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Migration & Asylum Strategy and Action Plan 2008-2011.

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**Bosnia and Herzegovina
Council of Ministers
MINISTRY OF SECURITY**

**MIGRATION & ASYLUM
STRATEGY AND
ACTION PLAN
2008 - 2011**

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FOREWORD

Bosnia and Herzegovina is a potential candidate country for membership in the European Union. This status the country has acquired by signing the Stabilisation and Association Agreement (SAA) with the EU in June 2008. Temporary Agreement has been in force since July 2008 and is mostly related to trade issues. In June 2008, Bosnia and Herzegovina has been presented with a detailed Road Map for Visa Free Travel with clearly set benchmarks of progress. At the proposal of the European Commission, the Council of EU has updated and adopted a document entitled European Partnership (in February 2008), which provides guidelines on reform priorities to the BiH authorities. Progress in implementation is followed by regular meetings of the Reform Process Monitoring (RPM) body. The European Standards chapter considers ability of Bosnia and Herzegovina to gradually align its legislation and policies with *Acquis Communautaire* in the fields of justice, freedom and security. Issues of visa, border control, migration and asylum are placed and carefully followed within that framework.



Bosnia and Herzegovina was an „internal“ republic of the former Socialist Federal Republic of Yugoslavia and as such did not have a single meter of international border. By proclaiming independence, the country faced series of big problems in the fields of border control, migration and asylum. For a country destroyed by war, without institutional capacities and trained staff, the establishment of an integrated system of migration management represented a huge problem. Significant results have been achieved during short period of time.

This would not be possible without remarkable assistance of the international community. This is the opportunity to express gratitude on behalf of Bosnia and Herzegovina.

Reaching the best solutions in the extremely complex constitutional structure of Bosnia and Herzegovina is a very demanding job. Emerging migration trends require a new, flexible and efficient concept of migration management. Integrated approach is necessary for harmonisation with the EU *acquis*, but also as a requirement of new time.

At the end of 2007, as the Minister of the Ministry of Security that is competent for border control, migration and asylum, I have appointed a Commission tasked to create Migration and Asylum Strategy, and an Action Plan for its implementation. Apart from domestic experts from variety of fields, representatives of the International Organisation for Migration (IOM) became involved in creation of these documents. The job was not simple, because this was a type of document new to BiH. Analysis of current system was needed to be done; shortcomings of the system should have been identified, etc. Then the guidelines have been defined, objectives set, organisation of complex migration management system projected, intra-institutional and inter-institutional co-operation and co-ordination established, as well as registries keeping and data exchange, etc.

In November 2008, the BiH Council of Ministers adopted the Strategy in the Fields of Migration and Asylum and an Action Plan for the period 2008-2011. We have clearly committed to strive to be a country of legal and not country of illegal migration, and the country in which asylum seekers, on the basis of threats or persecution because of their political affiliation,

race, religious or national background will be able to exercise their right to international protection, as a form of protection of human rights and fundamental freedoms. Our partners from the international community gave their green light. Bosnia and Herzegovina has fulfilled yet another important European obligation.

The new Law on Movement and Stay of Aliens and Asylum that came into force in the beginning of 2008, and the updated Strategy of Integrated Border Management (IBM) and Action Plan (July 2008) have all made this complex system complete. In 2008 we have opened the Immigration Reception Centre, and also started activities pertinent to construction of the Asylum Reception Centre. We have harmonised stances and commenced the activities relating to the establishment of the Risk Analysis Centre, and the operationalisation of the Migration Information System (MIS) is in its final stage. We know what we want and which road to take. A lot of hard work lies ahead of us. We are encouraged by support offered to us by our partners and friends from many countries.

At the end, I would like to pay recognition and to thank to my associates and all other involved in the preparation of these important documents. Their implementation shall ensure possibility to our country to manage migration flows within it and to be a partner in the region as part of process of creation of good neighbouring relations and co-operation that are of essential importance for accession to the European Union.

Apart from the professionals, these documents may serve as an excellent guides for introduction to and understanding of fields of visa, border control, migration and asylum. Therefore, I recommend them to the wide audience.

*Minister of Security of BiH
Tarik Sadović*

Introduction

Introduction by Marijan Baotic, Chair of the State Commission on Migration and Asylum Strategy and Assistant Minister, Asylum Sector, Ministry of Security

As part of the goals set by the Stabilization and Association Agreement and Roadmap for Liberalisation of Visa Regime for Bosnia and Herzegovina, BiH needs to formulate a coordinated migration and asylum strategy and action plan for foreign nationals. The main objective of this strategy is the development of a quality system for border management, visa regime, immigration and asylum and combating trafficking in human beings, both in accordance with EU standards as well as with the migration trends and realities of BiH today. It is the hope of this Ministry that from the point of view of Justice & Home Affairs it will facilitate the integration of Bosnia and Herzegovina into the European Union.

.Looking back at the work already done, the EU compatible legal, regulatory and institutional frameworks in the fields of asylum, migration and visa matters (supported under the EC CARDS Regional Programme) resulted in the creation of a 2005 Roadmap for integrated asylum, migration and visa management, and specific national BiH EU Alignment strategies in all three sectors . As a follow-up, in May 2008, the new *Law on the Movement and Stay of Aliens and Asylum* entered into force, bringing the BiH legislation in line - to the current extent possible - with the EU *acquis*. Within the European integration process, BiH has also accepted the principles of Integrated Border Management (IBM), which promotes the idea of a controlled border while still remaining open to trade and tourism. Additionally the legal, policy and management capacities of the BiH Government in migration issues, supported by the EC National CARDS 2003 and 2005 Programmes, have resulted in the establishment of a Secure Reception Centre for Irregular Migrants, a Central Database registering the entry, stay and exit of foreigners, and the reinforcement of the recently created Service for Foreigners Affairs.

Therefore, BiH currently possesses relevant legislation and functioning state bodies at all levels of migration control, capable of addressing all forms of migration flows (both regular and irregular) as well as enforcing decisions reached. Yet, what was lacking was a coordinated national migration policy and strategy clarifying roles and responsibilities of the various bodies, establishing cooperation and coordination mechanisms and providing policy guidance to respond in a comprehensive and coordinated manner to the objectives set out by the BiH State.

It is in this framework that, in December 2007, the Minister of Security, Mr. Tarik Sadovic, established a Commission comprised of officials from the Ministry of Security (Asylum and Immigration Sectors, Service for Foreigners Affairs, Border Police, State Information and Protection Agency – SIPA) and the Ministry of Foreign Affairs, charged with drafting the strategy for Migration and Asylum and an Action Plan for the period 2008-2011. I have had the honour of leading the work of this Commission.

The Commission met regularly over the past year with the technical assistance provided by the International Organization for Migration (IOM). A Working Group consisting of the Commission members and IOM organized two retreats outside of Sarajevo during this process. At the first retreat held in May 2008, the approach toward the development of the migration strategy document and questions to be addressed were discussed following a presentation of best practices to achieve the formulation of a comprehensive and functional migration & asylum strategy. Subsequently, a draft document was prepared with inputs from the members of the Commission. The draft was shared with IOM as well as representatives of

two countries, Switzerland and the Czech Republic, who were asked to review and provide comments. Both were identified as countries that have relevant comparable experience: the former because of its federal constitution and the latter because of the existence of similar political, social and economic transition processes. After receiving comments from the Swiss and Czech governments as well as the opinion of IOM experts, the second retreat of the Working group was held in October this year which subsequently resulted in the final text of the Strategy. The strategy comprises a summary of past, current and future situations in the fields of visa issuance, border control and immigration and asylum management; it presents the achieved results, identifies critical issues and restrictive factors; it defines the objectives to be achieved as well as a plan of action on how to achieve them.

The National Migration and Asylum Strategy and Action Plan for 2008-2011 were adopted during a regular session of BiH Council of Ministers held on 13 November 2008.

The Final document includes three main parts:

Part A: An internal evaluation carried out by the BiH Government bodies participating in the Commission (*BiH Migration Management Assessment: Overview of the Administrative and Operational Review*);

Part B: an external evaluation carried out by IOM (Part B: which includes an *Overview of Migration Trends in BiH, past and present*), a *Legal Review: Monitoring Report on the Implementation of the EU Acquis*) and an *Operational and Enforcement Review*; and

Part C: *The Action Plan 2008-2011*: a combination and joint analysis of both of internal and external recommendations listing legal, administrative and operational targets over the next three years.

The adopted Strategy and Action Plan provides the necessary foundation of a comprehensive migration system. However the biggest challenge ahead will be the actual implementation of the Action Plan.. This will require the continued commitment of all the actors involved in its drafting working together towards the successful implementation of a policy that will help Bosnia and Herzegovina on the road to EU accession. I am sure that the standing Members of the Commission would join me in committing themselves to ensure the success of this exercise and will look forward - together - to reviewing its progress report at the beginning of 2012.

Marijan Baotic, Chair of the State Commission on Migration and Asylum Strategy and Assistant Minister, Asylum Sector, Ministry of Security

Glossary of Acronyms

BCP	Border Crossing Point
BiH	Bosnia and Herzegovina
BP	Border Police of BiH
CRC	Citizenship Review Commission
CSA	Civil Service Agency
DEI	Directorate of European Integration
EC	European Commission
ECD	European Commission Delegation
EUSR	European Union Special Representative
FBiH	Federation of BiH
GFAP	General Framework Agreement for Peace in BiH
IBM	Integrated Border Management
IOM	International Organization for Migration
IPA	Instrument for Pre-Accession Assistance
ISM (or MIS)	Information System on Migration (Central Database on Foreigners)
LMSAA	Law on Movement and Stay of Aliens and Asylum
MFA	BiH Ministry of Foreign Affairs
MHRR	BiH Ministry of Human Rights and Refugees
MIS (or ISM)	Migration Information System (Central Database on Foreigners)
MoCA	Ministry of Civil Affairs
Mol	BiH Ministries of Interior
MoJ	BiH Ministry of Justice
MoS	BiH Ministry of Security
OHR	Office of the High Representative
OIC	Organization of Islamic Conference
OSA	Intelligence Security Agency
OSCE	Organization for Security and Co-operation in Europe
RS	Republika Srpska
SFA	Service for Foreigners Affairs
SIPA	State Investigation and Protection Agency
THB	Trafficking in Human Beings
UN	United Nations
UNHCHR	United Nations High Commissioner for Human Rights
VoT	Victims of trafficking
WTO	World Trade Organization

PART A.

Internal Evaluation –
BiH Migration Management
Assessment:
Overview of the
Administrative and
Operational Review

Introduction

At the beginning of the 21st century, migration is considered to be one of the most crucial global issues, as a larger number of individuals have been moving than ever before in history. To date, approximately 175 million persons have been living outside of their country of origin, representing approximately three percent of the world's population. Further, this means that there is approximately one migrant for every 35 persons in the world's population.

Europe was an area of emigration during the first half of the 20th century: Its residents migrated towards the countries of North and South America, Australia, and European colonies in Africa and Asia. In the second half of the century and until today Europe has become an area of immigration.

All migration movement is largely conditioned by economic needs. A high level of demand for labour in developed countries and the availability of a workforce in developing countries have initiated the global movements of labour migrants. At first, the development of the initial forms of labour migration was characterized by the movement of non-skilled and semi-skilled workers. This later turned into the movement of a highly skilled workforce at its most developed stage. The migration of individuals (in the 1960s and the 1970s of the last century) came first, followed by family reunification (in the 1980s), while a new trend of refugees and asylum seekers was developed in the 1990s, as well as in the first decade of the 21st century.

Demographic changes have significantly affected migration movements. The global growth of population differs between developed and developing countries. In developed countries, the current annual growth rate is less than 0.3%, while the population in the rest of the world is increasing at a rate six times that. The rapid growth of population along with economic hardships has spurred people from their homes. At the same time, countries with an "old" population are forced to receive migrants. According to certain estimates, the diminished, older population in developed countries will further increase the mobility of individuals in the following 50 years. Practice has shown that, regardless of the challenges which developed countries face, migrants remain in their destination countries with no desire to return to their countries of origin.

BiH was an emigration country in the 1970s, a transit country in the late 1990s, but is increasingly becoming a country of immigration and the immigrants' final destination. Over the past years an unstable political, economic and social climate has emerged in this area after the dissolution of the former Yugoslavia and has resulted in migrations in large numbers of neighbouring countries' citizens to BiH. Even today, when the motives for such migration have ceased or almost ceased, a large number of migrants are staying in BiH, either with granted residence, under international protection or illegally.

Migration needs to be brought under control. This is possible if:

- there is a migration policy in place,
- migrations are managed in a planned and productive way,
- migrations are stipulated with the contributions of all relevant players on both regional and wider levels.

The migration policy must be based on four fundamental principles:

Principle of legality – it is vital to set up a system of measures for efficient migration control, thereby creating opportunities that benefit both the migrants and the State, with simultaneous reduction of illegal immigrants and THB;

Principle of integration – to ensure an environment conducive to the successful integration of aliens by raising public awareness and acceptance and through a more active role for both governmental and non-governmental sectors;

Principle of safety for the country and its citizens – to ensure the protection and possibility for rapid action by the services dealing with security issues in case of illegal immigration or larger migration waves;

Principle of international cooperation – to ensure dialogue and cooperation both with the countries of origin and third countries in order to harmonize foreign policy with the goals of the migration policy.

Successful migration control implies measures to enhance legal migration and to prevent irregular migration, THB and smuggling, by means of:

- visa policy,
- border control,
- legalizing one's stay,
- the right to international protection,
- the right to return (readmission).

Management of migration includes establishing and maintaining cooperation with the countries in the region and on a wider scale, monitoring of efficiency, consistent application of measures and their adjustment as circumstances require.

The strategy in this area comprises a summary of past, current and future situations in the fields of visa issuance, border control and immigration and asylum management; presenting the achieved results, identifying critical issues and restrictive factors; defining the objectives to be achieved as well as a plan of action on how to achieve them.

Each field has been developed separately, with clearly defined objectives and tasks, time schedules for implementation of activities, the implementing bodies and required financial sources.

The goal is to develop a system for managing borders, visa regime, immigration and asylum in BiH according to the European Union standards, thus enabling the integration of BiH into the European Union.

A.
VISA POLICY

Efficient visa policy is the basis for a reliable visa system and it constitutes one of the major means of controlling aliens' entry into BiH.

Balancing human rights with control of migration using a visa system is the primary challenge for those who create visa policy.

States secure their borders and make decisions on conditions for the entry into, stay in and departure of foreign nationals from their state territories. At the same time, they do not have complete autonomy over migration issues, as they are also to some extent bound by international law in the form of bilateral, regional or international agreements which coordinate national legislation on entry into, stay in and exit from the state territory.

According to approved international migration standards, visa issuance is considered the first protection line against the international movement of persons who might represent a security risk.

Joining the white Schengen list, i.e. a visa-free regime with the EU Member States, is a strategic interest of BiH in terms of its visa policy. Efficient control of migration is a key prerequisite imposed by the EU Council for achieving this goal, which includes a BiH visa system in line with Schengen standards.

LEGAL FRAMEWORK

1. International conventions and their significance for migrations:

- European Convention for the Protection of Human Rights and Fundamental Freedoms
- Geneva Convention on Refugees Protection from 1951 and Protocol from 1967
- New York Convention on Stateless Persons from 1954
- UN Convention on the Rights of the Child
- Protocols in relation to the prevention of organized crime

2. Law on Supervision and Control of State Borders (Official Gazette of BiH No. 56/04);

3. Law on Movement and Stay of Aliens (Official Gazette of BiH No. 36/08)

- Development of visa policy system in BiH over the last period

I. The visa regime was set forth by the Law on the Movement and Stay of Aliens and Asylum in BiH (Official Gazette of BiH No. 29/03), which was passed by the Parliamentary Assembly of BiH in July 2003.

- Article 23 of the aforesaid law stipulated that a visa is a permit that allows entry, stay and transit through BiH territory within a certain period. A series of other by-laws that regulate this matter have been passed based on this law.
- The conditions and procedures for the entry and stay of aliens in BiH, as well as other issues significant for the entry of aliens and visa issuance at the border, have been additionally regulated by the Rulebook on the Conditions and Procedures for Entry and Stay of Aliens (Official Gazette of BiH No. 4/05).
- Visa issuance or visa extension, types of visas, the form and content of the visa sticker, as well as other issues relevant for visa issuance, is regulated in detail by the Rulebook on the Conditions and Procedures of Visa Issuance to Aliens, Visa Extension, Visa Annulment, Visa Types and

Records on Issued Visas, approved in 2004. The approval of this Rulebook was followed by the approval of the Instruction for Visa Issuance Procedure in Diplomatic and Consular Missions of BiH.

Besides the law and by-laws that regulate this matter, the purpose of regulating the visa application procedure was to prescribe more strict criteria of entry into BiH, prevent illegal immigration and reconcile actions to be undertaken with actions approved by the signatory countries of the Schengen Agreement.

II. In order to harmonize the visa issuance procedure with EU regulations and to reconcile BiH visa regime with the EU Members States and Schengen Agreement signatory countries, i.e. the regulations of EU Acquis that regulate this field, the new LMSAA (Official Gazette of BiH No. 36/08) entered into force on May 14th 2008.

The core change in terms of visa issuance prescribed by the new Law is seen in the replacement of the existing eight visa types with four.

The LMSAA thus prescribes 4 visa types:

1. Airport transit visa (visa A)
2. Transit visa (visa B)
3. Short-term stay visa (visa C)
4. Long-term stay visa (visa D).

In extraordinary cases, due to security, humanitarian, professional or personal reasons, a short-term stay visa (Visa C) for single entry up to 15 days or transit visa (Visa B) or airport transit visa (Visa A) may be issued at the border by the BP.

Visa C (short-term stay visa) enables an alien single or multiple entry with undisturbed stay or more consecutive stays in the country for up to 90 days over a period of six months.

Visa D (visa for long-term stay) enables an alien to enter and stay in BiH for a period of six months with validity up to one year.

Before a visa is issued, the diplomatic and consular representation of BiH is obligated to request approval from the Office of Aliens in case a long-term visa D is to be issued, as well as in other foreseen cases.

- The aforementioned law foresees three months for producing legal acts (by-laws) in the competence of BiH MFA:
- The Rulebook on the Conditions for and Procedure of Issuance of Visa for Long-Term Stay (Visa D),
- The Rulebook on Technical Issues Regarding Conditions for Issuing Airport Transit Visa (Visa A) and Transit Visa (Visa B)
- The Rulebook on Procedures for Issuing of Visas in Diplomatic and Consular Representation Offices.

VALID VISA REGIME

The visa regime is set by the law and decisions of the Council of Ministers in line with international practice and the conclusion of bilateral agreements applying a principle of reciprocity.

In accordance with valid regulations, visa for entry into BiH is not required for:

- Citizens of 49 countries who are holders of regular passports,
- Citizens of the Peoples` Republic of China, who are holders of service - regular passports
- Citizens of 13 countries who are holders of diplomatic passports
- Citizens of 12 countries who are holders of service passports.

Citizens of BiH may travel to 19 countries without visas (Montenegro, Dominica, Croatia, Democratic People's Republic of Korea, Cuba, Macedonia, Maldives, Malaysia, Russia, Samoa, St. Lucia, Seychelles, Singapore, Solomon Islands, Serbia, St. Vincent and Grenada, Tunisia, Turkey, West Samoa).

The MFA undertook activities for liberalization of the visa regime and the following agreements are being reviewed or negotiated:

- Agreement on the abolition of the visa regime for holders of diplomatic and service passports with the Kingdom of Morocco, Israel, Algeria, Moldova, Brazil, Argentina, Mexico, Indonesia, India, the United Arab Emirates, Jordan, the Republic of South Africa, Cuba, Albania:
- Agreement on the abolition of the visa regime for holders of regular passports with Brazil, Argentina and Albania.

The visa regime of BiH with the EU Member States and signatories of the Schengen Agreement was regulated by the Agreement on Facilitation of the Visa Regime signed and ratified between the EC and BiH. The purpose of this Agreement is to facilitate visa issuance for citizens of BiH for an intended stay not exceeding 90 days over a period of 180 days.

Visa facilitation relates to a certain category of citizens of BiH, such as:

- members of BiH official delegations who were officially invited to participate in meetings, negotiations, etc., held in the territory of the member states by inter-governmental organizations,
- businessmen and representatives of business organizations,
- drivers involved in inter-state transportation of goods and passengers,
- journalists, persons who participate in scientific, cultural and artistic events, students, post-graduate students and accompanying teachers, participants in international sporting events.

The purpose of visa facilitation is to make the visa issuance of long-term multiple visas procedure simpler for this category.

Article 10 of the aforesaid Agreement stipulates that holders of valid diplomatic passports may enter, leave and transfer through territories of EU Member States without visas.

THE ROAD MAP AND VISA REGIME LIBERALISATION

I. A draft decision on visas has been prepared, the procedure has been started and it has been delivered to the relevant institutions for their inspection.

This decision foresees a visa free regime for 66 countries. Visa regime abolition is being foreseen for all countries listed under the so-called White Schengen List.

This is very important for the development of tourism in BiH, as this draft includes among others the most populous countries of South America (Brazil, Argentina, Mexico, Chile, etc)

II. BiH and the EC showed mutual willingness to start activities for visa regime abolition for BiH citizens if entering the Schengen countries. In line with those activities, the EC has prepared a document, "Road Map for Visa Regime Liberalization in BiH," which was delivered to BiH on June 5th 2008.

This document lists all the obligations and tasks to be carried out by the state institutions of BiH as prerequisites for acquiring a visa free regime. On May 29th 2008, the Council of Ministers of BiH appointed a work group for negotiations on visa regime liberalization whose task is to prepare an action plan.

INSTITUTIONAL FRAMEWORK

All BiH institutions, including the MFA, the MoS and its organizational units, the Border Police and the Service for Foreigners have directly and mutually participated in making legal, regulatory and institutional frameworks for migration and visas in harmony with the EU principles.

In terms of the current migration and visa situation, besides the existing cooperation between BiH institutions, MFA, MoS and BP - a prerequisite for efficient implementation of obligations set forth by the rules and regulations - there is a need for permanent coordination, monitoring of regulations and their harmonization with EU regulations.

VISA ISSUANCE PROCEDURE

I. The MFA, i.e. diplomatic and consular representatives of BiH, are permitted to issue visas to aliens. Visas are issued in 35 diplomatic and consular offices in BiH. In exceptional circumstances the Border Police, in accordance with the LMSAA, can issue visas at the border. More details on this matter are contained in section B) Border.

Each visa application is sent electronically to the MoS for inspection. Visa stickers are printed out and include a machine-readable space for sticker validity control. All diplomatic and consular representations of BiH are connected to the system. The State Border Office of BiH may check each visa electronically. It is possible for the MFA to monitor electronically the work of diplomatic and consular representatives.

II. Technical prerequisites for visa issuance

As of November 2004, an electronic visa issuance system was established at the time when the Migration Information System project (MIS) was completed, which enabled efficient, accurate and reliable maintenance of central records with the personal data of foreign citizens staying in BiH for different purposes. The MIS system was upgraded in September 2007 by linking four existing visa, stay, border and asylum modules.

The MFA issued a User Manual for the application of the visas module and initiated activities for the implementation of a new MIS system in the diplomatic and consular missions of BiH.

HUMAN RESOURCES AND FUNDS REQUIRED TO ACHIEVE OBJECTIVES

In order to enable the state bodies to work efficiently and create a reliable visa regime, services and institutions participating in implementation have to have human resources and technical prerequisites to be able to carry out BiH visa-related activities in a productive manner. Besides organizing trainings for existing staff, especially in diplomatic and consular missions at destinations under the pressure of migration, the MFA should undertake measures required for the permanent training of staff in order to provide efficient and safe implementation of the set visa policy that has been harmonized with EU standards.

PRIORITIES OF VISA REGIMES

- To establish a legal and institutional framework and create technical and personnel prerequisites for services and persons within the Ministry who participate in visa regime implementation;
- To sign the Readmission Agreement between BiH and the EU countries, as well as other signatories of the Schengen Agreement
- To strengthen the BP in order to enable efficient border control when implementing the visa regime;
- To harmonize the visa regime with those of the EU Member States and signatories of the Schengen Agreement;
- To upgrade and implement the Migration Information System (MIS);
- To create a function for rejecting visa applications within the visa module;
- Cooperation between diplomatic and consular representations of BiH with the relevant institutions of the receiving state for migration flow control;
- To intensify cooperation with neighbouring countries, to coordinate the activities of visa regime liberalization for the so-called 'Western Balkans' countries and to have a joint position towards the EU and its Member States in relation to issues of common interest on visa policy;
- To improve and formalize the cooperation of all relevant bodies, especially those dealing with migration: MoS, Office for Aliens, BP of BiH and BiH MFA by concluding the Protocol of Cooperation;
- To conclude an agreement on the simplification of the visa issuance procedure with the third countries and to introduce biometric data in travel documents, visas and other personal documents;

- To educate personnel in diplomatic and consular representations of BIH at destinations which record migration flows and prepare diplomats in advance in learning the language of the receiving country.

CONCLUSIONS:

1. Visa policy, as a basis of visa regime, is presented through chronologically listed regulations as they were adopted.
2. Liberalization of the visa regime in order to fulfil a final aim: abolishing visa obtainment for BIH citizens travelling abroad.
3. Priorities of visa policy in order to fulfil an action plan for the liberalization of the visa regime and adjustment of local visa procedures with the Schengen regulations and the accomplishment of the previously determined visa policy.

B.

BORDER CONTROL

1. Legal framework

The State Border Service (BP BiH) was established pursuant to the Law on the State Border Service of BiH that the High Representative for BiH, Wolfgang Petritsch, adopted on February 2nd 2000, under the authority bestowed upon him. By this law, the State Border Service (below referred to as SBS) was established to carry out border protection and international airport security activities in BiH.

SBS became operational on June 6th 2000 by formation of the first Unit of BP – Sarajevo Airport. In cooperation with UNMBiH, a Transition and Implementation Plan was made in order to successively take over BCPs by entity and canton MOIs in the years 2001 and 2002. The process ended in September 2002 when SBS took over competence and responsibility over the entire BiH border.

In 2004, a new Law on the State Border Service was enacted, regulating its competence, organisation and management, By this law, SBS was defined as an administrative organisation within MoS with operational independence, established to carry out police activities related to surveillance and border check in BiH. In the same year the Law on Surveillance and Border Check was enacted, which, together with the Law on Foreigners Movement, Residence and Asylum and Criminal Laws in BiH, comprises the basic legal frame for BP work. In 2007, the name State Border Service was changed to the BP BiH.

In compliance with the Law, activities in the field of BP are as follows:

- a) Enforcement of Law on Surveillance and Border Check regulations;
- b) Enforcement of Law on Foreigners Movement, Residence and Asylum regulations;
- c) Prevention, detection and investigation of criminal acts as defined by Criminal Laws in BiH, 'related to the state border' (criminal acts directed against state border security or against performance of BP activities, criminal acts in connection with misuse of personal and travel documents when crossing the border or with directly crossing the state border, criminal acts of transporting goods, the transport of which is not permitted over the state border, transport of goods without any official authorization or by breaching the existing embargo, in case the BP is assigned to control such an authorization or embargo;
- d) Prevention, detection and investigation of other criminal acts as requested by the relevant authorities;
- e) Prevention, detection and investigation of offences laid out in the Law on Surveillance and Border Check, the Law on Foreigners Movement, Residence and Asylum and other laws or upon the request of relevant authorities;
- f) Police support to organisational units within MoS as implementation of the Law on Foreigners Movement, Residence and Asylum and other regulations covering this field;
- g) Undertaking measures on civil air traffic protection and international airports security in BiH;
- h) Performing other activities regulated by the Law and other legislature.

Apart from the above-stated laws (Law on BP BiH, Law on Foreigners Movement, Residence and Asylum, Law on Surveillance and Border Check, Criminal Laws in BiH) in the context of the BP BiH the following implemented laws should also be mentioned: Criminal Proceedings Law, Law on Offences in BiH, Law on International and Inter-entity Road Transport, Police Officers Law, Confidential Data Protection Law, Personal Data Protection Law, BiH Travel Documents Law, Law on Prevention and Suppression of Drug Abuse, Administration Law and Administrative Procedure Law.

For the work of BP significant importance is also given to contracts, memorandums, conventions and agreements which regulate cooperation with international organisations, law enforcement agencies and other state administration bodies in BiH, neighbouring countries and on a wider scale.

In 2008 a new Law on Foreigners Movement, Residence and Asylum was adopted. The BP BiH, together with other agencies, is going to work on the preparation and implementation of by-laws regulating activities to be carried out within its competence.

There is also an ongoing procedure of enacting a new Law on Border Control, in order to bring border control activities in line with best practices and standards in the European Union and in line with the Schengen Code. In compliance with the EU standards, the new legislation shall introduce a term of border checks (border control checks include checks on border crossing and surveillance of the state border between border crossings); define obligations of operators at the border crossings, international cross border police cooperation, control and transportation of arms and ammunition, state border crossing, border incidents, border incidents and other related matter.

Having enacted this Law, the BP will, in cooperation with MoS, start preparing sub-laws, in an attempt to implement best EU practices and standards with adherence and implementation of the Schengen manual procedures (a practical handbook for police officers who carry out a border control).

In addition to this, in the following period the BP is going to make changes and amendments to the Rulebook on Internal Organisation, in order to adjust its organisational structure to the objectives of the Strategy of IBM in BiH as well as to requests in line with the European Union.

2. Institutional framework

The Law on Border Police defines BP as an administrative organisation within MoS with operational independence, established in order to carry out police activities of surveillance and border check in BiH. The BP is structured in order to coordinate all activities on a central, regional and local level and thus to offer highly specialised service necessary for performing assigned tasks, as well as to provide two-way exchange of information between organisational units on a central, regional and local level.

Performance of the tasks within the BP competence is achieved within organisational units established on a central, regional and local level.

Central level organisational units include:

- Cabinet of the Director
- Head Office (Operations Administration, Administration Office, Office for Professional Standards and Internal Control, Office for Strategic Planning and Analysis)
- Central Investigation Office (within which there are two Surveillance and Monitoring Units)
- Training Centre

The Regional level covers six organisational units, i.e. Field Offices (FO) within which there are (except Airport FO) Support and Control Units.

At the local level there are 17 BP Units (BPU) and four International Airports BP Units in BiH.

(Note: The graph of the organizational structure of BP is added as an annex.)

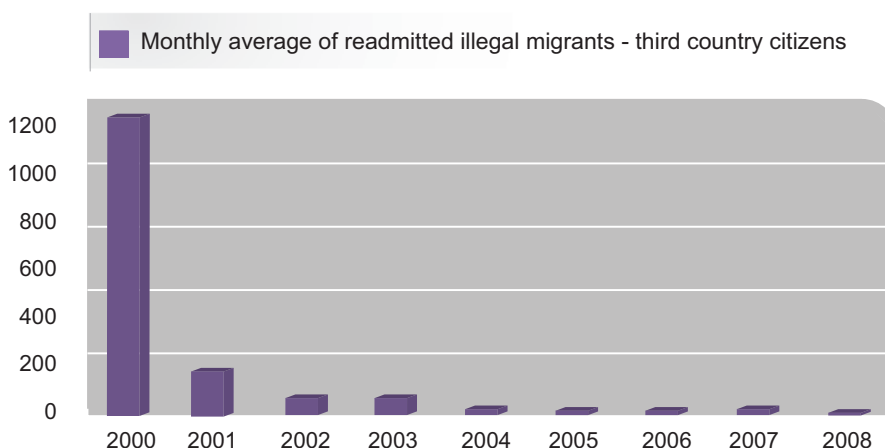
The Rulebook on the internal organisation of BP specifies 2,536 employees, of which 2,339 are police officers, 48 civil servants and 149 staff members. On March 31st 2008, according to the systematisation of positions, there were 458 vacancies, mainly for police officers (442). As for the qualification structure, most of the employees have completed secondary school 76.65%, those with a high school diploma comprise 12.04% and those with a university degree 11.31%.

The main reason why there are so many vacancies available for qualified personnel is the fact that BP performs its activities mainly border areas (rural areas), so the place of work for the police officers is significantly far from their place of residence. Currently there are 400 police officers working at a distance of more than 80 km away from home. As a result, police officers from other agencies are not interested in working for BP, and so BP is faced with the problem of qualified personnel leaving BP to join other police agencies. BP is trying to overcome this problem by educating and training its staff in the Training Centre, as well as by improving the financial prospects of its employees.

3. Evaluation of the migration situation

The geographical position of BiH as a country at the crossroads between east and west makes it a transit country for migrants on their way to Western European countries. BP BiH has since its foundation recorded a continuous increase of traffic (persons and vehicles) across the BiH state border. Most of the traffic is on the border with the Republic of Croatia. Most foreigners come from high migration-risk countries to BiH to get in legally, but some of them attempt to leave BiH illegally in order to go west. The data indicates illegal migration routes over BiH territory, starting from the eastern BiH border - especially with Montenegro - moving towards the western and north-western border with the Republic of Croatia.

It can be concluded that since the foundation of BP there has been a continuous decrease of illegal migration over BiH territory. The best evidence for this is the data concerning the monthly average of readmitted migrants- third country citizens, pursuant to the Readmission Agreement with the Republic of Croatia.



From the outset BP started dealing with illegal migrants in BiH territory. In the first years illegal migrants were mainly from Iran, Turkey and China and later Moldova, Ukraine, Romania and Bulgaria. However, visa regime changes with some countries, BP developments and consistent implementation of legal regulations and best practices of western countries in this area brought, apart from a significant decrease in illegal migration over BiH territory, changes in the nationalities of illegal migrants. In the last two years BiH has mainly dealt with illegal migrants from Albania, Serbia, Kosovo, and Macedonia (mainly of Albanian nationality). Citizens of these countries and Turkey make over 96% of the total of deported foreign citizens, and in 72,95% of cases they are deported for illegal residence in BiH. Furthermore, the citizens of the abovementioned countries make up 96,66% of readmitted third country citizens pursuant to the Readmission Agreement with the Republic of Croatia. It is important to state that these countries' citizens are refused entry to BiH mostly for giving false data about their right to enter BiH. Data on illegal crossings of the state border indicate that citizens of Albania and Serbia – UNMIK make up 85% of persons registered, not including citizens of BiH and neighbouring countries.

Significant changes are not expected in the coming period that could influence the position of BiH when it comes to migration, illegal migration and illegal migrants' nationalities. We should take into account the European dimension of illegal migration over BiH territory. To that end, one of the conditions for further liberalization of the visa regime for BiH citizens is efficient migration control in BiH.

4. Visas

In accordance with the Law on Surveillance and Border Check, as well as the Law on Foreigners Movement, Residence and Asylum, as a part of foreigners' border checks, the BP checks on possession of an entry visa, residence visa and transit visa over BiH territory issued by the consular posts. In addition, in cases stipulated by the law, the BP can issue and charge visas at the borders. After the establishment of the BP, visas were issued at all international BCPs. In 2004 a new electronic system for visa issuing was set up and since then visas have been issued at 14 international BCPs. Visa issuing was carried out in accordance with by-laws, as recommended by MFA and in coordination with MoS by carrying out checks in the DFR (designated foreigner register) database.

Taking into account all visa requests at the border, it is obvious that most visas are issued for the purpose of participation in cultural and sporting events, religious tourism and business. Most visas are issued at Sarajevo International Airport, approximately 90% of all the visas issued at BCPs. Visa requests at BCPs are submitted mainly by citizens of Albania, Ukraine, Moldova, Kosovo and South-American countries. In practice so far these persons who obtained a visa at the border have not presented potential illegal migrants and have not been registered in admission pursuant to the agreement with the Republic of Croatia. By applying laws and by-laws relating to visa issuance, the number of visas issued at the border has decreased, in compliance with EU standards and recommendations in this area

Year	2003	2004	2005	2006	2007
Number of visas issued at border	4.327	5.641	2.049	927	735

In 2008 a new Law on Foreigners Movement, Residence and Asylum was put into force, according to which the BP is authorised to make decisions on visa annulment in cases when a visa was issued to a foreigner who is prohibited entry to BiH or when a visa is forged. The BP is also authorised to reduce visa validity in case the foreigner has no sufficient means of support.

The BP is also authorised, by the abovementioned Law, to issue certain types of visas (A,B,C) at borders in exceptional cases for reasons concerning BiH's security, humanitarian, serious professional and personal reasons. The BP can independently decide on the justification of a visa request at the border.

In accordance with new laws it is necessary to adopt a by-law (Rulebook) in the following period which will regulate in detail all the aspects of issuing visas at borders (reasons, issuance procedure, charging, registering, annulment, reducing validity and other technical matters), in order to further decrease the number of visas issued at borders.

Furthermore, it is essential to have continuous police officer training on visa issuance and visa control. Technically speaking, an on-line connection of border crossings (ISM – module visa) should be established where visas are issued with relevant databases.

The BP officers passed the training of consular personnel of BiH for managing interviews with persons requesting visa issuance, which should continue in the future.

5. Foreign Citizens' entry to BiH

According to the Law on BP, the BP performs police activities related to surveillance and border checks in BiH and other activities regulated by the Law on Surveillance and Border Checks and the LMSAA.

The Law on Surveillance and Border Checks regulates, among other things, surveillance and border checks, BCPs, border checks, international BP cooperation and BiH services cooperation at the state border as well as inside BiH, collecting personal data and registration. In accordance with the Law there are two Rulebooks adopted in relation to border checks. The first is on the manner of performing border checks, regulating the performance of border checks in road, rail, air, sea and river traffic and the measures and procedures in carrying out border checks, and the second is on recording data when entering and leaving the country, on refusing entry to the country and other data in documents appropriate for crossing the state border.

The LMSAA regulates, among other issues, the following: conditions and procedures for foreigners' entry to BiH, including visa and non-visa regime; travel documents for foreigners; international and temporary protection in case of a mass foreigner inflow and the competence of authorised bodies in the law's implementation.

There are ongoing activities to enact a new Law on Border Control which will contain legal solutions for the implementation of best practices and standards of European Union in the area of border control. After the adoption of this law it will be necessary to enact a series of by-laws to regulate *modus operandi* for the police officers carrying out border control.

Moreover, in accordance with the Law on Foreigners Movement, Residence and Asylum, proper by-laws should be enacted to regulate in detail the control of the entry of foreign citizens following EU requests.

5.1. Border Crossing Points

A border crossing point (BCP) is the place designated for the crossing of the state border. International BCPs and BCPs for border-areas have been designated by Contracts of BCPs Designation and by Agreements on Border-Area Traffic and Cooperation with Neighbouring Countries. It is important to state that these Contracts and Agreements with the Republic of Croatia have already been put into force and with Serbia and Montenegro they are still being processed.

According to these Contracts and Agreements, there are 89 BCPs on the BiH border, of which 55 are international and 34 are for border-area traffic. Of the 55 international BCPs, 8 are for rail traffic, 40 are for road traffic, 4 BCPs are at BiH international airports and 3 are ports. Following the Agreement, the border services of BiH and the Republic of Croatia carry out border checks at the joint locations of 6 international road BCPs.

Most of the BCPs in BiH do not meet the necessary EU standards in infrastructure and equipment. In the former Yugoslavia, BiH had no international border, but its internal, administrative borders became international and without a proper border infrastructure. Twelve BCPs, with all the necessary conditions for successful border checks have been recently renewed. The current issue of building, maintaining and managing BCPs has not been resolved on a systematic basis. Basically, all services present at BCPs (Indirect Taxation Agency, BP, Sanitary and other Inspection bodies) maintain the facilities they directly use. The Strategy of IBM implies formation of a special body at the state level with the task to manage and maintain BCPs.

In order to carry out border checks properly, it is necessary to equip border crossings both in infrastructure and technically in line with EU standards, and in that way provide for the free and fast flow of passengers and goods while at the same time preventing, detecting and investigating all criminal acts and offences related to crossing the state border. In relation to this it is necessary to define the general conditions for BCPs regarding infrastructure, equipment, communications, database access, etc.

5.2. Checks on persons

Border checks activities cover, pursuant to the Law on Surveillance and Border Checks, checks on persons, luggage and vehicles. A person intending to cross or a person who has already crossed the border line is obliged to stop and show proper travel documents for crossing the border, to be subjected to border checks, not to leave the BCP until border checks are over and not to avoid border checks in any way. During border checks the police officer will check on the proper travel documents for crossing the border, whether the foreigner meets the conditions for entry and stay in BiH and will also check the search registers.

The person intending to or who has already crossed the border line is obliged to explain to the BiH police officer all the circumstances about meeting the conditions for crossing the state border and to obey warnings and orders given by the BP BiH police officer carrying out border checks. For that purpose a 'Practical Guide for Interviewing' has been issued to inform BP officers about how to prepare and conduct an interview with illegal immigrants and about other issues to apply when collecting information and identifying potential illegal migrants. The police officer in charge of border checks will record data in the proper documents for crossing the border on entry and leaving the country, refused entry and other relevant data.

Those procedures related to the refusal of entry to foreign nationals and subsequent decisions on refused entries are entirely in compliance with the EU standards and practices of the Schengen Manual.

Foreign citizens who do not meet conditions for entry to BiH will be, pursuant to legal regulations, refused entry to BiH. BP decides on the refusal of entry and gives that order to the foreign citizen who will be requested to leave the BCP immediately. The foreigner's passport is stamped with 'REFUSED ENTRY'. The foreign citizen can appeal that decision within 15 days, which does not postpone the implementation of the decision. The foreigner with refused entry cannot enter BiH within 24 hours from the moment entry was refused even if he/she meets entry conditions later, after the decision of refusal was made.

The following table indicates the number of refused entries to BiH:

Reasons for refused entry to BiH for foreign citizens	2003	2004	2005	2006	2007	Total	%
Did not possess valid travel documents	4.436	4.991	4.402	4.365	4.115	22.309	52,96%
Did not have visa	3.658	4.584	2.564	1.934	1.336	14.076	33,42
Intentionally giving false data about right to enter	409	354	210	715	532	2.220	5,27
Did not have enough financial resources	576	367	431	564	474	2.412	5,73
Did not have work permit for the required occupation	334	158	139	236	133	1.000	2,39
Threat to public order, national security and under expulsion order	37	15	12	15	28	107	0,25
Total	9.450	10.469	7.758	7.829	6.618	42.124	100%

Where fighting illegal migration is concerned, the BP has given significant importance to the detection of forged documents. The total number of forged documents and criminal acts related to forging documents detected by the BP is shown in the following table:

	2003	2004	2005	2006	2007
Detected forged documents	403	458	334	434	295
Criminal acts related to forging documents	407	447	350	280	216

In most cases they are forged documents from BiH, Serbia and Montenegro. As for other countries, they are mainly from Germany, Croatia, Italy, Macedonia, Turkey, Slovenia, Greece and only lately Austria and the Czech Republic. The structure of forged documents used for crossing the state border mostly consists of: passports, IDs, visas, residence permits, driving licences, vehicle documents, i.e. traffic licences, vehicle insurance and travel licences.

From the outset the BP has encountered BCPs not sufficiently equipped with forged document detectors. Currently all international border crossings have basic equipment for document detection, including retro-cheques and mobile magnifying glasses. All police officers participate in training on the detection of forged documents and managing interviews. There are two stereo microscopes installed at Sarajevo Airport, as well as an integrated-camera microscope, scanner and colour printer. Three mobile devices for document analysis are in function in field offices. At the central level there is a laboratory for document analysis with modern equipment for the detection of forged documents and which can give expert opinions upon court and prosecution requests. There is appropriate equipment for the detection of forged documents installed at the Training Centre in order to carry out the training of police officers.

The following table shows data on persons detected in illegal crossings of the state border at BCPs in 2006 and 2007:

Illegal crossings of the state border at BCPs	2006	2007
- entering BiH	483	176
- leaving BiH	270	195
TOTAL	753	371

For a successful detection of forged documents in the following period it is essential that, pursuant to the new LMSSA, the BP sets up a database with examples of valid travel documents forms and a database of forged travel documents accessible to the Foreigners Affairs Service, Immigration Sector, Asylum Sector and Ministry of Foreign Affairs. Apart from these it is necessary to set up a database of lost and stolen travel documents to which the BP will have direct access. This database should be connected to the INTERPOL LASP database, which keeps records on lost and stolen passports. Therefore, a direct access (on-line) to these databases should be enabled from BCPs. Furthermore, a module

on 'early warning of forged passports' should be developed and continuous police officer training in this area should be carried out. There is also a continuous requirement for the renewal and procurement of modern equipment for the detection of forged documents.

In accordance with legal obligations, as well as operational requirements, the BP has adopted instruction on registration and its management. From the illegal migration standpoint, it is especially important that the BP register refused entries, persons detected in illegal crossing of the state border, readmission of persons pursuant to the Readmission Agreement and persons who breach the rules of the law when crossing the state border. In the coming period, the coordination of registration should be done to make them compatible for use among different agencies in BiH. This is of crucial importance for risk analysis implementation, establishment and implementation of mechanisms for monitoring illegal migration flow and the definition of migration profiles in BiH.

The biggest problem police officers face during border checks is lack of direct access to databases from most of the international BCPs. This problem, in the following period, will be paid special attention..

Since the new Law on Foreigners Movement, Residence and Asylum has recently been adopted and the Law on Border Control is in process, it is necessary to adopt a series of by-laws concerning personal checks procedures, especially of foreign citizens crossing the state border. Procedures to be analysed in detail are as follows: procedures for checks on persons (basic and detailed checks), for special categories (minors, sailors, aircraft staff, persons with special needs), armed persons (armed escort etc.), procedures for refusal of entry for foreign citizens, border checks in special situations, risk analysis and border checks methods, procedures for crossing the state border verification, etc.

In the following period the BP will pay special attention to police officers training in the area of profile determination and conducting interviews in order to successfully detect potential illegal migrants, and all illegal ways of border crossing.

5.3. Vehicle and luggage checks

Vehicle checks include inside and outside visual checks, search of the vehicle, checks in search registers and checks for necessary vehicle documents and proper equipment. The vehicle is checked when there is reason to believe that the vehicle transports hidden persons, illegal goods and things that help detect their identity or that of other passengers, all in order to prevent illegal crossings of the state border. BP officers are involved in vehicle checks in road, rail, air, sea and river traffic.

When checking vehicles in order to detect hidden persons, different equipment is used: vehicle search mirrors, optical tubes and endoscopes, CO2 detectors, stethoscopes among other pieces of equipment. The BP faces the problem of BCPs not properly equipped with these. During vehicle and luggage checks, in accordance with risk analysis, service dogs for explosives and drugs detection are used. The BP keeps operational registers on buses and trucks crossing the state border.

From this point it is necessary, in the coming period, to renew the existing equipment and procure modern equipment for detection of hidden persons in vehicles, and also to train police officers continuously in this area. It is also important to adopt by-laws to regulate procedures for vehicle checks, checks of rail traffic, checks of sea vessels and river traffic and checks of air traffic.

5.4. Border surveillance

The length of the BiH state border is 1.551 km, of which 905 km is land ('green') border, 625 km is river border (rivers Sava, Drina and Una), and about 21 km is sea border. BiH has no marked state border since the activities on the establishment of border relations with neighbouring countries haven't finished. With regard to this, it is necessary to intensify the work of the interstate Commission for the Border to identify the borderline. In that area significant improvement has been achieved in regulating border cooperation with the Republic of Croatia, while these activities with Serbia and Montenegro are at an initial stage.

The majority of the BiH border is land and river border, where 432 points have been identified as environment conducive to crossing illegally. At the border with the Republic of Croatia there is an ongoing project of blocking the points suitable for the illegal crossing of the state border. Within the project in this part of the state border 118 such points have been identified, and 68 of them have been blocked. There are plans for the coming period to block the rest of them, while with Serbia and Montenegro no such project has started.

The BP carries out border surveillance in the border-area covering 10 km from the borderline into BiH territory. The whole border and border-area are divided into sectors. Work on sectors is done in compliance with the Instruction on way and methodology of work in the area of BP Units regulating activities in sectors, registering events in sectors, managing sector registers, etc. At the regional level the BP has established Units for Support and Control which are mostly involved in border surveillance. Lack of qualified staff in the BP is apparent in the lack of police officers involved in border surveillance.

According to the legislation, border surveillance is carried out by authorised persons equipped with technical and highly sophisticated means and service dogs in order to survey the area efficiently in all weather conditions. Border surveillance is, among other means, done by motorised and foot patrols and the establishment of check points. Patrol boats are used on sea and rivers. Modern devices such as sensors and detectors have been used lately for border surveillance. Those mostly used are seismic sensors, magnetic sensors, CO2 detectors, day and night observation devices, lightening devices (spotlights and lamps) and special surveillance vehicles equipped with devices for video surveillance.

In border surveillance the BP cooperates with police agencies in BiH acting in the BP responsibility zone, as well as with local people in the border-area. Cooperation is also established with the border services of neighbouring countries.

The total number of illegal crossings attempts of the state border in the border-area for 2006 and 2007 is shown in the table:

Illegal crossings of the state border In border – area	2006	2007
Entering BiH	317	321
Leaving BiH	219	159
TOTAL	536	480

In the coming period the BP plans to procure highly sophisticated border surveillance equipment such as thermal vision cameras, IC sensors, parametric cables, optical-electric devices, as well as renewal of the existing equipment. It is also necessary to renew regularly the motor pool, including cars, four-wheel-drive vehicles, special vehicles, vessels and motorbikes.

BP will also enroll and educate police officers in the Training Centre and in that way increase the number of police officers involved in border surveillance.

Pursuant to the new Law on Border Control, the BP will start preparing by-laws regulating activities and work organisation in this sector. In relation to that it is necessary to renew the Instruction on the ways and methodology of work in this sector, especially from the perspective of building risk analysis into the process of planning border surveillance. Besides the abovementioned procedures are required for the treatment of detained persons, procedures in cases of cross-border smuggling, in cases of border incidents, and the establishment of cooperation with local police and the local community.

5.5. Databases access and communications

Databases were not arranged upon establishment of the BP. During its development the BP created databases according to the legislation and its own operational needs. Currently there are two databases available in the BP: those created in the BP and those of other institutions that the BP uses in its work. Databases created in the BP contain details on crossings of the state border, searches for persons, registration of border dossiers, registration of documents that are searched for, vehicles searched for and databases of truck and bus crossings. For these databases the 'Oracle' platform was used for Field and regional units with direct on-line access, and the 'Access' platform for all other local and regional units.

Apart from these databases, the BP has access to the database ASF (INTERPOL) which comprises details on searches for vehicles, persons, documents and works of art. This access is possible from the Head Office. A database of issued visas and visa applications (ISM database) in MFA is also used. The BP has also access to databases created within the CIPS project (issued passports, IDs, residence permits, driving licences and registered vehicles)

Through the development of databases and the expansion of on-line access (currently 9 BCPs) the BP has gradually achieved better results in detecting wanted persons. This can be seen in the following table:

	2003	2004	2005	2006	2007
Persons discovered on searches	331	507	534	402	1.041

So far the BP has come across non-arranged data in databases, and insufficiently developed IT network for the direct use of these databases.

In the coming period it is necessary to enact comprehensive instruction on carrying out searching activities, to arrange the database of wanted persons (and goods) pursuant to positive legal regulations. It is also important to provide an optimal technical solution according to the needs and requests of the 'searching activity' that will be compatible with the IT systems of other police subjects in BiH and its surroundings (IBM).

As for its telecommunication infrastructure, the BP found the situation was not suitable for their needs. Radio links for imperturbable operational work of the officers in the field and at international airports have been implemented. All BP units are equipped with a telephone switchboard, modern digital ISDN, and all international BCPs have direct phone lines, while a large number of them have video surveillance systems installed. The BP uses an IT system for border checks which is in function at international airports and at five more BCPs. This system enables the registration of persons crossing the border, as well as of wanted persons.

Currently in the field of telecommunication system development there are projects implemented by the BP to cover BCPs and enable database access:

Project ISM (Information System of Migration). This is an EU CARDS financed project and deals with migration and asylum in BiH. The project involves BiH diplomatic bodies in the world and agencies dealing with migration and asylum, MoS, Foreigners Affairs Service, the Ministry of Foreign Affairs and the BP. One of the system sections would be visa issuance, which is especially significant for BP in controlling and issuing visas at border. Currently the system is not in use due to unresolved organisational, technical and personnel problems.

SPIN network: comprises the creation of a wireless communication network for police structures requirements at the state level – SIPA, BP and MoS, and is financed by the American Government organisation ICITAP. There are plans for other state level police agencies to join in future. This project should enable direct access to databases run or used by police agencies.

SDH network: is a wide range radio-relay wireless network financed by EU CARDS for police agencies, and the BP will be covered on 11 locations. Since it is important to be connected with other agencies, primarily the Directorate for CIPS Program Implementation, connection via this network will continue, and it will also be used for communication, primarily through a telephone switchboard connection.

MIND system: is the system for going through searches for persons and vehicles in INTERPOL databases. It enables direct access from BCPs to INTERPOL databases. It is financed by INTERPOL and is in a testing stage at 3 BCPs.

TETRA system: is a digital radio system which, apart from improvement of the quality and modernisation of radio communications at the national level, creates good conditions for cross-border co-operation by connecting neighbouring countries for successful border control, joint patrolling etc.

There is a conceptual project of the BP Central database to unite all existing databases used by the BP and to automate activities on information management at all organisational levels. This project would be financed by IPA funds.

The BP will continue with activities on uniting all organisational units and border crossings into one information system

6. Fight against illegal migration

Illegal migration over BiH territory has been influenced by internal and external factors, the most important of which are BiH's geographic position on the crossroads between the east and the west, the consequences of the war in the region, an inadequate system of surveillance and border checks before the BP's establishment, an inadequate visa regime, changes in the geopolitics of the surrounding countries as well as the economic situation of the countries of the Western Balkans, North Africa and Western Asia. These stated factors made BiH a suitable starting point to go to Western European co-

ountries, the consequence of which was a large number of illegal migrants from the aforesaid regions. Citizens of Iran, Turkey and Iraq dominated the make up of illegal migrants in 2000.

Strengthening institutional capacities (BP, MoS, SIPA, OSA, Foreigners Affairs Service and establishment of other bodies), changing the visa regime, and strengthening the border security system and legal regulations enabled BiH to achieve significant results in the field of illegal migration. The number of illegal migrants decreased and their nationalities changed; thus in 2007 they were mainly persons from Kosovo, Albania and Macedonia. BiH Criminal Law from 2003 defined the criminal act of smuggling people as an act related to the prevention of criminal groups and individuals to act in the field of illegal migration. This way of sanctioning this type of criminal has been regulated in BiH in a unique manner. Criminal Procedure Law defines special investigation actions, but the implementation of these actions has not developed sufficiently as of yet.

The following table shows registered criminal acts of smuggling people that were reported to authorised prosecutors by the BP:

	2003	2004	2005	2006	2007
Criminal acts related to smuggling people	38	45	31	60	83
Number of submitted official reports	32	37	22	46	55
Number of reported persons	62	88	62	82	118

At the same time criminal groups dealing with illegal migration (smuggling and trafficking people across the border) and which act at an international level, strengthen and become more organised and specialised for committing these criminal acts. In the BP organisational structure, the Central Investigation Office takes the key place in the development of the investigation and intelligence components for fighting organised illegal migration. Within the Central Investigation Office there are two Units for surveillance and monitoring with a significant emphasis on the implementation of special investigation actions. There is also a network of police officers in charge of investigation and criminal intelligence work established at the local and regional levels.

Based upon the BiH Strategy for fighting organised crime and corruption from 2006, the BP has created its own Action Plans, which include activities on fighting illegal migration.

There have been several Instructions regulating intelligence work and running investigations in the BP, such as the Instruction on criminal intelligence work, work with informants, running interviews, etc.

The work of the BP demands modern equipment, i.e. constant renewal and procurement of devices such as modern telecommunication surveillance devices, detectors for currently used mobile phone numbers, day and night observation and photo-documentation device, and other specialised equipment following the trends in the area of fighting illegal migration.

In order to elevate capacities in fighting criminals, the international community provides significant help through 'Twinning' projects for which there is a structure established in the BP, thus enabling efficient fight against organised crime. Current 'Twinning' project is aimed at further development of BP capacities in criminal investigations.

The BP cooperates with other law-enforcement agencies in BiH and the police of other countries and international organisations in fighting illegal migration. It is in particular cooperation with ministries of South-Eastern Europe countries pursuant to the Convention on Police Cooperation in South-Eastern Europe, to implement joint actions aimed at criminal groups and individuals dealing with smuggling people. It has resulted, lately, in implementation of actions at the regional level, which again has resulted in cutting off the chains of smuggling people from Kosovo, Macedonia and Albania into Western Europe. This cooperation is constantly improving. Important possibilities for improvement in the area of fighting illegal migration can be found in better cooperation with the BiH Foreigners Affairs Service.

In the following period no significant improvement is anticipated in the following areas: organisational strengthening, qualified staff capacity, staff selection and training (specialist training for investigators), IT connection and automation of the processes supporting the intelligence system, strengthening criminal intelligence and work with informants, cooperation and division of competence with other agencies to avoid investigation overlap. The BP will also regularly analyse and, according to its needs, arrange Action Plans for fighting cross-border organised crime and an Action Plan for fighting corruption. Fighting corruption and improving professional conduct of police officers and other staff are priorities.

7. National and international cooperation

The BP has achieved a significant level of cooperation with BiH institutions, especially with security and police agencies (SIPA, OSA, MIs etc.) and with bodies within the IBM Strategy (IBM Strategy), which has been largely formalised. It is important to mention that the updated IBM Strategy in BiH and the Action Plan for Strategy Implementation was adopted by the Council of Ministers on July 10th 2008.

Pursuant to the Cooperation Agreement between the BP and the Indirect Tax Agency, a mixed working body has been formed to work on the implementation of the Action Plan for Agreement Implementation. The cooperation is carried out through exchange of information, joint operational actions, designation of contact officers, etc. The BP has agreements on intelligence data exchange with all the police bodies in BiH.

The Border Police regularly, by its regular periodic reports and special reports, submits information to the Sectors within the Ministry of Security dealing with the Border Police and its affairs. The information refers in particular to migration movement and criminal offences committed at the state border. In order to assist in creating migration policy, the Border Police submits several types of data, including: refused entries at the border; border crossing by nationals of countries who pose a high migration risk; data on visas issued at the border, admission of migrants based on international treaties, foreign nationals who are subjects of interest to other law enforcement agencies, data on persons caught during illegal crossings of the state border, registered offences including trafficking and human smuggling in particular and others.

While performing checks and visa issuance at the border, the Border Police cooperates with the Ministry of Foreign Affairs and the Ministry of Security. The Border Police, Ministry of Foreign Affairs and Ministry of Security are through the ISM system linked with the database ROS as well as with the standardized electronic visa applications at all border crossing and consular posts abroad.

In addition, the Border Police cooperates with the recently established Service for Foreigners Affairs. It transfers all foreign nationals, for a further procedure to the Service, where it is established that they stayed illegally in BiH. Furthermore, cooperation includes exchange of data on foreign nationals who were removed from the country.

According to the law, the BP cooperates with foreign law-enforcement authorities, other appropriate foreign bodies and international organisations. International cooperation involves data exchange and joint activities within the BP's competence. The BP's international cooperation is carried out at three levels: local, regional and central. To that end the BP has designated contact persons at local, regional and central levels for cooperation with neighbouring countries, i.e. with the BP of neighbouring countries. Furthermore, the BP cooperates with international organisations such as EUPM, EUFOR, OHR, UNHCR, IOM, OSCE and diplomatic bodies in BiH (Embassies of USA, UK, Germany, France, and Egypt etc.). The cooperation is mainly achieved through equipment donations and BP officer training. The cooperation is also achieved by SECI Centre activities and the Ohrid Border Process. The BP has significantly participated in DCAF activities, especially in the working groups 'Leadership and Management', 'Legal Reform' and 'Risk Analysis, Criminal Intelligence and Investigations'. These working group activities stress the regional aspect of the adoption of EU standards in the border security area.

BP cooperation with border services of neighbouring countries has been increasing constantly. Besides that, the BP has engaged in intensive cooperation with the border services of all countries in the region and the EU through different border security programs through which it became a recognizable and respected agency for surveillance and border checks.

Pursuant to the Agreement on Cooperation in State Border Surveillance between BiH and the Republic of Croatia - the General Police Directorate and MoS - the BP have signed the following Protocols: on joint patrols of the common state border, on establishment of joint groups for crime prevention, on sending liaison officers and on official transit over state territory by the other contracting party in order to act on its own state territory. The BP is to implement all of these Protocols, the result of which will be a more efficient campaign against illegal migration.

The BP will, as part of the BiH security system, keep cooperating intensively with the competent BiH authorities in the field of control and prevention of illegal migration. It is necessary in the following period to adopt the innovated IBM Strategy in BiH and Action Plan for Strategy Implementation. The BP, together with the ITA (Indirect Taxation Agency) as the leading agency in the area of border security, is going to participate actively in the realisation of the IBM Strategy and Action Plan.

In the following period the BP will intensify all types of cooperation with authorised bodies in BiH and abroad to achieve a successful realisation of the activities anticipated by the 'Roadmap for liberalisation of visa regime with EU'. An important part of these activities concerns illegal migrations, to which the BP will fully contribute.

Pursuant to the South-Eastern Europe Police Cooperation Convention, it is necessary to approach signing the implementation protocols for certain areas of international police cooperation. Activities on the realisation of the objectives of Ministerial Declarations within the DCAF border program will also be continued.

Initial contacts have been established with FRONTEX, and in the coming period it will be necessary to establish formal ways of cooperation (Contract, Agreement and Protocol).

8. Strategic objectives and activities

In order to achieve more efficient migration control and fight illegal migration in accordance with best European Union practices, the BP will direct its activities to the realisation of the following strategic objectives:

- Creation and adoption of normative acts.
- Strengthening of organisational and staff capacities
- Infrastructure and equipment
- Development of databases and communications
- Improvement of cooperation with BiH authorities and at international level.

Activities undertaken for the achievement of strategic objectives

1. Creation and adoption of normative acts

1.1. Adoption of the Law on Border Control

1.2. Participation in working groups for the adoption of by-laws in accordance with the Law on Border Control

1.3. Adoption of Instructions for particular activities of border inspection:

- General border inspection conditions
- Inspection of persons (basic and detailed)
- Inspection of special categories of persons
- Risk analysis and border inspection methods
- Vehicle inspection
- Rail traffic inspection
- Inspection of vessels in river and sea traffic
- Air traffic inspection
- Visa inspection
- Crossing the border verification
- Relaxation of border regime
- Armed forces border inspection
- Arms and ammunition transfer across the border inspection
- Documents inspection
- Entry refusal
- Use of equipment for border inspection
- Database use
- Border inspection in special situations
- Asylum and humanitarian protection
- Security tactics

- 1.4. Adoption of Instruction for particular activities of border surveillance
 - Surveillance organisation in accordance with risk analysis
 - Detained persons
 - Cross-border smuggling
 - Procedure in case of border incidents
 - Organisation of shift work
 - Cooperation with local police
 - Cooperation with local community
 - 1.5. Participation in working group activities to adopt by-laws pursuant to the Law on Foreigners Movement, Residence and Asylum.
 - 1.6. Changes and amendments to the Rulebook on BP Internal Organisation.
 - 1.7. Changes and amendments to Instruction on BP Registers according to legal changes.
 - 1.8. Conclusion of contracts and agreements to regulate border relations with neighbouring countries.
 - 1.9. Adoption of Instruction on carrying out search activities.
 - 1.10. Adoption of Instruction and procedure for realisation of special investigation activities.
 - 1.11. Changes and amendments to Instruction on internal revision and inspection.
- 2. Strengthening of BP capacities in fighting illegal migration**
- 2.1. Enrolment and education of cadets in the Training Centre.
 - 2.2. Hiring of qualified staff (police officers from other police agencies, civil servants and staff members).
 - 2.3. Improvement of the financial situation of employees.
 - 2.4. Advanced police officer training:
 - Visa issuance and inspection
 - Running interviews, profiling
 - Risk analysis, creation of profile for illegal migration risk
 - Forged documents
 - Use of equipment in border inspection
 - Specialist investigators training
 - Use of special investigation actions and work with informants.
 - 2.5. Introduction of risk analysis, creation of risk profile and monitoring of illegal migration flows
 - 2.6. 'Early warning' of forged travel documents system establishment
 - 2.7. Analysis of implementation of BiH Strategy for fighting organised crime and corruption, Action Plan for fighting organised cross-border crime and Action Plan for fighting corruption, and accordingly revision of their changes and amendments.
 - 2.8. Implementation of the Twinning project 'Building BP Capacities in Criminal Investigations'
- 3. Infrastructure and equipment**
- 3.1. Establishment of agency for building, maintenance and management of border crossing points pursuant to IBM Strategy.
 - 3.2. Building of BCPs in accordance with EU standards:
 - Infrastructure
 - Facilities
 - Marking.
 - 3.3. Equipping BCPs:

- Equipment for checks on persons (procurement of optical scanners for biometric passports)
- Equipment for vehicle and drivers checks
- IT equipment (terminals and software)
- Energetic equipment
- Office equipment

3.4. Procurement of equipment for forged documents detection:

- Docs-box
- Microscopes for document inspection
- Pocket magnifying glasses

3.5. Renewal and procurement of border surveillance equipment.

3.6. Renewal of motor pool.

3.7. Procurement of specialist equipment for:

- Telecommunication surveillance and detection of used mobile phone numbers
- Day and night observation
- Photo-documenting.

4. Development of databases and communications

4.1. Further ISM development with emphasis on access to search databases

4.2. Setup of forged documents database

4.3. Setup of lost and stolen passports database and its connection with INTERPOL LASP database

4.4. Development of BP Central database project

4.5. Development of SPIN network

4.6. Expansion of SDH network

4.7. Development and implementation of MIND system

4.8. Development and implementation of TETRA system.

5. Improvement of cooperation with BiH authorities and at international level

5.1. Adoption of innovated Strategy and Action Plan for implementation of Integrated Border Management Strategy in BiH.

5.2. Education of consular personnel for visa issuance

5.3. Implementation of Strategy and Plan for police work implementation in community BiH.

5.4. Implementation of Agreement on cooperation with ITA.

5.5. Strengthening cooperation with agencies covered by IBM Strategy in BiH.

5.6. Strengthening cooperation with police and other agencies in BiH with emphasis on agencies founded at the state level.

