

COMMENCEMENT OF NEGOTIATIONS AND PRESENCE OF THE EU AS THE BASIS OF STABLE GROWTH AND DEVELOPMENT OF BOSNIA AND HERZEGOVINA

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Abstract

It is important for Bosnia and Herzegovina, but also for the European Union, that the negotiation process begins as soon as possible. Real changes in the legal, administrative and political sense commence only with fulfilment of benchmarks for opening and closing of chapters. The negotiation process is also important for learning and progressing in the understanding of European policies which help to strengthen state institutions, democracy and openness to grow and result with stronger economic growth due to an increased level of trust and safety. It is important for the European Union that the country at the very heart of Europe, which belongs to Europe not only geographically, but also historically and in terms of tradition and culture, becomes a part of it as soon as possible and also in terms of the standards it applies. In this paper we give an overview of recommendations that the European Commission has provided to Bosnia and Herzegovina since 2002, and it is precisely from the recommendations which are being repeated each year that the most important challenges which Bosnia and Herzegovina needs to solve are still visible. Rule of law, respecting human rights and rights of minorities, as well as the constitutionality of the three nations, in addition to a fast and efficient judicial system and the public sector as a whole are the key elements for fulfilling political, legal and administrative criteria. At the moment B&H is significantly lagging behind even the least developed Member States and convergence towards the EU average is necessary because on the current level B&H could not equally participate in the EU Single Market, and accession would create

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more obstacles than advantages. The EU is expected to take a more active approach in solving the challenges of economic convergence of B&H, therefore in this paper an overview is provided of the priorities of the new EU Enlargement Strategy in which support to socioeconomic development is pointed out as one of the initiatives.

Keywords: *EU programs; BiH; Croats; sustainable development; economy.*

Introduction

As of 2005 the European Commission draws up reports on the progress of Bosnia and Herzegovina and monitors the country's readiness for the commencement of negotiations. In November 2005 negotiations on the Agreement on Stabilization and Association, which was concluded in December 2007 and entered into force on 1 July 2015, were also initiated.

In 2005 Bosnia and Herzegovina was stated in the Enlargement Package¹ as a potential candidate country along with Albania, Montenegro, Serbia and Kosovo. The Enlargement Package represents a set of documents which the European Commission issues on an annual basis, which evaluates the implementation of key political and economic reforms in the countries of Southeast Europe and Turkey, as well as pointing out what needs to be done in order to respond to the remaining challenges. The Progress Report represents one of the documents from the Enlargement Package through which the European Commission provides information on the progress which a particular candidate country or potential candidate country has made with regard to fulfilling requirements and objectives set by the European Union, as well as a summary of measures which need to be taken based on established plans of action.

In the Progress Report fulfilment of measures and benchmarks in the area of democracy and rule of law, public administration, judicial system, anti-corruption policy, as well as observation and protection of human rights and rights of national minorities are monitored as the basic preconditions which a country must meet in order for the process of commencement of negotiations to be initiated. A country's progress is evaluated on the basis of decisions brought, laws adopted and measures carried out. This approach ensures equal treatment in all reports and allows for an objective evaluation.

¹ *Communication from the Commission - 2005 enlargement strategy paper*, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005DC0561>>.

The first Progress Report for Bosnia and Herzegovina was published in 2005, preceded by annual reports on the Stabilization and Association Process (from 2002 to 2004). From twelve Progress Reports drawn up it may be concluded that it would have been much more efficient both for the European Union and B&H if accession negotiations had commenced immediately and if different important issues which are key for the functioning of the legal system and democracy in Bosnia and Herzegovina were solved during the negotiations through benchmarks for opening and closing of chapters. This way, instead of progress, different important issues often come up which return the entire process several steps backwards.

On 6 February 2018 the European Commission brought the EU Enlargement Strategy for the Western Balkans² (hereinafter: Strategy), on which a discussion was held on the same day at a plenary session of the European Parliament in Strasbourg. A clear message was given that the European Union wants Western Balkans countries to become Member States, and that the moment of accession depends solely on themselves, the speed of implementing reforms and harmonization with EU standards and benchmarks.

Hereafter is provided an overview of the main conclusions from the Enlargement Strategy, a comparison of progress made in countries of Southeast Europe, as well as an overview of the recommendations provided to and progress made by Bosnia and Herzegovina since the commencement of drawing up of the Progress Report.

1. Conclusions and messages from the EU Enlargement Strategy for the Western Balkans (WB6)

On 6 February 2018 the European Commission presented the new Enlargement Strategy for the Western Balkans, which had been mentioned in the State of the Union Address by European Commission President Jean-Claude Juncker relating to the reaffirmation of the European future of Western Balkan countries. As of the meeting of the Council of Europe in Thessaloniki in 2002, the EU has been involved in the future of that area as a component part of the EU. The Strategy relates to 6 countries under the title of WB-6

² Strategy for “Credible Enlargement Perspective for and Enhanced EU Engagement With the Western Balkans”; <https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf>.

(Montenegro, Serbia, Bosnia and Herzegovina, Macedonia, Albania and Kosovo). During 2018 the Commission commenced carrying out several initiatives aimed at improvement of the democratic, institutional and political framework of the Union by 2025 based on agreements currently in force.

