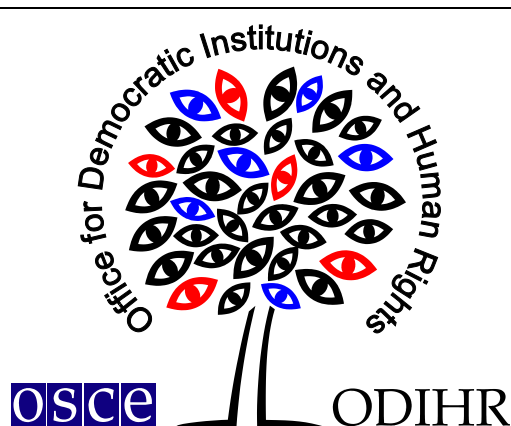


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**OPINION**

**ON THE DRAFT LAW**

**ON PARLIAMENTARY OVERSIGHT**

**IN BOSNIA AND HERZEGOVINA**

**based on an unofficial English translation of the Draft Law  
provided by the OSCE Mission to Bosnia and Herzegovina**

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**Annex: Draft Law on Parliamentary Oversight of Bosnia and Herzegovina**

## **I. INTRODUCTION**

1. *On 18 May 2016, the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) received a request from the Ad Hoc Joint Committee responsible for preparing a Draft Law on Parliamentary Oversight of the Parliamentary Assembly of Bosnia and Herzegovina (hereinafter “the Draft Law”) to review the Draft Law. On 13 June 2016, the OSCE/ODIHR responded to the request of 18 May, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Draft Law with OSCE commitments and international human rights and democracy standards.*
2. *On 6 December 2016, the OSCE Mission to Bosnia and Herzegovina forwarded to the OSCE/ODIHR the text of the Draft Law, along with its unofficial English translation. On 16 December 2016, the OSCE/ODIHR responded to reiterate its readiness to prepare a legal opinion on the Draft Law.*
3. *This Opinion was prepared in response to the above request.*

## **II. SCOPE OF REVIEW**

4. The scope of this Opinion covers only the Draft Law submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal framework for parliamentary oversight in Bosnia and Herzegovina.
5. The Opinion raises key issues and identifies main areas that would benefit from further consideration. In the interests of conciseness, the Opinion focuses more on those provisions that require improvements rather than on the positive aspects of the Draft Amendments. The ensuing recommendations are based on international standards and practices related to parliamentary oversight. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Opinion examines whether a gender perspective has been integrated in the Draft Law.<sup>1</sup>
6. This Opinion is based on an unofficial English translation of the Draft Law provided by the OSCE Mission to Bosnia and Herzegovina, which is attached to this document as an Annex. Errors from translation may result.
7. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on the respective legal act or related legislation pertaining to the legal and institutional framework regulating parliamentary oversight in Bosnia and Herzegovina in the future.

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<sup>1</sup> See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), available at: <http://www.osce.org/mc/23295?download=true>.

### **III. EXECUTIVE SUMMARY**

8. Effective parliamentary scrutiny of the actions and policies of the executive branch is an essential element of democratic governance, the rule of law and government accountability. Viewed in this light, a Law on Parliamentary Oversight may be a positive step in the evolution and maturing of the political system in Bosnia and Herzegovina. Such a law would establish a comprehensive and effective framework for all oversight activities performed by the federal Parliament of Bosnia and Herzegovina (the Parliamentary Assembly) with regard to the federal executive institutions. Certain elements of parliamentary oversight can already be found in the Rules of Procedure of the two Houses of the Parliamentary Assembly as they build on the checks and balances embodied in the Constitution of Bosnia and Herzegovina.
9. The Draft Law strengthens, clarifies and expands these mechanisms. It adds some important oversight methods (e.g., public hearings and committees of inquiry) and generally strengthens and streamlines the oversight powers belonging to parliamentary committees (oversight bodies). While usually, parliamentary oversight is primarily conducted through parliamentary rules of procedure, the merit of adopting a special law on parliamentary oversight is that it allows to impose obligations on officials of the federal executive bodies (and, possibly, other individuals) to comply with the requests of parliamentary oversight bodies and, generally, cooperate with the Parliamentary Assembly in good faith. This may not be achievable through rules of procedure of the Houses of the Parliamentary Assembly, since these are not 'legislation.' At the same time, the rules of procedure – which can be more easily adopted and modified compared to legislation – afford the Parliamentary Assembly a greater degree of flexibility in building and adjusting its oversight practice. Therefore, it may be advisable to leave the regulation of some of the more specific procedural details, such as reporting standards for supervised bodies, to the rules of procedure and the practices of parliamentary committees.
10. The Draft Law provides for a good range of oversight tools which include hearings, inquiries, the review of reports submitted by executive bodies, oral and written questions to the executive, interpellations, and votes on motions of no confidence against the Council of Ministers or requests for its reconstitution. These oversight tools are in keeping with the practice of many OSCE participating States, as are the powers that the Draft Law grants to parliamentary oversight bodies. However, the Draft Law would benefit from greater consistency in defining those powers, as well as from clarifying and strengthening several crucial rights of oversight bodies, namely, the right to call witnesses and the right to access documents and information relating to the work of supervised bodies. Greater detail in the regulation of some of the methods of parliamentary oversight would also enhance the Draft Law.
11. While the Draft Law is generally well-structured, the current version contains a fair amount of avoidable duplication and fragmentation and, most problematically, inconsistency between different provisions. This will most likely improve as work on the Draft Law advances. Nevertheless, additional care is recommended in ensuring that all provisions of general relevance (especially, those related to the overall powers of oversight bodies) are streamlined and set out at the beginning of the Draft Law – which would help avoid inconsistencies and lacunae and facilitate implementation once the law is adopted.

12. More specifically, and in addition to what was stated above, OSCE/ODIHR makes the following recommendations to further enhance the Draft Law:
  - A. To increase the role of the parliamentary opposition in the oversight process as a means of ensuring more rigorous scrutiny of the Government; [pars 31, 43, 44, 51, and 56]
  - B. To recognize the special role of independent oversight bodies, especially, the Human Rights Ombudsman, by clarifying the extent to which they can be subject to parliamentary oversight without undermining their independence and by ensuring that their specialized investigations and technical expertise are properly fed into Parliament's oversight work; [pars 34-37]
  - C. To clarify the powers of parliamentary oversight bodies to call witnesses and request the submission of documents and information, in particular in the context of inquiries and hearings, and the nature and extent of sanctions for failure to comply with such requests; these powers could be further strengthened by enabling oversight bodies (or, at least, committees of inquiry) to summon individuals other than officials from supervised executive bodies; [pars 24-28, 45-48, 61, and 65-67] and
  - D. To integrate a gender perspective in the institutional framework and material scope of parliamentary oversight by encouraging a gender balanced approach to the composition of oversight bodies and by requiring all oversight bodies to consider the issue of gender equality in all aspects of their oversight of governmental activities. [pars 32 and 33]

*Additional Recommendations, highlighted in bold, are also included in the text of the opinion.*

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **1. The importance of parliamentary oversight**

13. Parliamentary oversight can be defined as “the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation.”<sup>2</sup> It plays a crucial role in democratic governance by helping to improve the quality of executive policies, programs and practices and imparting greater legitimacy to those policies.<sup>3</sup> In performing its oversight function, the legislature can detect and prevent abuse of power and illegal conduct within the government and public agencies and, at the same time, help ensure the efficient and transparent use of public money by the executive and the proper implementation of policies that the government is committed to delivering.<sup>4</sup>

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<sup>2</sup> Hironori Yamamoto, *Tools for parliamentary oversight* (Inter-Parliamentary Union, 2007), p. 9, available at: <http://www.ipu.org/PDF/publications/oversight08-e.pdf>.

<sup>3</sup> Riccardo Pelizzo et al., *Parliamentary Oversight for Government Accountability* (2006), p. 3, available at: [http://ink.library.smu.edu.sg/soss\\_research/13](http://ink.library.smu.edu.sg/soss_research/13).

<sup>4</sup> Tools for parliamentary oversight, *op. cit.* footnote 2, p. 9.

14. The concept of parliamentary oversight derives from the broad principles of democracy and the rule of law and the principle of the separation of powers.<sup>5</sup> OSCE participating States have agreed that it is a “duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law” and that “the activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law.”<sup>6</sup> In particular, OSCE participating States have committed to a form of government that is representative in character, *in which the executive is accountable to the elected legislature or the electorate.*<sup>7</sup> Furthermore, relevant OSCE commitments refer to parliamentary oversight specifically in military and national security matters, namely, “effective arrangements for legislative supervision of all such forces [i.e. military and paramilitary forces, internal security and intelligence services, and the police’], services and activities”<sup>8</sup> and “legislative approval of defence expenditures.”<sup>9</sup>
15. At the national level, the foundations of parliamentary oversight (i.e., a democratically elected parliament as the legislative branch of the government, the supremacy of law, checks and balances in the relationship between parliament and the executive branch) and, often, some of its modalities (e.g., a vote of no confidence and parliamentary inquiries) are usually laid down in the constitution. However, it is parliamentary rules of procedure and similar regulations that most commonly provide a more detailed, relatively comprehensive framework for oversight activities, though often without explicitly referring to the concept of ‘parliamentary oversight.’

## **2. Purpose and structure of the Draft Law**

16. Bosnia and Herzegovina is a highly decentralized federation with a uniquely complex political structure. The powers of the federal government (‘Institutions of Bosnia and Herzegovina’) are exhaustively listed in the Constitution of Bosnia and Herzegovina (Article III). The legislative branch is represented at the federal level by the Parliamentary Assembly of Bosnia and Herzegovina (hereinafter “Parliamentary Assembly”), which consists of two chambers: the House of Peoples and the House of Representatives (Article IV of the Constitution). The formation and election of the two chambers is based on the principle of parity, namely: the parity of the Entities (the Federation of Bosnia and Herzegovina and the Republika Srpska) and, with regard to the House of Peoples, also the parity of the constituent peoples (the Bosnians, the Croats, and the Serbs). Each House has a number of permanent committees whose mandates and powers are defined in the respective House’s rules of procedure. The rules of procedure are adopted by the respective House by majority vote (Article IV par 3(b)). By contrast, all legislation requires the approval of both Houses (Article IV par 3(c)).
17. The executive branch at the federal level is represented by the Presidency (the collective Head of State) and the Council of Ministers (Article V of the Constitution). The appointment of the Chair of the Council of Ministers (who is nominated by the

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<sup>5</sup> As the European Commission for Democracy through Law (‘Venice Commission’) points out, the rule of law is “a concept of universal validity” (Venice Commission, *Rule of Law Checklist*, 11-12 March 2016, par 9). For an overview of international and regional instruments referring to the principle of the rule of law, see pars 9-23.

<sup>6</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, pars 5.3 and 5.5 respectively.

<sup>7</sup> *Ibid.*, par 5.2 (italics added).

<sup>8</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, par 25.3.

<sup>9</sup> Concluding Document of Budapest, 6 December 1994, par 22.

Presidency) requires the approval of the House of Representatives. All other ministers are nominated by the Chair of the Council of Ministers. Their appointment also requires the approval of the House of Representatives. All three constituent peoples must be represented in the three posts of the Chair and their two deputies. The ministerial portfolios are distributed in such a manner that all three constituent peoples have the same number of ministers and deputies in the Government.

