 2021, and the Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 23 July 2024, Bosnia and Herzegovina's EOIR practice in respect of EOI requests made and received during the three year period from 1 January 2020 to 31 December 2022, Bosnia and Herzegovina's responses to the EOIR questionnaire, inputs from partner jurisdictions, as well as information provided by Bosnia and Herzegovina's authorities during the on-site visit that took place from 13 to 17 November 2023 in Sarajevo, Banja Luka and Brčko, in Bosnia and Herzegovina.

| Review                  | Assessment team  | Period under review                   | Legal framework as on | Date of adoption by Global Forum |
|-------------------------|--|---------------------------------------|-----------------------|----------------------------------|
| Round 2 combined review | Ms Jennifer Dalton (Ireland)<br>Ms Leydis Murillo (Panama)<br>Mr Ignacio Hagelstrom and Ms Carine Kokar (Global Forum Secretariat) | 1 January 2020 to<br>31 December 2022 | 30 July 2024          | 20 November 2024                 |

## List of laws, regulations and other materials received

### **State laws**

Constitution

Law on procedure for concluding and executing international agreements

Decision 10-17-1 of 26 November 2021 of the Ministry of Finance and Treasury of Bosnia and Herzegovina on the delegation of EOIR competent authority powers

Law no. 13/24 on Prevention and Combating of Money Laundering and Financing Terrorist Activities (AML Law)

Memorandum of understanding (MOU) signed between the tax authorities of the entities

Law on Conclusion and Execution of International Agreements

***Federation of Bosnia and Herzegovina***

Law on Tax Administration of FBiH

Law on Personal Income Tax

Law on Corporate Income Tax of the FBiH

Banking Law of the FBiH

Guidelines of the FBA for the identification of a beneficial owner

Criminal Code of FBiH

Law on the Advocate Office of the FBiH

Ethical code of lawyer of the FBiH

Company Law of the FBiH (Official Gazette of FBiH No. 81/15 and 75/21)

Law on Registration of Business entities of the FBiH

Law on Securities Market of the FBiH

Law on Liquidation procedure of FBiH

Bankruptcy Law in the FBiH

Law on Misdemeanours of the FBiH

Law on Domestic Payments of the FBiH

Law on agricultural co-operatives of the FBiH

Law on Associations and Foundations of the FBiH

Law on Accounting and Auditing of the FBiH

Law on Civil Service in FBiH

Law on Non-Civil-Service Staff in FBiH

Law on the Protection of Secret Data in FBiH

Regulation on the Organisation and Manner of Performing Archival Work in the Legal Entities in the Federation of Bosnia and Herzegovina

***Republic of Srpska***

Law on Corporate Income tax of RS

Law on Personal Income tax of RS

Law on Property tax of RS

Law on Tax Procedure of the RS  
Law on Securities Market of the RS  
Banking Law of the RS  
Guideline of the BARS for the identification of a beneficial owner  
Law on National Payments Transactions of the RS and Law on  
Amendments to the Law on National Payment Transactions  
Law on Advocacy of the RS  
Law on Practice of Profession of Lawyer in RS  
Law on Business Companies of the Republic of Srpska (Official Gazette  
No. 127/08, 58/09, 100/11, 67/13, 100/17 and 82/19)  
Law on Registration of Business entities of the RS  
Law on agricultural co-operatives of the RS  
Law on Associations and Foundations of the RS  
Law on Accounting and Auditing of the RS  
Law on the Unified Register of Accounts of Business Entities  
Decision 06.05/012-643 of May 2022  
Methodological Guide of the RSTA  
Rulebook on Office Management of the RSTA  
Criminal code of RS (Official Gazette No. 64/17, 67/21 and 89/21)

### ***Brčko District***

Statute of BD  
Law on Tax Administration of BD  
Law on Corporate Income Tax of BD,  
Law on Personal Income Tax of BD  
Law on Property Tax of BD  
Law on Companies of BD  
Law on Registration of Business entities of the BD  
Law on agricultural co-operatives of the BD  
Law on Associations and Foundations of the BD  
Law on Accounting and Auditing of the BD  
Criminal Code of the BD  
Law on Office Management of the BD

## Authorities interviewed during on-site visit

### ***State level***

Ministry of Finance and Treasury of Bosnia and Herzegovina

Ministry of Security of Bosnia and Herzegovina

Financial Intelligence Department

### ***Federation of Bosnia and Herzegovina***

Federal Ministry of Finance.

Tax Administration of the Federation of Bosnia and Herzegovina.

Banking Agency of the Federation of Bosnia and Herzegovina.

Securities Commission of the Federation of Bosnia and Herzegovina.

Insurance Supervisory Agency of the Federation of Bosnia and Herzegovina.

Federal Ministry of Justice.

Federal Ministry of Energy, Mining and Industry.

### ***Republic of Srpska***

Ministry of Finance of the Republic of Srpska

Tax administration of the Republic of Srpska

Agency for Intermediary, Information and Financial Services

Securities Commission of the Republic of Srpska

Ministry of Economy and Entrepreneurship of the Republic of Srpska

Banking Agency of the Republic of Srpska

Ministry of Justice of the Republic of Srpska

### ***Brčko District***

Tax administration of the Brčko District

Basic Court of the Brčko District

## Annex 4: Bosnia and Herzegovina's response to the review report<sup>74</sup>

Bosnia and Herzegovina expresses its sincere gratitude to the Global Forum, the Secretariat, the members of the Peer Review Group and the assessment team for providing the necessary assistance and guidance to our team.

Bosnia and Herzegovina would like to thank the assessment team for their professionalism, support and hard work and for their constructive cooperation during the peer review process.

We would also like to thank the Secretariat of the Global Forum for the technical assistance provided. The technical support helped us to go through the review process better and more qualitatively. This would also include the assistance received during the mock assessment for which Bosnia and Herzegovina had the opportunity to better prepare itself for the actual onsite visit.

Bosnia and Herzegovina is satisfied with its overall rating.

It is clear that there are many recommendations and room to improve the process of exchange of information on request.

Bosnia and Herzegovina accepts the findings and the recommendations in the report. We remain fully committed to the standard for transparency and exchange of information on request. We will work to improve our legal and administrative framework as well as our practices and procedures in order to address the recommendations in the report and to support international developments in improving transparency and exchange of information on request.

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74. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.



GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information  
on Request BOSNIA AND HERZEGOVINA 2024  
(Second Round)**

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 170 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This peer review report analyses the practical implementation of the standard of transparency and exchange of information on request (EOIR) in Bosnia and Herzegovina, as part of the second round of reviews conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes since 2016.



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