During the presentation of the Strategy, Federica Mogherini, High Representative of the European Union for Foreign Affairs and Security Policy, pointed out that the Western Balkans represents a part of Europe wherein we all share the same history, geographical and cultural heritage, the same opportunities and challenges, as today so in the future. This Strategy provides a joint, unambiguous and concrete perspective for European Integration for each of the six partners. Setting 2025 as the key year for accession of the mentioned countries to the EU, primarily Montenegro and Serbia, does not represent the final deadline but a perspective for accession, which will depend solely on results achieved and the speed of negotiations.

WB6 countries must continue fulfilling key conditions for membership. In order to fulfil all conditions for membership and strengthen their democracies, they still require comprehensive and convincing reforms, as well as solving the issues in key areas such as the rule of law, protection of basic human rights and rights of minorities, public administration reform, solving bilateral disputes and strengthening good neighbourly relations. In addition to those issues, emphasis was also put on strengthening the economies because at the moment no economy of WB6 countries can be considered functional.

Through this enlargement policy the EU wants to continue in the direction of strengthening stability among the countries covered by the Strategy. This especially relates to solving all bilateral disputes which are still slowing down the way towards EU membership and must be solved bilaterally or through arbitration. Definitive and obligatory solutions of those disputes must be reached and carried out prior to the accession of the countries to the EU. Commissioner for European Neighbourhood and Enlargement Negotiations Johannes Hahn stated that this Strategy has no shortcuts and that criteria for accession are clearly defined and must be fulfilled. Progress will depend exclusively on work, will and results of each particular country³.

³ Press release available at: <http://europa.eu/rapid/press-release_IP-18-3342_en.htm>.

2. The following steps of countries of Southeast Europe on the way to EU membership: Strategy Initiatives

With the Strategy the EU should increase its political involvement in Southeast Europe, focusing on areas of joint interest such as the judicial system and internal affairs, including security and fight against organized crime, the economy and the Single Market, energy, transport and digital policy, social policy, education and innovation, as well as foreign affairs and defense. By strengthening its policy the EU is beginning to carry out a series of leading initiatives which represent a significant increase of EU's involvement in South European countries, which is of joint interest.

The Strategy defines six initiatives and 57 concrete, innovative measures. Hereafter is provided a short overview of the initiatives which are the basis of new enlargement-related documents:

1. **Strengthened support to the rule of law** – Reforms in this area need to be intensified through analysis of legislation and practice. In the negotiating frameworks for Montenegro and Serbia special emphasis has been placed on reforms in the area of rule of law. Activities relating to concrete judicial system reforms, fight against organized crime and corruption are the way to strengthening the rule of law.
2. **Reinforcing engagement on security and on migrations** – Increased strategic and operational cooperation regarding security and migrations is of key importance for efficient and effective addressing the existing security and terrorist threats. Although significant progress has already been made in this area, countries of Southeast Europe should be more involved in discussions on security policy taking place in the EU on an ad hoc basis. Increased involvement in the fight against terrorism and radicalization, cooperation in the fight against different types of organized crime, support to capacity building in the area of cyber-security and fight against cyber-crime by EU agencies such as Interpol is necessary in the following period. Precisely with that objective the Commission will set up and coordinate an Interagency Workgroup on EU level.
3. **Supporting to socio-economic development** – Increased financing has been foreseen in the areas of transport, energy, social sector, environment and private sector development, including digital economy.

The objective is to link socio-economic development in the region with investment priorities of the Union in order to significantly increase the provision of guarantees under the investment framework for Southeast Europe, with the aim of attracting private investments in the region, in full complement with the existing initiative. With the aim of development of the regional economic area, the Commission will additionally facilitate trade between the EU and countries of Southeast Europe. In order to strengthen entrepreneurship and innovation, the Commission will introduce a scheme of support to technology transfer and startups in the entire region and provide support to efforts directed at smart specialization, as well as circular economy. Through the new strengthened social dimension for countries of Southeast Europe, the Commission will work on support to employment and carrying out social policies in the region, by encouraging corresponding involvement of all levels of government, social partners and the civil society. In order to provide support to social inclusion, increased financial support to the social sector is planned, especially for investment in education and healthcare. Financing under Erasmus+ programme will be doubled and a mobility pilot scheme for students and teachers in the area of vocational education and training will be set up in close cooperation with all stakeholders, including the European Education Foundation.

4. **Increasing connectivity** – Increasing transport and energy connections will allow for increasing competitiveness, economic growth and safety of supply, and at the same time will be an important precondition for economic integration with countries of Southeast Europe. The Commission will work on ensuring more efficient use of the Connecting Europe Facility in Southeast Europe countries.
5. **Launching a Digital Agenda for the Western Balkan** – Through implementation of the Digital Agenda the price of roaming will be reduced. Support will be provided to the introduction of broadband internet in countries of Southeast Europe. The Commission will provide support to capacity building in the area of industry security and digitalization in order to ensure that all sectors benefit from digital innovations.
6. **Supporting reconciliation and good neighbourly relations** – Good neighbourly relations should develop through regional cooperation

initiatives promoting education, culture, young people and sports. The extent and reach of the Regional Youth Cooperation Office will be extended. With increased financing under Erasmus+ programme, the Commission will continue to promote cultural linkage with the region. That will include work on the protection of cultural heritage of countries of Southeast Europe and promotion of their cultural and creative industries.