5.7. Strengthening cooperation with government and non-government organisations in the field of migrations.

5.8. Conclusion of Agreement on cooperation with FRONTEX.

5.9. Conclusion of Protocol with the countries signatories of the South-Eastern Europe Police Cooperation Convention.

5.10. Implementation of Agreement on Cooperation in Joint Border Surveillance with the Republic of Croatia and of the signed Protocols.

5.11. Continued work in DCAF border program.

5.12. Participation in SECI Centre activities and operations.

Budget resources for the realisation of the aforementioned activities have been anticipated by the Action Plan for Implementation of IBM Strategy in BiH.

9. Strategy implementation and monitoring

The deadline for the realisation of this Strategy and Action Plan is 2011. All organisational BP units are obliged to, within their competence (job description and tasks), elaborate and monitor realisation of activities contained in the Strategy and Action Plan. These organisational BP units are to submit reports quarterly to the Office for Strategic Planning and Analysis about planned, undertaken and implemented activities. The Office for Strategic planning will consolidate the reports and monitor their realisation of targeted objectives and thereof inform the body in charge of monitoring the Strategy realisation at the state level.

Through the realisation of this Strategy and Action Plan and its implementation the BP BiH will, as an integral part of the security system, contribute significantly to the security of BiH citizens. BiH borders will become more serviceable for the legal movement of people, vehicles and goods, whilst at the same time become an obstacle for all types of illegal migration and cross-border crimes. This way BiH will be on the path to Schengen legal acquisition and the EU Acquis in border control and control of migration over its territory. The abovementioned will also improve the reputation of BiH as a safe country, a country that, by its activities, contributes to the security of the region and Europe as a whole, and is a country worth investing in.

All activities and measures for efficient migration control and fighting illegal migration will always be carried out by the BP with authorised bodies in BiH and abroad, and the BP will be their reliable partner. Moreover, the BP primarily relies on cooperation with the citizens whom we serve.

10. Conclusions

The Border Police shall significantly contribute to the safety of BiH citizens by implementing the Strategy and Action Plan. The BiH border shall become more passable for the regular traffic of persons, vehicles and commodities, and at the same time shall be an efficient obstacle for all types of illegal migration and cross border criminal activities. In this way, BiH shall be able to accomplish standards of the Schengen acquis and the best practices of the EU in the area of border and migration control over its territory. This shall improve the image of BiH, as a safe country and a country which contributes to the improvement of the security of the region and Europe as a whole, as well as a country worth investing in. The BP shall implement all activities and measures aimed at efficient migration control and combating illegal migration with competent authorities in BiH and abroad and shall be a trustworthy partner. Furthermore, the Border Police also relied on cooperation with BiH nationals.

C.
IMMIGRATION

DEVELOPMENT OF LEGAL AND INSTITUTIONAL FRAMEWORK

Introduction

The classification of countries into countries of origin, transit and destination is becoming less and less relevant. Nowadays, many countries are sending migrants, receiving migrants or having migrants in transit; this is also the case in BiH.

There are several forms of migration, including the migration of labour force, qualified and unqualified, the joining of families, migration for business or research, and other forms.

Irregular migration, which has represented a significant phenomenon in Europe for the past few decades, has also left its mark on BiH. The movement of foreign citizens from East to West and across the territory of BiH has been recognised as one of the significant problems of BiH, as well as of the entire European Community. A large number of foreign citizens have either legally or illegally entered BiH for the purpose of entering into the countries of Western Europe. Having analysed the obtained data, it can be concluded that a certain number have fulfilled their intention. In the past few years, BiH has been observed as merely a transit country, both for legal and illegal migrants. However, it has been noted in recent analysis and evaluations that BiH is becoming a final destination for migrants. In view of this it is important to conclude that there has not been an increase in illegal migration; on the contrary, the data shows that there is a significant decrease of illegal migrations across and within BiH.

1. Development of the legal framework

Efficacious regulations and practice of migration management should be in accordance with the relevant provisions of the state's legal framework. Migration management begins within the scope of a fundamental legal context that includes international agreements, conventions and instruments to which the state acceded, as well as the Constitution and other valid regulations by which the field of migration is regulated.

State sovereignty is traditionally the initial point of international law on migration. States have authority over their territory and population. The state decides who can and who cannot enter its territory, decides on the terms of stay as well as on reasons for removal from its territory.

However, states no longer have absolute autonomy because international law includes contracts on bilateral, regional and international levels that restrict state competence over issues of entry, stay and removal from the territory of the state. The international migration law is a network of legal relations among the states, the state and individual, and the state and international organizations.

There is no international legislative body that built regulations on international migration. This branch of law has been developing over time and as the need for international cooperation grows.

Human rights – especially those that refer to non-discrimination, freedom of movement, asylum, return, the joining of families, protection of children, among others – are part of international law, and domestic regulations must be in accordance with these international standards.

The policy of immigration in accordance with Article III, paragraph (1), Item (f) of the Constitution of BiH is placed under the competencies and authorities of state level institutions.

The first regulations of BiH concerning the issues of immigration and asylum comprised the Law on Immigration and Asylum that entered into force on 30 December 1999. The provisions of this law were unclear and incomplete; there was a conflict between the competencies of different institutions and over some key issues such as the registration of residence, placing an alien under surveillance, specia-

lised reception institutions, aliens who were victims of THB, and sanctions for violation of the Law on Immigration and Asylum, which were not regulated at all. Although the aforementioned law, due to its various gaps and ambiguities, caused many reactions by the competent bodies for its implementation, it also completed its task, which was harmonising immigration and asylum with constitutional requirements. It also created conditions for further legal and institutional development in this field.

Significant progress was also achieved in improving the legal framework which regulates the movement and stay of aliens in BiH by adoption of the LMSAA at the end of 2003 (Official Gazette BiH No. 29/03 and 4/04 and 53/07).

At the time of its adoption, the text of this Law was significantly harmonised with the EU Acquis in the field of immigration, as well as the international regulations on refugees in the field of asylum. A total number of nine by-laws were adopted to define the procedures on entry and residency of aliens, travel documents, protection of aliens, victims of THB, surveillance and removal, keeping files and asylum.

- Rulebook on Conditions and Procedures of Entry and Residence of Aliens (Official Gazette BiH No. 04/05 and 61/07)
- Rulebook on Travel Document for Aliens (Official Gazette BiH No. 25/04)
- Rulebook on Protection of Aliens who are Victims of THB (Official Gazette BiH No. 33/04)
- Rulebook on Standards on Functioning and Other Issues Significant for the Work of Immigration Centre (Official Gazette BiH No.41/07)
- Rulebook on the Central Data-Base on Aliens (Official Gazette BiH No. 61/07)
- Rule book on Conditions and Procedures of Visa Issuance for Aliens, Extensions of Visas, Types of Visas and Registers of Issued Visas (Official Gazette BiH No. 56/04)
- Instruction on the Rules of Keeping and Use of the Official Register of Specific Aliens, which entered into force on April 29th, 2008
- Rulebook on the Removal of Aliens from BiH (Official Gazette BiH No. 41/08)
- Decision on the Amendments of Fees for Administrative taxes (Official Gazette BiH No. 3/08 and 42/08).

However, the aforementioned law did not resolve the issue of second-instance decision-making in certain administrative procedures, where the Ministry in Seat is the first-instance decision-making body. Moreover, the provisions of the Law did not provide for the possibility of controlling immigration policy at the state level with regard to the approval of temporary residences based on a work permit. During the implementation of the Law, certain problems have appeared in issues related to temporary residence status of aliens who are sports professionals, consultants, key personnel within legal entities, aliens that reside in BiH based on international agreements in which BiH is one of the contracting parties, as well as aliens that participate in a project significant for BiH.

The field of visas was not harmonised with the standards used in member countries of the European Union and signatories of the Schengen Agreement.

The development of the EU Acquis means that a certain number of provisions of the current law had to be amended, in order to harmonise it with the EU Acquis or the common legal heritage of the European Union.

The new LMSAA was published on May 6, 2008 (Official Gazette BiH No.36/8) and entered into force on May 14, 2008. It was passed in order to harmonise BiH legislation in the field of immigration with the legislation of the European Union and the Schengen Agreement, as well as to remove all flaws that were observed in the application of the current law. In addition to regulating the work/stay status of the above listed categories, the new LMSAA introduced many new concepts addressing carriers' responsibility, minors, marriages/adoption of convenience, four visa types, quotas for work permits, exemption of the work permit requirement for long term residents, submissions of requests for stays outside of BiH and many others.

2. Development of the institutional framework

The creation of a legal basis for migration management also comprises the creation of an institutional framework that regulates the activities of the state in a way that is directed towards a common established policy. The institutions of the state, legislative authority, executive authority and judiciary, are institutions that apply legislation. In order to implement legislation these institutions must have appropriate competences and duties as well as be indirect participants when dealing with foreign nationals, such as carriers, institutions for accommodation, institutions for education, employers and international institutions and non-government institutions.

This combination of subjects constitutes an institutional framework for migration management. There is no ideal organizational structure for migration management, because every country has different migration goals and priorities; therefore their organizational structure differs according to particular needs.

The institutional–administrative structure, the institutional framework, must be established in such a way as to solve the problem of migration control and its implementation, the restriction of movement across borders, entry into and stay in the territory of the state, as well the removal of irregular migrants.

In Bosnia-Herzegovina, several institutions including MoS¹: Sector for Immigration, Sector for Asylum, the BP, SFA, MFA, Intelligence-Safety Agency, State Agency for Investigation and Protection, MoCA-CIPS Project, the Ministry for Human Rights and Refugees, Entity² and Cantonal Ministries of Internal Affairs and the Police of the Brčko District represent an institutional framework for the implementation of regulations in the field of migration. Besides the cited institutions and bodies, the ministries for social policy, education, labour, finance, health, culture and other bodies down to the local level are indirectly involved in migration processes.

2.1. Development of the institutional framework – Sector for Immigration

The Sectors for Immigration and Asylum were established within the Ministry for Human Rights and Refugees on August 1st 2000 and was very limited in its work due to an insufficient number of civil servants.

The Sectors for Immigration and Asylum continued to work as two separate organisational units within the MoS as of January 1st 2004.

The role of the Sector for Immigration within the system of immigration management in BiH is as follows: performing administrative and other tasks related to immigration policy and its implementation in BiH, making drafts of the laws and by-laws concerning this issue, following and achieving European standards, preparing reports and analysis, reception and protection of victims of THB and other activities and tasks which fall within the competency of this Sector.

2.1.1. Immigration Sector Activities in 2007

We can single out some data that illustrate the scope of work and activities of the Sector with regard to administrative procedures and the sharing of data from official records. In 2007, the Sector for Immigration processed 176 appeals against first instance decisions made by the SFA, issued 4,439 stickers of temporary residence² and 129 stickers of permanent residence, 460 requests for temporary residence that fall within the competency of the MoS³, 12,770 electronic check ups in the data-base ROS⁴ performed, 105 travel documents for aliens issues, etc.

The employees of the Sector for Immigration actively participated in drafting the new LMSAA. In 2007, numerous activities were undertaken on amendments of by-laws: the by-law on the Central Data-Base on Aliens (Official Gazette BiH No. 61/07), the by-law on the Standards of Functioning and Other Issues related to the work of Immigration Sector (Official Gazette BiH No. 41/07), and the Rulebook on Amendments of the Rulebook on Conditions and Procedures of Entry and Residence of Aliens (Official

1 A detailed description of MoS' competencies is made on page 53.

2 Until November 1, 2007, the Sector for Immigration issued residence stickers upon the decisions of the Ministry in Seat and the Service for Foreigners' Affairs, and as of that date, the sticker issuance has been divided by competencies.

3 As per new legislation, this type of humanitarian stay is not a competency of the Immigration Sector, it is the competency of the Service for Foreigners Affairs.

4 Register of specific aliens.

Gazette BiH No. 61/07). In addition, during 2007 the Sector conducted activities in drafting the Decision on Amendments to Tariff and Administrative Taxes and the Proposal on the Rulebook on Removal of Aliens from BiH.

The Sector has actively participated in the implementation of two projects financed by the EC⁵ which resulted in establishing the Informational System of Migrations, and in the project realised by a bilateral cooperation with the Ministry of Internal Affairs of the Czech Republic⁶.

In 2007, the partnership with the International Organisation for Migration (IOM) was continued through the CARDS project "Assistance to BiH in developing the capacities in the immigration field", as well as the Protocol on cooperation in implementing the protection programme for the victims of THB and their voluntary return to countries of origin. In cooperation with IOM a new Memorandum of Understanding was prepared on the implementation of the AVR Programme – Assisted Voluntary Return - a programme that has been successfully implemented for the voluntary return of irregular migrants since September 4th 2007. The representatives of the Sector for Immigration participated in negotiations on the Agreement on Readmission and the Agreement on Visa Facilitation between the European Community and BiH, which came into effect as of January 1st 2008. In 2007, the Sector has been implementing current agreements on readmission in relation to the admission of citizens of BiH from abroad.

Since 2005, the MoS has been in continuous cooperation with non-governmental organizations with which it signed protocols on cooperation and provision of appropriate accommodation for victims of THB, and with the association "Vaša prava" providing free legal assistance.

At the beginning of 2007, the Sector for immigration started cooperation with the network GDISC (General Directors' Immigration Services Conference) consisting of representatives of EU countries and candidate countries. This cooperation was formalized with the "Summit on BiH" that was held on 19th and 20th April 2007 and which was organized by the GDISC and the MoS. The cooperation continued through the visits of representatives of GDISC in BiH and a six-day visit of experts from GDISC member countries. The experts worked and analysed the issues of asylum, visas and migrations between 10th and 14th December 2007. Continued cooperation is expected through the project, which is expected to be approved by the EC.

The representatives of the Sector actively participated in 33 seminars and conferences, and held several presentations in the field of immigration in 2007.

3.2. Development of the institutional framework – Service for Foreigners Affairs

The SFA is an administrative organization within MoS with operative independence for the management of work and solving the issues within its competence, and was founded due to the implementation of administrative-managerial and inspection affairs prescribed by the Law on Movement and Stay of Aliens and Asylum.

The Service commenced operations on October 1st, 2006 by taking over all matters with regard to foreign nationals residing in BiH from the department of foreigners with the entity/cantonal Ministry of Interior and Brčko District Police. It continued to perform activities in its competence in conformity with the Law on SFA, Law on Amendments of the Law on SFA, LMSAA, and other law and by-law acts.

Within the Service Headquarters are the Management of the Service, consisting of the Director, the Deputy Director and the Assistant Director for Internal Control, then the Sectors and Departments established by the Regulation on Internal Organization and Systematization of Service. The Sectors at the Headquarters of the Service are: the Sector for Operative Support and Administrative–Legal Issues, the Sector for Readmission, Reception and Accommodation of aliens, and the Sector for Legal, personnel, general, financial and technical-information issues.

The Service has also basic organizational branches, i.e. 16 Field Offices, and an Immigration Centre. The field offices of the Service include:

- Sarajevo
- Banja Luka
- Mostar
- Istočno Sarajevo
- Livno

5 "Informational system of migrations" and "Support to BiH in Development of Capacities in the Field of Migrations"

6 "Support in Establishing the infrastructure for Migrations and Asylum in BiH – Training for the High and Middle Migration Administration"

- Doboj
- Tuzla
- Bihać
- Goražde
- Bijeljina
- Trebinje
- Zenica
- Travnik
- Brčko
- Orašje
- Ljubuški.

2.2.1. Service for Foreigners' Affairs Activities in 2007

An analysis of the operations of (previously established) offices for foreign nationals with the entity MoI and Brcko District Police by the Sector for operational support and administrative affairs for the year 2006 showed an inconsistent approach in dealing with various matters and issues as per the LMSAA. The analysis further has shown an obvious differentiation while dealing with various status issues of foreign nationals, including an inconsistent application procedure for stay, reporting, a lack of operational activities to combat illegal migration, poor establishment of facts, non-compliance of other regulations in the umbrella Law, oversights in providing attestations on facts from the official record, insufficient cooperation with other institutions, among others.

As a result of planned activities undertaken by the Service, its management and its field offices, certain indicators have been developed which can be compared with the same activities addressing the stay and movement of foreign nationals during 2006.

ACTIVITY	Year 2006.		Year 2007.	
Registration and cancellation of registration of stay of foreign nationals	Registration and deregistration	240440	Registration and deregistration	299448
Decision on ranting/extending of temporary stay	Granted	2387	Granted	2238
	Extended	2733	Extended	2815
	TOTAL	5120	TOTAL	5053
Decision on refusing stay/ extension of temporary stay	Granting	158	Granted	112
	Extended	71	Extended	69
	TOTAL	229	TOTAL	181
Decisions on granted Long Term Residency	Granted Long Term Residency	153	Granted Long Term Residency	136
	Refused Long Term Residency	3	Refused Long Term Residency	6
	TOTAL	164	Total	163
Submitted Applications for Asylum /	Submitted Applications ZAHTJEVA	25	Submitted Applications	145
Attestation of invitation letters	Attestation of invitation letters	3293	Attestation of invitation letters	2355
	Rejected invitation letters	2	Rejected Invitation Letters	52
	TOTAL	3295	TOTAL	2453
Attestation of sponsorship letters	Attestation of sponsorship letters	1716	Attestation of sponsorship letters 1180 19	
	Rejected requests for attestation	4	Attestation of sponsorship letters	
	TOTAL	1703	TOTAL	1250
Control visits of Foreign Nationals who were granted a stay permit	No. Of control visits	1963	No. Of control visits	4856

Control visits of business and individuals that provide accommodation services to foreigners	Actions taken to legal persons	7	Actions taken to legal persons	25
	Actions taken to individuals	14	Actions taken to individuals	99
	TOTAL	21	TOTAL	124
Control visits at the companies and institutions employing foreign nationals	No. of Control visits	485	No of Control Visits	1415
	No. of controlled persons LICA	1013	No. of controlled persons	233
	No. of irregularities established	42	No. of irregularities established Actions	
	Actions Taken	20	Taken	266

2.3. Legal immigrations – stay of aliens in B&H

The stay of aliens, according to the LMSAA (Official Gazette of BiH No. 29/03, 4/04 and 53/07), which was valid until 14.05.2008, is divided into: stay with visa, stay without visa, and temporary and permanent stay.

The request for stay can be submitted in the country and/or through Diplomatic-Consular representation. In the period from 2004 to 2007 in BiH 663 permits for permanent and 20,089 permits for temporary stay were issued.

Temporary stay

Pursuant to the provisions of the aforementioned law, temporary stay implies a stay in the territory of BiH for the duration of up to one year. The reasons for permission of permanent stay can be: marriage with a citizen of BiH, reunification of family, education, scientific research and art work, work based on an issued working permit, business purposes, medical purposes, or humanitarian reasons. The SFA is competent, through Field Offices, for issuing the permits for temporary stays.

Permanent stay

A permanent residence permit is issued on the request of an alien under the condition that he/she fulfils the conditions regulated by the Law that he/she lives in the territory of BiH at least five consecutive years prior the submission of the request for permanent stay.

5,513 permits for temporary residence and 136 permits for permanent residence were issued in 2007.

PERIOD/YEAR	PERMANENT RESIDENCE	TEMPORARY RESIDENCE
2004	178	4897
2005	196	5143
2006	153	*5274
2007	136	**5513
TOTAL:	663	20.089

Table 1. The report on the number of permanent and temporary permits for the period between 2004 and 2007. Remark: * Service 5053 and Sector for Immigration 460, ** Service 5120 and Sector for Immigration 154.

Permanent residence – year 2007		Temporary residence – year 2007	
Citizenship	%	Citizenship	%
China	34,64 %	Serbia and Montenegro	36,77 %
Croatia	13,73 %	China	10,16 %
Turkey	10,64 %	Croatia	10,40 %
Germany	5,23 %	Macedonia	4,87%
Macedonia	5,23 %	Germany	2,76 %
Others	30,53 %	Others	35,04%

Table 2. Number of temporary and permanent resident permits that were issued in 2007 by citizenship

Illegal migrations

A comparative data analysis on the number of citizens of third countries admitted according to the Agreement on Readmission with the Republic of Croatia shall directly lead to conclusion that the number of citizens that use the territory of BiH to travel into countries of the Western Europe has significantly decreased, owing to the series of activities that have been undertaken in the realm of immigration.

Data enclosed in the table represent a monthly average per years of readmitted irregular migrants

2000	2001	2002	2003
1,117 persons	177 persons	65 persons	63 persons
2004	2005	2006	2007
21 persons	11 persons	11 persons	20 persons

In 2007 there was a slight increase of readmission (or 37.93% more than in 2006), but it is important to emphasize that the total number of readmitted persons were 240 foreign citizens, out of which 120 came from Serbia, 68 from Albania, 25 from Macedonia, 19 from Turkey, 4 from Egypt, 3 from Sri Lanka and 1 Iranian citizen.

It should be emphasized that in the region of BiH significant and important results have been achieved in detecting illegal immigrants since the operative work of the SFA commenced in October 1st 2006. The achieved results are due to various factors, but above all due to the enhanced and planned activities of the control of movement and stay of aliens and gathering intelligence and operative data by our Service.

For the adequate application of the legal provisions of the field of the Service's work, as well as the movement and stay of aliens and asylum, the Service organized, in cooperation with IOM, ICITAP, Federal Ministry of Internal Affairs, the training of inspectors for aliens in order to acquire knowledge and skills necessary in daily work.

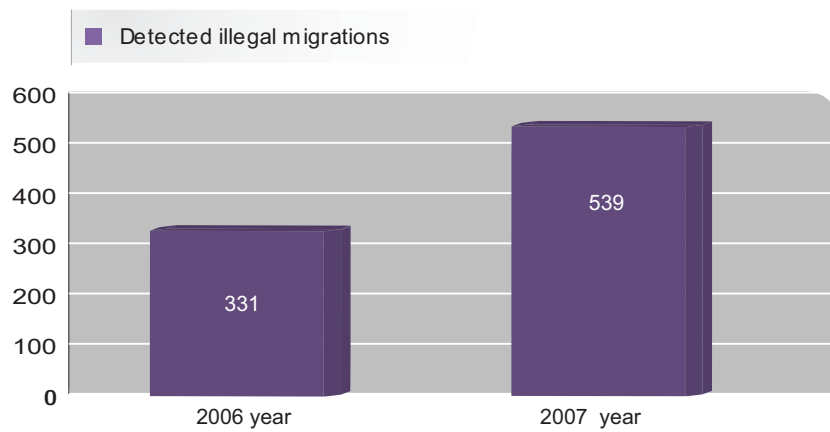
In accordance with competences regulated by the Law on SFA, the inspectors for aliens of our Service, in order to conduct inspection work regulated by the LMSAA, recorded the purposes of stays, registration of stays or alteration of residence, surveillance of the legal entity and physical person due to the stay and employment of foreign citizens, submitting the registrations and requests for proceeding against legal entities or physical persons for the non-observance of regulations on matters of movement, the stay and employment of aliens, submitting the request for proceeding because of annulment of an already approved stay, conducting inspection controls, regular inspection supervisions, etc.

Due to the curbing of illegal migration in BiH, the Management of the Service carried out appropriate activities of planning and conducting the control of the movement and stay of foreign citizens in the regions that are covered by Field Offices of the MoS, while gathering useful operative data on these phenomena. After gathering useful operative information, a major number of control actions have been performed in coordinated action by Field Offices of the MoS, and cooperation with Entities' Ministries of Internal Affairs.

All the information that the MoS has, i.e. that which regards illegal immigration, was delivered to the Agencies for Security in the territory of BiH for the sake of knowledge and further proceedings to enable more efficient problem-solving.

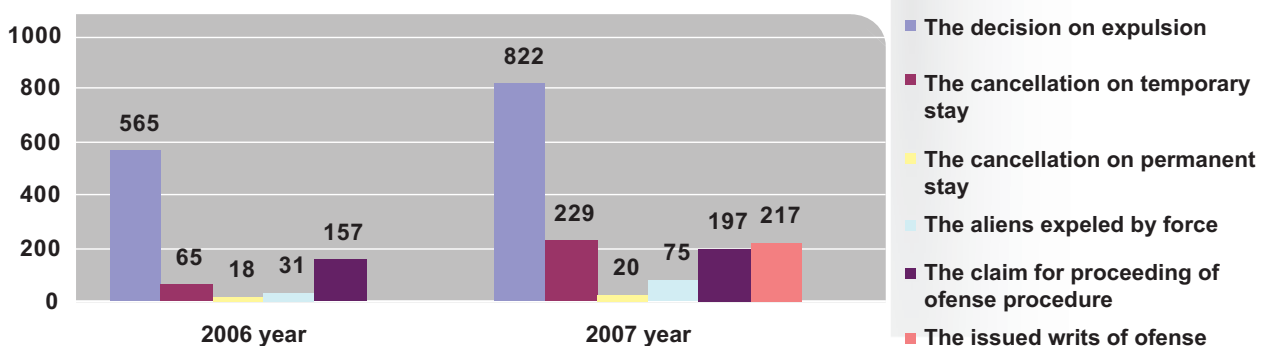
Due to the curbing of illegal immigration, the Service performs, according to need, the coordination of activities with the Ministry of Foreign Affairs, the BP, the State Agency for Investigation and Protection, the Intelligence Security Agency, the Entity's Ministry of Internal Affairs, and the Brčko District Police.

As a result of the continued strengthening of operative work on the field, the inspectors for aliens of the Service, by gathering operative information in order to detect and prevent illegal migrations in the territory of BiH, detected phenomena associated with illegal migration in 539 cases in 2007, which is an increase of 62 % in relation to 2006, when 331 cases were detected.



Measures undertaken against aliens

While performing all necessary operative measures and acts of control of aliens' stays during 2007, irregularities emerged, and according to the Law certain measures against aliens were taken in 1,347 cases: 822 decisions resulted in the expulsion of aliens from BiH, 229 decisions resulted in the cancellation of temporary stay, 20 decisions resulted in the cancellation of permanent stay, 75 foreigners were removed by force, 197 claims were submitted for proceedings of the offence procedure, and 217 offence writs issued. This is an increase of 59,9% in relation to 2006, when measures against aliens were taken in 842 cases: 565 decisions resulted in the expulsion of aliens from BiH, 65 decisions resulted in the cancellation of temporary stay, 18 decisions resulted in the cancellation of permanent stay, 31 foreigners were removed by force, and 157 requests for proceedings of the offence procedure were submitted.



The majority of decisions involving expulsion were made after conducting an inspection of an alien's movement and stay, and this refers to citizens of Serbia and Montenegro, Albania, Turkey and Macedonia, against whom the measures had been taken due to breaking the rules of crossing the State border, concealing facts about their real intentions for staying in BiH, and the citizens of China and Palestine due to their remaining in BiH after the expiration of their visas or approvals to stay.

Due to the curbing of illegal migration in BiH, the inspectors for aliens of the Service gathered some useful operative data on this phenomena, and based on this appropriate activities for planning and conducting the control of movement and stay of foreign citizens in the regions that are covered by the Field Offices have been performed. After gathering useful operative information, the major number of control actions were performed through coordinated action of the Field Offices, and in cooperation with the Entities' Ministries of Internal Affairs.

II. EVALUATION OF CURRENT INSTITUTIONAL FRAMEWORK, LEGISLATION AND PRACTICE

1. Legislative framework

1.1. The field of legislation

The legislative framework, which regulates the issues of immigration, is incorporated in the Law on Ministries and Other Administrative Bodies (Official Gazette BiH No. 05/03 and 42/03, 26/04 and 42/04), the LMSAA (Official Gazette BiH No. 36/08), and the Law on the SFA (Official Gazette BiH No. 54/05 and 36/08).

The LMSAA has been to a large extent harmonised with the EU Acquis Communautaire in the field of immigration and completely harmonised with the Schengen Agreement concerning visa issues.

As of the day of adoption of the new LMSAA (Official Gazette BiH No 36/08), the by-laws adopted within the previous LMSAA (Official Gazette BiH No. 29/03, 04/04 and 53/07), shall be applied in the transitional period of time until the new by-laws are passed, unless they are in contradiction with the new law.

To date, two by-laws stemming from the LMSAA have come into force, including the BoR on the stay and the BoR on the detention of foreign nationals.

1.1.1. Resolutions from the Law on the Movement and Stay of Aliens

Prohibition of discrimination – The Law on the Movement and Stay of Aliens prohibits discrimination expressed towards aliens on any grounds whatsoever, including sex, race, colour of skin, language, religion, political and other views, national or social origin, status of a national minority, property status, status attained by birth or any other status.

Principle of non-refoulement - An alien shall not be expelled or returned (*“refoulement”*) in any way whatsoever to the frontier of territories where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership in a particular social group or political opinion, regardless of whether or not he/she has formally been granted international protection. The prohibition of return or expulsion (*“non-refoulement”*) shall also apply to persons in respect of whom there is a reasonable suspicion for believing that they would be in danger of being subjected to torture or other inhuman or degrading treatment or punishment. An alien may not be either expelled or returned to a country where he/she is not protected from being sent to such a territory.

Confidentiality - Provisions and principles of the Law on the Protection of Personal Data and the Law on Central Records and Exchange of Data shall be applicable to each processing, accessing and use of data from this Law.

Legal assistance - The responsibility of the competent bodies in charge of procedures in accordance with the Law is to inform an alien of all rights and obligations that are stipulated by the aforementioned law. In addition, MoS is responsible for providing special protection and assistance to victims of THB for the purpose of their recovery, return to their country of habitual residence or the admission country. As part of the stated assistance to aliens who are victims of THB, the association *“Vaša prava”* provides free legal assistance.

Identity - During his/her stay in BiH territory, an alien must possess travel documents used to enter BiH or some other identity document or appropriate certificate issued by BiH for the purpose of proving his/her identity and right to enter and stay in BiH. An alien shall be obliged to present his/her identification document to an authorized official of the Service, police or other competent authority when the other competent organ is authorized for that by the law.

An alien whose identity cannot be immediately established or arouses reasonable doubt regarding its accuracy shall be put under supervision if his/her identity cannot be established with certainty even within six hours from his/her admittance to the official premises. Pursuant to the Law on the Movement and Stay of Aliens, the procedure for alien identity confirmation shall be initiated and conducted by the Service. If the identity confirmation procedure of an alien whose identity cannot be immediately established or arouses reasonable doubt regarding its accuracy and actions initiated by police

cannot be completed within six hours, the Service shall be informed as soon as possible. The identity confirmation procedure of an alien shall be conducted pursuant to provisions of the Law on Service for Affairs with Aliens and the Law on Police Officials.

Documents for identification - a valid travel document refers to a passport or any other travel identification document issued by competent foreign authorities which recognize BiH, as well as an ID Card or another identification document with a photograph authorizing its bearer to travel abroad, which has been recognized by an international treaty to which BiH is a Contracting Party, as well as a travel document issued to an alien in accordance with the LMSAA.

Travel documents for aliens issued in BiH shall be:

- a) travel document for refugees,
- b) travel document for stateless persons,
- c) travel permit for aliens.

Travel documents for aliens shall be issued to aliens who have a recognised refugee status in BiH, are stateless persons or need a travel document. An alien with a permanent residence permit in BiH must have an ID for aliens to be used for identification in the territory of BiH.

Interpreting - The body that conducts the procedure is obliged to give an alien an opportunity to follow the course of the proceedings through an interpreter, honor requests for the assertion of rights in accordance with this Law and evidence justifying the requests, as well be given their summons, decisions and other writs in one of the official languages of BiH.

Interviews – Administrative procedures are run upon a request by an alien or by official duty. In all procedures run by official duty, an authorised person performs an interview with an alien. The interviews are performed in the language that an alien understands, and during the interview minutes must be taken. A specially educated and trained person will perform an interview with an alien who is a victim of THB.

Refusal of entry – The BP of BiH shall decide on refusal of entry at the border to those foreign nationals who do not fulfil basic general conditions for entry referred to in the Law on Movement and Stay of Aliens. In accordance with the aforementioned Law, the BP BiH shall issue a decision on refusal of entry. The decision on refusal of entry must contain reasons for the refusal of entry and shall be issued on a form to be signed by an alien. If an alien refuses to sign the decision, an official shall enter that information accordingly. A copy of the decision shall be delivered to the alien. If an alien refuses to receive the decision that information shall be noted in the decision and addressed to him/her.

A decision on refusal of entry shall be immediately enforced by affixing a stamp “ENTRY REFUSED” or another appropriate label to the travel document of the alien. If an alien is not in possession of a travel document to affix a stamp or another appropriate label, that information shall be noted in the decision.

An alien whose entry has been refused by the BP may not enter BiH within 24 hours from the moment of refusal of his/her entry, even if after issuance of the decision on refusal he/she has additionally fulfilled the entry requirements.

Vulnerable groups – In immigration procedures, the competent bodies respect the specific needs of aliens, such as victims of THB or aliens incompetent for work. Victims of THB need to be provided appropriate and safe accommodation, health protection, information on their legal status in a language they understand, information on how to approach Diplomatic-Consular Offices and the procedure of repatriation. The assistance is delivered by the MoS and non-governmental organisations which have signed the Protocol on Cooperation with the MoS. If there are reasonable grounds to believe that a person could be a victim of THB, he/she shall be given a status of a protected person for a period of 15 days so that he/she can apply for a temporary residence. On humanitarian grounds, an alien who is a victim of THB may be granted up to six months of temporary residence for the purpose of protection and assistance in his/her recovery and return to his/her country of origin. A temporary stay on humanitarian grounds may be extended in accordance with the LMSAA. The Association “Vaša prava” provides free legal assistance to aliens who are victims of THB. A person who is not fit to work shall be allocated a legal representative to represent him/her in all administrative procedures in accordance with the LMSAA.

Cases involving minors – Pursuant to the provisions of this Law, BiH bodies are required to treat minor aliens with special care and respect, and to treat them in accordance with the Convention on the Rights of the Child and BiH regulations on minors and their protection. A minor is an alien younger than 18 years of age. If a minor is in possession of a personal travel document he/she may cross the border accompanied by his/her parents, legal representative or a tutor or a person authorized to escort him/

her by a signed and verified power of attorney from parents, legal representative or tutor, or if traveling alone he/she must have the agreement of parents or legal representative. An authorized official in charge of the state border crossing control shall be obliged to draw special attention when controlling aliens under 18 (minors) who intend to cross the BiH state border, as well as persons escorting a minor.

A minor alien who entered BiH illegally and is not accompanied by his/her parents or a legal representative or tutor or who has been left without them upon entering BiH and who cannot be returned immediately to his/her country or delivered to the representatives of his/her country by the Service for Foreigner's Affairs, shall be temporarily placed in a specialised institution for minors. The competent centre for social work shall immediately appoint a temporary custodian in accordance with the law. A minor shall not be returned to the country of his/her habitual residence or a country of admission until he/she is ensured to be admitted by a parent or a legal representative or tutor or a representative of a legal body in the country of return. A minor without an escort shall not be returned under any circumstances as this would violate the European Convention on Human Rights and Fundamental Freedoms and the LMSAA.

Change of status - As a rule, an alien must file the application for the first temporary residence permit outside BiH through the BiH Diplomatic–Consular representative and in person. On BiH territory the alien may file the application for the first temporary residence permit only in the following cases: he/she has entered BiH with a long stay visa (Visa D); or he/she is a citizen of a non-visa country. A temporary residence permit may be extended at the request of an alien and on the same conditions as prescribed for issuing a residence permit whose extension has been requested. An alien who has continuously resided in BiH for three years based on temporary residence granted for the purpose of a family reunification shall acquire the right to apply for temporary residence on some other grounds providing that he/she fulfils conditions prescribed by this Law for granting temporary residence on grounds other than reunification of a family.

Forms of residence – According to the LMSAA, residence of aliens refers to: visa residence, non-visa residence, and temporary or permanent residence.

- A visa residence is the right of an alien to stay in BiH for the period stated in the visa.
- Non-visa residence is the right of stay of an alien arriving from non-visa countries. At the proposal of the MFA, the BiH Council of Ministers shall specify the countries whose citizens shall not be required to have a visa when entering BiH. Aliens who, according to this Law, are exempt from the visa requirement when entering BiH territory shall be entitled to entry and stay in the country for a period of 90 days within the period of six months from the first day of entry, unless otherwise regulated by an international treaty to which BiH is a Contracting Party or by a decision of the BiH Council of Ministers.
- Temporary residence is the right of an alien to stay in BiH for the period of up to one year, unless specified otherwise in the residence permit.
- Permanent residence is the right of an alien to stay in BiH for an indefinite period of time.

Temporary residence - A temporary residence permit may be issued for reasons such as: marriage or cohabitation with a BiH citizen, reunification of a family, education, scientific research, artistic work, work related to sport or consultancy work; the work of a key staff with a natural or legal entity or work performed based on a regularly issued permit; for the purpose of private business or volunteer work or for the purpose of the realization of a project relevant to BiH; religious activities, medical treatment, or for humanitarian reasons; and for other similar justified reasons, or for a reason based on an international treaty to which BiH is a contracting party. A temporary residence permit may exceptionally be issued based on a real estate possession, provided there is an effective connection between the alien and BiH.

Permanent residence - A permanent residence permit shall be issued to an alien on the following conditions: that he/she has resided on the BiH territory on the basis of a temporary residence permit for at least five years uninterruptedly before submitting the application for issuance of a permanent residence permit, that he/she has sufficient and regular funds to support himself/herself, that he/she has been provided with appropriate accommodation, and that he/she has medical insurance.

Even though he/she fulfils conditions, an alien shall not be granted permanent residence if he/she resides in BiH on:

- education grounds;
- temporary protection grounds or if he/she has applied for temporary protection and is awaiting a decision on his/her status;

- international protection grounds or if he/she has applied for international protection and is awaiting decision on his/her status;
- legal status grounds provided for by the Vienna Convention on Diplomatic Relations from 1961, the Vienna Convention on Consular Relations from 1962, the Convention from 1969 on Special Missions or the Vienna Convention on Representatives of the States and their Relations with International Organizations from the Universal Charter from 1975;
- volunteer work grounds;
- temporary residence grounds on humanitarian reasons from Article 54 (Temporary residence on humanitarian grounds) of this Law;
- because he/she has been serving a sentence and/or has received other criminal sanctions or other obligations determined by a decision of the court or other competent authority;
- medical treatment grounds; or
- on grounds of implementing a project relevant for BiH which is implemented by the international community or local institution or humanitarian institution, association, foundation or other organization.

Stickers (visa and residents permits) - A permit sticker affixed in the valid passport of an alien shall serve as permission for BiH border crossing for the period of the resident permit's validity. Visa and resident stickers are applied with a high level of security. The stickers are machine-readable, they have a cinegram, a place for photo and other forms of protection.

Appeal procedures – Appeals may be filed with the MoS on first-instance decisions by the SFA and BP in accordance with the provisions of the Law. Procedures where appeal is not allowed are exempted.

Transfer from legal into illegal migration – An alien shall become an illegal migrant on the territory of BiH if:

- he/she has remained in BiH after the expiry of his/her visa or residence permit or after the expiry of the period of his/her entitlement to non-visa residence,
- his/her visa has been annulled by a final and binding decision, but he/she has not voluntarily left BiH within 15 days and/or within a period given for voluntary enforcement, in accordance with the LMSAA;
- his/her residence has been cancelled, and he/she has not voluntarily left BiH within the specified deadline in accordance with the stated Law;
- he/she has remained in BiH after the cessation of his/her refugee status, subsidence or temporary protection or in case of refusal of his/her request for international protection when decision was final and binding, and the alien has failed to leave the territory of BiH within the specified deadline;
- the decision on withdrawal or release from BiH citizenship has become final and binding, but he/she has not realized the right to residence in accordance with this Law.

Supervision – The LMSAA stipulates the provisions on placing an alien under supervision.

The SFA may alter the way of placing an alien under supervision and, instead of accommodating the alien in the institution specialized for the reception of aliens, impose a more lenient measure of supervision if the purpose of supervision may be achieved even with application of a more lenient measure. The lenient measure means that the alien is allowed to reside outside the institution. When deciding on a more lenient measure, the SFA may reduce movement of the alien to his/her place of habitual residence or his/her home address, impose him/her with an obligation to regularly report to the competent organizational unit of the Service and seized from him/her all travel documents which he/she may use for the BiH border crossing, providing him/her with an appropriate certificate. However, if that is not possible, then the decision on placing an alien under supervision (in the immigration centre-detention facility) shall be taken by the Service and communicated to the alien at the same time when executing the decision. Based on the decision of the Service, an alien may be kept under supervision as long as the reasons that have constituted the grounds for his/her placement under supervision are considerably changed, but not more than 30 days. An appeal against the decision on placing an alien under supervision may be lodged with the Ministry within 24 hours from the notification of the decision. The appeal does not have a suspensory effect.

An administrative dispute may be initiated by a complaint filed with the Court of BiH if the Ministry does not revoke the decision on placing an alien under supervision within 24 hours from the moment the appeal has been filed or makes no decision whatsoever within the specified deadline.

The complaint shall be filed with the Court of BiH within 24 hours after expiry of the deadline for the MoS to decide upon the appeal. The Court of BiH is obliged to consider these cases urgent, to interview the alien and issue a decision on the complaint within three days from the day the law-suit has been filed. The complaint does not have a suspensory effect.

The measure of placing an alien under supervision shall be carried out by accommodating the alien in an institution specifically for the reception of aliens; to be precise, the immigration centre. Upon the expiry of the deadline of 30 days, the alien may be kept under supervision based on the decision of the SFA. The supervision may be extended each time for up to 30 days, but that total duration of supervision may not last longer than 180 days. The decision on extension of supervision may be issued within seven days prior to expiry of the previously determined deadline of the supervision.

In the exceptional case that an alien makes his/her removal from the country impossible or if for some other reasons his/her removal from the country cannot be realized within 180 days, the total duration of supervision may be extended for a period longer than 180 days. Decisions on exceptional extension of supervision shall be made by the SFA.

Legal remedies against decisions on placing aliens under supervision may be taken against the decision on the extension of the supervision of the alien.

In case that an alien has been placed under detention, keeping or supervision, the body that issued such a decision shall provide the alien, upon his/her request, the possibility to contact the competent bodies of the country of his/her citizenship or the country that offers protection.

Expulsion – In accordance with the provisions of the LMSAA, an alien may be issued an expulsion measure. Expulsion is a measure instructing an alien to leave BiH and prohibiting him/her to enter and stay in BiH for a specific period not less than one year or more than five years.

In addition, the aforementioned Law defines the provisions when it is possible to shorten or lift the decision on prohibited entry, as well as provisions to extend the decision on prohibited entry into the territory of BiH.

The period of duration of prohibition of entry shall begin from the day the alien has left BiH.

The decision on the expulsion of aliens from BiH, prohibiting him/her to enter and stay in BiH for a specific period, shall be issued by the SFA ex officio or at a reasonable proposal of another organizational unit of the Ministry, law enforcement agencies or another authority. An appeal against the decision of the SFA on the expulsion of aliens from BiH may be filed with the MoS within eight days from the day of notification of the decision. If the decision on expulsion has been delivered on the grounds that the alien has been admitted in accordance with an Agreement on Readmission and he/she does not have a residence permit in BiH, the deadline for filing an appeal shall be 24 hours from notification of the decision. An appeal has a suspensory effect.

The LMSAA prohibits the collective expulsion of aliens. An expulsion measure may only be delivered in individual cases.

In exceptional cases, at the reasoned proposition of the MoS, the SFA, other organizational unit of the Ministry or police, while resolving individual cases, the Council of Ministers may issue a decision on the expulsion of the alien from BiH permanently prohibiting his/her entry to BiH on the grounds that his/her expulsion is necessary in the interest of public order or is based on reasons of national security of BiH in accordance with Article 1 paragraph 2 of Protocol no. 7 to the European Convention on Protection of Human Rights and Fundamental Freedoms amended by Protocol no. 11. The abovementioned decisions of the BiH Council of Ministers shall not be delivered in contradiction with the principle of »*non-refoulement*« of the Law on the Movement and Stay of Aliens.

2. INSTITUTIONAL FRAMEWORK

2.1. The Scope of Competencies of the MoS

The MoS, as one of the nine ministries in BiH at the state level, in accordance with the Law on Ministries and Other Administrative Bodies (Official Gazette BiH No. 05/03 and 42/03, 26/04 and 42/04) is competent for:

- Protection of international borderlines, internal borderline crossings, and regulating traffic at the border check points of BiH;
- Preventing and discovering the perpetrators of terrorist criminal acts, drug trafficking, forgeries of foreign and domestic currencies, and THB, in conjunction with international and inter-entities' elements;
- International cooperation in all fields of the Ministry's competencies;
- Protection of persons and facilities;
- Collection and use of data significant for security in BiH;
- Organising and harmonising the activities of the Entities' Ministries of Internal Affairs and the District of Brčko in achieving security tasks in the best interest of BiH;
- Implementing international obligations and cooperation in civil protection, coordinating the activities of the Entities' Civil Services in BiH, and harmonising their plans in case of natural disasters or other disasters striking the territory of BiH and adopting programs and plans for protection and evacuation;
- Creating, providing and implementing the policy of immigration and asylum in BiH and determining procedures regarding the movement and stay of aliens and asylum in BiH.

2.2 Development of institutions

2.2.1. The Scope of Competencies of the Immigration Sector

The immigration sector performs administrative and other professional tasks related to the implementation of policy in the field of immigration in BiH, participating in policy-making concerning immigration through the development of laws and by-laws, following progress in achieving EU and international standards, and performs other activities that fall within the competency of this Sector. The Sector is divided into two Sections: the Section for Administrative Tasks and the Section for Regulations, Surveillance and Training. According to the current Rulebook on Systematisation of Work Positions, the Sector for Immigration was foreseen to have 26 work positions, although there are 15 employees at the moment (civil servants and regular employees).

Keeping in mind that migration management, or rather the capacity of state institutions to oversee who enters and exits the territory of the country, is extremely important for the general progress of BiH, it is important to increase the capacities of human resources in the Immigration Sector; this is one of the conditions of European Partnership. It is necessary to fill vacant work positions, ensure premises for work, and to have continuous training for employees.

2.2.2. The Scope of Competencies of the SFA (The Service)

The SFA is an administrative organization within MoS of BiH with operative independence in managing the work and solving the issues of its competence, established for the execution of administrative, legal, and inspection matters regulated by the LMSAA.

The administrative work due to the movement and stay of aliens in BiH includes:

- registration of residence or residence alteration of foreign nationals,
- issuance/ withdrawal of identification and travel documents to aliens,
- authentication of guarantee letters,
- annulment of visas for aliens,

- issuance of residence stickers for aliens,
- matters concerning asylum requests,
- approval on and extension of temporary/permanent residence,
- cancellation of temporary/permanent residence and detention of aliens,
- expulsion of aliens from the country,
- dealing with documentation and its registration regulated by the Law on Movement and Stay of Aliens, as well as Asylum and registration under jurisdiction of the Service.

Inspection on implementation of the LMSAA includes:

- inspection of stay (purpose, use, registration or alteration of residence),
- inspection over legal entities and physical persons regarding residence and employment of aliens,
- submitting applications and requests for proceeding against legal entities and physical persons because of non-observance of the regulations on matters of movement, residence and employment of aliens,
- submitting requests for the searching of persons and facilities,
- submitting requests for the search of persons, search of items, vehicles and facilities, as well as the detainment of aliens,
- regular inspection surveillance, surveillance due to warrants or requests, namely due to the submitted report,
- tracking, gathering, examination and data processing, and the information Service's competence,
- undertaking necessary actions under the jurisdiction of the Service, proposing measures in order to improve the overall situation within the area of movement, residence and employment of aliens,
- implementing the removal measures of aliens from the country.

The Law on Amendments of the Law on SFA has been adopted, and the activity on making the Rule Book on Internal Organization of Service is presently being carried out.

2.2.3. Central Database on Aliens

Through the CARDS 2003 and 2005, the Central Database on Aliens (or Migration Information System) was established, the purpose of which is to provide an efficient Central Record on foreign citizens who reside in BiH on different grounds. The use of the central database is divided into four modules: visas, borderlines, residences and asylum, and access is provided in accordance with an alien's status in BiH.

The users of the central database are: the MoS, namely the Immigration Sector and the Asylum Sector, in performing activities related to migrations and applications for asylum; The SFA is in charge of the registration of residence, approval of temporary or permanent residence for aliens, expulsion from BiH, and all other activities in accordance with the LMSAA and the Law on The Service for Foreigners Affairs; the BP BiH is in charge of entries and exists of foreign citizens into and from BiH; The MFA and Diplomatic-Consular Offices performing tasks related to visa issuance for the aliens who come to BiH.

Although this system was formally open for work on October 15, 2007, there have been specific problems in their daily application, so it will be necessary to harmonise it with the current legislative framework and to remove all its defects.

2.2.4. Creation of statistical data

The report that was a result of the Regional Programme CARDS on Statistics describes the current situation concerning data collection on the movement of citizens from and into BiH. The section referring to statistical data on immigrants states that the data could be produced by use of the Migration Information System, but so far such information/data has not been produced. The same applies to statistical data on the refusal, detention and return of illegal migrants. One of the basic recommendations resulting from the Project is that the Information System on Migration needs to be carefully controlled so the collection of data would be accorded with the EY Regulation on Collection of Statistical Data in the

field of migration and international protection that was adopted in October 2007. The purpose of this provision is to harmonise statistical data that member countries submit to EUROSTAT, as well as the joint definitions base on EU regulations referring to immigration, control of borderlines and asylum.

Croatia and Macedonia are currently submitting their migration data to EUROSTAT.

It has been planned that the Agency for Statistics of BiH, in cooperation with the MoS and other relevant institutions, and in accordance with the recommendations from the aforementioned project, should intensify the activities for the preparation of statistical data for EUROSTAT.

2.2.5. Cooperation between different agencies

The Immigration and Asylum policy and legislation are created by: BP, SFA, the Sector for Immigration and the Sector for Asylum of the MoS and MFA – *Section for Consular Issues* in the domain of visas.

The cooperation between these two agencies is achieved through meetings upon requests and invitations from senior levels. Depending on needs, a direct cooperation between the managers and subordinate levels of civil servants is being developed.

It is necessary to advance the cooperation between all relevant bodies dealing with immigration issues: the Sector for Immigration, Sector for Asylum, SFA, BP and the Ministry of Foreign Affairs.

Upon the establishment of the SFA, it was determined there was evidently insufficient official cooperation between the Department for Aliens and Institutions in the region of BiH due to the Sector of Movement and Stay of Aliens, and insufficient information exchange regarding what might be used for the measures and activities undertaken by the competence of any Safety Agency in the region of BiH. Due to the analysis of the recent situation, a significant improvement had been made in the domain of official cooperation with all Agencies for the Implementation of the Law, Prosecution Authorities, and International and Non-Governmental Organizations.

Particularly strong and professional cooperation should be emphasized with the Entities' Ministries of Internal Affairs and Brčko District Police, the BiH BP, State Investigation Protection Agency, NCB Interpol Sarajevo, State Commission for Revision of Decisions on Naturalization of Foreign Citizens in BiH, Sector for Asylum and Sector for Immigration, ICITAP, IOM, EC, and the NGO "Your Rights."

The inspectors of aliens of the Service have reached in their daily work very useful operative information of the competence of the Intelligence Safety Agency, State Investigation Protection Agency, the BiH BP, and the Entities' Ministries of Internal Affairs, and which was accordingly employed with regard to competences and proceedings.

Additionally, good cooperation has been shown during actions on movement control and the stay of aliens, during the removal of persons from the territory of BiH, and cooperation with officers from the State Investigation Protection Agency and Intelligence Security Agency while detecting and preventing offences in the domain of THB and the smuggling of persons.

All necessary information has been required in 2007 by the OSA (Intelligence Security Agency) and SIPA (State Investigation Protection Agency) while resolving, according to the request of the client for approval of stay in BiH, authentication of invitation and guarantee letters, for persons coming from countries with a high rate of illegal migration, as well for persons from whom the State Commission for the Revision of Decisions on Naturalization of Foreign Citizens in BiH has deprived of BiH citizenship because of knowledge concerning whether they are a threat to public order and national safety.

2.2.6. Human resources

Training of employees – Immigration is a very dynamic issue, so the training of employees is very important and should be continuously carried out for all positions. The organisation and financing of training in the field of immigration is being realised through mediation of the international organisations and projects financed by the EC. Additionally, the MoS has used bilateral agreements with partner countries. Training in the field of immigration and asylum, organised in cooperation with the Czech Republic, is especially significant.

The employees of the SFA attended the training under the auspices of the EC, IOM, ICITAP, and support of MoS BiH and the Police Academy of the Federal Ministry of Internal Affairs.

In 2008 the cooperation with the program of the EC was established for the technical assistance and information exchange TAIEX.

For the purpose of strengthening human resources and their capacities, the Agency for Civil Service is preparing and offering specialised training for civil servants depending on the level at which a civil servant is employed.

Training programs – Programs are mainly in the field of immigration and for the purpose of strengthening capacities and the roles of state institutions.

2.2.7. Cooperation with non-governmental organisations

2.2.7.1. Protection of victims of THB

The MoS is responsible for the protection of foreign victims of THB in terms of providing a safe and appropriate accommodation and protection as well as regulating their status in BiH, and their return to their country of origin. Keeping in mind that the MoS does not have its own institutions to accommodate victims of THB, it has signed a Protocol on Cooperation with six non-governmental organisations in charge of providing accommodation for the victims, a Protocol with NGOs that offers free legal assistance to victims of THB, as well as a Protocol on Cooperation in Implementing the Protection Program for victims of THB and their voluntary return to their countries of origin or countries of residence, signed between the MoS and IOM.

According to the data received from the Office of the State Coordinator for Combating THB, 44 victims were registered in 2005, 40 victims in 2006, and 14 victims in 2007, which show a decreasing tendency in the number of foreign victims of THB.

Identification – The most important document related to the status of foreign victims of THB is the Rulebook on the Protection of Alien Victims of THB (Official Gazette BiH No. 33/04), which determines the rules and standards in procedures of admission, recovery and repatriation of aliens who are victims of THB, as well as the procedures of the competent institutions for the purpose of ensuring efficient protection of victims in accordance with the laws and international standards on the protection of human rights.

During the identification procedure, it is necessary to focus attention on the following indicators: self-identification, place and conditions in which an alien – potential victim of trafficking - has been found, psycho-somatic condition of the victim, their way and purpose of entry to BiH, possession of a travel document and all other circumstances relevant for an accurate identification.

It is necessary to provide a victim with appropriate and safe accommodation, health insurance, information on his/her legal status in the language he/she understands, information on the Diplomatic-Consular Offices and the repatriation procedure.

Both the MoS and non-governmental organisations which have signed the Protocol on cooperation with the Ministry provide assistance to victims of THB.

Keeping in mind that the state has not developed yet specific programs for repatriation of victims of trafficking in human beings, the International Organisation for Migration, in cooperation with the MoS, has a key role in repatriation. In accordance with the Protocol on Cooperation between the MoS and the International Organisation for Migration, 22 requests for repatriation were submitted in the year 2006, and 6 requests in 2007.

2.2.7.2. Assisted Voluntary Return – AVR Programme

The MoS and the International Organisation for Migration signed the Memorandum of Understanding on the implementation of the AVR Programme (Assisted Voluntary Return for irregular migrants) on September 4th 2007 in Sarajevo.

The purpose of the AVR Programme is to promote a humane, organised and efficient policy of voluntary return of aliens and to set up a framework for offering assistance in cases of voluntary return. The decision on voluntary return has to be based on an independent and informed decision of a migrant to return to his/her country of origin, residence or a country that is willing or obliged to receive him/her as well as supplementary annexes.

Since the date of signing, 44 persons have voluntarily returned to their countries of origin using this programme. In 2007, through the IOM programme, a total of 234 persons returned voluntarily to their countries, out of which the largest number were to Albania (155) and Kosovo (94).

3. EU ACCESSION

3.1. Stabilisation and Association Agreement

BiH is a potential candidate for membership in the European Union and a participant in the Stabilisation and Association Process. The negotiations on the Stabilisation and Association Agreement (SAA) between BiH and the EU were officially opened in November 2005, while the technical negotiations were finalised in December 2006. The Agreement was initiated on December 5, 2007, and it was signed on June 16, 2008. A complete implementation of the provisions of the Stabilisation and Association Agreement for BiH represents a key step toward further integration and full membership in the European Union.

Section VII of the Stabilisation and Association Agreement - Justice, Freedom and Security – regulates the issues of immigration and asylum. Article 80 of SAA – Justice – regulates the issues of visas, border management, asylum and migration,⁷ while Article 81 of the SAA – regulates the prevention and control of illegal migration and repeated admission (readmission)⁸.

This agreement, amongst other responsibilities, obliges BiH to cooperate in the issue of visas, border management, asylum and migration, with the European Union and the countries of the region.

3.2. Readmission issues

The implementation of the Agreement on Readmission may serve as a support to programmes of return in a way that shall establish formal conditions for readmission with a country of origin or transit country. The purpose of the agreement is to create mutually reciprocal responsibilities, to determine in detail administrative and operational procedures for return or transit of persons who do not fulfil, or ceased to fulfil, the conditions for entry, presence or residence in a host country. Significant efforts have been made in the past few years at the international level to increase the number of readmission agreements.

The signing and implementation of agreements on readmission, or repeated admission of persons who reside without permission, is one of the obligations of BiH foreseen by the Stabilisation and Associa-

7 The Parties shall co-operate in the areas of visa, border control, asylum and migration and shall set-up a framework for co-operation, including at a regional level, in these fields, taking into account and making full use of other existing initiatives in this area as appropriate. Co-operation in the matters above will be based on mutual consultations and close co-ordination between the Parties and should include technical and administrative assistance for:

- a. The exchange of information on legislation and practices;
- b. The drafting of legislation;
- c. Enhancing the efficiency of the institutions;
- d. The training of staff;
- e. The security of the travel documents and detection of false documents;
- f. Border management.

Co-operation will focus in particular:

- g. In the area of asylum – on the implementation of national legislation to meet the standards of the 1951 Geneva Convention and the 1976 New York Protocol thereby to ensure that the principle of non-refoulement is respected as well as other rights of asylum seekers and refugees.
- h. In the field of legal migration – on admission rules and rights and status of the person admitted. In relation to migration, the Parties agree to the fair treatment of nationals of other countries who reside legally on their territories and to promote an integration policy aiming at making their rights and obligations comparable to those of their citizens.

8 integration policy aiming at making their rights and obligations comparable to those of their citizens.

The Parties shall co-operate in order to prevent and control illegal immigration. To this end, the parties agree that, upon request and without further formalities, BiH and the Member States of the EU shall co-operate in order to prevent and control the illegal immigration. To this end, BiH and the Member States of the European Union agree to readmit any of their nationals illegally present on their territories and also agree to conclude an agreement for readmission, including an obligation for the readmission of nationals of other countries or stateless persons.

The Member States of the European Union and BiH will provide their nationals with appropriate identity documents and will extend to them the administrative facilities necessary for such purposes.

Special procedures for the purpose of readmitting nationals, nationals of third countries and stateless persons are set up in the Agreement between the Community and BiH on readmission of persons whose residence has not been approved.

1. BiH agrees to conclude readmission agreements with the other countries of the Stabilisation and Association process and undertakes to take any necessary measures to ensure the flexible and rapid implementation of all readmission agreements referred to in this Article.
2. The Stabilisation and Association Council shall establish other joint efforts that can be made to prevent and control illegal immigration, including trafficking and illegal migration networks.

tion Agreement between BiH and the European Union as a foundation for the control and prevention of illegal migration.

The list of countries that signed and ratified the Agreements on Readmission with BiH:

- Confederation of Switzerland (Official Gazette BiH No. 41/01)⁹
- Republic of Hungary (Official Gazette BiH No. 08/05)
- Republic of Croatia (Official Gazette BiH No. 04/04)
- Kingdom of Norway (Official Gazette BiH No. 01/06)
- Romania (Official Gazette BiH No. 04/06)
- Republic of Greece Official Gazette BiH No. 14/06)
- Republic of Bulgaria Official Gazette BiH No. 14/06)
- Republic of Italy Official Gazette BiH No. 16/06)
- State of Union of Serbia and Montenegro Official Gazette BiH No. 12/07)
- Kingdom of Denmark (Official Gazette BiH No. 08/07)
- Kingdom of Sweden Official Gazette BiH No. 04/07)
- Federal Republic of Austria Official Gazette BiH No. 03/07)
- Republic of Slovakia (Official Gazette BiH No. no. 03/07)
- Benelux Countries (Official Gazette BiH No. 04/07)
- Republic of Slovenia (Official Gazette BiH No. 03/07)
- Republic of France (Official Gazette BiH No. 10/07)
- Republic of Macedonia – agreement signed on March 21, 2008 in Macedonia
- Agreement on readmission between the European Union and BiH (Official Gazette BiH No. 13/07)¹⁰

The implementation of the abovementioned agreements falls within the competency of the SFA in the section referring to the readmission of third country nationals, while the Sector for Immigration is in charge of admission of BiH nationals.

3.3. European partnership

The document of the European Partnership with BiH offers guidelines to the authorities of BiH on reform priorities. The Monitoring of the Reform Process (RPM) follows the progress in reform priorities, which remain a middle channel for political, economic and technical dialogue between the EU and BiH. The Sector for Immigration is in charge of meeting the priorities stated in the European partnership concerning immigration issues, as follows:

Short-term priorities - European standards

- To ensure an appropriate capacity of human resources in the Sector for Immigration in the MoS, as well as appropriate facilities, equipment, employees and training for the SFA;
- To adopt a Strategy on Migration at the state level and the new Law on Movement and Stay of Aliens;
- To implement an agreement on readmission between BiH and the EC, and to start negotiations on readmission with the countries of origin of migrants in transit.

Mid-term priorities

- To implement a migration policy, through continuous harmonisation of legislation in the field of migrations with the achieved standards of the EU which can be applicable to BiH, development of institutional capacities to achieve adopted legislation and continuous education and training of human resources in the field of immigration.

9 The new text of the Agreement on Readmission and visa facilitation with the Switzerland was initiated in Sarajevo on April 15, 2007. The signing is not expected until the end of 2008.

10 Provisions of this Agreement shall have an advantage to provisions of any other bilateral agreement on readmission of persons without residence permit, and which are concluded between certain member countries and BiH

The plan of activities to achieve the abovementioned priorities with defined deadlines has been made for each migration authority (chapter IV). The achieved progress in certain priorities shall be followed through monthly reporting.

3.4. Directives adopted by EU in the field of immigration and asylum

- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of THB or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;
- Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents;
- Council Directive 2005/71/EZ of 12 October 2005 on a specific procedure for admitting third-country nationals for the purpose of scientific research;
- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit or residence;
- Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service;
- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals;
- Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence;
- Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air;
- Council Regulation (EC) No. 377/2004 of 19 February 2004 on the creation of an immigration liaison officers' network;
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in member countries;
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection;
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

4. INTERNATIONAL AND REGIONAL COOPERATION

The MoS has established a bilateral cooperation with the Czech Republic through the project of the Ministry of Internal Affairs, "Support in establishing infrastructure for migrations and asylum in BiH".

Further, international cooperation has been achieved through the Regional initiative for migration, asylum and refugees (MARRI), whose member countries are Albania, BiH, Croatia, Macedonia, Montenegro and Serbia. MARRI is dealing with issues regarding the movement of citizens in the western Balkans through promoting a regional cooperation with a comprehensive and integrated approach to issues of asylum, migrations, border management, visa issuance, and return of refugees, in order to meet European standards. The basic priority of MARRI is to strengthen cooperation between countries in the abovementioned regions, which is of great significance for European integration. The MARRI Secretariat, whose seat is in Skopje, is in charge of implementing the projects related to migration.

Regional cooperation is further enhanced through the project "Strong institutions and unified approach to asylum, visa and migration management on the Western Balkans," which is financed by the AENE-AS Programme of the EC. The project coordinator is the Swedish Migration Board, and the partners in the projects are Danish Immigration Service, Norwegian Immigration Directorate and the International Centre for Development of Migration Policy (ICMPD). Besides BiH, the beneficiaries of this project are Albania, Montenegro and Serbia. The project is implemented through cooperation with experts and the organisation of regional and national seminars.

The formal start of cooperation within the General Directors' Immigration Services Conference (GDISC) occurred at the Summit on BiH held in Sarajevo on 19th and 20th April 2007. Members of GDISC are member countries of the EU and candidate countries for membership. Although BiH has the role of an observer, it has achieved a significant cooperation with GDISC. First of all, a group of experts visited BiH in December 2007, and BiH representatives attended conferences of the GDISC. Based on the recommendations of the Fact Finding Mission for BiH made by experts from six countries – members of GDISC – they are trying to find a solution for financing a joint project and to intensify all further cooperation.

III. OBJECTIVES IN THE FIELD OF MIGRATION

1. To develop a quality immigration system at a national level, harmonised with the standards of the European Union, which shall enable the integration of BiH into the European Union.
2. To actively participate in development and implementation of the migration system at the regional level.
3. To include the Immigration system of BiH in the immigration system of the European Union.

Development plan in the field of immigration

The implementation of the main objective - the basis for the quality of immigration system at the national level in accordance with the standards of the European Union - is a basic prerequisite for the long-term objective of integrating the immigration system of BiH into the immigration system of the European Union.

A consistent implementation of the Strategy and Action Plan in the field of immigration and asylum will result in achieving the main objective.

This document defines the tasks in order to achieve this.

A regional approach in the field of immigration and creation of immigration policy, as well as harmonising the legislation at the regional level, is the basis for successful control of illegal immigration as well as a precondition for a successful fight against illegal migration and all the consequences of this issue. BiH is committed to actively participate in the development of a migration system at the regional level with introduced standards of the European Union.

The implementation of the main objective - the basis for the quality of the immigration system at the national level in accordance with the standards of the European Union - is a basic prerequisite for the long-term objective of integrating the immigration system of BiH into the immigration system of the European Union.

1. Development of legislation

The purpose of the LMSAA was to solve the implementation issues that have not been included in the previous positive laws, as well as to harmonise this area to the existing standards of the European Union.

