

LEGAL AND ECONOMIC ASPECTS OF INTEGRATION OF BOSNIA AND HERZEGOVINA IN THE EUROPEAN UNION

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ABSTRACT

The authors in this article primarily seek to clarify the functioning of the legal and economic factors for the future integration of Bosnia and Herzegovina into the European Union. Accordingly, under the conditions of modern market and technological change, it is difficult to imagine the integration process in the sense of globalization, without the more active role of developed countries to assist countries in transition on their European path. Thus, diplomacy has a major impact on economic and legal and political integration in the EU, and on the other hand, Bosnia and Herzegovina has a political, legal and economic interest in joining the EU, and has already started using EU funds according to programs, based on the Framework Agreement between the EU and Bosnia and Herzegovina. It is quite logical that the EU funds are invested with intention to create a competitive B&H economy for the EU Single Market (internal market). However, economic co-operation is only the “first pillar” of the European integration process.

A big step forward, with regard to foreign-political cooperation and security, was achieved through the Maastricht Agreement, by introducing the “second pillar” within the European Union. So, it is quite logical to conclude that the Maastricht Agreement joined the security to the Foreign Policy, which then allowed Member States to actively and unreservedly support the realization of the “second pillar”.

The foreign policy and security of the EU member states cannot be at an adequate level if no internal security is established in each country. For this reason, it is very important to establish appropriate judicial cooperation and cooperation between the police, in the creation of a European judicial space, whose constituent part Bosnia and Herzegovina tend to be a part of. In this way, a “third pillar” of co-operation in the field of law and internal affairs is created.

Key words: *European Union, Bosnia and Herzegovina, economy, development funds, accession, enlargement*

1. INTRODUCTION

The authors point out to the fact that access to the European Union implies a contractual relationship that allows country with no membership to have certain rights which are, of course, only available to member states. From that point of view, it is clear that preparation for future membership acquires adoption of certain rules - standards, which will primarily help to be part of the internal single market, but also to assume other obligations arising from membership. Joining EU (European Union) a member gets rights to approach the "club of successful."¹ However, it is often forgotten that joining, and even more, the membership, means the fulfillment of the conditions and the assumption of obligations that result from that work. These obligations are of a legal, economic and political nature, as well as specific, created for each of the affiliated States individually, in accordance with their individual situations, and are part of an agenda that supports the success of legal, economic and political reforms and thus leads to more organized, more stable, predictable and more prosperous societies.² The state can and should strive for these standards without seeking to enter into full membership, but it is easier to have an ally on the reform path, whose technical and material help is a great support in making the necessary steps. In addition, the adoption of standards that lead to closer and more balanced relations with the European Union is easier if there is a prospect of participation in their formulation, and voting rights are something that can be possible by the membership.³

To access the European Union, de facto, there are two essential processes, namely: 1.) the accession process, on the basis of the Association Agreement (Stabilization and Association Agreement - SAA)⁴ and 2.) the negotiation process for EU access. The main objective of the SAA is to provide a framework for the process of harmonization of legal norms with the legal framework of the European Union, as well as a framework for their implementation. The process of negotiating of the access to European Union is a process in which a candidate country for accession to the European Union must reach an agreement with EU member states on the conditions of its accession to the Union. At present, this process is formalized in

¹ Kapetanović, A.; Latinović, Đ., *Bosna i Hercegovina od regionalnih integracija do Evropske unije*, Fondacija „Friedrich Ebert Stiftung“, Sarajevo, 2005, pp. 88-90

² Dedić, H., *Bosna i Hercegovina i Evropska unija: pretpostavke i dosezi integracije*, Bosanska riječ, Tuzla, 2015, pp. 146

³ Misita, N., *Osnovi prava Evropske unije*, Pravni fakultet Univerziteta u Sarajevu, Sarajevo, 2007, pp. 324

⁴ For the Central European and Eastern European countries, the agreement is called the Association Agreement, while for the countries of Southeast Europe - the Stabilization and Association Agreement - the SAA

35 chapters.⁵ The above-mentioned two processes are acquired at one point, but should be considered separately because they are based on different legal bases that deal with different tasks.

In accordance with the aforementioned, the authors in the article stress the determination of the real possibility of Bosnia and Herzegovina for joining the European Union and present the aggravating circumstances that contribute to the impossibility of harmonizing the Bosnian-Herzegovinian legal order with the European Union law. In the second part, it presents the path of Bosnia and Herzegovina to the European Union, detailing the legal and economic aspects of the full integration of Bosnia and Herzegovina into the European Union. In the next part of the paper, the authors emphasize the presentation of the perspective of full membership of Bosnia and Herzegovina in the European Union. Thus, the article itself seeks to present the current position of Bosnia and Herzegovina on its way to the EU.