The objective of the initiatives is to encourage joint work on projects and reforms, exchange of knowledge and experiences, as well as strengthening activities of the European Union in WB6 countries. It is important not only to act from the level of EU institutions, but as much as possible to include the Member States themselves, which can significantly accelerate reforms in these candidate and potential candidate countries for EU membership with their knowledge and practical examples.

3. The European way of countries of Southeast Europe (WB6)

The process of gradual integration of countries of Southeast Europe commenced in 1999 with the Stabilisation and Association Process, which represents the strategic framework for accession to the Union, based on bilateral agreement relations, financial assistance, regional cooperation, political dialogue, as well as trade relations. The Stabilisation and Association Process represents the backbone for strengthening the capacity of countries for adoption of European standards and the EU acquis, whose manners of implementation and process elements were formulated in Zagreb in 2000⁴ and in Thessaloniki in 2003⁵. By signing the Stabilisation and Association Agreement (SAA), the signatory country covered by the Process of Stabilisation and Association is given the status of an Associate Member and the status of a potential candidate for EU membership. An important element of the agreements is its focus on regional cooperation which obliges the signatory country to sign bilateral agreements with other countries undergoing the Stabilisation and Association Process and candidate countries, whose objective is encouraging countries in

⁴ <<http://www.esiweb.org/pdf/bridges/bosnia/ZagrebSummit24Nov2000.pdf>>.

⁵ <http://europa.eu/rapid/press-release_PRES-03-163_en.htm>.

the region to cooperate in a series of areas, including criminal prosecution of war crimes, solving border disputes, the refugee issue and fight against organized crime. The Agreement itself enters into force upon ratification by all signatory parties.

In order to acquire the status of a candidate country for EU membership, countries must prove that they respect the basic values set out in Article 2 of the *Treaty on the Functioning of the European Union*⁶, specifically: respecting human dignity, freedom, democracy, equality and rule of law, fundamental freedoms including minority rights, as well as a pluralistic society, non-discrimination, tolerance, justice, solidarity and gender equality.

Table 1: Overview of the status of the process of accession to the EU as per countries (status on 28 February 2019)

COUNTRY	APPLICATION FOR MEMBERSHIP	ENTERING INTO FORCE OF SAA	CANDIDATE STATUS AWARDED	NUMBER OF OPEN CHAPTERS	NUMBER OF CLOSED CHAPTERS
Serbia	19th December 2009	1st September 2013	1th March 2012	16	2
Montenegro	15th December 2009	1st May 2010	17th December 2010	32	3
Macedonia	26th February 2004	1st April 2004	16th December 2005	/	/
Albania	24th April 2009	1st April 2009	27th June 2014	/	/
Bosnia and Herzegovina	15th February 2016	1st June 2015	Potential candidate	/	/
Kosovo	/	1st April 2016	Potential candidate	/	/

Source: Elaborated by the author

Montenegro submitted its application for EU membership on 15th December 2008. The SAA entered into force on 1st May 2010, whereas the Council awarded Montenegro the status of a candidate country on 17th December 2010. On 12th October 2010 the Commission proposed the opening of accession negotiations, which was accepted by the Council on 29th June 2012. By now 32 out of 35 negotiation chapters have been opened, whereas three have been temporarily closed (science and research, education and

⁶ Treaty on the Functioning of the European Union, Article 2. Document available at: <<http://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A12016ME%2FTXT>>.

culture and foreign relations). The 12th meeting of the Accession Conference with Montenegro at ministerial level took place on 10 December 2018. The conference opened negotiations on Chapter 27 - Environment and climate change.⁷

Serbia submitted its application for accession to the EU on 19th December 2009, and on 12th October 2011 the Commission proposed that Serbia be awarded the status of a candidate country, which the Council awarded after the agreement between Beograd and Priština on regional representation of Kosovo, whereby Serbia became a candidate country. The SAA entered into force on 1st September 2013, whereas accession negotiations were opened on 21st January 2014. By now 16 out of 35 negotiation chapters have been opened, and two have been temporarily closed (science and research, education and culture). The 9th meeting of the Accession Conference with Serbia at ministerial level took place on 10 December 2018. The conference opened negotiations on Chapter 17 - Economic and monetary policy and Chapter 18 – Statistics⁸.

Macedonia submitted its application for accession to the EU on 26th February 2004, thereby prior to all countries of Southeast Europe. The SAA entered into force on 1st April 2004, and on 16th December 2005 the Council awarded to Macedonia the status of a candidate country. By 2015 The European Commission proposed opening of accession negotiations six times, however, considering that the Council requires approval of all Member States, commencement of negotiations was blocked because of an unsolved bilateral dispute with Greece regarding the name of Macedonia. On 1 July 2015 the Pržin Agreement was concluded, which has been partly implemented, based on which progress in carrying out urgent reform measures has been made.