18. Two important modalities of parliamentary control over the Government are expressly envisaged in the Constitution, namely the obligation of the Presidency to report to the Parliamentary Assembly on its expenditures (Article IV(3)(g)) and the right of the Parliamentary Assembly to demand the resignation of the Council of Ministers through a vote of no confidence (Article IV(4)(c)). These and other elements of parliamentary control are further regulated in the rules of procedure of each House. Apart from votes of no confidence and votes for the reconstitution of the Council of Ministers (e.g., Articles 157-166 of the Rules of Procedure of the House of Representatives), they include the right of parliamentary committees to summon officials of executive bodies and request reports from them (e.g., Article 39 of said Rules of Procedure); oral and written questions posed to the government (e.g., Articles 170-175 of said Rules of Procedure); interpellations (Articles 178-181 said Rules of Procedure); and an annual joint session of both Houses ‘Representatives and Members ask – the Council of Ministers of Bosnia and Herzegovina responds’ (Article 176-181 of said Rules of Procedure).
19. Although it is unusual for parliamentary oversight to be comprehensively regulated in one specific law, there is considerable merit in this solution. Unlike in many other countries, the parliamentary rules of procedure in Bosnia and Herzegovina do not appear to have the legal force of a law, as they are adopted by a decision of the respective House, and not via a more complex legislative procedure envisaged in the Constitution of Bosnia and Herzegovina (Article IV(3)). However, the effective discharge of parliamentary oversight functions requires certain obligations to be imposed on the representatives of supervised executive bodies and other individuals, including their obligations to respond to parliament’s requests for information, appear and testify before parliamentary committees, and provide unfettered access to documentation. Non-compliance with these obligations may even result in criminal responsibility. Such aspects of parliamentary oversight cannot be regulated entirely in internal rules of procedure that do not have the status of a law. At the same time, to allow the Parliamentary Assembly and its committees more flexibility in building and adjusting their oversight practices, it may be advisable that the finer procedural details, such as reporting standards for supervised bodies, are left to the rules of procedure and internal policies.
20. The current version of the Draft Law is divided into three chapters. Chapter I is dedicated to ‘general provisions’, and addresses the Draft Law’s scope of application, the objectives of parliamentary oversight, and the role and powers of parliamentary oversight bodies. Chapter II is dedicated to parliamentary inquiries, while Chapter III regulates how parliamentary oversight is performed. This latter chapter begins with several provisions dealing with the general modalities of parliamentary oversight (the public nature of oversight body sittings, the list of parliamentary oversight tools, and the powers of oversight bodies). It proceeds with addressing several specific formats of parliamentary oversight, namely, public hearings (Section A), public debates and thematic sessions (Section B), the review of reports submitted by executive bodies (Section C), oral and written questions, interpellations and question time (Section D),

and votes of no confidence (Section F). Section E addresses certain elements of cooperation between the Parliamentary Assembly and the Presidency of Bosnia and Herzegovina. Section G is intended to focus on parliamentary control over budget spending (yet to be drafted). Section H deals with the rights of oversight bodies to access documentation and visit supervised institutions. Finally, Section G includes provisions on sanctions for non-compliance with requests made by parliamentary oversight bodies and on protection against self-incrimination.

21. The structure of the Draft Law in its current version would benefit from additional streamlining and simplification. While the Draft Law's provisions largely flow from the general to the specific, there are some significant departures from this logical pattern which result in inconsistent regulation of related issues and make it difficult to the user to navigate the text. For example, some of the issues generally relevant to all oversight bodies and tools are not addressed at the beginning of the Draft Law. The general powers shared by all oversight bodies are listed only in Chapter III, that is, *after* the Draft Law addresses one of the specific oversight formats (committees of inquiries). Moreover, the important elements of some of those powers (specifically, the right of all oversight bodies to access documents, request information and additional reports, and summon and question witnesses) are spelled out only in the two concluding sections of the Draft Law, whereas several *earlier* provisions touch upon them in a less detailed and partially inconsistent manner. Moreover, the regulation of these issues is somewhat fragmented and duplicated. For instance, while the power to request special reports can be found in Articles 22 par 3 and Article 56, the public nature of hearings is addressed in Articles 12 par 2 and 16, and different aspects of the right to summon government officials are dispersed over numerous articles (Articles 11, 13, 14, 57, 58, 59, 60, 60, 62-64). In particular, it would be advisable to streamline and clarify the general powers of oversight bodies (see pars 24-28, 45-48, 61, and 65-67). **The drafters may consider setting out these issues concisely at the beginning of the Draft Law and then cross-referencing respective provisions as necessary**

### **3. The scope of parliamentary oversight, the role and powers of parliamentary committees, and the role of the parliamentary opposition**

22. Article 1 states that the Law on Parliamentary Oversight shall regulate parliamentary oversight over the institutions and administrative bodies of Bosnia and Herzegovina, as well as over persons appointed, confirmed or approved by one of the Houses of the Parliamentary Assembly or by both. It is not entirely clear if this provision is merely meant to describe the scope of the Draft Law (i.e. if it simply indicates that the law is designed to regulate how parliamentary oversight is performed whenever Parliament *has* the power of oversight), or if it actually establishes the scope of parliamentary oversight as such (i.e., if it prescribes that all bodies and officials referred to in it are subject to parliamentary oversight under this Law, regardless of whether parliament's power of oversight over them is established in other legislation). If Article 1 is meant to determine which public authorities are subject to parliamentary oversight, further attention should be paid to its wording. For instance, while it is understood that the terms translated into English as 'institutions' and 'administrative bodies' have a more specific meaning in the original languages, where they refer to executive authorities, it is unclear whether they also cover non-state entities with certain public functions or independent regulators that are, strictly speaking, outside the executive branch, such as the Central Bank. On the other hand, the reference to 'persons' who are appointed,



confirmed or approved by the Parliamentary Assembly is too broad, if understood literally, since such persons would include, for example, judges of the Constitutional Court. **Article 1 should be amended to clarify whether the authorities and officials listed in it are subject to parliamentary oversight by virtue of this Draft Law (i.e., irrespective of other legislation) and, if so, should define the subjects of parliamentary oversight with a greater degree of precision.**

23. Article 2 provides that parliamentary oversight is “performed through permanent or ad hoc bodies” established by the Parliamentary Assembly. In many parliaments, permanent parliamentary committees usually conduct the bulk of oversight activities. Article 2, while not excluding this approach, may encourage the creation of *ad hoc* oversight bodies, which would strain the Parliamentary Assembly’s resources and fragment and divert the expertise available in its permanent committees. **It is thus recommended that the Draft Law specify that the default oversight function rests primarily with existing committees and that *ad hoc* oversight committees are an exception.** Crucially, even though committees play a key role in oversight work, it is not true that *all* parliamentary oversight is performed through them and suchlike bodies, as Article 2 seems to suggest. Indeed, certain types of parliamentary oversight are performed by Parliament as a whole, via plenary debates, question time, and votes of no confidence. Oversight may also be performed by individual members of parliament or groups of members, through oral and written questions to the government and submission of interpellations. Therefore, while it is useful to introduce the term “oversight bodies” when referring to all permanent and *ad hoc* committees and sub-committees entrusted with oversight functions, **Article 2 should be modified to make it clear that oversight bodies are not the only channel through which parliamentary oversight is performed.**
24. The powers of all oversight bodies are generally regulated in Articles 10 and 11. However, certain important elements of these powers can be found in other parts of the Draft Law. Such fragmentation leads to inconsistency in the wording and substance of those powers and may render it difficult for the user to understand their full and exact scope. In particular, various aspects of the right of any oversight body to summon and question representatives of state institutions subject to parliamentary oversight and to request them to submit documents, special reports and other information are regulated in Articles 11, 14, 53, 54 and 56-60. In addition, Articles 11 par 1 (b) and 62-64 envisage responsibility of overseen officials for non-compliance with requests to appear and testify before the oversight bodies and submit written information. Article 14 par 2 and Article 68 par 2 oblige individuals ‘invited’ to a hearing/session to both respond to the ‘invitation’ and to participate in the hearing/session. The Draft Law does not specify, however, if an invited individual may be excused from appearing before the oversight body on justifiable grounds or whether he/she is allowed to request a different date for his/her attendance. It is also not entirely clear whether invited individuals can be sanctioned for failing to appear before the inviting oversight body or only for failing to respond to the invitation (see par 65 below). **The regulation of general powers belonging to oversight bodies, such as the right to summon witnesses (government officials), should avoid unnecessary repetition and fragmentation and be covered, as comprehensively as possible, in one place in the Draft Law.** Further recommendations on the scope of certain powers belonging to oversight bodies can be found in pars 47, 48, and 57.
25. The power of oversight bodies to demand access to documents is another issue that would benefit from further streamlining and clarification in the Draft Law. This power

is essential to Parliament's ability to scrutinize the Government's work and uncover instances of corruption, mismanagement, misuse of the taxpayers' money, and human rights violations. It is noted that there is no express mention of the right of access to information in the provisions setting out the general powers of oversight bodies. Namely, Article 11 only refers to the right to request 'reports' from supervised bodies and 'data' from 'administrative bodies', neither of which is equivalent to requesting direct access to documents in the possession of those bodies. The right of access to information is also not mentioned in the provisions specifying the powers of oversight bodies in the context of inquiries (Chapter II) and examination of executive bodies' reports (Section C of Chapter II). While this right is briefly referred to in Article 14 par 3 in the context of public hearings, it is still substantially restricted in scope: an obligation to submit requested documentation under Article 14 par 3 is imposed only on officials 'invited' to attend, and testify at, the hearing. This fails to address documents that the witness has no access to, even if they are in the possession of the executive body that he or she represents.

26. In general terms, Parliament's power to access documentation is set out only in Article 53. This provision specifies that oversight bodies can access "all information, documents and notes related to the work of supervised institutions" either directly during visits to those institutions or by submitting a request. The procedure for requesting documents is established in Article 54. Even though, on the face of it, the reference in Article 53 to 'all documents related to the work of supervised institutions' can be interpreted to include relevant documents in the possession of third parties, the procedure under Article 54 makes it clear that it applies only to documents that the supervised institutions have in their possession. **To increase the effectiveness of parliamentary investigations, the drafters should consider enabling oversight bodies to also request documentation in the possession of parties other than supervised bodies, such as, for example, courts. Generally, the right to request documents should be addressed at the beginning of the Draft Law, along with the other essential powers of parliamentary oversight bodies.**
27. The Draft Law contains several provisions dealing with access to classified documents and information. Article 55, which is expressly dedicated to this issue, states that oversight bodies shall have access to classified documentation in accordance with the Law on Protection of Classified Information and other relevant regulations and, for classified documents originating from international organizations and foreign countries, with relevant international agreements. In addition to the procedures established in that legislation, access to classified documents and their handling should be addressed in more detail and with greater consistency in the Draft Law itself. At the moment, in addition to Article 55, Article 53 provides for the right of oversight bodies to examine *all* information and documents related to the work of supervised institutions, and Article 58 par 1 gives oversight bodies a right to request witnesses from supervised institutions to "answer any questions and present all facts and information, *including classified information*". The latter is duplicated in Article 59, which once again specifically refers to the right to demand classified information. However, these provisions are contradicted by Article 62 ('Exemptions from oversight'), which states that oversight bodies cannot have access to documentation or demand information from a witness in circumstances established by the Law on Protection of Classified Information. **The drafters should address this inconsistency and ensure that any limits on oversight bodies' access to secret documents and information are clearly defined in the Draft Law.**

28. In this context, it should be borne in mind that access to confidential information is essential to parliament's ability to effectively perform its oversight functions, especially with regard to the military and to security and intelligence services.<sup>10</sup> However, the transparency of parliamentary oversight also needs to be balanced against the genuine need for secrecy in security and intelligence related matters.<sup>11</sup> It is thus important that parliament have proper procedures in place for handling sensitive documents internally. Typically, this issue receives considerable attention in parliamentary rules of procedure (although this would not appear to be the case in Bosnia and Herzegovina). For example, in the Netherlands, the Rules of Procedure of the House of Representatives requires the adoption of a separate regulation on the classification and handling of confidential documents (Article 146), while also introducing sanctions for members of parliament who are in breach of secrecy rules (Article 145).<sup>12</sup> Similarly, in Germany, the issue of secret documents is subject to detailed regulation in an annex to the Rules of Procedure of the *Bundestag*.<sup>13</sup> **It is therefore recommended that the Draft Law either provide directly for a sufficiently detailed procedure for the internal handling of secret documents or that it require that this matter be regulated by the Parliamentary Assembly in its rules of procedure. Also, appropriate exceptions for classified information should be envisaged in the provisions of the Draft Law, which require the publication of oversight bodies' reports and other oversight-related documentation.**
29. Usually, a parliamentary oversight body will complete its examination of a specific issue with the adoption of a report, which can then be submitted to the chamber<sup>14</sup> (i.e., the respective House of the Parliamentary Assembly) to form the basis for a plenary discussion. A report is a medium whereby an oversight body can present its conclusions and recommendations and, not infrequently, instigate public debate over certain executive policies or practices and prompt the government to take action. The Draft Law addresses reporting by oversight bodies in a number of provisions. Article 4, which is generally dedicated to the competence of parliamentary oversight bodies, provides that an oversight body "considers and adopts reports on the work of supervised institutions *if those supervised institutions are obliged to submit reports*" (par 1 (k) [emphasis added]). In this regard, it is not clear why the general ability of an oversight body to produce reports should depend on the pre-existing legal obligation of the relevant executive institutions to submit their own reports to the Parliamentary Assembly (assuming that this is the meaning of the provision in question). It would appear to be an unnecessary restriction, which, moreover, does not fit with the other provisions of the Draft Law related to reporting. **It is recommended that the drafters remove this apparent limitation on the capacity of parliamentary oversight bodies to report their findings.**

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<sup>10</sup> In addition to the OSCE commitments cited in par 14 above, the OSCE Parliamentary Assembly has urged national parliaments "to ensure effective oversight of security and intelligence agencies by establishing and strengthening special parliamentary bodies for *a priori* and *ex post facto* scrutiny of security and intelligence services' activities and providing them with appropriate resources" (2006 Resolution on Strengthening Effective Parliamentary Oversight of Security and Intelligence Agencies, par 18).