1.1. Adoption of the by-laws

The by-laws adopted in accordance with the LMSAA shall precisely define the responsibility of carriers that transport illegal immigrants to BiH, conditions and procedures on the entry of aliens, visa issuance and travel documents for aliens, residence permit issuance, cessation of visas and according procedures, removal of foreign nationals to their countries of origin or the countries from which they entered BiH, ways to register at a temporary or permanent address, rules of establishing and use of data-base on aliens, rules of treating aliens – victims of THB, as well as other provisions that shall facilitate the implementation of the Law in practice. Additionally, the by-laws shall define the foundation and functioning of specialised institutions for care for aliens, as well as special procedures for accommodating aliens into the abovementioned institutions.

The MoS shall be in charge of making the majority of by-laws, which are used to more precisely define the immigration policy in accordance to the Law. Defining a visa policy and procedures of visa issuan-

ce, and the issuance of travel documents for foreigners, fall within the competency of the Ministry of Foreign Affairs and the MoCA. The activities related to creation of by-laws are an ongoing task.

1.2. Harmonisation with the standards of the European Union

A permanent task in the area of legislation concerning immigration is to follow the developments of standards in the European Union concerning this issue and to harmonise them with the national legislation.

2. Development of institutional capacities

A complete immigration system falls within the competency of the MoS, Sector for Immigration, Sector for Asylum, SFA and BP and Ministries of Foreign Affairs BiH.

2.1. Strengthening capacities of the Sector for Immigration

In order to ensure the basic conditions for strengthening the capacities of the Sector, it is necessary to adopt a new Rulebook on the internal organisation of the MoS, which will strengthen the Sector for Immigration in the following fields:

- Following and making legislation in the area of immigration in accordance with EU standards;
- Implementation of the readmission agreements;
- Planning and organising training for the implementation of the Law on Movement of Aliens and Asylum and following by-laws in the area of immigration, and establishing and developing capacities for the preparations and implementation of projects.

2.2. Establishing and developing capacities for Analytical and Strategic Planning in the area of immigration within the Sector for Immigration

For the purpose of creating conditions for a proactive approach in creating immigration policy, it is necessary to ensure human resources, technical preconditions for collection, processing and analysis of statistical data in all segments of migration flow.

In accordance with the abovementioned, it is necessary to establish and develop working positions for making analysis and strategic planning in the field of immigration, and to establishing a team for analysis and strategic planning which will be a separate unit within the Sector for Immigration.

2.3. Strengthening capacities of the SFA

Strengthening of the Service's set of goals:

- Implementation of the new and upgrading of the existing legal framework, especially in the domain of the Law on Service and the Law on Aliens together with the Immigration Sector, as well as the Regulation on Internal Organization and Systematization of the Service;
- Recruitment of new civil servants and employees according to the systematization of working positions and organization of the Service;
- The purchase of adequate working space for the employees and office furniture;
- The purchase of adequate technical-material means of work , and particularly personal equipment, IT equipment and vehicles;
- The continuation of the activities related to the finalization of the already existing Reception Centre for illegal migrants and continuation of activities related to the finalisation of construction of the new reception centre;
- The continuation of already started activities on construction of the building of Service and Field Office Sarajevo;
- The permanent and quality education of employees through seminars, workshops, study visits;

- The upgrade of existing official cooperation with the institutions in BiH, as well as the establishment of official cooperation with institutions in the region handling migration;
- To provide major financial funds for the Service's work through BiH Budget institutions, international and individual donations and the state programmes of the European Union.

3. Development of the database information system

3.1. Development of a Central Database on Aliens

There are ongoing activities to evaluate the efficiency of the electronic Central Database on Aliens, and many inadequacies have been noticed during its implementation. There is a certain lack of harmonisation with existing legal solutions. A central database means that the network for data exchange should include all information on aliens, from the moment when they apply for visa in Diplomatic-Consular Offices until their entry, registration of residence, status questions and exit from the country.

The Law stipulates that the functioning of the central database on aliens is a pre-condition for collection of certain data which will be used to undertake direct activities on the implementation of legislation, as well as creating policy in the area of immigration.

In accordance with the abovementioned it is necessary to perform additional changes to the central base and to harmonise it with the new legal solutions.

3.2. Development of the information systems for the operative efficiency of the Service

For the needs of the SFA, beside the development of the Central Database on Aliens, it is required to establish and put into function the following information systems:

- analytics system I-2
- radio-communication system connection, and
- exchange of data, information and documents via electronic way-electronic mail at the Service.

4. Establishment of shelters for aliens who are VoT

The LMSAA determined the obligation of the MoS to admit, accommodate, and take care of victims of the THB until they are repatriated.

The shelter for victims, a "Safe House", is a central shelter, which would fall within the competency of the state authorities, and the MoS would run it. The objective of the building, furnishing and functioning of the shelter is to provide safe and secure accommodation, care, legal assistance, as well as medical and social care for victims until they are completely physically and psychologically rehabilitated and when there are conditions for their safe return to the countries of origin, their starting point or a third country which is ready to admit victims.

It is necessary to educate and train employees about the implementation of the Law on Treatment for Victims of THB.

Non-governmental organisations that provide support to victims of THB shall be included in the implementation of these projects if this is in the best interest of the victims. Financial resources are required for the implementation of the project "Establishing shelters for aliens who are victims of THB".

5. Agreements on Readmission

Concluding and implementing the readmission agreements is a main element of the cooperation with countries to prevent and control illegal immigration. These agreements include provisions on readmission of nationals, nationals of third countries and stateless persons

5.1. . Agreements between the European Community and BiH on readmission of persons without residence permit

The Agreement between the European Union and BiH on readmission of persons without a residence permit entered into force on 1st January 2008. The implementation of the abovementioned agreement in part related to admission of BiH nationals falls within the competency of the MoS – Sector for Immigration. Many problems have been noticed in this area because there is no a unified data base on nationals of BiH. Another problem is that competencies for checking identity are placed on various levels of authority.

The implementation of the Agreement between European Union and BiH on readmission of the persons who are residing without permit in the domain of the reception and return of the citizens of third countries is in the competence of the Service.

In order to follow up the total realization of the abovementioned Agreement and definition of illegal immigrants, it is necessary to develop a joint module for following up between the Sector for Immigration and the Service. In the joint statements that followed the Agreement between the European Community and BiH it is proposed, or it is recommended, that BiH concludes agreements on readmission with Switzerland, Denmark, Norway and Island, under the same terms as with the EC.

5.2. Agreements on readmission with countries of the Stabilisation and Association Process

BiH shall carry out activities to conclude readmission agreements with the other countries of the Stabilisation and Association Agreement with which it has not concluded the abovementioned agreements.

5.3. Agreement on readmission with countries of origin or transit of illegal immigrants

As one of the middle-term priorities from the European partnership, it is important to start negotiation on a readmission agreement with the countries from where illegal migrants come to BiH on their path toward European Union countries, as well as the countries from which illegal migrants originate.

6. DEVELOPMENT OF INTERNATIONAL COOPERATION

It is necessary to continue cooperation with the MARRI center (Regional Initiative for Migration, Asylum and Refugees) and GDISC (Conference of Directors Generale of Immigration Service), than further develop regional cooperation aimed at creating a unique approach in the migration area. Also, it is necessary to continue a bilateral cooperation with the Czeck Ministry of Interior, as well as with the other countries which are willing to improve the BIH migration system.

7. Coordinating body

To date, cooperation between the senior officials of the BP, SFA, Sector for Immigration and Sector for Asylum of the MoS and the MFA– Department for Consular Affairs in the domain of visa affairs has proved to be very useful and productive.

At those meetings, the participants have discussed potential issues in implementing the LMSAA and its bylaws, as well as about activities that need to be undertaken to ensure an efficient implementation of migration policy. The meetings are also used for exchange of information between institutions that carry out migration and asylum policy for BiH.

With regard to this, it is necessary to formalize these endeavours and set the Coordination body for immigration policy in BiH, which would consist of the abovementioned institutions and which will periodically meet at the highest level—including the director of the Border Police, director of the SFA,

the Assistant Minister in the Sector for Immigration, the Assistant Minister in the Asylum Sector and the Assistant Minister for Legal and Consular Affairs. Given that the Immigration Sector provides technical support in organizing and hosting such meetings, some staff support strengthening would be required.

8. Training

In order to successfully implement the immigration policy, it is necessary to educate and train civil servants in the Sector for Immigration, and the SFA, MoS, so they can efficiently implement provisions of the law, as well as respect human rights and fundamental freedoms.

Besides the abovementioned education and training, it is necessary to have specialised training, such as in the establishment and use of a data-base, recognising and treating victims of THB, treating illegal immigrants with specific needs, admission and care for illegal immigrants, reception and care for victims of THB, foreign languages, principles of bringing back prohibition and other specialist education with a view of realizing legislation in the domain of immigration.

It is necessary that the MoS – Sector for Immigration, in cooperation with the SFA, coordinates educational activities in the field of implementation of the LMSAA and related by-laws, covering the time framework for education and defining subjects and target groups for education. Furthermore, it is necessary to educate the employees of the SFA on gathering information on illegal migrations, and persons who are dealing with these activities, operative preparations and implementation of the action control of movement and stay of aliens, interrogatory techniques with a special retrospective view on body articulation, analysis of intelligence and operative data, to train inspectors for aliens and civil servants of Immigration Centre Security due to the handling and use of fire arms, application of the analytical system I-2, foreign languages, as well as other specialist training. The preparation and coordination of the mentioned specialist education is in the competence of the SFA.

Education shall be realised through seminars, workshops, participation in conferences and study visits.

D.
TRAFFICKING IN
HUMAN BEINGS

I INTRODUCTION

II PRINCIPLES USED FOR DRAFTING THE STRATEGY

III ORGANIZED CRIME AND HUMAN TRAFFICKING

- local and international legal aspects
- Institutional capacities
- International obligations and linkage between organized crime and human trafficking

IV RISK FACTORS

V HUMAN TRAFFICKING , definition , notion, basic characteristics

VI GENERAL AIMS IN HUMAN BEING TRAFFICKING IN BIH

VII PARTICULAR AIMS IN THE AREA OF HUMAN TRAFFICKING

I. OVERVIEW

Since the turn of the century the international community has faced serious security threats due to a wave of new forms of crime, particularly organized crime, THB, smuggling of migrants, smuggling of narcotics, illegal migration, money forging, international terrorism, laundering money generated from criminal activities, cyber crime and others.

The BiH State Investigation Protection Agency (SIPA) is a governing organization within the MoS that is operationally independent and was established in order to carry out police work and tasks, headed by its Director, and acting exclusively on a legislative and professional basis, not representing and not protecting the interests of any political party, registered organization or association, nor any particular constituent ethnic group or other ethnic group in BiH.

SIPA's priority is to combat organized crime in all its forms, such as organized illegal migration, THB and the smuggling of migrants.

To successfully combat THB, in addition to legislation, coordination, law enforcement, identification, assistance and protection of victims-witnesses, as well as prevention of trafficking in children, it is necessary to continually adapt the instruments and mechanisms to the new forms of this phenomenon, to permanently gather and analyze data, and in cooperation with NGOs and international organizations, to improve the process of coordination and action intended to suppress and prevent THB and illegal migration. In the area of prevention and raising public awareness regarding THB, a huge role has been played by non-governmental organizations in BiH.

The process of democratization has given the possibility to all citizens, with guaranteed identity protection, to report to the Prosecutor's Offices and law enforcement agencies the criminal offences of organized crime and THB and their perpetrators. This is not only the police's method for getting information, but requires the active inclusion of all segments of civil society, i.e. permanent transparency in combating THB.

The Strategy defines risk factors, principles for combat, general and individual goals, measures and deadlines, as well as the carriers responsible for prevention and combating the organized crime, THB and other forms of crime that may occur.

II. STRATEGY DEVELOPMENT PRINCIPLES

1. Principle of political will – actively combats the THB as a form of organized crime representing the prioritized activity of BiH institutions.
2. Principle of non-discrimination and respect for freedom and rights of citizens – the activities intend to implement the Strategy guarantee exercise of all human freedoms and citizen rights according to the Constitution Law of BiH, its laws and international legal standards.
3. Principle of a uniform and global vision – Combating a THB based on a uniform and global understanding of the issue.

4. Principle of coordination and cooperation – practices and procedures for combating THB will be based on a uniform national concept of the public sector, international organizations in BiH, its civil society and citizens.
5. Principle of professionalism and concert on all areas of action – Combating organized crime and THB requires continuous professional training, education and specialization of experts, as well as exchange of experience with the best practices and contemporary achievements and their harmonization with preventive measures.
6. Principle of an active international cooperation – active cooperation in preparations for accession to the European Union and for ensuring an active role of BiH in the international plan.
7. Principle of continuity and progressiveness – is the continuation of systemic activities implemented in the course of combating THB having a permanent character and reaffirming all positive outcomes.
8. Confidentiality principle – personal data disclosed from specific activities will not be made public except for cases and under the conditions envisaged by the applicable law.
9. Principle of analysis – periodic analysis and evaluation of the achieved goals and measures taken.
10. Principle of harmonization – harmonization and adequate application of the preventive and educative measures.
11. Principle of project's transparency and openness – results of the activities on combating the THB will be available to the public.

III. ORGANISED CRIME AND TRAFFICKING IN HUMAN BEINGS

National and international legal aspect

In addition to criminal offences tied to organized crime, the applicable law also incriminates the actions of making an agreement, preparation and association as forms of collaboration, i.e. as preliminary stages in organized crime criminal offences. These illegal acts are systematized in a separate chapter of the BiH Criminal Code, thereby demonstrating the seriousness of the approach to combating THB.

THB criminal offences are regulated by the Criminal Code of BiH; thereby all THB criminal offences, crimes against official duty or other responsible duty are classified in the separate chapters of the Code as follows: Criminal offence of THB, Article 186 of the BiH Criminal Code, Criminal offences of International recruitment for the purpose of prostitution, Article 187 of the BiH Criminal Code, Criminal offences of Illegal Deprivation of ID Documents, Article 188 of the BiH Criminal Code; criminal offences of the Smuggling of Persons, Article 189 of the BiH Criminal Code; criminal offences of Establishing Slavery and Transportation of Persons in Slavery, Article 185 of the BiH Criminal Code. The resolutions of the BiH Criminal Code on provisions regarding organized crime are harmonized with the standards and resolutions contained in the relevant international documents ratified and accepted by BiH.

The crucial international enactments directly dealing with combating organized crime and THB are: the UN Convention Against Trans-national Organized Crime, dated November 15th 2000; Recommendation (2001) 11 of the Committee of Ministers to the Member States related to the guiding principles for combating organized crime, dated September 19th 2001. In terms of harmonization of the BiH regulations with the EU regulations, the ratification of the UN Convention against Trans-national Organized Crime adopted in Palermo on November 15th 2000, and its three supporting Protocols including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, were all extremely important. The stipulated incriminations are in line with the provisions of the key international legal instruments dealing with THB, signed and ratified by BiH according to the applicable international standards. For combating the THB it was particularly fortunate that the BiH Law on Penal Procedure and BiH Criminal Code were enacted at the state level.

Institutional capacities

At the national level, under the MoS, the following agencies deal with combating organized crime and THB:

- SIPA
- BP

The jurisdiction of the SIPA is regulated under the Law on SIPA and comprises preventing, disclosing and investigating criminal offences related to organized crime, terrorism, war crimes, THB and other crimes against humanity and values protected by international law, as well as serious financial crimes.

SIPA processes the information and keeps records according to the BiH Law on Police Officers, the BiH Law on Protection of Personal Data and other applicable regulations of BiH.

SIPA, with its head office in Sarajevo, comprises 4 Regional Offices with their seats in Sarajevo, Banja Luka, Tuzla and Mostar, while each Regional Office has its own Crime Investigating Department. The main tasks of those Departments are to prevent, disclose and investigate THB criminal offences and all criminal offences falling under the jurisdiction of the Court of BiH, within their respective jurisdictions stipulated by applicable laws.

The Court of BiH and Prosecutor's Office of BiH act at the national level and the Law on the Court and Prosecutor's Office of BiH stipulates their jurisdictions, respectively. The Prosecutor's Office of BiH is an institution entitled and tasked mainly to disclose and prosecute the perpetrators of criminal offences falling under the jurisdiction of the Court of BiH, and the criminal offences regulated by the Entities' or Brčko District Criminal Codes when the conditions of state jurisdiction of the Court of BiH are fulfilled..

Aiming for the efficient investigation and penal prosecution of the abovementioned criminal offences and perpetrators, within the Prosecutor's Office of BiH, under the BiH Council of Ministers, the Task Force for Combating THB and Illegal Migrations was created.

International obligations and interconnection between organized crime and THB

The commitment of BiH to enter into European integration requires a serious analysis of the extent, nature and characteristics of organized crime and its forms. The international obligations of BiH in the area of organised crime are derived from executed bilateral agreements, the UN Convention against Trans-national Organized Crime, the Protocol against Smuggling of Migrants by Land, Sea and Air, Protocol for Preventing, Stopping and Punishing THB, particularly Trafficking in Women and Children, and from its membership in Interpol as well.

Only a comprehensive and systemic combating of organized crime can minimize its multiple adverse effects. No country can afford to ignore THB if it wishes to be a respected member of the international community and a factor of its integration processes.

Therefore, it is crucial for the players to focus on the achievement of the following special goals: institutional and operative development aimed at accomplishment of compatibility with the European structures according to the international conventions, agreements and recommendations, and national legislation.

Within the strategic directions and activities of SIPA fall strengthening and expanding capacities in the areas of criminological analyses and criminological intelligence work, while their priorities are:

- Building capacities for criminological, intelligence and investigative activities;
- Criminological-intelligence preparation of instruments for identification of any organized criminal group acting in the territory of BiH, guided by facultative criteria of organized crime;
- Special attention in criminological-intelligence and investigative activities towards indicating and disclosing cases of interconnection of an organized crime group with individuals in the governing institutions of BiH, with a review of the investigation conducted by Transparency International in BiH;
- Preventing and disclosing organized crime and corruption;
- Curbing illegal migration and THB channels to/in BiH;
- Timely and comprehensive evaluation of threats to each person and facility under protection;
- Identification of employment and residential status in BiH;
- Maintaining a sound and direct cooperation with BiH SFA;
- Carrying out permanent training of police officers and public servants engaged in combating THB and illegal immigration in the area of covering interviewing techniques on the occasion of granting permanent or temporary residence.

In view of the trends identified in this area, it is essential from a strategic perspective to monitor and adjust to the sphere of criminological-investigative activities - implying:

- Adapting to changes in the victim profiles;
- Adequate treatment of the increasing phenomenon of domestic and regional THB of local nationals.

IV. RISK FACTORS

In order to properly analyse the situation, to define strategic goals and schedule further activities by the relevant institutions of BiH, the key risk factors were identified that should be taken into account when implementing the Strategy. These include economic, political, legislative and institutional aspects, as well as the historical and geographic position of BiH.

In an economic sense the risk factors are the following: the capital ownership structure and its slow transformation, unnecessarily strong interference of political parties, and in the economy, insufficient observance of economic rules and poverty reaching disturbing levels in BiH.

In a political sense the risk factors reflect the dysfunctional Constitution Law of BiH, limited jurisdiction of the State, interference of the international community, issue of mandatory political consensus regarding the strategic goals of the country's development, among others.

From a legislative perspective, the following risk factors were identified: failed or selective application of regulations and failed harmonization of the individual regulations with European standards.

The risk factors from an institutional perspective were identified as: failure to set up all the required institutions, lack of efficiency of newly established institutions and the shortfall of adequate coordination between the institutions.

Another risk factor is the consequences of the war in BiH, tolerance of impermissible behaviour, insufficient collaboration of the citizens with the institutions and a considerable extent of distrust in institutions, as well as a distorted social values system and its frequent changes.

In terms of geography, the risk factor is BiH's location in the region and in Europe, as well as the length of its border.

V. ORGANIZED CRIME AND TRAFFICKING IN HUMAN BEINGS – definition and main characteristics

The generally accepted standpoint is that the first step towards the successful prevention and control of organized crime is defining the meaning of THB, as stipulated in the Criminal Code as follows: "Whoever, by means of use of force or threat of use of force or other forms of coercion, of abduction, of fraud or deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, harbours or receipts a person, for the purpose of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or similar status, servitude or the removal of organs or of any other type of exploitation."

There is agreement to a large extent regarding the fact that there are certain characteristics of coercion determining the criminological phenomenon of THB.

THB and children trafficking for the purpose of sexual exploitation is an international criminal phenomenon with serious consequences to the security and human rights of the victims. THB is a criminal offence "of high profit and low risk" jeopardizing quality of life.

Organized THB does not function as an isolated phenomenon; rather a rapidly expanding and developing trafficking network, with the establishment of mutual relations in order to generate mutual profit among the existing criminal organizations acting in other criminal spheres, such as narcotics, arms and other kinds of trafficking.

Given the wide range of the threats caused by THB, a rapid, decisive and professional approach by national and international law enforcement agencies is necessary and it is vital, at the strategic level, to achieve a higher harmonization and coordination at state and institutional levels. Development of bilateral and multilateral joint operations could enable the capture of perpetrators, regardless of the places where they operate.

The organized criminal network of human traffickers is focused on taking control of the situation as “delivery and demand”, with the aim of increasing profit. Crucial characteristics of the criminal profiles include:

1. Interconnection and cooperation of at least two or more persons, each of whom has an assigned role/task;
2. Availability over a particular or unlimited time period;
3. Existing suspicion of serious and other criminal offences committed;
4. Action at an international plan;
5. Use of violence and other appropriate intimidation methods upon victims;
6. Use of existing commercial and other structures available for similar misdeeds (labour exploitation of victims);
7. Involvement in money laundering;
8. Motivation for generation of profit and/or power.

VI. GENERAL AND SPECIFIC GOALS:IN COMBATING THB

1. Development and strengthening of the institutions of BiH combating organized crime and THB.
2. Training, professionalization and specialization of human resources employed with the institutions of BiH combating organized crime and THB;
3. Strengthening and development of inter-institutional cooperation in BiH, among governmental and non-governmental organizations.
4. Building of international cooperation in combating all forms of organized crime and THB, with an intensified involvement in the relevant international organizations, initiatives, working groups and teams, with efficient and timely enforcement of the decisions and conclusions resulting from their joint activities.
5. Development of independent scientific research related to organized crime and THB.
6. Raising civil society awareness and education of the public with regard to the risks and harmful impact of organized crime and THB to the society as a whole.
7. Raising awareness of the judiciary institutions and law enforcement agencies of the need to have cooperation with electronic and printed media to inform the public in an objective and timely manner of the factors generating THB and the most serious organized crime

VII. SPECIFIC GOALS

1. To provide a standardized and efficient legal framework for the enforcement of the witness protection measures in BiH and financial prerequisites for implementation of the witness protection programs.
2. To establish and maintain the international cooperation in penal legal issues among the judiciary authorities, which would ensure the carrying out of joint criminal investigations.
3. To establish and maintain cooperation among law enforcement on an international scale that would ensure the conduct of joint criminal investigations.
4. To intensify the activities for combating illegal migrations and THB.
5. To build new standardized IT systems, to develop, maintain and update the existing IT systems and databases in law enforcement agencies, and continual IT training for human resources.
6. To prevent and suppress computer-aided crimes, child pornography and child prostitution and to intensify repressive activity in combating the THB.
7. To continue with the activities intended for the suppression of illegal THB and illegal migration.

CONCLUSIONS:

The largest problem in the area of human trafficking is the permanent growth of domestic victims and the lack of a strategy for their protection and reintegration. Therefore, focus has been entirely directed towards prevention and developing protection for domestic victims of trafficking. This includes providing a response to the recent forms of trafficking, including forced labor and begging activities carried out by minors and Roma children

As social-economic hardships are one of main reasons for trafficking, it is necessary to link the Strategy for Combating Trafficking with other strategies in order to attack the source of this phenomenon and eliminate discrimination. In addition, it is necessary to research those issues, factors, and causes for prostitution, paying special attention to minor prostitution and “escort” services in order to facilitate the coordinated action of all law enforcement agencies in BIH.

E. ASYLUM

The section entitled International and Temporary Protection (Asylum) shall be presented in the following chapters:

I. LEGAL FRAMEWORK

II. INSTITUTIONAL FRAMEWORK

III. ACTUAL STATE IN THE AREA OF INTERNATIONAL PROTECTION

IV. INTERNATIONAL OBLIGATIONS

V. STATISTICAL DATA

VI. GOALS AND TASKS

I. LEGAL FRAMEWORK

Legislation I

1. The right to international protection (asylum) in BiH is granted through a number of documents, primarily by:
 1. The Constitution of BiH
 2. The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol
 3. The LMSAA (BiH Official Gazette No. 36/08)
 4. The by-law on Asylum in BiH (Official Gazette BiH No. 26/04)

1.1. The Constitution of BiH

As defined by Article III, paragraph 1, item f) of the Constitution of BiH matters concerning policy and regulations of immigration, refugees and asylum are solely in the competence of BiH institutions.

1.2. The 1951 Convention Relating to Status of Refugees and its 1967 Protocol

The right to international protection (asylum) in BiH is granted by the international Convention on Refugee status of 1951 and its amending Protocol of 1967, being constituent parts of the Constitution of BiH. By succession, BiH is a signatory to the 1951 Convention and its 1967 Protocol. For the purpose of more comprehensive and more efficient protection of human rights in BiH, the Dayton Peace Agreement envisages a number of international conventions as constituent parts of the Constitution listed in Annex I of the BiH Constitution.

1.3. The LMSAA (Official Gazette BiH No. 36/08)

The legal framework on the institution of international protection (asylum) in BiH is defined by the LMSAA, which entered into force on 14th May 2008 and was published in the Official Gazette of BiH No. 36/08.

Chapter VII of the Law – International and temporary protection (the asylum) defines matters concerning international legal protection of aliens granted either status of refugees or subsidiary protection by competent authorities in BiH. This chapter refers to persons seeking international protection, persons with recognised refugee status, and persons with subsidiary protection for whom, in the procedure upon a request for international protection, it was determined that there exist reasons to believe that such individuals would face a genuine risk of being subjected to the death penalty (execution), torture, cruel or inhuman treatment and punishment in their country of origin or country of habitual place of residence, or in cases of individual life threats of civilians (physical integrity of persons) caused by non-selective violence occurring in an international or internal armed conflict, that cannot or due to fear do not want to seek the protection of that particular country.

Article 143 of the Law defines chapters and articles of the Law that do not apply to the abovementioned categories of persons residing in BiH until their cases are decided upon.

1.4. By-law on Asylum in BiH (Official Gazette BiH No. 26/04)

The by-law on Asylum in BiH was issued in accordance with provisions of Article 87, para. 1 of the LMSAA, which prescribes that MoS, BiH Ministry for Human Rights and Refugees and BiH Ministry for Civil Affairs are obliged to issue a by-law for settling further details of matters covered in Chapter VII of the Law – on asylum. In accordance with the abovementioned responsibility, the MoS Asylum Sector approached drafting of the by-law on Asylum in BiH that was published in the Official Gazette BiH No. 26/04, and entered into force on 15th June, 2004.

However, even though the entry into force of the new LMSAA (Official Gazette BiH No. 36/08) on 14th May 2008 annulled the LMSAA (Official Gazette BiH No. 29/03, 4/04, and 53/07), provisions of Article 162 of the same law prescribe that the provisions of the by-law on Asylum in BiH would be applied in the transitional period until the issuance of new by-laws on this matter.

The by-law consists of IX chapters dealing with: the subject-matter, access to asylum procedure in BiH, the procedure for examination of asylum claims, rights and obligations of asylum seekers, rights and obligations of refugees, cessation of refugee status, temporary residence on humanitarian grounds granted upon Article 79 of the Law, official records and data protection in the asylum procedure, and transitional and final provisions. Hence, these chapters deal with a more detailed description of primary principles in the procedure, competent authorities, preconditions and procedures of acquiring refugee status and temporary residence on humanitarian grounds, rights and responsibilities of asylum seekers and recognized refugees in BiH, the method and procedure of registration of refugees as well as principles of data protection and other issues that are covered by Section VII of the Law.

Legislation II

2. Besides the already listed legal frameworks on asylum in BiH, it is necessary to additionally point out several other laws that directly or indirectly regulate international protection in BiH:

2.1. The Law on Administrative Procedure (Official Gazette BiH No. 29/02, 12/04)

In the procedure upon a claim for international protection the rules of administrative procedure in BiH apply. Namely, the provisions of Article 1 of the Law on Administrative Procedure, Article 3 of the LMSAA (Official Gazette BiH No. 36/08) and Article 13 of the by-law on Asylum in BiH stipulate that in the administrative procedures carried out before competent authorities provisions of the BiH Law on Administrative Procedure apply unless regulated differently by this law.

2.2. The Law on Administrative Dispute (Official Gazette BiH No. 19/02)

Provisions of the LMSAA prescribe that the decisions made upon requests for international protection are final in administrative procedure and cannot be appealed. A complaint, however, can be filed before the BiH Court, within deadlines stipulated by the same law. At the same time, upon filing a complaint

through the MoS, there exist different legal resolutions related to the postponement of the execution of decisions reached upon requests for international protection.

An administrative dispute is carried out as prescribed by provisions of the Law on Administrative Dispute. Provisions of Article 9 of this Law also prescribe that administrative dispute can be initiated only against final administrative acts issued by BiH institutions.

2.3. The Law on Ministries and Other Bodies of Administration (Official Gazette BiH No. 5/03, 42/03, 26/04, 42/04, 45/06)

The matters concerning international protection provided in BiH are in the competence of three ministries: the MoS, the Ministry for Human Rights and Refugees and the MoCA (Articles 12, 14 and 15 of this Law). Provisions of Article 109 para. 1 and Article 120 para. 5 and 6 of the LMSAA define the competences of respective Ministries upon relevant sections on asylum.

The applications filed in BiH are considered and decided upon by MoS's Asylum Sector, while the BiH Ministry for Human Rights and Refugees and the BiH Ministry for Civil Affairs are responsible for securing access to rights for persons with recognized refugee status.

Additionally, Article 4 of the Law on Changes and Amendments of the Law on Ministries and Other Bodies of Administration in BiH prescribes that Article 14 and its paragraph 1 should be amended with an additional, 9th, declaring that MoS is responsible for settling both the procedure and principle of organization of the service to be responsible for regulating movement and the stay of aliens in BiH, by which were set the grounds for establishment of an independent service functioning within MoS.

2.4. The Law on SFA (Official Gazette BiH No. 54/05 and 36/08)

The SFA was initiated by the Law on SFA, which determined its competences, organisation and administration, as well as other issues of importance for its work and legal functioning. Responsibilities of the SFA on the procedure of international protection (asylum) are defined by provisions of Article 3, para. 1, item f) of the Law. The abovementioned leans on provisions of Article 107 of the LMSAA and Article 14 of the by-law on Asylum in BiH prescribing that administrative responsibilities of movement and stay of aliens in BiH, *inter alia* also cover activities regarding claims for international protection.

2.5. The Law on Surveillance and Control of Crossing of State Border (Official Gazette BiH No. 56/04)

The role of the BP with regard to matters of international protection is reflected in its obligation to respect the principle of non-refoulement and the principle of forbidden sanctioning of an alien due to his/her illegal entry or stay in the country, as provided by provisions of Article 2, para. 2 of the Law on Surveillance and Control of Crossing of State Border of BiH, which leans on provisions of Article 108 of the LMSAA.

2.6. The Law on Protection of Personal Data (Official Gazette BiH No. 49/06)

Provisions of Article 2, para. 1., of the Law on Protection of Personal Data prescribe that this law is applicable to personal data processed by all administrative bodies, public and private bodies, unless otherwise prescribed by some other law. Additionally, provisions of Article 115 of the LMSAA, being *lex specialis* to the Law on Personal Data Protection, prescribe that the public is excluded in procedures regarding international protection, and all information gathered in this procedure is confidential. Therefore, to all remaining information not referred to by this provision from the LMSAA on asylum and personal data of persons with recognised status, the law must be applied on Protection of Personal Data. Provisions of Articles 3 and 9 of the Law on Protection of Personal Data are of the special importance for persons under international protection in BiH.

2.7. The Law on Central Registry and Data Exchange (Official Gazette BiH No. 32/01, 16/02, 32/07 and 45/07)

Provisions of Article 28, para. 1, item e) of the Law on Central Registry and Data Exchange require the establishment of a central database on aliens in BiH. Thus, for the purpose of registering and monitoring the residence and movement of aliens and persons that are seeking or were granted international protection in BiH, the MoS had established central database on aliens. The Central Database is run in accordance with provisions of Articles 144 and 145 of the LMSAA, which prescribe the obligation of keeping database on aliens, and lists types of official registers that such a database should possess.

Provisions of the Article 146 of the LMSAA prescribe that MoS would subsequently issue a by-law to further define rules on keeping records, its use and access to central databases on aliens and information held.

II. INSTITUTIONAL FRAMEWORK

1. Review on current resolutions concerning international protection (asylum) – procedural authorities

The first law to deal with this field was the 1999 Law on Migrations and Asylum of BiH that stipulated that asylum claim considerations and first instance decisions are to be made by the office within the Ministry for Civil Affairs and Communications, having full competence on asylum and refugee matters. However, at the very beginning of its implementation came the Law on Council of Ministers of BiH and on the Ministries of BiH (Official Gazette BiH No. 11/00) stipulating that activities regarding acquiring and protection of refugee rights and asylum would be referred to the competence of the Ministry for Human Rights and Refugees. Upon adoption of the Law on Council of Ministers (Official Gazette BiH No. 38/02) the Law on Council of Ministers of BiH and on the Ministries of BiH ceased to exist.

Additionally, issuance of the Law on Ministries and Other Bodies of Administration of BiH (Official Gazette BiH No. 5/03, 42/03, 26/04, 42/04 and 45/06) prescribed that by this law new Ministries, determined administrative organizations and other institutions in BiH were established, to be responsible for administrative tasks, their scope of activities, as well as the other issues relevant to their work. Thus, Article 12, para. 1 item 17 of this Law defines that the Ministry for Human Rights and Refugees is responsible for designing the policy of immigration and asylum in BiH. The same Law in its Article 14, para. 1 defines the competences of MoS, stating in its 8th paragraph that this Ministry is responsible for implementation of the policy of immigration and asylum as well as the regulation of procedures on the movement and stay of aliens in BiH. The abovementioned definition caused overlapping between bodies on designing policy on immigration and asylum in BiH. Therefore, certain provisions of the Law on Ministries and Other Bodies of Administration of BiH needed to be changed.

Upon issuance of the Law on Changes and Amendments to the Law on Ministries and Other Bodies of Administration of BiH (Official Gazette BiH No. 26/04) this issue was solved through Article 2 prescribing deletion of the Law's provisions of Article 12, para. 1, indent 17 which stated that the Ministry for Human Rights and Refugees is the authority responsible for designing immigration and asylum policy in BiH. The same law in Article 3 stipulates that the 8th paragraph of Article 14, para. 1 of the Law on Ministries and Other Bodies of Administration of BiH would be changed to have MoS as competent for design, management and implementation of immigration and asylum policy in BiH. Additionally, Article 4 of the abovementioned Law provided an amendment to Article 14 with an additional 9th paragraph stating that MoS is responsible for settlement of the procedures and organisation of the service dealing with the movement and stay of aliens in BiH. Thus the foundations were established for setting up an individual service functioning within MoS.

The BiH Council of Ministers had additionally regulated this area in 2006 by issuing the Decision on the Temporary Determination of Competencies, which clearly defined that the Ministry for Human Rights and Refugees is competent for determining the means of acquiring the rights and responsibilities of aliens whose rights to international protection (granted refugee status, subsidiary protection through approved temporary residence on humanitarian grounds or temporary admission upon authorities transferred by the BiH Council of Ministers) MoS had recognized.

Having clarified all of the previous dilemmas, it was settled that MoS and its Asylum Sector are competent for determination of refugee status or other means of international protection provided in BiH though procedures carried out upon requests for international protection, while the Ministry for

Human Rights and Refugees is competent for the determination of the means for acquiring the rights and obligations of aliens to whom MoS had previously recognized as having rights to international protection in BiH.

The LMSAA defines that a request for international protection is to be received, considered and evaluated in the form of a decision or a conclusion by the Asylum Sector that possesses the full capacity with regard to international protection and international law.

Initially, the Asylum Department was established within the Sector for Immigration and the Asylum of the Ministry for Human Rights and Refugees, as provided for by the division of competences of the then valid Law on the Ministries and Other Bodies of Administration of BiH (Official Gazette BiH No. 5/03, 42/03, 26/04, 42/04 and 45/06). By the beginning of 2004, this Sector became a constituent part of the MoS.

In accordance with its mandate and the procedures in BiH, until June 30th 2004 UNHCR was responsible for procedural standards and refugee status determination for asylum seekers from the moment of their identification in BiH until the issuance of the final decision on their claim, as well as for finding out permanent solutions for refugees. From July 1st 2004, the Asylum Sector took over the procedure for determination of refugee status in BiH abiding with provisions prescribed by the Law and the by-laws, as well as provisions of the Protocol on the Handover of Refugee Status Determination and Other Asylum Related Responsibilities from UNHCR to the MoS, and thus became responsible for procedural standards that persons seeking international protection enjoy from the moment of their identification till the issuance of the final decision on their claim.

III. CURRENT SITUATION IN THE FIELD OF INTERNATIONAL PROTECTION

Sub-section I

This sub-section is intended to summarise the actual situation on international protection (asylum) in BiH through: resolutions concerning international and temporary protection (asylum) prescribed by the LMSAA and By-law on Asylum in BiH, competent authorities, explanation of valid procedure, presentation of the provided means of protection, types of cooperation with UNHCR and other matters relevant for the field of international protection (asylum) in BiH.

1. Resolutions in the LMSAA

Chapter VII of the LMSAA treats the field of international protection (asylum). The chapter is divided into the following sections:

- Part A – Conditions for acquiring international protection
- Part B – The procedure and competent authorities
- Part C – Rights and obligations of persons granted international protection in BiH
- Part D – Cessation of international protection
- Part E – Mass influx and temporary protection

Keeping in mind the fact that the 1951 Convention Relating to the Status of Refugees is a constituent part of the BiH Constitution, the Law's definition of a refugee is identical to that in the Convention. Therefore, according to the LMSAA, a refugee is an alien who fulfils conditions listed in Article 1A(2) of the 1951 Convention Relating to Status of Refugees and its 1967 Protocol. Therefore, in accordance with the 1951 Convention and its 1967 Protocol, a refugee is an alien who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership to a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or, to an alien who, not having a nationality and being outside the country of his/her former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

At the same time, persons who do not fulfil the conditions from the Convention, but still cannot be returned to their country of origin or habitual place of residence for having serious reasons to believe that they would be subjected to the death penalty (execution), torture, inhuman or degrading treatment or punishment in their countries of origin or habitual place of residence, or there exist serious individual threats to their lives, or for non-selective violence that occurred in international or internal armed conflict, that cannot or due to fear do not want to seek the protection of that particular country, unselective violence in situations of international or internal armed conflict that do not want or due

to fear do not want to be under the protection of the respective countries, are granted, in accordance with the provisions of this Law, the right to subsidiary protection in BiH.

Unlike the resolutions from before, the valid Law enabling the submission of asylum claims to one of the field offices of the Service for the Foreigners' Affairs, the Asylum Sector of the MoS, the Entity MoI or BiH Brčko District Police, the new Law defines it quite differently. Namely, the new LMSAA regulates that an alien expresses an intention of submitting a request for international protection either at the border crossing to the BP, or to an organisational unit of the Service, while a request for international protection is submitted in person to the Seat Office of the Ministry.

The Law also envisages exclusion clauses to cover cases in which requests for international protection would be rejected despite the fact that the applicant formally fulfils conditions for its granting. These clauses are applied to persons for whom is reasonably believed to have committed a crime against peace, a war crime, or a crime against humanity, a serious non-political crime, or to have participated in planning, financing, organising, or in any way supporting or committing terrorist activities, or to have provided shelter to perpetrators of terrorist activities, or that have been guilty of acts contrary to purposes and principles of the UN. The Law also envisages situations in which an application for international protection in BiH can be revoked to an alien whose status has been recognized in some other country or to a person who has found effective protection in another country and is able to return to that country and re-avail himself/herself of such protection, or, at the time of reconsideration of the request receives protection or aid of a body or agency of the UN other than the UN Agency for Refugees.

The provisions of Article 123 of this Law also define the reasons for cessation of refugee status or status of subsidiary protection that are harmonized with Article 1 of the 1951 Convention. Thus, international protection granted in BiH would cease for an alien who has voluntarily re-availed himself/herself of the protection of the State of his/her citizenship; who, having lost the citizenship of another country has voluntarily re-acquired it; who has acquired a new citizenship and enjoys the protection of the country of this new citizenship; who has voluntarily re-established himself/herself in the State which he/she left or outside which he/she remained owing to fear of persecution; who can no longer, because of circumstances in connection with which he/she has been recognised as a refugee have ceased to exist,, continue to refuse to avail himself/herself of the protection of the State of his/her citizenship; who being stateless can no longer, because the circumstances in connection with which he/she has been recognised protection in BiH have ceased to exist, refuses to avail himself/herself of the protection of the State of his/her former habitual residence; who has obtained citizenship from BiH, or the circumstances which resulted in the granted status have ceased or have been changed to the extent that the protection is not needed any more.

The Law in Article 124 prescribes other reasons for cessation of refugee status or subsidiary protection, stating that the Ministry would withdraw recognised refugee status in cases where it is reasonably believed that the refugee represents a threat to the national security of BiH; when a refugee, after being rendered with a final and binding verdict for criminal offence which entails sentence of imprisonment for terms of three years or of severe punishment (serious criminal offence), presents a threat to the BiH community; or, it has been established that there exists a reason for the exclusion of the application for international protection.

The Ministry abolishes the recognized status of subsidiary protection in situations when it establishes existence of some reasons for the exclusion of international protection listed in Article 106 of this Law, as well as in situations in which the faulty presentation or omission of facts, including the use of forged documents, were crucial to granting the status of subsidiary protection.

The decision on cessation or abolition of international protection ex officio is issued by the MoS. An alien cannot be expelled or forcibly removed from BiH before the decision on cessation or abolition of international protection becomes final and binding.

No appeal is allowed against decisions upon requests for international protection in BiH or decisions on cessation or abolition of international protection. In these cases, the protection instrument for aliens is a complaint filed to BiH Court, within the deadlines defined by either this Law or the Law on Administrative Dispute in BiH.

The LMSAA secures respect of the non-refoulement principle (protection against forcible return), protection against punishment for illegal border crossing or residence in BiH, and data confidentiality in the procedure upon international protection requests. The law also guarantees that all persons with already recognised refugee or subsidiary protection status in BiH would maintain their status.

Provisions of Article 162 para. 2 of the same law prescribe that the provisions of the by-laws issued upon previously valid laws would be applied in the transitional period until the issuance of new by-laws on this matter, unless they oppose this Law.

2. Solutions in the By-law on Asylum in BiH

Legal provisions contained in Section VII on asylum and procedures to be undertaken upon submitted asylum claims are further regulated by the by-law on Asylum in BiH, which entered into force on 15th June 2004.

The by-law consists of IX chapters covering the subject-matter of the by-law, access to the procedure in BiH upon filed asylum claims, the procedure of considering asylum claims, rights and obligations of asylum seekers, rights and obligations of the refugees, cessation of refugee status, temporary residence on humanitarian grounds based upon Article 79 of the Law, official records and data protection in the asylum procedure, and transitional and final provisions.

2.1. Submission of request for international protection:

Unlike the resolutions from the previously valid Law and by-law on Asylum in BiH (which further defines matters of submission of requests in BiH), the new Law provides different definitions on procedures of submitting requests for international protection. Namely, previous provisions prescribed that claims in BiH be submitted by aliens in person to a competent field office of the SFA, or the Asylum Sector of the MoS, or Entity MoI or BiH Brčko District Police.

The new Law regulates that an alien expresses an intention of submitting a request for international protection either at the border crossing to the BP or to the organisational units of the Service, while a request for international protection is submitted in person to the Seat Office of the Ministry.

Therefore, keeping in mind that the new Law defines the procedure of receiving requests for international protection in a manner completely different from the by-law on Asylum in BiH, its provisions would not be applied for the fact they are opposed to the provisions of Article 162, para. 2 of the LMSAA. Namely, subsequent provisions state that the by-laws issued prior to issuance of the Law would be implemented in the transitional period until the issuance of the new by-laws, unless they are contrary to this law.

If an alien has registered residence in the country, his/her intention on submitting a request for international protection could be expressed at a Field Office of the SFA situated in his/her place of residence. If an alien expresses an intention to submit a request for international protection to BiH bodies which are not authorised to receive such intents, they would refer this alien to a competent Field Office of the SFA.

2.2. Receiving applications and registration of persons seeking international protection

Upon expressed intent to file a request for international protection in BiH, the authority to which this intent was expressed issues an alien an attestation containing deadlines and fixed routes of movement for his/her arrival to the MoS, the Asylum Sector, where the person submits his/her request for international protection in BiH. The application is submitted in person. Upon the arrival of the alien, an authorised official from the Asylum Sector fills the form of request for international protection.

After the acceptance of a request for international protection follows the registration of the applicant for international protection and his/her family members. The registration of persons seeking international protection in BiH is carried out in the MoS Asylum Sector. An authorised official from the Asylum Sector performs registration of an applicant (and his/her family members) by filling out the registration form followed by taking their photographs, taking their fingerprints, making copies of personal and other documents containing the person's photo, as well as all other documents relevant to the procedure.

Then, the Asylum Sector has authorised that each person seeking international protection be issued a yellow card valid for a maximum of three (3) months. The validity of this card may be extended until the issuance of a binding or a final decision reached upon request for international protection. The card extension is performed by the field offices of the Service of Foreigner's Affairs, after previously acquired approval of the Asylum Sector. An applicant submits the request for extension of his/her card at least 15 days prior to expiry of the previous card.

The Law prescribes that from the moment of issuance of this documentation – a card of an applicant for international protection that confirms that he/she has filed request for national protection - an applicant is deprived of all the travel documents that he/she may use for the BiH border crossing. That document cannot be used for state border crossing.

2.3. The refugee status determination procedure

Upon completed registration of an applicant for international protection, an authorised official from the Asylum Sector, as the body with exclusive competence over the procedure initiated upon received the claim for international protection in BiH for the purpose of deciding upon the claim, continues the procedure by contacting the applicant and arranging one (or more) interview(s) to decide upon the case.

2.3.1. Inviting an applicant for international protection / scheduling an interview:

In order to issue a decision upon a claim for international protection, an authorised official from the Asylum Sector has the responsibility to conduct without any delay one or several interviews with the applicant. If the applicant for international protection does not respond to the scheduled interview, the competent authority sends a second invitation.

The interview itself is one of the most complex operations in the procedure upon a claim for international protection, where an authorised official from the Asylum Sector (eligibility officer) is obliged to determine and investigate all relevant facts and circumstances, especially those concerning his/her country of origin, evaluate the person's general credibility, and, along with evaluation of the validity of given proofs, issues an adequate and legal decision with regard to refugee status determination, subsidiary protection or another type of international protection in BiH. The authorised officer has to take care of the applicant's cultural background and pay additional attention to certain circumstances that the applicant in question had found in, especially those subjected to violence, torture or trauma. Besides the abovementioned, an authorised official from the Asylum Sector has an obligation to inform the applicant for international protection on his/her obligation to present all circumstances and facts related to his seeking protection in BiH, where an applicant must be enabled to fully present, clarify and substantiate with all available means, all facts and circumstances relevant for reaching a decision upon his/her claim for international protection. The decision made by the competent authority does not depend on formal proofs presented by the applicant.

Besides an applicant and an authorised official from the Asylum Sector, the interviewing session may also be attended by a legal representative, or a guardian, UNHCR representative and interpreter, when needed. The eligibility officer is obliged to inform the applicant of the rights and responsibilities stated in the Law.

2.3.2. Issuing a decision upon a request for international protection:

The decision evaluating grounds for granting international protection must contain a thorough explanation of the decision itself, and, generally, must be delivered to the applicant in person. The applicant must be informed on his/her right to legal remedy (complaint) as well as on the relevant deadlines.

2.3.3. Types of decisions reached upon a request for international protection:

The competent authority may issue a decision upon the request for international protection by which it:

- approves the request and recognises refugee status in BiH,
- approves the request by granting subsidiary protection without recognizing refugee status,
- rejects the claim and determines the deadline for the alien to leave BiH,
- suspends the procedure for international protection and determines the deadline for an alien to leave BiH, or
- denies the request and determines the deadline for an alien to leave BiH.

2.3.4. Repeated submission of request for international protection:

The Ministry would abolish a request for international protection if the applicant's earlier request for international protection in BiH had been already denied, rejected or suspended, and the applicant did not provide evidence that in the meantime the circumstances on which he/she had based the previous request have considerably changed.

2.4. Legal remedy

A decision upon international protection request reached by the MoS may not be appealed. However, there is a possibility to initiate an administrative dispute by filing a complaint with the Court of BiH. Thus court protection of the rights of an applicant is secured.

Against a decision denying international protection on the basis that the claim is ungrounded, an alien may initiate an administrative dispute by a complaint filed through the Ministry within 8 (eight) days from the day of receipt of the decision, while the BiH Court is obliged to consider these cases as urgent and issue their decision upon the complaint within 30 days from the day of the receipt of this complaint. The complaint postpones execution of the decision.

Against a decision by which a request for international protection is suspended an alien may initiate an administrative dispute before the BiH Court by a complaint filed within eight days from the day of receipt of the conclusion. The complaint does not postpone execution of the decision.

Also permitted is the initiation of administrative dispute before the BiH Court against decisions on repeated applications for international protection or against decisions on potential suspension for cases covered by provisions of the Law on Administrative Procedure. However, in such situations filing a complaint does not have the effect of suspension and it does not hold execution of the MoS decisions.

2.5. Cessation or cancellation of refugee status or the status of subsidiary protection

2.5.1. Cessation of refugee or subsidiary protection status

International protection in BiH ceases under conditions regulated in Article 123 of the LMSAA. The decision on cessation of international protection in BiH is issued *ex officio* the Asylum Sector of the MoS.

2.5.2. Abolishment of refugee or of subsidiary protection status

The Ministry can abolish recognised international or subsidiary protection status in BiH under conditions regulated in Article 124 of the LMSAA.

The decision on cessation of refugee status does not affect the rights provided by Articles 91 and 118 of the Law, which concern the non-refoulement principle, and matters of protection in case of denial of a request for international protection of the Law, as well as the Article 32 of the 1951 Convention Relating to the Status of Refugees.

The Ministry shall abolish recognized refugee status in situations in which it establishes the existence of some of the reasons for exclusion of international protection, as well as in situations where the wrong presentation and omission of facts, including the use of false documents, was decisive for granting subsidiary protection status.

2.5.3 Legal remedy against the decision on cessation or abolishment of international protection

The decision on cessation or abolishment of international protection is *ex officio* made by the Ministry in the Seat Office.

No appeal is allowed against the decision on cessation or the abolishment of international protection, but administrative disputes may be initiated before the Court of BiH by a complaint filed through the Ministry within 15 days from the day of notification of the decision. The Court is obliged to consider these cases as urgent and issue a decision on the complaint within 45 days from the day of the complaint was received. In this case the complaint has a suspensory effect because it postpones the execution of the decision.

The alien for whom the MoS issued a decision on cessation of international protection must not be expelled nor forcibly removed from BiH territory before the decision becomes final and binding.

A person participating in the procedure must be given a thorough hearing or in writing reasons why his/her international protection should cease or be abolished.

Subsection II

COMPETENT AUTHORITIES

Keeping in mind the Constitutional provisions prescribed in Article III, para. 1, item f), that the responsibility of the institutions of BiH covers creating policy and legislation on immigration, refugees and asylum, on one side, and analysing current solutions practised by Western European countries on the other, it was concluded that it is necessary to establish a strong and centralised organisational unit to be well trained and vertically organised for prompt and efficient actions upon all issues covering foreign nationals in BiH.

In accordance with the current legal solutions, the authorities responsible for international protection matters cover: the Asylum Sector – of the MoS, Field Offices – of the BiH Service for Foreigner's Affairs, the BiH Ministry for Human Rights and Refugees, the BiH Ministry for Civil Affairs and the BP.

1. Procedure

1.1. Administrative procedure

In accordance with provisions of Article 3 of the LMSAA, it is prescribed that in all administrative procedures carried out before competent authorities apply provisions of the Law on Administrative Procedure, unless differently regulated by this Law. Provisions of Article 13 of the by-law on Asylum in BiH also regulate that with regard to requests for international protection in all cases not regulated by the Law or the by-law apply provisions of the Law on Administrative Procedure (Official Gazette BiH No. 29/02).

Therefore, in the procedure carried upon claims filed in BiH the rules of the administrative procedure apply unless differently prescribed by the provisions of the LMSAA or the by-law on Asylum in BiH. Upon the submitted application for international protection in BiH, the Asylum Sector initiates first instance procedures and undertakes steps prescribed by the provisions of the LMSAA and the by-law on Asylum in BiH.

Recognition of the refugee status does not depend on presentation of specific or formal evidence.

1.2. Administrative dispute

In accordance with the Law on the Court of BiH, the BiH Court is, inter alia, competent for deciding upon complaints filed against final administrative documents or cases of administrative silence shown by BiH institutions and their bodies. The court procedure upon such cases is carried by the Administrative department of BiH Court, as envisaged by provisions of the Law on Court of BiH and provisions of the Law on Administrative Disputes in BiH.

Article 4 of the LMSAA prescribes that an administrative dispute can be initiated against final administrative documents issued in accordance with this Law. Therefore, with regard to this administrative matter, the international protection is granted through the possibility to initiate administrative disputes by a complaint filed before the BiH Court, as stipulated by the Law on Administrative Disputes of BiH (Official Gazette BiH No. 19/02) and the Law on Court of BiH Official Gazette BiH No. 29/00, 16/02, 24/02, 3/03) unless regulated differently by this Law.

The LMSAA prescribes situations in which a complaint has a suspensory effect and in those which it does not.

MEANS OF PROTECTION

1. Recognised refugees or persons with recognised status of subsidiary protection

The field of the rights of persons granted international protection (recognised refugee status or the status of subsidiary protection) is defined by the provisions of Articles 120 - 122 of the LMSAA.

An alien to whom international protection has been granted and refugee status recognized is entitled to rights and obligations defined in provisions 3 through 34 of the 1951 Convention Relating to the Status of Refugees. An alien whose international protection has been granted and subsidiary protection recognized is entitled to the same rights and obligations as the alien with recognized refugee status, if not otherwise regulated.

Provisions of this and other laws of BiH and international instruments which are already in force and to which BiH is a Contracting Party have priority over provisions of the 1951 Convention Relating to the Status of Refugees in case they accord a more favourable treatment to aliens with recognized refugee status.

The alien holding a refugee status is entitled to reside in BiH territory for as long as his/her international protection is valid and for that purpose he/she would be issued a residence permit for refugees. A refugee status would in principle be extended to the partner he/she has been living in marriage and/or common-law marriage and minor children as well as other close family members, if they are living in the same household in BiH territory. An alien with recognized refugee status would be entitled to work and would have access to education, health care and social welfare under the same conditions as BiH citizens, and would also have the right to reunite his/her family.

The alien holding a subsidiary protection status is entitled to reside in BiH territory for one year. Upon the request of the alien, his/her residence would be extended for as long as the conditions that constituted grounds for subsidiary protection exist, except if otherwise required by reasons of public order and peace and the national security of BiH. In the period of international protection an alien would be entitled to work and would have access to education, health care and social welfare under the same conditions as BiH citizens.

The provisions of Article 120, para. 5 of the LMSAA prescribe that the Ministry, in co-operation with the BiH Ministry for Human Rights and Refugees and the BiH Ministry for Civil Affairs, is responsible for ensuring access to rights referred to in Articles 120 and 121 of this Law.

The BiH Ministry for Human Rights and Refugees and the BiH Ministry for Civil Affairs in co-operation with the MoS will ensure the right to work and access to education, health care and social welfare for persons with recognized refugee and subsidiary protection status as well as other rights prescribed by this Law enabling their integration during the period of recognized status. Additionally, provisions of the article 161 of the same Law prescribe that the Ministry for Human Rights and Refugees, upon obtained recommendation of the MoS and BiH Ministry for Civil Affairs, is responsible to issue a by-law to define in detail rights and responsibilities of the persons with recognized refugee or subsidiary protection status.

In this regard, the Ministry for Human Rights and Refugees has enacted four by-laws regulating status rights of recognized refugees and persons with some form of international protection. This includes the By-law on Health Insurance and Protection (Official Gazette no 27/04), the Book of Rules on Personal Status and Registration of Facts of Birth, Marriage and Death of those Persons (Official Gazette 51/07), the By-law on Right to Education (Official Gazette 67/08), the By-law on Accomplishing the Right to Work (Official Gazette 83/08). Currently, while another, the By-law on Establishing Rights to Social Protection, is currently being drafted.

Documentation for refugees and aliens on subsidiary protection

Aliens with recognized refugee status in BiH – the recognized refugees - as well as the aliens on subsidiary protection have, inter alia, the right to identification documents.

In accordance with the provisions of the Article 35 of the by-law on Asylum in BiH, the Asylum Sector, upon issuance of a final and binding decision on granting refugee status to an alien, submits a request to the MoCA for determination and the bestowal of a unique registration number (**URN**). Upon determination and granting of the URN, the Asylum Sector issues the recognized refugee a refugee card.

An alien holding a refugee status without a valid travel document or who is unable to obtain a travel document from the country of his/her habitual residence may be issued a travel document for refugees at his/her request for the purpose of travelling abroad and returning to the BiH territory, unless there exist compelling reasons of public order and peace and national security of BiH. A travel document for an alien holding a refugee status is issued by the Ministry.

An alien holding a status of subsidiary protection has the right to reside in BiH for a year. Approval on residence is extended upon the alien's request for the period of accuracy of conditions for which the status of subsidiary protection was granted, unless otherwise required by reasons of public order and peace and national security of BiH.

An alien whose subsidiary protection has been recognized and who does not have a valid travel document or is unable to obtain a travel document from the country of his/her habitual residence may be issued a travel paper at his/her request for the purpose of travelling abroad if there exist serious humanitarian reasons for his/her presence in the country outside of BiH territory, unless there exist compelling reasons concerning the public order and peace and national security of BiH. In that case an alien would be allowed to return to BiH.

1. Mass influx and temporary protection

In cases of mass influx or imminent mass influx of aliens in need of international protection, the BiH Council of Ministers may issue, in consultation with UNHCR and other relevant international organizations in BiH, special provisions for their protection.

The BiH Council of Ministers would, in consultation with UNHCR and other relevant international organizations in BiH, cancel special provisions securing these persons with temporary protection after cessation of the reasons justifying their presence. The aforementioned would not influence the right of aliens granted protection through these regulations to seek international protection. An assessment of the situation of the aliens arriving in mass influx to BiH would be made by the Council of Ministers, which takes into account economic and other circumstances of BiH, as well as factors like public order, peace and the national security of BiH, and decides on a number of persons provided with temporary protection and reasons for the potential increase in numbers until the initial decision has been changed.

Temporary protection would be granted to aliens arriving to BiH in mass influx from the country in which their human rights have been violated owing to the war or a similar state, general violence or internal conflicts and when their country of origin is not in a position to protect them.

Aliens who are citizens of the country they fled from or are stateless, would be granted temporary protection under conditions prescribed by Article 127 para. 2 of the LMSAA.

Article 129 of the LMSAA defines the reasons for denying temporary protection to an alien.

The same law prescribes the reasons for cessation of temporary protection, the rights and obligations of persons on temporary protection, as well as the obligation of the MoS to issue by-laws to further regulate matters concerning temporary protection of aliens in BiH.

It is necessary to point out that BiH had already recognized this type of international protection. The first regulation adopted for this type of international protection provided on BiH territories was the Instruction on Reception of Refugees from SR Yugoslavia originating from Kosovo and Metohija, issued by the Council of Ministers on 24th September 1998, the implementation of which was the responsibility of the MoCA and Communications. In the period from September 1998 till 30th September 2007 (when the temporary admission in BiH ceased), the BiH Council of Ministers had issued total of 9 decisions on temporary admission while the other competent authorities had adopted 5 Instructions to regulate registration of persons with granted temporary admission in BiH and their rights.

During the period of validity of their status in BiH, these persons lawfully resided on BiH territories and at the same time enjoyed rights such as: primary education, health care, accommodation, food, family unity, protection of children (especially those unaccompanied), and right to access to asylum procedure in which their individual cases were considered. In this period, all of the admitted persons were registered by competent authorities and issued cards for persons with temporary admission status in BiH. Due to lack of capacity of state institutions, until 1st July 2004, UNHCR Mission in BiH carried out refugee status determinations based upon individual asylum claims. By issuance of the Law on Immigration and Asylum, and subsequently the LMSAA the possibility was created to implement this type of international protection for persons seeking it. In accordance with legal solutions, the BiH Council of Ministers was still responsible for issuance of legislation to regulate issues regarding mass influx of refugees. To all persons with approved temporary admission on BiH territories before entry into force of the LMSAA, this status was also acknowledged in the sense of this law.

3. Temporary residence on humanitarian grounds

Article 188 of the LMSAA treats matters of protection of aliens in cases of denied requests for international protection.

An applicant for international protection who has exhausted all available legal remedies and whose request has been rejected with a final or a binding decision, but with respect to whom it has been determined that he/she nevertheless cannot be removed from the BiH territories for the reasons prescribed in Article 91 of the Law (the «*non-refoulement*» principle), would be referred to the competence of the Service. In such cases, the Service issues an alien a temporary residence permit reasoned on humanitarian grounds in the sense of Article 54, para. 1, item d) of the Law.

The Service would, in cooperation with the Ministry, other Ministries and Council of Ministers, undertake all necessary actions provided by the Law, other BiH regulations and the international law for the purpose of resolving the final status of aliens granted temporary residence on humanitarian grounds.

In exceptional cases the Service would impose a measure of supervision over an alien for whom it has been established presents a threat to public order, peace or national security of BiH, in accordance with provisions of this Law.

COOPERATION WITH UNHCR

In accordance with provisions of the Article 138 of the LMSAA, persons seeking international protection would, at any phase of the procedure, be secured with the possibility to communicate with UNHCR or other refugee organisations that may be working on behalf of UNHCR, and vice versa. Besides the abovementioned, it is also regulated that a representative of UNHCR would be informed of the course of the procedure, of the decisions of the competent authorities and would be given the opportunity to submit his/her observations. The same article reiterates the obligation of competent authorities to co-operate with UNHCR in accordance with Article 35 of the 1951 Convention Relating to the Status of Refugees.

Legal provisions also define the co-operation between BiH Council of Ministers and UNHCR for the cases of mass influx or imminent mass influx of aliens in need of international protection. Therefore, the Law prescribes that in cases of mass influx or imminent mass influx of aliens in need of international protection, the BiH Council of Ministers may, in consultation with UNHCR and other relevant international organizations in BiH, issue special regulations for their protection.

Provisions of a by-law to be issued in accordance with the Law would further define the principle of participation of UNHCR in the procedure upon requests of aliens seeking international protection in BiH.

RECEPTION AND ACCOMMODATION CENTRE FOR PERSONS SEEKING INTERNATIONAL PROTECTION

1. Reception and accommodation of persons seeking international protection

Persons seeking international protection in BiH, from the moment of submitting their application till the moment when the final decision is made upon the claim becomes either final or binding, must be secured with adequate conditions for accommodation, food which satisfies international nutrition standards, health care, education and access to legal assistance. Therefore, by provisions of the LMSAA and the by-law on Asylum in BiH it is prescribed that MoS would secure adequate conditions for reception of aliens seeking international protection. These tasks are performed by the MoS Asylum Sector, whose organisational structure consists of three departments: Department for asylum procedure, Department for support and Department for reception and program.

If an applicant needs accommodation, the MoS Asylum Sector (which received the request) decides on his/her accommodation in the centre, depending on its availability, and notifies its decision the management of the Centre. An applicant has the obligation to report on his/her arrival in the centre to an authorised official from the Asylum Centre with regard to his/her registration and accommodation.

If the applicant admitted and accommodated in the centre intends to leave the asylum centre, he/she is obliged to prove either that he/she has available means for self-support or a guarantee of a BiH citizen or an alien with temporary residence permit in BiH by which that person is obliged to support that applicant and inform an authorised official from the centre on the new address where he/she would temporarily reside.

1.1. Resolutions in the LMSAA with regard to reception and accommodation of persons seeking international protection

Article 98 of the LMSAA defines the possibility of the establishment of specialized facilities for the reception of aliens, covering centres for accommodation of persons submitting requests for international protection. The provisions of this Law define that the MoS provides monitoring over the work of such specialised facility for the reception of aliens. The Law prescribes that the facilities specialised for the reception of aliens would fulfil conditions stated in the BiH Constitution and international standards on the treatment of beneficiaries of the specialised facilities.

Therefore, the purposes of implementation of this law are established: immigration centers, centers for accommodation of applicants for international protection or persons whose temporary protection has been granted, centers for the accommodation of victims of the trafficking of human beings and other institutions specialized for the reception of aliens.

Besides those listed, the Law also regulates that, upon the Ministry's proposal, the Council of Ministers would, through by-laws, determine the method of administration, financial requirements, operational standards, the method of providing special conditions for beneficiaries of the centre, for accommodation of applicants, for international protection and persons granted temporary protection, accommodation centres for victims of THB, other institutions specialized for reception of aliens as well as other issues relevant for the operation of certain types of specialized institutions.

BiH does not have a specialized facility for the accommodation of persons seeking international protection. Their accommodation Refugee Reception Centres (RRC) were used and established for reception of persons arriving to BiH from the region of Kosovo at the beginning of 1998 and enjoying the status of temporary admission to BiH. There are currently 2 (two) Refugee Reception Centres, one in Rakovica and the other in Salakovac.

The RC in Rakovica is managed by the MoS and financed from the budget of the MoS and UNHCR, while the RC Salakovac is managed by the BiH Ministry for Human Rights and Refugees. The RC Salakovac accommodates solely recognised refugees in BiH, while the RC Rakovica accommodates persons seeking international protection in BiH.