On 25th January Greek parliament ratified the Prespa Agreement⁹ to end a nearly three decade-long dispute over neighboring Macedonia's name, in a landmark vote that will see the small country renamed North Macedonia and clear its path to NATO membership. On 6th February North Macedonia has signed up to become NATO's latest member. The signature of the NATO accession pact does not mark the end of the journey just yet. The enlargement

⁷ <<https://www.consilium.europa.eu/en/policies/enlargement/montenegro/>>.

⁸ <<https://www.consilium.europa.eu/en/policies/enlargement/serbia/>>.

⁹ Full text of Prespa agreement is available on web page: <<https://greece.greekreporter.com/files/symfwnia-aggliko-keimeno.pdf>>.

of the alliance now has to be ratified by the national parliaments of the 29 NATO member states. The timeline for this process will largely be driven by the time required for national ratification procedures in the national parliaments. In case of Montenegro, which joined NATO as its 29th member last year in July, the signature of the accession protocol and its admission took about one year.

Albania submitted its application for EU membership on 24th April 2009. The SAA entered into force on 1st April 2009. Albania had to achieve the required degree of conformity with criteria for membership according to the Commission's opinion, and the proposal for awarding the status of a candidate country was conditioned by a judicial system reform, fight against corruption, as well as organized crime, and on 27 June 2014 the European Council awarded Albania the status of a candidate country upon the Commission's proposal. The Stabilisation and Association Council (SA Council) between Albania and the European Union held its 10th meeting on 14 November 2018 in Brussels. The SA Council positively noted the European Commission's 2018 Albania Report, which recommended that accession negotiations be opened with Albania, in light of the progress achieved, maintaining and deepening the current reform momentum. The EU reiterated that constructive cross-party political dialogue and cooperation in the Assembly of Albania is essential for further progress on reforms and for the overall sustainability of the engagement in the EU integration process. They also reiterated the critical need for Albania to maintain and deepen the current reform momentum, to further consolidate progress made on judicial reform in particular through the vetting process, and to deliver further tangible results in the fight against corruption at all levels and in the fight against organised crime, in particular on the cultivation and trafficking of drugs, building on the positive results in the fight against cannabis cultivation that have continued throughout the current crop season. The SA Council also commended Albania's continuous participation in regional initiatives and structures in South Eastern Europe and its good neighbourly relations and constructive regional stance.¹⁰

Bosnia and Herzegovina submitted its application for accession to the EU on 15th February 2016, whereas the SAA entered into force on 1st June 2015, thereby eight months earlier. By adopting the reform plan, which put emphasis on solving the problem of the difficult socioeconomic condition

¹⁰ <<https://www.consilium.europa.eu/en/policies/enlargement/albania/>>.

in the country, implementation of the rule of law and public administration reform in July 2015, the way to the EU was established. Answers to a survey questionnaire delivered in February 2016 were submitted on 28th February 2018. The European Commission posed additional 106 questions which the B&H authorities still didn't submit. The contents of the survey questionnaire should serve as the basis for bringing a decision on awarding the status of a candidate country for accession to the EU. After B&H delivers its answers to the Questionnaire, the European Commission will bring an opinion (avis) on its preparedness for acceptance and fulfilment of conditions for membership, which can be positive or negative. Based on European Commission's opinion, the European Council approves the status of a candidate country to the applicant country.¹¹ On 13th of February 2019 European parliament voted on 2018 Commission report¹² on Bosnia and Herzegovina. They reiterated that the authorities in B&H needs to proceed with constitutional, political and electoral reforms, to advance the EU integration process. Finally highlight that BiH's EU membership application represents a strategic choice and a commitment, to advancing towards the EU

Kosovo has not yet submitted its application for accession to the EU. The SAA entered into force on 1st April 2016, which makes it the first contractual relation between the EU and Kosovo. Implementation of the mentioned agreement, which is necessary for strengthening of the rule of law and implementation of economic reforms, is awaited. Reforms relating to the rule of law have been carried out, and in May 2015 the Commission brought a proposal to transfer Kosovo to the list of countries with visa-free regime in the Schengen area. With regard to normalization of relations with Serbia, negotiations between Belgrade and Priština are underway, and integration of Kosovo, as well as Serbia in the EU depends precisely on those negotiations. Four high-level official meetings were held with the presence of Commissioner Federica Mogherini in July, August and September 2017, and in March 2018. Presidents Thaçi i Vučić agreed to work on a new phase of dialogues with the aim of comprehensive normalization of relations between Kosovo and Serbia. This is currently underway and all activities need to be accelerated. Meetings

¹¹ Ivana Maletić – Vinko Kandžija, "The accession process and IPA funds in Bosnia and Herzegovina – an opportunity for restructuring public spending and convergence towards the EU", *Zbornik radova Ekonomskog fakulteta Sveučilišta u Mostaru*, 2017, pp. 238-267.

¹² This interim report covers the period from October 2016 to February 2018.

on the technical level have continued in the second half of this year. The 6th EU-Kosovo Stabilisation and Association Parliamentary Committee (SAPC) held its meeting in Strasbourg on 14 February 2019, where they reiterated that progress in the process of normalisation of relations between Kosovo and Serbia was necessary and that Kosovo had fulfilled all of its obligations and that decisions by respective EU institutions should be taken without delay. Five EU Member States (Spain, Cyprus, Greece, Romania and Slovakia) still do not recognize Kosovo as an independent country, which makes Kosovo's position for acquiring the status of a candidate country for EU membership and commencement of negotiations more difficult.