2. BOSNIA AND HERZEGOVINA IN THE EUROPEAN UNION: STATUS QUO

In 1997, the European Union had established legal, economic and political conditions for the development of bilateral relations with Bosnia and Herzegovina. Accordingly, Bosnia and Herzegovina have been given the option of using autonomous trade preferences. In the coming years, relationship of these two entities, can be called successful. Subsequently, Bosnia and Herzegovina started the process of stabilization and association, activities under the Stability Pact for South Eastern Europe were launched, with the primary goal being the stabilization and strengthening of regional cooperation. The EU Road Map for the B&H membership application to the European Union from the March 2000 defined 18 essential steps for Bosnia and Herzegovina.⁶ Furthermore, the Feasibility Study for the start of Stabilization and Association Agreement negotiations has been initiated, which has, in the end, been successfully implemented. During the year 2000, the duty-free access of the products from B&H to the EU, Autonomous Trade Measure, was introduced. Following this, the European Partnerships were adopted in the planned sequence, namely: 1.) The Stabilization and Association Agreement (SAA) was signed and ratified by the Presidency of Bosnia and Herzegovina on 6

⁵ Countries that have been admitted to the EU until 2008 have been negotiating within 31 chapters, while 35 chapters were introduced after that period, respectively, for Croatia, Turkey, later Island, Montenegro, Bosnia and Herzegovina and Serbia

⁶ Chronology of relations between Bosnia and Herzegovina and the European Union. Directorate for European Integration of Bosnia and Herzegovina. [http://www.dei.gov.ba/dei/bih_eu/default.aspx?Id=9808&langTag=bs-BA] Accessed 11.02.2019

November 2008 and subsequently ratified by all EU Member States and 2.) The Temporary Trade Agreement entered into force on 1 July 2008, and on the basis of that Agreement, joint bodies of the European Union and Bosnia and Herzegovina were established.⁷

Of course, Professor Meškić emphasizes that the Agreement was concluded as a so-called “The Mixed Agreement”, ie the ratification of the European Union, as well as of each Member State, the European Parliament and the potential member states, is necessary.⁸ Essentially, the EU ratification process implies, according to Art. 218 § 6 and 8 of the UFEU Parliament’s consent as well as the unanimous decision of the Council. Immediately after the signing of the SAA, the Interim Agreement on Stabilization and Association entered into force, which contains the most important obligations of the SAA itself and serves as a legal framework for the preparation of potential candidates for the entry into force of the SAA.⁹

Consequently, following high-level negotiation on the accession process of Bosnia and Herzegovina to the European Union, the EU Road Map of Bosnia and Herzegovina’s application for membership of the European Union¹⁰, Bosnia and Herzegovina has set the basic requirements as preconditions for the entry into force of the Stabilization and Association Agreement (SAA), and after fulfilling these conditions, Bosnia and Herzegovina can submit a credible request for membership in the European Union. It is certain that Bosnia and Herzegovina have shown political immaturity and misunderstanding, and has not fulfilled all the required

⁷ It is about the following joint bodies - the Interim Committee and the seven sub-committees for European integration: a.) For the internal market and competition; b.) for agriculture and fisheries; c.) for economic and financial issues and statistics; d.) Subdivision for transport, energy, environment and regional cooperation; e.) support for justice and internal affairs; f) for economic issues and external cooperation and g) for economic and legal issues

⁸ Meškić, Z., *Osnivanje Vrhovnog suda Bosne i Hercegovine kao uslov za članstvo u Evropskoj uniji*, Fondacija Centar za javno pravo, Sarajevo, 2011, pp. 109-141

⁹ Haratsch, A.; Koenig, M., *Europarecht*, Tübingen, 2010, pp. 245

¹⁰ The requirements of the EU Road Map for Bosnia and Herzegovina’s application for membership in the European Union during 2012 are: 1. to submit a proposal to the Parliamentary Assembly of Bosnia and Herzegovina to amend the Constitution of Bosnia and Herzegovina on harmonization of internal legislation with a court decision in the case of Sejdić and Finci vs Bosnia and Herzegovina “; 2.) to hold a meeting of the European Commission in Bosnia and Herzegovina, which will provide a mid-term review of the implementation of the “EU Road Maps for Bosnia and Herzegovina’s Membership in the European Union”; 3.) holding local elections in Bosnia and Herzegovina; 4.) The European Commission should adopt an annual progress report on Bosnia and Herzegovina; 5.) answers to the two sectoral issues lists (chapters 5 and 27) will be provided, and an effective mechanism for coordination with EU issues will be defined; 6.) by the end of 2012, to amend the Constitution of Bosnia and Herzegovina with a view to be aligned with the court decision in the case “Sejdić and Finci vs Bosnia and Herzegovina” - which until today has not been done

obligations, and until 2019 hasn't solved two problems, and the solution is not to be seen in the near future.

The main feature of the SAA's content is its post-modernity, which is constituted and maintained in time-scale obligations that Bosnia and Herzegovina need to make in its preparations for EU membership. Postponement begins with the very signing of the SAA, so that shortly after the signing of the Interim SAA enters into force with the most basic obligations of the SAA itself, and certain parts of the SAA become effective, although the agreement has not passed the ratification process and its content did not fully come into force. Namely, the entry into force of the SAA seems to be delayed, as Bosnia and Herzegovina have not fulfilled its obligations under the Interim SAA, which is a step ahead. It is a violation of Article 1 of the Provisional SAA - the non-implementation of Sejdić - Finci's decision and the violation of Article 36 of the Provisional SAA without the adoption of the State Aid Act.¹¹

The first condition, linked to the Stabilization and Association Agreement (SAA), referred to the implementation of the decision of the Human Rights Court in Strasbourg in the case of "*Sejdić and Finci v Bosnia and Herzegovina*" and the other on the *establishment of an effective co-ordination mechanism*. These are the requirements of the European Union *conditio sine qua non*.