<sup>11</sup> The OSCE Parliamentary Assembly recommends that parliamentarians "use democratic principles as basic guidelines in striking a balance between the essential need for secrecy and confidentiality of security and intelligence services' activities and for transparency in exercising parliamentary oversight" (2006 Resolution on Strengthening Effective Parliamentary Oversight of Security and Intelligence Agencies, par 20).

<sup>12</sup> House of Representatives of the Netherlands – Rules of Procedure, available at: [https://www.houseofrepresentatives.nl/sites/default/files/atoms/files/141120-rules\\_of\\_procedure.pdf](https://www.houseofrepresentatives.nl/sites/default/files/atoms/files/141120-rules_of_procedure.pdf).

<sup>13</sup> See Rules of Procedure of the German Bundestag, Annex 3 "Bundestag Rules on Document Security", available at: <https://www.btg-bestellservice.de/pdf/80060000.pdf>.

<sup>14</sup> In this opinion, the term 'chamber' refers to a parliament – or, in the case of a bicameral parliament, one of its houses – sitting in plenary.

30. In addition, Article 4 par 2 provides that oversight bodies shall report to the Parliamentary Assembly on their oversight activities *and* report their “conclusions and proposals [...] in accordance with the provisions of this Law.” Although its wording is somewhat general, it can be assumed that this provision refers to two different types of reports: (1) periodical activity reports covering all oversight-related work performed by the reporting body over a certain period of time; and (2) special reports on specific issues examined by the reporting body. **Article 4 par 2 should be re-phrased to clarify this point, in particular whether it refers to two different types of reports, or, if not, which type of reports it refers to.** It should be noted that all committees are already required to submit an annual activity report to the House of Representatives under its Rules of Procedure (Article 32). **To avoid creating an unnecessary reporting burden on the committees, the Draft Law should specify that activity reports referred to in Article 4 par 2 shall be submitted in accordance with the respective provisions of the rules of procedure of the Parliamentary Assembly.** Such reference to the rules of procedure would have the additional benefit of **clarifying the frequency of activity reports.**
31. The existence of strong oversight powers *per se* is not enough to ensure that parliament is engaged in vigorous scrutiny of the government’s work in practice. As the Inter-Parliamentary Union’s (IPU) Guide on Parliament and Democracy points out, “oversight may be blunted through the way power is exercised within the ruling party or coalition, or the way competition between parties discourages internal dissent within parties from being publicly expressed. So while the interest of opposition parties lies in the most rigorous oversight of the executive, members of a governing party can use their majority so as to ensure that ministers are not embarrassed by exposure or a critical report.” The IPU goes on to observe that “it is minority or opposition parties within a legislature which give a necessary ‘edge’ to the different modes of oversight.” In practice, bearing this in mind, many parliaments have developed solutions aimed at increasing the role of the parliamentary minority in the oversight context.<sup>15</sup> These include minority reports, the triggering of oversight procedures by a minority quorum, and enhanced representation of the opposition in oversight committees. Some of these solutions are already reflected in the Draft Law. In particular, it is noted positively that interpellations can be submitted by eight members of the House of Representatives or by three members of the House of Peoples (article 35). Other solutions can be usefully incorporated in the Draft Law as per recommendations made in this Opinion in the context of parliamentary inquiries and hearings (see pars 43, 44, 51, and 56).

#### **4. Mainstreaming a gender perspective in parliamentary oversight**

32. It is noted positively that gender-sensitive language is used throughout the Draft Law. However, in substantive terms the Draft Law would further benefit from expressly mainstreaming gender equality, both in the oversight structures and in the substantive scope of oversight. It is reminded that, according to the definition used in the 2004 OSCE Action Plan for the Promotion of Gender Equality, mainstreaming a gender perspective involves assessing the implications for women and men of any planned action, including legislation, policies and programmes, in all areas and at all levels.

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<sup>15</sup> See Inter-Parliamentary Union (IPU), *Parliament and Democracy in the Twenty-First Century: A guide to good practice* (2006), p. 135, available at: [http://www.ipu.org/PDF/publications/democracy\\_en.pdf](http://www.ipu.org/PDF/publications/democracy_en.pdf).

Helpful guidance on how a gender perspective should be integrated into parliamentary oversight is found in the Plan of Action for Gender-sensitive Parliaments, adopted by the Inter-Parliamentary Union Assembly in 2012. In particular, the Plan recommends that parliaments “encourage the proportional and equitable distribution of women parliamentarians across all committees, not just those relating to women, children, gender, families, health and education.”<sup>16</sup> The Draft Law does not address the composition of oversight bodies (i.e. parliamentary committees), except the requirement for the equitable representation of the constituent peoples in committees of inquiry (see par 41 below). Instead, this issue is regulated in the rules of procedure of each House (e.g., Article 30 of the Rules of Procedure of the House of Representatives of the Parliamentary Assembly). **Nevertheless, the drafters should consider introducing the general requirement of a gender balanced approach to the composition of all oversight bodies.**

33. It is further noted positively that the House of Representatives already has a permanent Committee on Gender Equality, which stands to benefit from the oversight powers granted equally to all parliamentary committees under the Draft Law. However, the IPU Plan of Action for Gender-sensitive Parliaments recommends that, in addition to a dedicated parliamentary committee entrusted with reviewing government policies from a gender perspective, gender equality should be mainstreamed “throughout all parliamentary work” and “throughout all parliamentary committees, so that all committee members – men and women – are mandated to address the gender implications of the policy, legislative or budgetary matters under their consideration.” It also recommends allocating time in the order of business “for special debates on gender equality or gender-specific questioning of ministers.” **The authors of the Draft Law are encouraged to consider adding express references to gender equality as an issue that should be addressed by the Parliamentary Assembly and its oversight bodies in all aspects of parliamentary oversight, and in relation to all government activities.**

## **5. Independent oversight bodies, including the Human Rights Ombudsman**

34. The Draft Law could usefully clarify, and enlarge on, the relationship between Parliament and special independent regulatory and oversight bodies, including the Human Rights Ombudsman and those among the “special and independent bodies” established by the Parliamentary Assembly (Article 150 of the Rules of Procedure of the House of Representatives) that have oversight functions. These bodies have a dual role in the context of parliamentary oversight. On the one hand, they are accountable to Parliament and, therefore, subject to parliamentary oversight. On the other, these bodies too are engaged in the oversight of the executive branch within their respective thematic mandates. **Both of these dimensions should be recognized in the Draft Law. On the one hand, it should clarify the extent to which these bodies can be subject to parliamentary oversight without undermining their independence and special position vis-à-vis other state institutions. On the other, the Draft Law should ensure that specialized investigations conducted by these bodies and their technical expertise are properly fed into Parliament’s own oversight work.**

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<sup>16</sup> IPU, *Action Plan for Gender-sensitive Parliaments* (2012), p. 15, available at: <http://www.ipu.org/pdf/publications/action-gender-e.pdf>.

35. It is recognized that parliaments “do not have the time, resources or expertise to keep a close watch on anything as large, fragmented or complicated as modern government.”<sup>17</sup> Parliament should be at the apex of the system of scrutiny involving “an array of independent regulators, commissions and inspectors responsible for monitoring the delivery of government services.”<sup>18</sup> In practice, the modalities of interaction between parliament and these independent oversight bodies may include the submission of annual reports to parliament, regular appearances by the heads of these bodies before parliamentary committees, the submission of evidence to committees of inquiry, written answers on the work of these bodies, and plenary debates in parliament on their work.<sup>19</sup> Currently, the Draft Law expressly envisages only one modality of such interaction, namely, public hearings specifically dedicated to the oversight of “independent and regulatory bodies” (Article 18). However, the Draft Law does not specify how these bodies *contribute to* public hearings and other forms of parliamentary oversight, except in Article 11 par 2, which broadly enables parliamentary oversight bodies to request the “submission of data from other administrative bodies and organizations that are in possession of necessary facts”. This provision alone may not be sufficient to ensure the regular input of independent oversight bodies in a structured manner that will allow their findings and recommendations to be heeded and acted upon by Parliament.
36. The Parliamentary Assembly’s relationship with the Human Right Ombudsman of Bosnia and Herzegovina merits special attention in the Draft Law. Independence is essential to the functions of a national human rights institution (NHRI), and, indeed, it is guaranteed in the Law of the Human Rights Ombudsman of Bosnia and Herzegovina. The ability of the Ombudsman to “freely consider any question falling within [his/her] competence”<sup>20</sup> implies that he/she should not be subjected to the full panoply of parliamentary oversight in the same way that executive bodies are. **It would be advisable for the Draft Law to include a special provision or section which would specify the extent of oversight and its modalities with regard to the Human Rights Ombudsman, bearing in mind his/her independent nature (e.g. the requirement to submit annual reports and the procedure of their review).**
37. **In parallel, the Draft Law should establish a framework for *cooperation* between the Institution of the Human Rights Ombudsman and the Parliamentary Assembly in the national oversight of human rights.** Useful guidance on how the Ombudsman can contribute to the oversight activities of Parliament can be found in the 2012 Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments.<sup>21</sup> Forms of interaction recommended in the Belgrade principles include, *inter alia*: the submission of reports to parliament on the human rights situation in the country or specific human rights issues; parliament’s debating the most significant reports by the NHRI in plenary; parliament’s holding open discussion on the recommendations issued by the NHRI and seeking information from the public authorities on the implementation of those recommendations; designating an appropriate parliamentary committee as the NHRI’s main point of contact with Parliament; regular

<sup>17</sup> Alex Brazier, *Parliament at the apex: Parliamentary scrutiny and regulatory bodies* (2003), p. 2.

<sup>18</sup> *Ibid.*, p. 2.

<sup>19</sup> *Ibid.*, p. 8.

<sup>20</sup> Principle C(a) of the UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights, adopted by UN General Assembly Resolution 48/134 of 20 December 1993, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>.

<sup>21</sup> The Belgrade principles were developed during a Seminar co-organized by the Office of the United Nations High Commissioner for Human Rights, the International Coordinating Committee of National Institutions for the promotion and protection of human rights, the National Assembly and the Protector of Citizens of the Republic of Serbia, with the support of the United Nations Country Team in the Republic of Serbia. See also <http://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade%20Principles%20Final.pdf>.

meetings between members of the relevant specialized parliamentary committee and the NHRI; and the NHRI's participation in the meetings of, and provision of expert advice to various parliamentary committees. Article 11 par 2 of the Draft Law broadly enables parliamentary oversight bodies to request an opinion of the Institution of the Human Rights Ombudsman, but it does not specify the context in which such opinions can be used or the form in which they may be delivered. This sole explicit reference to the Ombudsman in the Draft Law by itself does not ensure that the Ombudsman has the possibility to provide systematic and consistent input in parliamentary oversight of human rights. It would thus be advisable to delineate and mutually reinforce the respective oversight roles of the Parliamentary Assembly and the Ombudsman.

## **6. Parliamentary inquiries**

38. Chapter II of the Draft Law (Article 6-8) is specifically dedicated to parliamentary inquiries. However, most of the powers and procedures essential to an effective inquiry are located not in this chapter, but in subsequent provisions which regulate oversight bodies in general, including provisions dealing with public hearings, report reviewing, access to documentation, and visits to supervised institutions. A parliamentary inquiry is one of the most powerful tools that parliaments have for scrutinizing governmental policies and activities and holding to account public officials in charge of implementing them. However, it is also a tool that may require a considerable commitment in terms of time and human and financial resources. Even in parliaments with a long-standing tradition of inquiries, the bulk of oversight is performed via routine committee hearings, plenary hearings, question time, and questions and interpellations. In the Netherlands, for example, the lower House of the Parliament has conducted only ten inquiries over the last thirty years.<sup>22</sup>
39. There is no reason to assume that the practice of the Parliamentary Assembly is, or will be, different in this regard. The Draft Law includes a broad array of oversight tools and, similar to the practice of many other countries, makes regular parliamentary committees a key forum for oversight activities. The current placement of the inquiry-specific provisions at the beginning of the Draft Law and before the provisions regulating other oversight tools may create a misleading impression that inquiries are envisaged as a primary, or even default, format. **In structural terms, it is thus advisable to address committees of inquiry in the part of the Draft Law, which regulates other oversight tools and after the provisions which set out powers, procedures and obligations attributed generally to all oversight bodies.**
40. Articles 6-8 refer to three types of entities which can be set up for purposes of inquiry, namely: commissions, sub-commissions, and working groups. However, the Draft Law does not explain the distinction between the three. The parliamentary rules of procedure of other countries usually employ a single designation for bodies conducting parliamentary inquiries, with committees of inquiry and investigative committees being the most commonly used terms (e.g. in the Netherlands,<sup>23</sup> Germany,<sup>24</sup> Estonia,<sup>25</sup> and

<sup>22</sup> <https://www.houseofrepresentatives.nl/how-parliament-works/parliamentary-inquiry>.