The second half of 2007 was marked with an increased number of applicants for international protection in BiH (especially in the period from June to October) due to the fact that, after 30th September 2007, temporary admission for persons from Serbia and Montenegro with last place of residence in Kosovo in BiH was not extended. Upon expiry of the temporary admission status, the Asylum Sector soon faced a problem which resulted in a lack of accommodation capacities for persons seeking inter-

national protection in BiH. For a better illustration, in 2007 the Asylum Sector had received 149 claims for 572 persons which, when compared with the previous period (from 1st July, 2004 until 31st December, 2006 and 180 applications for 310 persons) represents a considerable increase of applicants for international protection in BiH.

At the same time, the MoS is responsible for securing other asylum seekers' needs (such as food which satisfies international nutrition standards, primary education, social welfare, clothes, shoes, hygienic items, etc.), through means planned in the budget of BiH institutions and partially by UNHCR funds from programmes for special purposes.

The MoS had initiated activities devoted to finding permanent solutions for accommodation of applicants for international protection in BiH. For that purpose a location has been secured in Trnovo municipality where existing buildings (3 buildings for accommodation and a buffet) need to be adjusted in the forthcoming period for purposes and needs of persons seeking international protection in BiH. At the same time, it is necessary to construct additional accommodation facilities which would respond to given purposes, needs and tasks. Activities on resolving this issue were initiated by the end of 2007 and would, in accordance with the MoS activity plan, remain in the forthcoming period.

1.2. Solutions from the LMSAA on acquiring rights for recognized refugees

The Law on Ministries and Other Bodies of Administration of BiH (Official Gazette BiH No. 05/03, 42/03, 26/04, 42/04 and 45/06) defines that it is the responsibility of MoS to create, maintain and implement the immigration and asylum policy in BiH, while the BiH Ministry for Human Rights and Refugees is responsible for establishing the procedures for securing the means of acquiring rights and obligations to aliens granted one of the rights to international protection in BiH (recognised refugees or persons with subsidiary protection).

The MoS performs the procedure upon the requests of aliens for international protection, while the Ministry for Human Rights and Refugees is responsible for the matters and rights of recognised refugees and persons with subsidiary protection in BiH.

In accordance with Article 120, para. 5 and 6 which are connected to Article 137 of the LMSAA, it is regulated that this field would be further regulated by by-laws to issue the MoS or the BiH Ministry for Human Rights and Refugees depending on the scope of competence regulated by provisions of the same Law.

RIGHTS AND OBLIGATIONS OF PERSONS SEEKING INTERNATIONAL PROTECTION

The Asylum Sector would provide shelter in the Reception Centre to those persons seeking international protection without any secured accommodation.

The obligations of the applicants for international protection in BiH are stated in Article 9 of the LMSAA, which states that aliens in BiH must respect public order - obey rules, regulations and decisions issued by authorities of BiH. At the same time, by provision of Article 33 of the by-law on Asylum in BiH, it is regulated that applicants have the obligation to respect constitutional order, laws and decisions issued by competent authorities, to actively cooperate with relevant authorities throughout the entire procedure upon their claim, to obey the house rules of the reception centre, to report on a changed address if the persons concerned reside outside of asylum centre in the manner prescribed by the provisions of the Law, as well as to inform the Asylum Sector of every subsequent change of address at which the person concerned could be reached.

RIGHTS OF RECOGNIZED REFUGEES, PERSONS WITH SUBSIDIARY PROTECTION OR TEMPORARY PROTECTION STATUS

Competent authorities in BiH have the obligation to secure for recognised refugees, persons with a status of subsidiary protection and persons with temporary protection the access to and enjoy rights granted by the international instruments and provisions of the LMSAA and the by-law on Asylum in BiH.

Therefore, if the Asylum Sector, after a completed procedure upon international protection, grants to an alien refugee status or subsidiary protection status in BiH, the Sector has the obligation to inform the Ministry for Human Rights and Refugees for the purpose of enabling his/her access to rights guaranteed by provisions of the LMSAA and the by-law on Asylum in BiH. As the body responsible for enabling access to the rights of recognized refugees and persons with subsidiary protection in BiH, the Ministry for Human Rights and Refugees has the obligation to undertake all activities to provide these categories with access to all guaranteed rights.

An alien with granted temporary protection is obliged to register his/her habitual place of residence and change of his/her home address to the competent authority in accordance with provisions of this Law.

The rights and obligations of persons granted refugee or subsidiary protection status in BiH is defined by articles 120 and 121 of the LMSAA. Accordingly, any such person is entitled to the rights defined by Articles 3 – 34 of the 1951 Convention Relating to the Status of Refugees. The alien holding refugee status is entitled to: residence in BiH territory, work, education, health care and social welfare to the same extent granted to BiH nationals.

The same Article also states that these provisions would not influence provisions of national legislation nor any other international documents that are in force, or may enter into force, in case that they accord a more favourable treatment to aliens with recognised refugee status.

Besides the abovementioned, it is envisaged that an alien holding a refugee status would be entitled to reside in BiH territory and for that purpose he/she would be issued a residence permit for refugees. It is also regulated that the refugee status would in principle be extended to the spouse and minor children as well as other close family members if they are living in the same household in BiH territory.

Provisions of Article 35 of the by-law envisage that, upon issuance of a valid and binding decision on their status, persons with recognised refugee status are issued identification documents – refugee cards. At the same time, it is prescribed by provisions of Article 82, para. 3 of the Law and the by-law, being harmonized with the 1951 Convention Relating to the Status of Refugees, that the recognized refugees have the right to a travel document. Provisions of Article 36 of the by-law envisage that the structure and content of the application form as well as the form of refugee travel document would be defined by a by-law. Such a by-law has not yet been issued.

The alien holding a subsidiary protection status would be entitled to reside in BiH territory for one year. At request of the alien, his/her residence would be extended for as long as conditions that have constituted ground for subsidiary protection exist, except if otherwise required for reasons of the public order and peace and national security of BiH. In the period of international protection an alien would be entitled to work and would have access to education, health care and social welfare under the same conditions as BiH citizens.

TEMPORARY STAY ON HUMANITARIAN GROUNDS

The protection of foreign nationals whose request for international protection was rejected was regulated by art. 118 of the LMSAA.

The international protection applicant who has utilized all legal remedies, whereas a final or binding negative decision was made, but who can not be yet removed from BiH due to a non-refoulement shall be transferred to the competence of the Service for Foreigners Affairs. The Service will grant a temporary stay permit on humanitarian grounds, as per art. 54, para 1, item d) of this law.

The Service shall in cooperation with the Ministry, other ministries and the Council of Ministries undertake all necessary actions in accordance with domestic legislation and international law to deal with a final status of a foreign national who was granted a temporary stay on humanitarian reasons. Exceptionally, the foreign national who represents a threat to national security, public order or peace shall be placed under detention by the Service.

NON-REFOULEMENT PRINCIPLE

The LMSAA defines in Article 91 the principle of forbidden return and thus thoroughly accepts the “*non-refoulement*” principle, prescribing that aliens would not be expelled or returned in any manner whatsoever to the frontier of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, regardless of whether or not they have formally been granted international protection. The prohibition of return or expulsion also applies to persons for whom there exists a reasonable suspicion for believing that they would be in danger of being subjected to torture or other inhuman or degrading treatment or punishment. Aliens would not be expelled or returned to a country where they are not protected from being sent to such a territory. The Article 3 of the by-law on Asylum in BiH defines the non-refoulement principle in the same way.

If an alien expresses reasons referred to in Article 91 of this Law and article 3 of the by-law, the authority that has taken the statement refers the alien to the competent organizational unit of the Service, which is, in accordance with the Article 107 para. 1 and 2, for the purpose of expressing his/her intention for submitting a request for initiation of procedure on evaluating grounds of his/her statements and existence of the conditions for granting international protection in BiH.

As stipulated by Article 116 para 1 items c), d), and e) of the Law, an alien whose application for international protection has been denied by a final or binding decision, but who does not leave the country within the settled deadline, would be expelled from BiH in accordance with Article 88 para. 1 item d) of the same Law.

DOCUMENTS

Provisions of the by-law on Asylum in BiH prescribe the types and forms of identification documents issued to persons seeking asylum, granted asylum or granted some other type of international protection in BiH, for the purposes of settling their right to residence and freedom of movement. The by-law prescribes the types and purposes of personal documents issued to these categories of aliens in the procedure during their residence in BiH.

An alien holding a refugee status or a status of subsidiary protection in BiH would be issued identification documents. An alien with refugee status has the right to reside in BiH for the period of validity of his/her international protection and is granted approval of residence for refugees.

An alien holding status of subsidiary protection has the right to reside in BiH for one year. Approval of residence is, upon alien's request, extended for the period of validity of the conditions for which his/her status was granted, unless differently required for reasons concerning public order, peace or the security of BiH.

Upon receiving a request for international protection and completed registration of the applicant and his/her family members, the Asylum Sector issues each with a card for persons seeking international protection (asylum) in BiH.

In accordance with the provisions of the LMSAA and the by-law on Asylum in BiH, an alien with recognized refugee status in BiH is issued a personal identification document called a refugee card.

An alien with refugee status in BiH who does not possess a valid travel document or is not in the position of acquiring a travel document from the country of his/her habitual place of residence, has the right to the issuance, upon his request, of a travel document for travelling abroad or returning to BiH territories, unless there exist compelling reasons of national security and public order.

The alien with a status of subsidiary protection who does not possess or is unable to obtain a travel document from the country of his/her habitual residence may be issued, upon his request, a travel paper for the purpose of travelling abroad for serious humanitarian reasons for which he/she has to be present in that particular country outside of BiH, unless there exist compelling reasons of concerning the national security and public order or security of BiH. In that case, an alien would be permitted to return to BiH.

A travel document for an alien holding a refugee status would be issued by the Ministry valid for two years.

OFFICIAL RECORDS AND CENTRAL DATABASE

The provisions of the LMSAA state the obligation of keeping official registries that comply with principles of data protection applied in BiH. The Law states that the official registry is carried out by an authority which is, by this law, competent for the procedures in this regard. At the same time it is determined that, besides the official records, the competent authorities would also keep other registries for more efficient work or processing, unless they include personal data. Besides the obligation to make official registries regulated by provisions of the LMSAA, Article 28, para. 1, item e) the Law on Central Registry and Data Exchange also indicates the obligation on setting up a central database on aliens in BiH.

The Central Database on Aliens is established by provisions of Articles 144 and 145 of the LMSAA which list the type of official registries that this database should possess. Thus it was regulated to keep official records on aliens with permanent or temporary residence; travel documents for aliens issued in accordance with this Law; aliens who have been refused entry; aliens whose residence has been cancelled; aliens whose expulsion has been cancelled; aliens for whom the measure of expulsion has been pronounced; measures executed upon aliens; aliens forcibly removed from the BiH territory; travel documents of aliens that are reported missing; issued personal documents; residence registration, residence de-registration and change of address; applicants for international protection; aliens granted refugee status or the subsidiary protection and on aliens granted temporary protection; aliens pronounced with a measure of surveillance and/or who have been placed under surveillance; aliens appealing decisions of the Service and on aliens initiating administrative dispute; second instance decisions and final/binding decisions; visas issued to aliens; on aliens whose visa validity was shortened; aliens who-

se visas were annulled; legal and physical persons sending invitation letters for entry of aliens in BiH; international transporters who violated provisions of this Law.

The Law also defines that a central database on aliens would be established within the Ministry for the purpose of recording and monitoring the entry, stay and exit of aliens in BiH and of persons who have sought or have been granted international protection in BiH or who stay in BiH on the grounds of granted temporary protection.

The Central Database on Aliens contains all the official records referred to in Article 144 of this Law. After each change, the authority competent for keeping the official evidence would refer the data from their registry to the Central data base immediately or at the latest sometime during that day.

The Central Database on Aliens also contains records on identity, numbers and types of travel documents, and data on purposes and reasons of entry, stay and exit of aliens from BiH kept by the BP.

The Law defines that the Service and the organizational units of the Ministry, the MFA, the Intelligence and Security Agency of BiH and Police would have access to the central database, if it is necessary for performing tasks within their competence. Exceptionally, at a justified request, other authorities in BiH may have access to the central database, if it is necessary for performing tasks within their competence.

In accordance with the provisions of the Law on the Protection of Personal Data and the Law on the Central Register and Data Exchange, at a justified request, the competent authority in possession of the central database on aliens may allow access to the database to some other authority, if it is necessary for executing duties under the competence of that particular authority.

Provisions and principles of the Law on the Protection of Personal Data and the Law on the Central Registry and Data Exchange would apply to processing, accessing and using data from this Law.

According to provisions of Article 146 of the same Law it is prescribed that the MoS would issue a by-law to further define the rules on keeping, using and accessing registries of the central database on aliens and the respective information recorded there.

1. Existing databases in asylum sector

The obligation of the Asylum Sector functioning within MoS is to keep a central database on international protection, as prescribed by the LMSAA and the Section VIII of the by-law on Asylum in BiH, Articles 41 through 45.

In the area of international protection it is defined as obligatory to keep official registries on persons seeking international protection in BiH, persons with recognised refugee or subsidiary status, and those with temporary protection in BiH. It is also necessary to keep a database on identification and travel documents issued to aliens.

The Asylum Sector keeps the following databases:

- on persons seeking international protection in BiH,
- on recognized refugees in BiH,
- on persons granted subsidiary protection in BiH,
- on persons who enjoyed temporary admission status in BiH,
- on IDs issued to asylum seekers and recognized refugees in BiH.

1.1. Protection of data

Protection of personal data primarily concerns personal data containing information on a person whose identity is or can be determined. A person whose identity can be determined is a person that could be identified indirectly or directly, based upon his/her unique registration number, or one or several characteristics for physical, physiological, mental, economic, cultural or social identity.

Special categories of data are to be treated as strictly confidential and they cover all personal data on: race, citizenship, national or ethnic background, political opinion or membership to Unions, religion or other belief, health condition, sexual orientation or criminal offences. Data, and particularly its certain categories, are being protected from unauthorised access, altering, damage or deletion.

In accordance with provisions of Article 115 of the LMSAA, it is prescribed that public would be excluded in the procedures initiated at requests for international protection and all data obtained in the course of the procedure would be considered confidential.

Provisions of the by-law on Asylum define that all data on persons seeking international protection gathered by the competent authorities during the asylum procedure are considered confidential. The processing and the access to the data collected in the asylum procedure are performed in accordance with provisions of the Law on Protection of Personal Data and the by-law. All the databases to contain information on persons seeking international protection, subsidiary protection and those on temporary protection should be detached from the central database on aliens, but they must be technically compatible.

IV. INTERNATIONAL OBLIGATIONS

BiH has, by acceptance of a number of international documents, expressed its readiness and devotion to regulate the area of international protection in a way that would entirely correspond to standards prescribed by international laws. With regard to this area, BiH is fully aware of the fact that only a comprehensive and systematic set up of the international protection procedure may bring the best results in providing assistance to persons seeking this type of international protection. At the same time, such approach would ease inclusion of BiH into EU mainstreams concerning this field.

Consequently, BiH actively follows regulations (Directives, Regulations, etc.) brought by the Council of Europe on items that were not covered by the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and strives to include them into domestic legislation and implement them as far as possible. Regular and permanent following of these mainstreams would, as a result, enable BiH to make more successful inclusion into international protection system, and, simultaneously, enable a vigorous combating against the misuse of the international protection system in the country and on a wider scale. Therefore, it is only an active participation of BiH in EU mainstreams, and direct implementation of EU *Acquis* on international protection that would be a guarantee for successful operation of BiH on this field.

Review on relevant Council of Europe Directives that are binding upon BiH:

- Council Directive 2001/55/EC of 20th July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.
- Council Directive 2003/9/EC of 27th January 2003 laying down minimum standards for the reception of asylum seekers.
- Council Directive 2003/86/EC of 22nd September 2003 on the right to family reunification.
- Council Directive 2004/83/EC of 29th April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
- Council Directive 2005/85/EC of 1st December 2005 on minimum standards on procedures in Member States for granting and retracting refugee status.
- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.
- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.
- Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No. 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

V. STATISTICAL DATA

Year	Number of claims	No. of persons seeking international protection
2004	46	97
2005	97	145
2006	37	68
2007	149	572

The table above gives annual review on numbers of submitted claims for international protection in BiH accompanied with the number of applicants (from July 1st, 2004 until December 31st, 2007).

COUNTRIES OF ORIGIN OF PERSONS SEEKING INTERNATIONAL PROTECTION	NUMBER OF APPLICANTS
Kosovo	807
Macedonia	36
Croatia	8
Palestine	7
Ukraine	3
Sri Lanka	4
Bangladesh	11
China	10
Pakistan	8
Iraq	8
Romania	5
Moldavia	8

This table gives the review on countries of origin of persons seeking international protection in BiH. Besides the countries listed in the table, we had applicants from Syria, Jordan, Albania, Iran, Germany, Poland, Brazil, Slovenia and other countries.

VI. AIMS AND GOALS

1. GOALS TO BE ACCOMPLISHED

- a) To develop a high quality system for international protection on national level, containing international refugee law and EU standards which would enable integration of BiH into European Union, when the preconditions are met.
- b) To draft a by-law on international protection.
- c) To establish a centre for reception and accommodation of persons seeking international protection – the Asylum Centre.
- d) To actively participate in development of international protection system on regional level.
- e) To integrate BiH system for international protection into EU system for international protection.
- f) To maintain constant training of the staff on international protection.

Goal 1: To develop a high quality system for international protection on national level, containing international refugee law and EU standards which would enable integration of BiH into European Union, when the preconditions are met.

By implementation of the aims and goals stated in the Strategy on Immigration and Asylum in BiH it is expected to thoroughly accomplish implementation of: “The development of a of high quality system for international protection on national level containing international refugee law and EU standards that would enable integration of BiH into the European Union”. Complete implementation of this Strategy presupposes implementation of all activities to be further defined in the Action Plan for Immigration and Asylum consisting of activity plans, implementations and timeframes. Those should be: well harmonised, well prepared, and subsequently professionally implemented by all of the implementations in direct cooperation with all respective partners and organisational units existing within the MoS, that are responsible for administrative procedure upon an application for international protection in BiH.

In order to accomplished defined goals it is necessary to cumulatively implement following preconditions:

- To implement and/or amend the existing legislation

In accordance with the provisions of the LMSAA, the competent authorities are obliged to, within clearly determined deadlines, issue specific by-laws to support international and EU standards on international protection.

- To strengthen the staff and technical capacity of the MoS Asylum Sector

As previously said, the Asylum Sector of the MoS considers requests of aliens for international protection in BiH and issues final decisions in the administrative procedure.

In order to have this unit entirely ready for an efficient dealing with the claims for international protection and issuance of the decisions, it is necessary to strengthen staffing and technical capacity, in a manner regulated by the Rulebook on Internal Organisation of MoS.

- To secure high quality system for identification of persons seeking international protection

Securing a good quality system for identification of persons seeking international protection is very complex due to the fact that migration flows are constantly changing, and the in area concerning international protection varying forms are being encountered. Therefore, within the abovementioned priority, it is necessary to secure a good quality system for information on countries of origin of persons seeking international protection and thus accomplish easier and prompt identification of potential applicants for this type of protection.

- Cooperation with regard to international protection

With regard to international protection, the BiH Court is the authority competent for procedures in disputes initiated against Asylum Sector’s decisions reached upon requests for international protection in BiH.

It is necessary to focus the attention on education of the BiH Court staff working with complaints of aliens not granted international protection in BiH, primarily for the reason that new solutions contained in the LMSAA, being *lex specialis* law for this field, determines deadlines different from those that were previously valid.

Goal 2: To draft a by-law on international protection

The new LMSAA in its Article 137 imposes an obligation upon the MoS to issue a by-law to further define matters covered in Chapter VII of the Law – the international and temporary protection (the asylum), after received opinions of the Ministry for Human Rights and Refugees and the Ministry for Civil Affairs. The deadline for issuance of this by-law is prescribed by Article 161 of the same law and determines for it to be 6 months from the day of entry into force of this Law.

It is necessary to undertake preparation activities for drafting such a by-law by nominating a work group to prepare its text within prescribed deadlines. The drafting of the text needs to include all the institutions that are in any way connected to field of international protection, with appropriate inclusion of international organisations.

Goal 3: To establish a centre for reception and accommodation of the applicants – the Asylum Centre.

It is necessary to set up a centre for accommodation and reception of persons in need for international protection that comply with the standards needed for sheltering persons seeking international protection (such as applicants with special needs, mothers with children, unaccompanied minors, etc.).

Therefore, it is necessary to:

- establish a centre with secure, adequate conditions for reception and accommodation of aliens seeking this type of protection in BiH,
- recruit sufficient number of staff of adequate professions and additionally train them on treatment of beneficiaries, in accordance with EU standards.
- secure necessary financial means for unhindered functioning of the centres.

The planning and implementation of the functional centre starting with preparation of project documentation to the equipping and opening of the centre in all its sections will be underlined with full attention to EU and international standards on this field.

Goal 4: Active participation in development of the international protection system on regional level

This goal presupposes: establishment of cooperation with all relevant authorities of the regional countries and setup of a common database on persons seeking international protection (a mini EURODAC), setup of a database on country of origin information of persons seeking international protection, exchange of information, experiences, best practices, analysis of changes in field of international protection, as well as designing policies on regional level.

Goal 5: To maintain constant training of the staff on international protection

It is necessary to have constant education on all the subjects included in the field of international protection, in cooperation with UNHCR, through organisation of round tables, workshops, seminars, etc. The education should cover the staff engaged in

- the MoS Asylum Sector,
- field offices of the SFA and BP functioning within the MoS,
- centres for reception and accommodation of the persons seeking international protection,
- BiH Court, and
- NGOs

PART B.

External Evaluation – Migration Management Assessment

In 2008, BiH commenced work on creating a migration strategy and action plan. A working group has been created with representatives of most of the relevant migration bodies and a current migration situation analysis commenced. The purpose of this assessment is to support the work of BiH in this regard: to review the overall migration situation in BiH and to provide recommendations for drafting of the Strategy and Action Plan on Migration and Asylum.

Chapter I. Research – Overview of Migration Trends in BiH, past and present

1. Introduction

Geopolitical Situation of BiH

The signing of the 'General Framework Agreement for Peace in Bosnia and Herzegovina' ('Dayton Agreement') on 14th December 1995, ended the war in BiH and created a new state structure under which two separate entities were established: the Federation of Bosnia and Herzegovina (FBiH) and the Republic of Srpska (RS). Later, in 1999, the District of Brčko was created by decision made by special arbitration tribunal.

The Dayton Agreement established BiH international boundaries and created a new concept of division of power between the state and its entities. The Dayton Agreement is comprised of 11 Annexes that defined the following areas: military aspects of the peace settlement, regional stabilisation, inter-entity boundary line, elections, constitution, arbitration, human rights, refugees and displaced persons, preservation of national monuments, public corporations, civilian implementation and police task force. At first, the national-state government was given responsibility for conducting foreign, economic, and fiscal policy. Other competencies were assigned to entities.

Each of the entities has its own structure, with the FBiH divided in 10 Cantons and then into 79 municipalities while the RS is sub-divided into 62 municipalities. Each entity and canton in the FBiH has a full set of government functions while the State government (the Council of Ministers), assumes responsibility for foreign affairs, security (including migration and asylum affairs), defence and fiscal policy

It is often stated that the political and governmental systems of BiH are extremely complicated and convoluted and a significant proportion of BiH revenue (both state and entity) is devoted to maintaining the governmental structures in place. Analysis of the current structures – executive, legislative and judicial - shows significant theoretical possibilities to rationalize them into more streamlined and efficient structures; however attempts to do so in practice have so far failed given the specific orientations and constitution of the country.

BiH has a surface area of 51,209 square kilometres and is geographically placed in the western part of south-eastern Europe commonly known as the Balkans, on the crossroads between East and West. It has three immediate neighbours – the Republic of Croatia, the Republic of Montenegro and the Republic of Serbia. None of these countries are European Union Member States; however the Republic of Croatia holds a candidate status.

BiH has a population of between 3,842,762 (June 2006 est.) and 4,590,310 (July 2008 est.). According to the last census from 1991, BiH had 4,377,033 inhabitants in 1,207,098 families. In this pre-war period, the structure of population was made of three constitutive nationalities: 760,852 Croats (17.4%), 1,366,104 Serbs (31.2%), 1,902,956 Bosniacs - former pre-war Muslims (43.5%) and 347,121 others (7.1%).¹¹

During the four years of war almost a half of the pre-war population has been moved from their place of residence.

Various figures exist for the BiH border length (from 1,459km to 1,665km). A possible reason for these disparities is that to date delimitation of the total border has not been completed. It is estimated that the internal area enclosed is 51.129 km².

BiH has 89 official border crossing points (BCPs) including 4 international airports. 55 of these are designated as international crossing points. BiH possesses both green and blue borders (the latter along elements of the river Sava, the river Una and parts of the rivers Glina and Korana) in the length

11 Federation of Bosnia and Herzegovina, Federal Office of Statistics, www.fzs.ba

of 625 km. Predominantly land-locked, Bosnia and Herzegovina has direct sea access at only one small (around 20km) area in the Herzegovina-Neretva Canton of the Federation of BiH. In regard with BiH diplomatic network, BiH possesses 51 Diplomatic and Consular Missions abroad.

Official BiH statistics record the GDP per capita for 2007 (most recent figures) as 5,633¹² KM with a 489 730 registered unemployed persons as per June 2008¹³. It must be noted that official statistics for BiH are often disputed, with differing external bodies stating varying data. The presence of a significant grey economy in BiH additionally causes variances between the statistical and actual situations. Though improvement in the economy has been routinely seen over recent years with progress in the banking and other private sector businesses and foreign investment, BiH is still amongst the poorest countries in the region.

An influencing factor on the economy of BiH continues to be the impact of international assistance programmes in the country. Though predominantly the result of direct assistance provided (the US estimate that they alone have been responsible for over US\$ 1 billion¹⁴ of foreign aid since the signing of Dayton), the economic impact of international staff on the ground as well as employment created within the international organisations should be factored in. As such assistance progressively lessens and relevant impacts upon the economy must be expected.

Legislative and executive organization of the BiH

1.2.1. State level - BiH

The *Presidency of BiH* consists of three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation BiH, and one Serb directly elected from the territory of the RS. The term of the elected Members of the Presidency is four years¹⁵. The method of selecting the Chair of the Presidency is by rotation every eight (8) months.

The main responsibilities of the Presidency of BiH are:

- Conducting the foreign policy of BiH,
- Appointing ambassadors and other international representatives of BiH,
- Representing BiH in international and European organizations and institutions and seeking membership in such organizations and institutions of which BiH is not a member.
- Proposing of the annual state Budget to the BiH Parliament Assembly in line with recommendation of the BiH Council of Ministers.

The Presidency nominates the Chair of the state *Council of Ministers*, whose appointment has to be approved by the House of Representatives. The Chair nominates the ministers whose appointment has to be approved by the House of Representatives.

The Council of Ministers is composed of the following ministries¹⁶:

- Ministry of Foreign Affairs,
- Ministry of Security,
- Ministry of Defense,
- Ministry of Justice,
- Ministry of Finances and Treasury,
- Ministry of Transport and Communications,
- Ministry Civil Affairs,
- Ministry of Foreign Trade and Economic Relations,
- Ministry of Human Rights and Refugees

12 BiH Agency for Statistics

13 BiH Agency for Statistics

14 United States Agency for International Development (www.usaid.ba)

15 The General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP), Annex 4 – Constitution of BiH – Article V: Presidency, www.ohr.int, www.oscebih.org

16 The Law on Ministries and Other Bodies of Administration of BiH, BiH Official Gazette 5/03

The three of above-listed ministries including the Ministry of Security, Ministry of Foreign Affairs and the Ministry of Human Rights and Refugees are responsible for immigration, visa and asylum affairs.

The Parliamentary Assembly of BiH is composed of an upper chamber, the House of Peoples, and a lower chamber, the House of Representatives.

The House of Peoples is constituted of 15 Delegates, two-thirds from the Federation (including five Croats and five Bosnians) and one-third from the RS.¹⁷

The House of Representatives is constituted of 42 Members, two-thirds elected from the territory of the Federation, one-third from the territory of the RS.

1.2.2. Entity Level- RS and Federation BiH

Each entity, with some specificities, has its respective president, parliament and government. In Federation BiH, each of the ten cantons also has its government and parliament.

However, as per the BiH Constitution, art. 3, para 1, line f, policy and regulations of immigration affairs, refugees and asylum are the responsibility of BH state institutions. For this reason a core emphasis will be placed on the state ministries and agencies mentioned above, with references to entity/cantonal institutions when necessary.

1.2.3. Office of the High Representative

The role of the Office of the High Representative (OHR) is additionally an important element in understanding BiH governmental issues. The position of the High Representative was created under the Dayton Agreement. The High Representative is a foreign national, who is also the EU Special Representative (EUSR) in Bosnia and Herzegovina; the latter will take over after the closure of the Office of the High Representative i.e. when the BiH Government has fulfilled the objectives and conditions established by the Peace Implementation Council.

The mandate¹⁸ of the High Representative is to:

- Monitor the implementation of the peace settlement;
- Maintain close contact with the parties to the Agreement, to promote their full compliance with all civilian aspects of the Agreement;
- Co-ordinate the activities of the civilian organisations and agencies in Bosnia and Herzegovina to ensure the efficient implementation of the civilian aspects of the peace settlement. The High Representative shall respect their autonomy within their spheres of operation while as necessary giving general guidance to them about the impact of their activities on the implementation of the peace settlement;
- Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation;
- Participate in meetings of donor organisations;
- Report periodically on progress to the United Nations, European Union, United States, Russian Federation and other interested governments, parties and organisations.

Importantly in 1997 the High Representative was additionally granted what are known as the 'Bonn powers'. These give the High Representative the right to remove from office public officials who violate legal commitments and the Dayton Peace Agreement, and to impose laws as he/she sees fit if Bosnia and Herzegovina's legislative bodies fail to do so. Thus the High Representative is de facto the most powerful authority within BiH.

The OHR has continued to provide advice and support to BiH with regard to migration management development throughout its history, actively reinforcing the findings and objectives of the EC.

17 The General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP), Annex 4 – Constitution of BiH – Article IV: Parliamentary Assembly, www.ohr.int, www.oscebih.org

18 The General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP), Annex 10 – Agreement on Civilian Implementation

General migration trends

Migration movement remains a difficult subject to identify with accuracy for BiH. This is the result of several factors, including:

Core data and statistics are firstly not always available and secondly not always reliable. For example although the MFA record details regarding the visas issued, they keep none for those refused. Some data was simply not gathered in previous years either because the relevant agencies did not exist or there was no standard procedure for doing so. Migration agencies regularly only collect data which is directly relevant to their own immediate work and goals. This data is collated by the Ministry of Security for their periodic reports; however no standardised requirements of type, format or detail of data to be included is made of the units. Nor is the data provided subject to further analysis by the Ministry.

Border crossing points (BCPs) vary in their access to and input of data.

The absence of effective after-entry controls in BiH until recently seriously undermined the ability to estimate the actual migration threat to BiH. The threat posed by irregular migration is ultimately determined by the number and activities of foreign nationals who have managed to evade pre-entry and on-entry controls and are present within the state itself. Without meaningful data from after-entry, on-entry statistics are partially ambiguous, identifying the threat to the border itself without necessarily indicating the threat to the state (for example, irregular cross-border movements may indicate routine smuggling etc.; however they do not necessarily indicate an irregular migration threat to the internal order of the state). As a result, previous assessments have been heavily reliant on ambiguous data. The creation of the SFA has improved this issue; however, data provided by them and their level of effectiveness is still not up to standard.

When data is available, it is often no longer in raw form but has been 'analysed' by the responsible agency or body. Unfortunately, effective analysis has not reached necessary standards (and is generally only limited to Border Police and SIPA). This causes unreliability both whilst assessing specific data in isolation but also when comparing it with data from elsewhere or from different periods. Particular credit should however be paid to the Border Police who, year on year, have provided increasingly sophisticated reports which include detailed data and sensible analysis.

A significant number of citizens throughout the region carry dual citizenship leading to the situation where foreign nationals are actually considered BiH nationals at border crossings.

There is significant regular and repeated commuter traffic over many land borders, artificially inflating statistics.

A significant (comparative to the national population) presence in BiH of foreign nationals due to diplomatic or international assistance work also artificially inflate foreigner movement statistics.

The increase in capacities of migration agencies has continued to develop throughout reporting periods. As a result, there is no consistent 'base-line' standard of migration agency functionality in comparison between years. Variations are influenced by the relative effectiveness of migration bodies both individually and as a group (detection rates, geographical coverage, information gathered, legislation enforced etc).

The migration trends identified here are indicative and should not be considered definitive.

The greatest impact on migration trends in recent history for BiH was the conflict from March 1992 to November 1995, with repercussions still being felt throughout the region today.

From a pre-conflict population of around 4.4 million, it is estimated that at the end of the conflict some 1.3 million Bosniak inhabitants were internally displaced and another 1 million had left the country. Of these, around 1 million from both abroad and internally displaced have since then returned to their homes. Returns and sustainable integration for refugees and internally displaced persons still remain one of the key migration issues for BiH. The inheritance of the conflict, in migration terms, is still being felt today.

For the purposes of this report annual comparative statistics mentioned above are used from 2003 to 2008 inclusive. These statistics have been compiled using official BiH data unless otherwise indicated.

2. Historical overview of migration in BiH

BiH is historically an area characterized by significant movement of population both to and from the country at various periods of time. The reasons for migration have varied over time but generally include political (revolutions and wars), religious, ethnic, psychological, economical and demographic circumstances.

2.1. In-migration 1944 – 1989

The strongest impact on migration started after 1946 when industrialisation of the country began. Since then, demographic and economic impacts have been evident. In that period there was an obvious change in the population structure – through the decline of birth rate and mortality. The urban population and education level grew while the number of family members was dropping and the average age of members of a family increased (birth rate dropped from 26.2 in the period of 1950 – 1954 to 10.7 in the period of 1980 – 1983). Such dynamic processes caused strong demographic and social turbulences that inevitably resulted in the higher mobility of the population.¹⁹

Generally, there are two main immigration characteristics identified in BiH over the period of 1944 -1989. The first one was the economic migration of the BiH population within BiH that started immediately after the war and continued until today as a result of socio-economic development which caused migrations from rural to urban and more developed areas. The second one was a result of ‘modern education immigration’, referring to highly educated people who migrated to BiH from other parts of Yugoslavia during the middle of last century and contributed to the country’s economic, social, cultural and educational development.²⁰

2.2 Out-migration 1944 – 1989

Even though the socio-economic development of Republic of BiH was very dynamic, it was still below the development of some other republics within the former Socialist Federal Republic of Yugoslavia. Those differences in levels of development became one of the strongest factors in emigration of BiH citizens to more highly developed republics of Yugoslavia and third countries.

Beside the economics, the dynamic factor, meaning population development, had an influence. The rate of the growth of the population was still, even in 1980, higher than in some other Yugoslav republics. BiH had the youngest population, lower level of urbanisation, lower educational structure of the population and bigger number of family members. All those characteristics, in their own ways, put pressure on migration.

Immediately after World War II economic emigration from Yugoslavia to third countries was very rare. The increase of emigration to third countries toward West European countries started with the economic reform in 1965 which resulted in stagnation in the employment rate and consequently in unemployment. Most of the emigrants from that period came from the sector of agriculture, which consequently resulted in a decrease of both the number of the population employed in agriculture and the relative contribution of the agricultural sector to the country’s economy as compared to other economic sectors.²¹

During the period of 1971 – 1981 BiH, together with Croatia, had the highest number of economic migrants in proportion to its population²². In that period BiH measured parallel growth of unemployment in the country and in size of population in temporary employment abroad. In 1981, in BiH the total number of unemployed and temporary employed abroad amounted to 19.31%, which is 1.06% more than Croatia and Slovenia together²³

2.3. Migration in BiH after the 1990’s war in former Yugoslavia

As a result of the last war more than 2.2 million persons from BiH left their homes out of fear of displacement due to their race, religion, nationality, belonging to specific social group or due to their political

19 Ilijas Bosnjovic, Migracije stanovništva Bosne i Hercegovine od 1940. i ranije do 1981.god., I Migracije u Bosni i Hercegovini, p. 357.

20 Muhamed Filipovic, Migracija i duhovna situacija u Bosni i Hercegovini, I Migracije u Bosni i Hercegovini, p. 475.

21 Joko Sparavalo, Deagrarizacija – osnov socijalne i prostorne pokretljivosti stanovništva Bosne i Hercegovine u period poljsije drugog svjetkog rata, I Migracije u Bosni i Hercegovini, p. 365.

22 Janez Malacic, Selektivnost migracije, I Migracije u Bosni i Hercegovini, p.491.

23 Milena Davidovic, Etnicki aspekti migracija: rezultati jednog istrazivanja, I Migracije u Bosni i Hercegovini, p. 519.

beliefs. The local population, in most cases, used the routes of movement toward parts of BiH territories, which were not directly affected by the conflict, or toward the territory that was under control of trusted military formations. Besides, the significant number of BiH population, by self-initiative or through the support of international organisations, left the boundaries of BiH and moved toward third countries in the hope of finding sanctuary from the war.

With the signing of the Dayton Agreement at the end of 1995, approximately one million people were displaced within BiH, out of which, one-third within the boundaries of their home municipalities, which, as a result of the administrative agreement, became other territorial units.

The first comprehensive and official census of internally displaced persons (IDP) in BiH was conducted at the end of 2000, and identified as 556,214 IDPs (183,355 families²⁴). Even though the significant number of IDPs has, after registration, found a permanent solution through return and repatriation their systematic de-registration has never been conducted.

As of today, 41,013 families in BiH have the status of IDP, which makes a total of 125,072 IDPs, and out of the total 56, 287, or 45%, are internally displaced in the area of the FBiH, 67.673, or 54,1%, are on the area of RS and 0,9% in Brčko District area²⁵. It is also estimated that 1,300,000 BiH citizens of different ethnicities live in 110 countries of the world.

3. Overall migration indicators

3.1. Available data and statistical sources

For many years, no preparation of extensive population statistics and management information has generally been processed in BiH. The last census in BiH was done 17 years ago, in 1991.

The first system for collection of reliable data on foreign nationals in BiH was established in late 2001 following the first introduction of the machine-readable residence permit stickers. However, the system was only related to collection of data on regular migrants that fulfilled conditions for temporary and permanent residence in BiH. Following that, in late 2004, the Ministry of Security in cooperation with the Ministry of Foreign Affairs, Border Police, and Directorate for Implementation of the project CIPS supported by the OHR established the first reliable IT system on the issuance of machine readable visas for foreign citizens. In addition to that, in September 2007 the European Commission delegation in BiH donated a full-fledged system for control of migration in BiH, (Information System for Migration ISM), composed of all relevant modules for following regular migrations, i.e. visas, residence permits, control of border crossings and asylum²⁶

However, although the ISM is functional, until July 2008 it had not been operational in its full capacity. Even though the respective ministries and administrative organizations/users of the system are connected in the common network environment, not all of them made it operational within its own system. The users of the system also detected certain gaps in it, due to which the EC delegation in BiH conducted an evaluation of the system and is planning to support the BiH institutions in its upgrade²⁷.

The Agency for Statistics BiH is not able to provide reliable statistical data on foreign population and migration flows as none of the above-mentioned parties is providing their data to the statistical bureau.

With regard to the BiH population, the data on the overall number of BiH citizens is not available due to the lack of such database and absence of census in the last 17 years. The only database that can give a reliable overview of the adult BiH population is the civil register established through the project of introduction of the new BiH identification documents known as CIPS. However, this civil register cannot provide any data on the migration flows of BiH citizens - by its nature, it will not show any movements for the majority of BiH citizens that are in possession of dual citizenship or residing in third countries on a permanent basis and are in many cases also in possession of BiH identification documents with 'permanent' resident status and an address in BiH.

Furthermore, the agencies for employment in BiH (entity and state level agencies) are not in possession of accurate data on how many BiH citizens are employed in third countries. The agency for em-

24 Ministry of Human Rights and Refugees BiH.

25 Ministry for Human Rights and Refugees BiH: Report on Internally Displaced Persons, January 2008.

26 Interview with representative of OHR, Sarajevo, 5 June 2008

27 Interview with representative of Delegation of the EC, Sarajevo, 30 June 2008

ployment in BiH has very limited information on BiH citizens employed in third countries, mainly in Montenegro and Slovenia. The main reason is that in BiH there is no unique labour market, and furthermore BiH has not ratified bilateral agreements with third countries on the exchange of data on employed BiH citizens abroad, meaning that BiH workers individually look for jobs abroad and do not register within the BiH system once employed²⁸.

During the assessment of migration in BiH, the only sources and types of data concerning migration to and from BiH provided by the national institutions were: Border Police statistics registering both legal and illegal crossings of the border by people and goods; State Agency for Employment data on employment of foreigners in BiH as well as very limited data on BiH citizens employed abroad; Election Commission of BiH records on registered BiH voters abroad; Service for Foreigner Affairs data on the number of permanent, temporary residence and removals.

The statistics available for cross border movement do not show the exact number of passenger movements across the BiH borders, but can provide indicators on international mobility. At the moment BiH has a very poor border crossing infrastructure which does not allow efficient control of flow of either BiH or foreign nationals. It should be borne in mind that out of 55 international border crossings 14 have already established communication links with a central database.

3.2. Cross-border movement

3.2.1. Passenger movement

The number of crossings of the border in 2007 is recorded as 53,741,950. Crossings annually continue to increase (an increase of 18.5% can be seen over the 5 years assessed). This increase is spread across all forms of transportation (private vehicles, freight vehicles, buses, trains, air) with the exception of maritime transport. This increase in passenger flows can be seen across all BiH borders indicating a true increase and no particular anomalies.

The detailed figures show that the numbers entering and exiting the country are broadly similar (27,282,841 on entry with 26,459,109 on exit) and are also broadly evenly divided between foreign nationals and BiH citizens with the exception of air traffic where foreign nationals typically are double the number of BiH nationals. The dominant border is with Croatia which is responsible for 79.01% of all crossings of persons.

For the year 2007 the FBiH registered 209,007 foreign tourists and the RS registered 90,672. These tourists were mainly regional nationals (Serbia, Croatia, Slovenia); however an increasing number were from the EU countries (Italy and Germany predominantly). Figures for foreign tourism have shown a significant growth over previous years; however these figures would only account for around 2% of the overall foreign entries/exits for 2007.

Foreign student numbers remain generally low with few reported incidences from MFA and SFA sources. Foreign investment in BiH is increasing with the main sectors being tourism, power, telecommunications/IT, transportation and construction. Continued increases will naturally see a comparative rise in business travel to and from the country.

Analyses of general passenger flow numbers provisionally indicate that travel is local/regional and land-based (the increase of air traffic was only 0.40% in comparison with the previous year, with maritime traffic not registering at all in 2007 figures). This indication is not unexpected given the fact that BiH borders did not exist until comparatively recently and thus their creation artificially divided families, social groups and businesses. Travel between such groups naturally continues despite the borders and travel, if locally based, is easier on land-based routes as well as being significantly cheaper than air alternatives. A continuation of localised travel across borders is therefore to be expected in future trends.

The register on passenger movement in/out BiH is maintained by the Border Police. From 2005 – 2007 there was an increase of 9,96 % in the passenger border crossing.²⁹

28 Interview in BiH Agency for Statistics. document u Zakon o zaposljavanju radne dozvole

29 Interview with Jovo Djurica, Head of Border Police Operations Department, Ministry of Security, Sarajevo, 30 June 2008. Border police annual report 2007

30 The countries currently considered "high risk" are Armenia, Afghanistan, Algiers, Bangladesh, China, India, Iraq, Iran, Lebanon, Morocco, Pakistan, Sri Lanka, Moldova, Syria, Tunisia, Turkey, Serbia/Kosovo and Zimbabwe.

31 2007 for all border crossings, and for 2004, 2005, 2006 for four international airports.

Border crossing – foreigners from high risk migration countries ³⁰											
2004			2005			2006			2007 ³¹		
entry	exit	diff.	entry	exit	diff.	Entry	Exit	diff.	Entry	exit	diff.
17,601	17,005	596	19,939	19,935	4	23,672	23,455	217	34,203	31,083	3,120

Border crossing by the foreigners from high-risk migration countries

The Border Police now provide data relating to entries and exits of ‘high-risk nationalities’ across all border-crossing points (previously this was only provided for the four airports and therefore of limited use). In 2007 a total of 34,203 such nationals were monitored entering BiH however 3,120 of these failed to exit. This represents 9.12% of the total. Of course a degree of flexibility must be given to these figures to allow for possibilities such as the passenger arriving just prior to the BP reporting period (end of 2007) and leaving at the beginning of the current one (beginning 2008) and therefore not actually being irregular, or that the Border Police failed to record the exit (for the latter, although it is more usual for failures to endorse passports/record movements to occur at points of exit, one would also expect such ‘human error’ cases to be off-set to a certain extent against failures to record entries). These possibilities are not however enough to explain such a large disparity, indicating that BiH is definitely being used as either a transit or destination point for irregular migration.

The main nationalities involved in this disparity are predominantly Serbia/Kosovo (63.17% of those unaccounted for) and Turkey (33.2% of those unaccounted for). To a lesser extent India (2.34% of those unaccounted for), China (2.12% of those unaccounted for) also feature. Other nationals represent small disparities (less than 1%) and are therefore to be deemed inconclusive.

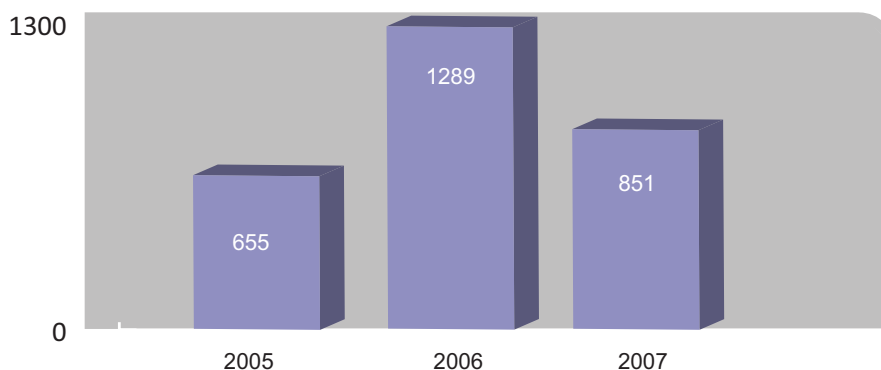
Citizenship	Four Airport Border Crossings			Land Border Crossings		
	2006			2007		
	Entry	exit	difference entry/exit	Entry	Exit	difference entry/exit
Armenia	124	100	24	58	53	5
Afghanistan	5	4	1	4	2	2
Algeria	20	29	-9	20	20	0
Bangladesh	14	12	2	3	2	1
China	856	871	-15	1,013	947	66
India	346	298	48	413	340	73
Iran	237	258	-21	310	290	20
Iraq	44	39	5	95	127	-32
Lebanon	876	867	9	1,090	1,188	-98
Morocco	17	17	0	28	18	10
Pakistan	83	87	-4	166	146	20
Sri Lanka	31	30	1	31	14	20
Moldavia	103	101	2	148	150	-2
Syria	165	175	-10	140	136	4
Tunisia	34	35	-1	53	32	21
Turkey	14,219	13,932	287	17,355	16,319	1,036
Serbia/Kosovo	6,129	6,229	-100	13,269	11,298	1,971
Zimbabwe	2	1	1	4	1	3
Total	23,672	23,455	217	34,203	31,083	3,120

The Border Police statistics on entrance and exits in BiH³²

32 Border police annual report 2007; since 2007, state border crossing of citizens from high migration risk countries on the whole length of the state border, while in previous reporting periods only data from international airports were encompassed

3.2.2. Illegal border crossing

According to the information provided by the Border Police, in period 2005 – 2007 the number of the identified attempts of the illegal border crossing varied.



Number of identified illegal border crossings

On the basis of the same data provided by the Border Police it can be seen that the number of identified attempts of illegal border crossing at entry and exits also varies.

Identified attempts of illegal border crossings at entry and exits of BiH											
2005				2006				2007			
entry		Exit		entry		exit		entry		exit	
451	68.85%	204	31.15%	489	37.94%	800	62.06%	497	58.40%	354	41.60%

Identified attempts of illegal border crossings at entry and exits of BiH

Out of the total number of all attempts of illegal border crossing from BiH it is evident that Croatia is the target destination for illegal border crossing from BiH. Furthermore, it can be concluded based on these statistics that irregular movement appears to be in a westerly direction.

The statistics show that 51.58 % persons were identified during an illegal crossing of a state border with Croatia (north and north-western part), meaning that illegal migrants choose this route to exit BiH.

This fact is also supported with the number of persons readmitted in accordance with the Agreement with the Republic of Croatia.³³

Data on illegal exits from BiH intercepted show a marked trend towards Croatia (79.1% of all illegal exits intercepted occurred on the Croatian border). In addition to this the Border Police has identified that the majority of these occurred specifically on the western and north-western part of the border.

Movement towards Croatia is also a defining characteristic of irregular migration committed by BiH nationals. Analysis of all states readmitting/returning BiH citizens to BiH shows that Croatia is the main state in 2007 (responsible for returning 49.24% of the total number of 1,117 of BiH nationals returned by all states). BiH nationals were the most represented nationality identified in an illegal border crossing: they were responsible for 45.83% of all cases of illegal crossings of the border. Data from the previous five years shows that whereas the numbers returned from EU countries has continued to reduce, numbers from Croatia have increased year on year. The implication is that in previous years the EU states were 'clearing' their backlog of BiH cases and that the problem has since been brought under more control. The rise in Croatia's returns rate implies that they have become more efficient at identifying and removing BiH irregular migrants (and therefore reducing the flow to EU, hence a further reduced number of cases in the EU). Possible additional factors relating to this such as the frequency and role of repeat offenders is not possible to assess with current data.

As a result it is thought that irregular migration flows (both foreign and BiH nationals) are (north) western.

33 Interview with Jovo Djurica, Head of Border Police Operations Department, Ministry of Security, Sarajevo, 30 June 2008. Border police annual report 2007

The natural implication is that the corresponding entry point is therefore eastern. Data for illegal entries into BiH for 2007 shows an indicative shift from previous trends, however.

The Border Police Annual Report shows, for the previous period the main entries to BiH were on borders with Serbia totalling to 61.25% of registered illegal border crossings in 2006, while in 2007 this percentage dropped to 12.27%. On the other hand, an increase was noticed of illegal border crossings at the Montenegro border at a rate of 36.62%.

As a result, indications based on the information available are that where previously the key illegal route into BiH was across the eastern (Serbian) border this has changed to that of the southern/south-eastern (Montenegrin) border zone.

Despite Montenegro having relatively recently separated from Serbia, Montenegro previously maintained its own Border Police and therefore generic failures of the border authorities there are an unlikely cause of this trend. It would seem more likely that this trend represents an indication of the organisers of the irregular migration/smuggling routes – namely that there has been a deliberate relocation of routes or that the organisers are possibly based in Montenegro.

The role of Croatian nationals in refusal statistics but lack of any evidence of extended stays in BiH would indicate that the threat posed by them is one of localised cross-border criminality as opposed to pronounced migration threat to the state of BiH itself.

In the period of 2005 – 2007 the greatest numbers of citizens caught in illegal border crossing were from Serbia and Montenegro/UNMIK, Albania, Croatia and Bosnia-Herzegovina.

Illegal border crossings by citizenships						
Country	2005		2006		2007	
Serbia+ UNMIK	140	21.37%	256	88%	183	21,50%
Albania	39	6%	89	6.9%	95	11.16%
Croatia	129	19.7%	67	5.2%	73	8.58%
BiH	283	43.21%	738	57.25%	390	45.83%

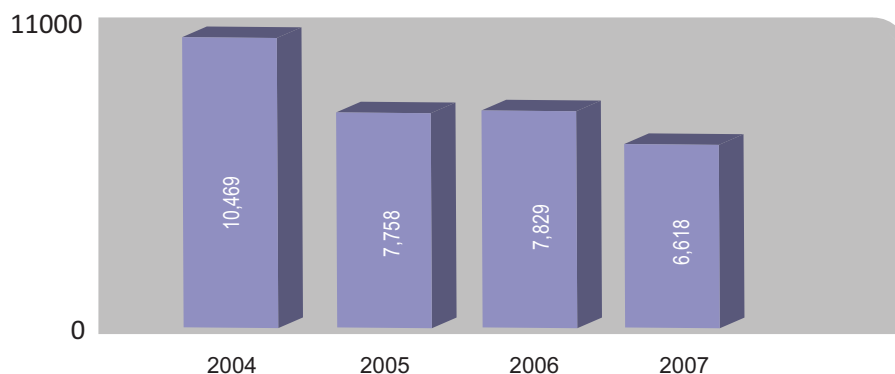
Illegal border crossings

The contribution of citizens of Serbia and Montenegro/UNMIK, Albania and BiH in all illegal border crossings in 2007 was 78.5% of total of illegal crossings by all citizens. This can be also concluded from the data for the same period 2005 – 2007 which show that the highest number of deportations of BiH citizens is from Croatia, as well as the most admitted citizens of Serbia and Montenegro and Albania in accordance with the readmission agreement with Croatia.

According to the Border Police report for 2007, a total of 6,618 foreigners were denied entry to BiH. In 2006, the total number of denied entries was higher by 15.47% (7,829 persons). Persons denied entry to BiH were citizens of a total of 88 countries³⁴. The largest number of denied entries in 2007 included citizens of Croatia, Serbia and Montenegro. In the cases of Serbia and Croatia there was a significant decrease of denied entries in comparison to 2006.³⁵

34 Interview with Jovo Djurica, Head of Border Police Operations Department, Ministry of Security, Sarajevo, 30 June 2008. Border police annual report 2007

35 Border police annual report 2007; meeting with Azra Popovic, Ministry of Foreign Affairs, Sarajevo, 19 June 2008.



Denied entries to BiH

From the above graph it can be seen that a decrease in the number of denied entries in 2005 and in 2007 followed the decision on the abolishment of the visa regime to the new EU member countries nationals, and again in 2007 for citizens of Bulgaria and Romania as new members of EU.

3.3. Immigration

3.3.1. Legal migration: permanent and temporary migration

Issuance of visa

World Bank estimates that there are over 40,000 immigrants in BiH, which constitutes one percent of the BiH population. However, due to the lack of a recent census in BiH, this information is not confirmed.³⁶

During 2007, a total of 735 visas were issued at the border crossings points. The biggest number of visas was issued to citizens of Albania, Moldova, Ukraine, Romania, Serbia/UNMIK, Kazakhstan and Armenia. The main reason why these nationals apply for visas of BiH at the border crossings is due to the undeveloped diplomatic network of BiH and non-existence of consular departments of BiH in those countries.

The number of visas issued at border crossings points is showing a trend to decrease. The first system on issuance of visas was established in 2004, which introduced electronic management over the process of issuance in both the diplomatic consular missions and at the border crossing points.³⁷ In 2004, the total numbers of international border crossings where visas were issued was limited to 14 border crossings and new procedures for issuance of visas at the border crossings were established.³⁸

At the same time, new regulations and conditions for issuing visas established strict rules on visa issuing at the border crossings. A new rule was introduced stating that a visa can be issued at the border crossing only if there is an explanatory request from the diplomatic consular office of BiH or accredited international organisations in BiH as well as in the exceptional cases with Ministerial authorisation.³⁹ The decrease of the number of issued visas at the border crossings due to the new regulations was expected and resulted in 735 visas issued in 2007 compared to 5,641 visas issued in 2004.

However, the decrease of the number of issued visas has to be justified also with the fact that the Council of Ministers has abolished visa requirements for citizens of ten⁴⁰ new EU country members in 2005 as well as visa requirements for citizens of Bulgaria and Romania in 2007. The European Commission in the BiH 2007 Progress Report recognised the further decrease in the number of issued visas at border crossing points.⁴¹

36 Migration and Remittances Factbook, www.econ.worldbank.org

37 Interview with Azra Popovic, Counsellor, Ministry of Foreign Affairs, Sarajevo, 19 June 2008; interview with Jovo Djurica, Head of Border Police Operations Department, Ministry of Security, Sarajevo, 30 June 2008

38 Sluzbeni Glasnik BiH, 60/07; Council of minister decision on determination of international border crossings on which visa can be issued.

39 Book of Rules on Types and Procedures for Issuance of Visas, Ministry of Foreign Affairs

40 More precisely 9 new EU country members as Slovenia already enjoyed a kind of free visa regime,

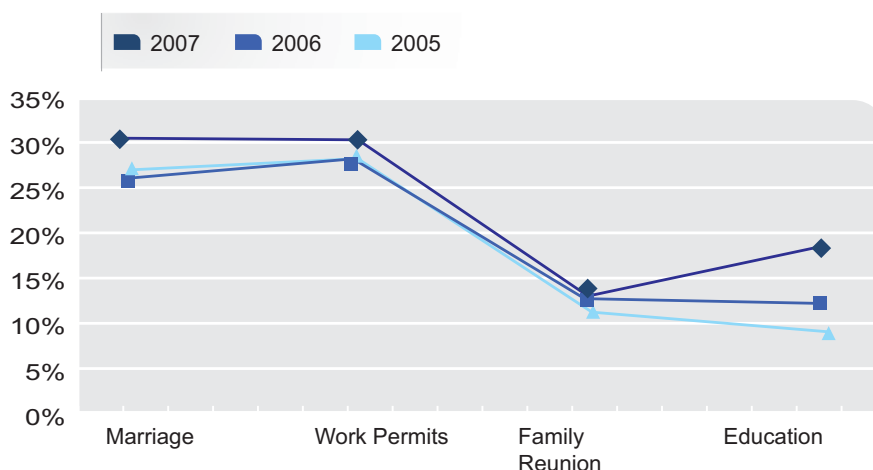
41 Commission Staff Working Document, Bosnia and Herzegovina 2007 Progress Report

The information on numbers of issued visas by Border Police and MFA shows that there is an obvious decreasing trend in the number of visas issued at the border crossing, while the number of issued visas within the MFA after a huge increase in 2005 is constant over the period of 2005-2007. What is evident is the significant increase, of almost eight times, in the number of issued visas in Diplomatic Consular Offices of BiH in 2005 in comparison to 2004. It is noticeable that the evident increase in the number of issued BiH visas appeared parallel with the system for electronic registration, printing and issuance of visas. Until then, visas used to be issued in handwriting in the Diplomatic Consular Offices of BiH, without any version of a central register where all information on visas would be entered. Another fact that contributes to this conclusion is that in 2005 BiH had the same visa regime as in 2004, so the increase in the number of issued visas cannot be explained by a change in the visa issuance policy.

Granting Stay Permits

During 2007, 2,980 requests for temporary residence were received (of which 75.1% were granted) with a further 3,226 applications for extensions of temporary admission in the same period (of which 87.26% were granted).⁴² The overall number of applications for 2007 saw a 14.6% increase over the year 2006; however the percentage of successful applications has reduced (in 2006, 94.65% of applications for temporary residence were granted and 94.57% of applications for extensions were granted). This indicates a more stringent approach to considering applications on the part of the BiH state. Furthermore, this could be due to the introduction of the new procedures for requests for temporary stay permits as well as the establishment of a single BiH immigration authority, the Service for Foreigners Affairs, which equalized procedures throughout all of BiH and allowed for better monitoring and control over approval and refusal of residence permits.

The main reasons for requesting temporary residence were marriage to a BiH national, work permits, family reunification and education.



The most common reasons for issuance of temporary stay permits

Taking into account that Service for Foreigners Affairs collected data for two months in 2006, the whole of 2007 and first six months of 2008, the short life span of the data gathered by the single BiH migration authority does not allow projection of the categories of temporary stay in BiH or what influences the rise/falls. Eventually, once Service for Foreigners Affairs publishes the results for 2008, it could be possible to estimate limited trends on the area of interests of foreigners for residing in BiH. The data collected on approved temporary and permanent residence in BiH before the establishment of SFA were collected by the Ministry of Security, Immigration Sector, which was the umbrella for collection of data from the Entity and Cantonal Ministry of Interior, and District Brčko Police force's departments for foreigners. However, it is evident that during the period 2005 – 2007 there was a decrease of issued temporary resident permits for profitable activities (business purposes) where in 2005 the total number of issued permits those contributed with 16.08% in 2006 with 10.65% and in 2007 with 8.68%.

During the period of 2005 – 2007 the biggest number of approved temporary stays were for citizens of Serbia⁴³ and Montenegro, China, Croatia, Turkey and Macedonia. The permanent stay permits were issued mostly to citizens of China, Croatia, Turkey, Macedonia and Ukraine.

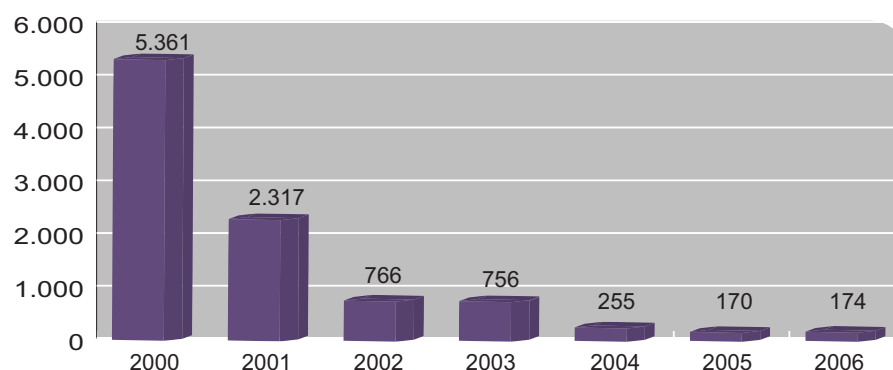
⁴² SFA 'Report on Work' 2007

⁴³ Until mid 2006 Serbia and Montenegro were in joint State Union and data collected were for citizens of the State Union. On 3 June 2006 Montenegro declared independence from State Union.

During 2007, 163 applications for permanent residence were received (of which 83.44% were granted, 3.68% were refused, with 12.88% pending). During 2006, 164 applications were received (of which 93.29% were granted, 1.83% were refused, with 4.88% pending). Similarly to temporary residence statistics above, indications are that a more stringent position is being taken by BiH.

3.3.2. Illegal (irregular) migration

In accordance with available data on readmission, and on the basis of a readmission agreement with Croatia, in 2007 a total of 431 persons were readmitted - 18.73% more than in 2006 with a total of 363. In 2007 191 citizens of BiH were readmitted which represents an increase of 114% compared to 2006 (89 BiH citizens). Furthermore, during 2007 the number of readmitted foreign citizens was 240 or 37.93% more than in 2006 when 174 foreign citizens were readmitted.⁴⁴



Number of readmitted persons on the basis of agreement with the Republic of Croatia in the period 2000* - 2006

Country of origin	Number of persons 2007	Number of persons 2006
Serbia ⁴⁵ and Montenegro/UNMIK	120 (50%)	100 (57.47%)
Albania	68 (28.33%)	31 (17.82%)
Macedonia	25 (10.41%)	32 (18.39%)
Turkey	19 (7.92%)	10 (5.75%)
Others	8	1

Readmission of foreign citizens from Croatia in 2006 and 2007⁴⁶

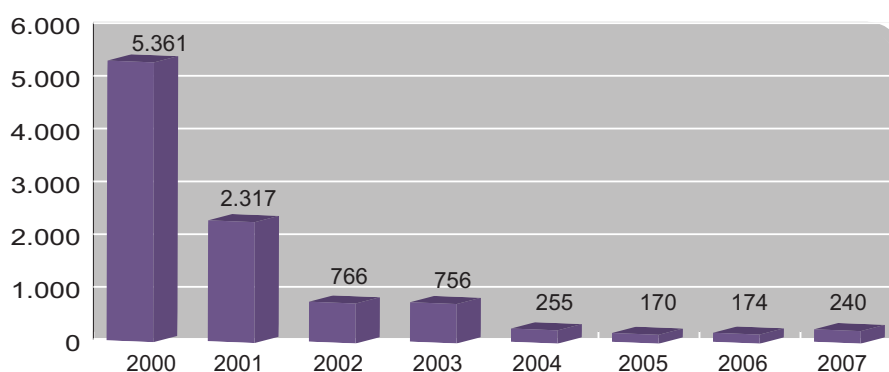
For the last two years, 2006 and 2007, the data shows that citizens of Serbia (Serbia and Montenegro/UNMIK), Albania, Macedonia and Turkey are the most represented of all third country citizens that are admitted in accordance with the agreement on readmission with Croatia. In 2006 those citizens represented 99.43% of total readmitted nationals, while in 2007 that percentage was 96.66%. One of the main reasons for such a high number is the fact that BiH has a visa free regime with Serbia and Montenegro (excluding Kosovo), Macedonia and Turkey, which allows for easy access of those citizens into BiH. Besides, even though BiH has visa requirement for Albania citizens, it seems that Albanians are using the BiH as a transit route toward the EU countries.

44 Office of the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration, Annual report 2006

45 Until mid 2006 Serbia and Montenegro were in joint State Union and data collected were for citizens of the State Union. On 3 June 2006 Montenegro declared independence from State Union.

46 Interview with Jovo Djurica, Head of Border Police Operations Department, Ministry of Security, Sarajevo, 30 June 2008. Border police annual report 2007

Since the establishment of the BiH state level Border Police, the number of foreign citizens admitted on the basis of the readmission agreement decreased.



Number of readmitted persons on the basis of agreement with the Republic of Croatia in the period 2000⁴⁷ - 2007

On the basis of the information available from the Border Police for period 2004 - 2007, the significant decrease in the total number of deported persons from the EU and other countries to BiH was registered. In most cases the citizens of BiH were deported due to illegal residence and work in third countries.