In the "*Sejdić and Finci vs B&H*"¹² verdict, the European Court of Human Rights in Strasbourg stated that Bosnia and Herzegovina violated Article 14 of the Convention on Human Rights and Fundamental Freedoms; Article 3 of Protocol No. 1 to that Convention on the inability of the plaintiff to run for elections to the House of Peoples of Bosnia and Herzegovina; as well as Article 1 of Protocol No. 12 because of the inability of the plaintiff to run for election to the Presidency of Bosnia and Herzegovina. Regardless of the above-mentioned judgment, being a member of the Council of Europe in 2002, Bosnia and Herzegovina committed itself to respect "*European standards*". Accordingly, Bosnia and Herzegovina undertook that within a year, with the assistance of the European Commission for Democracy through Law (Venice Commission¹³) to align the Election Law of Bosnia and Herzegovina from 2001 (which until today is not done) with the

¹¹ Kulenović, N.; Hadžialić – Bubalo, I.; Korajlić, M., *Presuda Sejdić i Finci protiv Bosne i Hercegovine: Konkretno posljedice prvi pregled*, Sveske za javno pravo, 1-2/2010, pp.18

¹² Sejdić and Finci vs Bosnia and Herzegovina, Applications no. 27996/06 and 34836/06 of 22 December 2009, [http://www.mhrr.gov.ba/ured_zastupnika/novosti/default.aspx?id=1008&langTag=bs-BA] Accessed 12.02.2019

¹³ The Venice Commission (full name European Commission for Democracy through Law) is an advisory body of the European Council, an international association, comprising a total of 47 European countries. This international legal body primarily deals with constitutional and electoral issues and generally with the action and engagement of democratic institutions

Council of Europe standards. In addition, by ratifying the 2008 Stabilization and Association Agreement with Bosnia and Herzegovina, Bosnia and Herzegovina has committed to amend the provisions of the Election Law on the Election of Presidency Members and Delegates to the House of Peoples of B&H for a period of one to two years. The verdict, however, opened Pandora's box. The first condition is still an "impossible mission" because even after ten (10) years it has not been implemented in the verdict "*Sejdić and Finci vs Bosnia and Herzegovina*".

The second requirement from the EU Road Map of Bosnia and Herzegovina's application for membership of the European Union, is the establishment of an effective coordination mechanism. This mechanism must enable Bosnia and Herzegovina to speak with one voice in relations with the European Union, especially at the time of the takeover of the *acquis communautaire* (*acquis communautaire*).¹⁴ By analyzing the provisions of all thirteen (13) constitutions in Bosnia and Herzegovina and the Statute of the Brčko District, however, it comes to the conclusion that these relations understand the direct involvement of the state, but also the entities and the cantons (in accordance with their respective competencies). The key problem in the implementation of this condition, is that all political fractions in Bosnia and Herzegovina consider that within the state, they need to control and coordinate the whole process, forgetting that, in accordance to the provisions of the Constitution of the Federation of Bosnia and Herzegovina and the Republic of Srpska, every form of subordination or arbitrary coordination of the cantons of the Federation of Bosnia and Herzegovina, is in opposition to the existing constitutions and violates the already fragile trust that has been built for years in Bosnia and Herzegovina.¹⁵

3. BOSNIA AND HERZEGOVINA ON HER WAY TO THE EUROPEAN UNION

Bosnia and Herzegovina as a state has a specific structure of power. It is divided into two entities, ten cantons in the Federation of Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina. Foreign Policy and Internal Affairs in Bosnia and Herzegovina has a great influence on the High Representative appointed by the United Nations Security Council. Of course, a democratic society in Bosnia and Herzegovina can be created through several phases. In the first phase, the European Union should assume an advisory role in Bosnia and Herzegovina in accordance with the principles of its legal system and the creation of conditions for all three pillars to be achieved. Essentially, this would mean abolish-

¹⁴ Gromovs, J.; Vehar, P., *Priručnik za usklađivanje propisa Bosne i Hercegovine sa propisima EU*, East West Consulting, Sarajevo, 2012, pp. 80

¹⁵ *Ibid.*

ing the Office of the High Representative for Bosnia and Herzegovina. In the second phase, it is necessary to strengthen security in the country and introduce the rule of law with full autonomy of the judicial system in Bosnia and Herzegovina. In the third phase, the authorities should take full responsibility for the economic prosperity of the country while taking into account all the measures of internal and external security, to which the European Union fully insists.¹⁶

The primary objective of Bosnia and Herzegovina is full membership in the European Union. For this purpose, there is a general consensus among public and social entities within Bosnia and Herzegovina. So, the goal is achievable, but great efforts must be made to improve the economy of Bosnia and Herzegovina in order to improve the gross domestic product (GDP). Of course, according to data from gross domestic product in Bosnia and Herzegovina, there is a \$ 50 billion war damage, because the GDP per capita has fallen by 60% due to war.¹⁷ Disproportion in economic development is being corrected by the European Regional Development Fund by removing inequalities in the development and structural adjustment of the region, which, unfortunately, lags behind in the economic development as well as the transformation of industrial regions with a shrinking economic structure.¹⁸

