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The Permanent Mission of Bosnia and Herzegovina to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, in regard to the letter sent by Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, dated 18<sup>th</sup> May 2015, has the honor to transmit the response received from the Ministry of Human Rights and Refugees of Bosnia and Herzegovina.

The Permanent Mission of Bosnia and Herzegovina to the United Nations Office and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurance of its highest consideration.



Geneva, 24<sup>th</sup> June, 2015

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## INFORMATION PAPER ON „Freedom of Opinion and Expression“

Freedom of opinion and expression is one of the fundamental rights listed in the catalogue of human rights afforded to the citizens of Bosnia and Herzegovina (BiH). Article II (Human Rights and Fundamental Freedoms) of the Constitution of BiH determines Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. The catalogue of human rights enumerates *inter alia* freedom of expression. Paragraph 3 of Enumeration of Rights reads that all persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above, including freedom of expression (sub-paragraph h).

The Entity Constitutions determines that the Constitutions shall ensure the highest level of internationally recognized human rights and fundamental freedoms, that citizens are equal in freedoms, rights and duties, including *inter alia* freedom of speech and the press and freedom of thought, conscience and conviction; that they shall be equal before the law and they shall enjoy equal legal protection irrespective of their race, sex, language, national origin, religion, social origin, birth, education, material standing, political or other conviction, social status or any other personal circumstance.

Article 13 (Fundamental Rights and Obligations) of the Statute of Breko District of BiH determines *inter alia* that everyone is entitled to the enjoyment of all rights and freedoms guaranteed under the Constitution and laws of Bosnia and Herzegovina, this Statute and the laws of the District, without discrimination of any kind. In Article 17(1) – Public Information determines that all BD institutions shall respect freedom of information.

Human Rights and Fundamental Freedoms enshrined in the the European Convention on Human Rights and Fundamental Freedoms are incorporated into the Constitution of Bosnia and Herzegovina. They are directly applicable in Bosnia and Herzegovina so that they have a priority over all other laws. Article 10(1) of the European Convention on Human Rights and Fundamental Freedoms provides that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 18 of the International Covenant on Civil and Political Rights determines that everyone shall have the right to freedom of thought, conscience and religion, while Article 19(2) provides that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Bosnia and Herzegovina has passed a number of laws protecting the right to freedom of expression. The Law on Protection against Defamation of the Federation of Bosnia and Herzegovina („FBiH Official Gazette“ 59/02, 73/05) regulates civil liability for harm caused to the reputation of a natural or legal person by making or disseminating an expression of false fact identifying that legal or natural person to a third person.

Legal protection of the life and physical integrity of all citizens, including journalists, in Bosnia and Herzegovina has been ensured in the criminal legislation of the Entities and the Breko District of BiH, which prescribes penalties for various types of attacks. All criminalized acts against the life and physical

integrity of man can be divided into two groups. The first group consists of crimes in which the life and body of a man are the primary and sole object of attack and are defined in a separate chapter of the Criminal Code (offenses against life and limb), while the second group includes crimes defined in various chapters of the Criminal Code and whose primary object of protection are some other individual or social values (e.g. crimes against freedoms and human and civil rights, offenses against public order etc.).

The current criminal legislation in BiH does not criminalize an attack on journalists as a separate offense. The High Judicial and Prosecutorial Council collects statistics on the prosecution of criminal offenses by type and number provided for by law and not by victim's profession and other characteristics. Due to this, we are not able to provide data on the prosecution of criminal offenses committed against journalists.

Article 6 (Scope of Application) of Chapter III: Protected Rights of the Law on Prohibition of Discrimination ("BiH Official Gazette" 59/09) determines *inter alia* that this Law shall apply to actions of all public bodies at the level of the state, entity, canton and Breko District of BiH, municipal institutions and bodies, and legal persons with public authorities, as well as to the action of all legal and natural persons, in all spheres of life, including the public information and the media.

The Press Code of BiH that also covers the online media was derived from existing European standards of journalistic practice. The Code aims to lay foundations of the system of self-regulation in the print and online media, which is considered morally binding on reporters, editors, owners and publishers of the print and online media.