Year	Number of Deported BiH citizens	Reason for deportation - Illegal residence and work	
2007	1,117	938	83.97%
2006	1,350	983	72.81%
2005	1,533	1,325	86.43%
2004	2,144	/	/

BiH citizens deported to BiH and main reason for deportation⁴⁸

From the above it can be concluded that the number of removed BiH citizens is steadily decreasing. However, a trend of increase in the number of deported citizens from Croatia can be noticed, which could be explained with the non-existence of a visa regime between BiH and Croatia and a relatively easy entrance to Croatia by BiH citizens. On the other hand, the trend of decrease of removals of BiH citizens from EU countries is clear, which can be explained by the difficult access of BiH citizens to the EU countries by illegal channels due to strong control of Schengen borders and strict visa regime legal travelling to EU countries.

Country	2005		2006		2007	
Croatia	426	27.79%	507	37.60%	550	49.24%
Germany	363	23.68%	234	17.33%	165	14.77%
Sweden	210	13.70%	89	6.60%	58	5.19%
France	55	3.72%	107	7.92%	86	7.70%
Switzerland	/	/	67	4.96%	52	4.66%
Austria	/	/	63	4.67%	41	3.67%

The countries with biggest number of deportation of BiH citizens

47 The number of readmitted individuals in year 2000 (5,361), covers the period between 27 July and 31 December 2000.

48 Interview with Jovo Djurica, Head of Border Police Operations Department, Ministry of Security, Sarajevo, 30 June 2008. Border police annual report 2007

Regarding removals of foreign citizens from BiH, during the period of 2005 – 2007 there was a significant increase of removals of third country citizens – in 2005 60 deportations and in 2007 329 persons were deported. One of the main identified reasons for removals in that period was illegal residence in BiH.

Year	Number of deported third country citizens from BiH	Reason for deportation - Illegal residence in BiH	
2007	329	240	72.95%
2006	95	17	17%
2005	60	5	8.33%

Table 12: Third country nationals' deportations

During the analysed period, 2005 – 2007, the biggest numbers of removed third country nationals from BiH were from Serbia⁴⁹ and Montenegro, Albania and Croatia.

Country	Number of deported third country nationals					
	2005		2006		2007	
Serbia and Montenegro/Kosovo	42	70%	37	37%	139	42.25%
Albania	11	18.33%	35	35%	158	48%
Croatia	7	11.67%	8	8%	11	3.34%

Deportation of third country nationals from BiH

From the above data it can be concluded that the number of deportations of third country nationals significantly increased in the last three years. This increase in the number of removals can be correlated with the establishment of a single Service for Foreigners Affairs (SFA) at the BiH state level at the end of 2006. In addition to this is the fact that the number of deportations in 2007 on the basis of illegal residence in BiH amounted to 240, which is 48 times more than the total number of deportations for the same reason in 2005 when 5 persons were deported. However, it will be interesting to compare this data with the data that will be collected during 2008 to discern whether or not there this trend will continue. It can be concluded that BiH improved the task of the control of legal residence in BiH and the identification and control of illegal migration. The Service for Foreigners Affairs together with the Border Police represent a good mechanism for control of illegal migration.

In May 2008 the Ministry of Security of BiH, its Service of Foreigners Affairs, opened the first facility in BiH for the purpose of detaining illegal migrants, to whom a decision for removal from BiH has been issued. In accordance with the new legislation in force, several grounds for the detention of foreign national are stipulated, when a more lenient measure can not be applied. The facility has been constructed according to the relevant standards for such facilities. The whole process of establishment of the centre was overlooked by the relevant international community organisations, such as IOM, who had provided, through the implementation of the EC CARDS 2005 expertise on management, organization and operation of the detention centre. The same program helped to train almost 40 staff of the detention to conduct their tasks in the detention centre. The BiH government sees the existence of such an institution as one of the main tools in the fight against illegal migration.

The facility consists of two blocks for the separate placement of male and female detainees, with a capacity of 42 beds. Last year, the Ministry of Security signed the agreement with the EC Delegation on the construction of a new block for the detention centre with an additional capacity of 80 beds. The total cost of the project is one million Euros. The detention centre fulfils all requirements arising from the BiH Constitution and international standards for detention centres.

In accordance with new provisions of the Law Stay and Movement of Aliens and Asylum, immigration detention centres became an integral part of the Service for Foreign Affairs outside of the Service's seat. Furthermore, by the amendments to the Law to the SFA security officers in the detention centre have been authorized so that they can apply force in the detention centre if needed. Moreover,

49 Until mid 2006 Serbia and Montenegro were in joint State Union and data collected were for citizens of the State Union. On 3 June 2006 Montenegro declared independence from State Union.

the immigration inspectors of the service and the security officer at the detention centre by the new provisions of the Law shall have authorisation for the execution of deportation measures of foreigners from BiH. Since its opening until the end of July 2008, a total of 45 foreign citizens were placed in the detention centre, of which the biggest numbers were Turkish (17) and Albanian citizens (15).⁵⁰

Despite the country's improved institutional and operational capacities to better control migration process, there are still significant challenges:

1. The borders of BiH are being routinely breached with regard to irregular migration;
2. Certain nationalities (Serbia etc) appear to tend to enter clandestinely (across green/blue borders) and have no intention of permanently remaining in BiH. This can indicate irregular return movement across the eastern borders in both directions (for related cross-border criminality) and intentions to continue movement out of BiH (westward);
3. Other nationalities (China) tend to remain in BiH illegally. Point 2) reinforces the view of BiH as a transit country; however point 3) implies that BiH is now also to be considered a destination country for irregular migration.

In order to better illustrate migration trends in BiH, two case studies on nationals of China, Turkey and Albania will be presented.

a) Chinese Case Study:

It should be noted that the numbers involved for point 3) are small (a total of 62 Chinese cases were identified by the SFA); however they are still indicative of abuse of the system. Cross-referencing with Border Police data gives a possible indication of the modus operandi of the Chinese cases in particular. No Chinese nationals were intercepted either entering or exiting BiH illegally across borders (clandestine); neither do any Chinese nationals appear as readmissions for Croatia. Therefore it can be surmised that irregular migration is being effected through official BCPs as 'genuine' passengers and that this irregular component are choosing to remain in BiH. Despite over 1000 Chinese cases registered as entering BiH in 2007, no refusals of entry are recorded by the Border Police (therefore indicative that all Chinese arrivals held 'correct' documentation). This in turn indicates two probabilities: Chinese irregular migrants are obtaining 'genuine' visas and; these cases are not being identified (or acted upon) at the BCPs.

Traditionally BiH BP has been unwilling to refuse entry to holders of 'genuine' visas. This in combination with possibly a rather lax visa issuance procedure by the MFA seems to foster an effective route for irregular migration of this particular group. Without a doubt there is a need for additional training of consular staff on issues of irregular migration and document verification. Generally the system of visa issuance and relative controls needs to be tightened up to avoid any kind of procedural irregularity. Additionally this implies that though land-based routes are the norm for general migration in BiH, this does not necessarily mean that it is always the case for irregular migration.

Chinese irregular migration is an emotive subject in BiH with many people willing to comment on the problem posed. Often however this is not backed up with any real data or intelligence on the subject. Chinese irregular (and regular) migrants represent an easy focal point as their appearance, culture, practices and language easily mark them out as different from the usual population. As is seen across most western countries, this generally highlights them for particular attention not necessarily based on objective intelligence. The majority of Chinese migrants are perfectly legal and pose no adverse threat. It is a minority which is worthy of attention.

There is no doubt that Chinese organised crime (heavily incorporating irregular migration) is a major threat to all countries; however this should not lead BiH authorities into possibly ignoring other valid threats present from other sources. The threat to BiH (based on the limited data available for this assessment) is not in the numbers involved but rather in the fact that the system is being successfully abused. Obviously actions must be taken to address the specific Chinese case; however the system itself must be reviewed and amended in order to prevent future abuses by any foreign national. As intelligence systems and effective migration management develops in BiH, a more rational approach to identifying risks needs to emerge.

b) Turkish/Albanian Case Study:

In contrast to the Chinese Case Study, the situation regarding Turkish irregular migration has not attracted much attention from certain BiH authorities.

Turkish nationals appear at all stages of BiH statistics for irregular migration: refusal of entry (267 cases – 4.03%); readmissions from Croatia (19 cases – 17.92%); illegal crossings of the border (22

cases – 4.77% cases involving foreign nationals); and importantly in the disparity between arrivals and departures (1036 cases – 33.2% of all nationalities unaccounted for). When compared to the case of Albanians (102 cases/1.54% of refusal of entry, 68 cases/28.33%, 95 cases/20.61% of illegal crossings of the border) a broad similarity can be seen with both countries evidently active in irregular migration and on-entry staff actively identifying cases.

The key difference emerges at the after-entry stage however with 163 Albanian cases (19.83%) being identified compared with only 32 cases (3.89%) Turkish nationals identified at the after-entry control. This implies that after-entry control may well be targeting operations based solely on beliefs on particular nationalities as opposed to actual threats as identified through effective analysis and planning.

In summary it would appear that BiH is facing various types of irregular migration incorporating different levels of sophistication. Whereas local/regional irregular migration seems to rely on illegal crossings of the borders, irregular migration from more distant countries has utilised more sophisticated methods (abusing the system itself in order to gain 'legal' entry).

Regional Nationalities (Serbia/UNMIK etc): Mode of entry: land-based, clandestine. Mode of exit: land-based, clandestine. Role of BiH: Transit/nexus point. Summary of modus operandi: Avoidance of the system.

China Case Study: Mode of entry: air, fraudulently obtained genuine documents. Mode of exit: air, fraudulently obtained genuine documents. Role of BiH: Destination. Summary of modus operandi: Organised abuse of the system.

Abuse is predominantly targeted at land borders. This is normal given the involvement of regional nationalities in the movements, ease of transport and the fact that airports are notoriously more secure and effective in identifying irregular migration than land BCPs. BiH's land borders are exceedingly porous due to the geography of the state and innate difficulties in monitoring them. The Border Police simply do not have sufficient resources to cover the entire non-regulated border. Even official crossing points pose resource problems for the BP at particular times such as during summer when cross-border traffic massively increases.

Thus, having considered the available data and cross-referencing where possible it can be estimated that irregular migration tends to be land-based and in a south-east to north-west direction. BiH is a source, transit but also destination country for irregular migration. The main 'problem' nationalities include Serbia (including Kosovo), Montenegro, Turkey, China and Albania. Irregular migration committed by BiH nationals remains prevalent, however the main exit point for them (Croatia) appear to be increasingly effective at identification and apprehension.

According to the Border Police Annual Report for 2007, the border with Croatia counts the highest percentage of all registered attempts of illegal border crossing, amounting to 79%. The same report indicates the shift of the main entry points to BiH in period between 2006 and 2007. As the Border Police Annual Report shows, for the previous period the main entries to BiH were on the borders with Serbia totalling 61.25% of registered illegal border crossings in 2006, while in 2007 this percentage dropped to 12.27%. On the other hand, an increase of illegal border crossings at the Montenegro border at a rate of 36.62% was evident. From this it can be concluded that there was a shift in modus operandi within illegal migrants and/or those who are organising illegal crossings. This shift can be eventually explained with the fact that the BiH border line with Montenegro seems to be harder to control than the border line with Serbia due to its location and geographical characteristics.

3.4. Emigration: Permanent migration and temporary migration

According to available statistical indicators provided by the UNHCR, the total number of returnees as of 31 December 2007 was 1,025,011, out of which 446,611 were refugees and 578,400 IDPs.⁵¹

According to the last re-registration process of IDPs, it has been identified that there are still around 180,000 IDPs in BiH. During the process of re-registration almost double the number of identified IDPs lost their status due to the fact that they did not return to their pre-war residence even though the conditions for return were secured.

According to the published results of the implementation of property legislation, the process of property return to citizens of BiH (return of properties that were in temporary possession of IDPs or the local population) has achieved a rate estimated at 98.5%. The rest is a minor number of cases that are legally problematic.

51 UNHCR Statistics report on migration for 2007, www.unhcr.ba, accessed on 12 July 2008.

On the basis of the achieved results in the restitution in BiH, it was expected that a mass return of refugees and IDPs to their pre-war homes would occur. Contrary to that, a mass exchange and trade of properties took place, which built a precondition for IDPs to stay in their new communities and that refugees out of BiH purchased properties in places different from their pre-war residences. According to information published by the Helsinki Committee for Human Rights in BiH it is estimated that 50% of returned properties (flats, houses, land) already changed owners and that 30% of those are in the process of trade or exchange. The only conclusion that can be drawn is that such behaviour is caused by the lack of trust of the population in the security conditions of the communities they are supposed to return to, and fear possible attacks on returnees by specific groups motivated by ethnic issues. Also, it is assumed that a significant number of people in their new residencies established new business, family and friends relations, and in general started a new life style in their new communities. On the other hand, the very process of realisation of property reconstructions and return to their pre-war owners in BiH was slow - another factor that influenced the low rate of return of IDPs.⁵²

According to the estimates of the Ministry of Human Rights and Refugees, there are still around 500,000 refugees from BiH in foreign countries. This estimate is significantly different to the one presented at the Forth Congress of BiH Diaspora by the World Federation of BiH Diaspora (1.3 million).

The first official registration of IDPs in BiH was conducted in 2000 and registered 556,214 persons in 183,355 families.⁵³ As has already been mentioned, according to UNHCR information as of 31 December 2007, BiH has 130,984 IDPs who are awaiting the resolution of their status.⁵⁴

Unfortunately, as has been already stated in this document, no institution in BiH can precisely state what the total number of refugees and IDPs currently is or the exact number of those who returned to their pre-war residences. Also, it is difficult to measure the extent of movement of the population within BiH and out of BiH. To achieve that, it would be necessary to wait for the results of the Census. The present situation in BiH with many unknown indicators is vulnerable to fraud and manipulation.

In accordance with the available reports it has been identified that "the top 10 emigration countries for BiH citizens are Croatia, Germany, Austria, the United States, Slovenia, Sweden, Switzerland, Canada, France and Australia. The analysis of the third country citizens groups showed that citizens from BiH accounted for a presence of over 300,000 individuals in the EU."⁵⁵

The highest emigration of the BiH population ever recorded was the consequence of the war in the Balkans in the early 1990's, when around 2.2 million people, almost half of the pre-war population, were driven away from their homes. Most of them left the country during the war or immediately after the war efforts ceased.

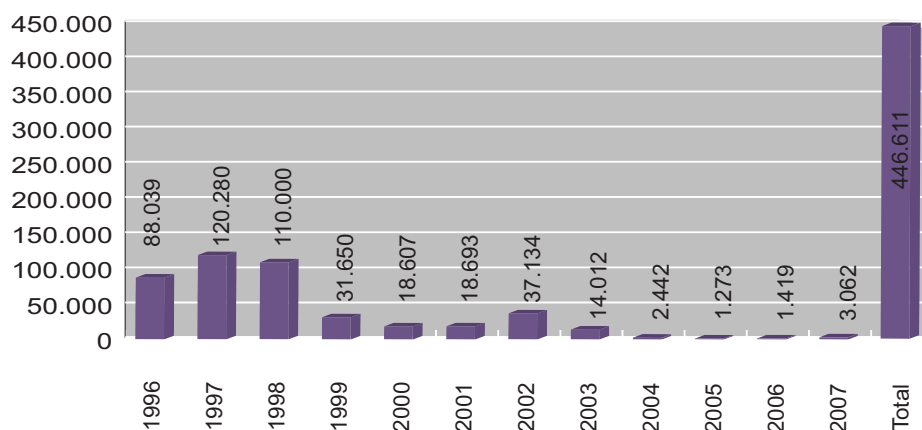
The latest information from December 2007 shows that only 446,611 former refugees returned to BiH. Most of those returnees are the result of voluntary return, which was agreed between BiH and the host country and often financially supported by the host country's government. For example, until October 2005, 12,000 refugees returned from Switzerland to BiH. These returns were mainly assisted and organized. Until today there have been an additional 11,300 registered returns from Switzerland. It is necessary to emphasize that the Government of the Swiss Confederation gave significant financial support to stimulate voluntary return. On the other hand, citizens of BiH whose temporary approved protection expired, which was valid for a period from 1992 till 14.12.1995, were obliged to leave Switzerland, as well as all others whose requests for asylum were negatively solved.

52 Report on the Status of Human Rights in Bosnia and Herzegovina, Analysis for the period January – December 2006, Helsinki Committee for Human Rights in BiH.

53 Interview with Medzid Lipjankic, Ministry of Human Rights and Refugees, 27 June 2008.

54 UNHCR Statistics report on migration for 2007, www.unhcr.ba, accessed on 12 July 2008

55 Bosnia and Herzegovina Migration Profile, IOM, Republic of Slovenia, Ministry of Interior, http://www.iom.hu/PDFs/BiH_Migration%20Profile.PDF page 16.

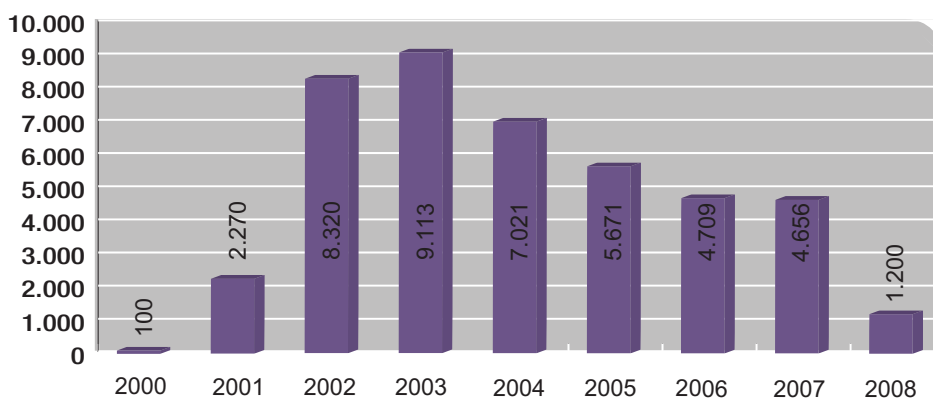


Refugees return

It is estimated that the vast majority of BiH refugees in foreign countries met the conditions for citizenship and that most BiH refugees, beside BiH citizenship, are in possession of citizenship of their host country. This indicates that BiH refugees plan to stay permanently in the host country, bearing in mind that in the last 15 years, since they left the country, they have started new lives, including children who were born in host countries, finished education and started their own professional carriers.

However, according to the BiH Constitution and the Law on Citizenship, a BiH citizen may only hold the citizenship of another state in case there is a bilateral agreement between BiH and the third country. In accordance with the provisions of the Law on Citizenship, the BiH citizen shall lose BiH citizenship should he voluntarily acquire another citizenship with which BiH does not have a bilateral agreement. The Law on Citizenship was adopted in 1998 and by its transitional and final provisions had stipulated that each BiH citizen who had acquired another citizenship prior to inaction of the Law on Citizenship shall lose BiH citizenship within a period of five years unless BiH concludes an appropriate bilateral agreement with that country. The five-year period expired on 31 December 2002. Bearing in mind that until that date BiH succeeded to conclude only one bilateral agreement on dual citizenship, and that with the former Federal Republic of Yugoslavia (State Union of Serbia and Montenegro) and that BiH would lose a huge number of its citizens, the High Representative of the international community in BiH used its power to influence the legislation by imposing a decision on amendments to the Law on Citizenship extending the deadline for conclusion of bilateral agreements until 1 January 2013.

On the other hand, a number of European countries required BiH refugees to renounce BiH citizenship in order to obtain their host country citizenship. Until June 2008, as a result of this, a total of 43,000 BiH citizens renounced their citizenship.⁵⁶



No. of persons renouncing from BiH citizenship for the purpose of obtaining other country citizenship

Over 50% of the BiH citizens that renounced BiH citizenship did it for the purpose of acquiring citizenships in the Republic of Austria and FR Germany, with the remaining acquiring citizenships in Sweden, Norway, Denmark, the Netherlands, Luxemburg, Czech Republic, Italy, Switzerland, Slovenia, Croatia and other countries.

Migration balance

In the absence of a census, reliable databases and given the generally fragmented structure of BiH, authorities that are supposed to keep records on the flow of the labour force and movement of BiH population, at this stage any estimates would not be based on relevant factors. For example, the pre war population of BiH, in accordance with the 1991 census, was app. 4,350,000, and in accordance to the latest estimates the current BiH population is app. 4,590,000. There has been no census since 1991 to determine the increase of the BiH population, on the basis of which facts the increase could be substantiated; according to the unofficial information more than 1.3 million BiH citizens still live out of the country, and according to unofficial estimations 98,000⁵⁷ citizens died during the last war. Many BiH citizens have obtained citizenships of other countries and have never been reissued BiH citizenship. However, these are questions for which very few institutions have precise answers. Keeping in mind all of the above-mentioned, any migration balance estimates would be inadequate and provide a false picture on migration balance in BiH.

Conclusion and forecast

The lack of reliable migration balance data influences BiH's ability to develop a clear vision of its migration policy, which is essential for the future planning of migration flows, i.e. in the service of economic development.

BiH still has not succeeded in establishing an infrastructure of satisfactory quality at border crossing points in order to achieve their effective control. Additionally, only 14 border crossings have access to relevant databases on passports, issued visas and residence permits. Besides, most of the 55 border crossings do not fulfil all requirements for functioning. One of the major obstacles in the effective prevention of illegal migration is the lack of an approved and agreed upon demarcated border line between BiH and its neighbouring countries, in particular with Serbia and Montenegro. There are 432 identified places where illegal crossings can happen. BiH border police officers sometimes face difficulties while patrolling along the undetermined demarcation line and identifying illegal migration if the act is under their jurisdiction (when they are within the BiH border line zone). The final demarcation of the BiH state border is entrusted to the BiH state commission for borders, which will try in the forthcoming period to determine exact border line with the appropriate institutions of the neighbouring countries and in that regard create all the necessary conditions for the final demarcation of BiH border.

It is evident that in the area of legal migration there is an increase of interest in BiH and this is also to be expected in the future as BiH approaches the possibility of EU membership. BiH will be an interesting

destination for many migrants who are citizens of countries not likely to soon become members of the EU. The level of further economic development in BiH will contribute to that trend as well.

Currently, BiH is one of the countries with a very high rate of transit migration, both legal and illegal. Evidence shows that many migrants coming to BiH, especially from the Middle East and Indian subcontinent, are using the possibility of higher education in BiH to settle themselves legally and then use that status for moving toward EU countries. By the establishment of the Service for Foreigners Affairs, BiH has obtained a significant tool for control of legal migration and the fight against illegal migration.

The Information System on Migrations (ISM) should be monitored in order to facilitate data collection in accordance with the EU Act on data collection in the field of migration and international protection, adopted in October 2007. The harmonisation of the data submitted to EUROSTAT would support questions of immigration, border control and asylum. In the Western Balkans region the only countries that provide information to EUROSTAT are Croatia and Macedonia. It is planned that the State Agency for Statistics of BiH in cooperation with the Ministry of Security and other relevant institutions will intensify activities on the development of statistical information for EUROSTAT.

Concerning emigration, the main issue about receiving, analysing and processing any information in that regard is that it is almost impossible due to the fact that there is no reliable mechanism in place for collecting and processing such information. The main difficulty is the lack of a census for the last 17 years. As a result of the last conflict in BiH many BiH citizens left the country without any information available to BiH authorities on whether they are planning to settle themselves permanently in new host countries or they intend to return to BiH. Many of them are in possession of dual citizenship while holding regularly issued documents of BiH on residence in BiH. That leaves a false impression that the return of BiH citizens is at a higher level than in reality. It can be assumed that many of them are registered at unemployment bureaus in BiH while working and residing outside the country. This has a significant influence on the false picture on permanent migrations, temporary migrations and the unemployment rate. In view of this, if BiH wants to be in possession of reliable migration indicators then it would have to establish many legislative operational and technical capacities in order to effectively track all movements of the foreign population and its own.

As BiH continues to develop its migration management capacities, including detection and reporting capacities, a much clearer picture of the irregular migration situation will develop.

If the implementation of detention and removals procedures is conducted effectively by BiH, it is also expected that increasingly measures designed to frustrate this will be utilised by irregular migrants – such as destruction of travel/identification documents, frivolous appeals and abuse of the asylum system.

Events throughout the region will naturally influence migration trends for BiH. The principle issue is the independence of Kosovo. The relative effectiveness of the new institutions there with regard to border control as well as travel document issuance will directly impact BiH.

BiH progress towards EU membership will also impact irregular migration flows, with a potential goal for irregular migrants being to gain entry prior to more stringent controls on the 'EU external borders' taking effect.

4. Factors contributing to migration movements⁵⁸

4.1. Emigration

4.1.1. Push Factors

The economic and employment situation in BiH continues to reinforce the apparent aim of many BiH nationals to emigrate from the country.

BiH has experienced a high outflow of its population to third countries in the last 17 years due to the consequences of war and the destruction of its economy, housing and infrastructure. In such an environment, over 2.2 million BiH citizens left their homes and 500,000⁵⁹ are still in third countries. The consequences of war, the slow reconstruction of industry and infrastructure and poorly developed economy additionally influenced the outflow of the BiH population toward third countries.

The conditions for employment and new job openings are still at an unsatisfactory level. According to the last estimate, there are approximately 493,765 unemployed persons in BiH as of 31 May 2008.⁶⁰ Besides, the average monthly income as of May 2008 in FBiH was BAM 751.82 (€384.39) and in Republika Srpska BAM 758 (€387.56) which represents another motivation factor for citizens of BiH to leave the country and look for better paid jobs. Also, the youth of BiH see migration to economically developed countries as an opportunity for fulfilling needs for education, embracing new technologies as well as improvement in both a professional and educational sense.

Another important element which influences the decision on emigration to third countries is the lack of visible economic development in BiH, as well as low knowledge and the apparent waste of significant funds received in last the 12 years by the international community.

Furthermore, one of the important factors that influences BiH citizens in their to decision to migrate to European Union countries and other countries of the western world rests in the fact that currently BiH migrants who left the country during the war reside mostly in EU member states, USA, Canada and Australia. The vastness of the BiH Diaspora represents a good support network for new migrants from BiH in accommodation and in searching for employment.

4.1.2. Developments in neighbouring countries

It should not be overlooked that a significant number of BiH citizens came into possession of citizenship of the neighbouring countries Serbia, Montenegro and Croatia after the dissolution of Yugoslavia in the early 1990s. It is estimated that a large number of BiH dual citizens are settled in those countries on a permanent basis, but due to the lack of a census (the last one was conducted in 1991) the exact number of them cannot be determined.

Furthermore, over the past years the ex-Yugoslav republics have been committed to structural and economical changes in order to fulfil requirements for EU membership. The Republic of Montenegro and Republic of Serbia have signed the SAA (Stabilization and Association Agreement), while the Republic of Croatia has the status of a candidate country for accession to EU. These developments represent a major boost for the local and regional economy, since the process of accession to the EU is followed by significant financial support for economical and infrastructural development. These developments will contribute to further movement of the population in the region across the border, as well as attracting more third-country nationals to come to the region

58 Service for Foreigners Affairs; SFA 2007 Annual Report; BiH Agency for Employment; individual interviews

59 Ministry for Human Rights and Refugees

60 BiH Agency for Employment

4.2. Immigration

4.2.1. Pull factors

Even though the BiH economy is not at the desired level of development and, as citizens indicate, it is difficult to find a secure and well-paid job, BiH still represents a destination that attracts specific groups of foreign citizens. The three main groups of immigrants can be identified as citizens of the neighbouring countries (Croatia, Serbia, Montenegro), citizens of China and citizens of EU member countries employed in BiH in diplomatic or foreign enterprises' representative offices.⁶¹

The largest group present in BiH without doubt is the group of migrants from ex-Yugoslav countries, even though there is no reliable data on how many of them reside in BiH. The main problem in determining the real number of those immigrants lies in the fact that BiH has bilateral agreements with Serbia, Montenegro and Croatia on visa-free entry. This agreement does not cover the citizens of Serbia from Kosovo that are in possession of UNMIK travel documents. In their case there is a visa regime. The citizens of the abovementioned countries can enter BiH on the basis of a valid ID card (passport is not needed) and stay in BiH up to 90 consecutive days. Since they are entering BiH on the basis of an ID card, and not on a basis of the possession of a passport, the fact that they have entered the country can not be registered on the document itself (stamping of the ID card is not possible). Furthermore, due to the fact that the most of the BiH international border crossing points are poorly equipped, the actual fact that they have entered BiH cannot even be recorded by the information system. After entry, even though there is a legal responsibility for them to register their stay in BiH in the vast number of cases they avoid registration in order to secure a longer stay in BiH. Additionally, according to data provided by the SFA on the number of issued residence permits in BiH, from a total number of short term permits in 2007, 36.77% were issued to citizens of Serbia and Kosovo, while no reference is made on long term residency (however the breakdown is not included in the Service's report, which is highly recommended for the future).

However, out of the available data it can be seen that in 2005, of 4,751 foreigners with temporary residence in BiH, 1,720 or 36.2% were from Serbia and Montenegro, and 448 or 9.42% were from Croatia, which makes 45.62% of all foreigners with temporary residence in BiH. In 2006, of the total legally approved residences (5,247), from Serbia and Montenegro there were 1,839 or 35% and from Croatia there were 544 or 10.37%, which represents 45.37% of all temporary residences in BiH.⁶²

Information provided by the BiH Agency for Employment shows that citizens of the abovementioned countries contribute to 54.01% of the total 2,731 work permits issued to foreign citizens in 2007.

Citizen	No. of work permits	%
Serbia	1,036	37.93
Croatia	335	12.27
Montenegro	104	3.81
Total	1,475	54.01
Others citizens	1,256	45.99
Grand Total	2,731	100

Issued Work Permits to Foreign Citizens in 2007

The basic motivation for this group of migrants is the short distance to their home countries, the possibility of undertaking daily jobs in the border area, the ability to communicate with the BiH population in the same or very similar language and existence of numerous relatives and friends. Besides, the fact that there is no visa regime for citizens of neighbouring countries shouldn't be overlooked as this allows easier movement for the population.

61 http://www.cefmr.pan.pl/docs/cefmr_wp_2003-05.pdf page 37.

62 Report on the situation of trafficking in human beings and illegal immigration in Bosnia and Herzegovina and report on the implementation of the action plan for combating trafficking in human beings and illegal immigration in Bosnia and Herzegovina in 2006, Office of the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina

The second largest group of migrants in BiH is the Chinese Diaspora (already mentioned in the Subchapter on Illegal Migration), which has been unofficially estimated at some 10,000 people. However, like in all other previous examples there are no reliable statistical data that can confirm this statement. However, the Chinese population is the most visible foreign population in BiH and very recognizable, since the main basis of their income in BiH falls mostly in the area of small Chinese shops (usually selling low quality products) and restaurants. Opening shops and restaurants serves, at later stages in immigration, the transit of more Chinese migrants on the basis of family reunion. Furthermore, one of the methods of bringing the Chinese into BiH is through employment of the labour force from China that are satisfying criteria that cannot be satisfied by the local labour force, i.e. knowledge of the Chinese language or familiarity in preparation of traditional Chinese food. The Chinese migrants as a group will very soon transform themselves into a large and united community. In accordance with available data from the BiH Agency for Employment, 183 work permits have been issued to Chinese citizens. Unfortunately, data available from the SFA do not show how many residence permits have been issued to this category of migrants for the same reasons mentioned before.

However, it should not be overlooked that after Serbians, Chinese migrants obtained the most work permits issued in 2007, with 467 or 17.1% of all issued work permits in BiH in 2007. The total number of Chinese with approved temporary residence in 2005 was 866 (18.23%), and in 2006 823 (15.7%). This places Chinese migrants in second place, next to the citizens of Serbia with regard to the number of issued temporary stays.⁶³

Most of the deportation of Chinese citizens happens due to overstaying in BiH or illegal performance of work (work without an issued work permit). In 2007, according to the Service for Foreigners Affairs Annual Report, 62 Chinese citizens were deported. In 2006, the BiH Ministry of Foreign Affairs issued only 200 visas.

It is also worth mentioning that through analysis of the data and indicators it can be concluded that for citizens of China, BiH represents a final destination and not just a transit country. This conclusion is drawn out of the information that in the period of the last three years, there is no registered case of denied entry to Chinese citizens at the border crossings, there were no attempts of illegal border crossings by the Chinese, and as a result of the agreement of readmission during 2005 there was only one case of admission of a Chinese citizen, while in 2004 there were nine.⁶⁴ Moreover, as has already been said, Chinese are the second biggest group next to Serbians in the total number of issued residencies and working permits in BiH. The indicators that justify the abovementioned conclusion can be seen throughout this report.

The third largest group of migrants in BiH is the group of immigrants from highly developed countries i.e. the EU, USA and Canada, so-called highly-skilled professionals. There are no available indicators that would show how many of those citizens reside in BiH.

The main pull factor for this group was a natural consequence of the BiH conflict that ended in 1995. Most of the highly-skilled international workers came in early 1996 as members of the peace-keeping and implementation missions in BiH to support development of the institutions of BiH. The majority of this expert skilled human capacity has transferred themselves from peace-keeping missions to the private sector. The second wave of interest in BiH happened in the course of the last few years, when the BiH economy became open for foreign investment. That was one of the main motivation factors for many specialists and qualified managers to come to BiH. The majority are working in the growing banking sector. The prediction is that the BiH, on its road to EU integration, will become a more interesting destination for foreign investors, and as a consequence there will be a higher rate of highly-skilled immigrants to BiH. Another significant push factor for this group of immigrants is the possibility of gaining EU-funded contracts for specific types of research or for development projects of special interest to the EU or other international donors. Moreover, this group of people is attracted to BiH due to its low living costs relative to their annual revenues.

63 BiH Agency for Employment; Report on the situation of trafficking in human beings and illegal immigration in Bosnia and Herzegovina and report on the implementation of the action plan for combating trafficking in human beings and illegal immigration in Bosnia and Herzegovina in 2006, Office of the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina

64 Border Police Annual Report 2007.

4.2.2. Trafficking and smuggling of illegal migrants⁶⁵

BiH was a centrally located republic in the former Yugoslavia and until 1992 did not have any outside borders. Bearing in mind that the war from 1992-1995 resulted in the fragmentation of specific structures designed to fight organized crime, after the war BiH faced not only solving this but also a new organised crime phenomenon, namely, human trafficking and the smuggling of illegal migrants.

In the period after the war, BiH invested significant effort into developing mechanisms necessary for the battle against human trafficking. The difficulties that BiH faced on its way were of a different character: from non-existence of adequate legislation to non-existence of adequate technical and operational capacities that could effectively fight this problem.

On the other hand, an additional complicated circumstance for the institutions of BiH was the fear among victims of cooperating with responsible bodies, as well as the non-existence of adequate legislation that would provide them with protection in case they decided to testify in the trials against organizers of trafficking and smuggling of illegal migrants.

BiH proceeded to establish cooperation among all relevant BiH institutions (Law enforcement agencies, prosecutor offices, etc.), the non-governmental sector, with neighbouring and regional countries as well as with the countries of origin of victims of trafficking and smuggling of illegal migrants.

BiH has, with the aim of protecting the victims of trafficking, defined possibilities for granting temporary residence for humanitarian reasons to victims of human trafficking within the Law on the Stay and Movement of Aliens and Asylum. In accordance with that, the Sector for Migrations within the Ministry of Security granted in 2004 one, in 2005 eight, in 2006 eleven and in 2007 eight permits for temporary residence on the basis of humanitarian reasons.⁶⁶ The same Law defines the responsibility of the Ministry of Security for providing special protection and assistance to victims of trafficking of human beings for the purpose of their rehabilitation and repatriation into their countries of origin or to the country that has admitted the persons concerned.

Furthermore, in the field of international cooperation, BiH has signed 17 agreements on police cooperation with the following parties: Russia, Greece, Austria, Slovakia, Switzerland, Slovenia, Romania, Iran, Egypt, Hungary, Bulgaria, Montenegro, Macedonia, Turkey, Italy, Croatia and the German provinces Baden and Wurttemberg. Currently, a number of agreements on police cooperation is in preparation, such as with Spain, Pakistan, Serbia, Moldova, Belgium, Denmark, Norway, Sweden, Holland, Saudi Arabia, Alger, Tunis, Morocco, Albania, Ukraine and France.⁶⁷ There is no doubt that through establishment of cooperation between BiH and other countries, better conditions will be built for effective combat against all kinds of organized crime, including trafficking in human beings and the smuggling of illegal migrants.

In 2006 BiH signed 'The Council of Europe Convention on Action Against Trafficking in Human Beings', and ratified it in 2007. Also, as part of BiH's efforts in achieving a better framework for protection and assistance to national victims of trafficking in human beings, the BiH Council of Ministers in July 2007 adopted 'Rules for Protection of Victims - Witnesses of Human Trafficking that are citizens of BiH'.⁶⁸ The Rules established obligations, defined procedures of work for BiH institutions in relation to the victims of human trafficking that are BiH citizens. It is very important to note that within the Rules the establishment of a Fund is planned to support reintegration of victims of human trafficking.

The European Commission has, in its 2006 Progress Report⁶⁹, identified progress in this area, but at the same time recommended that BiH should invest more efforts to ensure effective prosecution of these offences. Also, the European Commission Report on Progress in BiH for 2007 states that BiH remains a country of transit and origin for the trafficking of human beings.⁷⁰

In accordance with information provided by the office of the State Coordinator, during 2007 there were 41 victims of human trafficking⁷¹ out of which, 30 were citizens of BiH or 73.17% and 11 foreign citizens or 26.83%. Of the total number, 18 or 43.9% were children (under 18 years of age).

65 Report on the situation of trafficking in human beings and illegal immigration in Bosnia and Herzegovina and report on the implementation of the action plan for combating trafficking in human beings and illegal immigration in Bosnia and Herzegovina in 2006, Office of the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina

66 Service for Foreigners Affairs Annual Report 2004, 2005, 2006.

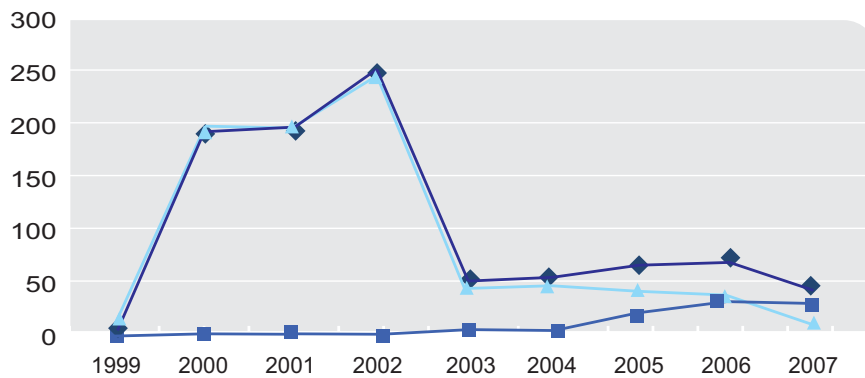
67 Ministry of Security.

68 www.vijeceministara.gov.ba.

69 EC Progress Report on BiH 2006, www.ec.europa.eu.

70 www.europa.ba; EC Progress Report on BiH 2007.

71 Ministry of Security



Total	14	199	200	255	53	54	66	71	41
BiH citizens	0	0	0	3	4	6	22	31	30
Foreigners	14	199	200	252	49	48	44	40	11

Identified victims of trafficking in BiH

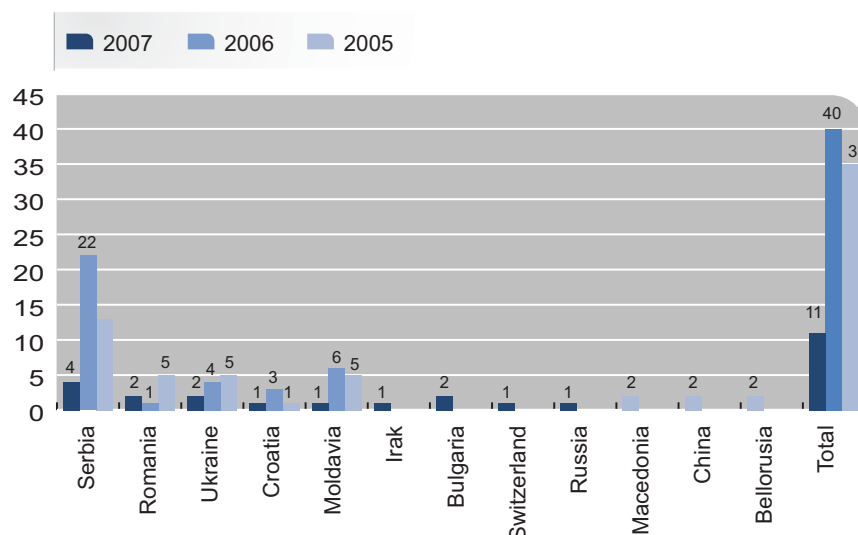
From the comparative analysis for the period of 2005 – 2007 it can be concluded that there is a slow but constant decrease in the number of foreign citizens who are victims of human trafficking in BiH. One of the basic reasons for that can be found in the contribution of better and more effective work from the Border Police on controlling border crossings and the border line. Also, it can be assumed that established cooperation through agreements on police cooperation with other countries contributed to better exchange of information on the organization of human trafficking and a decrease in the number of those victims.

On the other side it was noticed that the number of victims who are BiH citizens is increasing. In 2002 there were 3 victims, while in 2006 there were 31 victims of human trafficking with BiH citizenship. This trend can be explained by the fact that organized criminal groups oriented themselves to BiH and its citizens due to better control of borders and the difficulties of crossing them. Also, this trend points to the fact that responsible institutions in BiH have to undertake additional efforts toward identification of organized criminal groups within BiH. The rate of growth has also been noticed within the child population who are victims of human trafficking.⁷²

Further analysis of the data shows that the number of citizens of Serbia and Montenegro who have been identified as victims of human trafficking has decreased.

However, the total number of victims of human trafficking has significantly decreased.

72 Report on the situation of trafficking in human beings and illegal immigration in Bosnia and Herzegovina and report on the implementation of the action plan for combating trafficking in human beings and illegal immigration in Bosnia and Herzegovina in 2006, Office of the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina



Structure of foreign citizens victims of trafficking in BiH

On the basis of the Report of the Border Police it was noticed that in 2007, 55 reports (122 persons) on smuggling were submitted by the Border Police. A year before in 2006, the BP submitted 46 reports (86 persons).to competent prosecutorial authorities.

4.3. Conclusions and forecasts

As was previously explained, push and pull factors for both immigrants and emigrants result from a combination of socio-economic factors. Both groups are driven by relatively similar interests, for instance, seeking better prosperity for themselves and their families, while the BiH citizens look to higher living standards that can be found within the frontiers of developed western countries.

Immigrants to BiH – especially those who come from undeveloped countries – consider BiH a desirable long term destination. As has been already presented through this research, BiH is constantly losing its population, especially its youth. While recognizing that trend it could be expected that, over time, their places shall be replaced with migrants that will come from third countries. BiH will become a more and more attractive destination to that group of migrants in the forthcoming period as it approaches the possibility of EU membership.

Unfortunately, expectations of a better life outside of a home country can be exploited by well organized criminal groups who use faith in a better future and prosperity to instigate different types of criminal activity, such as the trafficking of human beings. Following the establishment of institutional capacities such as the State Investigation and Protection Agency - SIPA (State Police Agency), BiH Border Police and the Office of the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in BiH, the trends are showing that there has been a significant decrease in the number of foreigners identified as victims of trafficking. Also the result of the decrease of the number of victims of human trafficking is the result of enhanced cooperation between Law enforcement agencies and prosecutor's offices. On the other hand, the trend shows that the number of victim of human trafficking of BiH nationality is permanently growing. In 2002 there were 3 victims, while in 2006 there were 31 victims of human trafficking with BiH citizenship.

It is obvious that, over the period of the last few years, as a result of the establishment of sufficient border control capacities, the number of victims of human trafficking has significantly decreased, so it could be supposed that the 'modus operandi' of the criminal groups has changed in terms of their selection of victims from BiH.

5. Impact of migration movements on BiH society

5.1. Impact of immigration

5.1.1. Economic impact

In the absence of reliable statistics and economic indicators, there is no reliable data that would show if there is any economic impact from immigration. The only assumption that can be made is that, on the basis of the large number of foreigners that are employed in different international community organisations and diplomatic representation offices, there has been an increase in the purchasing power of BiH society.

As a result of immigration, the only visible investments in BiH are small-scale businesses, which are usually shops, opened by the Chinese immigrants, generally selling cheap Chinese products that do not contribute to the large-scale economical development of BiH. In these particular cases Chinese immigrants are using benefits described by the regulations on the establishment of small-scale business in BiH, on the basis of which it is possible to register a company with 1,000 Euros of founding capital.⁷³ This amount of founding capital can be distributed between founders down to a minimum of 50 Euros per founder. The Chinese immigrants are in most cases using this practice of 'financial investments' to get possession of residence permits in BiH. On the basis of this they request reunions with their families from China at a later stage.

There is no relevant data on the basis of which the real economic value of these investments in BiH could be determined, especially bearing in mind that most of these shops employ Chinese immigrants and not members of the BiH labour force. One of the reasons for the low employment of BiH citizens in Chinese shops can be explained by the fact that the usual condition required for these positions is knowledge of the Chinese language. This again opens doors to import low-qualified foreign labour. According to the opinion of the Immigration sector of BiH, this pattern opens the legal door to 'illegal migration'.

5.1.2. Refugees⁷⁴

The numbers of asylum applications from foreign nationals are consistently low in BiH, with figures seldom reaching triple digit figures and applicants generally being from the region.

A sharp rise was observed in applications for 2007 when an increase of over 400% was observed (from 37 in 2006 to 149 in 2007). By the end of July 2008 none of the requests had been approved.

Closer analysis shows that of this number, only 4 applications were made at the point of entry, and the remaining 145 in-country.

Further detailed data is unavailable; however, the probable impact factors for this are:

- Following amendments to the Law on Citizenship in 2006, a Citizenship Review Commission was formed in order to review the cases of the dubious issuance of Bosnian citizenship during and after the 1992-95 war. The Commission reviewed around 1200 cases, withdrawing citizenship from 612 individuals. With the removal of their citizenship they were entitled to apply for asylum.
- BiH has had a significant population of Kosovo refugees residing in BiH under temporary admission in recent years (since 1999). This status was withdrawn at the end of September 2007 when around 3,000 refugees originating from Kosovo lost their right to temporary residency. A number of them were subsequently granted refugee status or have submitted asylum applications.

Hence the general profile of asylum seekers in BiH is not one of new arrivals requesting asylum but of procedures implemented to deal with existing in-country situations.

Until 1 July 2004, the applications for asylum were submitted to the UNHCR. Since that date, the responsibility is with the Ministry of Security.

The identified increase of asylum seekers in 2007 (especially in the period June-October) is mainly the result of cancellation of temporary admission to BiH for the citizens of Serbia and Montenegro from Kosovo. The decision on the cancellation of temporary admission was adopted by the BiH Council of Ministers on 30 September 2007. Keeping in mind that BiH hosted more than 9000 Kosovo Albanians over the period of the last nine years and that, according to some unofficial data, there are more than 1,500 Kosovo Albanians still in BiH, an increase of asylum requests in the forthcoming period can be expected. The majority of asylum seekers are Roma from Kosovo.

The Ministry of Security is responsible for placement of asylum seekers in BiH. So far there is no reception centre established for sheltering asylum seekers in BiH. The Ministry of Security is in the process of establishing such a facility. The MoS has identified the location for the future asylum centre and it is expecting that the construction of the asylum centre will be supported by funds through the Instrument for Pre-Accession Assistance (IPA) programme. Currently two facilities (Rakovica i Salakovac) serve as reception centres for temporarily admitted persons from Kosovo and asylum seekers.

Year	No. of asylum requests	Number of persons/asylum seekers
2004	46	97
2005	97	145
2006	37	68
2007	149	572

Asylum requests and seekers

No. of Refugees	BiH	FBiH	RS	DB
From Croatia	7,163	0	7,130	33
From Serbia and Kosovo	187	187	0	0
Other	17	17	0	0
Total	7,367	204	7,130	33

Refugees

There were three main waves of influx of refugees to BiH:

- During the conflict in Croatia in the period of 1991-1995, a large number of Serb nationals populations from Croatia settled in BiH (app. 40-60,000), in the Republic of Srpska and obtained BiH citizenship.
- In 1999, during NATO intervention in the Federal Republic of Yugoslavia (Serbia and Montenegro) BiH accepted around 70,000 refugees, mainly from Sandzak and Kosovo.
- Regular migration to and from BiH.

5.1.3. Public perception

For the purpose of this research, different types of media were approached. However, no usable information was received as a result of that research, bringing the conclusion that there is either no interest by the public media in the subject or there is nothing to report to the public on.

Nevertheless, there is great support from the citizens of BiH for the efforts of the BiH government to secure conditions for foreign investors that are interested in large or small-scale businesses. This is perhaps due to the fact that direct foreign investments, as mentioned previously, would lead to a direct decrease in unemployment, which currently stands at 493,765⁷⁵. Also, foreign investment would have a direct impact on lowering the rate of poverty and increasing living standards. The number of foreign citizens who are residing in BiH as members of the i.e. military, civilian or foreign trade representatives, which has been observed in the last 15 years, should also be borne in mind. The overall population of BiH did not show any negative aspirations against those foreigners and there are no records of any serious incidents against foreigners in BiH.

However, the BiH public is extremely interested in the phenomenon of small merchandise shops open by the Chinese migrants. It may be worth noting that most of the employment generated in developing economies is caused by small and medium size enterprises. However, according to the opinion of the BiH public, these shops do not benefit the economic development and prosperity of BiH.

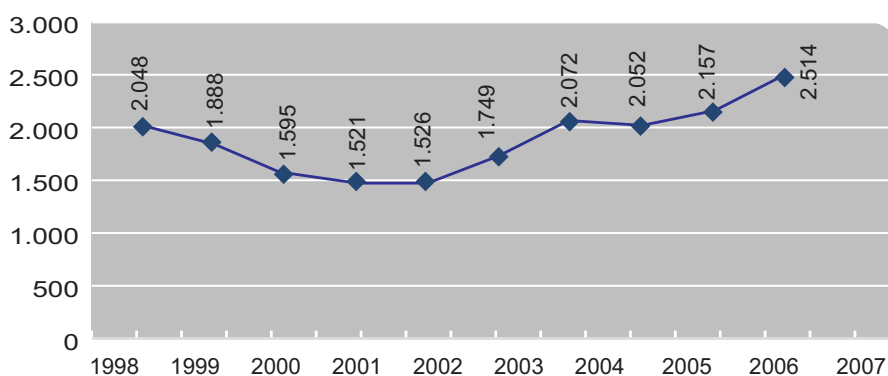
5.2. Impact of emigration

5.2.1. Positive impact – the growing remittances

Remittances are one of the most important financial inflows for many developing countries. Remittances, as such, have a strong impact on economic growth, as well as on the livelihood of those who receive them. The World Bank ranked BiH as one of the top ten remittance recipient countries in the region of Europe and Central Asia in 2007, with remittances amounting to approx. US \$19 billion. In December 2006, the World Bank placed BiH among the first five top remittance recipient countries, for which remittances account for the largest proportion of the GDP. In case of BiH it was 17.2%.⁷⁶ The high portion of individual remittances is most evident through the higher living standards of BiH citizens whose relatives live and work abroad.

The Central Bank of BiH acknowledges that remittances play a significant role in the increase of the country's foreign reserves, together with the privatisation of the big systems in BiH, increasing the number of tourists in BiH and having a seasonal impact of visits by BiH emigrants.

The official remittances are transferred via official bank channels and accordingly are recorded in the country's statistics. They need to be distinguished from the unofficial remittances that are sent to the home country via friends, relatives, or brought by migrants personally. World Bank estimates that unofficial remittances would add up to 50% of total remittances in general worldwide. It is unclear whether the effect of remittances in BiH is positive - there is no clear economical analysis that would show whether remittances are invested in development or in the satisfaction of personal needs.



Remittance Inflow in US\$ million

The graph above shows the level of remittances received in BiH through official bank channels in the period of 1998 - 2007.⁷⁷

5.2.2. Skilled emigration: brain drain

As one of the consequences of the war in BiH during 1992 – 1995, the weak economic situation, and at the same time the globalisation of the world labour market, BiH is faced with the phenomenon of the departure of high-skilled labour force, better known under the term 'brain drain'. High-skilled

labour force leaves in search for employment, for better working conditions, better salaries and opportunities for career promotion, which eventually can have a negative impact on the country's future development. Brain drain in the case of BiH can have a strong influence on the reconstruction of the economic and social sphere. Through clearly defined institutional policy, BiH would need to identify ways how to stop the outflow of its high-skilled labour force. A simple concern is emerging - how will BiH accomplish development in all social and economic areas, if the most qualified and educated force leaves the country?

Unfortunately, BiH at this moment in its research does not have information on its citizens who left the country as high-skilled emigrants. In the absence of exact indicators it is difficult to draw clear conclusions on this question.

UNDP Millennium Goals Report 2001 estimated that 92,000 young people left BiH during the period from January 1996 to March 2001. Economic crises, low financial resources, low employment rate, housing problems and constant exposure to political manipulation were listed as the basic reasons for migration of the youth. Current estimations reveal that tens of thousands of young people are currently trying to obtain visas for emigration.⁷⁸

BiH has not undertaken any steps towards the development of an integrated social policy that would cover, besides other topics, questions on push factors for emigration. Social policy should also consider how to use natural human resources, which developed countries eager to import.

*"If they were be given the opportunity 57% of young people would leave the country because of temporary engagement and work, 49% because of education and 48% would like to permanently leave the country, while 36% wants to leave the country because of marriage."*⁷⁹ This newest result shows an urgent need for undertaking measurement with the objective of decreasing brain drain.⁸⁰

*"The rate of unemployment of young people is 58.5% which is almost four times higher than in EU countries."*⁸¹ Furthermore, in most cases young people in BiH do not have the opportunity to find employment in the field of their expertise. In accordance with UNESCO report 'Science, technology and economic development in South-East Europe', since 1995, a total of 79% of engineers-researchers, 81% of masters of Science and 75 PhDs have left BiH.

5.2.3. Unskilled emigration: depopulation, negative image

BiH in between the two last conflicts, corresponding to the period of 1945 – 1991, was one of the main exporters of a low qualified work force, and obtained this image in the region and some parts of the Europe until today.

According to the data shown on the evidence available in the agencies for employment in BiH, the largest numbers of unemployed are unskilled and semiskilled workers. Even though there are no reliable indicators, it can be assumed that unskilled workers are more inclined to register with agencies for employment than hi-skilled workers. There is no evidence or even indication that the people in the databases of these agencies are a representative sample of the total population of unemployed people in BiH.⁸² The only indicators available through the state agency for employment show that recently there is an increase of interest for the unqualified and semi qualified labour force in Slovenia, Croatia and Montenegro, while Slovenia and Croatia are looking for a labour force that will be employed in the ship building industry and at construction sites, while in Montenegro there is a need for workers skilled to work in tourism during the summer season.

According to information available during 2007, 10,300 temporary and permanent working permits have been issued to citizens of BiH while over the same time in Slovenia 33,953 working permits were issued.⁸³ The Agency does not have information for previous years.

78 www.undp.ba

79 Analysis of the position of the Youth in BiH, Commission for Coordination of youth issues in Bosnia and Herzegovina, 2007

80 www.mladi.gov.ba and interview with a Muhamed Mujagic, Commission for the Coordination of Youth Issues in BiH

81 Analysis of the position of the Youth in BiH, Commission for Coordination of youth issues in Bosnia and Herzegovina, 2007

82 Richard P.T. Ots, IOM BiH

83 BH Agency for Employment

5.3. Demographic tendencies of society

Mass-migration during the last war caused demographic crises that led to the depopulation of entire areas of BiH. Besides depopulation, those areas suffered serious damage to their infrastructure. Most of those areas are poor and could not invest in rebuilding their infrastructure, which led to a low rate of return of the population that migrated either to more developed areas within the country, or emigrated beyond the borders of BiH. As already mentioned in the chapter on brain drain, a large number from the highly skilled population fled BiH during the war in 1990's and this trend is still continuing.

BiH is following the trend of some other countries in terms of aging. According to the predictions of the US Census bureau, the overall number of the BiH population in 17 years will decrease by app. 60,000 people.⁸⁴ Nowadays in BiH there are approximately 607,100 persons younger than 15 - 420,000 less than in 1991, when last census was held. The number of young people between 15 and 29 has decreased for the same period by approximately 315,000 in comparison to 777,000 from 1991 census results.⁸⁵

Due to the lack of reliable data on education, gender and the age structure of migrants in BiH, at this moment it is impossible to draw conclusions on how the 'brain drain' effects BiH, whether BiH immigration is high-skilled or unskilled labour and if migrants to BiH are young people who want to establish their family in BiH.

5.4. Conclusions and forecast

The trend of further depopulation of the highly educated potential of BiH is evident. Therefore BiH will need to develop strategies either to improve the economic environment in order to prevent further brain drain and stimulate stay or to define a new immigration policy where BiH will determine what kind of a high profile migration labour force will be imported and what kind of benefits those migrants will gain. Furthermore, if this trend continues, together with the low level of financial growth of BiH, the population of BiH will continue its trend of aging, as the young population will either leave the country or avoid establishing a family due to the poor economic situation.

For the purpose of this research the conclusion was drawn that in BiH, direct foreign investments on the basis of regular migrations did not achieve even a proximate economic effect as direct foreign investments of individual companies from Western European countries or other countries. Economic development on the basis of investments by migrants with temporary residence in BiH is mostly focused on small businesses that do not employ labour, and their financial impact on development is of no significance.

On the other hand, BiH is seeing a trend of increased remittances from its citizens who are temporarily or permanently residing abroad. It is indicative that remittances are contributing to 20% of the total GDP in BiH (€2,880 GDP/C⁸⁶ in 2007⁸⁷). Even though there is no reliable data on GDP in BiH, it can still be stated that a big part of the financial contribution to the GDP is coming from foreign citizens who have worked in BiH after the implementation of the Dayton Peace Agreement, meaning the international organisations.

Taking into consideration the high number of unofficial remittances, one should consider the promotion of sustainable economic benefits through cooperation with the BiH Diaspora in the sphere of opening projects and foreign investments that would be used as tools for self-employment in BiH and development of enterprises that would influence general BiH social standards.

Bearing in mind the fact that BiH's society and economy is mostly a cash economy and that financial inflows are not established on the basis of well developed plans for production in BiH, it is not surprising that a large number of high skilled workers leave BiH with the hope of employment. In connection to that, BiH should, without any delay, define priorities for assessments of the economical feasibility of the specific types of foreign investments by immigrants, the ways to keep the highly-skilled working force in the country and how to raise an interest for immigration by highly-skilled labour with its migration policy. At this moment most of the legal migrants in BiH are using the possibility of registering private businesses only for the purposes of obtaining legal residence permits and the possible reunion of families.

84 www.census.gov, accessed on 18 July 2008.

85 www.mladi.gov.ba and Analiza položaja mladih i omladinskog sektora u BiH

86 GDP/C is only an estimate due to the lack of reliable data on BiH population – no Census since 1991

87 www.bhas.ba, BiH Agency for Statistics

If in the next period there is no significant progress in development and planning with regard to the abovementioned area, the tendency for the withdrawal of qualified labour, aging of the population, decrease of educational capacity and import of low-skilled labour should be expected to continue.

6. CONCLUSIONS AND RECOMMENDATIONS

It has been concluded from this research that in its recent past BiH has seen the emigration of many of its citizens based on different factors. In the period between the 1960s and the late 1980s, migrations of the BiH population were mostly influenced by economic interest, while in the period after 1992, people were mostly driven away by the war, and 1995, by its after-effects. Beside the significant physical loss of the BiH population during the war period in which more than 2.2 million were either internally displaced or left the country, BiH suffered huge damages to its infrastructure and economic environment.

After the war BiH was a country with an internal organisational structure completely different from what it had had previously, and had to establish a certain number of mechanisms that would provide for the functioning of BiH institutions. It has to be kept in mind that BiH was the only among the ex-Yugoslav countries to not have external borders. Because of that, even today, BiH has a much more undeveloped infrastructure at border crossing points, and still has unmarked border lines which are supposed to separate BiH from its neighbouring countries. BiH is permanently working on the establishment of efficient capacities for border protection and management in order to protect its territory from organised crime, illegal migration trafficking and other sorts of criminal activities. Even though BiH has established border police to protect its borders and border crossing points, almost 10 years after its establishment, it is still struggling to control the entry and exit of foreign nationals and BiH citizens.

Furthermore, the Bosnian economy and its slow development over the past years had a significant impact on the decision of BiH citizens to leave the country and to find better opportunities and employment prospects in foreign countries. On the other hand, BiH nationals who left the country before the war as 'guest workers' as well as BiH citizens who had left the country as refugees would not consider returning in the near future, knowing that BiH could not offer them the economic and financial situations of their host countries. Many of them have already renounced their BiH citizenship, especially those living in Germany and Austria, while others are in possession of dual citizenship, which can also contribute to a great extent to their final decision on whether to return to BiH or not.

Loose border control and a poor economic environment together constitute a breeding ground for different criminal organized groups involved in organising the trafficking and smuggling of human beings, as well as organising easier access for illegal migrants to come to BiH. In recent times, as a result of increased efforts by BiH to establish sufficient operational, legal and technical mechanisms, the number of criminal offences related to smuggling, trafficking and organising illegal migrations have decreased.

The influence of the large BiH Diaspora is considerable since, according to the available data over the last few years, remittances received from BiH Diaspora account for 17 to 22% of the GDP of BiH. While the remittances contribute up to 20% in national GDP, BiH does not have a clear picture of the real economic impact made by immigrants who came to reside in BiH. Unfortunately, it seems that this is the only benefit that BiH can obtain from its Diaspora apart from the possibility of gaining their financial means and experience in case of their return. On the other hand, the level of direct foreign investment supported by multinational cooperation or international companies interested in participating in BiH economic development is apparent and increasing every year.

On the other hand, BiH does not have a developed state policy regarding its Diaspora but deals with these issues on an ad hoc basis. There are no visible programmes of support toward the Diaspora, nor visible interest to stipulate their return to BiH. The main ways of communication between the Diaspora and the relevant state authorities is through occasional organised conferences and meetings.

In order to address all the concerns related to issues of migration and asylum in BiH, the relevant authorities, in close cooperation with the representatives of the various international communities in BiH, have been permanently evaluating achievement in establishing an effective legal and operational framework. As a result of this, BiH adopted new legislation on migration and asylum that is to a great extent in compliance with EU standards. Also, BiH established operational capacities in order to manage legal migrations and, at the same time, to fight and prevent illegal migrations. In 2006 BiH established the Service for Foreigners Affairs, which represents the main tool in implementation of BiH migration legislation. In addition, BiH has also introduced an information system for tracking migration as well as specialized facilities for the detention of illegal migrants. All those established mechanisms will reinforce the position of BiH in forthcoming negotiations for visa facilitation and the final abolishment

of the visa regime for BiH citizens. However, this could be considered a great success, even though BiH migration policy has never been officially developed and adopted by the BiH government.

BiH legislation has recognised the needs of asylum seekers, recognized refugees and returnees and in view of this is providing all these groups with unlimited access to the social welfare system, education and the right to work and choose their place of residence.

From this research it has become clear that the main gap was/is the lack of communication between relevant State or Entity authorities on the exchange of data relevant for the determination of trends in migration. Furthermore, BiH authorities that are gathering certain data on migration flows are not providing the BiH Agency for Statistics with their findings. That significantly undermines the capacity to obtain reliable statistics, and also has a certain impact regarding obligation towards EUROSTAT.

The research, in order to determine reliable data on migration trends in BiH, identified the following gaps:

- Lack of Census data – the last one conducted in 1991;
- No existence of a BiH migration policy;
- No available data on the overall number of Diaspora;
- No available data on how many of Diaspora are in the possession of documents from BiH and their host country (dual citizenship);
- No available data on how many of Diaspora are employed outside of BiH and how many of them are still registered as unemployed within the bureaus for employment in BiH;
- Lack of information on general labour market (the rate of unemployment is unrealistic since BiH does not possess reliable information on how many people work outside of the country and are at the same time registered as unemployed)
- No available data on the educational profile of the BiH population (low, medium, high skilled)
- No available data on the educational profile of the BiH Diaspora (low, medium, high skilled)
- No available data on the educational profile of BiH immigrants (low, medium, high skilled)
- There are no bilateral agreements signed between BiH and foreign countries on exchange information on employed BiH citizens abroad
- Lack of efficient capacities at all border crossing points to register the entry and exit either of BiH or foreign citizens;
- Lack of mechanisms on data exchange between immigration and employment authorities.

The absence of the abovementioned represents the biggest obstacle facing BiH in the identification of its migration profile, migration trends as well as the future profile of the total population of BiH. Without all of that, BiH will not be in a position to define its economic and social needs, such as whether or not it needs a skilled or low-skilled work force or if indeed it needs any additional work force at all. In the absence of such indicators BiH will not be able to express its needs for further development, nor will it be able to realistically set its expectations about the future societal or demographic picture of BiH.

Without having these indicators BiH will continue to waste its financial resources on the development of certain capacities in order to satisfy the needs of BiH society, i.e. the creation of better conditions for the employment of unemployed persons, while there is no tangible evidence how many BiH citizens are really unemployed and what their respective educational backgrounds are.

Additionally, foreign investors will be reluctant to continue to invest their funds and resources in BiH if there is insufficient information on its demographics, which have a significant influence on economic growth.

Chapter II - Legal Review: Monitoring Report on the implementation of the EU Acquis

Introduction

From June 2004 to October 2005, IOM, along with its partners, implemented the EU CARDS Regional Program for Establishment of the EU compatible legal, regulatory and institutional framework in the field of Asylum, Migration and Visas (CARDS AMV).⁸⁸ As the final outcome of its project activities, IOM made the EU Alignment Institutional and Legal Framework on Migration Strategies (hereafter the Strategy) for five countries of the region including Bosnia-Herzegovina, Croatia, Serbia and Montenegro, Albania and Macedonia. The BiH document, as well as others, contained a set of legislative and operational measures in the field of migration that Bosnia-Herzegovina needed to undertake in order to be compliant with the EU *Acquis Communautaire*⁸⁹. Drafted in simple and pragmatic language, the Strategy was acknowledged and warmly accepted by the BiH migration authorities. Accordingly, BiH authorities decided to take a step further than the other countries of the region – they adopted the document as their own migration strategy by passing it on the 92nd session of the BiH Council of Ministers held on September 15, 2005. The appreciation of the document and readiness to implement it was shown by the BiH Deputy Minister of Security at the IOM CARDS Regional conference in Vienna on September 29, 2005. In this way, BiH has committed itself to implement legislative and operational recommendations from the Strategy in order to be compliant with EU standards with regard to migration and thus speed up its accession into the EU. The strategy in local language can be found on the website of the MoS and its Service for Foreigners Affairs, demonstrating the importance of the document.

