

## Bosnia and Herzegovina

### *Self-rule*

#### INSTITUTIONAL DEPTH AND POLICY SCOPE

The confederation of Bosnia–Herzegovina contains two upper level units or “entities,” the *Republika Srpska* and the *Federacija Bosne i Hercegovine*. There are also cantons (Bosniak *kantoni*, Croatian *županije*) in the *Federacija*.<sup>1</sup>

The confederation was the product of the Dayton Peace agreement of 1995, which put an end to three and a half years of civil war in the former Yugoslavia and gave Bosnia and Herzegovina its constitution (United Nations 1995, Annex 4; Jenne 2009; Søberg 2008). The autonomy of all regional tiers within the confederation of Bosnia–Herzegovina is limited by the international community, which has intervened regularly—through a UN-appointed official—in the internal affairs of Bosnia–Herzegovina. The Dayton agreement set up an Office of the High Representative (OHR), which is responsible for coordinating and monitoring the implementation of the peace settlement (United Nations 1995, Annex 10). The mandate of the OHR is determined by the Peace Implementation Council, comprised of fifty-five countries and agencies, which met six times between December 1995 and May 2000 to set targets and review progress. In addition, there is a steering board which provides the High Representative with political guidance. The OHR functioned as a manager of the international community’s post-conflict peace building efforts and as a mediator between the domestic parties, but this changed in response to dissatisfaction on the part of the international community about how the political system in Bosnia and Herzegovina was functioning (Parish 2007). In 1997 the peace implementation council extended the mandate of the OHR to allow it to remove public officials who violated the Dayton agreement and, if necessary, impose laws and decisions.<sup>2</sup> The exercise of these powers during the following decade led to 286 instances of imposition of laws or the amendments of laws and the dismissal of 139 officials, including judges, ministers, civil servants, and members of parliament at both entity and cantonal levels (Venneri 2007; Woelk 2012: 119; for a critical assessment of Dayton, see Caplan 2006; also Bose 2005; Sebastian 2012). Many bans on public officials were lifted between 2009 and 2014 and until 2014 the OHR regularly overruled the authorities with regard to constitutional amendments.<sup>3</sup> The OHR involvement leads us to downgrade scores for institutional depth from 3

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<sup>1</sup> The culturally mixed *Brčko* district has been governed under UN mandate since 2000 (Office of the High Representative Brčko 1999, 2008). Its autonomy status was not recognized until 2009 in the constitutions of the entities or in that of the confederation. Following the constitutional reform of 2009, the Brčko district was incorporated as a territory jointly ruled by the entities (Law No. 25/2009). However, authority remains largely vested in the OHR. Given its UN status, we do not include the Brčko district in the measure.

<sup>2</sup> Office of the High Representative. “The Mandate of the OHR.” <[http://www.ohr.int/ohr-info/gen-info/default.asp?content\\_id=38612](http://www.ohr.int/ohr-info/gen-info/default.asp?content_id=38612)>.

<sup>3</sup> Office of the High Representative. “High Representative’s Decisions by Topic.” <<http://www.ohr.int/decisions/archive.asp>>.

to 2 for all units for 1998–2014.

Confederal competences are limited to foreign policy, trade, customs, monetary policy, international and inter-entity criminal law enforcement, regulation of inter-entity transportation, and air traffic control (C 1995, Art. III.1; Jokay 2001; Lenić 2006). The two constituent entities have their own military forces and independent budgets. They are responsible (concurrently with the confederal government or, in the case of the *Federacija*, also with the cantons) for the police, environmental policy, social policy, agriculture, refugees, reconstruction, justice, taxation, and customs. Immigration, refugee, and asylum policy are confederal competences, but citizenship is primarily an entity competence (C 1994, Art. III; C 1995, Art. III.3; Jokay 2001; Lenić 2006). A person obtaining citizenship in *Republika Srpska* or in the *Federacija* automatically acquires confederal citizenship (C 1995, Art. I.7).