In exercising its competencies the Communications Regulatory Agency is guided with the regulatory principles of broadcasting defined in the Law on Communications ("BiH Official Gazette" 31/03, 75/06, 32/10, 98/12), which include *inter alia* the protection of freedom of expression and diversity of opinion while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy, and impartiality (Article 4 of the Law).

Ethical norms of journalism are well developed in the framework of the relevant documents. There are a number of laws governing the electronic media. Communications Regulatory Agency of Bosnia and Herzegovina as an independent body, granted licenses for electronic media and enforce laws and regulations in the broadcasting sector.

*1. Please indicate if there are norms or regulations which protect those in the media from the compelled disclosure of confidential sources of information, When these exist, what limitations on such protections may be accepted under the law?*

Bosnia and Herzegovina has passed three laws on defamation, which is an important positive step.

**Article 9 of the Law on Protection against Defamation of the Federation of Bosnia and Herzegovina („FBiH Official Gazette“ 59/02, 73/05) determines:**

Quotations: „1. A journalist, and any other natural person regularly or professionally engaged in the journalistic activity of seeking, receiving or imparting information to the public, who has obtained information from a confidential source has the right not to disclose the identity of that source. This right includes the right not to disclose any document or fact which may reveal the identity of the source particularly any oral, written, audio, visual or electronic material. Under no circumstances shall the right not to disclose the identity of a confidential source be limited in proceedings under this Law.

2. The right not to disclose the identity of a confidential source is extended to any other natural person involved in proceedings under this Law who, as a result of his or her professional relationship with a journalist or other person referred to in paragraph 1 of this Article, acquires knowledge of the identity of a confidential source of information.“

**Article 10 of the 2001 Law on Protection against Defamation of the Republika Srpska** („Republika Srpska Official Gazette“ 37/01) determines: A journalist, and any other natural person regularly or professionally engaged in the journalistic activity of seeking, receiving or imparting information to the public, who has obtained information from a confidential source is not obliged to disclose the identity of that source. This right includes the right not to disclose any material which may reveal the identity of the source including, but not limited to, any oral, written, audio, visual or electronic material. Under no circumstances shall the right not to disclose the identity of a confidential source be limited in proceedings under this Law.

Paragraph 2 determines that the right not to disclose the identity of a confidential source is extended to any other natural person involved in proceedings under this Law who, as a result of his or her professional relationship with a journalist or other person referred to in subsection 1. of this Article, acquires knowledge of the identity of a confidential source of information.

**Article 9 of the Confidential Sources Protection Chapter of the Law on Protection against Defamation of the Brčko District of BiH** („Official Gazette of Brčko District of BiH“ 14/03) determines that a journalist or any other natural person regularly or professionally engaged in the journalistic activity of seeking, receiving or imparting information to the public, who has obtained information from a confidential source is not obliged to disclose the identity of that source. This right includes the right not to disclose any material which may reveal the identity of the source including, but not limited to, any oral, written, audio, visual or electronic material. Under no circumstances shall the right not to disclose the identity of a confidential source be limited in proceedings under this Law.

2. The right not to disclose the identity of a confidential source is extended to any other natural person involved in proceedings under this Law who, as a result of his or her professional relationship with a journalist or other person referred to in subsection 1. of this Article, acquires knowledge of the identity of a confidential source of information.

The purposes of **Laws on Free Access to Information of BiH** („BiH Official Gazette“ 28/00, 45/06, 102/09, 62/11, 100/13) is:

- a) to acknowledge that information in the control of public authorities is a valuable public resource and that public access to such information promotes greater transparency and accountability of those authorities, and is essential to the democratic process;
- b) to establish that every person has a right to access this information to the greatest extent possible consistent with the public interest, and that public authorities have a corresponding obligation to disclose information; and
- c) to enable every natural person to request the amendment of, and to comment on, his or her personal information in the control of a public authority.

Every natural and legal person has the right to access information in the control of a public authority, and each public authority has a corresponding obligation to disclose such information. This right of access may only be subject to such formalities and restrictions as are prescribed by this Law.