4. Overview of recommendations to and progress of Bosnia and Herzegovina from the Progress Report

The Progress Report¹³ represents the Commission's official document in which the state of play in each candidate country and potential candidate country is evaluated in detail on an annual basis, and instructions on reform priorities are provided. It represents a sort of guide for each candidate country or potential candidate country, showing the direction which needs to be followed in order to fulfill conditions and criteria required for membership in the EU as best as possible. Reports for 2017, which the European Commission presented on 17th April 2018 and based on which the European Parliament drew up its reports and brought resolutions regarding each particular country of Southeast Europe are currently actual, and the focus is on issues relating to the the judicial system, rule of law, protection of human rights and rights of national minorities, fight against corruption and organized crime, public administration reform, fight against terrorism, regional cooperation, macroeconomic development, as well as infrastructure development.

4.1 Democracy and rule of law

Reforms including the need for improvement of the functioning of democratic institutions, strengthening ministries and agencies on state level were postponed in B&H due to significant differences within state institutions,

¹³ Progress reports by each of WB6 countries can be found at: <https://ec.europa.eu/neighbourhood-enlargement/countries/package_en>.

the central state and entities. Better and more systematic coordination of legislative programmes needs to be ensured between all levels of government. Distrust in the transfer of any kind of competence from entities or cantons to the central state is a significant obstacle to a comprehensive and sustainable reform of institutions and the constitutional order.

In Progress Reports it is continuously pointed out that the constitutional order does not allow for fast decision-making and is slowing down implementation of reforms. The problem is inadequate coordination with regard to legislative plans between the state parliament and entity parliaments, as well as non-existence of a consensus on the transfer of competences from the entities to the state.

Complicated decision-making procedures, problems with lack of capacities, lack of political will and different national interests in the Parliaments at state and entity levels are continuously slowing down and stopping adoption of laws and advancement of B&H, which is repeated in all Commission reports.

It has been established that lack of coordination, national tensions, inability of achieving consensus among political parties and a lack of resources are postponing the required constitutional reforms, and conducting policy is still fragmented.

Reforms are being postponed due to different standpoints and interests between entities, inadequate resources and a lack of political dialogue. There is no joint vision of political leaders on the general direction of the movement of the state.

It is necessary to solve the issue of expensive and complex governance structure and overlapping between the Federation, cantons and municipalities.

No progress has been made in harmonization with the rulings of the European Court of Human Rights in the court case of *Sejdići-Finci*.

With the last report from 2017 it was finally established that the Council of Ministers had adopted the coordination mechanism for the process of European integration, as well as the action plan for implementation of the Reform Agenda on central state level, which brought to adoption of reforms such as debt management, prevention of money laundering, customs policy and fight against organized crime. The need for adoption of a Strategic programme for harmonization of legal regulations with the EU *acquis* was pointed out. In

addition, it is necessary to draw up a strategic framework for establishment of cooperation between governments and civil society organizations.

The Election Law, which leaves room for violation of the constitutive principle of the Croats, which was evident in the recent final elections in which Bosniaks elected a Croatian representative as a member of the Presidency of Bosnia and Herzegovina, is a significant problem.

4.2 Public administration

In the very first report from 2005, public administration reform was identified as one of the most important reforms. Constant political involvement disables advancement and employment of officials based on knowledge and quality. Depolitization of institutions and increasing the efficiency of public administration is necessary. In an attempt to solve these issues, analyses in seven key public administration sectors were carried out already in 2005: police, judicial sector, education, healthcare, agriculture, environment and return of refugees. In March 2005 a systematic analysis of the entire public administration was carried out, including a review of horizontal functions such as human resources, public finance, drawing up of laws, administrative procedures, information technology and institutional communication. These analyses resulted in detailed recommendations to authorities on how to improve public administration and make it faster, more flexible, more efficient, transparent and independent. In addition, in 2007 a Public Administration Reform Coordinator was appointed for a four-year term, and all governments adopted a joint platform for implementation of the Public Administration Reform Strategy (PAR) which defines responsibilities on the political level of coordination and implementation.

However, implementation of systematic reforms has failed. Year after year it is repeated in reports that governance structures of B&H are still massive, fragmented and prone to duplication and unclear division of competences, as between institutions on the same level, so also vertically between different levels of government. No progress has been made in the direction of development of an expert and depoliticized civil service, and no improvements have been made in employment procedures in order to ensure application of objective employment criteria based on knowledge and quality.

The Public Administration Reform Coordinator's Office (PARCO) carries out coordination tasks, but on the technical level of coordination of different

assistance instruments. PARCO's monitoring capacity is continuously weak due to a lack of adequate effect indicators for measuring progress in the realization of objectives set in the Public Administration Reform Strategy.

For the whole time this reform in B&H is lacking necessary political support. The European Commission points out that civil service capacities are weak with regard to harmonization with the EU *acquis* and implementation of commitments arising from the Interim Agreement and Stabilisation and Association Agreement. It is necessary to strengthen administrative structures in the country in order to efficiently respond to requirements for the process of accession to the EU. In a report from 2015 it is stated that the continued lack of comprehensive political support for reforms in the entire country and fragmentation of public services are endangering efforts to implement institutional and legislative reforms.

