

**Monitoring performance of the BiH Council of Ministers and the BiH PA**

**01.01 – 30.06.2017**

****

**INTRODUCTION**

The intention of this report is to show and to point out the principal results of monitoring performance of the BiH Council of Ministers and the Parliamentary Assembly of Bosnia and Herzegovina. Having in mind personal attendance of the members of the CCI’s monitoring team, as well as accessibility of all available documents from the sessions (minutes, stenographs, reports), given *Report* was generated after careful analysis whilst observing past practices of fair and correct reporting.

\* \* \*

Instability and intolerance, which we have witnessed over the past two years at other levels of authority, have transfused to the national level as well. They are threatening to fade away the progress achieved over the last two years, primarily on the EU path, together with all hope that has been rested in the continuance of that process, making it yet another missed chance. Each laboriously taken step forward was followed by a step backwards.

First half of 2017 was marked by an informal breakup of the ruling coalition, which has besides public confrontation between its officials (that have all the characteristics of a premature fierce pre-election campaign) manifested in dysfunctionality and poor results of the State authority.

Not even after the second attempt did the BiH Council of Ministers managed to “push” through the Parliament a set of laws concerning the Law on excises, which was a precondition for continuance of the arrangement with the IMF. It may be the best illustration of nonexistence of both the ruling majority and the compromise policy in the country having in mind the dependency of the BiH authorities on loans.

The EU integration process was again put to a halt. Ambitiously set deadlines for giving answers to the questions from the EU questionnaire have been missed due to usual obstructions, but also due to the inability to efficiently solve some banal technical issues.

The second half of the year started with yet another humiliation of the country at the international level. Due to internal conflicts and insistence on narrow-party interests and projects Bosnia and Herzegovina was the only country that didn’t sign the Transport Community Treaty at the Trieste Western Balkans Summit, and if it isn’t done by the end of September projects worth approximately half a billion Convertible Marks will be stopped.

Furthermore, the Report on performance of the BiH Council of Ministers for 2016 wasn’t adopted by the House of Representatives of the BiH PA. This is yet another déjà vu of the situation that is so characteristic for the BiH politics – where ruling parties simultaneously act both as the government and as the opposition, i.e. criticizing and demanding dismissal of the government in which they are participating as well without exhibiting any intention to leave it.

**BIH COUNCIL OF MINISTERS I-VI 2017**

**IN THE FIRST HALF OF 2017 THE BIH COUNCIL OF MINISTERS HAD THE LOWEST WORK INTENSITY OF THE CURRENT MANDATE.** It held only 19 regular sessions (which is below number prescribed by the Rules of Procedure) and 7 extraordinary sessions.

**THE WORK OF THE CURRENT COUNCIL OF MINISTERS SHOWS CERTAIN, BUT NOT TOO DRAMATIC, FLUCTUATIONS.** After a decline (from 778 to 708 considered measures) in the second half of 2016, which put a stop to the constant growth of the Council of Ministers’ productivity at the semiannual level in this term, the productivity increased again in the first half of 2017 and the number of considered measures increased to 750.

**THE BIGGEST PROBLEM IN THE WORK OF THE COUNCIL OF MINISTERS IN THE FIRST HALF OF 2017 IS REALIZATION OF THE MOST SIGNIFICANT MEASURES AND ACTIVITIES.** In the reporting period the BiH Council of Ministers dealt the most with different reports, information, plans and programs, which make up 41% of all considered measures. Decisions, approvals and conclusions make up 32%, while answers to MPs’ questions and initiatives make up 8.4%. But, there are only 2% of the laws in the total volume of considered measures, while strategies make up 0.4%.

**THE MOST DRAMATIC CONSEQUENCE OF THE STATE GOVERNMENT’S DYSFUNCTIONALITY IS REFLECTED IN THE LOW REALIZATION OF THE LAWS.** Since the BiH Council of Ministers verified 26 laws in the 2nd half of 2016, the realization has dropped so much that the same number of laws was verified in the next year and a half. Only 8 laws were verified in the first half of 2017, not taking into account the double adoption of a set of 4 laws, which include the Law on excises, as part of a procedural game whose goal as to have these laws pass through the Parliament at all costs.