Participation of Bosnia and Herzegovina in the process of stabilization and association assumed responsibility for meeting legal, economic and political stabilization commitments, through the process of gradual integration into the European Union with a view to gaining full membership. According to that, the European Union is beginning to realize these commitments by setting up special investment funds for Western Balkan countries. A positive assessment and recommendation from the European Commission on the start of negotiations followed the signing of the Stabilization and Association Agreement (SAA), and its implementation depends on fulfilling the conditions set by its authorities, primarily through full co-operation for pre-accession assistance. The conditions set for countries in transition are not simple, but they are possible and easily achievable with additional effort by using the European Union funds, which are offered according to prepared programs, with a view to accelerating affirmation and entering into full European Union membership.¹⁹

¹⁶ Bogunović, A., *Evropska unija – stanje i perspetive*, Ekonomski pregled, Vol. 57, No. 1-2, 2006, pp. 31-63

¹⁷ Džombić, I., *Ekonomska diplomatija Bosne i Hercegovine*, Univerzitet za poslovni inženjering i menadžment, Banja Luka, 2008, pp. 223

¹⁸ *Ibid.*

¹⁹ Derajić, S.; Hodžić, Dž.; Halilović, Z., *Bosna i Hercegovina na putu ka Evropskoj uniji*, Centar za sigurnosne studije Sarajevo, Sarajevo, 2007., pp. 145

3.1 Legal aspects of the integration of Bosnia and Herzegovina into the European Union

The European Union determines the application of community law in the Member States' territories. The scope of the founding treaties includes overseas territories in the case of some Member States and the "European territory" for which foreign trade relations are the responsibility of a Member State. In the event of a change of the borders of one of the Member States, the limit of application of Community law is automatically changed. Thus, Community law applies to relations related to the territory of the European Union, where the necessary link is established either by the place where the legal relationship is established, or by the place where they are enforced, or because of the close linkage between the law of a Member State and therefore of Community law. This means that Community law also applies to legal persons whose seat is outside the territory of a Member State if it carries on business in the Union territory in terms of bonding points.²⁰

In order to clarify the legal aspects of the integration of Bosnia and Herzegovina into the European Union, the authors in the article pay special attention to the deployment of the Supreme Court of Bosnia and Herzegovina, whose existence is a necessary obligation to the SAA. Thus, one of the provisions that came into force by the very signing of the SAA is the "harmonizing clause" of Article 70 of the SAA. The first paragraph of Article 70 of the SAA obliges Bosnia and Herzegovina to "ensure the gradual alignment of its existing and future legislation with the *acquis communautaire*. Bosnia and Herzegovina will ensure the proper implementation and application of existing and future legislation."²¹ It follows from the next paragraph that alignment will begin on the date of signing the Agreement, which means that this provision has long been valid in Bosnia and Herzegovina. Of course, the obligation deriving from the harmonizing clause of the SAA contained in Article 70 for Bosnia and Herzegovina means harmonization at two levels, namely: a. Harmonization of entity regulations with the purpose of creating the conditions and assumptions for the complete freedom of movement of goods, persons, services and capital in accordance with Article I / 4 of the Constitution of Bosnia and Herzegovina and b.) simultaneously harmonize this legislation with EU law in order to create the conditions for entering this new market.²²

Before signing the Maastricht Treaty, within the European Council, legal instruments of European judicial cooperation were established: protection of hu-

²⁰ Kasagić, R., *Pravo Evropske unije*, Ekonomski fakultet Banja Luka, Banja Luka, 2005, pp. 320

²¹ Popović, V., *Neki aspekti harmonizacije prava Republike Srpske sa Sporazumom o stabilizaciji i pridruživanju*, *Pravni život*, 7-8/2010, pp. 54

²² Meškić, *op. cit.* Note 8, pp. 133

man rights and fundamental freedoms, extradition, international recognition of judgments, fight against violence, transfer of criminal proceedings, international consequences loss of motor vehicle driving rights, the fight against terrorism, the transfer of convicted persons and minor offenses related to cultural treasure.²³ Thus, the legal system of the European Union is well-placed, and the same is provided for the free and happy life of citizens. It should be added that Community law (European Union law) allows Member States to exclude, in exceptional cases, from their obligations arising from the founding treaties. They can take unilateral measures when it comes to the vital interests of its security or in the event of a conflict of interest, in the face of the maintenance of the internal order and peace, in the event of a serious international crisis threatening or in order to fulfill the commitments taken to preserve peace and international security. In such cases, the State may deny information that would otherwise be required to undertake measures related to production and trade in weapons, ammunition and war materials and take other measures to protect the (internal) market.²⁴

When it comes to the legal aspects of Bosnia and Herzegovina's entry into the EU, it is important to note that the first obligation to harmonize entity regulations under Article I / 4 of the Constitution of Bosnia and Herzegovina implies, inter alia, the adoption of a whole set of private law regulations at the state level. However, the full realization of market freedom will again be facing the obstacle of the absence of a state judicial body that will ensure the uniform application of the so-called state laws passed on the entire territory of Bosnia and Herzegovina. Judicial protection of citizens' rights arising from state regulations such as the Consumer Protection Act and regulations whose adoption will take place at the level of Bosnia and Herzegovina again has the same importance as the adoption of these regulations.²⁵ In this case, the Constitutional Court of Bosnia and Herzegovina in its endeavors to provide such protection and at the same time remain within the limits of its jurisdiction directly relies on the practice of the EU Court of Justice in the area of EU market freedoms. The ECJ therefore emphasized that the general provision on market freedoms should be interpreted in accordance with the practice of the European Court of Justice, since the Constitution does not define in detail what this responsibility implies. This position of the Constitutional Court, established several years prior to the signing of the SAA, has early recognized that the harmonization of entity regulations with clause I / 4 of the Constitution, with regard to the political objective of Bosnia and Herzegovina for