<sup>23</sup> House of Representatives Rules of Procedure, *op. cit.* footnote 12, Section 141.

<sup>24</sup> Bundestag Rules of Procedure, *op. cit.* footnote 13, Rule 54.

<sup>25</sup> *Riigikogu Rules of Procedure and Internal Rules Act*, 17 March 2003, Section 17, available at: <https://www.riigiteataja.ee/en/eli/518112014003/consolide>.

Latvia<sup>26</sup>). **It is recommended that the Draft Law use only one designation (e.g., a ‘committee of inquiry’) for any temporary body established for purposes of parliamentary inquiry.**

41. At the same time, Chapter II does not make it clear whether specially established ‘inquiry commissions, sub-commissions and working groups’ are the only settings for conducting parliamentary inquiries, or whether inquiries can be also conducted by regular oversight bodies (i.e., parliamentary committees). Establishing a temporary committee for a specific case is the most common way in which parliaments conduct their inquiries. In some countries, however, inquiries can also be referred to permanent committees.<sup>27</sup> Given the relatively small size of the Parliamentary Assembly of Bosnia and Herzegovina, it may be advisable to allow for both solutions so that the limited resources of the Houses are not unnecessarily fragmented by the creation of additional committees. **The Draft Law should clarify whether an inquiry can be also conducted without establishing a special inquiry body.**
42. Paragraph 1 of Article 6 states that special inquiry commissions, sub-commissions and working groups (hereafter ‘committees of inquiry’) “may be established on a temporary basis... as a part of a parliamentary oversight body.” However, the Draft Law does not explain how a decision to establish an inquiry is taken. In most parliaments, such a decision will rest with the chamber.<sup>28</sup> The chamber will also decide on the terms of reference and composition of a committee of inquiry.<sup>29</sup> Occasionally, however, the power of establishing an inquiry belongs to permanent committees (e.g., in Finland<sup>30</sup>). Considering that inquiries deal with matters which encompass the remit of more than one parliamentary committee,<sup>31</sup> the former approach may be more appropriate. It also seems more consistent with the heightened court-like powers granted to committees of inquiries.
43. In many parliaments, committees of inquiry are set up by a qualified minority of members of parliament rather than by a majority decision. This approach is designed to empower the parliamentary opposition which, in turn, helps strengthen the effectiveness of oversight tools to scrutinize governmental policies and activities. In the German *Bundestag*, for instance, a motion by one-quarter of its members is required to establish a committee of inquiry.<sup>32</sup> In Latvia’s *Saeima*, an investigatory committee must be appointed when this is requested by one-third of its members.<sup>33</sup> In Norway, the required quorum is one-third of the members of the Committee on Scrutiny and Constitutional Affairs.<sup>34</sup> Drawing on the practice of these and other parliaments in Europe, the Parliamentary Assembly of the Council of Europe recommends a quorum of one quarter of all members of parliament for this type of decisions.<sup>35</sup> **It is recommended that the**

<sup>26</sup> Rules of Procedure of the Saeima, Section 150, available at: <http://www.saeima.lv/en/legislation/rulesofprocedure>.

<sup>27</sup> See Tools for parliamentary oversight, *op. cit.* footnote 2, p. 40. This solution is adopted in Germany, Estonia and Latvia, to name but a few.

<sup>28</sup> Ibid.

<sup>29</sup> For instance, the Rules of Procedure of Estonia’s *Riigikogu* provide that a “committee of investigation is formed by the resolution of the *Riigikogu* that sets out the membership of the committee, including substitutes for all committee members, as well as the functions of the committee and the term of the committee’s mandate” (par 20(2)).

<sup>30</sup> The Constitution of Finland, 11 June 1999, Section 115, available at: [https://www.eduskunta.fi/FI/tietoeduskunnasta/julkaisut/Documents/ekj\\_3+2013.pdf](https://www.eduskunta.fi/FI/tietoeduskunnasta/julkaisut/Documents/ekj_3+2013.pdf).

<sup>31</sup> IPU Guide for Parliament and Democracy, *op. cit.* footnote 15, p. 135.

<sup>32</sup> Basic Law for the Federal Republic of Germany, Article 44.

<sup>33</sup> The Constitution of the Republic of Latvia, Article 26.

<sup>34</sup> IPU Guide for Parliament and Democracy, *op. cit.* footnote 15, p. 129.

<sup>35</sup> Council of Europe Parliamentary Assembly Resolution 1601(2008) on “Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament”, par 13.2.8, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17626&lang=en>.



**Draft Law provide for a clear procedure by which inquiries can be requested and established. Specifically, a single member of either House should be able to submit a motion to establish an inquiry, and such a motion would then be granted if it is supported by a qualified minority of the members of the respective House. The Draft Law could further specify that a decision establishing a committee of inquiry must determine the committee’s composition and terms of reference.**

44. Article 6 par 3 requires that special care should be taken to ensure that the composition of committees of inquiry adequately represents the constituent peoples of Bosnia and Herzegovina. The drafters may consider addressing likewise the representation of parliamentary political groups in such committees. It is usual practice for parliaments to ensure that the membership of committees of inquiry reflect the representation of political groups in the chamber.<sup>36</sup> Some parliaments even go beyond merely equitable representation and seek to enhance the presence of the opposition. This is usually achieved either by guaranteeing the majority and the opposition equal representation or by guaranteeing the opposition the chairmanship position. The Parliamentary Assembly of the Council of Europe has recommended that a member of the opposition should be appointed either as chairperson or as rapporteur of every committee of inquiry successfully requested by opposition members.<sup>37</sup> **The drafters may consider including additional requirements with regard to the composition of committees of inquiry in the Draft Law that would ensure adequate – and, preferably, enhanced – representation of members of the opposition.**
45. As stated earlier, inquiries are a quite powerful tool whereby parliaments can scrutinize governmental policies and activities and hold to account public officials in charge of implementing them. The power of these tools lies primarily in the court-like powers of committees of inquiry, which may compel witnesses to appear and testify before them. In Germany, for instance, the rules of criminal procedure apply *mutatis mutandis* to the taking of evidence by committees of inquiry.<sup>38</sup> In Latvia, a committee of investigation “has the authority to summon persons to appear before the committee and to require the presentation of information and documents necessary for the performance of its functions.”<sup>39</sup> If a person fails to comply with such a request, “the police, at the request of the committee, shall take coercive measures to ensure the fulfilment of the above requirements.”<sup>40</sup> In Estonia, all parliamentary committees can demand that governmental officials appear before them and submit information. However, it is only committees of investigation that have the power to summon *any* individual, with the threat of criminal sanctions for failure to comply.<sup>41</sup>
46. In contrast with these practices, the Draft Law does not grant committees of inquiry any unique powers. Article 7 simply states that supervised institutions are obliged to ‘cooperate’ with committees of inquiry and ‘provide them with all necessary assistance and information.’ This provision does not add to the powers belonging to all parliamentary oversight bodies (i.e., both permanent committees and *ad hoc* committees of inquiry), which are regulated elsewhere in the Draft Law (see pars 24-27 above). It

<sup>36</sup> Tools for parliamentary oversight, *op. cit.* footnote 2, p. 41. See also Parliamentary Assembly of the Council of Europe, Report by Mr. Karim van Overmeire, *Procedural guidelines on the rights and the responsibilities of the opposition in a democratic parliament*, Doc. 11465 rev., 3 January 2008, par 68, available at: <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11792&Lang=EN>.

<sup>37</sup> Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament, *op. cit.* footnote 35, par 13.2.8.

<sup>38</sup> Basic Law for the Federal Republic of Germany, Article 44.

<sup>39</sup> Rules of Procedure, *op. cit.* footnote 26, Article 174.

<sup>40</sup> *Ibid.*, Article 174 par 2.

<sup>41</sup> Rules of Procedure and Internal Rules Act, *op. cit.* footnote 25, Sections 22 and 23.

appears that the Draft Law does not envisage the power to summon individuals who do not work for supervised executive bodies or to request documents and other written evidence that do not originate from those bodies. The only provision which comes close to such a power is Article 11 par 1 (d), which authorizes the oversight bodies to ‘request assistance from independent experts outside the [supervised] institutions’. However, non-state experts are apparently not obliged to comply with such requests, as the Draft Law does not envisage any sanctions for cases of non-compliance besides those that apply to governmental officials.

47. Extending the power of committees of inquiry to summon witnesses and access documents beyond the overseen institutions to any third party is crucial for the effectiveness of their investigations. As was already mentioned, it is this power that distinguishes parliamentary inquiries from other oversight tools. A good example of succinct wording which could be used in the Draft Law is found in Section 22 par 2 of the Rules of Procedure of the Estonian Parliament. It states:

A committee of investigation has the authority to summon persons to appear before the committee and to require the presentation of information and documents necessary for the performance of its functions. The summoned person is obligated to appear, provide explanations and reply to questions. The information and documents requested by the committee must be submitted by the date set by the committee.<sup>42</sup>

**It is recommended that the Draft Law clarify and strengthen the powers of committees of inquiry. Where committees of inquiry share the same powers with other oversight bodies, the section of the Draft Law dedicated specifically to inquiries should provide clear reference to the provisions where those general powers are formulated. Committees of inquiry should be given additional powers to compel any individual to appear and testify before them and to present documents**

48. To be effective, it is not enough that committees of inquiry are able to compel individuals, including public officials, to testify. They also should be able to *protect* witnesses coming forward to expose instances of corruption and mismanagement (so-called ‘whistleblowers’). Many countries have some form of whistleblower legislation, which protects whistleblowers against the disclosure of their identity and retaliation by their employer and may shield them from criminal and civil liability for breaching secrecy rules.<sup>43</sup> **The Draft Law should ensure that individuals providing information to committees of inquiry can benefit from existing legislation on whistleblower protection, or, if such legislation does not exist in Bosnia and Herzegovina, the Draft Law should provide for its own protection mechanism in line with the recommendations formulated by the Parliamentary Assembly of the Council of Europe in its Resolution 1729(2010) on the Protection of Whistleblowers.**<sup>44</sup>

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<sup>42</sup> Rules of Procedure and Internal Rules Act, *op. cit.* footnote 25.

<sup>43</sup> For more details on whistleblower protections existing in various jurisdictions, see OECD, *G20 Guiding Principles on the Protection of Whistleblowers* (2011), available at: <https://www.oecd.org/g20/topics/anti-corruption/48972967.pdf>. See also OSCE, *Handbook on Combatting Corruption* (2016), pp. 131-140, available at: <http://www.osce.org/secretariat/232761>.

<sup>44</sup> Council of Europe Parliamentary Assembly *Resolution 1729(2010) on the Protection of Whistleblowers*, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17851&lang=en>.

49. The inquiry-specific provisions of the Draft Law do not specify how the proceedings of committees of inquiry are to be conducted. However, Article 9 of the Draft Law does provide in general that the sessions of all oversight bodies must be open to the public (unless decided otherwise), and Articles 10 and 13 grant all oversight bodies the right to conduct public hearings. This corresponds to the practice of other countries, where it is common practice for parliamentary committees of inquiry to conduct their hearings in public. For instance, the House of Representatives of the Dutch Parliament considers the public nature of inquiries as one of their essential features.<sup>45</sup> The principle of transparency also requires that inquiry-related *documents* are made public. In this context, it is noted that Article 8 requires that the reports of committees of inquiry be published on the official website of the Parliamentary Assembly. **The Draft Law could expand this requirement to ensure that other documents related to the work of committees of inquiry are also published, including agendas, witness testimonies, transcripts and records of committee actions.**<sup>46</sup> Necessary exceptions to the publication requirement should be envisaged for documents containing classified information (see par 28 above).
50. Apart from the publication requirement, the only guidance that Article 8 offers with regard to reporting by committees of inquiry is that, upon completion of their work, they shall ‘submit a report to the body which carried out parliamentary oversight.’ The wording is unclear as to whom the report shall be submitted to, though presumably this would be the parliamentary body which set up the committee of inquiry in question. As recommended above, committees of inquiry should, as a rule, be established by the chamber. Accordingly, **it is recommended that a committee of inquiry shall submit its final report to the respective House of the Parliamentary Assembly.** The elaboration of the exact modalities of reporting may then be left to the rules of procedure and the practice of the Parliamentary Assembly.
51. At the same time, it is important, in line with the good practice of other OSCE participating States, that the Draft Law ensure that dissenting opinions are duly reflected in inquiry reports as a means of strengthening the role of the parliamentary opposition. This is usually achieved either by enabling committee members to append their dissenting opinions to the main report or by allowing the presentation of a minority report. In Germany, for instance, the Rules of Procedure of the *Bundestag* provide that committee reports must contain “the recommendations of the lead committee together with the reasons therefor, *the opinion of the minority*, and the comments of the committees concerned.”<sup>47</sup> In Estonia, the Rules of Procedure specify that a “member of the committee may provide a reasoned dissenting opinion concerning a report; the opinion is annexed to the report” (Section 23 par 1). In Austria, by comparison, the Rules of Procedure of the National Council entitle three or more dissenting committee members to publish a minority report (Article 42). This practice of European

<sup>45</sup> <https://www.houseofrepresentatives.nl/how-parliament-works/parliamentary-inquiry>.