**ACCORDING TO THE CURRENT EFFICIENCY, THE BIH COUNCIL OF MINISTERS WOULD NEED AN ENTIRE FOUR-YEAR TERM TO REALIZE THE LAWS FROM ONE ANNUAL WORK PLAN ONLY.** Namely, only 5 out of 42 laws that were scheduled for realization in 2017 according to the Work Plan were realized in the first six months. It means that the second half of the year was started with 37 unrealized laws.

**THE LAW ON FOREIGN AFFAIRS IS AMONGST UNREALIZED LAWS.** Bosnia and Herzegovina is the only country in the region that doesn’t have this law, although both audit and CCI’s monitoring reports have been constantly suggesting the need for its adoption.

**DUE TO CONSTANT RESISTANCE FROM RS AN ENTIRE ARRAY OF ESSENTIAL STRATEGIES HASN’T BEEN ADOPTED FOR YEARS, ALTHOUGH THEIR NON-ADOPTION ALSO INSTIGATES INTERNATIONAL SANCTIONS, INCLUDING THE LOSS OF HUNDREDS OF MILLIONS OF EUROS OF THE EU PRE-ACCESSION FUNDS.** Although the activities on meeting our country’s obligations towards the Energy Community have been intensified lately, BiH still doesn’t have Energy Strategy at the national level or the Law on gas, which originally should have been adopted by the end of 2014, and then by the end of March 2017 and due to the recent violations of the agreement BiH again risks introduction of sanctions and termination of already approved financial support to BiH by the EU Energy Community. The Development Strategy of BiH and the Social Inclusion Strategy have been verified yet, although seven years have passed since they have been developed, covering the period until 2014. Over the past few years the country has already lost significant IPA funds, intended for the development of agriculture due to the lack of rural development and agriculture strategies and it will lose even more if the relations within the country don’t change. Still...

**IN THE FIRST HALF OF 2017 THE BIH COUNCIL OF MINISTERS VERIFIED 3 STRATEGIES.** These strategies also include the BiH Medium-Term Debt Management Strategy, which is one of the obligations from the Action Plan for the Reform Agenda Implementation. It is important to remember that the number of set strategies in the first two years of the current mandate already exceeded the total four-year results of the previous mandate.

**THE WORK PLAN OF THE BIH COUNCIL OF MINISTERS INCLUDES DETERMINING OF FOUR SIGNIFICANT STRATEGIES, AMONGST WHICH WE PARTICULARLY HIGHLIGHT THE EMPLOYMENT STRATEGY, THE STRATEGY ON COOPERATION WITH THE DIASPORA AND THE STRATEGY TO COMBAT DISCRIMINATION IN BIH.** Special about this is the fact that the strategy to combat discrimination is to be adopted by institutions that discriminate themselves – the BiH Council of Ministers conducts discrimination based on gender, and the BiH Parliamentary Assembly conducts discrimination based on the nationality. It is important to remember that the BiH Council of Ministers is violating the BiH Gender Equality Law which sets forth that equal representation of genders exists when one of the genders is represented in at least 40%, and the BiH PA is still violating the decision of the International Court for Human Rights and there are still no seats for representatives of the so-called “Others” in the House of Peoples of the BiH PA.

**THE BIH COUNCIL OF MINISTERS WAS FIRST LATE WITH ADOPTION OF THE JUSTICE SECTOR REFORM STRATEGY, AND THEN IT WAS EVEN MORE LATE WITH THE ADOPTION OF THE ACTION PLAN FOR ITS REALIZATION.** The Strategy that covers the period 2014 – 2018 was verified on September 8, 2015, and the Action Plan only on March 15, 2017, so approximately a year and a half before the expiry of deadline for implementation of the Strategy.