²³ Gasmı, G., *Pravo i osnovi prava Evropske unije*, Univerzitet Singidunum Beograd, Beograd, 2011, pp. 243

²⁴ *Ibid.*

²⁵ Constitutional Court of BiH, 18. 02. 2000, U-5/98-II, Fig. sec. BiH no. 17/00, paragraph 29

EU membership, is directly related to further alignment with same clauses within EU law. Consequently, this position of the Constitutional Court makes the link between the first and the second obligations arising from the harmonization clause in accordance with Article 70 of the SAA.²⁶

In order for the European Union to be able to effectively implement its policies, the European Union's legal system must be unique and apply equally to the entire territory of the Union. That is why, at the time of entry into the Union, the state must have a legal system that is fully in line with EU law, as it applies in the same way as it is in the other Member States. Thus, the objective of legal alignment in the process of accession is to harmonize domestic law with the overall EU law, which is the ultimate goal of Bosnia and Herzegovina. Concrete obligations in the process of harmonization derive from the different, established phases of EU accession, which make the definite "*EU enlargement policy*". This policy of enlargement has three general conditions, which at different levels of joining the EU, must meet in different, each time in higher stage. These are the conditions that were defined and adopted at the European summits in Copenhagen in 1993 and in Madrid in 1995.²⁷

In addition to these general conditions, each state in the process is going through some necessary phases, in which the degree of convergence of the system (legal, economic and political) becomes more and more similar to the European Union, and mutual obligations with the European Union are created through signed agreements. Summarizing, the stages of state status in the process of European integration are the following: *obtaining a Feasibility Study, Negotiation and Signing of the Stabilization and Association Agreement (SAA), which represents a very close relationship between the associated country of the Union; submitting an official candidacy for membership to the Council of Ministers; sending the Commission's question to the state; State Response to Commission's question; Report of the Commission to the Council of Ministers on the readiness of the candidate country for status; obtaining candidate status by the European Council; the beginning of membership negotiations and, finally, the signing of the EU Accession Treaty, which sets the date on which the candidate country becomes a full member of the Union.*²⁸

Concrete obligations in the area of legal harmonization arise from the accession phase in which the state is in. The first obligations deriving from the international

²⁶ Constitutional Court of BiH, 25. 06. 2004, U-68/02, Fig. see. BiH no. 38/04, Item 41

²⁷ Ajanović, J.; Nuhodžić, L., *Strategija integriranja Bosne i Hercegovine u Evropsku uniju*, Direkcija za evropske integracije Bosne i Hercegovine – Vijeće ministara Bosne i Hercegovine, Sarajevo, 2006, pp. 89

²⁸ Fonten, P., *Evropa u 12 lekcija*, Delegacija EU, Beograd, 2011, pp. 45

treaty are the obligations from the SAA, which is the first comprehensive international treaty that the state is practically pursuing through integration. This agreement is complex and is related to many areas of rights and obligations between the candidates and the European Union (political regulations, regional cooperation, regulations on free flows of goods, mutual reduction of tariffs, capital flow, freedom of movement for workers and so on). Among others, for example, Chapter VI of the SAA (Bosnia and Herzegovina²⁹ and the EU) carries the title “*Harmonization of Regulations, Application of Rights and Competition Rules*”, which defines the obligations of harmonizing the legal system of Bosnia and Herzegovina with Community law “in all areas covered by the Agreement”, and further states that the harmonization will refer to the basic elements of the Union’s legal transactions in the areas of the internal market, justice, freedom and security in trade issues.³⁰

In the area of trade, harmonization obligations relate to: protection of competition, state aid, public companies, public procurement, standardization, methodology, accreditation, compatibility evaluation, protection of intellectual property, consumer protection and equal opportunities for employees. Harmonization of legislation in these areas aims to adjust the state system with internal market regime existing in the European Union, in order for the state system to be compatible with those in the European Union and to achieve the free trade zone predicted by this agreement. This agreement is the most important agreement signed by the state with the European Union and it “*opens the door*” to the further integration process.³¹ At the stage of the fulfillment of obligations under the SAA, therefore, it is necessary to strive for full alignment with the relevant EU legislation, if possible within the given legal framework, and if such harmonization would not cause major problems and costs of the administrative system at a given moment. Since the beginning of the implementation of the SAA and a certain time of success-

²⁹ The Stabilization and Association Agreement (SAA) entered into force on 01.06.2015. after the Presidency of Bosnia and Herzegovina and both Houses of the Parliamentary Assembly of BiH confirmed and adopted a Declaration on the commitment of the institutions of Bosnia and Herzegovina to implement the necessary reforms in the framework of the EU accession process, in line with the Conclusions of the EU External Relations Council. By signing and entering into force of the SAA, Bosnia and Herzegovina has a legal obligation to harmonize national legislation with the EU *acquis* (*acquis communautaire*). The SAA also provides for the promotion of economic relations between BiH and the EU, with the gradual development of a free trade zone between the two sides. The agreement is regulated (according to chapters): general principles; political dialogue; regional cooperation; free movement of goods, movement of workers, business settlement, provision of services, movement of capital; harmonization of laws, enforcement of laws and competition rules; justice, freedom and security; political cooperation; financial cooperation; institutional, general and final provisions

³⁰ Bosnia and Herzegovina in the Stabilization and Association Process, Ministry of Foreign Affairs, [http://www.mvp.gov.ba/vanjska_politika_bih/multilateralni_odnosi/evropska_unija/bih_i_eu/bih_u_procesu_stabilizacije_i_pridruzivanja/ ?] Accessed 14.02.2019

³¹ *Ibid.*

ful implementation, the next stage of integration of the state into the European Union is the submission of the candidacy of the state and obtaining status from the European Council.