<sup>46</sup> This is in line with recommendations made in the Declaration on Parliamentary Openness which was adopted by a global group of parliamentary monitoring organisations and formally launched on 15 September 2015. Article 19 of the Declaration states: “Reports of committee proceedings, including documents created and received, testimony of witnesses at public hearings, transcripts, and records of committee actions, shall promptly be made public.” This recommendation reflects an international trend “towards routinely providing citizens with proactive access to many committee documents”; see the Provision Commentary, p. 25, available at <https://www.openingparliament.org/static/pdfs/commentary-20120914.pdf>. Similarly, the Inter-Parliamentary Union Guidelines for Parliamentary Websites recommend that information published by parliaments online should include “documentation produced by non-plenary bodies (committees, commissions, and other official groups) such as schedules and agenda of meetings published in advance, records of meetings and actions taken, reports and documentation (including from other parliamentary offices relevant to the work of the body), hearings and other activities” (Section 2.5), available at: <http://www.ipu.org/PDF/publications/web-e.pdf>.

<sup>47</sup> *Bundestag Rules of Procedure, op. cit.* footnote 13, Rule 66 par 2.

parliaments is reflected in the guidelines of the Parliamentary Assembly of the Council of Europe which recommend that “opposition members have the possibility to append a dissenting opinion to a report adopted in committee or to present a minority report.”<sup>48</sup> **It is therefore recommended to specify in the Draft Law the right of individual members of a committee of inquiry to present their dissenting views via a minority report or in a dissenting opinion attached to the committee’s majority report.**

52. **In principle, the regulation of the inquiry procedure in the Draft Law would benefit from a greater level of detail.** In Austria, for example, a detailed set of rules of procedure of parliamentary investigating committees is attached to the rules of procedure of the National Council.<sup>49</sup> This separate set of rules addresses evidence, the procedure of calling witnesses, the rights and duties of witnesses, the involvement of experts, and reporting, among other issues. Similarly, in the Netherlands, the Rules of Procedure of the House of Representatives require the adoption of a separate regulation on parliamentary inquiries.<sup>50</sup>

## **7. Parliamentary hearings**

53. Plenary hearings and committee hearings are widely used by parliaments to collect information to supplement government reports, but also provide a platform for engaging with experts and a broad range of stakeholders. The importance of hearings as an oversight tool is recognized in the Draft Law, which effectively dedicates two of its sections (Sections A and B of Chapter III) to the topic. Nevertheless, the Draft Law could benefit from a greater level of detail with regard to the procedure of initiating and conducting hearings, inviting witnesses, and reporting. As is the case with several other oversight tools covered by the Draft Law, measures could be introduced to strengthen the role of the opposition and increase transparency (pars 44 and 45). Since the Draft Law envisages the possibility of closed hearings (Articles 12(2) and Article 16), **it would be more logical to use the term ‘hearings’ instead of ‘public hearings’ as a generic designation.**
54. Section A of Chapter III is explicitly dedicated to ‘public hearings,’ whereas Section B (Articles 19-21) purports to introduce another oversight format, referred to as ‘public debates and thematic sessions.’ It is not clear, however, in which way ‘public debates and thematic sessions’ within the meaning of Section B would serve a purpose distinct from that of hearings under Section A. In the context of parliamentary procedure, debates are “oral exchanges of opinions that are intended to facilitate the chamber’s collective decision-making on certain issues.”<sup>51</sup> It is in this sense that the term ‘debate’ (*rasprava*) is used in the Rules of Procedure of the House of Representatives of Bosnia and Herzegovina. However, this is not how Section B uses the term: just like hearings, public debates and thematic sessions under Section B are held by oversight bodies (i.e., committees rather than the Houses in plenary) and designed to collect information on specific issues from third parties (Article 19). There are, however, some formal differences between the procedures envisaged in Section A and Section B. ‘Hearings’ can be initiated both by an oversight body/committee and by the House

<sup>48</sup> Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament, *op. cit.* footnote 35, Section 13.6.3.

<sup>49</sup> Rules of Procedure of the Austrian National Council, available at: <https://www.parlament.gv.at/ENGL/PERK/RGES/UAUS/index.shtml>.

<sup>50</sup> House of Representatives Rules of Procedure, *op. cit.* footnote 12, Section 140.

<sup>51</sup> Tools for parliamentary oversight, *op. cit.* footnote 2, p. 62.

(Article 13 par 1), while ‘public debates and thematic sessions’ are initiated and held by oversight bodies/committees only. Section A does not specify who may be invited to take part in a hearing, but expressly envisages such a possibility only for officials representing supervised institutions (Article 14 par 2). Section B, on the other hand, enables experts and other interested parties to participate, in addition to the mandatory involvement of representatives of the relevant supervised institution(s). Finally, Section A expressly obliges invited officials to answer questions truthfully and submit requested documents, while Section B does not provide for similar responsibilities (and it is unclear if they are implied).

55. However, all of the above differences seem to be somewhat random and not based on any intrinsic characteristics of a hearing, which can be used by parliament both for purely consultative purposes and for taking oral and written evidence.<sup>52</sup> Creating a separate format to enable interested parties, including external experts and representatives of business and society, to submit evidence or views would not appear to be necessary at this point, given the existing means to do so in the Draft Law. **Instead, it is recommended that the consultative elements of ‘public debates and thematic sessions’ under Section B (specifically, pars 3-5 of Article 19 and Article 20) be integrated into the ‘hearings’ format under Section A. Section B should then be removed accordingly.** For the purposes of this analysis, the provisions on ‘public hearings and thematic sessions’ are discussed in this section under the umbrella of (public) hearings.
56. According to Article 13, a decision to initiate a hearing can be made by either the House (in which case the House determines which parliamentary committee will be holding it) or by a parliamentary committee/an oversight body directly. Although not specified in the Draft Law, a decision to hold a hearing is presumably taken by a simple majority of the members of the House or a committee respectively. However, the Parliamentary Assembly of the Council of Europe recommends a qualified minority (one quarter) of committee members for this type of decisions.<sup>53</sup> This approach is adopted, for example, by the German *Bundestag*.<sup>54</sup> **To strengthen the role of the parliamentary opposition, the drafters should consider applying *mutatis mutandis* the recommendations made in the context of parliamentary inquiries (see par 43).**
57. Article 13 par 2 further specifies that a House decision to initiate a hearing must include ‘a list of invitees’ which, presumably, refers to representatives of governmental institutions requested to submit evidence at the hearing. This would seem to imply that, for hearings initiated by the House, a conclusive list of witnesses must be compiled in advance of the hearing. However, it is not unusual for a need to call additional witnesses to arise in the course of taking evidence. **It would thus be advisable to amend the Draft Law to explicitly enable the oversight body to call additional witnesses at any point during the hearing. With regard to who may be called to testify, as was already recommended in par 47 above, the Draft Law should enable the oversight bodies to summon a wide range of individuals, including those who are not government officials, at least in the framework of inquiries.**
58. Article 19 par 3 provides that “[e]xternal experts, interested organizations, institutions or individuals *may* participate in public debates or thematic sessions” [emphasis added].

<sup>52</sup> See Tools for parliamentary oversight, *op. cit.* footnote 2, p. 30.

<sup>53</sup> Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament, *op. cit.* footnote 35, Section 13.6.4.

<sup>54</sup> Bundestag Rules of Procedure, *op. cit.* footnote 13, Rule 70 par 1.

It is assumed that this provision means that, rather than to be summoned by the oversight body, interested parties may also ask for leave to submit information, although the respective wording would benefit from more clarity on this point. **The Draft Law should specify how interested parties may request to participate in public hearings and how such requests are to be decided by the oversight body.**

59. It is not quite clear if interested parties may also present their views in writing, although Article 20 par 2 seems to allude to such a possibility. This means of submitting information would indeed be a useful alternative or addition to oral submissions, especially because not all interested parties may be permitted to speak at a hearing due to time constraints. **The Draft Law should clarify whether interested parties can make submissions in writing and, if so, should specify a procedure for such submissions.**
60. Article 19 par 4 appears to require that a public debate/thematic session must take place no later than 15 days from the moment when the decision to hold it is made. While it may be useful to provide for some timeframes in this context, it is not clear why this degree of expediency in holding debates/thematic sessions would be necessary. Allowing less than 15 days between the decision to hold a public hearing and the actual hearing is likely to leave insufficient time for potentially interested parties to indicate their interest in the hearing and prepare their submissions (this is especially true for smaller under-resourced organizations that do not have the capacity to prepare a quality submission on short notice). Moreover, although Article 19 par 5 requires that public debates/thematic sessions are announced on the website of the Parliamentary Assembly, it does not specify how long in advance this announcement shall be posted. If information about an upcoming hearing is not published immediately after its scheduling, it shortens the notice time for interested parties even further. On this point, the Declaration on Parliamentary Openness recommends that “parliament shall provide sufficient advance notice to allow the public and civil society to provide input to members regarding items under consideration.”<sup>55</sup> **It is, therefore, recommended to modify the timeframe within which hearings shall take place so that, except for urgent matters, upcoming public debates/thematic sessions must be announced on the official parliamentary website at least 15 days in advance (with even longer notice required for more complex issues). To further enable public participation, the Draft Law could specify what basic information should be contained in such an announcement, for example, the topic of the hearing, the exact time and location, key documents related to the hearing, and guidance on how interested parties can request to participate in the hearing or make a submission.**
61. Paragraphs 2 and 3 of Article 14 spell out the obligation of invited individuals (representatives of supervised institutions) to participate in the hearing, answer questions truthfully and submit any additional information or documents requested by the oversight body. Similar provisions related to the power of an oversight body to compel witnesses to appear before it and submit evidence can be found elsewhere in the Draft Law, namely, in Articles 11 par 1 (a)-(c), 57-60, 63 and 64 (the last two articles establish criminal responsibility for non-compliance with an oversight body’s summons or requests for information). These provisions are not entirely consistent in their contents. To avoid unnecessary fragmentation and ensure consistency in the regulation of the powers granted to the oversight bodies, **it is suggested that the power to**

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<sup>55</sup> *Op. cit.* footnote 46, Article 17.

**summon government officials and other individuals and to compel them to testify and submit other evidence is spelled out only once, in the general part of the Draft Law, and that the section on hearings includes only a cross-reference to those provisions.**

62. According to Article 17, an oversight body is required to prepare a report on the hearing that it has held and submit it to the relevant House. **The recommendations made above with regard to reports prepared by committees of inquiry (see pars 50 and 51) apply *mutatis mutandi* to Article 17.**

## **8. Miscellaneous procedures**

63. On several occasions, the Draft Law does not provide enough guidance on the procedures to be followed. Some of these lacunae may result in procedural uncertainties in politically sensitive situations. In particular, in the constitutionally significant context of voting on proposals of no confidence, the Draft Law does not specify how “other initiatives” referred to in Article 47 should be proposed and voted on. Presumably the intention is that they be proposed and voted on in the same manner as initial proposals. **However, if this is so, it should be stated; and it should also be stated whether the various time limits relating to the initial proposals apply to “other initiatives”.**
64. In the context of interpellations, Article 36 par 2 provides that only one interpellation may be included in each session’s agenda. **In case there is more than one interpellation at a given time, the Draft Law should offer guidance on the procedure for selecting which interpellation is to be included.** Article 38 provides that, after the debate, the House “*shall take a stance on the matter* that was raised through the interpellation and the proposed conclusions” (emphasis added). The term “taking a stance on the matter” would appear to be somewhat vague. **It is suggested that the Draft Law specify a procedure for adopting a resolution, which will contain the main findings and recommendations arising out of the debate.**