**AMONGST SIGNIFICANT MEASURES THAT WERE VERIFIED IN THE FIRST HALF OF 2017 WE WOULD LIKE TO HIGHLIGHT THE POLICY OF INFORMATION SOCIETY DEVELOPMENT IN BIH AND THE POLICY OF TELECOMMUNICATIONS SECTOR IN BOSNIA AND HERZEGOVINA FOR 2017-2021.** These are key preconditions for development of domestic software industry and for introduction of 4G network and higher internet speed in Bosnia and Herzegovina.

**IMPLEMENTATION OF THE ACTIVITIES PLANNED IN THE REFORM AGENDA ACTION PLAN AT THE STATE LEVEL HAS BEEN SLOWED DOWN.** A total of 18 out of 34 general measures (53%) from the Action plan that are under competence of the BiH CoMs were completely adopted as of March 14, 2017, while continuous work is being done on seven more measures, whose realization started over the past two years.

**THE COUNCIL OF MINISTERS DIDN’T ADOPT ANY OF THE DOCUMENTS IMPORTANT FOR ITS WORK IN 2017 ON TIME.** Instead of being verified by the end of 2016 the Work plan of the Council of Ministers for 2017 was verified in February of 2017. The BiH Council Ministers verified the draft 2017 budget on November 3, 2016 instead of doing that by October 15 at latest, thus disabling the BiH Presidency to meet its obligation in this context.

**THE BIH COUNCIL OF MINISTERS ADOPTED THE MID-TERM WORK PLAN OF THE BIH COUNCIL OF MINISTERS FOR THE PERIOD 2018 – 2020 IN THE FIRST HALF OF 2017 (MID-JUNE),** thus creating preconditions for high quality management of development in line with the competencies of the BiH Council of Ministers. The mid-term work plan of the BiH Council of Ministers represents a foundation for preparation of the Framework budget document and the mid-term work plans of the BiH Institutions. In order for this measure to generate positive effects and to be meaningless, it is necessary to have the BiH Council of Ministers completing its obligations at a satisfactory rate. Otherwise, all plans will be just a dead letter.

**TRANSPARENCY OF THE BIH COUNCIL OF MINISTERS IS CONTINUOUSLY AT A SATISFACTORY LEVEL.** Positive image is somewhat spoiled by the failure to conduct public discussion when adopting the budget and existence of the possibility for so-called “discretional” spending of the budge funds from the so-called current reserve by the chairman and the vice chairman of the BiH Council of Ministers, as well as by the members of the BiH Presidency, which the CCI finds to be an unacceptable practice. Spending of the budget funds without clear and transparent criteria is also unacceptable, and the CCI find that the decision on spending of the budget funds must be made by an institution and not an individual.

**WITH THE DISSOLUTION OF THE CAUCUS OF SDA MEMBERS AND ESTABLISHMENT OF THE “INDEPENDENT BLOCK” CAUCUS WITHIN THE HOUSE OF REPRESENTATIVES OF THE BIH PA, THE RULING COALITION CAME DOWN ONLY TO 21 MEMBERS AND HAVE LOST THE MAJORITY STATUS IN THIS HOUSE.** Along with the inter-party conflicts that have been going on for some time and that bring into question existence of the ruling coalition, the current situation is that there is no stabile majority in the Parliament, but that it is being established depending on the measure which is put to the agenda.

Besides all the problems we are facing, additionally worrying is the fact that was underlined by the opposition critics of the work of the current Council of Ministers when voting about its work report in 2016 (quote): “The Council of Ministers should leave, although the question is what to do thereafter.”

It is a fact that the CCI has been indicating for more than a decade where nonexistence of necessary mechanisms in the Election Law (amongst which the most significant is the possibility of extraordinary elections) makes a government constituted after the elections almost irremovable i.e. unchangeable. It is actually possible to pass a motion of no-confidence to the current Council of Ministers, for example, but all actors at the political scene agree that the possibility to elect a new Council of Ministers after that is only theoretical.

So, the CCI again accentuates that amendments to the Election Law, besides attempting to observe the decision of the European Court for Human Rights, should be also taking a turn towards development of mechanisms to remove blockages and to have normal functioning of the political life, in line with the standards of developed democratic societies. It, inter alia, means introducing the possibility to announce extraordinary elections.