Lack of mid-term policy planning for the entire country represents a serious obstacle for development, but also for public supervision of the operation of governments. Government reports available to the public do not provide information allowing for comparison of what has been achieved with specific policy objectives. B&H does not have a comprehensive public administration reform strategy because the last one expired in 2014. There has been no progress in the preparation of a new strategy, mostly because of the lack of wider political support and strategic guidelines.

In the last report from 2016¹⁴ the Commission warned that B&H regressed with regard to amendment of the legal framework for civil service in the Federation and that politicization and instability of the public sector increased. Once again, for the *n*th time, the Commission requests activation of political support for implementation of a comprehensive public administration reform. An agreement upon approach to policy making and coordination is urgently required. Certain elements of policy creation and drawing up regulations in an inclusive way and based on evidence have been introduced, but the quality of policy and legislative proposals needs to be additionally improved. Public consultations are defined by law, but are still not being implemented completely.

¹⁴ Full progress report for B&H from 2016 available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_bosnia_and_herzegovina.pdf>.

Without a quality arranged, fast and efficient public administration, clearly defined objectives based on joint work and cooperation not only between different levels of government but also all segments of society, the realization of B&Hs accession to the EU will not be possible.

4.3 Judicial system

In the reports the problem of inefficient operation of courts is pointed out, especially due to the existence of four parallel and separate jurisdictions (State, Serb Republic, Federation and Brčko District). Lack of financial resources required for the operation of the overall judicial system is pointed out. The need for reform of the judicial system is repeated year after year. Reform strategies are being brought, but implementation of measures is continually lacking. As of 2008 the Commission has been requesting establishment of a Supreme Court which would be able to harmonize the application of laws between four internal court jurisdictions because fragmentation of the judicial system and differences in legal frameworks, as well as the lack of a single budget are completely impairing the quality and efficiency of the operation of the judicial system.

Lack of political will and corresponding planning, insufficient distribution of human and financial resources, as well as poor coordination between competent institutions are making implementation of the Judicial Reform Strategy difficult. Progress has been made by enhancing the information system, and a digital approach to court cases is used in most courts. Better informatization has also led to acceleration, and the number of unsolved cases is reducing, but is still very high.

In the report from 2012¹⁵ it was stated that a new HandbookRulebook on Temporal Benchmarks for the operation of judges, expert associates and other employees at B&H courts, which has been significantly improved in relation to the preceding one has been adopted, whereby further steps have been taken for reducing the number of unsolved cases. The Handbook entered into force on 4th June 2012, and the last amendment was made in December 2015. In the following year the Commission stated that a proposal has been made for a Law on the Courts, planning the establishment of a State-level Appellate

¹⁵ Full progress report for B&H from 2012 available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf>.

Court separated from the court of first instance, in line with recommendations of the European Commission and the Venice Commission of the Council of Europe. A positive step was taken with the introduction of a single human resources management system, whereby the efficiency of the judicial system in the procedure of appointment, planning and management of human resources has been strengthened. The judicial system infrastructure in the country has been improved. Thereby the Commission stated that in 2012 and 2013, unlike in the preceding years, partial progress in the improvement of the operation of the judicial system has been made.

In the report from 2015, the Commission still points out that because of the lack of a Supreme Court on state level harmonization of court practices between different levels of the judicial system is not ensured. It is pointed out that B&H must strengthen the mechanisms of responsibility and integrity, as well as modernize the education of judges and ensure complete access to court decisions.

In March 2017 the Council of Ministers adopted an action plan for state-wide judicial sector reform strategy for the period 2014-2018, with new, adapted implementation deadlines.

In the report from 2018 it is stated that the blueprint of the Law on Bosnia and Herzegovina Courts should be finalized under the leadership of the Ministry of Justice of Bosnia and Herzegovina, in line with penal jurisdiction standards as defined by the Treaty of the Functioning of the European Union. The adoption of this law is needed to reinforce legal certainty and functioning of the judiciary, notably in the fight against serious crime.

Independence of courts and autonomy of prosecutors need to be further strengthened. Politically motivated threats addressed to courts and prosecutors must be detected in time and acted upon appropriately. The constitutional and legal framework with regard to protection of independence, impartiality and autonomy of judges and prosecutors is still weak.

4.4 Anti-corruption policy

In the first Progress Report from back in 2005, the need for harmonization of penal codes including chapters dealing with corruption, sanctions against corruption and measures for promotion of responsibility was established, and bringing of a strategy for fight against corruption and implementation of concrete measures requested. The first Strategy for fight against organized

crime and corruption was adopted for the period 2006-2009, however, there have been no positive movements. Bringing of the Law on Conflict of Interest, Law on Public Procurement and Law on Value Added Tax was positive, however, anti-corruption legislation is not completely harmonized in the entire country.

The Commission is continually warning about the lack of concrete measures and a high level of corruption which is present on all levels of government as well as in the public and private sectors. Progress has been very slow the whole time, and adoption of a new Strategy for Fight Against Corruption for the period 2009-2014 and the accompanying Action Plan should have initiated significant changes and concrete implementation. Regardless of the new strategy, measures for fight against corruption are still not being adequately carried out. Corruption has a significant negative impact on all areas of life, economic development and the rule of law. Investors have no trust, and entrepreneurs are giving up expanding their businesses or undertaking new ventures. The Commission is continuously calling for implementation of the Strategy and the Action Plan.