## **9. Responsibility for non-compliance with requests by oversight bodies**

65. Article 63 of the Draft Law establishes criminal responsibility for officials who fail to comply with an oversight body’s request to appear before it or to submit documents. The need for creating a mechanism to enforce parliament’s demands in the context of its oversight activities is often overlooked. The Draft Law should thus be commended for addressing this issue. However, the offence under Article 63 is formulated too narrowly and does not appear to be entirely consistent with other relevant provisions of the Draft Law. Article 11 par 1 (b) authorizes oversight bodies to ‘raise the issue of responsibility’ for failure to appear before them or for making false or inaccurate statements to them, which presumably means referring such cases to the relevant law enforcement authorities. At the same time, Article 14 par 2 obliges individuals summoned to a hearing to both respond and participate. Article 14 par 3 further obliges such individuals “to speak the truth.” The same requirement, albeit differently worded, is repeated in Article 58 par 2, which requires witnesses appearing before an oversight body to “answer questions to the best of their knowledge.” Yet, it is noted that Article 63 does not establish responsibility for providing deliberately misleading or untruthful written or oral evidence. Furthermore, the literal interpretation of its wording suggests

that an invited official is responsible only for failing to *respond* to the invitation to appear before the oversight body but not for failing to appear before it (without compelling reasons). **It is recommended that the offence under Article 63 is clarified and expanded accordingly. It is further recommended that liability for perjury and similar acts is aligned as much as possible with the already existing sanctions under the criminal law.**

66. An exemption from criminal liability is found in Article 62 par 1, which bars parliamentary oversight bodies from compelling government officials to submit documents or respond to questions if this may open them to criminal prosecution. In effect, this provision contains an extension of the privilege against self-incrimination, which is one of the essential elements of the right to a fair trial in criminal proceedings.<sup>56</sup> The privilege is also known as the right to remain silent, and it means primarily that a person cannot be compelled to testify against themselves in a criminal trial (including the investigation stage) or to actively provide other incriminating evidence, such as documents, ‘by way of locating, obtaining, delivering or giving otherwise access to them.’<sup>57</sup> However, outside of the context of criminal proceedings, the European Court of Human Rights has held that the privilege against self-incrimination (implied in Article 6 par 1 of the European Convention on Human Rights) does not prevent authorities from compelling an individual to answer questions *as long as the incriminating evidence thus obtained cannot be used in subsequent criminal proceedings against them* (this principle is known as ‘use immunity’).<sup>58</sup> Such ‘use immunity’ does not preclude criminal conviction on the basis of evidence obtained independently by the prosecution.<sup>59</sup> The broad protection granted under Article 62 par 1 restricts Parliament’s capacity to effectively investigate potential abuses within the executive branch. However, it would be possible to narrow this exception without breaching the right against self-incrimination. **The drafters may consider introducing the above-mentioned option of use immunity as an alternative means of protecting individuals against self-incrimination in the context of parliamentary investigations.**
67. With reference to documents, Article 62 par 1 states that the oversight body “*cannot have access to documentation*” of a potentially incriminating nature. This is a strange wording, considering that the privilege against self-incrimination only implies that an individual may refuse to provide self-incriminating evidence, but does not give the individual a right to prevent the investigating authorities from obtaining that evidence through other means. **It is recommended to amend the wording of Article 62 par 1 to the effect that a person cannot be compelled to *submit* a requested document, if they inform the oversight body that the submission may leave them open to criminal proceedings.**

[END OF TEXT]

<sup>56</sup> See OSCE/ODIHR, *Legal Digest of International Fair Trial Standards* (2012), pp. 99-103.

<sup>57</sup> *Ibid.*, p. 100.

<sup>58</sup> ECtHR, *Saunders v. The United Kingdom* (application no. 19187/91, judgment of 17 December 1996), paras 71-76.

<sup>59</sup> On use immunity in congressional inquiries in the United States, see Daniel Curbelo Zeidman, *To Call Or Not To Call: Compelling Witnesses To Appear Before Congress*, *Fordham Urban Law Journal*, Vol. 42 (2016), p. 583.



**ANNEX:**

**Draft Law on Parliamentary Oversight of Bosnia and Herzegovina**

Pursuant to Article IV, Para 4, Item a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the session of the House of Representatives, held on \_\_\_\_\_ 2016, and at the \_\_\_\_ session of the House of Peoples, held on \_\_\_\_\_ 2016, has adopted the

**L A W  
ON PARLIAMENTARY OVERSIGHT**

**CHAPTER I - GENERAL PROVISIONS**

**Article 1  
(Subject-Matter of the Law)**

- (1) The Law on Parliamentary Oversight (hereinafter: the Law) regulates: parliamentary oversight over the work of the institutions and administrative bodies of Bosnia and Herzegovina (hereinafter: BiH), persons appointed by one or both Houses of the Parliamentary Assembly of Bosnia and Herzegovina (hereinafter: the Parliamentary Assembly of BiH), as well as persons whose appointment, confirmation or approval is given by one or both Houses of the Parliamentary Assembly of BiH (supervised institutions or persons).
- (2) The Law regulates jurisdiction, rights and obligations of the Parliamentary Oversight Bodies, a procedure for performing parliamentary oversight, cooperation in the field of parliamentary oversight and reporting to the Parliamentary Assembly of BiH.

**Article 2  
(Oversight Bodies)**

- (1) The parliamentary oversight is performed through permanent or ad hoc bodies established by the Parliamentary Assembly of BiH and the ones that have specific tasks in performing oversight (hereinafter: Oversight bodies).
- (2) Parliamentary oversight is performed at the request of the Houses of the Parliamentary Assembly of BiH or Oversight bodies assess it as necessary.

**Article 3**  
**(Objective of the Oversight)**

- (1) The Parliamentary oversight is performed with the aim of improving efficiency, transparency and functionality of the work of institutions that are subject of oversight and to control implementation of certain policies, based on compromise.
- (2) **The Parliamentary oversight is performed with the aim of improving: management of given public authority, public finances, preventive protection against crime and corruption, abuse of power and authority, and to collect information and facts about the events related to the work of institutions and the authorities of BiH. (Proposal of MP Ljilja Zovko)**

**Article 4**  
**(Competencies of Parliamentary Oversight Bodies)**

- (1) The body conducting the parliamentary oversight oversees the work of supervised institutions, in the following manner:
  - a) considers implementation of BiH Constitution, laws, by-laws and other acts adopted under the competence of supervised institutions or persons;
  - b) oversees the legality of work of supervised institutions through implementation of reporting standards;
  - c) oversees the compliance of supervised institutions with policies and standards of preparation of legislative solutions through "simulation" of its application with the financial effects;
  - d) oversees the implementation of adopted acts of the Parliamentary Assembly of BiH, the Council of Ministers of BiH and the Audit Office of BiH through the uniform spreadsheet reports;
  - e) oversees the compliance with human rights and basic freedoms;
  - f) oversees the respect for political, ideological and interest neutrality in the work of the supervised institutions;
  - g) oversees the application of means and methods in conducting special inquiry actions of other state bodies;
  - h) oversees legality of budget and other resources spending for operation of the supervised institutions **through spreadsheet, uniform program reports on**

**planning and implementation reports, as well as approved programs and implemented budgetary spending. (Proposal by MP Ljilja Zovko)**

- i) **initiates and submits proposals for temporary withdrawal of authorization until adoption of new or amending and supplementing the existing laws concerning competencies of supervised institutions. (Proposal by MP Ljilja Zovko)**
  - j) **considers all types of complaints related to the parliamentary oversight and standards of conduct, and promote the rule of law and good governance over public authorities and public resources. (Proposal by MP Ljilja Zovko)**
  - k) considers and adopts the reports on the work of the supervised institutions if the supervised institutions are bonded to submit report;
  - l) launches initiatives (and submit proposals) for adoption of new or amending and supplementing the existing laws from the jurisdiction of the supervised institutions;
  - m) reviews the proposals and petitions sent to the Parliamentary Assembly of BiH or to the body performing the parliamentary oversight in connection with the work of the supervised institutions (**obstacles, abuses, omissions, preventions, promotions - addendum by MP Ljilja Zovko**), proposes to the Parliamentary Assembly of BiH measures to address the issues contained in the proposals and petitions and subsequently notify applicants;
- (2) Parliamentary Oversight Bodies shall report to the Parliamentary Assembly of BiH on the activities referred to in Paragraph (1) of this Article, and shall report its conclusions and proposals to the Parliamentary Assembly of BiH in accordance with the provisions of this Law.

#### **Article 5 (Dynamics of Work)**

Parliamentary Oversight Bodies shall conduct activities under Article 4 Paragraph (1) pursuant to received reports, work plan dynamics, or according to the requests from the Houses of the Parliamentary Assembly of BiH.

### **CHAPTER II – INQUIRY COMMISSIONS, SUB-COMMISSIONS AND WORKING GROUPS**

#### **Article 6 (Inquiry Commissions, Sub-Commissions and Working Groups)**

- (1) Special inquiry commissions, sub-commissions and working groups may be established on temporary basis because of specific needs, as a part of Parliamentary Oversight Bodie.

- (2) Parliamentary Oversight Bodies make decisions on the appointment of its members in the inquiry commissions, sub-commissions and working groups, as well as regulate their structure and mode of operation.
- (3) In forming an inquiry commission, sub-commission or working group in Parliamentary Oversight Bodies, care should be taken that the composition has adequate representation of the constituent peoples.

#### **Article 7**

##### **(Tasks of Sub-Commissions, Inquiry Commissions and Working Groups)**

- (1) Special inquiry commissions, sub-commissions and working groups shall be formed for the purpose of more efficient performance of a specialized and focused parliamentary oversight and to perform tasks and duties determined by the Parliamentary Oversight Body.
- (2) The supervised institutions are obliged to cooperate with the **inquiry commissions**, sub-commissions and working groups and provide them with all necessary assistance and information in the performance of their activities and tasks in accordance with the provisions of this Law.

#### **Article 8**

##### **(Reports of Sub-Commissions, Inquiry Commissions and Working Groups)**

- (1) **Sub-Commissions, Inquiry Commissions and Working Groups submit report to the body that carried out the parliamentary oversight after the completion of the task.**
- (2) **It is mandatory to publish above reports on the website of the Parliamentary Assembly of BiH.**

### **CHAPTER III – PERFORMING PARLIAMENTARY OVERSIGHT**

#### **Article 9**

##### **(Sessions of Parliamentary Oversight Bodies)**

- (1) Sessions of Parliamentary Oversight Bodies are open to public.
- (2) Parliamentary Oversight Bodies may decide to discuss certain issues within its competence *in camera*.

**Article 10  
(Mode of Oversight)**

**VERSION I**

(1) Parliamentary Oversight Bodies perform oversight by:

- a) conducting public hearings;
- b) conducting public debates and thematic sessions;
- c) reviewing reports;
- d) representative's/delegate's questions and interpellation;
- e) providing information to Houses of the BiH Parliamentary Assembly on matters within the competence of the Presidency of BiH;
- f) voting no confidence and by requesting recomposition reconstruction of the Council of Ministers of BiH;
- g) controlling of budget spending;
- h) examination of documents relating to authorizations and tasks;
- i) interviewing the **responsible person** of the supervised institution with an aim of submitting written or verbal report;
- j) inviting and hearing witnesses from any institution;
- k) visiting supervised institutions.

**VERSION II - (Proposed by MP Ljilja Zovko)**

(1) The parliamentary oversight is performed by:

- a) defining of standards of programmatic reporting areas and specifics for all budgetary and extra-budgetary users on the state level of government and administration;

a. An example:

b) Programming tasks				c) Budget			
d) Go al	e) Progr am	f) Executi on	g) %	h) Pl an	i) Executi on	j) %	k) %Previ ous
l)	m)	n)	o)	p)	q)	r)	s)

- b) defining of standards for preparation of legislative proposals through simulation of implementation with mandatory financial effects and targeted benefits of each legislative solution, which is planned and expected;
- c) defining of standards of transparency: it is duty of all supervised bodies to publish all acts and decisions in the Official Gazette and on the website, as well as all advertisements for employment;
- d) defining of standards for all employees: test of intelligence and mental and physical abilities and skills in terms of increasing the scope and complexity should be done each three years of employment. Career building written form should be kept for all positions, where possible sanctions should be registered, possible divestiture of authority for officers

working in public procurement if there are work failures - assignment to another position.  
For senior officers consequences for new appointments if unsuccessful in previous doings;

- e) request reports from the Civil Service Agency on all employments for each 6 months interval (deed contract, internal, external advertisements, without advertisements, - institution- qualification - coefficient);
  - f) request table from the Civil Service Agency with data of all managerial, elected and appointed positions with information on date of appointment, date of termination of duty and a list of all functions performed by authorized person;
  - g) examining the documentation related to authorizations and tasks;
  - h) performing discussion with all persons from the supervised institutions;
  - i) interviewing responsible person from the supervised institutions with the aim of submitting written or verbal statements;
  - j) conducting of public hearings;
  - k) conducting **announced or unannounced** working visits to the supervised institutions.
- (2) Procedure for performing of oversight under Paragraph (1) of this Article shall be regulated by the Rules of Procedure of both Houses of the Parliamentary Assembly of BiH in the part relating to general provisions of the Committees of both Houses.