It is simple unacceptable to have the State government trapped between party conflicts, and its citizens victimized and held hostage without possibility to solve the situation in a normal, democratic and legal way.

**BiH PA I-VI 2017**

**THE WORK INTENSITY OF THE BI PA IN THE FIRST HALF OF 2017 HAS REMAINED AT THE SAME LOW LEVEL OF THE SECOND HALF OF 2016 WHEN A SIGNIFICANT DECLINE OF PREVIOUS WORK INTENSITY HAPPENED.** The House of Representatives held 8 regular sessions and House of Peoples held 5 regular sessions, while there was an urgent session held by the House of Representatives.

**GENERAL PRODUCTIVITY DOESN’T SHOW SIGNIFICANT OSCILLATIONS.** The House of Representatives considered 217 measures in the reporting period, while the House of Peoples considered 131 measures. It has more or less been at the same level throughout the term. Overall, the result in current mandate so far matches the productivity showed in the first two and a half years of previous mandate.

**THE KEY PROBLEM, WHICH DRAMATICALLY SHOWS DYSFUNCTIONALITY OF THE GOVERNMENT AND NON-EXISTENCE OF THE RULING MAJORITY, IS EXCEPTIONALLY LOW REALIZATION OF THE LAWS.** Only 2 laws were adopted in the first half of 2017, which is six and a half times less than in the previous, second half of 2016. Both adopted laws are just changes and addenda to the existing legislative documents. Thereat...

**THE PROBLEM OF UNFAVORABLE RATIO BETWEEN ADOPTED AND REJECTED LAWS, WHICH MAKES THE BIH PA UNIQUE WORLDWIDE, HAS REACHED ITS PINNACLE IN THE REPORTING PERIOD.** Namely, the BiH PA is well known for exceptionally low number of adopted laws and identical, yet sometimes even higher number of overturned laws. But the result in the first half of 2017 is truly devastating and a kind of surprise even for the BiH PA. Namely, 2 laws were adopted in the reporting period, while 7 laws were rejected or 3.5 times more than the number of adopted laws. It thus makes the achieved result the worse result in the last 11 years. We should also add that…

**REALIZATION OF AROUND 50 LAWS IN THIS YEAR WAS PLANNED BY THE WORK PLANS OF THE BIH PA’S HOUSES.** It thus means that 4(!)% of the plan was realized in half a year. Namely, at this rate it would take more than 3 four-year terms to realize legislative part of the work plans for a single year.

**WITH SUCH AN ATTITUDE THE BIH PA IS ADDITIONALLY DEVALUATING ALREADY MODEST RESULTS OF THE BIH COUNCIL OF MINISTERS.** In the first six months of 2017 none (!) of 8 laws verified by the Council of Ministers in this period was adopted. And four were rejected. Two laws that were adopted in the observing periods are the laws that the BiH Council of Ministers had verified in 2015.

**BOTH HOUSES OF THE BIH PA WERE SERIOUSLY LATE WITH ADOPTION OF THEIR ORIENTATION WORK PLANS FOR 2017.** Instead of adopting the work plans by the end of 2016, both plans were adopted in March of 2017. On the other hand...

**THE 2017 BUDGET WAS ADOPTED ON TIME.** Lateness of the BiH Council of Ministers, which also caused lateness of the BiH Presidency in meeting its obligations within set deadlines, didn’t lead to lateness of the BiH PA – both Houses had adopted the budget by December 15, 2016.

**THE TOTAL INCOMES OF MEMBERS OF BOTH HOUSES OF THE BIH PARLIAMENTARY ASSEMBLY ARE STILL COMPLETELY DISPROPORTIONATE TO THE SOCIAL AND ECONOMIC SITUATION IN THE COUNTRY AND WITH THE WORK RESULTS OF THIS INSTITUTION.** Total incomes of the MPs in the both Houses of the BiH PA, considering that all members of the BiH PA are receiving lump sum payment irrespective of their employment status, along with the allowance for accommodation, living away from home allowance, allowance for work in “ad hoc” commissions, travel allowance, meal allowance still range between 4.800 and 6.500 KM and are highest in the region. Anyway...