Purpose of the report

The purpose of this monitoring report is to provide an update on the progress made to date by BiH on the implementation of the strategy's recommendations. In addition, it will stress areas where BiH needs further improvement to be fully compliant with the EU Acquis. The report will take into consideration that some new migration legislation is now in place in BiH, and that competencies of some institutions have been changed to better deal with migration challenges. However, the fact that the migration *acquis* is not a static category will also be considered.

Structure of strategy and report

The Strategy was composed of six long chapters dealing with various and numerous migration issues, attempting to organize them in a systematic and chronological order. These chapters include: 1) Entry and Admission, 2) Stay and Residence, 3) Expulsion, Voluntary Return and Readmission, 4) Irregular Migration, 5) Trafficking, and 6) Migration Statistics and Data Protection. Each of the listed chapters deals with a certain number of associated migration issues and is followed by recommendations on further actions by BiH (if needed), which could be of a legislative or operational nature. Each recommendation indicates an institution for the task and proposed timeframe for its implementation. In total, the strategy contains approximately over 130 recommendations grouped in those six chapters.

Many recommendations are purely of a legislative nature; however some of them involve more operational action (e.g. creation of database on forged travel documents).

It is worth mentioning at this point that prior to the issues and subsequent recommendations being placed in the strategy, all of them were thoroughly addressed and discussed with the BiH counterparts during the course of the CARDS AMV regional seminars and follow up sessions. Thus, one could say that the strategy represents common conclusions, a consensus, on further actions based on discussions of various issues that needed some action – either legislative or operational. The BiH migration authorities, primarily the MoS, also contributed to the strategy development by providing some of their suggestions and by inserting a timeframe and responsible authority for each of actions enshrined in the recommendation. That would not have been possible without an analysis of each respective recommendation. Today, almost three years after the Strategy's adoption, this document will aim to evaluate the extent to which recommendations were accepted and implemented by local authorities. This will be the primary goal of the monitoring report. However, at the same time it will show the accomplishments made by BiH with regard to adjusting its legislation with the Migration EU *Acquis*. The references include: compliant, not fully or partially compliant and non-compliant, and the appropriate

88 Two other agencies including UNHCR and ICMPD were in charge of implementing the Asylum and Visa modules respectively.

89 The EU Acquis represents a general legal framework of the EU Member States, including binding and non binding Community legislation as following Regulations, Directives, Decisions, Framework Decisions, Recommendations and Opinions, Conclusion and Resolutions

comment will be made next to each recommendation. On rare occasions, where insufficient or no information was available, the recommendation will be left blank with no commentary. The numbering and headings format will be identical to the ones used in the strategy for ease of use. However, please note that if there is an “intentional jump” from recommendation 2.1 to 2.4 for example, it will mean that the recommendations listed under 2.2 and 2.3 were already accepted/implemented by BiH.

Current legislative framework

The report will focus on BiH migration legislation currently in force, in other words, on the umbrella migration law- the new Law on Movement and Stay of Foreigners and Asylum (hereinafter 2008 LMSAA⁹⁰), adopted on April 16, 2008. Given the timeframe of just a few months, most of the secondary legislation stemming from this Law (by-laws or book of rules) is still being drafted. In such a situation, the LMSAA foresees that existing by-laws will be applied as long as they don't contravene the new law's provisions. This pattern will be used in the monitoring report as well. In addition to primary legislation, the analysis will be making a reference to secondary legislation where appropriate, including the existing book of rules which derived from the 2003 LMSAA, and the new draft by-laws if available.

Furthermore, related laws including the Law on SFA and its amendments, the Law on BP, the Law on Control of Border Crossing and the entity Laws on Employment of Foreigners and others will be considered as well. Where appropriate, the report will refer to the previous legislation or plans for future development if such information is available.

The intention here is not to go into a great detail in describing the provisions of the new legislation. Rather, the report will go through the respective Strategy recommendations and see if they were incorporated fully or partially in the current BiH legislative framework.

1. ENTRY AND ADMISSION

1.1. Entry Conditions

Transparency

BiH has improved its transparency in providing access to the legislation through the internet: at the time when the strategy was made, only the MFA (MFA) had a webpage, offering some information on visa requirements. Presently, the information related to migration is available on the websites of several institutions including, apart from MFA, the MoS (MoS), the SFA (the Service), the BP, Office of the State Coordinator for Counter Trafficking. This is commendable progress! However some of the internet legislation needs up-to-date versions of laws and procedures. This particularly refers to the former LMSAA which needs to be replaced with the new one. Though the web pages have an English language option, additional efforts in translating legislation and relevant procedures need to be undertaken. This particularly refers to all information pertaining to conditions for entry and stay in BiH. For example, the SFA web page contains a document in the local language entitled “Guide for Foreigners Requesting Temporary Stay in BiH”. It contains a lengthy list of documents, divided per each specific ground for the stay, for example education; work; family reunification; and others that have to be provided by the foreign national. The existence of such a guide is important and authorities should consider making it more user-friendly: avoiding over-complicated language and terminology, providing translation into foreign languages and contact details for additional info, etc. It is particularly important that information and requirements are updated regularly. The Service should consider transforming the guide or making separate additional printed material (e.g. brochure) to be distributed per the Strategy's recommendation. Though the efforts have been commendable, there is room for improvement. → NOT FULLY COMPLIANT

Individual and Group Travel Medical Insurance

The former LMSAA (art. 11) set out that the foreigner may be granted entry to BiH provided that he has enough funds to support himself, including means for health care. The 2008 LMSAA (art. 23, para 2) introduces group or individual medical insurance as an alternative to the health care funds. BiH should further insist on travel medical insurance, rather than on health care funds, in order to protect itself from paying significant health costs by uninsured foreigners. → COMPLIANT

⁹⁰ When referring to the Law on Movement and Stay of Aliens and Asylum, adopted in May 2008, for easier reference an acronym “2008 LMSAA” will be used.

Public Health

The 2008 LMSAA (art. 19) mentions that a foreigner must have a certificate on vaccination if he is coming from an area affected by epidemics of contagious diseases. However, the by-law should define what instruments are used to define epidemics or a disease with epidemic potential (like WHO instruments). → COMPLIANT w. comment on BoR.

Special Procedures for Minors

The new LMSAA for the first time defines the unaccompanied foreign minor under the definition section (art. 5). Further, it stipulates that a foreign minor must either be escorted by a parent, legal representative or a guardian when crossing the border or must have their authorization if travelling unaccompanied. In addition, the border officers are requested to pay special attention to all minors as well as to persons accompanying minors (art. 17 LMSAA). → COMPLIANT

Travel documents

Three recommendations are contained in this group, including the List of recognized travel documents; Information exchange/reporting and archiving system of false documents; and Technical equipment/Training for the Detection of False Documents are clearly operational measures. However, 2008 LMSAA (art. 147) specifies that the BP will establish a database on forged travel documents, which would be available to the Service, Sector for Immigration, and Sector for Asylum and the Ministry of Foreign Affairs. At the end of 2006, the BP created a database on all available specimens and collected forged documents for a certain number of countries. The existing database is not available through a network to other institutions, but the BP responds to the request for assistance of the other migration authorities when approached. In fact, the BP has a specialized unit for detection of forged documents, within its Operations Department, staffed by three inspectors. In terms of specialized equipment, it has a total of four docu-boxes (detection) devices. All BP field officers are trained in several fields, and document examination training is one of the core fields. However, a note should be taken that though highly specialized in this area, the GP officers are not authorized expert witnesses. Unfortunately, this means that their expertise can not be taken as evidence in court. → COMPLIANT

Specific requirements to guarantee returns

The recommendation proposes exercising special caution and introducing preventive measures for migrants that pose a high immigration risk for BiH, by establishing a method of immigration risk assessments. Obviously, this is an operational measure. However the LMSAA (art. 25 c) gives a discretionary right to the border officer to refuse an entry even if a foreigner fulfils general entry conditions “if there are grounds for suspicion that the person would not use his stay in BIH in accordance with the stated purpose.” In addition, the BP keeps separate records on refused entries and records the number of crossings by nationals of high migration risk countries. → COMPLIANT

1.2. Refusal of Entry

General guidelines

Anticipation of the legal requirements of Article 5 of the Schengen Convention

Under the previous LMSAA, all conditions for refusal of entry, as per art. 5 of the Schengen Convention were met except that the condition that the entry could be refused if a person represents “a threat to a public health”. The new LMSAA (art. 19) has introduced this ground for refusal. → COMPLIANT

Specific guidelines

Safeguarding basic standards for persons refused entry

Previously, most of the procedures from the Common Manual for border guards were implemented on the basis of instructions prescribed by the Head of BP, but were not clearly legally articulated. However, the 2008 LMSAA made progress in this regard. Provisions contained in art. 26 of LMSAA reflect principles from Part II of the Common Manual on reasons for refusal of entry. This includes an obligation for the BP officer to provide a decision in writing on a standardized form which clearly indicates a reason for refusal. The decision will be grounds for any appeal filed by a foreigner. However, the appeal does not suspend the implications of decision. In addition, the stamp “refused entry” or other appropriate remark will be attached to the passport. → COMPLIANT

Transparency of exceptional provisions regarding refusal of entry

The 2008 LMSAA did not incorporate some new provisions that would allow exceptions to the rules regarding refusal of entry on humanitarian grounds, grounds of national interest and international obligations. The only exception is contained in (art. 20) that stipulates that a foreigner can be allowed entry only if prescribed by the international treaty or by a decision of the BiH Council of Ministers. Nevertheless, the existing and draft Laws on Border Control (art. 6, 7) stipulate that in case of major elementary catastrophes the state border can be crossed whenever at any place. Persons who crossed the border in this way are obliged to report this act and explain the reasons for crossing to the closest unit of the BP. → PARTLY COMPLIANT

1.3. Entry for Specific Purposes

1.3.1. General guidelines related to entry for specific purposes

The strategy recommended that general entry and admission procedures, including applications for various grounds (types) of stay should be available to foreign nationals ahead of their arrival in BiH. This could be accomplished through the provision of information on internet and by producing certain printed materials (brochures⁹¹). The report on the availability of information through the internet is provided under Chapter I Entry and Admission (2.1 Section Transparency.). Regarding printed materials, none of the authorities asked, including the Service, Immigration Sector, FBIH Unemployment Bureau, could confirm that such a fact sheet (in the form of a brochure, leaflet) was made to date. → NOT COMPLIANT

Procedures

- Existence of job offer and employers' guarantees

The strategy pointed out that a secure job offer and employer's guarantee must exist before the issuance of work permit and foreigner's entry to BiH. The new 2008 LMSAA put a strong emphasis on the existence of job offers and employers guarantee. This is evident from art. 80, line b. and f., which specifies that the employer must submit certain information along with his request for issuance of the work permit. This information includes data on the vacancy or type of work as well as the terms of work, and an explanation of a justified need to employ a foreign national. In addition, a guarantee that employment will actually take place is assured by submitting the employment contract to the Service immediately or within three days of it being signed. → COMPLIANT

- Market and employment survey

Additionally, the strategy acknowledges the following recommendation that it would be useful to conduct market and employment surveys (both topically and nationally) to assess BiH needs for foreign labour. The result of such surveys could be followed by introduction of quotas. Every year, the Federation Bureau for Unemployment conducts a labour survey on 4,000 local companies, employing a minimum of five workers (regardless of their nationality) to test their needs for work force. The results are sent to all ministries. Regarding a particular survey for foreign labour, the BH Agency for Labour and Employment and the MoCA were not aware of any survey that would naturally precede introduction of quotas. In this regard, a request for assistance and know how could be sent from the Employment Bureau (observation from author of the report). → NOT COMPLIANT

- Quotas

The new LMSAA (art. 78) for the first time introduces a quota system. The law stipulates the involvement of many institutions in this process, including the MoCA and the Agency for Labour and Employment, as well as authorities in charge of employment. The process is as follows: a proposal of annual quotas is made by the MoCA BiH through the Agency for Labour and Employment. The ministry provides its proposal based on assessed needs for working permits articulated by the several authorities in charge of foreigners' employment, including FBIH, RS and the Brčko District. The assessments on a total number of (future) work permits will have to consider the educational background and professional qualifications of foreign labour. These and other parameters are certainly needed to plan quotas. This Ministry in cooperation with other institutions, as per the LMSAA, is obliged to submit a proposal of quota to the CoM. By 31st October, the Government is obliged to determine quotas for the following

91 This does not refer to FIPA printing materials, which deals with foreign investments information, but not with a status of the foreigner himself.

year. However the question remains of how this process of assessment (survey) of foreign labour will be done. Without clear criteria and policy decisions on BiH needs for foreign workers, coupled with a relatively short time to prepare the field (October 2008), and several competencies for employment, a whole system of quotas could be put at risk. Information received from the several institutions, including the Federation Bureau for Employment, the Agency for Labour and Employment and the MoCA state that they have not received any tasks yet.

→ COMPLIANT from legal point of view, but operational concerns exist

Harmonization of laws

The strategy acknowledges the fact that the state is responsible for immigration, refugee and asylum policy, while the responsibility for labour policy and legislation is divided between entities. The employment of foreigners has been the competency of entities and has been legislated by the entity legislation, including the Law on Employment of Foreigners in FBiH and the RS Law on the Employment of Foreigners and Stateless Persons. In this situation, both entity laws need to be immediately harmonized with the new state Law on the Stay and Movement of Foreigners. This is a pressing priority, since the 2008 LMSAA has introduced several different concepts in the area of employment, elaborated in the text to follow. Harmonization efforts have already been made by the FBiH, more precisely by the Ministry of Labour and Social Policy, which is in charge of drafting the Law on Employment of Foreigners in FBiH. The Ministry has recently made a new harmonized proposal of the Law on Additions and Amendments to the current Law on Employment of Foreigners (“Federation proposal on employment”), as a response to the new LMSAA. Prior to providing a respective analysis of certain law provisions, one could make a general conclusion that both laws have placed a much stronger emphasis on cooperation than previous ones. This is visible from the responsibility of parties (Service and Employment Bureaus) to inform each other and undertake concrete coordinated actions in a process of issuance and abolishment of work permit vis-à-vis foreigner’s stay.

Specifically, the harmonization is reflected in a significant change in terms of the sequence of work and stay permit issuance. This is obvious from the provision of article 3 of the Federation proposal on employment, which states that the Employment Bureaus which issued a work permit (1) are responsible to submit a copy of the work permit immediately to the Service. The issued work permit serves as a basis to consider granting a stay permit (2). This means that the work permit is being issued first, after which a short-stay term permit can be issued. If the stay permit was not granted, the issued work permit will be cancelled. In addition, the draft Federation law on employment is compliant with the LMSAA regarding a provision that both permits (work and short stay) have to be granted prior to the conclusion of the employment contract (3). The provisions on termination/cancellation of work permits are compliant too. However, there is some discrepancy between the laws with regard to a requirement or lack of requirement for work permits for certain managerial positions with the companies, including founder/co-founders of companies, key personnel (i.e. board member). The draft Federation law on employment states that work permits will be issued to those categories as an exception, regardless of other BiH persons registered with the employment bureaus who satisfy the criteria. However, LMSAA (art. 84, para 1 and 2) states that those categories, among listed others, “don’t have to possess the work permits, with the application of other provisions addressing the stay”. There are two issues here. The first deals with non-harmonized provisions of the two laws that differently regulate the requirement for work permit with regard to the abovementioned categories. This requires an immediate intervention while the Federation law is still in draft form. The second issue deals with possible room for (mis)interpretation of LMSAA art 84, which could result in a different practice in the field. Without any doubt, the legislator had the right idea, but the wording needs to be more precise and adjusted to BiH’s particular situation to eliminate any confusion during enforcement.

Furthermore, in order to avoid confusion and misinterpretation, it would be beneficial for the Federation law on employment of foreigners to include a new provision that long-term residents don’t need a work permit for their employment. This will assure compliance with the EC Directive on Long Term residence and the LMSAA (art.85) which gives foreign nationals equal footing with BiH citizens with regard to employment.

The RS law on the employment of foreigners and stateless persons was twice amended (in 2005 and 2006), but needs to be harmonized again to be compliant with the new LMSAA. Primarily, the amendments need to reflect a change in the sequence of permit issuance, as already elaborated: the work permit comes first (1), then a possible short term stay- subject to approval (2) and lastly (3) the employment contract. In addition, similar to the Federation proposal, the RS amendments need to have clear and straightforward provisions to ensure coordinated actions between the Service and Bureaus for Employment with regard to the issuance and annulment of work permits. The RS law on em-

ployment also needs to follow the LMSAA provisions on exceptions of certain categories from the work permit requirement who are residing on a short term basis (LMSAA art. 84); to indicate professions/exceptions that are not subject of quota limitations (LMSAA art. 79); to adjust a provision that long term residents (LMSAA art. 85) are equalized with BiH citizens as regards their right to labour and thus don't need work permits; to adjust its provision in art. 6 to reflect a new visa classification (LMSAA art. 28).

Registry of Work permits

Some additional issues seem to be unregulated, like the movement of foreign nationals from one entity to another, or even from one canton to another, in terms of a work permit's validity. No particular laws regulate or address these specific situations. In reality, each canton in FBiH represents a sort of labour market for itself. For instance, this would mean that foreign nationals, if moving from Sarajevo canton to Goražde canton, would have to go through a new procedure of re-issuance of work permit even if he/she would remain with the same employer (whose business is running in both cantons). In this situation, the Federation Bureau for Employment could play a better coordination role between the cantonal bureaus (checking the previous record of the respective foreigner) since it already has the role of a clearing house: it receives all individual requests for work permits' approval from each cantonal office. The situation is even more complicated with labour movement from the Federation to the RS or visa versa, because no regulations exist on cooperation and relationship between these institutions with regard to the exchange of information on issued, extended, expired or withdrawn work permits.

For example, how would the Dobož (RS) employment bureau, which has just received an application for a work permit, know that a foreigner's work permit issued by Tuzla (FBiH) bureau was revoked based on fraudulent information or false documents? Clearly this is hardly possible without one single centralized registry (database) of work permits over the whole territory of BiH, despite the fact that they are issued locally. The single registry as proposed would not only allow easier exchange of information and necessary checks, but also assist BiH in assessing and planning its need for foreign labour. The BiH Agency for Labour and Employment has initiated some activities in this direction and has awaited response from the entity bureaus of employment. → NOT COMPLIANT

National working group

The Strategy proposed the creation of a national level working group made up of representatives from each institution involved in the employment process. The working group would discuss all relevant issues which are of importance to employment and self-employment of foreign nationals, as mentioned above, including synchronization of procedures for work and stay permits. According to received information from several institutions dealing with migration and employment issues (Federation Bureau for Employment, Immigration Sector, Agency for Labour and Employment) no such formal working group was established. Occasionally, ad-hoc meetings do take place on a case-by-case basis, particular when a specific, complex issue arises. → NOT COMPLIANT

Abuse

The strategy recommended the introduction of additional sanctions, not only against foreign employees, but against employers, to fight abuse committed in illegal employment. The current Federation law on Employment provides sanctions to both employees (foreign workers) and employers. The foreign worker will be banned from work if the inspectorate of labour establishes that he does not possess a work permit or does not meet other prescribed conditions for work (art. 16). The employer will be penalized with a fine, if the foreigner works without a work permit or contract. If this offence is repeated, a measure of temporary closure of business will be imposed on the employer. The RS law stipulates the same provisions (fines and closure of business) for the employer, but amounts and length of period differ. However, it seems that no specific penalties are foreseen in the RS Law for the foreign worker, in situations of work without permit or invalidity of permit for any reason.

The new amendments to the Federation law have recognized that the current provision on banning work for a foreigner has not entirely accomplished the purpose of punishment. For this reason, the proposed amendments acknowledged and penalized the responsibility of the employer. The proposed article now reads 'The employer will be banned from further employing foreigners. Similar provisions should be introduced in the RS law. → FBiH: COMPLIANT → RS: NOT COMPLIANT FULLY

1.3.2. Specific guidelines related to entry for self-employment

The strategy pointed out that the term “self-employment” needs to be defined more clearly and separated from employment, as regards denoting a person who starts independent economic activity and brings economic benefit to the country. This primarily includes investors or entrepreneurs. Though the term self-employment is not explicitly defined in the 2008 LMSAA as such, the difference between employment and self-employment is clear. For example, art. 11, para 2 addressing the work permit, states that “activities needed for the establishment and registration of a legal entity or business subject are not considered employment and are not subject to obtaining a work permit. In contrast, employment is considered to be a salaried activity requiring the working permit. Though the word “self-employment” is missing here in the article, this could be only understood as self-employment. Furthermore, work permit and a decision on registration of a legal person⁹² are clearly separated as two separate proofs/grounds for requesting a short stay permit in the section of LMSAA dealing with general conditions for temporary stay (art. 53). This again implies a difference between employment and self-employment.

The issue here is the status of the foreign national after registration of a business, if he/she will in fact, as a self-employed person, continue to be exempt from the work permit requirement. The law does not further elaborate this, so it would be advisable to further clarify it in the appropriate book of rules and entity legislation on employment of foreigners. → COMPLIANT w. comment

Transparency

The strategy recognizes that a future⁹³ national working group for employment should be charged with compiling a brochure to include all legal requirements for businesses and favourable investment conditions. In addition, the brochure should contain a clear reference to the rights and obligations of foreigners. The interviewed counterparts could not confirm that such a working group was ever established. As regards promotional material, the BiH Foreign Investment Promotion Agency (FIPA) has produced several publications for foreign investors which contain general info on the country, legal framework for business operation (registration, taxes, customs laws), the country’s comparative advantages, etc. The publication’s design, quantity of information, translation into foreign languages, are all impressive. However, it was not noted (from available internet samples) that particular information on regulating an individual status of a foreign national- entrepreneur, seems to be included. In addition, the new LMSAA has not been made available yet in English on the internet to allow checking respective provisions on self employment. Given all, a working group or some other forum tasked with employment issues is necessary for many issues, but coordination is required above all. → NOT COMPLIANT

Evaluation Procedures

The strategy calls upon the establishment of “the economic benefit test” which would be established if the proposed business investment will be a capital multiplier and create additional jobs. In addition, the strategy proposes the introduction of a tracking system, which would measure the impact of a foreigner’s business investment 6-12 months after its establishment. The LMSAA (art. 53, general entry conditions) introduces an economic benefit test. This provision requests the BiH Ministry of Foreign Trade and Economic Relations to attest that a business activity of legal entity is of economic use to BiH in terms of job creation, exchange of technology, innovation or investment. However, no reference to a later tracking system was made and no information was received as to whether or not any institution conducts such tests. → COMPLIANT w. comment

Abuse

In order to avoid so-called “brief case business”, in other words, companies that only exist on paper for obtaining a residence permit for “their founders”, the Strategy again reiterated the importance of conducting the economic benefit test. (This does not imply a standard tax control and inspectorate checks, imposed on any business entity). This test would be applied wherever doubt arises in relation to a company’s genuine intention to facilitate illegal migration. In a way, the economic benefit test (see 3.3.) is already in practice. It is merely a question of tracking. No information was obtained about whether the institution conducts or will conduct such tests. → NOT COMPLIANT

92 This decision must have solvency proof and attestation that the activity of a legal entity is of economic use to BiH in terms of vacancy opening, technology, innovation or investment exchange issued by the Ministry of Foreign Trade and Economic Relations.

93 At point of time when strategy was drafted summer 2005.

1.3.3. Specific guidelines related to entry for study purposes

Transparency

The strategy calls upon transparent application procedures that should be available to foreign students prior to their arrival in BiH. To date, almost all universities have developed their respective websites. All citizens of BiH, as well as foreign nationals, can enter a tender for admission to study at the University of Sarajevo. Admission requirements are the same for everyone, but foreign students must be fluent in BiH languages in order to follow lectures. Exceptions include some private universities where lectures are partly or fully held in English. In addition, foreign students who completed their high school outside of BiH, must submit their diploma before applying for the university to establish if it is adequate for further education. Most importantly, an attestation of enrolment at the educational institution is one of the general conditions for approval of a short term stay. However none of this information could be obtained in print form (brochure, leaflet). This could be done by the coordinated activity of the Service and universities. → PARTLY COMPLIANT

Minors

One of the Strategy's recommendations was to introduce the permission of parents (legal guardians) as a legal requirement for admission of a minor for study purposes in BiH. This recommendation is incorporated in the Draft Book of Rules on Entry and Stay, which stipulates that authorization from both parents or from the guardian must be obtained allowing the minor to study and be accommodated in a boarding school, alongside a request for a stay permit. → COMPLIANT

Work

The strategy proposed that students should be given the possibility to work part time for a limited number of hours. However, study should remain their primary reason for being in BiH. This proposal was accepted and is regulated by art. 84 of the LMSAA, which states that foreign nationals who have the status of regular students when performing temporary, occasional jobs don't need a work permit. → COMPLIANT

1.3.4. Length of visa (stays)

The recommendation points out that students should be allowed to stay at least for the length of their academic degree period. It was proposed that BIH legislation should decide on some limitation on the maximum period of study in order to avoid abuses. This recommendation was appreciated and is reflected in the draft Book of Rules on Entry and Stay (art. 41, para 5 and 6) It states that a temporary stay is granted during the course of a school year, for a maximum of one year, provided that the validity of travel document exceeds three months for a period of planned stay. The short term stay for study reasons can be extended up to two years at most, after the expiry of the period of regular schooling, with proof that a student failed and had to renew his/her school year. → COMPLIANT

1.3.5. Specific guidelines related to Entry for scientific research

Alignment with recent EU draft legislation

As there were no provisions in the former LMSAA addressing researchers, two recommendations were proposed in accordance with the Council Recommendation 2005/762/EC. They included introduction of simplified procedures for the work permit or waivers and the need for precise obligations on the part of the BIH hosting institution. Recommendations have been accepted and included in the LMSAA (art. 84. lists categories exempted from work permit) and further elaborated in the draft Rulebook on Entry and Stay (art. 37 scientific work). The rulebook clearly defines scientific personnel and the precise obligations of the hosting institution (accommodation, subsistence costs, health care funds) on the basis of a contract/ agreement on cooperation concluded between a researcher and hosting institution for a determined period. → COMPLIANT

2. STAY AND RESIDENCE

2.1. National Guidelines on Conditions for Issuance, Withdrawal, and Refusal of Residence Permits

2.1.1. Format of residence permits and technical specifications

Elements of stay permit

The format of the stay /residence permit is prescribed by the Book of Rules on the Entry and Stay of Foreigners (art. 54). All elements of the BiH stay/residence permit are in accordance with the Council Regulation No 1030/2002 laying down a uniform format for residence permits. → COMPLIANT

Information on co-holder

The provision in art. 54 does not stipulate if the permit sticker has room to include information on co-holders of the document, such as children (like EU stickers). However, the LMSAA (art. 61) prescribes that a separate request for a child's stay needs to be submitted within 30 days of the date of birth. This leads to the conclusion that a child will get its own stay permit (sticker) that by regulations must be placed in the child's passport. Perhaps the approval of stay for a child could be attached to the parents' passport for practical reasons (in case of the lack of possibility to obtain a passport for the child). → COMPLIANT w. comment

Stand alone document

The strategy proposed to consider issuing a stay permit in the form of a stand alone document as well (in compliance with Council Regulation No 1030/2002). This could be, for example exceptionally needed for victims of organized crime or trafficking and who don't have their travel documents. The stand alone document seems not to be foreseen by BiH legislation as an exception. → NOT COMPLIANT

2.1.2. Status of foreigners residing on a temporary basis

Conditions for issuing and renewing temporary residence permit

- Sickness insurance

In order to be fully in line with the EU Acquis regarding conditions for issuing a short term stay permit, it was stressed that all foreign nationals residing in BiH must have a regular sickness insurance. Unlike travel medical insurance, sickness insurance does not cover only emergency cases, but all regular medical examinations and treatment. The 2008 LMSAA (art. 53) has introduced possession of health insurance as a general requirement for stay. For practical reasons, this issue could be elaborated more in the appropriate Book of Rules, considering various categories of foreign nationals and their specifications (e.g. student, worker or family member). → COMPLIANT w. comment

- Submission of Applications in Relation with Changing Status

The 2008 LMSAA (art. 60) has introduced that (the first) request for short- term stay be submitted from abroad as a general rule. Exceptions to this rule include non-visa nationals and visa D holders. Regarding procedures, the request is submitted in person through the BiH consular posts. Furthermore, if a person who was granted a stay permit wants to change the grounds for their stay (i.e. student- worker) he will be obliged to leave BiH once when his genuine stay comes to an end and reapply. This is in compliance with the EU Acquis. It should be stressed that this option (of submitting requests for stay through consular posts) was not excluded under the former law, however foreigners "preferred" to enter the country as visitors and then once in BiH would have applied for a residence permit. → COMPLIANT

Grounds for withdrawing temporary residence permits

BiH is in line with requirements of the EU Acquis regarding treatment of foreign nationals who have contagious or infectious disease as per relevant WHO instruments. Public health cannot constitute a reason for the withdrawal of the permit if the disease was received after granting the stay, in other words if the person became ill while in BiH. Therefore this ground is not listed as one of the 15 reasons for cancellation of a person's stay (art. 68, 69 LMSAA). → COMPLIANT

2.1.3. Status of foreigners residing on a long-term basis

Conditions for issuing long term residence permits

As per the strategy's proposal and provisions of the Council Directive 2003/109/EC, BiH has excluded certain categories of foreign nationals from acquiring long-term residence status. This includes students, persons on temporary and subsidiary protection and asylum seekers. → COMPLIANT

- Work permits for long term residents

The EU Acquis does not require long term residents to have work permits. Unlike before, the 2008 LMSAA (art. 85, 84 v) has equalized the foreign long term residents with BiH nationals regarding their right to labour and exempted long term residents from the work permit. However another provision concerning the work permit (art.11, para 4) does not list long term residents as an exempted category from the work permit requirement (two other categories are exempted, including refugees and persons under international protection). In order to avoid confusion, articles 85, 84 (point v) should be adjusted with art. 11 of the law. The similar provision must also be incorporated into entity laws on the employment of foreigners. → NOT FULLY COMPLIANT—attention to be paid to comment!

Rights and obligations of persons with long term residence status

The Council Directive 2003/109/ EC among others state that the long term resident has the right to equal treatment with nationals as regards:

- a) access to employment and self-employed activity, (...),
- b) educational and vocational training, (...),
- c) recognition of professional diplomas, certificates and other qualifications, (...),
- d) social security, social assistance and social protection (...),
- e) tax benefits,
- f) access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing,
- g) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, (...), and
- h) free access to the entire territory of the Member State concerned, (...).

The LMSAA (art. 85) states that foreign nationals who are long term residents are equal with BiH nationals regarding the right to labour. So this meets the requirement of point (a) from the Directive. However, BiH should make sure that other listed rights from (b)- (h) for long term residents be guaranteed by screening other laws regulating social, educational, tax and other issues. Given the fact that most of those competencies and legislation are on the entity level, this will require coordination with other institutions too. → COMPLIANT in terms of labour; → NOT COMPLIANT in terms of other rights

3.5. Expulsion of long-term resident

According to Council Directive 2003/109/EC, the long term resident can be expelled only if fraudulent acquisition of long term residents' status is detected or if the person constitutes a serious threat to public policy or public security. LMSAA (art. 68 points a, b,c, d,e , h) lists several reasons for expulsion of long term residents. All listed grounds fall under two major circumstances/reasons prescribed by the Directive. → COMPLIANT

2.2. Family reunification

The strategy pointed out that BiH has to amend its legislation in order to guarantee the right to family reunification to close family members, including spouse and minor children as per Directive 2003/86/ EC on the Right to Family Reunification, provided that conditions including accommodation, sickness insurance and funds for subsistence are met. In particular, a proposal was to replace the words "the temporary permit can be given" with "the temporary permit will be given" in article 38 of former LMSAA. Leaving the human right to family unity to the discretion of a third party should no longer be permitted. However, the provision in the new LMSAA (article 57) kept the same text: the temporary permit can be given. → NOT COMPLIANT

2.2.1. Definition of family members

Inclusion of Adopted Children

The strategy recommended the inclusion of adopted minor children of the foreigner where he/she has custody and children are dependent on him/her. This is stipulated in art. 4 of the Directive. The recommendation was accepted in 2008 LMSAA and is reflected in art. 57. → COMPLIANT

Second line of kinship

The second degree kinship (cousins) was suggested for inclusion, as a non-mandatory category of family members who could be granted the right to family reunification. This proposal was not accepted, but the 2008 LMSAA extended the list of family members to include adult unmarried children, supported parents and an unmarried partner, which is in accordance with art. 4.2 of the Directive. → COMPLIANT

2.2.2. Attitude towards polygamous marriages

The Directive limits family reunification rights in the event of polygamous marriages. It means that if a foreigner has a spouse living with him already, the reunification will not be allowed for another, additional spouse. LMSAA (art. 5) defines a marriage as a community of one man and one woman on the basis of the law. Furthermore, it uses the term “spouse” in a singular form in the section addressing family reunification. However, a more specific provision could be included in the appropriate by law to avoid misuses, if BiH decides to introduce this restriction. → COMPLIANT w. comment

2.2.3. Rights of family members/autonomous residence permits

Art. 57 (4) of the LMSAA stipulates “an adult foreign national who has been in BiH for three years continuously on the basis of family reunification, acquires the right to submit the request for stay autonomously, on the basis of some other ground, if he fulfils conditions for obtaining the stay on some other ground except the family reunification.” However, art. 15 (1) of the Family Reunification Directive states: “An autonomous residence permit, independent of that of the sponsor, shall be issued upon application, no later than after five years of residence to the spouse or unmarried partner and a child who has reached majority. However, the granting of an autonomous residence permit to a spouse or unmarried partner may be limited to cases of breakdown of the family relationship.” It is evident that 2008 LMSAA has narrowed the right to request the autonomous residence permit. In other words, other grounds for stay and their fulfilment are not requested as per the Directive.

→ NOT FULLY COMPLIANT, w. adjustments needed.

2.2.4. Rights to autonomous residence permit in case of widowhood, separation and divorce

Provisions from art 58 of the LMSAA covering stay in case of dissolution of marriage/ common law partnership are in line with the Directive, art, 16 (1). → COMPLIANT

2.3. Non-discrimination / integration

2.3.1. Principle of equal treatment

Discrimination grounds

The Strategy highlights that non-discrimination should be ensured in a legal sense through a combination of several acts, including LMSAA. Art. 8 of the LMSAA (Prohibition of discrimination) states that no discrimination shall be allowed against foreigners on any grounds whatsoever, including gender or sex, race, colour of skin, language, religion, political and other opinion, ethnic and social origin, affiliation with a national minority, property status, status acquired by birth, or other status. → COMPLIANT

Definitions of direct and indirect discrimination

At the CARDS seminars, BiH participants agreed that it would not be advisable to place strict definitions as listed in Council Directive 2000/43/EC and 2000/78/EC on forms of discrimination, but rather to guarantee equal treatment of foreigners in practice. No report regarding discrimination issues, if such exists, was available for analysis.

Limited Exceptions to the principle of equal treatment

BiH adopted the recommendation to formalize legally some restrictions imposed on foreigners while in BiH. Article 10 of LMSAA contains most of the restrictions, including: prohibition on establishment of political parties; restriction of possession of weapons; restriction on wearing foreign military, police or customs uniforms; and conditioned right to establish associations. The limitation regarding exclusion from civil service posts is not listed here, but this limitation could be implied by the fact that only a BiH national can be a civil servant. → COMPLIANT

Legal Remedies

The strategy recommended conducting an analysis of reasons for a relatively small number of complaints on discrimination. One of the reasons could be that discrimination is prevalent in BiH or that persons are reluctant to report it. No information, if analysis was made, was available.

Public awareness raising and promotion of equality

The recommendation proposed improving public awareness and provisions on training regarding the principles of non-discrimination and the promotion of equality. There is no information if such a training/PR initiative took place.

2.3.2. Integration

Integration programmes

The strategy stressed that the integration process starts from the moment a person has entered a state and takes time. It was recommended that as a first step, foreign nationals should be informed about their rights and responsibilities in BiH. This issue of information provision was already covered under Chapter 1, in the Transparency section. No information that an orientation programme, designed to familiarise the foreigner with BiH, exists.

Political participation

The potential granting of some voting rights to long term residents is more a political than a legal measure.

3. EXPULSION, VOLUNTARY RETURN AND READMISSION

3.1. Expulsion Decision/Removal Orders

The strategy has reiterated that a lack of provisions on judicial administrative review by courts over final decisions of the 2nd instance bodies represents a deficiency of the LMSAA. This resulted in the court dismissal of migration cases. In particular, this is an important right for the persons to whom the expulsion order is given, a measure with significant legal and other consequences for the concerned individual.

As per the legal definition, expulsion is a measure by which a foreign national is ordered to leave the country and forbidden to enter it again for a certain period of time which cannot be shorter than one year and longer than five years. This first instance decision on expulsion is made by the Service or other organizational unit of the Ministry, which can be subject to a (regular) appeal by the foreigner. The Ministry brings the 2nd instance decision based on appeal, if filed. By the time the decision becomes executable⁹⁴, the foreign national can be detained. In practical terms, the foreign national, a subject of expulsion, will be removed after expiry of a deadline for non-forced return in the (2nd) decision. The

new article 4 of the LMSAA allows an administrative review by the BiH court for all 2nd instance final decisions (including the decision on expulsion). On the basis of this provision, the foreign national will be able to launch such an administrative review at the BiH Court against the 2nd instant decision on expulsion, which does not, however, delay the Ministry's decision. In practical terms, this will mean that a foreign national will be able to file his complaint (lawsuit) either from his destination country or through his legal representative in BiH.

→ COMPLIANT with comment: The legislator and policy makers should consider their further course of action as regards the respective foreigner if the Court makes a decision in favour of the foreigner.

3.1.1. Regional cooperation

Transit for the purpose of expulsion

Though EU Council Conclusions on transit for the purpose of expulsion are not binding *acquis*, it was recommended that BiH authorities address this issue of the transit operations involving countries with which readmission agreements have not been concluded. These issues include the approval of the transit country, escorts by the requesting country, costs, and the responsibility of the requesting country for completion of the process. The 2008 LMSAA does not address in particular the issue of transit. However, there are some provisions on transit in the draft Book of Rules on the Detention and Removal of Foreign Nationals including: the provision on requesting the assistance of the transiting country for an escorted or non-escorted foreign national subject of forcible removal (art. 16.e), and the provision on revealing only necessary data to establish a foreigner's identity, such as data on travel documents (art. 27 para 4). The transit procedures, including costs, are not particularly addressed in the BoR, except a general reference to the LMSAA provision on the costs of removal (art. 96, 97). The procedures of transit, including costs, are thoroughly regulated in the readmission agreements. Perhaps some of such standard provisions could be included in the draft Book of rules on Detention and Removal.

→ PARTLY COMPLIANT.

3.1.3. Joint removals by air

The idea of organizing removals by air of persons subject to expulsion orders by BiH and other countries of the region has not been yet feasible, likely due to financial constraints.

3.1.4. Compensation

As mentioned above, some issues regarding transit for the purpose of removal are included in the draft Book of rules on Detention and Removal, but not the issue of compensation. These matters are currently regulated by readmission and cooperative agreements dealing with transit. The responsible party for costs payment should always be identified. → NOT COMPLIANT

3.1.5. Procurement of necessary document

The cooperation between BiH and concerned consulates/embassies with regard to obtaining valid travel documents for migrants- subject to expulsion is a necessity. From a legal perspective the LMSAA does not explicitly address the provision of valid travel documents for the purpose of removal; it contains only provisions on travel documents for refugees, stateless persons and *laissez-passers* (art. 47-50). It further states that the MoCA will, by its by-law, regulate technical issues with regard to travel documents for foreigners, but it is not clear if this specific by-law will include more types of travel documents than listed. The draft BoR on Detention and Removal does not specifically cover this issue either, except in the provision (art. 16 c) stating that the Service will procure travel documents for foreigners if needed in accordance with the LMSAA. Obviously, the procurement of valid travel documents is more an operational measure (cooperation with embassies), but at least more than one general reference provision on this matter in the book of rules should exist. According to the Service's information, cooperation with the consulates of countries whose nationals were subject to expulsion was good so far: they issued to their nationals adequate travel documents for the purpose of return.

Nevertheless, the IOM Sarajevo Final AVR Report shows that the number of undocumented migrants is extremely high, and, especially with regard to minors, is increasing. Accordingly, some further elaboration of issues dealing with an undocumented irregular migrant is needed. In addition, authorities have

to find solutions for countries which don't accept BiH laissez-passers. For example, some countries (like India) do not have their embassy in BiH, but at the same time don't accept the temporary travel document issued by BiH. In one specific instance, an Indian consul had to travel from Budapest to BiH to issue travel documents to two stranded Indian migrants. → NOT FULLY COMPLIANT

3.1.6. Minimum standards on detention pending removal

The strategy reiterated that BiH must adhere to national and international human rights standards, meaning that migrants who wait to be removed must not be detained for undetermined periods of time. In this sense, the strategy's recommendation was to allow the right to appeal a decision on the extension of detention, which was not allowed by the previous LMSAA. This right to appeals is allowed in the new LMSAA (art. 102). → COMPLIANT

The second recommendation dealt with providing legal grounds in the LMSAA to submit the appeal to the court against all final decisions of administration, including the decision on detention. This optional right to launch administrative review by courts is now regulated by art. 4 of the LMSAA. → COMPLIANT

Proportionality and human rights principles regarding removal procedures

Removal procedures must adhere to international human rights standards (such as medical checkups prior to removal, proportional use of force, trained escorts, etc.) The draft book of rules on detention and removal contains all those guarantees for adherence to human rights with respect to a foreigner subject to removal. These include: the provision of information on return (art. 27), consideration of medical fitness for travelling, in particular for transport by airlines (art. 30), respect for the person who is subject to removal and proportional use of force by trained escorts if needed (art. 32). → COMPLIANT

Return of unaccompanied minor

The 2008 LMSAA (art. 94, 139) contains several provisions of protection for foreign minors. In particular, it states that the unaccompanied foreigner must not be forcibly returned if there are no guarantees that the minor will be accepted by a family member, legal guardian or another authorized person in the receiving country. This principle is further elaborated in the Book of Rules on Detention and Removal (art.25). → COMPLIANT.

BiH authorities should take particular note of the increased number of undocumented stranded minors who do not possess any travel documents. As per IOM's AVR Final report, the highest number comes from Albania, a country which does not have an embassy (consulate) in BiH. This will require corresponding action from the authorities, particularly given the fact that the AVR programme is currently on hold.

Monitoring of forced returns/ Exchange of statistical data

Like the previous law, the 2008 LMSAA contains the provision that official records will be kept, *inter alia*, on foreigners who are the subject of expulsion orders as well as on foreigners who were forcibly removed from BiH. Furthermore, it states that the Ministry establish a central database on foreigners which will contain all official records on foreigners (including the above). The MoS, Service, MFA, OSA, and police have access to the database, though it is not fully operational.

With regard to the exchange of this data regionally and internationally, BiH has already undertaken some activities. For example, the BP compiles its periodical "Overview of operations on the state border," which contains statistical data on 1) Traffic of Passengers and Vehicles at border crossings; 2) Entry Bans to BiH; 3) Illegal border crossings into BiH; 4) Admission and Return of Persons on border crossing; 5) Forged Travel Documents; 6) Detected drugs. In order to promote cooperation, BiH BP exchanges the document with other neighbouring countries. Furthermore, through a project entitled 'Development of Communication Systems and Exchange of Information on Illegal Migration in the Western Balkans area', additional categories of info on illegal migration will be exchanged in a uniform format on a regular basis between the five countries. In addition to statistics, the establishment of an early warning system is foreseen by this project as well. The MoU between partner countries will be signed shortly. BiH should not be dependent on donors' assistance (initiatives) only.

3.2. Voluntary Return

3.2.1. Definition of voluntary return

Though there is no binding EU *Acquis* on the area of the manner of return (voluntary vs. forced), priority should be given to voluntary return for several reasons. These include obvious reasons from the perspective of humane treatment, but, additionally, those concerning cost, efficiency and sustainability.

The new LMSAA introduced a provision that a re-entry ban can be shortened or abolished when a foreign national left the country voluntarily and at his own expense. This shows that a voluntarily return is preferred and encouraged by the authorities. However, it was noted that a 15 day period deadline for a voluntary return may be too short to provide a foreigner who is subject to expulsion sufficient time to gather all the necessary documentation and/or funds. Nevertheless, art. 89 of the new LMSAA contains the same provision that an expulsion decision can determine a 15-day period for a foreigner to leave the country voluntarily and thus did not consider the abovementioned practical reasons.

→ PARTLY COMPLIANT with comment: the voluntary return is being defined; however, a timeframe should allow some flexibility and exceptions.

3.2.2. Cooperation

The strategy pointed out the participants'⁹⁵ concurrence on the establishment of a regional mechanism for the exchange of information on voluntary return, such as MARRI. However, this is an operational, not a legal measure, whose implementation depends on specific acts of migration policy makers. There is no available information if such a mechanism has been established.

3.2.3. Voluntary return in practice

Preference of voluntary return

The LMSAA and the Book of Rules on the Removal and Detention of Foreigners from BiH do introduce the basic principle of voluntary return by giving it preference and encouragement over forced return. As mentioned before, in the case of voluntary return a re-entry ban can be shortened or abolished and this fact is noted in the person's passport. It is noteworthy that the Book of Rules on Detention and Removal does not elaborate further how this provision will be implemented in practice. With regard to the nature of return, the BoR defines two types of return: an independent voluntary return, which is always preferred and encouraged by authorities, and assisted voluntary returns. The latter returns are currently being implemented on the basis of protocols on cooperation (MOUs) with international organizations. The MoS BiH has concluded the MoU on Assisted Voluntary Return Programme with IOM. The document clearly specifies (art. 3- beneficiaries) the categories of migrants who are entitled to a programme, including irregular migrants, unaccompanied minors, rejected asylum seekers or those who revoked their application, and aliens whose protection was cancelled. In addition, the Memorandum specifies that "persons with criminal records," meaning offenders, will not be entitled to the IOM AVR Programme. Nevertheless, there is no such explicit provision in the LMSAA or book of rules that certain categories, including such serious offenders, should be excluded from a voluntary return option.

→ COMPLIANT w. comment

3.2.4. Cooperation and information exchange of voluntary return

The strategy recommended that the BiH Government needs to conclude a Memorandum of Understanding with an international organization, like IOM, in order to regulate the implementation of such a programme. In this regard, IOM and MoS concluded the MoU agreement on September 2nd, 2007, which sets out the obligations and responsibilities of each party concerning the agreement.

→ COMPLIANT w. comment: However, due to financial constraints, the programme has been suspended as of early 2008.

95 Participant refers to the representatives of migration authorities from Albania, BiH, Croatia, Serbia and Montenegro. v

The second recommendation refers to informing some foreign representation offices in BiH by the Government and IOM country about the existence and advantages of the AVR programme. IOM has informed some embassies in BiH on the project, whose nationals represents the most frequent irregular migrants in BiH, including China, Turkey, Macedonia, Serbia and Montenegro. This information was provided usually when requesting their assistance in the provision of travel documents. → COMPLIANT

3.2.5. Counselling and information dissemination on voluntary return programmes

The AVR Memorandum (art.7) set out that the Ministry shall inform irregular migrants on their legal status and on the availability of return assistance on a voluntary basis under the AVR programme. The Ministry and IOM shall jointly develop a mechanism for information dissemination on the AVR programme. However, the information from the Service confirms that migrants in the Immigration Center were not beneficiaries of the AVR programme (if they represent offenders than they should be excluded from any option of voluntary return). → COMPLIANT w. remark

3.2.6. Sustainability of assisted voluntary return

The BiH AVR Programme offers organization and cover of travel costs to the destination country, assistance in obtaining valid travel documents, medical check up, and travel allowance in the destination country and occasionally shelter in BiH. In addition, AVR beneficiaries who have been assisted once to return to their country of origin under AVR, will not be eligible to apply again for the AVR Programme (art. 4 AVR Agreement between BiH and IOM).

3.2.7. Legal consequences of voluntary or forced return on application of subsequent entry

The previous law imposed an entry ban of 1-10 years on all persons who have been the subject of an expulsion decision. The strategy recommended a reduction or lifting of the entry ban for persons who are subject to expulsion, and subsequently this recommendation was accepted in the 2008 LMSAA (art. 87, para 2). → COMPLIANT

3.2.8. Information exchange

Information exchange seems to be still fragmented and uncoordinated. However, some exchange still takes place. For example, the BP exchanges information on the basis of its overview of operations on the state border data on entry bans, imposed as a consequence of forced return with other neighbouring countries. In terms of voluntary assisted return, IOM BiH keeps a database which contains statistics on AVR beneficiaries, such as the number of migrants from individual countries, general profiling information (personal, educational and professional background), reasons for leaving the country of origin, routes taken to reach BiH, intended final destinations and other information. Upon request, IOM shares the general profiling information and analysis with the Ministry.

3.3. Readmission Agreements

3.1. Preparatory phase of readmission agreements

3.1.1. Initiation Phase

The strategy recommended holding inter-ministerial meetings to discuss the initiation of readmission agreements and to determine countries of priority. The MoS is the designated ministry in charge of initiating and negotiating readmission agreements, in compliance with the Law on Conclusion of International Agreements. However, prior to initiation activities with a respective country, the MoS conducts some consultations with the MFA (and possibly others) to determine countries of priority. In 2008, a significant number of agreements has been initiated, including, among others, India, China, Sri Lanka, Iran, Afghanistan, as well as protocols with Estonia and Poland based on the BiH Agreement with the EU.

3.1.2. Negotiation Phase

The recommendation was to reduce the period of time needed for conclusion of readmission agreements, which was previously from several months up to 2 years. The process has not been shortened due to legal procedures involving the Council of Ministers and the BiH Presidency, but also due to the receptiveness of the other party. However technical negotiations carried out by the Ministry don't generally take long; in fact, they are usually completed within two meetings.

3.1.3. Contents

In general, readmission agreements between BiH and other countries follow the EU example in terms of their content. However, the recommendation proposed to review the content of the "older" agreements. According to information from BiH authorities, the general principle is that the "old agreements" stay in force, unless they are contrary to the EU example. On January 1st 2008, the Readmission Agreement between the EU and BiH entered into force. This agreement (art. 20) clearly indicates its priority over all other bilateral agreements on readmission concluded earlier between individual EU member states and BiH, if their provisions are not in line with the provisions of this Agreement.

The other recommendation, regarding the implementation of readmission agreements, was to draft clear provisions on the responsibilities of the border posts in this process. The information received from the BP stated that they act in accordance with signed Readmission Agreements. No reference to their internal instruction was made.

3.1.4. Ratification

The recommendation acknowledged the importance of fast ratification procedures for readmission agreements, which represent bilateral agreements. However, it was stressed that these agreements can, upon the BiH presidency's decision, be partially implemented even before full ratification.

1. Aspects relevant to implementation of readmission agreements

1.1. Means of identification of nationality, residence/transit

In the absence of concrete documents showing an illegal stay and transit of a domestic and foreign national, the Strategy recommended to consider accepting the category of indicative evidence as presumption of transit and stay per the Decision of the Schengen Executive Committee of 15 December 1997.

A subject of this analysis was the available Agreement with the EU, which, in the absence of regular evidence, clearly intends both parties (EU member states and BiH) to accept prima facie evidence, as documents valid for the readmission procedures. The list of this indicative evidence, establishing a person's citizenship, stay or transit through a country is attached in the annexes to the Agreement. Furthermore, the Agreement (art. 19, para 1 point c) entitles the parties to make protocols upon implementation to define additional means and documents, in addition to the ones contained in the annexes.

The BP acts in accordance with the signed Readmission Agreements that set out procedures of readmission, as well as the obligations of Bosnia-Herzegovina. → COMPLIANT

2.2. Simplified and normal procedures

The recommendation called for a review of whether the existing readmission agreements contain both types of procedures,, which would simplify, shorten and normalize them. The information from the MoS official confirms that shortened procedures are applied in situations of confirmed identity and citizenship. → COMPLIANT

2.3. Detention Facilities

The strategy recommended the construction of detention facilities, among other reasons, to make readmission agreements more effective and diminish the possibility for repeated readmission. In 2007, BiH built its first center for irregular migrants. → COMPLIANT

2.4. Reintegration Assistance

The strategy recommended a provision of reintegration assistance to BiH nationals to avoid further circulatory irregular migration. As already mentioned, the Readmission agreement between BiH and the EU entered into force on 1 January 2008. As per the Ministry's information⁹⁶, its implementation has highlighted a problem with the shortage of the all-inclusive database on BiH citizens, and problems in the verification of a person's citizenship and identity. No data exists on reintegration assistance programmes for readmitted Bosnian nationals, except that persons can register with the Centres for Social Work when they arrive.

Regional cooperation

The cooperation needs to be further improved in fighting irregular migration. The conclusion of readmission agreements is an important element. Programmes such as the exchange of migration statistics, establishment of an early warning system and others are concrete acts of cooperation.

4. IRREGULAR MIGRATION

4.1. Definitions

4.1.1. Smuggling

Previously, illegal entry was subject to different interpretations due to the lack of a precise definition. The 2008 LMSAA (art. 16) defines illegal entry into the country in the following situations: a) attempt to cross or crossing the border beyond a border crossing; b) attempt to avoid or avoiding the border crossing control; c) use of another person's travel document or expired or invalid travel document; d) provision of fraudulent information; g) entering country during an entry ban, imposed as a consequence of expulsion. Since the LMSAA is an umbrella law for all migration authorities, any doubt or misinterpretation on the meaning of illegal entry is eliminated. → COMPLIANT

4.1.2. Facilitation of entry and residence

The EU Acquis requires the facilitation of Entry and Transit to be punishable even if not committed for financial gain. On the other hand, BiH criminal legislation states that the offence is committed by a person "who in order to gain a financial or other material gain, allows or facilitates the entry and residence of a foreigner." The strategy recommended that in order to be fully in line with the Council Directive 2002/90/EC, a minor correction should be made in art. 189, which defines this as a criminal offence. Specifically, BiH should delete the words "financial or other material gain" from its Criminal code. Though the Criminal Code of BiH was several times amended from 2003- 2007, art. 189 was not subject to amendments. → NOT COMPLIANT

The 2007 statistics show that the BP submitted reports for 83 criminal offences of smuggling against 118 identified persons and four unknown persons. During the first six months of 2008, the BP filed reports for 31 criminal offences of smuggling against 42 identified persons and one unknown person. According to information from the BP, only physical persons were involved in the crime of smuggling.

4.1.3. Marriages and Adoptions of Convenience

The 2008 LMSAA for the first time introduced the concept of marriages and adoptions of convenience in accordance with the EU Acquis. Prior to its inclusion in the legislation, a lot of time and effort was spent in explaining that migration authorities have a right not to grant and/or to revoke, withdraw or refuse to renew stay permits where it is shown and proved that a marriage, partnership or adoption was contracted for the sole purpose of entering and residing in BiH. The concept is fully accepted and elaborated in several relevant portions of the law including: definitions (art. 5), refusal/rejection of the request (art. 62) and cancellation of stay (art. 68). → COMPLIANT

4.2. Penalties and sanctions

4.2.1. Penalties for legal persons

In BiH, legal persons are held liable if the criminal offence was committed in the name of, on behalf of, or for the benefit of the legal person. At the time the strategy was written, there were a relatively small number of legal actions brought up against legal persons for smuggling. Therefore it was recommended to provide an analysis which would evaluate if there are some legal obstacles for prosecuting the legal persons or if they simply had not been involved in smuggling operations. This trend has continued: the BP did not identify any legal persons involved in smuggling operations in 2007. No information was obtained to confirm if any analysis on this issue was made.

4.2.2. Jurisdiction

The strategy acknowledged that BiH legislation has already set a foundation for establishing jurisdiction over legal persons in BiH and is compliant with the EU Acquis. However, a practical issue was raised, namely if BiH could establish jurisdiction over a person whose seat is outside of BiH, but whose smuggling operations are directed at or run through BiH. According to art. 12 of the Penal Code, criminal legislation is applicable to anyone, even outside BiH territory, who commits such criminal offences, and BiH is obliged to punish them according to international law, international treaties or interstate treaties. Smuggling would by its nature fall under this category, and accordingly BiH would be able to establish jurisdiction. There has not yet been available information on such a case to test/apply this provision.

4.2.3. Carrier liability

The Directive 2001/51/EC and Schengen Convention foresee that carriers are obliged to take all necessary measures to make sure that a foreign passenger has a valid travel document. If not, they are held responsible for the return of such a passenger. At the beginning, BiH authorities were reserved towards this concept, but later realized that it could only benefit BiH and result in budget savings. The new LMSAA (art. 18) foresees the obligations of the carrier to transport and/or provide accommodation if necessary for a foreigner who has been refused entry to BiH. All these issues need to be defined in detail by the book of rules to be adopted by the Council of Ministers at the proposal of the MoS and with the clearance (“opinion”) of the Ministry of Traffic and Communications. → COMPLIANT with comment on BOR

4.2.4. Illegal Employment

The issue of illegal employment needs to be addressed as a migration-related problem for the whole country. The strategy recommended that BiH should introduce a simple system to track issued work permits throughout the country. Currently, the BiH Agency for Labour and Employment intends to establish a centralized system of work permits. However, this process is conditional upon reaching agreement with the entity bureaus for employment, which are currently competent for work permits. No policy decisions have yet made. The issue of harmonization of entity legislation on employment of foreigners is fully explained in the section “harmonization of laws” → NOT COMPLIANT

4.2.5. Measures to combat irregular migration

Visa policy

The introduction or abolition of visa requirements for certain nationals represents one in a range of measures to fight illegal immigration. However, such decisions have to be taken to a higher political level in BiH. The strategy recommendation proposes a forum for regular data exchange and coordinated activities between the MFA, the MoS and others in this area. The meetings are held to exchange views and make some preliminary recommendations for alleviating or abolishing visa requirements. In practical terms, BiH is following to a certain degree the White Schengen list. In this regard, a current proposal is to exempt nationals from several countries of South America. In addition, BiH abolished

visa requirements for the new EU Member States, including Romania, Bulgaria, Hungary, Poland, the Czech Republic and Slovakia. → COMPLIANT

Pre frontier and other preventive measures

BiH concurs with the fact that training consular employees and diplomatic personnel is an important initial pre-entry measure in preventing irregular migration. In the past, IOM, in coordination with the MFA and the BP, hosted four training events on interview techniques and basic forgery detection skills for consular officers. MFA should aim to organize regular and mandatory training for all consular officers before they leave BiH. From 2007 to June 2008, MFA organized independently three such training sessions, of which two took place in the country and one in Beijing, China. → COMPLIANT

Border Management

Equally important as pre-entry measures is effective “at entry” control, which can be accomplished only if border officers receive regular training. In BiH, all BP officers have to go through the institutions’ training programme. First of all, cadets (currently 120) attend a six month mandatory theoretical training at the local training centre of the MoI/BP, which is then followed by operational training at the field. In addition to this in-house training, the BP, on the basis of a bilateral cooperation with other countries (such as Egypt, U.S., Hungary, Germany) organizes specialized training sessions. The topics include money laundering, crime scene investigation techniques, car smuggling, drug smuggling, illegal migration and others. The BP’s statistics show that a total of 11 training sessions were conducted for 273 BP officers in 2007. During the first six months of this year, 39 officers were trained in five training sessions which took place in BiH and abroad as well.

Protection of Rights

The strategy points out that in accordance with the international standards, BiH should afford all persons who migrate illegally, particularly those who were the victim of smuggling, certain minimum rights. Those rights are already guaranteed by the non-refoulement provision and the provision on humanitarian stay. The LMSAA (art. 54) stipulates that a humanitarian stay will be approved to: 1) a foreign victim of organized crime and/or human trafficking;

2) an unaccompanied minor child; 3) a stateless person; 4) a foreigner who meets the requirements of the non-refoulement principle 5) and for other justified humanitarian reasons to be defined in the by-law.

As per art. 16 of the UN Protocol against the smuggling of migrants by land, sea and air, BiH has an obligation to provide some medical/psychological assistance to migrants who endured some form of violence and found shelter in BiH. In practical terms, irregular migrants will be provided with medical assistance if accommodated in one of three existing structures. These include the Government’s centre for illegal migrants, IOM’s shelter for stranded irregular migrants and/or shelters for victims of trafficking currently managed by local NGOs. → COMPLIANT

Regularization of residency status

The strategy acknowledged that there may not be any need for large scale regularization of migrant status in BiH, but advises that the national laws should allow for regularization of irregular migrants status on a case-by-case basis. Currently, the 2008 LMSAA (art. 54) only allows that a temporary humanitarian stay be approved for a person who generally does not meet the requirements for a regular stay, in a situation where a person cooperates with judicial authorities in the investigation of criminal offences, or whose presence is needed at court proceedings, or is the victim of organized crime. Obviously, these will likely include situations when a foreigner entered and stayed in the country illegally, but is given legal humanitarian residence status later by BiH for the above-listed reasons. However, no other situations of status regularization are covered by the law.

→ PARTIALLY COMPLIANT, some flexibility with regard to this issue should be considered.

5. TRAFFICKING

5.1. Penalties and sanctions

Penalties for legal persons and compensation for damages⁹⁷

The BiH Criminal Code does provide for penalties against all legal persons, but it does not contain any specific provisions regarding penalties for legal persons that have committed or have been involved in the crime of trafficking. The measure of confiscation is included as a general measure and as such is applicable to all criminal offences. It will be ordered with regard to objects used or intended for use in the perpetration of a criminal offence, or to objects that resulted from the perpetration of a criminal offence, when there is danger that those objects will be used again for the perpetration of a criminal offence, or when the purpose of protecting public safety or moral reasons make the confiscation seem necessary. It could be concluded that a legal framework for the confiscation exists. However, the issue remains on the extent to which the measure is being used in actual cases of trafficking. The reply to this question is contained in the Counter Trafficking Action Plan of the State Coordinator for Counter Trafficking, which states, inter alia "...modest or no progress was made in confiscating assets and allocation of compensation to victims. Efforts must be made to build an efficient judicial system which will discourage traffickers by confiscation of their assets, and encourage victims to seek their compensation through confiscated assets in the court proceedings. Victims who cannot be compensated in this way should be assisted through state funds, pending available funds. As mentioned in the report, the issue of confiscation is closely linked with the issue of victims' compensation.

The BiH legislation allows all damaged and/or aggrieved parties, including victims of trafficking, to submit their property claims while the criminal proceedings are taking place (if it does not considerably prolong such proceedings), or in separate civil proceedings. In current practice, courts are inclined to refer the damaged parties, victims of trafficking, so they can initiate a separate civil lawsuit upon the completion of criminal procedures. Additional court proceedings, particularly their length of time, greatly discourage the VoTs. As a result, they usually give up in pursuing their right to compensation in civil matters. Vaša prava, a domestic NGO contracted to provide legal assistance to the victims, confirmed that there have been very few cases in the past two years where victims submitted their claims for compensation. It happens that the victim has already been repatriated to her (his) country of origin when the proceedings are scheduled to start. In such situations, Vaša prava represents the interest of the victim alone.

5.2. Protecting and Assisting Domestic Victims of Trafficking

The strategy has noted that many legislative and operational measures were undertaken to assist foreign victims of trafficking. However, considering the trend of an increasing number of domestic victims of trafficking, the Strategy urged the creation of a legal framework which would provide the same treatment to BiH nationals. Consequently, in 2007, MHRR developed the Rules on Protection of Victims of Trafficking and Witnesses- BiH Nationals, which was later adopted by the BiH Council of Ministers. The rules regulate a range of issues including principles and common operational standards pertaining to identification procedures, protection and assistance, primary and secondary prevention and other issues. → COMPLIANT

5.3. Repatriation

The following recommendation addressed an issue of identification of the BiH budgetary funds for repatriation of foreign victims of trafficking. To date, funds for repatriation were exclusively provided by foreign donors. The State Coordinator's Action Plan stated that BiH has to develop its own funding mechanisms for repatriation as an alternative, particularly after IOM's project termination.

97 These two recommendations are merged here due to their causality.

5.4. Length of Residence Permit

As the strategy recommended, the time period of the residence permits for victims of trafficking should be extended from 3 to 6 months. The new draft Book of Rules on Protection of victims of trafficking accepted this recommendation and provides a longer stay on humanitarian grounds if other conditions are met (art.6). → COMPLIANT

5.5. Prevention and combating of trafficking

Training and identification of offenders and trafficked persons and training

The strategy recognized a good practice of the State Coordinators office in terms of coordinating/ providing training to various partners, including law enforcement agents, the judiciary, social workers and others. The Action Plan still places a strong emphasis on continued training of all listed and additional institutions. However, an author of the report noted that for the training of certain institutions (i.e. judiciary) three donors showed their interest, while most of the others were left with no funds. This issue should be considered with the donor community to avoid a “cherry picking” situation and provide necessary training to everyone.

5.6. Research, information and mass media campaigns

The strategy acknowledged the significant activity undertaken by BiH authorities to raise public awareness of trafficking. In addition, public campaigns specifically targeted vulnerable categories such as children and teenagers (through a school programme), single mothers, rural women, potential clients and others. One of the forthcoming, specific activities will be enrolling persons in birth registers (particularly the Roma population) who had not been registered before. These persons don't legally exist and are thus exposed to a particular risk of recruitment by traffickers.