### **Article 11** **(Authorizations of Parliamentary Oversight Bodies)**

- (1) Parliamentary Oversight Body has authority to:
- a) invite and hear witnesses from any institution in BiH;
  - b) raise the issue of responsibility for failure to appear or giving false or inaccurate statements to the Parliamentary Oversight Body;
  - c) require report from any elected and appointed official, employee or institution;
  - d) require assistance from auditors;
  - e) request assistance from independent experts outside the institutions of Bosnia and Herzegovina.
- (2) In the exercise of parliamentary oversight, the opinion of the Institution of Ombudsman for Human Rights in BiH, as well as submission of data from other administrative bodies and organizations that are in a possession of necessary facts, may be requested.
- (3) Based on the facts established by hearing or inspecting the official documentation, Parliamentary Oversight Bodies shall develop a report with proposed measures for the Parliamentary Assembly of BiH.
- (4) The proposed measures can include proposal for dismissal of appointed persons, and/or reorganization of the institution.

## **Section A – Public hearings**

### **Article 12 (Public Hearing)**

- (1) Public hearing shall be carried out when deemed necessary to obtain information or technical opinion, review of state of affairs in certain areas from the committee jurisdiction, find a solution for certain issues; if there are allegations of illegitimacy and irregularity in work of supervised institutions and other cases upon decision of the body performing the parliamentary oversight.
- (2) The body performing the parliamentary inquiry may carry out public or closed hearings, independently or in cooperation with other competent bodies; **(provision of Article 34 of the Rules of Procedures of the House of Peoples of the Parliamentary Assembly of BiH).**

### **Article 13 (Opening a Public Hearing)**

- (1) The House or the Parliamentary Oversight Bodies makes the decision on opening a public hearing.
- (2) When the decision on opening a public hearing is made by the House, the Collegium of House informs the Parliamentary Oversight Body that is appointed for conducting the hearing. The decision contains:
  - (1) subject-matter and aim of the hearing;
  - (2) list of invitees;
  - (3) deadline for conducting of hearing and submitting reports to the Parliamentary Assembly of BiH.
- (3) When the decision on opening a public hearing is made by the Parliamentary Oversight Body, the Chair of the Parliamentary Oversight Body informs Collegium of the House. When the decision is made by joint body of both Houses of the Parliamentary Assembly of BiH performing parliamentary oversight, Chair of that body informs Collegiums of both Houses. The decision on opening a public hearing made by the Parliamentary Oversight Body consists of the elements from paragraph (2) of this Article.

### **Article 14 (Response to Invitation)**

- (1) Parliamentary Oversight Body, the body appointed to conduct a hearing, or the body that made a decision to conduct hearing shall make the decision on date of hearing and invite in written form, persons from the Article 15, paragraph (1) of this Law.

- (2) Upon the invitation from the Parliamentary Oversight Body, invited person from the supervised institution is obliged to answer and participate at public hearing conducted by the Parliamentary Oversight Body.
- (3) Invited person is obliged to speak the truth, submit requested documentation, give information and answer the questions from the members of the Parliamentary Oversight Body to the best of his/her knowledge.

**Article 15**  
**(Hearing process)**

Hearing shall, as a rule, be recorded phonographically, i.e. minutes shall be taken. Technical and all other corrections may be taken only upon the agreement and approval from the individuals who are subject to hearing.

**Article 16**  
**(Access of Members of the Public to the Public Hearing)**

- (1) Parliamentary Oversight Body shall make decision to close part of hearing for public if estimated that the issues subject to hearing are sensitive for national or individual security.
- (2) Public hearing is not allowed in case of hearing on issues that are subject to ongoing judicial proceedings.

**Article 17**  
**(Report on Hearing)**

- (1) Parliamentary Oversight Body prepares and submits report on hearing consisted of essential information to the competent House.
- (2) Parliamentary Oversight Body may propose appropriate conclusions for adoption by the House.
- (3) If report from Paragraph (1) of this Article implicates suspicion in commission of criminal act, the Parliamentary Oversight Body may propose to the Parliamentary Assembly of BiH to inform the competent Prosecutor's Office.

**Article 18**  
**(Public Hearing with regard to the work of Independent or Regulatory Bodies)**

- (1) Public hearing of independent and regulatory bodies includes examining the regularity of work but also the assessment of possible political influence on work of independent or regulatory institution, or on respective appointed person managing the institution.
- (2) Public hearing must be performed in case that collective decision by consensus cannot be reached due to obstructions that are not based on law.



**Section B - Holding of Public Hearings and Thematic Sessions**

**(Note: Institute of Thematic Sessions has been problematized by the TWINING)**

**Article 19**

**(Public Hearing and Thematic Session)**

- (1) Parliamentary Oversight Body may decide to hold a public hearing or thematic session during the procedure of consideration of the issues that are subject to parliamentary oversight and submit report to the House.
- (2) Parliamentary Oversight Body is obliged to invite representatives of the supervised bodies at the public hearings or thematic sessions.
- (3) External experts, interested organizations, institutions or individuals may participate in public hearing or thematic session.
- (4) Public hearing or thematic session of the Parliamentary Oversight Body shall take place within a timeframe of 15 days from the scheduling date.
- (5) Parliamentary Oversight Body announces public hearing or thematic session on the web page of the Parliamentary Assembly of BiH.

**Article 20**

**(Opinions by the Participants in the Public Hearing or Thematic Session)**

- (1) Participants in the public hearing or thematic session shall present their opinions on issues related to the function of the parliamentary oversight.
- (2) Upon concluding public hearing or thematic session, the expert work and other written material presented over the course of the hearing may be attached to the conclusion reached by the Parliamentary Oversight Body.

**Article 21**

**(Outcome of the Public Hearing or Thematic Session)**

Parliamentary Oversight Body, when submits its report, shall attach a transcript of the public hearing or thematic session, if any; as well as papers and materials submitted in the course of the public hearing or thematic session.

## **Section C – Analyzing Reports**

### **Article 22 (Analyzing Reports)**

- (1) On the basis of law or other act, the supervised institutions submit report to the Parliamentary Assembly of BiH for consideration and adoption;
- (2) Parliamentary Oversight Bodies analyze reports stipulated in Paragraph (1) of this Article, under the authorization of the House.
- (3) Parliamentary Oversight Body may request submission of a special report from any elected and appointed official or institution on issues that are important for parliamentary oversight.

### **Article 23 (Standards of Reporting)**

- (1) The supervised institutions shall submit brief reports with as many tables as possible and should contain data for comparison, indicators and statistical data. **(TWINING Project suggestion)**
- (2) Reports on spending of financial means of budgetary and non-budgetary users from the state level shall be submitted in line with the form which is an integral part of this Law. **(Proposal by MP Ljilja Zovko)**

### **Article 24 (Procedure with negative reports)**

Reports with negative opinions received from both Houses shall be published at the website of the Parliamentary Assembly of BiH. **(To be considered – TWINING Project suggestion)**

### **Article 25 (Performance Report of the BiH Council of Ministers)**

- (1) Performance Report of the BiH Council of Ministers shall be reviewed and adopted annually.
- (2) In order to exercise the parliamentary oversight, one or both Houses of the Parliamentary Assembly of BiH may request submission of a special report from the BiH Council of Ministers on a particular issue, field or activity as well as for determined period.

### **Article 26 (Methodology)**

The Parliamentary Assembly of BiH may determine the methodology of submission of reports stipulated in Paragraph (2) of Article 25, as well as submission deadlines.

## **Section D – Representatives’ or Delegates’ Questions and Interpellation**

(Suggestion by the EU Twinning recommendations)

### **Article 27**

#### **(Representatives’ and Delegates’ questions and initiatives)**

- (1) Representatives or delegates shall pose questions and submit initiatives to the Chairperson and members of the BiH Council of Ministers or to other subjects from their scope of work, especially related to the current state of affairs in particular fields of the social life and implementation of laws and other acts of the Parliamentary Assembly of Bosnia and Herzegovina, the work of Ministries and other bodies of the state government respectively.
- (2) Representatives’ or delegates’ questions shall be posed in oral form or in writing, whereas the initiative shall only be posed in writing.
- (3) Representatives’ or delegates’ questions in writing also may be addressed to the Office of the High Representative in Bosnia and Herzegovina.

### **Article 28**

#### **(Oral questions)**

- (1) Representatives or Delegates shall pose questions in oral form to the BiH Council of Ministers, an individual member of the BiH Council of Ministers respectively, at the beginning of each first session of the House in the month, prior to the discussion on the agenda, with direct TV broadcast ensured.
- (2) The order of posing questions shall be determined based on the order of applying Representatives or Delegates.
- (3) Representative or Delegate may ask one question, which can last up to two minutes. A question shall be concise and clearly formulated, in such a manner that it can be immediately responded and without the preparation.
- (4) Representative or Delegate may state if he/she is content or not with the response to the question, and state the reasons for the duration of no longer than one minute.
- (5) In case that Representative or Delegate is not satisfied with the response, he/she may request to receive a response in writing within 15 days deadline.

### **Article 29**

#### **(Submitting of questions)**

- (1) Representatives or Delegates shall announce the submitting of oral questions in writing, at the latest twenty four hours prior the beginning of the session of the House.

- (2) The announcement stipulated in Paragraph (1) of this Article shall be made known to the Chairperson of the BiH Council of Ministers and the member of the BiH Council of Ministers who is the addressee. The announcement shall contain, as mandatory items, the name and the surname of the Representative or Delegate that requires to pose the question in oral form, a note on the addressee and a note on the particular field that the questions relates to.
- (3) The Chairperson of the BiH Council of Ministers shall be obliged to ensure the presence of at least one half of the BiH Council of Ministers at the session of the House at the time designated for posing Representatives' and Delegates' questions in oral form.

**Article 30**  
**(Answers to the questions)**

- (1) A Member of the BiH Council of Ministers to whom the question is posted shall be obliged to respond to the question at the same session at which the question is posted, or he/she shall state the reasons due to which he/she cannot respond. If this is the case, a Member of the BiH Council of Ministers shall be obliged to provide an answer in writing to the posted question at the first following session of the House, at the time designated for oral questions.
- (2) The oral answer to the posted question shall not extend two minutes.

**Article 31**  
**(Posing of questions and submitting of initiatives)**

- (1) Representative or Delegate may pose a question and submit an initiative in written form through the Office of the Speaker of the House.
- (2) When the question is formulated according to Paragraph (1) of this Article, the Speaker of the House shall forward the question and the initiative to an addressee.
- (3) The Speaker of the House, at the beginning of each session, shall inform the House on Representatives or Delegates that have posed the question and report about questions that have been answered to Representatives and Delegates.

**Article 32**  
**(Responses in Writing)**

- (1) The questions in writing are mostly, although not exclusively, related to the technical issues or the matters which require more than a simple verbal explanation. Neither the question nor the answer shall be longer than standard A-4 format.
- (2) The answer in writing must be provided within a 30 days deadline commencing from the day when the question was submitted to the addressee.

- (3) In case that the BiH Council of Ministers, its member respectively, are not able to respond within a deadline stipulated in Paragraph (2) of this Article, they are obliged to inform a Representative or a Delegate through the Office of the Speaker of the House on reasons due to which he/she cannot comply. A Representative or a Delegate must also inform about the timeline within which he/she shall provide the response.
- (4) When the Speaker of the House receives the response, he/she shall submit a copy of the response to all Representatives and Delegates. The Speaker of the House gives an opportunity to a Representative or a Delegate who has requested a response in writing to state if he/she is satisfied with the response. In case that a Representative or a Delegate is not satisfied with the response, he/she may submit a supplement question in writing.

### **Article 33**

#### **(Joint Session of the Houses – Questions and Responses)**

- (1) At least once in a year, the Joint Collegium shall organize a special Joint Session of both Houses: «Delegates and Representatives Ask – the BiH Council of Ministers Responds ».
- (2) Live television and radio coverage of these debating sessions shall be ensured for the purpose of transparency and informing the citizens about all the relevant issues which pertain to the work of the executive authorities of BiH.
- (3) A Representative or a Delegate may pose one question and reply to the response for three minutes at most. The questions shall be submitted to the BiH Council of Ministers at least seven days prior to the date of the session.
- (4) The session referred to in Paragraph (1) of this Article shall be convened 30 days in advance and may last up to four working hours.

### **Article 34**

#### **(Procedure at the Joint session)**

- (1) The question shall be explained in the following way: a Representative or a Delegate shall be allotted three minutes to pose a question. Thereafter, the BiH Council of Ministers or a competent Minister shall be allotted three minutes to respond. Thereafter, the Representative or the Delegate may give a comment on the response or pose a new question. The time allotted for that purpose shall be two minutes. The Chairperson of the BiH Council of Ministers or the competent Minister shall also be allotted two minutes to react, after which the Speaker shall conclude the debate and give the floor to another person authorized to speak.
- (2) The BiH Council of Ministers or the Minister may request for certain reasons and only once that debate on a certain issue be postponed for the next session of the House.