This phase consists of sending a large number of questions from the Commission to a potential candidate country regarding the overall functioning of the state. The state answers these questions and sends them to the Commission (Bosnia and Herzegovina fulfilled this obligation in 2018), on the basis of which it gives an opinion on the readiness of the state to start membership negotiations. This phase, also calls for a general higher level of fulfillment of the Copenhagen criteria, and the Commission may address additional questions to the state or give a negative opinion (Bosnia and Herzegovina is waiting for an answers). If the opinion is positive, the European Council, by unanimous decision, accepts the request of the state to become a candidate and opens a new phase, namely membership negotiations.³²

The authors detail the position of the Constitutional Court in Decision U-68/02, which points to a very important aspect of alignment with EU law, which implies respect for the practice of the EU Court. This is first confirmed by Article 70 of the SAA, as the EU *acquis* is seen as a legal *acquis* by the EU as a source of EU law. Of course, even more direct on the importance of the case-law of the EU Court refers to Article 71 par. 2 of the SAA, which stipulates that any breach of the competition rules in the SAA will be assessed on the basis of criteria deriving from the competition rules applicable (ex) EEC, in particular on the (former) Articles 81, 82, 86 and 87 of the EEC Treaty and the instruments of interpretation adopted by the (former) Community. Here, it directly points to the meaning of these provisions, which the Commission or the Court of Justice gives its interpretation in appropriate proceedings. This provision has already shown impact on domestic legislation, where the Competition Law of Bosnia and Herzegovina in Article 43 provides that the Competition Council as the local authority responsible for the protection of competition in the first instance, “*in the assessment of the case, can use the practice of the European the Court of Justice and the decisions of the European Commission* “. ³³ Again, it is evident what significance the EU attaches to the protection of rights arising from the regulations adopted for the purpose of harmonization with EU law and the application of these regulations in accordance with the meaning they have in the EU. It can therefore be concluded that the provisions of the SAA provide a legal basis for concretizing the above-mentioned criteria that Bosnia and Herzegovina has to fulfill in order to become a member of the EU.

³² Mujagić, N., *Sedam minuta za BiH i evropske integracije*, Časopis Odjek, Vol. 1, No. 1, 2016, pp. 34-38

³³ *Ibid.*

Consequently, Article 70 of the SAA, prescribing the obligation to properly implement and apply existing and future legislation, expressly lays down the criterion on which, in its Annual Progress Reports on Bosnia and Herzegovina, the Commission criticizes the lack of a Supreme Court to provide a single legal application in the entire territory of Bosnia and Herzegovina.³⁴

Apart from the adoption of the law, the Commission as an inseparable part of legal adjustment observes its implementation, which must be satisfactory. The law, which is not applied or applied ineffectively, is treated as an unfulfilled obligation and an area that does not work. Efficient implementation of the law is a prerequisite for the Commission to give a positive assessment. In other words, community law must be fully incorporated in the domestic legal system and part of the internal law that is effectively implemented. On the day of entry of a candidate country into the EU, the EU legal system in that country has to function as a part of domestic law and as it does in other Member States. Unlike obligations deriving from the SAA, the process of full harmonization is much more demanding. It refers to the entire EU legal system and to all the regulations that are in force in the EU, which means that it applies to all areas within the jurisdiction of the EU. Harmonization is more demanding because at this stage, full compliance is being sought, which is strictly controlled by the Commission through negotiations. When the negotiations in 35 areas are successfully completed, the “Accession Treaty” is signed, defining the rights and obligations achieved in membership negotiations and determining the date when the candidate country becomes a member of the EU.³⁵

3.2 Economic aspects of the integration of Bosnia and Herzegovina into the European Union

When we talk about the economic aspects of Bosnia and Herzegovina’s integration into the European Union, the international economic situation is characterized by a concrete market where traditional and geographical constraints collapse. Due to the creation of new economic relations, especially new market relations, products and services are internationalized and emerge from national frameworks, resulting in the opening of national borders and the integration of the economic and political character of Bosnia and Herzegovina.³⁶ The common trade policy of the European Union is based on the unique principles of customs change, the

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Vukmirica, V.; Špirić, N., *Ekonomska i monetarna integracija Evrope*, Ekonomski fakultet u Banja Luci, Banja Luka, 2005, pp. 44

conclusion of customs and trade agreements, the equalization of export liberalization measures, as well as trade protection measures such as those to be introduced in the case of dumping and subsidies.³⁷ Thus, the single European market enables the gradual integration of the national markets of the Member States into a single market (which is the ultimate goal of Bosnia and Herzegovina), in which the same conditions will be imposed for taking all forms of economic activity for all market entities (regardless of their domicile) or national affiliation. The establishment and functioning of a single market depend on the realization of the freedom of movement of goods, labor, capital and services, respectively, the success in removing all prohibitions and barriers between Member States.³⁸