**CONCRETE ACTIVITIES WITHIN THE BIH PA HAVE STARTED ON CREATING CONDITIONS FOR DRAFTING THE LAW ON INVESTIGATING ORIGIN OF THE PROPERTY OF OFFICIALS IN THE BIH INSTITUTIONS.** The House of Peoples of the BiH PA had at 28th session held on May 4, 2017 adopted the Conclusion on establishment of an inter-departmental working group for preparation of this law, and proposal of this Conclusion has been already put on the agenda of 51st session of the House of Representatives that will be held on September 7, 2017. If this inter-departmental working group is established (and we hope it will) its task will be to prepare the aforementioned law within six months following entry into force of this Conclusion, and if necessary also to amend existing laws at the level of Bosnia and Herzegovina in part relating to the fight against corruption, and to forward a concrete proposal, through authorized proposers, into the BiH PA’s parliamentary procedure.

**“THE EU INTEGRATION PROGRAM FOR BiH” IS STILL NOT ADOPTED**. Following adoption of the “EU coordination mechanism”, the key precondition for final adoption of this program was met. The program represents strategic i.e. planning document for BiH accession to the European Union, which should provide an overview of all BiH’s obligations, dynamics of their realization, the plan for meeting criteria for the EU membership, the plan for harmonization of domestic legislation with the EU legislation, as well as an cost assessment for realization of the program.

**HIGH ACTIVENESS OF THE MPS IN PROPOSING LEGISLATIVE SOLUTIONS IS STILL ONE OF THE MOST POSITIVE SIDES OF THE BI PA’S WORK.** Out of 36 laws, which were in the parliamentary procedure in the first half of 2017, almost half (17) were proposed by the members of the BiH Parliamentary Assembly. However…

**CERTAINLY THE MOST POSITIVE SEGMENT OF THE BIH PARLIAMENT’S WORK IS ITS TRANSPARENCY THAT CAN SERVE AS AN EXCELLENT EXAMPLE TO ALL OTHER AUTHORITIES IN BIH AND BEYOND.** Over the past few years the BiH Parliamentary Assembly has reached a very respectable level of transparency, which was additionally improved at the end of last year by redesign of this institution’s official website. On the other hand...

**THE BIH INSTITUTIONS CONTINUE TO SYSTEMATICALLY DISCRIMINATE BIH CITIZENS AND TO VIOLATE INTERNATIONAL LAWS.** The House of Peoples of the BiH PA is still functioning without representatives of “Others” and there is no agreement about how to implement the Decision of the Court in Strasbourg in the context of election of the BiH Presidency’s members. Instead of discussing individual rights, a political war about collective rights is currently ongoing.

**CONCLUSION**

**at the end…centers for civil initiatives call on observance of the principles of the state of law and the rule of law.** We would like to remind that we are living in a country in which government institutions don’t respect laws and Constitution or the decision of Constitutional Courts. According to the data from the end of 2016, there had been 13 unexecuted decisions of the BiH Constitutional Court, whereof 5 involve requests for assessment of the constitutionality and eight are falling within the appellate competence of the Constitutional Court. Unexecuted decisions of the Constitutional Court taken based on requests for assessment of the constitutionality relate to the obligations of legislative bodies: Parliamentary Assembly of Bosnia and Herzegovina (3), Parliament of the Federation of Bosnia and Herzegovina (1) and the National Assembly/Council of Peoples of Republika Srpska (1).

**CONCERNING THEIR FUTURE WORK THE CCI GIVES THE FOLLOWING RECOMMENDATIONS TO THE BIH COUNCIL OF MINISTERS AND THE BIH PA:**

One should try to reach a political compromise that will enable establishment of a parliamentary majority, making the normal work of the institutions and continuance of the reforms and the Euro-Atlantic integration possible. The current situation, which illustrated the best with 4% realization of the annual plan over the period of 6 months and 3.5 times more rejected than adopted laws, is completely inacceptable. It is also inacceptable to suffer the current agony until the next elections and to have us lose another year, year and a half of our lives, just waiting and watching pre-election campaigns.