### **Article 35**

**(Submission and consideration of Interpellation)**

- (1) An interpellation is a question that is submitted to commence the discussion at the session of the House about the work of the BiH Council of Ministers as a whole, or on the certain decisions of the BiH Council of Ministers or certain Ministries, i.e. to the implementation of a defined policy or law.
- (2) The interpellation may be submitted also when a Representative or a Delegate is not satisfied even with the supplement response in writing by the BiH Council of Ministers to the posed question, wherein the question and a response denote that there are particularly justified reasons to open the deliberation at the House.
- (3) The interpellation can be submitted by eight Representatives, three Delegates respectively, to the Speaker of the House in writing. The interpellation shall contain a clear and elaborated question that need be considered.
- (4) The Collegium shall consider the interpellation and submit it to the addressee.

**Article 36  
(Inclusion in the Agenda)**

- (1) After the interpellation is sent to whom it is addressed, it shall be put on the agenda of a session of the House within 30 days of its submission.
- (2) Only one interpellation may be included in the agenda of a session.

**Article 37  
(Debate on the interpellation)**

- (1) The representative of an interpellant shall be allotted 30 minutes at most to explain his or her interpellation. Then the floor shall be given to the person to whom the interpellation is addressed. Thereafter other Representatives or Delegates may, at their own request, intervene for 10 minutes at most. The same rule shall apply to an interpellant and to the person to whom the interpellation is addressed.
- (2) The interpellants may withdraw the interpellation until the debate is concluded.

**Article 38  
(Adopting interpellation with the needed measures)**

After the debate, the House shall take a stance on the matter that was raised through the interpellation and the proposed conclusions, determine a set of measures needed for the resolving of the matters, and, if need be, it shall determine the responsibility for the current state of affairs.



**Section E – Informing the Houses of the Parliamentary Assembly of BiH about matters within the competency of the BiH Presidency**

**Article 39**

**(Informing the BiH Presidency about the sessions of the House)**

- (1) The Speaker of the House invites the BiH Presidency to all sessions of the House.
- (2) In sessions in which law proposals, proposed by the BiH Presidency, are discussed or when matters within the competency of the BiH Presidency are deliberated on, attendance of at least one member of the BiH Presidency is mandatory.
- (3) Through its representatives, the BiH Presidency participates in sessions of the House from Paragraph two (2) of this Article and is entitled and required to take part in the discussion at any time.

**Article 40**

**(Informing the House about matters within the competency of the BiH Presidency)**

- (1) At the request of the House or upon its own request, the BiH Presidency presents its stances and informs the House on matters within its competency.
- (2) The House may request the BiH Presidency to submit a report in writing in advance of the session.
- (3) Upon discussion, the House may endorse a resolution that contains its stances or guidelines about the relevant policy.
- (4) The BiH Presidency, in line with the BiH Constitution, submits a report on expenditures at least once a year (**Article 176 of the Rules of Procedure of the House of Peoples**)

**Section F- Vote of No-Confidence and the Need for Recomposition of the BiH Council of Ministers**

**Article 41**

**(Duty and responsibility of the BiH Council of Ministers)**

- (1) The BiH Council of Ministers is accountable to the Houses for proposing and implementing policy and implementation of laws, other regulations and provisions whose implementation is part of its constitutional and legal jurisdiction, and for guiding and coordinating the work of the Ministries.
- (2) At the request of the House, the BiH Council of Ministers shall submit information about all relevant activities within its competency.



**Article 42**  
**(Initiating a Vote of No-Confidence to the BiH Council of Ministers)**

- (1) At least eight (8) Representatives in the House of Representatives or three (3) Delegates in the House of Peoples may initiate a proposal for a vote of no-confidence or for the need for the reconstruction of the BiH Council of Ministers.
- (2) The BiH Presidency may propose removal of the Chairperson of the BiH Council of Ministers.
- (3) Proposals from the Paragraphs 1 and 2 of this Article are submitted to the Speaker of the House in writing, signed and with an explanation.
- (4) The Speaker of the House immediately delivers the proposal to the BiH Presidency, the BiH Council of Ministers, Representatives or Delegates and the other House of the Parliamentary Assembly of BiH.

**Article 43**  
**(Inclusion in the agenda)**

The proposal for a vote of no-confidence or for the recomposition of the BiH Council of Ministers shall be included in the agenda of the session of the House twenty (20) days, and no later than thirty (30) days, from the day of its submission to the BiH Council of Ministers.

**Article 44**  
**(The Report of the BiH Council of Ministers on the Vote of No-Confidence)**

- (1) Prior to the session on the vote of no-confidence, the BiH Council of Ministers may submit a report in writing that contains its opinion and stances.
- (2) The report is delivered to the Representatives and Delegates no later than 48 hours prior to the session.

**Article 45**  
**(The Report of the BiH Council of Ministers on the Recomposition)**

- (1) Prior to the session on the vote for reconstruction, the BiH Council of Ministers may submit a report in writing to the House that contains its opinion and stances.
- (2) Ministers whose removal is proposed may submit a report to the House.
- (3) The report is delivered to the Delegates no later than 48 hours prior to the session.

**Article 46**

**(Elaboration of the Proposal and the Response of the BiH Council of Ministers)**

- (1) The proponent is entitled and is required to elaborate the proposal for a vote of no-confidence or the recomposition of the BiH Council of Ministers at the session.
- (2) The BiH Council of Ministers is entitled to respond and present its stances, upon which a discussion shall be initiated.

**Article 47**

**(Voting)**

- (1) At the end of discussion, the proposal on the vote of no-confidence or the recomposition of the BiH Council of Ministers is put to the vote.
- (2) If the proposal is not endorsed, other initiatives related to the proposal may also be put to the vote.
- (3) The Speaker informs the House of Representatives, the BiH Council of Ministers and the BiH Presidency about the results of the vote of no-confidence or the reconstruction of the BiH Council of Ministers or any other initiative, if any, related to it.

**Article 48**

**(Initiating the Procedure for Dismissal of Minister or Deputy Minister)**

- (1) The Chairperson of the BiH Council of Ministers may initiate the procedure for dismissal of a Minister or a Deputy Minister.
- (2) The proposal from Paragraph 1 of this Article is submitted to the Speaker of the House, in writing and with an explanation.
- (3) The Speaker of the House immediately delivers the proposal to the Representatives or Delegates and to the other House.

**Article 49**

**(Inclusion in the Agenda)**

Proposal for dismissal of Minister or Deputy Minister shall be included in the agenda of the session of the House no later than fifteen (15) days from the day the proposal was received by the Speaker of the House from the Chairperson of the BiH Council of Ministers.

**Article 50**

**(Elaboration of the Proposal and Discussion)**

- (1) The Chairperson of the BiH Council of Ministers is entitled to elaborate on his/her initiative, upon which a discussion shall be initiated.

- (2) The Minister or the Deputy Minister, whose dismissal has been initiated, is entitled to address the House.

#### **Article 51**

##### **(Vote on Confirmation of the Dismissal of the Minister or Deputy Minister)**

- (1) Upon discussion, a vote on confirmation of the dismissal of the Minister or the Deputy Minister shall take place.
- (2) If the proposal is not confirmed, a vote on other initiatives, if any, related to it, may take place.
- (3) The Speaker of the House informs the other House, the BiH Council of Ministers and the BiH Presidency about voting results and about other initiatives, if any, related to it.

### **Section G - Control of Budgetary Spending Budget (Proposal from MP Ljilja Zovko)**

#### **Article 52**

### **Section H - Examining Documentation and Interviewing Responsible Person in the Supervised Institution**

#### **Article 53**

##### **(Examining Documentation)**

- (1) Parliamentary Oversight Bodies shall be authorized to examine all information, documents and notes related to the work of supervised institutions, made by any person in the supervised institution.
- (2) Examining of the documentation referred to in Paragraph (1) of this Article, is done by the Parliamentary Oversight Body as follows:
  - a) in course of direct inspection during working visit as specified in the Article 10 Paragraph (1) of this Law, while making minutes of the examined documents;
  - b) by obtaining documentation from the supervised institution.

#### **Article 54**

##### **(Obtaining of the Documentation)**

Parliamentary Oversight Body obtains the materials referred to in **Article 53**, Paragraph (2) item b) based on a request which states the name of the supervised institution from which the documentation is requested, the type of the necessary documentation, and the deadline and the

form in which the body needs to deliver the requested materials to the Parliamentary Oversight Body.

**Article 55**  
**(Documentation with the Classification Level)**

- (1) If the documentation has a certain classification, the Law on Protection of Classified Information and regulations of Bosnia and Herzegovina which regulate handling classified data.
- (2) If the documentation is given the classification level of NATO, the European Union, other country, international or regional organization, Parliamentary Oversight Bodies shall establish access to such documents in accordance with the international agreements and the Law on the Protection of Classified Information.

**Article 56**  
**(Submission of the Special Written or Verbal Report)**

During execution of the parliamentary oversight, the Parliamentary Oversight Body may request submission of a special report on a specific issue, specific field, or for a certain period.

**Article 57**  
**(Elaboration of the Report)**

At the request of Parliamentary Oversight Bodies, the responsible person from the supervised institution shall be obliged to verbally explain the report, or information that the supervised institution submitted to the Parliamentary Oversight Bodies in accordance with this Law and is obliged to answer questions from members of Parliamentary Oversight Bodies.

**Article 58**  
**(Inviting Witnesses)**

- (1) Parliamentary Oversight Body may summon and hear witnesses from any institution in Bosnia and Herzegovina and can request from them to answer all questions and present all facts and information, including classified information;
- (2) Upon invitation of the Parliamentary Oversight Body, any person from the supervised institution is obliged to respond to the summons and attend the sessions of Parliamentary Oversight Body provide information and answer questions from the members of the Parliamentary Oversight Body to the best of their knowledge.

**Article 59**  
**(Obligation of the Invited Person to Provide Answers)**

Parliamentary Oversight Body may request the invited person responds to all questions and present all facts and information, as well as those represented as being classified. **(Rules of Procedure of the House of Peoples - Article 34/a)**

**Article 60**

**(Notification in the Case of Absence)**

The invited persons shall, in the case of absence, notify in writing the Parliamentary Oversight Bodies of the reasons for absence, at least 48 hours before the start of the session.

**Article 61**

**(Visits to the Supervised Institutions)**

- (1) Working visits of Parliamentary Oversight Bodies to supervised institutions may be announced and unannounced. **(Alternative – the visits have to be announced to the Ministry of Justice).**
- (2) A responsible person is required to enable access for Parliamentary Oversight Bodies to all premises of the supervised institution in accordance with the Law on Protection of Classified Information.
- (3) Any person from the supervised institution is required to cooperate with the Parliamentary Oversight Body.

*(Note: the BiH' Ministry of Justice considers that the better solution is: „to delete a provision of Article 16 in relation to the non-announced but also announced arrival to institutions. Namely, before all, it is foreseen that supervision is performed by parliamentary commissions which will have at least 5 members. What is the expected result when at least 5 members of a parliamentary commission come to the institution unannounced and enter official premises? - to be discussed)*

**Section G - Special Provisions on Parliamentary Oversight**

**Article 62**

**(Exemption from Oversight)**

- (1) Parliamentary Oversight Bodies cannot have access to documentation or require a response to questions from the persons and responsible persons of the supervised institutions in the following cases:
  - a) if the person making a statement would subsequently be liable to criminal prosecution because of such statement;
  - b) by the applicable provisions of the Law on Protection of Classified Information. **(SEE FOR CLASSIFIED INFORMATION - discussion)**
- (2) If the report, referred to in Paragraph (1) of this Article, has elements that raise suspicion about commission of criminal offence, the Parliamentary Assembly of BiH shall submit it to the competent Prosecutor's Office.

**Article 63**

**(Non-responding to the Invitation)**

**Non-responding to the invitation of the Parliamentary Oversight Bodie and non-submission of documentation shall be considered as minor offense.**

**Article 64**

**(Initiating the Minor Offense Proceeding)**

- (1) Parliamentary Oversight Bodie shall submit evidence on the sent invitation or documentation requested and information that the request was not fulfilled to the Office of Public Attorney of BiH.**
- (2) The Office of Public Attorney of BiH shall submit a request for initiating a minor offense proceeding and shall participate in the minor offense proceeding.**

**Article 65**

**(Entering into Force)**

This Law shall enter into force eight days after the publication in the "Official Gazette of BiH".

BiH PA, Number:  
S a r a j e v o

Speaker  
of the House of Representatives  
of the BiH Parliamentary Assembly  
Mladen Bosić

Speaker  
of the House of Peoples  
of the BiH Parliamentary Assembly  
Ognjen Tadić