The disturbances that have emerged between the member states in the operation of the single market, the Commission of the European Union grouped the physical, technical and tax obstacles in the White Book. It has been established that the disturbances in the functioning of the European Union's unique market (before - European Economic Community) are of a physical nature or the introduction of different standards for certain goods. Hence the establishment of the internal market required the harmonization of economic regulations by the Member States in order to remove the existing barriers and the ban and the introduction of new barriers in trade between Member States.³⁹

Since the end of the twentieth century, until today, the European Union has allocated more than 2.5 billion euro to Bosnia and Herzegovina. Accordingly, the main goals of assisting our country were:

- humanitarian aid,
- assistance in strengthening the peace process and strengthening co-operation between the Entities,
- the reconciliation of ethnic groups, the return of refugees and displaced persons to their homes,
- establishment of functional institutions of the state of Bosnia and Herzegovina and sustainable democracy, based on the rule of law and respect for human rights,

³⁷ *Ibid.*

³⁸ Kurtćehajić, S., *Kako Evropska unija i Visoki predstavnik mogu pomoći Bosni i Hercegovini u njejoj integraciji*, [<https://ssrc.ibu.edu.ba/assets/ssrc/userfiles/files/ZBORNIC-TOM-II.pdf>] Accessed 16.02.2019.

³⁹ *Ibid.*

- setting the foundation for sustainable economic development and growth,
- bringing Bosnia and Herzegovina closer to the standards and principles of the European Union.⁴⁰

It can be concluded that the European Union is the main trading partner of Bosnia and Herzegovina. Exchange with the European Union accounts for around 50% of total foreign trade, which emphasizes the importance of Bosnia and Herzegovina's entry into European integration. Most of the products produced in Bosnia and Herzegovina are exempt from paying customs when exporting to the European Union market. Bosnian-Herzegovinian products are mostly sold in Italy, Germany and Slovenia. Imports from the European Union are the most common in these countries and, to a lesser extent, in Austria. It mainly exports products from the metal processing and wood processing sector, mineral products and chemical industry products. Import includes spare parts for machines, minerals, foodstuffs and chemicals, and by joining the EU, Bosnia and Herzegovina would have a stronger and better starting position to strengthen its economic position on the European Union market.⁴¹

The creation of a single market for EU member states meant closing economic borders for their goods and services. Members of the European Union had mutual freedom of movement of goods and services, and in relation to the goods and services of the Member States, uniform customs tariffs were introduced. In order to match the market conditions provided to companies in the single market, businessmen domiciled outside the market, their governments had to recognize stimulating measures, at least in the import tariffs of EU member states. This was difficult to reconcile, especially because of the export deficit in relation to the exchange of goods and services with the countries belonging to the single European market, which is the ultimate goal of Bosnia and Herzegovina. The Union proclaimed its trade identity with strict reciprocity in its trade relations with third countries, and thus Bosnia and Herzegovina. This can be achieved through bilateral and multilateral agreements between non-member countries and the European Union, unless the Articles 113 and 228 of the TFEU (Treaty on the Functioning of the European Union) do not represent a disturbance, in which the European Union has retained exclusive competence in the conduct of trade policy towards third countries, in this case Bosnia and Herzegovina.⁴²

⁴⁰ Guide to the European Union - How to bring Bosnia and Herzegovina closer to EU integration, [<https://www.rez.ba/bestinvest/publications/VodicEU.pdf>] Accessed 16.02.2019

⁴¹ *Ibid.*

⁴² *Ibid.*

The European Union's unique market has established standards and each European country, which intends to become a member of the European Union, must gradually adapt to these standards. The technological development of the EU member states sets the framework for business cooperation between Europe's businessmen.

However, Bosnia and Herzegovina can apply to European Union funds for economic prosperity and the creation of a competitive economy in Bosnia and Herzegovina. But that is just one pillar which each state intending to join the European Union has to fulfill. Investing in a country's economy is conditioned by external and internal security, but by a secure legal system and independent judiciary. The CFSP's status of being a "pillar" thus ended. Furthermore, in an effort to ensure greater co-ordination and consistency in EU foreign policy, the Treaty of Lisbon created a High Representative of the Union for Foreign Affairs and Security Policy, de facto merging the post of High Representative for the Common Foreign and Security Policy and European Commissioner for External Relations and European Neighbourhood Policy. Thus, economic aspects must be fully aligned with community law in order to align the B&H legal order with the European legal order.

4. PERSPECTIVES OF MEMBERSHIP OF BOSNIA AND HERZEGOVINA IN THE EUROPEAN UNION

The European Union decides to strengthen its program of assistance by giving concrete trade concessions to the countries of the region, thereby fostering greater commodity exchange in the region. In this atmosphere, so-called "legal and economic conditions" for the development of bilateral relations between Bosnia and Herzegovina and the European Union are promoted. In 1998, the EU/B&H *Consultative Task Force (CTF)* was established, providing technical and professional assistance in the area of administration, regulatory framework and policy.