6. MIGRATION DATA AND STATISTICS

6.1. Enacting the By-law

The strategy pointed out that a distinction should always be made between statistics, as quantitative aggregated information collected and processed by national authorities, and a foreigner's personal data. Migration data and statistics are needed in order to plan and manage migration processes. In this regard, the Strategy stressed the necessity for enacting a by-law on migration data (bos. official records) at the earliest convenience to provide a legal background for functioning of the MIS. With some delay, BiH authorities met this requirement by enacting the by-law in July 2007. Formally speaking, the recommendation was implemented and thus BiH is COMPLIANT. However, the MIS itself is not fully operational.

6.1. 2. Collection of data and preparation migration statistics

Reporting template and focal point

The 2008 LMSAA contains the same provisions on the official records. However, a list of these records was to some degree extended to include new categories of records, for example carriers, senders of invitation letters, filed appeals and others. As per the LMSAA (art. 145, para 2) the central database contains the data from all official records. The Book of Rules on the central database on foreigners prescribes a range of data to be kept for each particular official record. However, it does not define in what format the data should be collected (for example, only narrative or numerical information, use for specific reasons, etc). This could lead to some format inconsistency depending on which authority supplies the data. However, information from the Immigration Sector states that MIS, which is currently being upgraded, contains uniformed templates to be used by different migration authorities. This should be reflected in the Amendments of the BoR. → PARTLY COMPLIANT.

6.1.3. Focal Point

The second recommendation was that MoS needed to appoint the focal point that would be responsible for the overall collection of data, the production of statistics and source for the definitions and procedures to be used. The Immigration Sector is responsible for overall coordination and policy planning. However, it currently lacks the personnel to perform those analytical operations. Therefore it is recommended that a team/section be established within the Immigration Sector to deal exclusively with migrations analytics and strategic planning. → NOT COMPLIANT yet.

6.1.4. Data sources for migration statistics

Task force

The Strategy called for a better coordination between different providers and users of migration statistics in order to ensure coherence in the collection and efficient use of statistics. In order to accomplish this task, the parties agreed to establish an inter-agency statistical task force composed of the representatives of each body that deals or is associated with migration. This taskforce would be responsible for finding out which statistics are required by the EU. There is currently no such task force. Occasionally, the meetings between the management of the GP, Immigration Sector, Asylum Sector and MFA take place to discuss practical issues, but migration statistics do not seem to be given their due on the agenda. The MoS strategy proposes an idea to formalize cooperation through the establishment of the Coordination Body for Migration Policy, which could analyze migration statistics or delegate this task to someone. → NOT COMPLIANT yet

6.1.5. Processing of migration statistics

Legal framework

The strategy pointed out that the processing of migration statistics needs to be done with respect to the conformity of standards, with common definitions, disaggregation, validity, timeliness, comparability, harmonization, and relevant periods. The recommendations suggest 1) establishment of definition of statistical terms in the field of migration; 2) establishment of the reporting templates and timeframes for use; 3) joint reporting mechanisms and timeframes to enable BiH to respond to EUROSTAT requests. None of these recommendations has been yet incorporated in the by-law instruction. Obviously from the operational side, the Service or the Sector could provide most of the statistical information on certain categories of data, for example a total number of short-term stays in 2007. This data would correspond to the EUROSTAT request of BiH for the provision of data on “Statistics on residence permits and residence of third-country nationals”. However, these activities will be facilitated significantly if procedures (following the above three recommendations) are prescribed. Lastly, this would enable BiH to compare its migration statistics with other countries. → NOT COMPLIANT

6.1.6. Statistics and policy needs at the national and international level

Annual Reports

The strategy recommended that as soon as an adequate data collection system is in place, BiH can start compiling an annual report on migration data that will assist BiH authorities in responding effectively to the annual requests for statistics made by EUROSTAT. As said, MIS is not fully operational, but agencies keep their respective data. The Immigration Sector, the BP, and the Service for Foreigners compile their respective annual reports which contain statistical information in accordance with their respective competencies. Though reports were unavailable for analysis, it is clear that they need to be adjusted with EUROSTAT criteria and definitions. The Immigration Sector and BiH Statistical Bureau had some meetings to clarify EUROSTAT reporting templates and the type of information to be supplied. There is no confirmation that BiH sent its report to EUROSTAT. → NOT FULLY COMPLIANT.

Exchange and Analysis of Data

The strategy points out that analysing and exchanging migration data can help authorities to foresee certain migration trends, for example statistical data on influx of labour migrants or asylum seekers, and can provide a good insight into migration policy makers on how to control or at least monitor migration. For this reason, it is vital that BiH improves its data an analysis, which would enable the

exchange and comparison of data with other countries. Certain activities are taking place in this field. For example, the ANEAS programme, the Development of Communication Systems and Exchange of Information on Illegal Migration in the Western Balkans countries, foresees the monthly exchange of certain data (forged travel documents, asylum seekers, etc) between the BP primarily, once the MoU is signed. However, this refers only to the BP's data. There is information from other MoS sectors and organizational units, as well as from other ministries to analyze migration trends and propose actions. As a central place for policy and coordination, the Immigration Sector should be strengthened by additional personnel who would deal only with migrations analytics and strategic planning.

Data protection

From a legislative perspective, the Book of Rules on the Central Database contains provisions on the protection of personal data (art. 60), deletion of data (art. 62) and data storage (art .61)

In this regard it is compliant with Convention 108.

However, as the strategy recommended, the MoS, as the owner of the database, needs to be registered and certified by the Commission for Personal Data Protection to operate legally. This condition was met.

Chapter III. Operational and Enforcement Review

1. Introduction

The goal of this report is to help to identify the current situation regarding migration management structures, legislation and their relative effectiveness and subsequently to propose practical recommendations to facilitate development. BiH is entirely capable of seeing continued progress in line with accepted standards and norms, dependent on a willingness to acknowledge existing deficiencies and to take appropriate action.

2. Executive Summary

No formal national migration policy or strategy or has to date been developed in BiH. Both ministries previously given with this responsibility (MoCA prior to 2000, and the Ministry of Human Rights and Refugees from 2000 to 2003) did not make progress and despite having existed since 2003 with the responsibility for 'policy development for asylum' and 'policy development for immigration'⁹⁸ the MoS did not manage to complete this task. The absence of a policy has weakened the effectiveness of migration management initiatives and also the role of the Ministry itself (with many elements of migration management devolved to the state-level law enforcement agencies, or under the responsibility of other ministries), leaving an unclear situation as to ultimate ownership and responsibility. As a result, MoS' recent stated intention to develop a policy is a clear, commendable step forward.

A review of the migration situation makes it clear that though progress has been made in many migration management areas, work remains if a sustainable and effective system is to exist in the future.

BiH faces many problems affecting migration management including: limited financial resources; a lack of institutional experience; a lack of accountability; unclear mandates; duplication of responsibilities; gaps in procedures etc. However the most evident of all is the lack of a strong, centralised, coordinating body able to act as a focal point of all migration issues and provide the necessary direction to implementers on a proactive basis. BiH subsists on a fragmented approach to government (operating on state, entity and cantonal levels) and concepts of civil service. This is, of course, an inheritance of the conflict, which left the new state with few functioning structures and little concept of how to create them.

BiH faces a very specific situation given its particular governmental model, as well as the role of the International Community there. Despite not possessing a fully functioning migration management system it must be stated that significant developments have been made within a relatively short period of time (the first state-level migration agency, the BP, was only created in 2000). Much of this has been in collaboration with the international community.

The noteworthy level of assistance provided to BiH has seen the creation of many of the migration related developments, however significantly many of these were done on an individual agency/ministry basis with little attempt to approach migration management as a whole. This can be understood when it is acknowledged that creating an entire migration management system, with all of the required bodies and legislation, is an immense task. Quite simply no provider of assistance had the necessary resources, mandate or desire to handle it previously. This does not mean that no progress has been made; in fact much progress is evident (BiH is able to claim that it has all the required legislation and bodies to fully implement a four-tier migration model for example). However, it does mean that a comprehensive or cohesive migration system has to be further developed in BiH. As a result, migration management agencies are unclear of their responsibilities and tasks in a real sense as part of a national approach, and procedures for foreign nationals are often both bureaucratic and easy to avoid.

BiH migration management activities are predominantly focussed on immigration – the control of foreign nationals entering, residing or departing BiH - as opposed to emigration issues. Naturally the state retains authority over those who enter and exit and is therefore able to implement initiatives which impact upon them, following a usual governmental model. BiH nationals not guilty of criminal activities or considered threats to security, health or order are not subject to control by the state.

The framework for a functioning migration management model therefore generally exists; however this fails to transfer to reality and developments in areas such as legislation are undermined by in-

98 'Law on Ministries and other bodies of administration of BiH', 2003, Article 14.

complete implementing structures and practices. It is generally at this practical level where failures in effective migration management occur for BiH.

BiH has increasingly become more willing in recent years to acknowledge weaknesses in previous approaches and incorporating changes and initiatives necessary to see concrete development.

The main elements detracting from the overall effectiveness are:

- Coordination/Cooperation
 - Individual ministries, agencies and bodies identify and pursue their own policies and goals in the absence of a centrally agreed national migration management policy. Subsequently these may not fully reflect the best interests or goals of BiH;
 - Not all migration-related bodies function at the same level of authority. Most direct migration 'control' bodies are retained at state-level; however associated bodies responsible for issues such as health, employment, education and others exist at lower levels (entity /canton);
 - Weak overall coordination. Despite legislation clearly identifying the MoS as the responsible body for immigration, asylum and border matters, this leadership has not always been evident in a real sense. This is the result of several factors, such as the chronology of the creation of state institutions, inadequate legislative guidelines, under-resourcing, and perhaps lack of experience;
 - Limited strategic planning. BiH bodies seldom have strategic planning which extends further than the coming year. Planning is agency-specific with little or no coordination. Plans where they do exist are often vague and seldom reinforced with concrete action plans;
 - Poor inter-agency communication and cooperation. Agencies tend to operate in isolation to each other. This is more commonly seen between the policing and non-policing bodies.
 - Limited scope of gathering, analysing and disseminating available information amongst all migration bodies does not allow for a realistic assessment of or response to the situation. Information/intelligence systems are implemented within some BiH agencies however further development is required.
- Resources
 - An inadequate border infrastructure;
 - Inadequate access to and use of databases
 - Many staff employed within migration bodies have little practical concept or understanding of national migration management nor of their agency's particular roles within it.
- Capacities
 - SFA is understaffed and under-equipped.
 - Management structures are predominantly strictly top-down with regard to chain of command, however bottom-up regarding communication. Staff are insufficiently empowered to take proactive measures at their respective level.
 - Weak pre-entry (visa staff are insufficiently trained; procedures are not applied uniformly or fully; a lack of accountability for actions exists; little communication with other elements of migration management; an over-reliance on the submission of documents required by law with little investigative approaches from staff).
 - Heavy reliance on international and other external assistance.
 - A personality-led approach to management instead of well-structured and efficient procedures.
 - Weak sustainable capacity/development capabilities and recruitment procedures.

2.1. Policy

No formal written migration strategy exists for BiH. As a result, this assessment has considered the various inferred policy aims from various BiH organisations through either specific stated goals or through recent initiatives conducted. Through the signature of various agreements (most notable and recently the 'Stabilisation and Association Agreement' with the EU) BiH has repeatedly committed to progressing towards eventual EU membership. As such it has also committed to comply with the relevant mi-

gration standards of the EU (embodied within *EU Acquis* etc) and thus a certain degree of migration policy is already decided for BiH.

Other general goals can be summarised as:

- Facilitating foreign investment and associated economic benefits, whilst promoting BiH business and trade opportunities abroad;
- Developing tourism;
- Protecting the resident labour force and developing the resident labour market;
- Ensuring a strong stance against cross-border criminality and terrorism.

2.2. Administrative Structures

BiH administrative structures are held back by a heavily administrative and complex system, with divided responsibilities across various bodies at different administrative levels. All administrative structures are relatively new and still developing capacities (some faster than others). The necessary migration bodies all do exist; however there is room to improve efficiency.

2.3. Operational Mechanisms in Migration Management

Operational mechanisms have seen significant development and in some areas BiH currently complies with standards seen in some EU states. Unfortunately these successes are limited and generally confined to particular agencies/bodies. As a whole, BiH is not effective in implementing migration control measures across the board because of failures in certain key bodies, most notably at pre- and after-entry stages.

3. Methodology

This assessment was conducted from 19th May 2008 to 23rd June 2008 by Adrian Cooper under the general direction of IOM, Sarajevo.

The assessment has been developed through the use of direct analysis of BiH reports, assessments, statistical data, open source research, as well as interviews with involved persons. Raw data has been analysed to provide indicative results and assumptions.

4. Migration Policy

4.1. Policy-Making

The term 'policy' should not be confused with 'legislation' or 'rules'. A policy is a set of principles which guide the actions and activities conducted by the state in pursuit of particular objectives. 'Developing migration policy is not an easy or straightforward matter. While migration has emerged as a significant area of public policy in its own right, it is still heavily interdependent with other areas of public policy. Effective national migration policy is challenged to find and maintain a balance among measures that address various migration-related issues without achieving the goals of one sphere at the expense of neglecting the goals of another.'⁹⁹

The process of migration policy creation is exceptionally complex, however can be generally summarised as follows:

Migration Policy is sub-divided into two elements – 'immigration' (the state's goals related to the intake of foreign nationals) and 'emigration' (the state's goals in relation to BiH nationals leaving).

First of all the mechanism for policy creation must be clarified. Although policy will ultimately be endorsed by the relevant Head of State, there is a need to clarify the process below. Who will assume responsibility (national coordinator etc.) and who is involved in the process? Policy creation requires a great degree of coordination and compromise across a variety of bodies (both 'government' and

99 IOM, 'Developing Migration Policy', website <http://www.iom.int/jahia/Jahia/lang/en/pid/242>

‘non-government’). It is usual that individual bodies will have clashing priorities (for example whilst economic bodies may wish to increase the number of certain foreign visitors, law enforcement bodies may wish to reduce the number because of national security concerns). In such cases a decision of what is best for the state is required.

Detailed research is then required to clarify the current situation (and the likely future situation) in the country in order to identify obvious issues. This will involve analysis of the state’s demographic, economic, political and social situation (into which immigration and emigration statistics will be incorporated). This will be conducted by various agencies involved, however, importantly, a standardised system of data collection and presentation is required (using agreed definitions and criteria) to ensure as accurate a result as possible is obtained.

Key questions will be considered:

- How capable is the state to provide for its own citizens and therefore also for foreign nationals in light of the analysis (the priority of a country is usually to safeguard the best interests of their own nationals and state)?
- What obligations are placed on the state (conventions, treaties etc.)?
- What are the costs and benefits of immigration and emigration to the state?
- What are the capacities to deal with migration (identifying what realistic options exist)?
- What are the likely future ramifications of policy decisions (effects on international relations/ clashes with other state policies etc.)?

Thus the principle of policy creation is to identify goals which are both in the best interests of the state but also reflect the practicalities involved. Depending on the priorities and situation of the country, the migration policy may result in being ‘restrictive’ (limiting immigration) or ‘open’ (encouraging immigration). The following stage is to identify necessary gaps and needs to fulfil obligations and define an action plan on precisely how the policy will be pursued.

4.2. Current Policy

No formal migration policy exists (either immigration or emigration). Policy responsibility theoretically rests at state-level in BiH as per accepted norms elsewhere. However, the procedures and capacities normally utilised to create policy are not in place. It is noted that there is a lack of understanding amongst state bodies regarding migration policy. Individual ministries and migration bodies do publish ‘reports on work’ on a regular basis and sometimes also ‘action plans’, however these are limited in nature and often do not take into account the activities of other migration bodies’.

4.3. Existing Migration Policy Challenges

BiH has demonstrated a willingness to develop a migration policy, however faces certain practical challenges to this:

- No effective leadership for policy creation is evident. Although the MoS have notional responsibility, this is not reinforced in practice, allowing individual migration bodies too much authority over what are essentially state policy issues. The role of operational migration bodies is to implement policy and not to decide it unilaterally;
- Not all relevant migration bodies (for full migration policy) exist at state-level;
- Data collection and analysis is not standardised;
- General capacities of the state ‘supervisory’ bodies (MoS for example) are inadequate with regard to resources;
- Not all migration management bodies sufficiently understand their role. This is particularly true of the MFA whose visa sections must commit to their role as pre-entry control and not as automatic facilitators of migration.

5. Migration-related legislation

BiH has succeeded in adopting most necessary migration-related legislation and this has included regular amendments to key legislation (such as the umbrella law LMSAA). Legislative developments are slow however, with an approach to the process which is further complicated by the involvement of many

international actors who sometimes frustrate procedures in order to promote their own agendas. The current legislative situation in the area of migration can be said to be now broadly compliant.

The description of respective primary legislation is already given in MoS' Part A and in the Monitoring Report, so at this section only a list of relevant legislation is provided.

5.1. Legislation on Refugees/Asylum Seekers:

LMSAA

5.2. Legislation on Border Control and Management:

- Law on the State Border Service
- Law on Amendment to the Law on the State Border Service
- Law on Surveillance and Control of the State Border
- LMSAA
- BiH Criminal Code (and amendments)
- BiH Criminal Procedure Code (and amendments)
- Law on International and Inter-entity Road Transportation
- Law on Police Officials
- Law on Travel Documents (Passports) in BiH
- Law on Prevention and Control of Misuse of Narcotics
- Law on Administration
- Law on Administrative Procedure.

5.3. Legislation on Labour:

- LMSAA
- Law on Employment of Foreigners in FBiH
- The RS Law on Employment of Foreigners and Stateless Persons
- District of Brčko Law on Employment of Foreigners

5.4. Legislation on Irregular Migration:

- LMSAA
- Law on SIPA
- Law on Prevention of Money Laundering
- Law on the Protection of Threatened and Endangered Witnesses
- Law on Witness Protection Program in BiH
- Law on the SFA

5.5. Legislation on THB and Migrant Smuggling:

- LMSAA
- BiH Criminal Code (and amendments)
- BiH Criminal Procedure Code (and amendments)
- Law on the Protection of Threatened and Endangered Witnesses

5.6. Legislation on Protection of Data:

- Law on Confidential Data Protection
- Law on Personal Data Protection
- Law on the Central Data Register and Data Exchange
- Law on the Agency for Identification Documentation and Exchange of Data

5.7. International Treaties Ratified:

- 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Ratified: 01/09/1993)
- C97 Migration for Employment Convention (Revised), 1949 (Succession: 02/06/1993)
- International Covenant on Civil and Political Rights (Succession: 06/03/1992)
- International Covenant on Economic Social and Cultural Rights (Succession: 06/03/1992)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Succession: 01/09/1993)
- Convention on the Elimination of All Forms of Discrimination Against Women (Succession: 01/10/1993)
- Convention on the Political Rights of Women
- Convention on the Rights of the Child (Succession: 06/03/1992)
- Convention on the Prevention and Punishment of the Crime of Genocide. (Succession: 29/12/1992)
- International Convention on the Elimination of All Forms of Racial Discrimination (Succession: 16 July 1993).
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Accession: 01/06/2003)
- UN Convention against Trans-national Organized Crime, with Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and with Protocol against Smuggling of Migrants by Land, Air and Sea (Accession: 24/04/2002)¹⁰⁰

5.8. Existing Legislative Challenges

Numerous assessments have been conducted on BiH migration legislation aimed at identifying necessary steps to be taken to achieve EU compliance¹⁰¹ and progress has definitely been made in achieving greater conformity with accepted legislative standards.

The most obvious example of this is the latest LMSAA, adopted in April 2008, which has incorporated many elements required for EU compliance¹⁰² including: carriers' liability; adoption of the 'A, B, C, D' visa categories; the ability to refuse entry to holders of visas has been strengthened; tighter restrictions on employment; reinforced rights of minors; inclusion of additional categories such as researchers, consultants, key-personnel at companies and others; the inclusion of adopted children; exclusion from the possibility of obtaining permanent residence based on temporary residence for studies, incomplete international protection applications, flexibility on the re-entry ban period following expulsion; 'bogus' marriage/adoption was recognised; introduction of a work-permit quota; accelerated asylum procedures; clearer detention and removal of aliens procedures; introduction of the no-switching policy (changing basis of stay whilst in-country).

As such, the LMSAA, 2008 represents the most significant migration development for BiH in recent history.

100 Source: EC National CARDS 2005 'Support to the Implementation of the IBM Strategy for BiH' project as implemented by IOM.

101 The most extensive of these was probably the 'EU Alignment Institutional and Legal Framework Strategy on Migration for Bosnia-Herzegovina.' This document was created within the framework of a CARDS Regional Programme on the "Establishment of EU compatible legal, regulatory and institutional frameworks in the fields of Asylum, Migration and Visa matters" (CARDS AMV), financed by the EC and managed by the Swedish Migration Board. The 'Migration' module was created by IOM. The document included technical recommendations in six key areas (entry and admission; stay and residence; expulsion, voluntary return and readmission; irregular migration; trafficking; migration statistics and data protection).

102 As per EU Acquis

There do remain some developments necessary for full compliance such as:

A specific list of recognised travel documents has yet to be adopted;

No progress has been made regarding the fact that employment issues are still retained at entity level and not state. The role of the state and specifically the SFA has been considerably strengthened with regard to control over the migration status of foreigners with work permits;

No 'economic benefit test' has been legislated to determine the relative impact of foreign business later, except at first registration phase. Hence the ability to qualify using 'briefcase businesses' is still possible. As the role of the SFA develops, initiatives to counter this are planned;

Entry for study is still in detailed legislated for. Although the concept of fraudulent entry in this capacity is implied in legislation, specific issues are not;

Specific rights of permanent residents are unclear, with an exception to right to employment;

Mitigating circumstances for removal of residence are undefined;

The granting of residence based on family reunification is not as finite as per EU guidance (the use of the word 'may' instead of 'must');

No formalised procedures for transits for the purposes of expulsion.

Despite this, BiH has achieved broad compliance with legislative standards.¹⁰³

Challenges facing BiH with regard to migration legislation are less an issue of specific legislation but rather the weakness of the associated processes to achieve the legislation in the first place.

BiH should adopt a clearer procedure for reviewing, creating and amending migration legislation. The current situation is a confused one and heavily reliant on and influenced by the international community. As such the sustainability of BiH capacity to update legislation in the future may appear weak.

Given the peculiarities of the country, it is also impractical for BiH to adopt legislation fully compliant with all required standards and best practices immediately. Instead, this must be done as a gradual process and in conjunction with building the capacities of the organisations involved (both 'supervisory' and implementing agencies). Without the relevant agencies abiding by the revised legal provisions and fulfilling the spirit of the law and not just the letter of it, legislative developments will be ultimately futile.

Amendments to and adoption of primary legislation necessitate all related secondary and tertiary legislation (by-laws) to also be updated. Until this is done, the contents of the previous by-laws retain validity (unless in direct contravention to the new primary legislation). This therefore requires BiH to conduct speedy amendments to by-laws in order to avoid inconsistencies.

6. Administrative Structures of Migration Management

6.1. Overview of State Structures

In real terms, responsibility for migration management is primarily held by the MoS and its organisational units (BP, SIPA and SFA), with additional involvement of the Ministries of Foreign Affairs, Justice, Civil Affairs, Human Rights and Refugees, the BiH Court and DEI. Certain important elements such as Health, Education and Employment are not held at state-level – allowing BiH to approach the 'control' element of migration at a state-level, however not so 'welfare' issues to the same extent.

6.2. Mandates and Functionality

6.2.1. MoS and its Organizational Units

The MoS (MoS) was created through the "Law on Ministers and other administrative bodies", in 2003. The Ministry was created specifically in response to the need for strengthened state-level ownership over security issues and to provide overall supervision of the state-level law enforcement agencies that

103 Council of Europe and UNHCR also confirm BiH's general compliance for legislation relating to asylum specifically. This is reiterated by the findings of the Visa Liberalization for BiH 'Roadmap'.

had been created (the State Border Service (BP)¹⁰⁴ and the State Information and Protection Agency (SIPA)¹⁰⁵) before it. Since that time the SFA (SFA) as the third state-level law enforcement agency has come into existence.

The Ministry's current competencies are defined under the 'Law on Ministries and other bodies of administration of BiH', 2003¹⁰⁶ as:

- protection of international borders, domestic border crossings and traffic regulation at BiH border crossings;
- prevention and tracing of perpetrators of criminal offences of terrorism, drug trafficking, counterfeiting of domestic and foreign currencies and trafficking in persons, and of other criminal offences with an international or inter-Entity element;
- international co-operation in all areas within the remit of the Ministry;
- protection of persons and facilities;
- collection and use of data relevant for security of BiH;
- organisation and harmonisation of the activities of the Entity Ministries of Internal Affairs and of the District of Brčko of BiH in accomplishing the tasks of security in the interest of BiH;
- meeting of international obligations and co-operation in carrying out of civil defence, co-ordination of activities of the Entity civil defence services in BiH and harmonisation of their plans in the event of natural or other disasters afflicting BiH, and adoption of protection and rescue plans and programmes;
- implementing BiH immigration and asylum policy and regulating procedures concerning movement and stay of aliens in BiH

The precise functions of the MoS however are broad with the 'Book of Rules on the internal organisation of the MoS' The Ministry is responsible for implementing all migration management-related issues however lacks the operational and legal ability to practically implement measures itself. These abilities are instead found within the three state-level Law enforcement agencies (as organisational units of the MoS). There is no clarification or guidance on precisely what the Ministry's role is with regard to interaction with them, apart from the inferred principle that the Ministry has a supervisory position. This vague relationship with the organisational units of the MoS is a key issue and a major obstacle to achieving effective implementation of migration management. Though the three state-level organisational units report to the Ministry, they do so directly to the Minister himself (as endorsed through the principle of operational autonomy) and not to any lower levels of the MoS structure. Even this requirement to report to the Minister is not automatic for the organisational units in all cases. As a result, the situation renders much of the practical control more usually found within a country's relevant state ministry effectively in the hands of the implementing bodies. In order to effectively function as a supervisory body to the state-level law enforcement agencies, the current situation necessitates smooth vertical and horizontal communication in all directions i.e. the lower bodies of the Ministry receiving all relevant information, processing it and advising the Minister who then communicates with the law enforcement agencies - currently not the case for BiH.

Clarifications of specific roles are developing through the creation and refinement of procedures and authorities of the state-level organisational units; however these generally remove functions from the Ministry rather than clarify the precise role of the Ministry itself.

The MoS has successfully developed over the five years of its existence in several areas and can claim certain key successes towards progress:

- a number of international agreements for both security and migration (readmission) have been signed;
- migration reporting and the implementation of limited action plans has been seen¹⁰⁷;
- necessary primary migration legislation has been adopted and amendments subsequently made;
- secondary and tertiary migration legislation have been developed;
- responsibility for the management of asylum procedures has been assumed from UNHCR;

104 The State Border Service was subsequently renamed the 'BP of BiH' in 2007

105 The State Information and Protection Agency was subsequently renamed the 'State Investigation and Protection Agency' in 2004.

106 Source: 'Law on Ministries and other bodies of administration of BiH', 2003, Article 14.

107 Such as the annual 'Report on the situation of Trafficking in Human Beings and Illegal Migration in BiH', and 'Report on the Implementation of the Action Plan for Combating Trafficking in Human Beings and Illegal Migration in BiH'

- the creation of the SFA, as the important after-entry control, has been completed;
- state resources for the creation of secure migration detention facilities were committed and one such centre completed;
- the development of basic IT and communications infrastructure.

In real terms however, operational effectiveness of the Ministry itself remains lower than would be expected. Much of the progress made above has been the result of the influence of external actors and the actions of the organisational units of the MoS.

The organisational structure of the Ministry is unclear, with potential for duplication of responsibilities across different MoS sectors; precise competencies and functions do not always exist or reflect the current situation; key tasks are left unimplemented (most importantly the creation of policies); staffing remains below target (the original staffing targets identified at the time of the MoS creation have still not been reached) and recruitment procedures are slow and bureaucratic. Additionally staff training fails to increase specific migration knowledge; the specifics of the relationships with the organisational units of the MoS are undefined; internal communication is disjointed; and accountability is not prioritised with the inspectorate underperforming.

The comment made by the EU BiH Progress report for 2007, “Still, there is a lack of mature coordination structures and limited administrative capacity”¹⁰⁸ although focused on general administrative capacities of BiH, should be considered by the MoS.

■ Immigration Sector

The Immigration Sector is one of the ten Sectors of the MoS. The Sector has within it two sections: the Section for administrative affairs; and the Section for regulations, oversight, and training.

The Sector’s specific responsibilities are to:

- Perform administrative and other expert duties pertaining to the realization and implementation of policies in the area of immigration in BiH;
- Conduct tasks pertaining to the elaboration of preliminary drafts and drafts of laws and by-laws in this area;
- Monitor the situation in regard to achieving European standards in this area;
- Perform analyses and reporting;
- Deal with the intake and accommodation of illegal immigrants and victims of THB;
- Undertake other tasks and duties that by the nature of the matter fall under the competency of this Sector¹⁰⁹

As such, the specific tasks of the Sector are ambiguous and open to interpretation, lacking clarification of exactly what is expected and how it is to be done. To date the Sector has focussed primarily on administrative functions as part of the migration management process and little concentration has been made on what is arguably its key task ‘realization and implementation of policies’. The position of the Sector is difficult. It is minimally staffed with insufficient practical experience of migration policies or their implementation. This tends to weaken the credibility of the Sector with the organisational units of the Ministry (one of which pre-dates the Ministry itself). The role of the Sector is further undermined by the ambiguous mandate of the Ministry and the lack of communication and clarification on specific responsibilities and apparent clashes in competencies with the organisational units of the MoS.

■ Asylum Sector

The Asylum Sector is another of the ten Sectors within the MoS. It contains three sections: Section for asylum procedure; Section for support; and Section for sheltering and programme

The Sector’s specific responsibilities are to:

- Perform administrative and other expert tasks which relate to the realization and implementation of asylum procedures and policy in BiH;
- Coordinate the work of all authorized organizational units in BiH;
- Conduct tasks which relate to drafting legal and sub-legal acts from within this field;
- Deal with the intake, accommodation and support to asylum applicants;

108 ‘BiH 2007 Progress Report’šCOM(2007) 663ć
109 Book of Rules on the internal organisation of the Ministry of Security, Article 11

- Follow the state of affairs with regard to respecting European standards in this field;
- Perform analyses and reporting;
- Other tasks which by the nature of the matter fall under the competency of this Sector.¹¹⁰

The key functions of the Sector can be further refined as:

- Evaluating asylum (international protection) applications submitted;
- Interviewing related to claims;
- Issuing decisions on applications;
- Issuing decisions on approved temporary residence based on humanitarian grounds;
- Revising decisions (cessation of status);
- Approving temporary admission;
- Cooperation/liaison with the BiH Court;
- Registration of asylum seekers;
- Issuance of the asylum seeker's identification card;
- Issuance of cards to recognised refugees;
- Keeping records on asylum seekers;
- Undertaking activities on determining unique registration number for recognized refugees;
- Keeping records in data bases on asylum seekers, persons with residence granted on humanitarian grounds, etc.;
- Providing interpretation and coordinating the work of interpreters (during interviews);

The Asylum Sector works very closely with the Ministry of Human Rights and Refugees (MHRR), which is in charge of providing access to rights in a society to recognized refugees.

As can be seen, the Asylum Sector has much clearer and defined roles and tasks than many of the other sectors of the Ministry. This clear focus of activities along with strong support from organisations such as UNHCR and effective local management has seen the Asylum Sector develop consistently throughout its lifespan. Currently the Sector is functioning well, with timely and well-researched decisions being reached. Additionally the Sector appears to possess effective communication with other relevant bodies (organisational units of the MoS, other ministries and the State Court of BiH¹¹¹)

The EU recently assessed the progress as "BiH efforts in the field of asylum are largely on track."¹¹²

■ **The Border Police**

The Border Police (BP) was the first state-level law enforcement agency of BiH when it came into existence in June 2000 (then named the State Border Service). Over the next two and half years following their creation they gradually assumed full control of all state borders from the entity and cantonal ministries of interior affairs, completing this task in September 2002.

The BP is the on-entry control of BiH.

The authorities of the BP cover:

1. Implementation of the provisions of the Law on Surveillance and State Border Crossing Control as it is stipulated by that law;
2. Implementation of the provisions of the LMSAA as it is stipulated by that law;
3. Prevention, detection and investigation of the criminal acts as it is regulated by the BiH Criminal Code including criminal acts when:
 - a) those criminal acts are directed against security of state border or against operations and tasks of BP; or
 - b) those criminal acts must be proceeding in accordance with provisions on abuse of public documents which serve as proof of identity, provisions on travel document and obligation to possess visa, then provisions on movement and stay of aliens and asylum if those crime

110 Book of Rules on the internal organisation of the Ministry of Security, Article 12

111 The State Court functions as the appeal body for MoS asylum decisions.

112 BiH 2007 Progress Report'šCOM(2007) 663č

offences are committed during border crossing or if they are directly linked with crossing the state border; or

- c) those criminal acts include transport of illicit goods across the state border, goods without official authorization or in the cases of violation of existing prohibition if BP is assigned to supervise such authorizations or prohibitions on the basis of the other regulation or administrative agreement with bodies competent for such proceedings.
4. Prevention, detection and investigation of other criminal acts upon the request of the competent body;
5. Prevention, detection and investigation of:
 - a) violations regulated by the Law on Movement, and Stay of Aliens and Asylum, and other relevant laws; or
 - b) other violations upon the request of the competent body;
6. Provision of police support to the organizational units within MoS in implementation of the LMSAA and other regulations in force in this field;
7. Undertaking security measures aiming to protect air civilian traffic and facilities at BiH International Airports;
8. Securing its organizational units from threat;
9. Performance of other tasks regulated by the law and other regulations.¹¹³

The BP function at all BCPs of BiH as well as within an area of ten kilometres from the border (this area may be extended if duties are carried out on aircraft, trains or maritime vessels). Though nominally BP as per EU definitions (focussing primarily on the human element of border movements), they also hold responsibilities for physical security of the border and combating associated cross-border criminality (narcotics, weapons etc). The BP are the dominant operational migration management body in BiH.

The current staffing complement of the BP is 2,083 (of which 1,904 are police officials). This number is 82.14% of the target level¹¹⁴ and leaves a short-fall of 458 positions (the majority of which are for police officials (442)).¹¹⁵

The BP is the oldest and very well established BiH migration management body and although it has achieved high-levels of operational effectiveness, continues to develop. Considerable international assistance has previously assisted the BP in their aims and though such assistance still continues to a lesser degree, the BP has demonstrated its ability to also function independently of this. The BP currently includes all necessary basic organisational components for a border policing authority including: clear management structures; administration; recruitment, training and staff development; intelligence gathering, analysis and dissemination; expert document examination; strategic analysis and planning.

Operationally the BP has recently demonstrated a more focussed approach to responding to threats identified through analysis of data, thus following an efficient model in order to maximise resources. Examples of this have been the creation and implementation of concrete action plans such as the 'Action Plan for Fight against organized cross-border criminal activities'. Such action plans have shown results: in 2007 all areas of BP criminal detection increased with the number of discovered criminal acts of human smuggling increasing by 43.1% on the previous year. The BP has demonstrated an increased competence in all criminal investigation capacities (counter-trafficking, narcotics etc.).

The BP has also effected a continued reduction of visas issued at the border (in cooperation with the MFA). This has been aided by the introduction of the electronic visa issuance system in 2004 and the official decision in the same year to limit issuance of visas at the border to only 14 of the 55 international BCPs.

Border crossing statistics do raise an anomaly however. Whilst passenger numbers continue to increase, the number of refusal of entries and detection of forged documents continue to decrease (passenger numbers have increased by 18.5% since 2003 however refusals of entry have reduced by 30% and detection of forged documents decreased by 26.8% over the same period).¹¹⁶ Whilst fluctuations are to be expected, assessment of statistics year by year, does not indicate a similar down-turn

113 'Law on the State Border Service', 2004 as amended by the 'Law on Amendment to the Law on the State Border Service', 2007

114 As defined by the 'Book of Rules on Internal Organisation of the BP'

115 Source: BP Data to be used in Drafting the Asylum and Migration Strategy and Action Plan' May 2008

116 It should be noted however that the BP has significantly increased their detection rate of forged travel documents (specifically identity cards) over this period.

in other areas. Given that BiH is still a transit and destination country for foreign irregular migration the possible reasons for this include: a drop in on-entry BP capacities; a change in modus operandi of irregular migrants (switching to clandestine entry and avoiding official BCPs). If the latter, it would be expected to see an increase in detection rates of illegal border crossings, however this is not supported by statistics. This finding is only indicative and would require further analysis for a more detailed assessment of likely causes.

■ **Challenges**

There are still challenges faced by the BP if their progress is to be maintained however:

- Under-staffing remains problematic - a shortage of 18.6% of their target staffing for operational police officials naturally significantly limits their capacities;
- Border infrastructure at many locations is below standard (including material resources, such as buildings, sanitation and equipment as well as effective communication systems);
- Whilst communication with other 'traditional' law enforcement agencies is developing, communication with other involved migration bodies (such as the Immigration Sector) is not well-defined or fully effective;
- Legislation needs clarification/amendment in order to further strengthen the role of the BP as part of a cohesive BiH migration management structure;
- Utilisation of the Migration Information System (MIS) needs to be refined and implemented;
- Core responsibilities and capacities (effective examination and assessment of the travelling public) must be maintained in line with improvements in other areas of BP work.

■ **SIPA**

In 2002, the State Information and Protection Agency (SIPA) was established before being subsequently reconstituted (and renamed as the SIPA) in 2004. This reconstitution saw SIPA adopting significant new policing powers and a much increased role within BiH law enforcement. SIPA is the second state-level law enforcement agency and was initially created in order to function as the operational element of the BiH Court and the Prosecutor's Office of BiH.

The competences of SIPA are:

1. Prevention, detection and investigation of criminal offences falling within the jurisdiction of the Court of BiH (hereinafter: the Court), especially: organized crime, terrorism, war crimes, trafficking in persons and other criminal offences against humanity and values protected by international law, as well as serious financial crime;
2. Collection of information and data on criminal offences referred to in item 1 of this Paragraph, as well as observance and analyses of security situation and phenomena conducive to the emergence and development of crime;
3. Assistance to the Court and the Prosecutor's Office of BiH (hereinafter: the Prosecutor's Office) in securing information, and execution of the orders of the Court and of the Chief Prosecutor of BiH (hereinafter: the Prosecutor);
4. Physical and technical protection of persons, facilities and other property protected under this Law;
5. Witness protection;
6. Implementation of international agreements on police co-operation and of other international instruments that fall within the scope of its competence;
7. Criminal expertise;
8. Other tasks as prescribed by law or other regulations.

SIPA shall also process data and keep records in accordance with the Law on Police Officials of BiH, the Law on the protection of personal data of BiH and other regulations of BiH.¹¹⁷

Commonly referred to as 'BiH equivalent to the FBI', SIPA is a specialised police investigations agency, focussing on major economic crimes, war crimes, terrorism and other serious violations of the state criminal code. SIPA additionally takes the lead in major organised crime and cross-border crime initiatives, including trafficking and money laundering. A secondary role of SIPA is to provide physical security for persons and buildings (including foreign representations) deemed important to the state.

As such SIPA represents the most classically police-orientated of the three state-level law enforcement agencies. Although migration-related crime is only one element of SIPA mandate, their role in investigating major crimes is an integral aspect of BiH migration management system.

Results were initially slow to appear from SIPA; however these have started to emerge with successful cases relating to financial crimes dominating. Importantly, SIPA has also effectively demonstrated its potential and willingness to act as an investigator of criminal offences in state institutions.¹¹⁸

■ SFA

The SFA is the youngest of the state-level migration bodies (created in October 2006) and makes up the third organisational unit under the MoS. The SFA was created in order to move the after-entry control to the state-level, as previously responsibility for in-country migration issues had been held by the various 'Departments for Aliens' within each of the Mol. Because of limited resources and powers, the previous system was highly ineffective and hence was transferred to state-level. (The scope of authorities the departments possessed was limited to the particular geographical district of that Mol. Additionally, staff in the RS and District of Brčko were authorised police officers, while the FBiH staff were purely administrative).

The SFA currently has 177 staff in place of the 233 stipulated within the Book of Rules for the Service.

The legal authorities of the SFA are:

1. The administrative duties related to movement and stay of aliens in BiH, prescribed by the LM-SAA, as follows:
 - a) annulment of visas to foreign nationals;
 - b) issuance of personal and travel documents to foreign nationals, i.e. revocation of the issued personal and travel documents,
 - c) registration of residence or registration of change of residence address of foreign nationals,
 - d) attestation of guarantee letters and invitation letters
 - e) issuance of residence permits to foreign nationals
 - f) duties related to applications filed for *Asylum* in BiH;
2. Decisions in administrative matters following the requests for:
 - a) granting temporary or permanent stay in BiH, or renewal of temporary stay,
 - b) cancellation of temporary or permanent stay;
 - c) placing foreign nationals under surveillance;
 - d) expulsion of foreign nationals from the country;
 - e) issuing conclusions concerning the enforcement of expulsion decisions.
3. The decisions referred to in paragraph (2) of this Article shall be issued by the Director of the Service.
4. Handling of the cases and keeping of the records prescribed by the LMSAA and keeping of the records within the scope of the Service's operations.
5. Inspection duties over the implementation of the LMSAA as follows:
 - a) control of stay, control of a purpose of stay, control of usage of granted stay, registration of stay or change of place of stay;
 - b) supervision over the various legal entities and individuals in relation with the stay and employment of foreign nationals;
 - c) filing charges and requests for the procedure against the legal entities and individuals, as a result of their non-compliance with the legal provisions regulating the issues of movement, stay, and employment of foreign nationals;
 - d) submission of requests for initiating the procedure of cancelling a granted stay, cancelling a stay on grounds of filing an application for asylum or on grounds a granted asylum as well as submission of the requests for visa cancellation;
 - e) keeping the records concerning the inspection controls and findings;

118 Most recently seen with wide scale arrests made by them of Ministry of RS Interior staff for offences relating to the fraudulent issuance of national identification documents.

- f) regular inspection control, inspection by order or request, or upon receiving reports (complaints, notifications, applications);
 - g) submission of requests to organize search to locate an individual or item being sought;
 - h) submission of requests to conduct examination of persons, items, vehicles and premises/buildings, as well as to place a foreign national under close surveillance;
 - i) making checks based upon an order given by the Ministry in relation to entry, movement and stay of foreign nationals who are in the process of obtaining BH citizenship.
 - j) execution of the measure of removal of the foreign citizen from the country.
6. The activities related to:
- a) follow up, collection and processing of data and findings falling under the responsibility of the Service,
 - b) analysis of the state of affairs under the responsibility of the Service,
 - c) undertaking necessary measures and activities under its responsibility, suggesting the measures for improvement of overall situation in the area of movement, stay and employment of foreign nationals.
7. Data-analysis and record-keeping in accordance with the LMSAA;
8. Initiation of the procedure in order to claim the refund of amounts spent on expatriation of foreign nationals;
9. Other activities prescribed by the LMSAA and other laws and regulations, regulating rights, obligations and other issues in relation to movement, stay and employment of foreign nationals.¹¹⁹

As the after-entry migration control of BiH, the SFA is designed to identify, apprehend, detain and remove from BiH irregular migrants as necessary. The Service is also the first receiving body for in-country applications for international protection (before passing responsibility to the Sector for Asylum in the MoS) and additionally conducts checks to confirm details of invitation/support letters (ensuring addresses exist etc) on behalf of the MFA as part of the visa issuing process.

The SFA importantly has responsibility for two new elements of migration management for BiH, namely the detention and removal of irregular migrants. Previously BiH did not possess a secure detention facility suitable for irregular migrants nor did it have the necessary mechanisms in place to routinely conduct removals of such migrants. In 2007/2008 work was completed on the construction of the first migrant detention centre¹²⁰ and legislation adopted to allow for its functioning as was legislation governing the forced removal of migrants. Neither of these elements is currently fully functioning.

The SFA is divided into 2 main segments:

- Aliens Inspectors
- Reception Centre

The 'Aliens Inspectors' are based in regional field offices providing full national coverage and are the staff dealing with the first elements of the Service's responsibilities (identifying, processing and deciding on cases). The 'Aliens Inspectors' are further subdivided between field officers and administrative workers.

The Reception Centre staff are responsible for the detention and removal of irregular migrants as necessary.

Unlike the BP and SIPA, the SFA is not a police agency. It is a civil service based organisation dealing with administrative breaches and actions. Legislation has granted staff possession of limited police-style powers however (search, seizure, detention, use of force, including firearms etc.) in order to allow them to effectively conduct operations combating irregular migration in the country and to provide security during detention.

The SFA initially managed an exceptional level of development within a very short period in what is a very contentious and difficult field of work. This initial impressive speed of progress has recently slowed down however. The investigation, detention and removal of individuals for administrative of-

119 'Law on Service for Foreigners Affairs' 2005 as amended by the 'Law on Changes and Amendments to the Law on the Service for Foreigners Affairs' 2008

120 Referred to as the 'Immigration Reception Centre'

fences require a much higher degree of sensitivity and operation to different standards than in criminal cases. It is because of the high level of contentiousness and need to operate to the very highest of standards that a similar pace of development must be maintained by the SFA in the future.

Challenges

The Service faces several ongoing challenges:

- The SFA is understaffed with only 75.87% of the initial figure of staff required actually in post. The SFA has made no progress on the recruitment of any additional staff. It is the opinion of this assessment that this target staffing figure is significantly understated if the Service hopes to function effectively nationally (only 50 Aliens Inspectors are planned for under the staffing complement);
- Capacities of operational staff are low. The majority of the current Aliens Inspectors consists of the previous staff from the various Mols who were transferred into the new Service. The role of the SFA is unlike any previous BiH structure however and therefore needs highly skilled staff along EU-inspired standards. The majority of these skills and concepts are new to the existing staff who are more used to the previous Departments for Aliens working regime. Although the Reception Centre staff were recruited externally, the nature of their jobs also requires that they receive effective training and advice to ensure their continued level of competence – this is particularly true when dealing with the accommodation of irregular migrants and effective and safe removals;
- Initial training was conducted in 2007; however, without a strong commitment to sustainable and effective training and development of staff along the necessary standards, operational capacities will naturally suffer;
- In relation to the above point, the SFA has no sustainable training capacity of its own and is still dependent on external assistance. The development of such capacities is essential for the progress of the Service;
- There is no standardised intelligence/analysis capacity within the SFA or effective and accountable risk analysis and identification of operational priorities. It appears possible that operations are currently being planned based on information which has either not been analysed or analysed inefficiently. It is not practical for the after-entry control of any country to actively pursue all irregular immigrants – the agency should identify priorities which comply with overall national policy and available intelligence. The overall objective (the removal of irregular migrants from the country) should also be kept in mind as targeting subjects without ensuring that removal can be achieved is a waste of resources;
- Strategic planning remains minimal;
- Budget and budget planning concerns are evident and have resulted in operational shortfalls¹²¹;
- A lack of clear Standard Operating Procedures allows the possibility of differing interpretations of procedures as well as their abuse by staff;
- The Internal Control unit does not appear to be operating at standard level in the identification of irregularities;
- Internal communication and functioning appears more based upon the influence of individual personalities than a structured system;
- The need to introduce specialist units within the organisational structure of the SFA such as a travel documentation unit, removals coordinator, removals 'escorts' etc.

6.2.2. Ministry of Foreign Affairs

The MFA's competences are defined as:

- implementation of foreign policy of BiH and development of international relations in accordance with the positions and directions of the Presidency of BiH;
- proposing adoption of positions concerning the issues of interest for foreign policy activities and the international position of BiH;

¹²¹ For example sufficient finances for the running of the Reception Centre are currently in doubt as well as basic office and operational equipment not being purchased. Failures in budget planning also hinder efforts to recruit much-needed staff.

- representing BiH in diplomatic relations with other countries, international organisations and at international conferences, and direct communication with foreign diplomatic and representation offices and missions of international organisations in BiH, and carrying out the professional tasks in relation to that;
- monitoring of the state and development of international relations of BiH with other countries, international organisations and other participants in international law and international relations and reporting on that to the Parliamentary Assembly of BiH, the Presidency of BiH and the Council of Ministers of BiH (hereinafter: the Council of Ministers);
- proposing to the Presidency of BiH the establishment and termination of diplomatic or consular relations with other countries;
- co-operation with international organisations, proposing to the Presidency of BiH membership or participation of BiH in the work of international organisations;
- organisation, direction and co-ordination of the work of diplomatic and consular representations of BiH abroad;
- preparation and organisation of international visits and meetings;
- preparation of bilateral and multilateral agreements,
- carrying out duties concerning the stay and protection of the rights and interests of BiH citizens permanently and temporarily staying abroad and of domestic legal entities abroad;
- monitoring, in co-operation with competent ministries and institutions, international economic trends and relations and informing thereof the competent authorities as well as of international economic relations of BiH with individual states or regions;
- promotion, development and co-ordination of co-operation with the emigrated citizens of BiH;
- preparing documents, analyses, information and other materials serving the needs of the Presidency of BiH, the Council of Ministers and other bodies competent for the foreign policy implementation.¹²²

As such, the MFA assumes the lead in the implementation of foreign policy, initiating and monitoring international agreements, jointly advising the Council of Ministers on the BiH visa regime, as well as safeguarding the interests of BiH nationals abroad (consular responsibilities).

The MFA additionally holds authority over the pre-entry migration control, in the form of the visa issuing posts abroad. Specific responsibility for the consideration of applications and issuance of visas depends on the relative size and capacities of the foreign post; however there is notionally one member of staff assigned to this duty.

The MFA is a well-established ministry with a generally functional organisation. With regard to the pre-entry control specifically though, progress must be made if BiH is to possess a fully functioning migration management model. The Ministry has not been the focus of much operationally focussed international assistance and as such has not developed fully along accepted standards.

Challenges

The dominant issues facing the MFA with regard to migration control currently are:

- inadequate recruitment and selection of visa issuing staff. Staff traditionally join the MFA for careers in diplomacy and as such are not necessarily suited for the more police-style work of visa issuance¹²³ and as such may not be able to commit fully to it;
- training capacities for staff in the particular skills required for visa issuance work are generally absent. Previous international assistance¹²⁴ ensured initial training of all staff, however no further or sustainable solution has since replaced this. As a result, some visa issuing staff are operating without the relevant skill-base;
- staff in postings abroad operate with a high degree of autonomy and lack of accountability allowing the possibility of breaching code of conduct;

122 Source: 'Law on Ministries and other bodies of administration of BiH', 2003, Article 8

123 As per the 'Common consular instructions on visas for the diplomatic missions and consular posts' (2005/C 326/01) which states that, "The purpose of examining applications is to detect those applicants who are seeking to immigrate to the Member States and set themselves up there, using grounds such as tourism, business, study, work or family visits as a pretext". The CCI reiterates throughout the importance of effective examinations of visa applicants using similar standards as though used for BP in the 'Community Code on the rules governing the movement of persons across EU borders (Schengen Borders Code).

124 EC National CARDS 2003 and 2005 'Support to Migration Management Capacities, BiH' as implemented by IOM

- operational communication and cooperation with other migration agencies is weak;
- BiH possesses a relatively small number of posts abroad which do not allow for full global coverage. As BiH utilises no international/bilateral cooperation with regard to visa issuance (allowing other countries to act on their behalf), the reliance on applications by post is increased.

6.2.3. Ministry of Human Rights and Refugees

The MHRR was established in 2000 and originally was responsible for all issues related to refugees, immigration and asylum (including policy creation) as well as monitoring and protecting human rights within BiH. In 2003, responsibilities for refugees, asylum and immigration were transferred to the newly formed MoS.

Official responsibilities of MHRR are:

- monitoring and implementation of international conventions and other documents on human rights and fundamental freedoms;
- promoting and protection of individual and collective human rights and freedoms,
- co-ordination and preparation of reporting to the competent domestic and international human rights treaty bodies, and implementation and execution of decisions of human rights treaty bodies;
- designing and implementing activities to facilitate the fulfilment of BiH obligations concerning accession to Euro-Atlantic integration, in particular concerning the application of the European Convention on Human Rights and its Protocols;
- monitoring, drafting and disseminating information on standards, achievements and activities in the area of human rights;
- co-operation with religious communities;
- co-operation with national minorities and their associations;
- co-operation with institutions and organisations responsible for tracing missing persons in BiH;
- co-operation with the Red Cross of BiH and the International Committee of Red Cross and humanitarian organisations;
- taking care of asylum issues and the rights of refugees coming to BiH;
- implementing Annex VII to the GFAP and in particular overseeing and monitoring the implementation of this Annex;
- formulating and implementing the BiH policy in the field of return of refugees and displaced persons in BiH, reconstruction projects and ensuring other conditions for sustainable return;
- within the State Commission for Refugees and Displaced Persons co-ordinating, directing and assessing the activities of the Entities and other institutions in BiH responsible for issues related to the implementation of the policy in this field;
- any other activities required by law, and/or pertaining to implementation of Annex VI and Annex VII of the GFAP;
- all data it considers relevant in accordance with all applicable data protection standards;
- co-operation with non-governmental organisations on the issues from within the competence of the Ministry;
- formulating the policy of immigration and asylum in BiH;
- formulating the BiH policy related to the emigrated citizens;
- collecting, systematising, publicising and disseminating all data from within the competence of the Ministry.¹²⁵

As mentioned, the Ministry is responsible of providing access to rights to the persons who obtained a refugee status in BiH, including health and social protection, education, employment and other rights.

125 Source: 'Law on Ministries and other bodies of administration of BiH', 2003, Article 12

6.2.4. Ministry of Justice (MoJ)

Created in 2003, the MoJ is responsible for:

- administrative functions related to the judicial institutions at the state level;
- international and inter-Entity judicial co-operation (mutual legal assistance and contacts with international tribunals);
- drafting of relevant legislation to address the issues referred to in sub-paragraphs 1 and 2 of this article;
- ensuring that legislation and implementation by BiH at all levels is in compliance with the obligations of BiH deriving from international treaties;
- co-operating both with MFA and with the Entities in the drafting of International Bilateral and Multilateral Treaties;
- providing guidelines and monitoring legal education to ensure inter-Entity harmonization and compliance with best practice;
- generally acting as central co-ordinating body for ensuring inter-Entity legislative and justice system harmony and best practice, whether by providing good offices for discussion or co-ordinating initiatives;
- extradition;
- tasks of administrative inspection of legislation governing civil servants and employees of the bodies of administration, of administrative proceedings and special administrative proceedings, as well as of office operations in the bodies of administration;
- the issues of association of citizens and keeping of registers of associations of citizens and of non-governmental organisations operating within BiH;
- other tasks and duties which are not within the competence of other Ministries of BiH and which are related to the tasks and duties of this Ministry

In the event of a conflict of competence between the Ministries or in the event that individual tasks and duties are not expressly provided for as falling within the scope of work of a Ministry while being related to other tasks and duties carried out by that Ministry, the Council of Ministers of BiH shall issue a Decision identifying the Ministry to which specific tasks and duties belong.¹²⁶

Challenges

The involvement of the BiH MoJ in migration management is as an oversight body of the responsible agencies to ensure compliance with the relevant administrative procedures. In practical terms however, the MoJ involvement is limited as it suffers from major internal capacity issues such as staffing, poor internal communication and cooperation and ineffective management practices.¹²⁷

6.2.5. Ministry of Civil Affairs (MoCA)

The MoCA holds responsibility for:

- Citizenship, citizen registration and records, personal data protection, residency registration, identity documents, travel documents and vehicle registration process,
- Mine action.

This Ministry shall be responsible for carrying out tasks and discharging duties which are within the competence of BiH and relate to defining basic principles, co-ordinating activities and harmonising plans of the Entity authorities and defining a strategy at the international level in the fields of:

- health and social care;
- pensions;
- science and education;
- labour and employment;
- culture and sport;

- geodesic, geological and meteorological affairs.

Within this Ministry, there shall be the Directorate for CIPS Implementation, and the Commission for De-mining of BiH as autonomous services, the rights and duties of which shall be regulated by special regulations.¹²⁸

The MCA had originally been responsible for migration issues in BiH prior to 2000; however currently their migration responsibilities are broadly limited to the provision of identification documents (including travel documents) and deciding the annual work-permit quota for foreign nationals as per the new LMSAA.

6.2.6. The Directorate for European Integration

The DEI is an independent administrative organisation of BiH which was created in 2003 with the following responsibilities:

- coordination of activities concerning the harmonisation of the BiH Legal System with European *acquis communautaire* Standards;
- checking compliance of all draft laws and decrees submitted by the ministries and administrative organisations to the Council of Ministers with the Directives of “The White Book - the Preparation of the Associated Countries of Central and East Europe for Integration in the Union’s Inner Market” and the procedures of meeting the requirements of the relevant Directive.
- harmonisation of activities of bodies and institutions in BiH relating to the relevant activities necessary for European integration;
- participation as the technical operational contact body for the EC;
- co-ordinating implementation of decisions taken by the competent authorities and institutions of BiH, of the Entities and of the District Brčko of BiH with respect to all activities required by BiH for European integration;
- participating in activities or drafting draft laws, other regulations and directives relating to the carrying out of activities that BiH is required to take in the European integration process;
- acting as the main operational counterpart to the EC institutions in the Stabilisation and Association Process,
- co-ordination of EU aid to BiH.

The Directorate will establish the functional relationship with Ministries, administrative organisations and Entity governments on the issues related to EU integration strategy and policy, harmonisation of legislation and aid co-ordination.¹²⁹

As such the Directorate was created specifically to facilitate BiH progress towards EU membership. The DEI is supposedly involved in amendments to BiH migration legislation to achieve EU *Acquis* compliance; however realistically this level of involvement is modest

6.3. Existing Structural Challenges

The key structural challenge is that whilst Ministry of Security is a theoretically lead migration body, much control has been practically passed to the hands of its the organisational units.

There are many contributing factors to this such as the fact that certain organisational units predate the actual ministry itself, a lack of credibility (as a result of previous inaction, low levels of migration knowledge and experience and a tendency to focus on implementation functions instead of leadership ones) and poorly clarified responsibilities and tasks.

The simple concept behind migration management structures is that the lead ministry creates/reviews/updates policy, core legislation and coordinates between all involved BiH migration bodies, whilst the organisational units implement the policy and laws laid down. The challenge will be to rectify the present situation so that the ministry assumes its correct position whilst still allowing the organisational units the semi-autonomy to implement policy effectively. A review of the MoS Book of Rules was commenced in 2007 in cooperation with the International Community; however the resultant proposal was not adopted.

128 Source: ‘Law on Ministries and other bodies of administration of BiH’, 2003, Article 15

129 Source: ‘Law on Ministries and other bodies of administration of BiH’, 2003, Article 18

Additional challenges are created by the governmental system of BiH, with differing aspects of migration contained within differing bodies at different levels. As a result, these relationships must be rationalised to allow all bodies, at all levels, to function cohesively.

7. Enforcement and Operational Mechanisms

7.1 The process of migration

7.1.1. Entry

- Pre-entry is managed by the MFA.
- On-entry is managed by the BP.

Foreign nationals entering BiH must comply with the requirements laid out in the LMSAA, namely that he/she:

- is in possession of a valid travel document, visa, residence permit etc. as appropriate;
- has the sufficient means to support himself/herself during the time of intended stay in and exit from BiH, including health care;
- is in possession of documents/information supporting their basis for entry and stay;
- is in possession of necessary documents required for entry to their next country of entry;
- is in possession of a vaccination certificate, if coming from the territory on which there is epidemics of a contagious disease;
- is not subject of an extant expulsion measure, cancellation of stay or prohibition of entry to BiH;
- is not registered as a criminal offender;
- can satisfy the BP that there are no reasons to indicate that his/her presence in BiH would constitute a threat to health, order or security.

Croatian and Serbian and Montenegrin citizens are entitled to travel on identity cards as per specific bilateral agreements with BiH. Where possible the BP endorses the travel documents of all foreign nationals both on entry and exit.

Legislation clarifies the basis for possible refusals of entry. Upon refusal the travel document is clearly endorsed. A non-suspensive right of appeal against a refusal decision is allowed.

Periods of stay vary for nationalities:

- Non-Visa nationals - For a total period of no longer than ninety days within the period of six months
- Visa nationals – As stipulated in visa ('A' direct airside transit; 'B' maximum of five days; 'C' for a total period of no longer than ninety days within the period of six months, 'D' for up to six months within one year). Certain exceptions to these rules apply.

Visas may exceptionally issued at the border by the BP; however only in circumstances where the applicant can demonstrate satisfactorily that they satisfy the general conditions for entry, that they were unable to file a visa application in advance, and that there is an imperative need for them to enter BiH immediately, as well as providing guarantees of return.

Stay

- After-entry is managed by the SFA.
- Stay (additionally to categories mentioned above) categories include:
 - Temporary Residence – up to one year (renewable)
 - Permanent residence – indefinite

Procedures for the first issuance of temporary residence are subject to the nationality of the applicant:

If a visa national, the residence must have been applied for and granted whilst abroad via the MFA visa and consular sections (unless already in BiH on a 'D' visa in which case applications can be conducted in-country).

If a non-visa national, the request for short stay can be applied for in-country.

Legislation clarifies specific categories of stay and obligations/procedures particular to them. All forms of stay in BiH may be cancelled subject to the appropriate guidance¹³⁰.

Asylum may be requested at any stage of the migration process in which case all procedures are halted until a decision on the asylum case is reached.

Detention/Removal

Detention and Removals are also managed by the SFA.

Upon identification of breaches of migration legislation the subject will be interviewed, investigations conducted and a decision made by the SFA. Non-suspensive appeals against the decision are allowed.

The subject will be issued a decision on expulsion/deportation and has a maximum of fifteen days to voluntarily remove themselves from BiH (with the agreement of the SFA regarding details). BiH possesses the power to forcibly remove a foreigner as appropriate. Removals, either voluntary or forced, are recorded by the BP.

Following removal from BiH, there is a generic re-entry ban for a period of between one and five years. This period however can be extended, shortened or annulled entirely dependant on the particularities of the case.¹³¹

An irregular migrant may also be subject to detention in cases when they are considered likely to abscond, a risk to public health, order or security, and/or their identity is in doubt. Primarily, detention is to be used to ensure expulsions are completed.

The concept of 'Carriers¹³² Liability' has been introduced into BiH migration legislation. In non-asylum cases, the carrier responsible for the entry of an unsatisfactory foreigner may be forced to remove them at their own cost without delay and additionally pay for costs incurred by the foreigner (detention).

7.2. Monitoring and detecting migrants

All foreign nationals who are subject to control (excluding diplomats etc.) are required to register with the SFA within 48 hours of arrival. If staying in a hotel or similar accommodation facility. it is the responsibility of the owner of the business to do so on behalf of the foreigner. All foreign nationals are required to carry on them the travel document used for entry as well as additional evidence that they have registered.

The SFA is authorised to conduct checks/investigations on foreign nationals as well employers, sponsors, providers of accommodation. They have additionally limited powers of search, seizure, apprehension and detention (with complementary use of force powers) as defined by the relevant primary, secondary and tertiary legislation.

All BiH law enforcement agencies will alert the SFA should doubtful foreigners be identified/located.

The Migration Information System (MIS) provides the capacity to register the entries, exits and conditions of all foreign nationals within a centralised electronic system. The system can be accessed by all migration bodies. This system is however not currently used fully by all migration bodies.

7.3. Employment and entrepreneurship of foreigners

All foreigners entering in order to take paid employment must possess a work permit issued by the competent authority (employment bureaus etc.). Exceptions to this obligation are contained within the LMSAA.

The concept of work-permit quotas for foreigners has just been introduced into BiH legislation. The various employment agencies in the FBiH, RS and District of Brčko will provide data to the MoCA who will then make a proposal on an annual quota. Based on this the BiH Council of Ministers will announce specific numbers and categories of work permits to be issued in the coming year. This system is not functioning at the moment as the LMSAA has only very recently been adopted.

130 Details are contained within the LMSAA 2008

131 Details are contained within the LMSAA 2008

132 A 'Carrier' is any physical or legal body providing services of international traffic transportation of persons by using any means of transportation. Source LMSAA, 2008, Article 5 (t)

The process of registering a company as a foreign national is more complicated and dependent on the particular entity (and/or canton as appropriate) in which the business is to be located. Overall, starting businesses is a very slow and bureaucratic process¹³³ as a foreign national; however assistance in the process is readily available from BiH institutions.

7.4. Public awareness campaigns

Public awareness has traditionally not been a high priority amongst the migration bodies of BiH. This is changing. Most bodies have websites. Summaries of content are as follows:

- 1.1.MoS – available in all three national languages and English (not all pages have English versions yet) – link to MFA site but no links to SIPA, BP or SFA. Well-designed, providing a good overview of the MoS and its workings however little migration-specific information;
- 1.1.MFA – available in all three national languages and English – no links to MoS, BP, SIPA or SFA websites. Well organised if minimal information for migrants. The site focuses on the foreign policy of BiH, general BiH administration and trade links. It aims to ensure migrants are able to contact their relevant visa section for further information;
- 1.1.BP available in all three national languages and English – no links to other BiH migration bodies. Very easy to use, it includes advice to travellers on the requirements of entry, travel documents, restrictions as well as legislation;
- 1.1.SIPA available in all three national languages and English (not all pages have English versions yet) – no links to other migration bodies. A brief overview of the work of SIPA and its organisation;
- 1.1.SFA in national languages (English is planned but not available currently) – no links to other migration agencies. It includes information on the SFA, contact details of all regional offices and laws, however lacks practical guidance to migrants.

This internet information is however not often reinforced with hard copies of guidance available at points of entry and diplomatic posts. There is also a lack of access to practical guidance on procedures such as the new requirements under the LMSAA.

All migration bodies have spokespersons within their organisations and are demonstrating an increased media-awareness methodology. Individual agencies also conduct information campaigns on particular subjects.

7.5. Existing Enforcement Challenges

Currently all basic migration structures are in existence within BiH, complemented by a much-improved primary legislation which clarifies the particular roles of the implementing agencies and procedures to be followed. The core challenge facing BiH is not primarily one of legislation however, it is one of capacity. Despite distinct developments seen over recent years, the capacities of individual agencies and bodies still require improvement. Concepts and practices introduced with new legislation are often entirely new to BiH and as such implementation is weak. A much more proactive approach is assumed by new procedures and closer working to similar standards across agencies. More police-styled and well-established agencies such as the BP and SIPA are more able to adapt to such concepts, however concern exists that both the SFA and MFA (visa sections) will struggle with their roles - not because they don't want to but simply because they don't know how to. A lack of accountability within these agencies additionally risks that bad practices could go unnoticed and/or unchallenged and practical development of the whole of migration enforcement will be undermined.