The two entities have starkly different structures of governance. Since 1995, the *Republika Srpska* has two cities which are governed by special laws: *East Sarajevo* (the city of Sarajevo was split during the war), which is *de jure* the capital of the *Republika Srpska*, and *Banja Luka* which operates as the *de facto* capital (Council of Europe: Bosnia and Herzegovina 2001, 2012; Law No. 11/1994). Both capital cities exercise the same competences as municipalities but the law establishing the city may divide the competences between the city level institutions and the composite municipalities (Bašić and Bašić 2015; Law No. 101/2004). For example, East Sarajevo exercises competences in transport, tourism, firefighting, inspection, and intermunicipal cooperation on behalf of its six constituting municipalities (Council of Europe: Bosnia and Herzegovine 2006, 2012). Since 2012, *Bijeljina*, *Doboj*, *Prijedor*, and *Trebinje* obtained city status (Mujakić 2016) but none of these cities—including *Banja Luka* and East Sarajevo—surpass the population threshold of 150,000 inhabitants. *Republika Srpska* has no regional tier (C 1992, Arts. 100–104; Jokay 2001; Lenić 2006).

*Federacija Bosne i Hercegovine* has an authoritative intermediate tier consisting of ten cantons (C 1994, Art. III). Five cantons have a Bosniak majority, three have a Croat majority, and two are mixed Bosniak and Croat. The average population of a canton is roughly 230,000. These cantons have their own basic laws or constitutions and their own governments. The *Federacija* is a relatively loose federation in which most competences related to economic and land planning, tourism, culture, housing, education, and the implementation of welfare policy lie at the cantonal level (C 1994, Art. III.4).<sup>4</sup> The cantons also control the police (C 1994, Arts. III.4.a and V.10). The federal level has powers in energy, taxation, defense, foreign affairs (concurrent with the confederation and the cantons), citizenship, and has the right to authorize cantons to conclude international agreements (C 1994, Art. III.1; Jokay 2001; Lenić 2006). It can also legislate, in cooperation with the cantons, in welfare, health, infrastructure, transport, tourism, and the environment (C 1994, Art. III.3). Thus policy scope is divided between the two levels with the

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<sup>4</sup> When the majority of the population in a municipality in the *Federacija* is different in ethnic composition from that of the canton as a whole, several competences including education, culture, tourism, local business and charitable activities, and radio and television must be allocated to the municipal level to protect the minority within the canton (C 1994, Art. V.2b; Jokay 2001).

balance tipping slightly to the cantonal side. The *Federacija* scores 2 and the cantons score 3 on policy scope.<sup>β</sup>

*Sarajevo* is the capital of the state of Bosnia and Herzegovina and of the *Federacija Bosne I Hercegovine*. The constitution of the *Federacija* grants the city self-government but does not attribute any specific competences to Sarajevo (C 1994, Art. VI.B.1). In practice, the canton Sarajevo exercises all the powers of the city of Sarajevo apart from urban planning (Council of Europe: Bosnia and Herzegovina 2012). *Mostar*, and as of 2014, *Bihać*, *Široki Brijeg*, *Tuzla*, and *Zenica*, have city status which does not grant them any specific competences (Law Nos. 49/2006 and 51/2009, Art. 3; Mujakić 2016). None of the cities have more than 150,000 inhabitants except for Sarajevo.

### FISCAL AUTONOMY

Tax power lies exclusively with the *Federacija* and the *Republika Srpska*, and the *Federacija* contributes two-thirds and the *Republika Srpska* one-third of confederal revenues (C 2009, Art. VIII; Jokay 2001: 96–97). The bulk of confederal revenue comes from customs duties and sales and excise taxes which, before 2005, were set by the confederation, but collected and administered by the entities (Jokay 2001: 96–97). Since 2005, a nation-wide indirect tax authority collects all indirect taxes including customs and excise taxes and, since 2006, also a value added tax (Woelk 2012). Taxes are transferred into a “single account” which funds the state budget and debt obligations, with the remainder divided between the two entities and the *Brčko* district (Lenić 2006: 8–12).

Tax power in the *Federacija* is concurrent between the federal government and the cantons (C 1994, Arts. III.1h and III.4l). Cantons receive their revenues from personal income and property taxes, for which they can set the rate but not the base (Lenić 2006: 8–12).

### BORROWING AUTONOMY

The constitution of Bosnia and Herzegovina makes the two entities responsible for the international liabilities of the confederation (C 2009, Art. III.1e; Recica 2000).<sup>5</sup>

The *Republika Srpska* (C 1992, Art. 70.3) and the *Federacija* (C 1994, Art. 20j) can borrow without confederal approval. Borrowing must be approved by their respective assembly. The constitution of the *Federacija* allows cantons to borrow under limits specified by federal law (C 1994, Art. III.4l). The current law sets an absolute limit on cantonal debt and limits borrowing to 20 percent of cantonal revenue. The cantons are allowed to borrow from domestic and foreign sources for capital investments only (Law No. 01-011-328/1998, Arts. 37–39).