A competent authority may claim an exemption where disclosure would reasonably be expected to cause substantial harm to the legitimate aim of the following in Bosnia and Herzegovina: a) the foreign policy, defense and security interests, and the protection of public safety; b) the monetary policy interests; c) crime prevention and crime detection; and d) the protection of the deliberative process of a public authority insofar as it involves the expressing of opinion, advice or recommendation by a public authority, employee thereof, or any person acting for or on behalf of a public authority, and does not involve factual, statistical, scientific, or technical information.

Where a competent authority reasonably determines that a request for access to information involves the confidential commercial interests of a third party, the competent authority shall forthwith notify the third party in writing of the specifics of the request. The notice shall inform the third party that the disclosure of the information is imminent unless the third party, within 15 days of receipt of the notice, responds in writing that it considers the information to be confidential and gives reasons as to why harm would result from disclosure. Upon receipt of such a response the competent authority shall claim an exemption.

A competent authority shall claim an exemption where it reasonably determines that the requested information involves the personal privacy interests of a third person.

BiH is the first country in the region that passed the Law on Free Access to Information in 2000 at the state level first and then in 2001 in both entities, the Federation of Bosnia and Herzegovina and the Republika Srpska and they are: the Law on Free Access to Information in the Federation of Bosnia and Herzegovina („Official Gazette of the Federation of Bosnia and Herzegovina“ 32/01, 48/11) and the Law on Free Access to Information („Republika Srpska Official Gazette“ 20/2001). The law came into force on the eighth day after its publication and its implementation started six months later: in November 2001 in the Republika Srpska and on 1 February 2002 in the Federation of Bosnia and Herzegovina.

**The Law on Protection of Secret Data** („BiH Official Gazette“ 54/05, 12/09) governs common fundamentals of a single system of designation, access to, use, keeping and protection of secret data from unauthorized disclosure, destruction and abuse within the competence of Bosnia and Herzegovina, entities and other levels of government structure of Bosnia and Herzegovina pertaining to public security, defence, foreign affairs or intelligence and security activities, declassification of such information, and security clearance procedure and issuance of security authorization to access secret data.

Provisions and arrangements of the Law on Protection of Secret Data (hereinafter: the Law) shall apply to all institutions, bodies, legal entities and citizens of Bosnia and Herzegovina and international or regional organizations when required by an agreement between Bosnia and Herzegovina on the one hand and the international and regional organizations on the other hand and shall be observed by state and entity bodies, holders of public offices, bodies of local administration, administrative bodies at all other levels of the government, economic and other organizations and institutions which in the exercise of their own legal authorities produce, have access to and use such data, as well as employees in such bodies, organizations and institutions.

The use of secret data shall mean a procedure of use of such data by authorized persons in the exercise of their duty, subject to protection of the source and method in which it was obtained.

**The Press Code of BiH and Online Media** is drawn from existing European standards of journalistic practice. The Code's purpose is to establish the foundation of a system of self-regulation in print and online media, which shall be considered morally binding for reporters, editors, owners and publishers of print and online media. Journalists and editors of print and online media shall respect generally accepted ethical principles and protect the professional integrity of journalism. In addition to this Code, laws and other legal regulations constitute the framework in which print and online media operate in BiH.

This Code includes the basic principles of the Memorandum of Understanding signed by the Independent Union of Professional Journalists of BiH, the Association of Journalists of BiH, the Independent Union of Journalists from the Republic of Srpska, the Association of Journalists of the Republic of Srpska and the Syndicate of Professional Journalists of the Federation of BiH, and it is adhered to by the Association of Croat Journalists in BiH.

Article 13 - Confidentiality of Sources determines that whenever possible, journalists should rely on open, identified sources of information. These sources are to be preferred to anonymous sources, whose honesty

and accuracy cannot be judged by the public. Journalists have an obligation to protect the identity of those who provide information in confidence, whether or not they explicitly request confidentiality.

Print media are covered by a system of self-regulation implemented by the Press Council. The Code sets forth the fundamentals of the system of self-regulation in the press and is considered morally binding on reporters, editors, owners and publishers of newspapers and periodicals. The Code was later adapted and journalistic content on the web.