During 2014 key laws relating to financing political parties, conflict of interests and approach to information were changed in the way that standards lower than preceding ones are applied, and therefore instead of a step ahead there has been regression. The Commission is warning about the lack of political will for a shift from words to actions, initiating efficient investigations and bringing convictions in highly-ranked cases. Corruption still prevails in many areas in B&H and represents a serious problem and an obstacle to progress, growth and development.

4.5 Respecting and protecting human rights and rights of national minorities

In this area, as in the area of fight against corruption, there has been no significant progress as of 2005. Implementation of laws and respecting and protecting human rights and rights of national minorities are insufficient, inter alia, because minority languages are not used in the administration, courts and education system.

The problem of no progress having been made in the reform of the Constitution of B&H is pointed out, and minorities are still excluded from the Federation House of Peoples and the Presidency. It is proposed that all three

nations be included in bringing better and more efficient laws regarding the protection of human rights. The Constitution contains most of the principles from human rights conventions and guarantees that they will be above domestic legislation. In a number of cases decisions of the Commission for Human Rights of the Constitutional Court of B&H were not properly implemented. This resulted in submission of complaints to the European Court of Human Rights. Implementation of Commission for Human Rights decisions is slow, especially because of entity governments' avoidance of compensating victims. Decisions of the Commission for Human Rights of the Constitutional Court of B&H have not been properly implemented in a large number of cases. Application of decisions relating to amendments to laws and other provisions is extremely slow because it requires coordination between different institutions.

Establishment of a National Minority Council on state level which has become operational represented a positive step ahead. The Commission is continuously recommending that implementation of the existing laws on national minorities should be further improved on the state and entity level, and that increased involvement of minorities in the Federation House of Peoples and the Presidency is necessary. With regard to political participation of national minorities, amendments to the Election Law from 2008 allowed national minorities to have their own list of representatives. Certain progress in the area of minority rights, cultural rights and protection of minorities has been made, but they are still underrepresented in political life.

In the area of gender equality progress in the harmonization of entity and cantonal laws with the Law on Gender Equality is slow. In spite of increased financing, administrative capacities for ensuring gender equality on the state and entity/cantonal levels are still weak. This is preventing adequate monitoring and implementation of the Law on Gender Equality and the Gender Action Plan.

National minorities are still excluded from the state House of Peoples and the Presidency because they do not belong to the three constituent nations. No progress has been made in the implementation of the European Charter for Regional or Minority Languages. The legal and institutional framework for respecting human rights has been established, and the basic elements of international regulations on human rights have been incorporated in the legal system.

The National Strategy for Civil Society Development is in preparation, and the procedure for consultations with the civil society during the drawing up of legal regulations has been established, but is not being fully implemented. The legal framework for protection of minorities was mostly established by 2013, but practice and non-implementation are a problem. Numerous activities aimed at promotion of human rights, such as trainings for judges, prosecutors, prison guards and police officers have been undertaken.

Constitutional and legal guarantees regarding the freedom of opinion, conscience and religious confession are mostly respected. Cases of discrimination on a religious basis are still being reported. Incidents concerning religious symbols, religious officials, believers and the property of religious institutions have been recorded.

In the last report for 2016 it is stated that during the reporting period certain progress was made in solving recommendations from preceding periods, especially in view of minority issues. Efforts in adoption of relevant amendments to anti-discrimination laws are visible. It is stated that it is necessary to significantly improve the strategic, legal and institutional framework, as well as policies for respecting human rights. The provision regarding the death penalty has not yet been abolished in the Constitution of the Serb Republic. As of September 2015, the European Court of Human Rights identified at least one violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in three cases concerning the right to freedom, safety and non-discrimination. The decision-making body received a total of 383 new cases, after which the total number of unsolved cases reached 1027. The remaining unsolved cases mostly concern return of tenancy rights, missing persons and discrimination based on ethnic origin.

In the latest B&H Progress Report from 2018 it is stated that the Constitution of B&H, represented by Annex 4 of the Dayton/Paris peace agreement, has established a complex institutional structure which is still inefficient and subject to different interpretations. The Constitution of Bosnia and Herzegovina is preventing citizens who do not declare themselves as Bosnians, Croatians or Serbs to run for the Presidency and the House of Peoples of the Parliamentary Assembly. No progress has been made in the implementation of rulings of the Court of B&H in the cases of Sejdić-Finci and Zornić. On 22nd December 2009 the European Court of Human Rights brought a verdict in the case of Sejdić-Finci based on a lawsuit by Derva Sejdić and Jakob Finci,

who were prevented from being elected for the Presidency and the House of Peoples of B&H as members of national minorities (Roma and Jewish) because of the fact that they did not belong under the constitutional category of a “Constituent Nation”. In the lawsuit they claimed that this prevention constituted racial discrimination and a violation of Article 14 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. In the verdict the Court stated that violation of the mentioned rights represents direct discrimination. On 30th November 2016 the Ministry of Justice delivered a proposal for an Action plan for implementation of rulings of the European Court of Human Rights to the Council of Ministers of B&H. The Council of Ministers of B&H has not yet implemented the decision¹⁶. For a long time the EU set the implementation of that ruling as one of the first conditions which B&H must fulfil in order to be able to submit a plausible application for membership, however, after a series of failed attempts to solve this issue, it has been postponed for a later phase of B&H’s accession to the EU. Equality of all three constituent nations, manifesting among other things in equal participation in all institutions and decision-making processes, is of the key importance for development of B&H based on European values.