### REPRESENTATION

Direct elections for the parliaments of the *Federacija* and *Republika Sprska* are held every four

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<sup>5</sup> The total external debt in 2005 was approximately 30 percent of GDP (Čičić et al. 2007). The principal creditors are international lenders such as the World Bank, the IMF, the European Investment Bank, the London Club, and the Paris Club (Recica 2000).

years (C 1992, Art. 72; C 1994, Art. IV.2), as are direct elections for the cantonal parliaments in the *Federacija* (C 1994, Art. V.5). All parliaments elect their own executives (C 1992, Art. 93; C 1994, Section IV.B and Art. V.8). The scores for regional executives drop to 1 between 1998 and 2014 because during this time period the OHR regularly removed public officials from office at all tiers of government within Bosnia and Herzegovina.<sup>6</sup>

### *Shared rule*

## LAW MAKING

The upper house of Bosnia–Herzegovina (House of Peoples) contains fifteen delegates: ten from the *Federacija* (five Croats and five Bosniaks) and five from the *Republika Srpska* (five Serbs) (*L1, L3*). The delegates are chosen by the parliaments of the entities (*L2*) (C 2009, Art. IV). All legislation, including constitutional amendments, requires the approval of both chambers, giving the upper house veto power (*L4*) (C 2009, Art. IV.3c). The confederation has consociational elements, including the requirement that at least three members of each ethnic group be present for an upper house quorum (C 2009, Art. IV.1b) and that legislation requires the assent of at least one-third (i.e. two) of the representatives from each entity or fewer than four voting against (C 2009, Art. IV.3).

Cantons do not share legislative power within the confederation though they have an extensive role in law making by virtue of their representation in the upper chamber (House of Peoples) of the *Federacija*. Cantonal representation in the chamber is population based, but each cantonal parliament selects at least one representative from each of the three ethnic groups (C 1994, Art. IV.8). Federal legislation requires approval by the upper chamber (C 1994, Art. IVA.17).

## EXECUTIVE CONTROL

There appear to be no formal, regular meetings between the confederal government and subnational governments, or between cantons and the *Federacija*, notwithstanding the fact that the constitutions envisage intergovernmental meetings.<sup>a</sup>

The constitution of the confederation stipulates that the president may initiate inter-entity coordination on matters not within the responsibilities of Bosnia and Herzegovina, though entities cannot be forced to participate (C 2009, Art. III.4). In the *Federacija*, the constitution states that the cantons and the federation shall “consult one another on an ongoing basis” with regard to their shared responsibilities and that “the cantons shall act with respect for inter-cantonal comity, [and] for coordinated approaches to inter-cantonal matters” (C 1994, Art. III.3). Hence both vertical and horizontal intergovernmental meetings are foreseen. In addition, cantons may establish councils in order “to share information and harmonize the Cantons’ respective actions” (C 1994, Art. V.3).

## FISCAL CONTROL

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<sup>6</sup> Office of the High Representative. “High Representative’s Decisions by Topic.” <<http://www.ohr.int/decisions/archive.asp>>.

The confederation depends on annual contributions from the two constituent units (C 2009, Art. VIII). This gives these units a veto on the distribution of tax revenues. Cantons have no say at the confederal level, but they can veto tax laws in the *Federacija* through their representation in the upper house.

### BORROWING CONTROL

Since 2008, the confederal government and the entities regularly meet in the fiscal council which consists of the chair of the council of ministers at the confederal level, the president of the *Republika Srpska*, the prime minister of the *Federacija*, and the ministers of finance from these three governments (Law No. 63/2008, Art. 3). The fiscal council coordinates fiscal policy including setting borrowing ceilings for the confederation and the two entities. Decisions require the consent of five out of six members which must include at least one vote from each of the constituent peoples (i.e. Bosniaks, Croats, Serbs) (Antić 2013: 288–289; Law No. 63/2008, Arts. 4–5).

The *Federacija* established a fiscal coordination body in 2014 which is responsible for proposing fiscal objectives and borrowing ceilings for the *Federacija*, the cantons and municipalities (Network of Associations of Local Authorities of South East Europe 2017: 52–65). This body includes the *Federacija* minister of finance, all cantonal ministers of finance, and a representative of the association of municipalities and cities of the *Federacija*. The fiscal coordination body regularly meets but it does not take binding decisions (Law No. 102/2013, Arts. 40–41).