*2. Please indicate what protections are afforded to whistleblowers in national law. Please note that this report should focus on whistleblowers in the context of public sector and adopts the definition of a whistleblower as any person who report or disclose information of a threat or harm to the public interest in the context of their work-based relationship.*

**The Law on Protection of Whistleblowers in the Institutions of Bosnia and Herzegovina** (hereinafter: the Law) regulates the status of persons reporting acts of corruption in the institutions of Bosnia and Herzegovina and legal persons established by the institutions of Bosnia and Herzegovina, the reporting procedure, the obligations of the institution in regard to reporting acts of corruption, procedure for protection of the whistleblowers, and shall lay down sanctions for violation of provisions of the Law (Article 1).

Article 2 of this Law determines that a whistleblower shall mean a person employed in the institutions of Bosnia and Herzegovina and legal entities founded by the institutions of Bosnia and Herzegovina, who reports, due to reasonable belief or circumstance indicating the existence of corruption in any of the institutions of Bosnia and Herzegovina, in good faith, to the authorized persons or institutions any suspected acts of corruption in pursuance of this law.

Protected disclosure/ reporting is: 1) disclosing information to the competent authorities which in the employee's reasonable belief show corruption in the light of paragraph a) of this Article; 2) reporting of a criminal offence of corruption against responsible person in the institutions referred to in Article 1 of this Law; 3) filing a lawsuit, complaint or appeal in regard to acts corruption against responsible person in the institutions referred to in Article 1 of this Law; 4) giving a testimony before a court or an administrative authority in proceedings against responsible person in the institutions referred to in Article 1 of this Law; 5) Cooperation in the proceedings conducted by investigative bodies.

Special form of protected disclosure/ reporting is disclosing or any other form of making publically available the information indicating to corruption, provided that whistleblowers has a reason to suspect that: 1) he/she will be subjected to detrimental action by a certain person, or 2) in the event of protected reporting from paragraph c) of this Article, there will be no appropriate action taken, or that the evidence and information will be concealed or destroyed, or 3) if the same information has been disclosed to the subject referred to in paragraph c) of this Article and that no appropriate action was undertaken within the legal timeline, provided that prior to making a special form of protected disclosure, the whistleblower is obliged to consider possible damage that may be incurred as a result of his disclosure.

Article 4 defines types of protected disclosure/ reporting and they may be: a) Internal and b) External.

Internal protected disclosure/ reporting means that any person employed with the institutions of Bosnia and Herzegovina, referred to in Article 1 of this Law may submit a report referred to in Article 3 paragraph (1) of this Law to the following: a) His/her superior or to any other person, in the institution where he/she is employed who is responsible for the compliance of that institution with the law, or b) a person or to the institution's manager who is responsible for compliance of that institution with the law; c) a person or a body performing supervision or audit in the institutions of Bosnia and Herzegovina, referred to in Article 1 of this Law.

Article 6 defines external reporting/disclosure as reporting/disclosure to the following: a) authorities responsible to conduct a criminal investigation and prosecution of perpetrators of criminal offences; or b) the Agency for Prevention of Corruption and Coordination of Fight Against Corruption, and c) the public, in accordance with article 2, point d) of this Law.

External reporting/disclosure shall be conducted in case that:

a) the procedure based on internal reporting/disclosure referred to in Article 5 of this Law takes longer than 15 days; or b) the whistleblower has a reason to believe that the procedure based on internal reporting/disclosure referred to in Article 5 of this Law has been irregular, or c) the whistleblower has every reason to believe that the authorized person who is designated by laws to receive the reports referred to in Article 5 of this Law or the manager of an institution, are directly or indirectly associated with the act of corruption.

Pursuant to Article 7 of the Law, the Agency for Prevention of Corruption and Coordination of Fight against Corruption shall decide on granting the whistleblower status to the employee within 30 days following his or her request, made in a good faith, to the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption regardless of whether the employee claims that detrimental actions have been taken or only suspects that they could be taken.

Protected reporting/disclosure shall commence from the day of submitting the report referred to in Article 3 of this Law.

The whistleblower shall not be subjected to material, criminal or disciplinary liability for disclosing an official secret in case of he or she reports an act of corruption to the competent authority.

The Agency for Prevention of Corruption and Coordination of Fight Against Corruption shall inform the whistleblower of the decision to afford the whistleblower status.