8. Conclusions and recommendations

8.1. Conclusions

BiH has made significant improvement in its migration management capacities within a comparatively short period of time (most migration management bodies of BiH have been in existence for less than eight years with minimal migration knowledge or experience predating that). Despite successfully initialling the Stabilisation and Association Agreement in December 2007 and subsequently signing it in June 2008, all EU commentaries have made it clear that there is still significant development needed in the field of asylum, migration and visas.

BiH currently possesses all basic migration management structures and legislation. Pre-entry, on-entry and after-entry organisations as well as limited international cooperation provide all tiers of the four-tier migration management model. Primary legislation now incorporates many of the standards and procedures necessary to operate at acceptable levels including defined entry, stay, removals and asylum procedures and has been assessed as broadly compliant with EU standards. Importantly, BiH has recently taken steps to allow for the secure detention of irregular migrants as well as removals/expulsions (the construction of the first detention centre specifically for irregular migrants and the introduction of forced removals procedures in legislation). The well-established police-style migration bodies (BP and SIPA) are aggressively combating cross-border criminality and continue to develop their internal structures and overall capacities in all fields. Pre-entry and after-entry capacities remain sub-standard however.

Key elements are:

Administration

- There is no effective leadership body for migration issues. Notionally, this responsibility rests with the MoS; however through poorly clarified responsibilities this is not always manifested. There is a pronounced need to enforce the role of the MoS in this regard with other ministries, migration bodies and their own organisational units.
- The MoS faces internal organisational and communication problems. Sectors do not appear to have functioning links (the Immigration and Asylum Sectors do have a good informal communication however) nor do mechanisms for effective working with the state-level organisational units exist. Whilst MoS organisational units are required to report to the Cabinet of the Minister, it does not appear that the input from Sector-level is sought as part of this process, thus excluding the Sectors from practical involvement.
- Generally, inter-agency communication/cooperation is developing; however much of this tends to be as a result of informal arrangements and practices as opposed to established coordination structures. Operational international communication/cooperation similarly is improving (with the BP in the lead), but similarly to inter-agency cooperation, this is often not formalised.
- BiH does not possess a formal migration policy neither has it identified the current situation faced, its true capacities nor its policy goals.

Legislation

- Whilst legislation has developed, the capacities of those implementing it have not necessarily kept pace. BiH migration agencies are expected to perform to standards which are sometimes entirely new concepts for them and require additional skills and resources. The corresponding level of support and progress in developing these skills and obtaining resources is lacking.

Operational

- The capacity for effective gathering, analysis and dissemination of relevant data is weak amongst individual migration bodies (specifically the MoS, MFA and SFA) and subsequently all migration bodies as a whole. Potentially valuable data for operation and policy use is therefore lost.
- Progress on initiatives which will benefit migration management (such as IBM) are not completed.
- Forced removal is possible, however not functional to acceptable standards. Although legislation allows for the forced removal of irregular migrants, practical skills of those involved are severely lacking due to no previous experience). Furthermore, BiH has not introduced the nece-

ssary mechanisms and structures to facilitate the documentation procedure of undocumented removals cases.

- Strategic planning is disjointed and generally limited to specific bodies or specific subjects, thus restricting potential progress. This is an effect of lack of policy and coordination.
- Reporting is weak. Though required to provide reports, the content, format and quality of these vary drastically between migration agencies.
- Demarcation of the BiH border has not been completed.
- Human resources and development seem to be low priorities for most migration bodies allowing a situation where ineffective recruitment procedures, selection and lack of improvement of staff reduce overall capacities. If the quality of staff and their performance is developed, they can be increasingly empowered and thus improve efficiency as a whole.
- Detention remains theoretical. Construction of the centre is nearly completed; staff are in place as is the relevant primary, secondary and tertiary legislation. However, budget issues constrain the ability to use the centre fully. Capacities of the centre and the staff as well as additional procedures urgently need to be improved such as methods of coordinating detention cases.
- Carriers' liability is now present in legislation which will improve the efficiency of controls (encouraging carriers to consider more carefully passengers they allow to travel) as well as providing revenue to cover state costs. The successful implementation of carriers' liability will require additional specialist staff to be recruited. No such development has been seen currently.
- Pre-entry needs to be strengthened. Compliance with procedures and investigation of applications for visas vary between locations and staff; professional standards and expectations are undefined; and adequate support and training of visa staff is lacking. A situation has arisen where the possibility for breaching code of conduct/or incompetence in visa issuance is present.
- After-entry also needs improvement. Despite impressive initial progress, development has slowed at a stage when efforts should actually be increased. Continuing staffing shortages, budget problems, inadequate training mechanisms, insufficient/inappropriate equipment, a failure to introduce necessary specialist units and staff all undermine the progress made.
- Accountability is not enforced. Poor performance and breaches of procedures by some individuals seem to go unpunished within certain bodies perpetuating the situation. This damages operational effectiveness and negatively impacts upon the opinions of the BiH public and international authorities.

In summary, the general structures, legislation and mechanisms exist for efficient migration management in BiH; however weaknesses in implementation through poor management, a lack of effective resources (including staffing) and inaction drastically hinder this.

Recommendations

The proposed recommendations have been sub-divided into categories for ease of reference and, unless specifically stated refer to all migration bodies.

Summary of main recommendations and indications of timescales for implementation (short-term (12 months), mid-term (up to 36 months), long-term (over 36 months):

Administration

Short term

- A review of MoS structures and staffing is conducted. This should build on work conducted previously and should ensure that there are sufficient numbers of staff with adequate terms of reference to conduct the tasks of the MoS;
- The Immigration Sector sheds overtly administrative duties, devolving practical issues to the organisational units of the MoS and focusing on: coordination; and monitoring, evaluation and review of policy, legislation and procedures. This role should be reiterated through documentation and practice;
- Greater accountability for all government staff (including the work of the inspectorates/internal control units of other migration bodies within BiH and at posts abroad);
- The policy making process should be clarified and documented – reiterating the MoS lead in this. This process should include full involvement of relevant parties, performance objectives and monitoring mechanisms. The inclusion of non migration 'control' agencies such as the Agency for the Promotion of Foreign Investments (FIPA) should be facilitated as part of this;

- A detailed assessment of the current migration situation and likely future situation should be assessed;
- A policy should be developed and formally adopted by BiH;
- A greater coordination of external assistance should be implemented. The role of the MoS is vital in this and should assume the lead within the framework of consultation with the relevant migration bodies;
- BiH should adopt a stronger approach in pursuing external assistance in the areas they need assistance in as opposed to the areas that are offered to them.

Short to mid-term

- A migration action plan should be created and adopted;
- Create a specialist removals/expulsions unit within the SFA. This unit would be responsible for all administrative issues relating to removals and expulsion such as processing travel documentation, booking flights recovering costs as well as operational coordination with other migration agencies (in BiH and in receiving/transit states). The unit would process all cases of removal regardless of the originating agency (BP, SFA etc.). An important task to be undertaken will be the obtaining of the relevant travel documentation for individuals (liaison with domestic and foreign embassies/authorities etc.). This unit should also deal with providing removals 'escorts' as required (physical security, medical, social care – both male and female) (short-term with development continued into mid-term);
- Creation of a carriers' liability unit responsible for processing all carriers' liability procedures, including recovering of costs (short-term with development continued into mid-term).
- The relationship between the MoS and the state-level organisational units to be clarified and documented.

Mid-term

- The MoS Immigration Sector should assume overall coordination responsibilities of training within migration bodies. This must include maintaining the actual delivery of training at the operational level (i.e. the MoS only acts as a coordinator/facilitator not as a deliverer of training per se). The responsibility for practical training issues will be retained by the individual agencies;
- Greater accountability for the actions (or inaction) of Sectors should be implemented both in legislation and practice. This should involve proactive measures from the MoS Inspectorate. The work of the Inspectorate should in turn be monitored by the Minister;
- Creation of a 'joint analysis unit' jointly staffed and accessible to all migration agencies. This may be included under IBM initiatives.

Mid to long term

- Implement the IBM strategy and component activities;
- All migration bodies should strengthen international operational links with similar agencies abroad focussing on sharing experiences but also implementing operational tools such as early irregular migration warning systems etc.

Long-term

- The work on developing and signing readmission agreements and other treaties etc. should continue (long-term).

Legislation

Short term

- Amended secondary and tertiary legislation pursuant to the LMSAA should be adopted as soon as possible;
- Implementation of all legislation/agreements etc. adopted.

Short to mid-term

- A 'migration legislation review body' should be created within the MoS (under the Immigration Sector working closely with the Asylum Sector and the DEI). The purpose of this body should be to compile all BiH migration legislation (primary, secondary and tertiary as well as international/bilateral conventions, treaties etc. for all aspects of migration not just those directly relevant to the

MoS itself), proactively research standards and make suggestions for improvements. This body should liaise regularly with the implementers of the legislation (such as the organisational units) as well as suitable external actors to ensure that suggestions are practically implementable.

Long-term

- Progress towards *EU Acquis* compliance, where practical should continue.

Operational

Short term

- Procedures be put in place to facilitate internal communication and cooperation within the MoS;
- Procedures be put in place to facilitate internal communication and cooperation within all other migration bodies;
- Improve public awareness and access to information/procedures on migration. This should include improving websites with regard to languages available, links to other agencies, and inclusion of clear guidance on requirements, obligations, rights etc. Information should be available to the public in the form of leaflets etc. at all official posts of all migration agencies and should include other agencies' information;
- Removals/expulsion procedures must be clarified and documented;
- All migration bodies should be encouraged to publish targets relating to their future work;
- The SFA should develop operational procedures for conducting visits (premises outside of their offices) including risk assessments and operational planning;
- Mechanisms to monitor the impact and performance of foreign businesses should be introduced in order to feed into situation analyses as well as to identify possible abuses;
- The Migration Information System (MIS) should be updated to reflect changes to legislation/procedures. Technical issues relating to the system should be resolved, followed by full utilisation by all bodies;
- The MFA should implement specific and sustainable training programmes in relevant areas for all visa issuing staff;
- The MFA should ensure that all visa issuing staff have access to basic document examination equipment (magnifier, UV lamp etc);
- Solve SFA budget issues;
- Create and document procedures for carriers liability actions;
- Complete all works on the detention centre for irregular migrants;
- External assessments from bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) should be encouraged;
- A mechanism created to investigate any possible abuses/corruption by migration body employees (both within BiH and abroad)

Short to mid-term

- Mechanisms be put in place to allow direct communication at all times between all migration 'control'/authorising bodies. This should be done to a standard to ensure speedy and accurate consideration of cases;
- Joint training programmes be implemented across the migration bodies in areas of shared need – interviewing, migration processes and procedures, document examination, intelligence, asylum procedures etc.;
- Implement and monitor the work permit quota scheme;
- Reporting should be standardised – agreed criteria and formats for completing criteria;
- Recruitment procedures should be reviewed with a view to improving speed, transparency and selection of the most appropriate staff;
- Training and development must be given a higher profile. This should include the development of Human Resource and Development strategies and action plans and closer liaison with bodies able to assist. Such bodies should be both governmental (such as the CSA (CSA)) and non-governmental (such as educational establishments etc.). Staff should be encouraged to obtain natio-

nal qualifications. All bodies should have specialised and competent training units/sections and all staff should be regularly and effectively trained on all areas within their operational remit;

- Implement specific training for removals 'escorts'.

Mid-term

- Adoption and regular review of standard operating procedures (SOPs) for all migration enforcement bodies;
- The 5X5X5 intelligence system should be adopted and implemented across all enforcement bodies;
- Staffing shortages in all migration bodies are addressed. This should be done initially by a review and update of target staffing and then recruitment;
- Develop the BP document database and facilitate access by other migration enforcement bodies;
- All management staff should undergo specific training and development in modern management practices and be encouraged to then implement these practices in their work;

Mid to long-term

- Implement exchanges of staff between agencies for short periods of time. The purpose of this will be to improve operational awareness of related agencies and improve communication;
- Harmonise visa lists with those of EU (mid to long-term);
- A heavy emphasis is put on individual operational staff in order for accepted models of migration management to function – pre-entry and on-entry officers are required to make difficult decisions regarding admission for example. Errors of judgement will happen given that often enforcement has to be conducted without hard 'evidence'. To assume that all decisions/actions relating to potential irregular migration/national security will be 100% accurate is ridiculous. No country can claim this otherwise irregular migration would not occur. It is important however to provide operational staff with the necessary skills and resources and then empower them to make decisions. A continuing mentality in BiH of holding individual officers to blame for such decisions is ultimately damaging to morale and efficiency. This does naturally require that staff performance is regularly monitored and if continued or blatant errors are made action should be taken (retraining or dismissal) (mid to long-term);
- General development of and access to databases (both domestic and foreign) (mid to long-term);
- Identify and implement a sustainable solution for communication with migrants in foreign languages. A system which provides the possibility to contact qualified (and vetted) interpreters in relevant languages twenty-four hours a day to conduct translations by telephone, internet or in person should be adopted (mid to long-term);

Long-term

- Implement mechanisms to allow 'seconding' staff to another agency. The most beneficial example would be to second BP staff to problematic visa issuing posts to ensure a more stringent examination process. These mechanisms should include all migration agencies (focussing primarily on implementing bodies). Selection of staff for such exchanges should be done ensuring that only effective operational staff with relevant experience and skills are chosen. Staff would need to undertake relevant training prior to deployment. Seconded staff should suffer no adverse effect on their careers or salaries by taking part.
- Adequate investment should be allocated to the development of border infrastructure, including communications/databases access. This should incorporate both BiH and external funding;
- Physically block identified illegal border crossing locations;
- The number of BiH diplomatic posts abroad should either be increased or mechanisms to allow other countries to act on their behalf should be developed.

| ACTION PLAN
2008-2011

A. VISA POLICY

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)				Funding source
				2008	2009	2010	2011	
1.	Establishment of legal and institutional framework	MFA	MFA, MoS	x	x	x	Budget of BiH institutions	
2.	Establishment of technical capacities for implementing visa policy	MFA	CIPS, MoS, MoCA	x			Budget of BiH institutions	
3.	Staff training, esp. of diplomatic and consular missions of BiH	MFA	MFA, projects by International organizations	x			Budget of BiH institutions	
4.	Implementation of an Action Plan for Liberalization of Visa Policy for BiH	MFA	BiH Institutions	x	x	x	Budget of BiH institutions	
5.	Harmonization of visa issuance procedure with the EU	MFA	MoS	x	x	x	Budget of BiH institutions	
6.	Establishment and implementation of Migration Information System	MoCA	MFA, MoS		x		Budget of BiH institutions	
7.	Alignment of BiH visa policy with Schengen countries and Acquis	MFA	International institutions	x	x	x	Budget of BiH institutions and donor training programmes	
8.	Strengthening of border control during implementation of visa policy	MoS	MFA and MoS					
9.	Cooperation with diplomatic consular offices with relevant institutions of receiving country in order to control migration movements	MFA	MFA and authorities of receiving countries					
10.	Improving cooperation with all relevant authorities regard migration	MFA	MFA and MoS					
11.	Introducing biometric data in travel documents, visa and other personal document	MoCA	MoCA, MFA and MoS					
12.	Training of Personnel, particularly consular employees deployed at consular posts	MFA	MFA and international institutions					

ACTION PLAN – BORDER MANAGEMENT

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)			Funding source
				2008	2009	2010	
1.	Creation and adoption of normative acts						
1.1.	Creation and adoption of the Law on Border Control	Parliament Assembly		x			Budget of BiH institutions
1.2.	Participation in working groups for enacting sub-laws according to the Law on Border Control	MoS	BP	x	x		Budget of BiH institutions
1.3.	Enacting instructions for activities at border checkpoints: <ul style="list-style-type: none"> - General conditions for border checks - Checks on persons (basic and detailed) - Checks on special categories of persons - Checks in special situations - Risk analysis and methods of border checks - Vehicle checks - Rail traffic checks - Vessels check at sea and river traffic - Air traffic checks - Visa and document checks - Armed forces border checks - Liberalization in border regime - Checks of arms and ammunition transfer across the border - Entry refusal - Application of border check equipment - Application of databases - Asylum and humanitarian protection - Security tactics 	BP	MoS	x	x	x	Budget of BiH institutions

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)			Funding source	
				2008	2009	2010		2011
1.4.	Enacting instructions for particular activities in border surveillance: <ul style="list-style-type: none"> - Surveillance organisation according to the risk analysis - Apprehended and detained persons - Cross-border smuggling - Procedure in cases of border incidents - Organisation of shift work - Cooperation with local police and local community 	BP	MoS	x	x	x	x	Budget of BiH institutions
1.5.	Participation in working groups for enacting sub-laws pursuant to the LMSAA	MoS	BP	x				Budget of BiH institutions
1.6.	Changes and amendments to the Rulebook on the Internal Organisation of the BP	BP	MoS	x	x			Budget of BiH institutions
1.7.	Changes and amendments to the Instructions on BP Registers in accordance with legal changes	BP		x				Budget of BiH institutions
1.8.	Conclusion of contracts and agreements for regulating border relations with neighbouring countries	MoS	BP	x	x	x	x	
1.9.	Enacting Instructions on conducting search activities	BP			x			Budget of BiH institutions
1.10.	Enacting Instructions and Procedure on conducting special investigation actions	BP			x			Budget of BiH institutions
1.11.	Changes and amendments to the Instructions on Internal Revision and Control				x			Budget of BiH institutions
2.	Enhancing BP capacities in fighting illegal migration							
2.1.	Training of cadets at the Training Centre	BP	MoS	x	x	x	x	Budget of BiH institutions

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)			Funding source
				2008	2009	2010/ 2011	
2.2.	Recruitment of qualified staff and staff exchange with other agencies	BP	Civil Service Agency	x	x	x	Budget of BiH institutions
2.3.	Adjustment of employees' remuneration	Council of Ministers	BP, MoS,	x	x	x	Budget of BiH institutions Donors
2.4.	Advanced training of police officers in: <ul style="list-style-type: none"> - Visa issuance and checks - Conducting interviews and profiling migrants - Risk analysis and creation of a profile of illegal migration - Application of equipment at border checks - Special investigations - Application of special investigation equipment - Working with informants 	BP	MoS	x	x	x	Budget of BiH institutions Donors
2.5.	Introduction of risk analysis and creation of risk profile and monitoring of illegal migration flows	MoS	BP	x	x	x	Budget of BiH institutions Donors
2.6.	Establishment of early warning of forged documents system	MoS	BP	x	x	x	Budget of BiH institutions
2.7.	Analysis of implementation of BiH Strategy and development of the Action Plan for combating organised crime and corruption	BP	MoS	x	x	x	Budget of BiH institutions
2.8.	Implementation of the Twinning Project Building BP Capacities in Criminal Investigations	BP	Twinning partner: Hungary	x	x		Budget of BiH institutions Donors
3.	Infrastructure and equipment						
3.1.	Establishment of the Agency for the construction, maintenance and management of border crossing points pursuant to the IBM strategy	Council of Ministers	MoS, BP		x		Budget of BiH institutions
3.2.	Construction of border crossing points in accordance with EU standards: infrastructure, facilities, marking	Council of Ministers	MoS	x	x	x	Budget of BiH institutions

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)				Funding source
				2008	2009	2010	2011	
3.3.	Equipping border cross points with: <ul style="list-style-type: none"> - Equipment for conducting checks on persons (procurement of optical scanners for biometric passports) - Equipment for conducting vehicle checks - IT equipment (terminals and software) - Energetic equipment - Office equipment 	Council of Ministers	MoS, BP	x	x	x	x	Budget of BiH institutions Donors
3.4.	Procurement of equipment for forged document detection	BP		x	x	x	x	Budget of BiH institutions Donors
3.5.	Renewal and procurement of border surveillance equipment	BP		x	x	x	x	Budget of BiH institutions Donors
3.6.	Renewal of motor pool	BP		x	x	x	x	Budget of BiH institutions Donors
3.7.	Procurement of specialist equipment for: <ul style="list-style-type: none"> - telecommunication surveillance and detection of used mobile phone numbers - day and night surveillance - photo-documenting 	BP		x	x	x	x	Budget of BiH institutions Donors
4.	Development of databases and telecommunications							
4.1.	Further MIS development with emphasis on access to search databases	MoS	BP	x	x			Budget of BiH institutions
4.2.	Setting up of the database on forged documents	BP		x	x			Budget of BiH institutions
4.3.	Setting up of the database on lost and stolen passports (LASP) and its connection with INTERPOL LASP database	MoCA, Directorate for CIPS project	MoS, BP	x	x			Budget of BiH institutions
4.4.	Development of the BP Central Database	BP		x	x	x	x	Budget of BiH institutions Donors
4.5.	Development of the SPIN Network	MoS	BP	x	x			Budget of BiH institutions Donors

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)				Funding source
				2008	2009	2010	2011	
4.6.	Expansion of the SDH Network	MoS	BP	x	x	x	x	Budget of BiH institutions Donors
4.7.	Development and implementation of the MIND system	BP		x	x	x	x	Donors
4.8.	Development and implementation of the TETRA system	MoS	BP	x	x	x	x	Donors
5.	Improvement of the cooperation of relevant bodies at national and international level							
5.1.	Adoption of the revised BiH IBM Strategy and Action Plan	Council of Ministers	MoS	x				Budget of BiH institutions
5.2.	Training of Consular Officers on Visa Issuance Procedures	BP	BiH Veterinary Office Sanitary Inspections Market Inspections	x	x	x	x	Budget of BiH institutions
5.3.	Enforcement of the Strategy and Police Action Plan within BH communities	BP	ITA	x	x	x	x	Budget of BiH institutions
5.4.	Enhancing cooperation with agencies involved in the implementation of the IBM strategy	MoS	BP	x	x	x	x	Budget of BiH institutions
5.5.	Implementation of the ITA Cooperation Agreement	BP	Governmental and non-governmental sector	x	x	x	x	Budget of BiH institutions
5.6.	Enhancing national cooperation between police and other BiH agencies	MoS		x	x			Budget of BiH institutions Donors
5.7.	Enhancing cooperation with government and non-government organizations dealing with migration issues	MoS		x	x			Budget of BiH institutions
5.8.	Conclusion of cooperation agreement with FRONTEx	BP	General Police Directorate of the Republic of Croatia	x	x	x	x	Budget of BiH institutions
5.9.	Conclusion of cooperation agreement with countries signatories of the South-Eastern Europe Police Cooperation Convention	BP	DCAF	x	x	x	x	Budget of BiH institutions Donors

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)			Funding source
				2008	2009	2010 2011	
5.10.	Implementation of the Cooperation Agreement on Joint	General Police	BP				Budget of BiH institutions
5.11.	Continuation of the work within the DCAF programme	BP	DCAF	x	x	x	Budget of BiH institutions Donors
5.12.	Participation in the SECI Centre activities and operations	BP	SECI	x	x	x	Budget of BiH

In order to implement these activities, the Border Police does not have a need for additional funding due to the fact that the activities shall be funded from the budget funds allocated to implement the IBM Action Plan.

C. IMMIGRATION POLICY

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)			Funding source
				2008	2009	2010 2011	
1.	Legislation						
1.1.	Adoption of the Rulebook on the Conditions and Procedures of Entry and Stay of Aliens	MoS - Sector for Immigration	SFA, BP	x			Budget of BiH institutions
1.2.	Adoption of the Decision on the Minimum Amount required for subsistence during stay?	MoS - Sector for Immigration	SFA, BP	x			Budget of BiH institutions
1.3.	Adoption of the Rulebook on the Carriers' responsibilities	MoS - Sector for Immigration	SFA, BP	x			Budget of BiH institutions
1.4.	Adoption of the Rulebook on Standards of Functioning and other issues relevant to the work of the Immigration Centre	MoS - Sector for Immigration	SFA, BP	x			Budget of BiH institutions
1.5.	Adoption of the Rulebook on placing aliens under surveillance	MoS - Sector for Immigration	SFA, BP, Sector for Asylum	x			Budget of BiH institutions
1.6.	Adoption of the Rulebook on protection of VoT	MoS - Sector for Immigration	SFA, BP	x			Budget of BiH institutions
1.7.	Adoption of the Rulebook on the Procedures for the removal of aliens from BiH	MoS - SFA	Sector for Immigration, BP	x			Budget of BiH institutions
1.8.	Adoption of the Act on Covering the Costs of Removal and Surveillance of Aliens	MoS - SFA	Sector for Immigration, BP	x			Budget of BiH institutions
1.9.	Adoption of the Rulebook on the Central Database on Aliens	MoS - Sector for Asylum	SFA, BP and Sector for Immigration	x			Budget of BiH institutions
1.10.	Adoption of the Rulebook on the Means of Implementing Security Measures	Intelligence and Security Agency	SFA	x			Budget of BiH institutions
1.11.	Adoption of the Rulebook on Travel Document of Aliens	MoCA	MoS - Sector for Asylum, Sector for Immigration and SFA	x			Budget of BiH institutions

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)			Funding source
				2008	2009	2010	
1.12. and 1.13	Monitoring the implementation of domestic legislation and its harmonization with the <i>Acquis</i> in the field of immigration in accordance with DEI guidelines	MoS - Sector for Immigration		x	x	x	Budget of BiH institutions
2.	Development of institutional capacities of the Sector for Immigration						
2.1.	Completing the recruitment process in accordance with the current Rulebook on Internal Systematization of the MoS	MoS, State Agency for Civil Affairs		x			Budget of BiH institutions
2.2.	Adoption of the new Rulebook on Internal Organisation of the MoS	MoS - Working Group, Council of Ministers		x			Budget of BiH institutions
2.3.	Development of capacities for inspection monitoring on the application of standards of the Council of Europe in the Reception Centre for illegal migrants and VoT	MoS	MoS - SFA		x	x	Budget of BiH institutions
2.a.	Establishment and development of capacities for analytical and strategic planning of the Sector for Immigration						
2.a.1.	Establishment of the Analytical and Strategic Planning Team - two civil servants	MoS, State Agency for Civil Affairs			x		Budget of BiH institutions
2.a.2.	Amendments of the Rulebook on internal organization of MoS	MoS – Working group, CoM of BiH					
2.a.3.	Establishment of the Analytical and Strategic Planning Section within the Immigration System	Ministry of Security and Agency for Civil Servants					
	Ministry of Security and Agency for Civil Servants						
2.b.1.	Activities following the establishment of the current reception centre for illegal immigrants and continuation of activities for the establishment of the new Reception Centre - Phase II	SFA			x	x	Budget of BiH institutions /CARDS prog. /Donors
2.b.2.	Construction of the new business building of the Service and Field Centre Sarajevo	SFA		x		x	Budget of BiH institutions Donors – IPA
2.b.3.	Staff recruitment for abovementioned centre	SFA		x	x	x	Budget of BiH institutions

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)			Funding source
				2008	2009	2010	
3.	Development of the information system and database						
3.1.	Database operation and its harmonization with the legal amendments	IT sectors of MoS, SFA, BP, Mol		x	x	x	Budget of BiH institutions IPA
3.2.	Establishment and functioning of the analytical system 1-2	SFA	Respective UK institution	x	x		Budget of BiH institutions Donors
3.3.	Establishment and functioning of radio-communication systems and lines	SFA	ICITAP	x			Budget of BiH institutions Donors
3.4.	Establishment of the systems for exchange of data, information and documents via email	SFA	SFA Field Centres	x			Budget of BiH institutions Donors
4.	Establishment of the shelter for aliens / VoT						
4.1.	Providing property	MoS				x	Budget of BiH institutions
4.2.	Construction and furnishing of the facility	MoS				x	Budget of BiH institutions Donors
4.3.	Furnishing the Facility	MoS				x	Budget of BiH institutions
4.4.	Staff recruitment for abovementioned centre	MoS				x	Budget of BiH institutions
5.	Readmission agreement						
5.1.	Implementation of EC Agreements on readmission	MoS - SFA, Sector for Immigration, BP	Mol at the Entity, Cantonal and Brčko District level	x	x	x	Budget of BiH institutions
5.2.	Conclusion of readmission agreements with countries of origin of illegal migrants in transit	MoS - Sector for International Coop., Delegation for Negotiations	MFA	x	x	x	Budget of BiH institutions
6.	Development of international cooperation						
6.1.	Cooperation with GDISC	MoS - Sector for Immigration	SFA	x	x	x	Budget of BiH institutions

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)				Funding source
				2008	2009	2010	2011	
6.2.	Cooperation with MARRI	MoS, BP	MoS - Sector for Immigration, Sector for Asylum, SFA	x	x	x	x	Budget of BiH institutions Donors
6.3.	Bilateral cooperation with the Mol of the Czech Republic	MoS - Sector for Immigration	MoS - Sector for Asylum, SFA, BP	x	x	x	x	Budget of BiH institutions Donors
6.4.	Negotiations on cooperation with the Swiss <i>Bundesamt für Migration</i> on financial support for the Service	SFA	ICMPD	x	x			Budget of BiH institutions Donors
6.5.	Conclusion of formal cooperation with similar partner services of other countries	SFA	Neighbouring countries (Serbia, Croatia, Montenegro)	x	x	x	x	Budget of BiH institutions Donors
6.6.	Participation of the Service at regional workshops on issues related to the harmonization of the migration policy within the Western Balkans	SFA	Swedish Migration Board	x				Budget of BiH institutions CARDS prog. Donors
7.	Coordinating Body for Immigration and Asylum in BiH							
7.1.	Decision on establishing the Coordinating Body for Immigration and Asylum	Council of Ministers	MoS - Sector for Immigration, Sector for Asylum, SFA, BP, SIPA, MFA - Section for Consular and Legal Matters		x			Budget of BiH institutions
7.2.	Regular meetings of the Coordinating Body	MoS - Sector for Immigration	MoS - Sector for Immigration, Sector for Asylum, SFA, BP, SIPA, MFA - Section for Consular and Legal Matters, State Coordinator for Illegal Migration and Combating THB		x	x	x	Budget of BiH institutions
8.	Training							

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)				Funding source
				2008	2009	2010	2011	
8.1.	Training on LMSAA's enforcement	MoS - Sector for Immigration	MoS - Sector for Asylum, SFA, BP; cooperation with international organizations and bilateral cooperation	x	x	x	x	Budget of BiH institutions Donors
8.2.	Training in the area of immigration- EU and international standards	MoS - Sector for Immigration and Sector for International Coop.	MoS - Sector for Asylum, SFA, BP; cooperation with international organizations and bilateral cooperation			x	x	Budget of BiH institutions Donors
8.3	Training on migration data collection and analysis							
8.4.	Training for Development of Project Proposals for IPA funding	Asylum, SFA, BP; cooperation with international organizations and	MoS - Sector for Asylum, SFA, BP; cooperation with international organizations and bilateral cooperation	x	x	x	x	Budget of BiH institutions Donors
8.5.	English Language Training	organizations and	MoS, Civil Service Agency, cooperation with international organizations, bilateral cooperation	x				Budget of BiH institutions Donors
8.6.	Capacity Building of Personnel through tailored Projects, workshops, training and study visits	SFA, Immigration Sector	Domestic and International Institutions	x	x	x	x	Budget of BiH institutions
8.7	Training on Use of Firearms for Aliens Inspectors and Guards at the Immigration Center	SFA	ICITAP	x				
8.8.	Training on Use of Analytical System I/2	SFA	Relevant UK institutions	x	x			

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)				Funding source
				2008	2009	2010	2011	
9.	Operational activities of SFA							
9.1.	Processing of requests for approval / extension of temporary and permanent residence of aliens	SFA - Middle level management and field offices		x	x	x	x	Budget of BiH institutions
9.2.	Annulment and cancellation of stay and expulsion measures	SFA - Middle level management and field offices		x	x	x	x	Budget of BiH institutions
9.3.	Operative data collection on illegal migration, migration routes, and measures to cut the channels of illegal migration	SFA - Middle level management and field offices		x	x	x	x	Budget of BiH institutions
9.4.	Placing of aliens under surveillance at the Reception Centre when legal conditions are met until the removal of the alien from BiH	SFA - Middle level management and field offices		x	x	x	x	Budget of BiH institutions
9.5.	Planning, organization and implementation of operative tactics for detecting and preventing illegal migration	SFA - Middle level management and field offices		x	x	x	x	Budget of BiH institutions
9.6.	Provision of accommodation of the alien at the Reception Centre as per the Law and by-laws; provision of escort for the removal from BiH	SFA and Reception Centre		x	x	x	x	Budget of BiH institutions
9.7.	Conducting of control measures as prescribed by the Law	SFA - Middle level management and field offices		x	x	x	x	Budget of BiH institutions
9.8.	Data processing and monitoring	SFA - Middle level management and field offices		x	x	x	x	Budget of BiH institutions
9.9.	Cooperation with other agencies on law implementation	SFA - Middle level management and field offices		x	x	x	x	Budget of BiH institutions
9.10.	Enhancement of national, regional and international cooperation on migration	SFA	EC, IOM, ICITAP, UNHCR etc.	x	x	x	x	Budget of BiH institutions Donors

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)				Funding source
				2008	2009	2010	2011	
10.	Internal control measures of the SFA							
10.1.	Internal administrative and financial control, performance reviews	SFA - Management of Service and Inspectorate		x	x	x	x	Budget of BiH institutions
10.2.	Instructions for measures to eliminate any malfunctioning and improve the services	SFA - Inspectorate		x	x	x	x	Budget of BiH institutions
10.3.	Provision of regulations for disbursement of funds, budget control	SFA - Management and Dept. of Finance		x	x	x	x	Budget of BiH institutions
10.4	Assure legal funds and budget execution and enactment appropriate by laws.	Management of SFA and its Financial Dpt.		x	x	x	x	Budget of BiH institutions
10.5	Assure legality in all actions on the basis of financial regulations. Undertake all measures as per audits.	Management of SFA and its Financial Dpt.						

D. TRAFFICKING IN HUMAN BEINGS

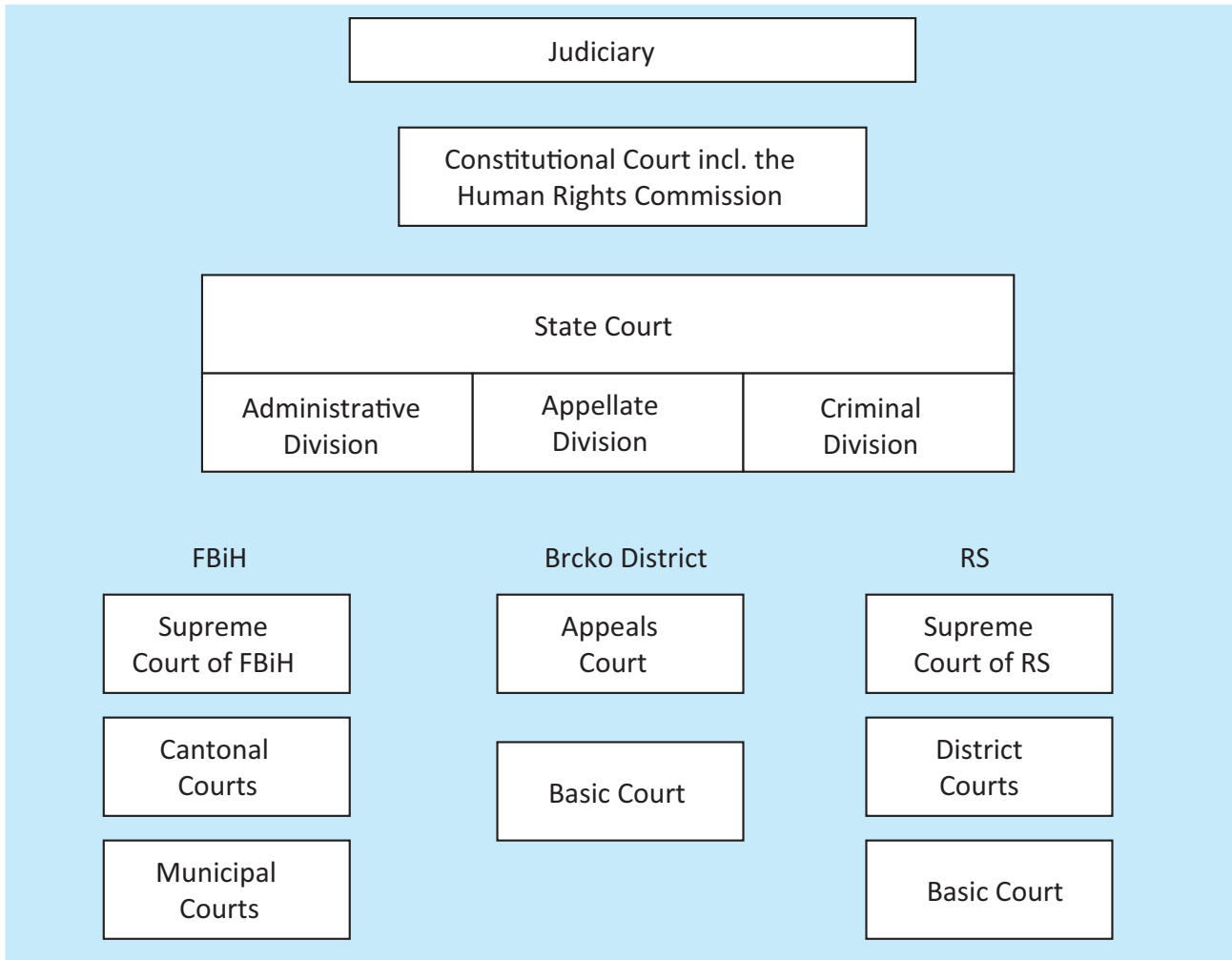
No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)			Funding source
				2008	2009	2010	
1.	Development and strengthening of BiH institutions to combat organized crime and THB	Law enforcement agencies and SIPA	Law enforcement agencies	x	x	x	Budget of BiH institutions Donors
2.	Provision of specialized training of staff	Law enforcement agencies and SIPA	Law enforcement agencies	x	x	x	Budget of BiH institutions Donors
3.	Development and strengthening of BiH inter-institutional cooperation, both governmental and NGOs	Law enforcement agencies and SIPA	Law enforcement agencies	x	x	x	Budget of BiH institutions Donors
4.	Development of international cooperation in combating all forms of organized crime and THB through participation in initiatives, working groups and effective and efficient implementation of the decisions and conclusions resulting from such activities	Law enforcement agencies and SIPA	Law enforcement agencies	x	x	x	Budget of BiH institutions Donors
5.	Conducting independent scientific researches on organized crime, provision of support to institutions dealing with multidisciplinary researches, strengthening of cooperation with scientific and academic institutions	Law enforcement agencies and SIPA	Law enforcement agencies, scientific and academic institutions	x	x	x	Budget of BiH institutions Donors
6.	Raising civil society awareness and education of the public on the risks of organized crime and THB	Law enforcement agencies and SIPA	Law enforcement agencies	x	x	x	Budget of BiH institutions Donors
7.	Awareness raising of judicial institutions and law enforcement agencies on the need for cooperation with media in order to inform the public in an objective and timely manner on the factors generating THB and organized crime	Law enforcement agencies and SIPA	Law enforcement agencies	x	x	x	Budget of BiH institutions Donors
8.	Provision of standardized and efficient legal framework for the enforcement of the witness protection measures in BiH and financial means for the implementation of witness protection programmes	Law enforcement agencies and SIPA	Law enforcement agencies	x	x	x	Budget of BiH institutions Donors
9.	Establishment and strengthening of international cooperation in penal legal issues among the judiciary authorities for joint criminal investigations	Law enforcement agencies and SIPA	Law enforcement agencies	x	x	x	Budget of BiH institutions Donors
10.	Establishment of new standardized IT systems, maintenance and updating existing IT systems and databases of law enforcement agencies, and continuous staff training on IT use.	Law enforcement agencies and SIPA	Law enforcement agencies	x	x	x	Budget of BiH institutions Donors
11.	Prevention and suppression of computer-aided crimes, child pornography and child prostitution	Law enforcement agencies and SIPA	Law enforcement agencies	x	x	x	Budget of BiH institutions Donors
12.	Continuation of Activities to Prevent Trafficking and Illegal Migration	Law Enforcement Agencies and SIPA	Law Enforcement Agencies	x	x	x	Budget of BiH institutions Donors

E. ASYLUM

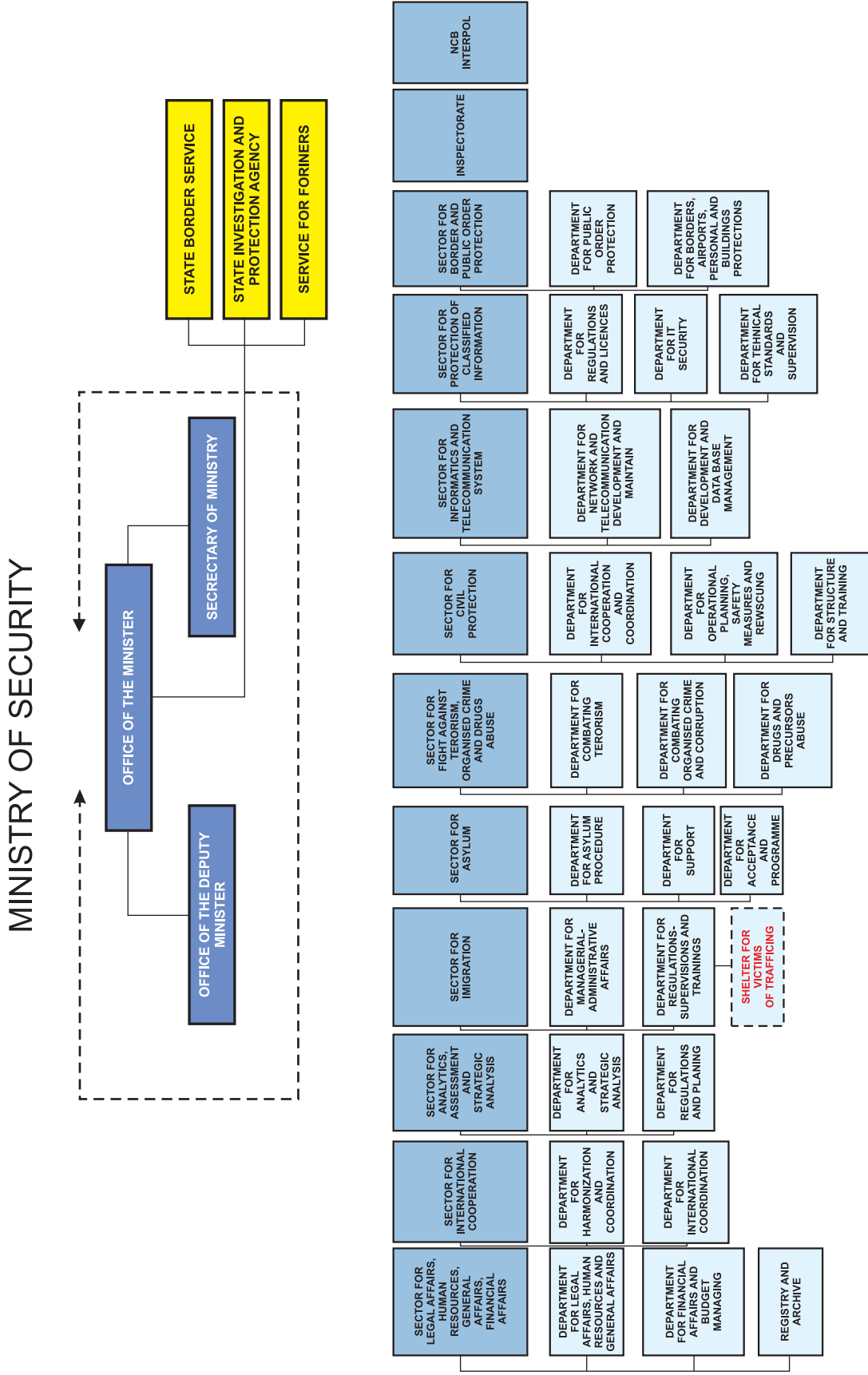
No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)			Funding source
				2008	2009	2010	
1.	Development of a high-quality national system for international protection with incorporated international refugee law and EU standards	MoS - Sector for Asylum	SFA, BP, Court and international organizations dealing with international protection	10,000 KM	20,000 KM	20,000 KM	Budget of BiH institutions Donors
1.1.	Implementation and/or amendment of existing legislation	MoS - Sector for Asylum	SFA, BP	x	x	x	Budget of BiH institutions
1.2.	Strengthening the human resources and technical capacity of Sector for Asylum of BiH	MoS - Sector for Asylum	MoS - Sector for Legal, Material and Financial Affairs	x	x	x	Budget of BiH institutions
1.3.	Provide a high quality system for identification of persons seeking international protection	MoS - Sector for Asylum	SFA, BP, Interpol, BiH Court	x	x	x	Budget of BiH institutions
2.	Drafting of a by-law on international protection	MoS - Sector for Asylum	SFA, BP and Sector for Immigration	14. Nov. 2008.			Budget of BiH institutions
3.	Establishment of a Reception Centre for asylum seekers	MoS - Sector for Asylum		x	x	x	Budget of BiH institutions Donors
3.1.	Securing the location for the construction of the Reception Centre for asylum seekers	MoS - Sector for Asylum	Trnovo Municipality, Cadastral Municipality Delijas	done			Budget of BiH institutions
3.2.	Planning of the construction project	MoS - Sector for Asylum	Architecture company in a bidding process	July 2008			Budget of BiH institutions
3.3.	Obtaining approval for the construction of the Reception Centre for asylum seekers	MoS - Sector for Asylum and Project Implementation Working Group	All relevant institutions	By the end of 2008.			Budget of BiH institutions
3.4.	Drafting the project proposal for the Reception Centre for asylum seekers and submission to EC for funding	MoS - Sector for Asylum and Project Implementation Working Group	EC	End of July 2008			Budget of BiH institutions

No.	Activity	Activity holder	In cooperation with	Deadline (duration/ completion)			Funding source
				2008	2009	2010	
3.5.	Construction of the Reception Centre for asylum seekers	MoS - Sector for Asylum and Project Implementation Working Group	EC		x		Budget of BIH institutions EC funds and other donors
3.6.	Equipping the Centre, staff recruitment and opening of the Centre	MoS - Sector for Asylum	MoS - Sector for Legal, Material and Financial Affairs			End of 2010.	Budget of BIH institutions EC funds and other donors
3.7	Hiring Personnel for Immigration Center	MoS - Sector for Asylum	MoS - Sector for Legal, Material and Financial Affairs			End of 2010	
3.8	Launching the Center's Operations	MoS - Sector for Asylum				End of 2011	
4.	Active participation in the development of international protection system on regional level	MoS - Sector for Asylum	Relevant institutions of regional countries	10,000 KM	10,000 KM	10,000 KM	Budget of BIH Donors/Projects
5. (5.1.-5.7)	Training of staff of the Sector for Asylum, SFA, the Centre, Court, BP, NGOs in the field of international protection	MoS - Sector for Asylum	All BIH institutions dealing with issues of international protection as well as international organizations	70,000 KM	70,000 KM	70,000 KM	Budget of BIH Donors/Projects

Annex 1. Overview of BiH Judiciary



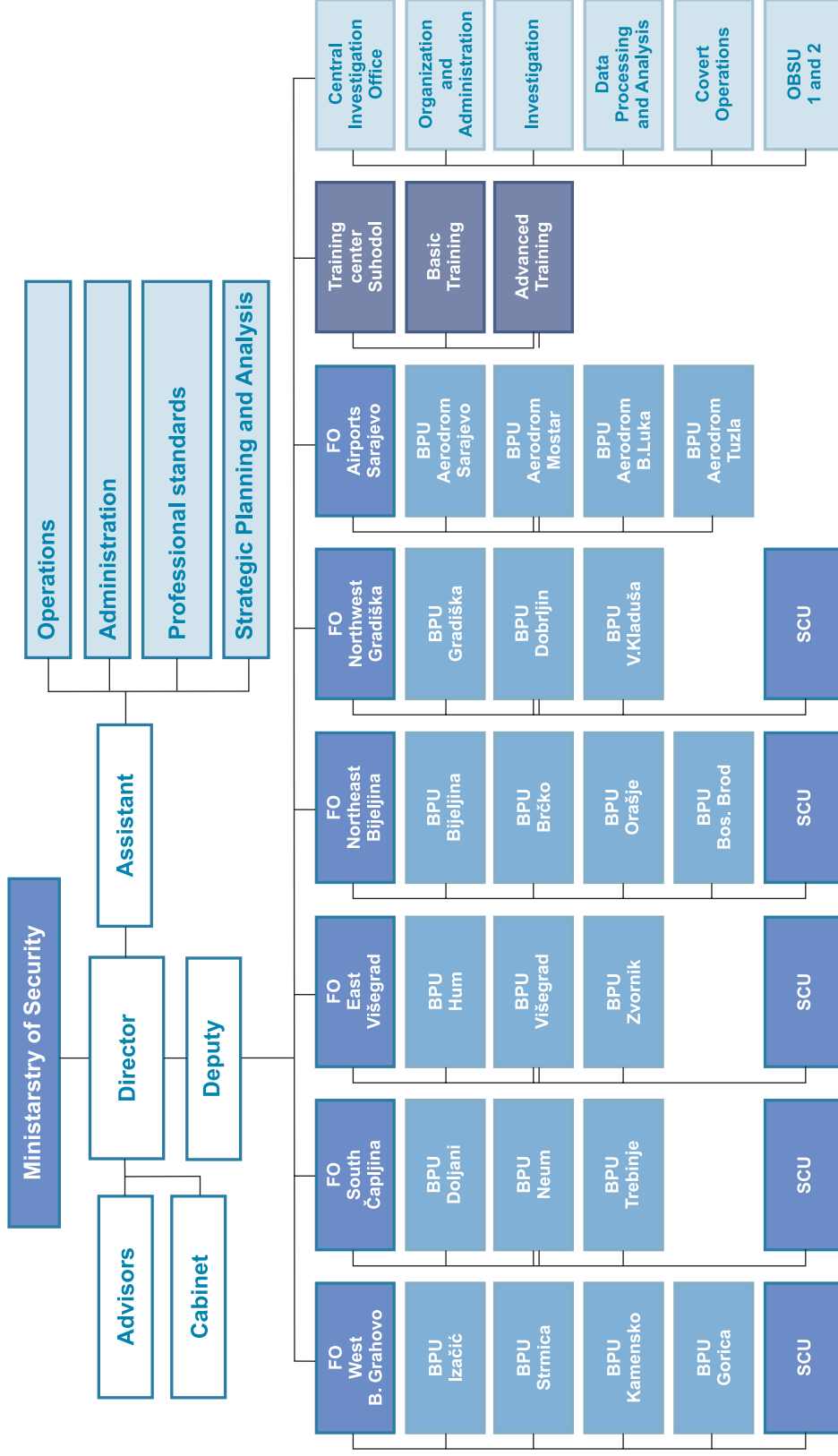
Annex 2. Organisational Chart of the MoS ¹



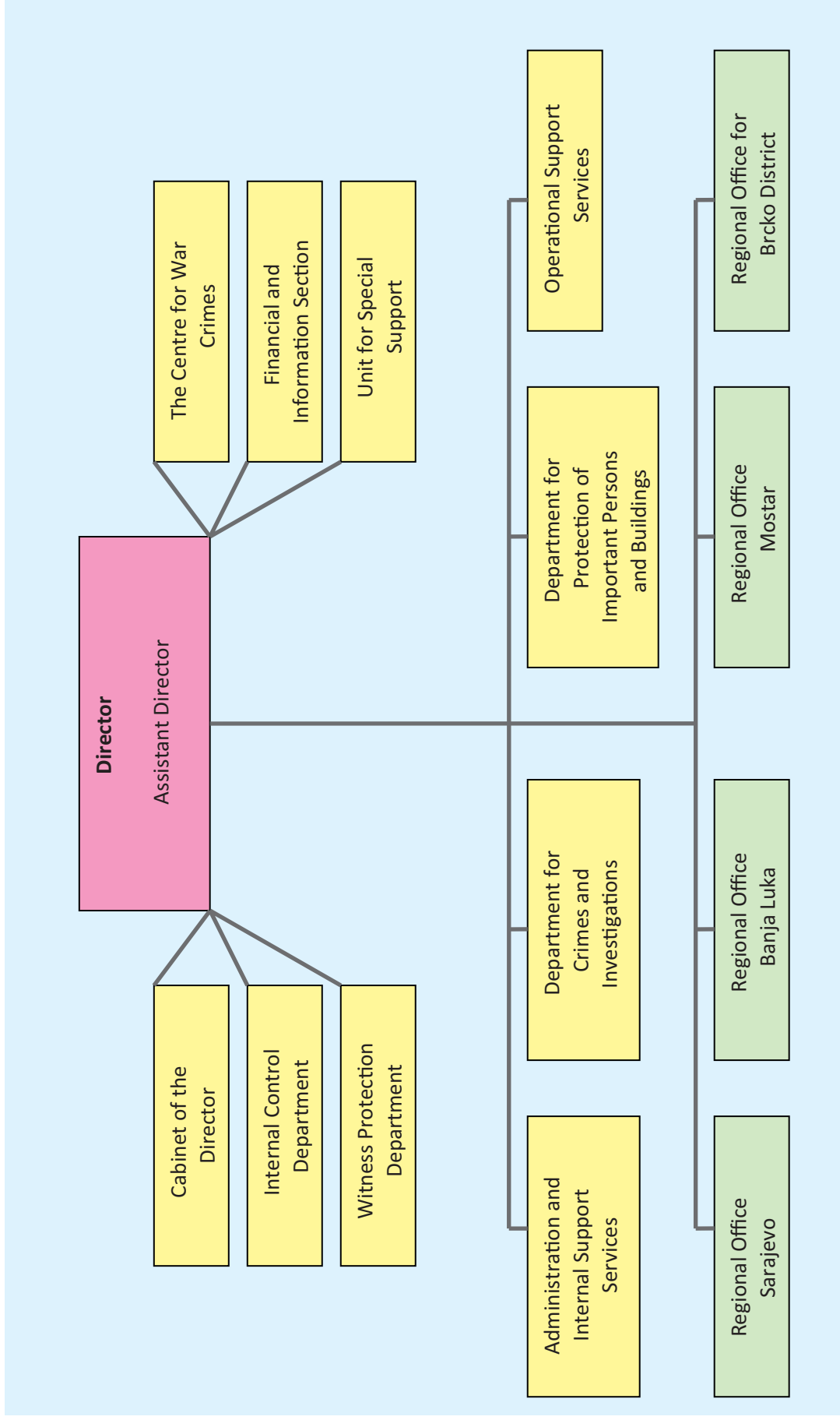
¹ Source: The Ministry of Security

Annex 3. Organisational Chart of BP ²

BiH Border Police Organizational Chart

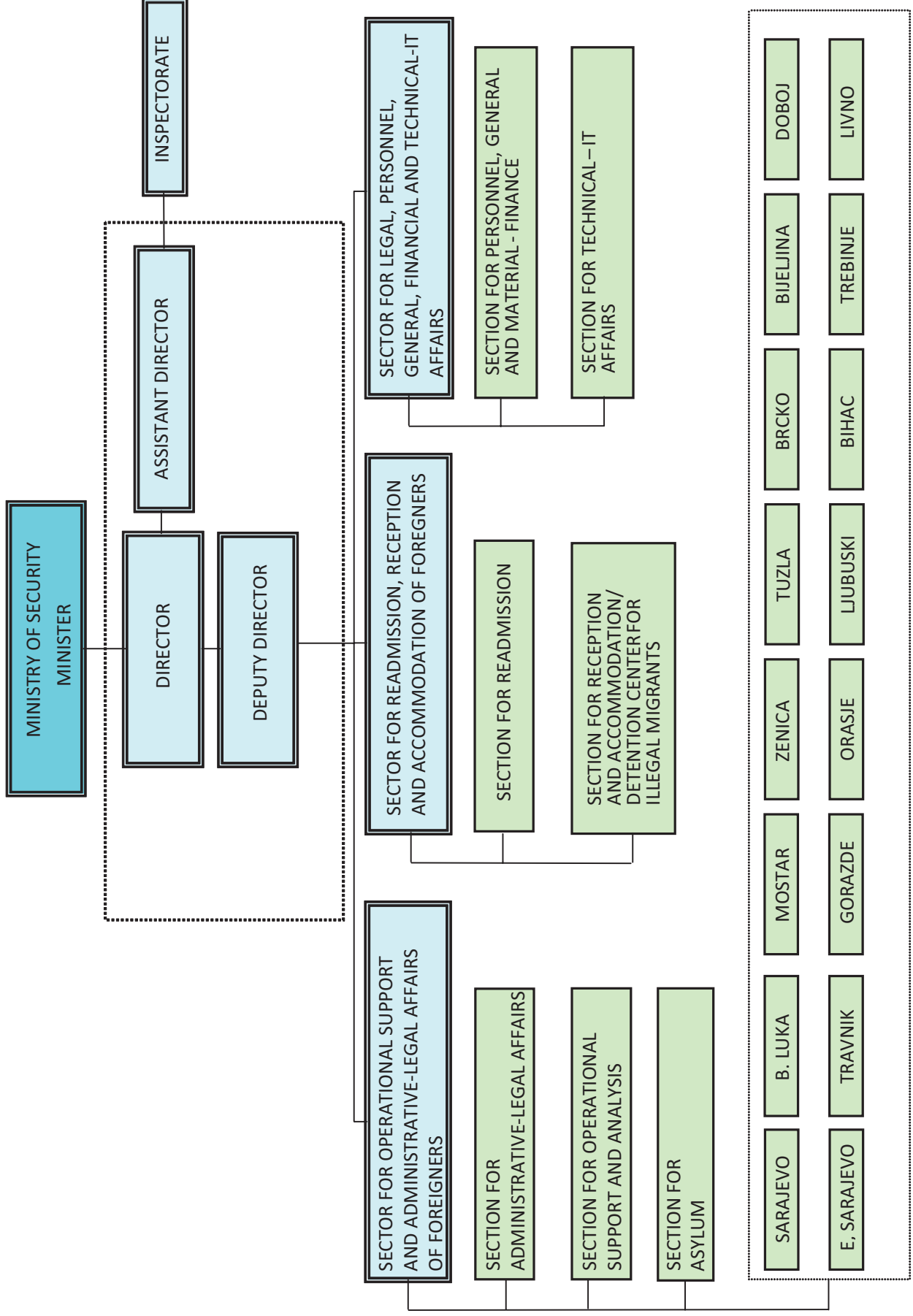


Annex 4. Organisational Structure of SIPA ³



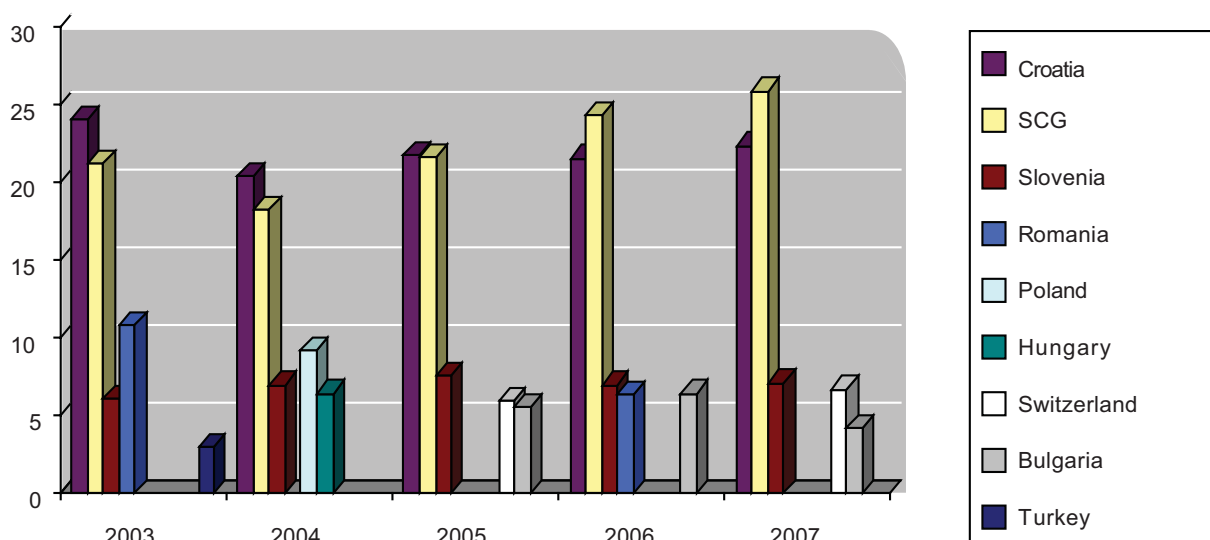
³ Source: State Investigation and Protection Agency, BiH

Annex 5. Organisational Chart of the SFA



Annex 6. Migration Data Charts

1. Top 5 Nationalities – Refused Entry at Border by % 2003 to 2007



2003 – Croatia 2,273 (24%), Serbia and Montenegro 2,004 (21,2%), Romania 1,021 (10,8%), Slovenia 572 (6%), Turkey 276 (2,9%)

2004 – Croatia 2,139 (20,4%), Serbia and Montenegro 1,914 (18,3%), Poland 963 (9,2%), Slovenia 729 (7%), Hungary 674 (6,4%)

2005 – Croatia 1,687 (21,8%), Serbia and Montenegro 1,681 (21,7%), Slovenia 584 (7,5%), Bulgaria 501 (6,4%), Romania 496 (6,3%)

2006 – Croatia 1,690 (21,6%), Serbia and Montenegro 1,904 (24,3%), Slovenia 543 (6,9%), Switzerland 461 (5,94%), Bulgaria 429 (5,53%)

2007 – Croatia 1,479 (22,35%), Serbia and Montenegro 1,715 (25,92,3%) (Serbia 1,350, Montenegro 365), Slovenia 467 (7,06%), Switzerland 440 (6,65%), Bulgaria 275 (4,16%)

Note: for purposes of statistical clarity Serbia and Montenegro have continued to be compiled together.

2. Number of cases of illegal entry to BiH (by direction)

Direction	2003	2004	2005	2006	2007*
From Serbia	141	119	121	490	61
From Montenegro	88	89	81	63	182
From Croatia	257	256	249	247	238

*A new 'Direction' indicator was added by BP for 2007 – Air Traffic. This saw 16 cases of attempted illegal entry by air for the year.

3. Number of cases of illegal exit from BiH (by direction)

Direction	2003	2004	2005	2006	2007
To Serbia	25	55	39	132	41
To Montenegro	37	28	0	6	7
To Croatia	409	55	165	351	280

*A new 'Direction' indicator was added by BP for 2007 – Air Traffic. This saw 26 cases of attempted illegal exit by air for the year.

4. Number of cases of deportations/removals from BiH of foreign nationals (by nationality)

2007 – 61 (Serbia 27, Albania 23, UNMIK 6, Croatia 3, Turkey 2)

2006 – 95 (Albania 35, Former Serbia and Montenegro 21, UNMIK 16, Croatia 8, Romania 2, Macedonia 2, China 2, Turkey 1, Slovenia 1, France 1, Dual national of Serbia and Montenegro and Croatia 1, Dual National of Croatia and Macedonia 1, Tunisia 1, Morocco 1, Moldova 1, United Kingdom 1)

2005 – 60 (Serbia and Montenegro 42, Albania 11, Croatia 7)

2004 – 82 (Serbia and Montenegro 58, Croatia 11, Albania 8, Singapore 3, Romania 2)

2003 – 111 (Serbia and Montenegro 65, Albania 24, China 3, Turkey 3, Czech Republic 2, Others 14)

5. Number of cases of deportations/removals to BiH of BiH nationals (by sending states and numbers)

2007 – 1117 (Croatia 550, Germany 165, France 86, Sweden 58, Switzerland 52, Netherlands 42, Austria 41, USA 39, Italy 31, Belgium 22, Denmark 20, Others 11)

2006 – 1350 (Croatia 507, Germany 234, France 107, Sweden 89, Switzerland 67, Austria 63, Netherlands 52, Italy 39, Norway 38, Others 154)

2005 – 1533 (Croatia 426, Germany 363, Sweden 210, Switzerland 108, Denmark 67, Norway 57, France 55, Others 247)

2004 – 2144 (Sweden 611, Germany 465, Croatia 358, Denmark 165, Switzerland 149, Austria 101, Others 295)

2003 – 3387 (Sweden 1575, Germany 464, Croatia 287, Denmark 282, Switzerland 219, Norway 155, Netherlands 110, Others 295)

6. Number of cases of foreign nationals readmitted to BiH from Croatia (by nationality)

2007 - 240 (SCG and UNMIK 120, Albania 68, Macedonia 25, Turkey 19, Egypt 4, Sri Lanka 3, Iran 1)

2006 – 174 (SCG and UNMIK 100, Macedonia 32, Albania 31, Turkey 10, Nigeria 1)

2005 – 170 (SCG and UNMIK 81, Albania 58, Macedonia 12, Senegal 8, Turkey 7, Pakistan 4)

2004 - 255 (SCG and UNMIK 122, Albania 93, Macedonia 17, Turkey 10, China 6, Bangladesh 3, Pakistan 1, Russia 1, Algeria 1, Stateless 1)

2003 - 756 (SCG and UNMIK 522, China 73, Albania 64, Macedonia 37, Turkey 22, Others 38)

7. Overview of relevant indicative migration statistics (by category and year)

	2003	2004	2005	2006	2007
Entries/exits over state border	45,331,287	45,807,266	48,872,820	48,540,884	53,741,950
Refusals of entry to foreign nationals	9,450	10,469	7,758	7,829	6,618
Forged documents encountered	403	458	334	434	295
Intercepted illegal border crossing (Entry to BiH)	486	464	451	800	497
Intercepted illegal border crossing (Exit from BiH)	471	411	204	489	354
Visas Issued at the Border	4,327	5,641	2,049	927	735
Deportations/ Removals	111	82	60	95	329
Cases referred to IOM by BP	471	204	195	54	0
Visas issued	20,000	18,350	11,531	12,716	11,220
Asylum claims		47	96	37	149