### CONSTITUTIONAL REFORM

The upper house of the confederation has a veto on constitutional amendments (C 2009, Art. IX). Moreover, a majority of the representatives of an ethnic group can invoke an alarm bell procedure on the grounds that proposed legislation is “destructive of [its] vital interest” (C 2009, Art. IV.3e). In such cases, legislation in the upper house requires a majority of the representatives of each entity present.

Cantons do not participate directly in confederal constitutional politics, but they can veto constitutional change in the *Federacija*. Constitutional amendments require a two-thirds majority in the lower house and a double majority in the upper house consisting of an absolute majority of all members and a majority in each of the three ethnic groups (C 1994, Art. VIII).

Between 1998 and 2014 the score for constitutional reform drops to zero because the OHR regularly overruled constitutional amendments made by the entity and cantonal governments.<sup>7</sup>

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## Self-rule in Bosnia and Herzegovina

			Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self-rule
							Assembly	Executive	
<b>Federacija Bosne i Hercegovine</b>	I	1995-1997	3	2	4	3	2	2	<b>16</b>
	I	1998-2014	2	2	4	3	2	1	<b>14</b>
	I	2015-2018	3	2	4	3	2	2	<b>16</b>
Županija/Kantoni	II	1995-1997	3	3	3	2	2	2	<b>15</b>
	II	1998-2014	2	3	3	2	2	1	<b>13</b>
	II	2015-2018	3	3	3	2	2	2	<b>15</b>
<b>Republika Sprska</b>	I	1995-1997	3	4	4	3	2	2	<b>18</b>
	I	1998-2014	2	4	4	3	2	1	<b>16</b>
	I	2015-2018	3	4	4	3	2	2	<b>18</b>

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## Shared rule in Bosnia and Herzegovina

		Law making						Executive control		Fiscal control		Borrowing control		Constitutional reform		Shared rule
		L1	L2	L3	L4	L5	L6	M	B	M	B	M	B	M	B	
<b>Federacija</b>	1995-1997	0.5	0.5	0.5	0.5	0	0	0	0	2	0	0	0	4	0	<b>8</b>
<b>Bosne</b>	1998-2007	0.5	0.5	0.5	0.5	0	0	0	0	2	0	0	0	0	0	<b>4</b>
<b>i Hercegovine</b>	2008-2014	0.5	0.5	0.5	0.5	0	0	0	0	2	0	2	0	0	0	<b>6</b>
	2015-2018	0.5	0.5	0.5	0.5	0	0	0	0	2	0	2	0	4	0	<b>10</b>
Županija	1995-2018 <sup>a</sup>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
/Kantoni	1995-1997 <sup>b</sup>	0	0.5	0.5	0.5	0	0	0	0	2	0	0	0	4	0	<b>7.5</b>
	1998-2013 <sup>b</sup>	0	0.5	0.5	0.5	0	0	0	0	2	0	0	0	0	0	<b>3.5</b>
	2014 <sup>b</sup>	0	0.5	0.5	0.5	0	0	0	0	2	0	1	0	0	0	<b>4.5</b>
	2015-2018 <sup>b</sup>	0	0.5	0.5	0.5	0	0	0	0	2	0	1	0	4	0	<b>8.5</b>
<b>Republika</b>	1995-1997	0.5	0.5	0.5	0.5	0	0	0	0	2	0	0	0	4	0	<b>8</b>
<b>Srpska</b>	1998-2007	0.5	0.5	0.5	0.5	0	0	0	0	2	0	0	0	0	0	<b>4</b>
	2008-2014	0.5	0.5	0.5	0.5	0	0	0	0	2	0	2	0	0	0	<b>6</b>
	2015-2018	0.5	0.5	0.5	0.5	0	0	0	0	2	0	2	0	4	0	<b>10</b>

National legislature has: L1 = regional representation; L2 = regional government representation; L3 = majority regional representation; L4 = extensive authority; L5 = bilateral regional consultation; L6 = veto for individual region. Total for shared rule includes the highest score of either multilateral (M) or bilateral (B).

<sup>a</sup> Power sharing in the confederation.

<sup>b</sup> Power sharing in the *Federacija Bosne i Hercegovine*. These scores are not included in the country score for Bosnia and Herzegovina.

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