The Law On the Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption („BiH Official Gazette“ 103/09) was passed in 2009.

The purpose of the Law is to prevent the impact of corruption on the development of democracy and respect for the fundamental human rights and freedoms, as well as the impact undermining the economic development of Bosnia and Herzegovina, and all other forms of impact on social values, as well as for coordination of the fight against corruption.

The Agency shall be responsible for corruption prevention in the institutions of both the public and private sectors in regard to: a) the office holders in legislative, executive and judicial authorities at all levels; b) the public servants and employees and police officials in government institutions at all levels; c) the members of management, authorized and other persons in business companies, public enterprises, public institutions and private enterprises; d) the members of bodies and other authorized persons in political parties e) the authorized persons in cultural and sports institutions, foundations, associations and non-governmental organizations.

The Agency shall be responsible to: develop the Anti-Corruption Strategy and the Corruption Prevention Action Plan; coordinate and monitor the implementation of the Strategy and the Action Plan, and provide opinions and guidelines on the matter of implementation of the Strategy and the Action Plan; Coordinate the work of the public institutions in preventing corruption and conflict of interest, and make analyses of the final decisions of the competent authorities in charge of processing conflicts of interest in order to look into the instances of corruptive practices, inform the competent institutions about the situation detected, as well as take all necessary measures as provided by law; monitor the instances of conflict of interest, provide recommendations for the strategy of managing the conflict of interest on a case-to-case basis, and

- issue the guidelines for the policy of managing the conflict of interest in governmental institutions; prescribe a uniform methodology for collection of the data about financial situation of public servants; in coordination with the competent authorities, analyze the delivered data in order to detect the instances of corrupt practices, and take necessary measures as provided by law; collect and analyze statistics and other data, and inform all relevant stakeholders in Bosnia and Herzegovina of the results of the inquiry; take action upon receiving the submissions that contain indications of a corruptive conduct pursuant to the applicable regulations; coordinate the work of the institutions with public authorities in combating corruption; monitor the effects of laws and bylaws aimed at preventing corruption and provide opinions and guidelines on the issue of their implementation. initiate activities in relation to amending the current legislative arrangements and harmonize them; cooperate with the national scientific and professional organizations, public media, and NGOs on the issue of corruption prevention; cooperate with international organizations, institutions, initiatives and bodies; establish and maintain the database containing the data collected in accordance with this Law; develop educational programs on the issue of prevention of corruption and fight against corruption, and monitor their implementation; issue publications to inform the public about the corruption situation; inform the competent institutions and the public of the obligations contained in international legal acts and give recommendations for their realization in relation to corruption prevention; prescribe a uniform methodology and guidelines for making integrity plans and providing assistance to all public institutions in their implementation; and perform other activities relating to corruption prevention.

**The 2009-2014 Anti-Corruption Strategy** aims to decrease the possibility of corruption by establishing a modern and efficient administrative and legal framework for the public sector. Significant element of the Strategy is management and organizational development and clear regulation of the relationship between governmental institutions, private sector and citizens. One of the main objectives of the Strategy is to increase the efficiency of existing institutions to prevent and fight the corruption.

Objectives: 1. To establish efficient system for coordination of activities of BiH government aiming to fight corruption, in order to ensure the consistency and sustainable results of the activities carried out under the Strategy. 2. To establish the system for preventing corruption in all structures of public institutions in BiH, in order to minimize the corruption risks. 3. To build capacities of anticorruption bodies at all governance levels, in order to efficiently manage the corruption prevention programs, educate BiH society about the corruption risks, coordinate the fight against corruption, expose and examine cases of corruption and initiate appropriate procedures against perpetrators. 4. To raise awareness about the corruption risks in BiH society in general, along with certain professional groups and associations and also to strengthen already existing negative opinion on corruption in BiH society and ensure participation of civil society in all the activities undertaken by public institutions in order to curb and fight corruption.

BiH has adopted an **action plan for the implementation of the 2009-2014 Anti-Corruption Strategy** **were adopted** and institutions are obliged to enact bylaws, specifically rulebooks, about internal corruption reporting and protection of persons who report corruption.