Conclusion

Bosnia and Herzegovina’s progress towards EU membership is slow. The country is facing numerous problems, the most actual of which is the dispute concerning the Election Law and the *Sejdić-Finci* ruling which established that the Constitution of B&H is contrary to the provisions of the Convention on Protection of Human Rights and Fundamental Freedoms relating to election of members of national minorities to the House of Peoples and the Presidency. A reform of the election system is required.

The public administration reform is in an early phase, and adoption of a new strategic framework for the public administration and public finance management policy is necessary. The judicial system is also slow and subject to political influence and urgent bringing of an action plan for implementation

¹⁶ H46-6 Sejdić and Finci group v. Bosnia and Herzegovina (Application No. 27996/06), MINISTERS’ DEPUTIES, Notes on the Agenda, CM/Notes/1288/H46-6, 7 June 2017; <<https://rm.coe.int/168070e584>> (10 August 2022).

of the justice system reform is called for, particularly because of questionable independence.

Polarization and a negative socioeconomic position are affecting the creation and spreading of radicalism, especially among young people.

It is visible from all Progress Reports which the Commission has drawn up for B&H as of 2005 that political will and togetherness between the state and entity levels required to implement necessary changes are lacking. Thereby B&H is stagnating and standing still, which in the present time of fast changes and adaptations taking place in all countries represents a setback for B&H.

The objective is that B&H acquires the status of a candidate country by the end of 2018, however, it is facing a demanding, but not necessarily long way, and thorough reforms are required in order for B&H to completely transform into an efficient and functional country based on the rule of law which guarantees equality and democratic representation of all constituent peoples and citizens. The first step was made by delivering to the Commission a survey questionnaire containing 3242 questions on 28th February of this year, following which the Commission requested answers to additional 600 questions to be delivered within a deadline of 3 months, which relate to a great extent to political criteria. The content of the survey questionnaire serves as a basis for bringing the decision on awarding the status of a candidate country for accession to the EU.

The principles of federalism, decentralization and democratic representation, as well as implementation of efficient social and economic reforms must be the priorities on B&H's way to EU membership. The Enlargement Strategy is a clear message to political leaders in B&H that the speediness of accession depends upon them. It is extremely important for B&H to use this opportunity and solve the issues regarding the Constitution and the Election Law and focus on economic strengthening of the country in order for it to be able to keep its young talents, attract others and raise the standards of developedness and economic and social excellence in order to be able to successfully compete on the EU Single Market as a Member State.

POČETAK PREGOVORA I PRISUTNOST EU KAO OSNOVA STABILNA RASTA I RAZVOJA BOSNE I HERCEGOVINE

Sažetak

Za Bosnu i Hercegovinu, ali i Europску uniju važno je da proces pregovaranja započne što prije. Stvarne promjene u pravnome, administrativnome i političkome smislu počinju se događati tek ispunjavanjem mjerila za otvaranje i zatvaranje poglavlja. Pregovarački proces važan je i zbog učenja i sazrijevanja u shvaćanju europskih politika koje pomažu jačanju institucija države, demokracije, otvorenosti i rezultiraju snažnijim ekonomskim rastom zbog povećane razine povjerenja i sigurnosti. Za Europску uniju važno je da država u samome srcu Europe koja ne samo geografski nego povijesno, tradicionalno i kulturološki pripada Europi što prije i standardima koje primjenjuje bude njezin dio. U ovome radu dajemo pregled preporuka koje Europska komisija daje Bosni i Hercegovini još od 2002. godine te se upravo iz preporuka koje se godinama ponavljaju uočavaju najvažniji izazovi koje Bosna i Hercegovina treba riješiti. Vladavina prava, poštivanje ljudskih prava, prava manjina te konstitutivnosti triju naroda uz brzo i učinkovito pravosuđe i javni sektor u cjelini ključni su elementi ispunjavanja političkih, pravnih i administrativnih kriterija. Bosna i Hercegovina u ovome trenutku znatno zaostaje i za najslabije razvijenim državama članicama te je konvergencija prema EU prosjeku neophodna jer na sadašnjoj razini BiH ne bi mogla ravnopravno sudjelovati na jedinstvenome tržištu EU-a te bi pridruživanje stvorilo više prepreka nego prednosti. Od EU-a se očekuje aktivniji pristup u rješavanju izazova ekonomske konvergenije BiH te se zato u ovome radu daje analiza EU sredstava koja su dostupna BiH za gospodarsko jačanje u odnosu na izvore iz drugih država s različitim interesima na ovome području.

Ključne riječi: *proces pregovaranja; preporuke; mjerila; reforme; EU financiranje; investicije.*