The engagement of the EU towards the Balkan crisis, as an incentive for German diplomacy, has resulted in a new strategic agenda called the *Stability Pact*.⁴³

Although Bosnia and Herzegovina started its journey to the European Union formally in 1997, only in December 2002 eighteen conditions from the EU Road Map were met.

The Roadmap is identified 18 directives that Bosnia and Herzegovina needs to fulfill before embarking on a feasibility study to open negotiations on the Stabilization and Association Agreement. In the Map of the European Union, the Eu-

⁴³ Signed in Sarajevo at the end of July 1999 with the participation of heads of state and government of USA, EU and Russia

ropean Union has defined political, economic and guiding principles for respect for human rights, democracy and the rule of law. The Map Guidelines are the following:

- a.) ***Policy Guidelines:*** Adopt election law and ensure election funding; adopt the Law on the State Border Service; to establish a permanent secretariat in the B&H Presidency - to reach an agreement on the Presidency of the B&H Council of Ministers and to adopt the necessary amendments and procedures; to adopt new rules and procedures for the B&H Parliamentary Assembly; adopt a unique passport; to enforce the Law on the State Border Service; Allocate sufficient funds for the Constitutional Court of B&H.
- b.) ***Economic Guidelines:*** Deleted Payments Bureaus; establish a state treasury; remove all obstacles to inter-company trade; Establish a unique B&H State Institute for Standardization; to adopt a law on competition and consumer protection; enforce a law on foreign direct investment and adopt a restitution law.
- c.) ***Guidelines in the field of democracy, human rights and the rule of law:*** Implement property laws; to strengthen responsibility at all levels in order to create conditions for sustainable return; implement decisions of human rights institutions and ensure adequate funding; adopt and enforce the laws on the judiciary and prosecution of the FB&H/Law on Judicial Services of the RS; the Law on JRTS (PBS) and to secure its funding. Bosnia and Herzegovina “substantially” met the guidelines from the Roadmap in September 2002.⁴⁴

At that time, former Foreign Policy Commissioner Chris Patten arrived in Sarajevo to inform the authorities that Bosnia and Herzegovina passed the first test. In November 2003, nearly a year after the conditions set out in the EU Road Map, Bosnia and Herzegovina was given a green light to begin work on the Feasibility Study, which should show whether Bosnia and Herzegovina is ready to begin negotiations on the conclusion of the SAA. When this agreement is signed, then Bosnia and Herzegovina will have the status of a potential member, or an associated candidate of the European Union, with the possibility of drawing additional financial assistance from certain funds.⁴⁵ The conclusion of the European Union

⁴⁴ Road Map, [<http://www.dei.gov.ba/dokumenti/default.aspx?id=5681&langTag=bs-BA>] Accessed 16.02.2019

⁴⁵ It is a public secret that at that time all the conditions in the Map were not fulfilled, but that the EU, thanks to Patten's personal engagement, wanted to give a small boost to democratic processes in BiH in the hope that it would accelerate the harmonization

report on the progress of Bosnia and Herzegovina in the SAA process from 2003 is still a current framework for the image of Bosnia and Herzegovina's position towards the European Union: *“The objective of B&H's integration into EU structures and eventual EU membership faces widespread support in B&H. However, in order to achieve this objective, the country must first demonstrate that it shares the core values of the EU as well as the capacity necessary to meet the obligations deriving from the Stabilization and Association Agreement (...)”*⁴⁶ No one is any longer deny the political consensus on a common European path, even if it is a declarative commitment to fundamental European values.

The Directorate for European Integration of Bosnia and Herzegovina, which is crucial for negotiations with the European Union, needs people, means and equipment to become the coordinator of overall B&H efforts to join the EU. In such a constellation, the limited “briselization” of Bosnia and Herzegovina is possible, but its membership in the EU by 2025 is very questionable.

5. CONCLUSION

The countries of the region, both individually and jointly, have made significant efforts and made significant progress to change the stereotype of the backward, problematic and conflicting European suburbs. Cooperation between the countries of the region has been improved, both bilaterally and multilaterally. The geographic position of Bosnia and Herzegovina, common history, ethnic structure of the population, infrastructure, legal and economic ties, point to the versatile cooperation that needs to be intensified in the forthcoming period. This cooperation becomes a more constructive component that enables Bosnia and Herzegovina to become a full member of the European Union.

The progress of each country in the region towards European integration is significant from the perspective of Bosnia and Herzegovina as an indicator that progress towards the European Union is likely to depend on the pace of reform of each country. The best example of this is the neighboring and friendly country, the Republic of Croatia and its full membership in the European Union, which has created a positive atmosphere in Bosnia and Herzegovina in terms of confirming membership opportunities once all the necessary legal and economic conditions have been met. It has been 24 years since the signing of the Dayton Peace Agreement and we can now be pleased to say that Bosnia and Herzegovina, thanks to its

⁴⁶ Report of the European Commission to the Council of the European Union about the readiness of Bosnia and Herzegovina to negotiate the Stabilization and Association Agreement with the European Union, BiH Road to the European Union, [http://www.dei.gov.ba/pdf/izvjestaj_komisije.pdf] Accessed 17.02.2019

European orientation and the stabilization and association process, comes out of the “post-war construction” period and moves with confidence to Brussels to her European future. The process is taking place very slowly, according to the “warm-cold” principle, but will surely come a time when Bosnia and Herzegovina will become a full member of the European Union.

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