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# ROAD AHEAD FOR BOSNIA AND HERZEGOVINA: NEW OPPORTUNITIES OR THE PRESERVATION OF THE STATUS QUO?

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## I. Introduction

This paper discusses the European integration process in Bosnia and Herzegovina (BiH), mapping out the current challenges it faces in parallel with the European Union (EU) challenges and at the end provides recommendations on what could the European Union do to accelerate the process. Bosnia and Herzegovina is a potential candidate for the EU and is currently at the bottom of the scale in the region by progress. However, recent period has brought new challenges, with emphasis on the COVID-19 crisis and its possible long-term consequences for both the EU and BiH, affecting the current situation and raising questions on the future of integration process, from one side, and enlargement from the other. Bosnia and Herzegovina applied for EU membership in February 2016. The Commission adopted its Opinion (Avis) on the EU membership application of the country in May 2019, identifying 14 key priorities for the country to fulfill in view of opening EU accession negotiations and since then, not much has been done.

## II. Counting the steps towards EU membership

Bosnia and Herzegovina handed over the application for membership in the European Union in February 2016. In September, the Council on

General Affairs of the European Union accepted the request of Bosnia and Herzegovina for membership in the European Union and gave an order to the European Commission to develop a questionnaire for BiH (1) which was handed to the country in December. Bosnia and Herzegovina's authorities delivered the answers to the Questionnaire and the European Commission adopted its strategy for "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans" in February 2018. The following year, in May 2019, the European Commission issued its Opinion on Bosnia and Herzegovina's application for EU membership. (2) The Opinion is a milestone in EU-Bosnia and Herzegovina relations, confirming that the EU is committed to guide and support the country in undertaking the necessary reforms on its path towards European integration. The Opinion identifies **14 key priorities** for the country to fulfil in order to be recommended for opening of EU accession negotiations; it provides a comprehensive roadmap for incremental reforms. The key priorities cover the areas of democracy/functionality, rule of law, fundamental rights and public administration reform – the fundamentals of the EU accession process. The analytical report accompanying the Opinion also, for the first time, reviews the situation in Bosnia and Herzegovina against all standards applicable to EU Member States, including issues such as internal market, public procurement, competition policy,

environment, food safety and consumer protection. The Opinion provides a solid basis for discussion in the EU Council, which will need to take a decision on the next steps in the EU path of the country. (3) The key priorities contain all the problems that BiH is facing, not only when it comes to its European path, but also the essential issues that must be resolved for the better life of its citizens.

So far, Bosnia and Herzegovina has made limited progress - several technical issues have been resolved, while all substantive issues remain open. The most significant step taken is the holding of local elections in Mostar (4), which is stated in the first key priority. The Directorate for European Integration is already working hard on drafting a European Integration Program (5). Furthermore, the rules of procedure of the Parliamentary Stabilization and Association Committee were finally adopted (6). Finally, the abolition of death penalty in Republika Srpska (7) has partially met another key priority. Addressing key priorities that require serious reform, such as the functioning of the judiciary or the fight against corruption, is not even on the horizon because there is a lack of will and consensus, so the conclusion is that there is no political will in Bosnia and Herzegovina to make real changes. Bosnia and Herzegovina opts for EU membership, although all political parties declaratively emphasize their commitment. The result is obvious - the decisive stagnation of Bosnia and Herzegovina.

### III. What remains to be done on BiH side?

There is a chance that Bosnia and Herzegovina will get the candidate status soon - after additional progress is made (8) - and even though it will not be of great importance, the politicians will present it as a great success. The European Union is likely to insist on resolving the problems in the judiciary in the near future, and it is likely that Bosnia and

Herzegovina will find it difficult to obtain candidate status without some progress or will receive it with additional conditions. However, candidate status is only one step in joining the European Union and does not in itself bring much, except the possibility of drawing and using the EU pre-accession funds that are to secure faster development and support to the reforms in the key areas (9). It is much more important for Bosnia and Herzegovina to open accession negotiations with the European Union - which is a step after gaining candidate status - and this will be difficult in this situation when there is no consensus on Bosnia and Herzegovina's European path, because opening negotiations will certainly require serious progress in the set criteria and reforms that will truly change Bosnia and Herzegovina, and this is stated in the Opinion. When it comes to making progress, Bosnia and Herzegovina can learn from certain countries in the region, especially from North Macedonia, and see what was needed to be done to open the negotiation process. The European Union has reaffirmed the European perspective of Bosnia and Herzegovina and the Western Balkans many times, but each country must fulfill its obligations on its own. Bosnia and Herzegovina needs to make changes to its Constitution so that it also means ensuring equal representation of all in the country, primarily the implementation of the Sejdić-Finci ruling (10). It also means ensuring the functioning of state institutions, so that they can participate effectively in the EU decision-making process, and fully implement and enforce the *acquis*. Changes are needed to ensure that the institutional framework in place in Bosnia and Herzegovina is in line with European standards. Work on 14 key priorities needs to continue, primarily the rule of law and judicial reform. The judiciary needs to be reformed urgently, considering all the recent affairs regarding its institutions. However, ethnically motivated vetoes obstruct law-making initiatives (11) and there is a lack of joint vision on how to approach the reforms process.

An assessment of the messages from the EU after the European elections indicates that BiH can neither expect nor hope for any significant change and it has been clearly stated that the ball is in BiH's court (12).

## IV. Facing the challenges

This is a difficult time for Europe and all its ongoing challenges have only taken the upturn due to the COVID-19 pandemic. With the endorsement of the revised accession methodology, the first half of 2020 promised to bring much needed boost to the EU-Western Balkans relations. However, the COVID-19 pandemic has created and is still creating devastating consequences for the economic and democratic consolidation of the Western Balkans. This means that the already large socio-economic gap between the Western Balkans and the EU stands to widen due to the coronavirus crisis. In a similar vein, the pandemic is amplifying democratic structural weaknesses in these countries, particularly in terms of institutional checks and balances linked to dysfunctional national parliaments and judiciary. (13) However, despite everything, the accession process has not stopped as the countries of the Western Balkans region are still advancing towards membership, unlike Bosnia and Herzegovina. The revised methodology announced the introduction of roadmaps for the functioning of democratic institutions and public administration reform (PAR), in addition to the roadmap for the rule of law chapters in the accession process. While the inclusion of the former two areas as new elements of the fundamentals' cluster is an opportunity to strengthen the EU conditionality on issues of democratic governance, their operationalization in view of supporting democratization processes will be a challenge due to the lack of common EU rules in this area. The new roadmaps should be carefully prepared and communicated with an input from the member states and the civil society of the region (14) However, all this is not largely affecting Bosnia

and Herzegovina since the country is simply not yet a part of the processes introduced by the new methodology, although there is some perspective with the announced Economic and Investment Plan (EIP). The EIP is ought to affect economic prospects of the region, including Bosnia and Herzegovina, as well as provide a set of clear incentives in terms of democratic governance and effective rule of law (15). With this plan, the EU integration process is expected to move forward, taking other challenges along. To meet its objectives, the Plan should not trade off the need to address growing socio-economic vulnerabilities in the region with the employment of an effective rule of law conditionality as both efforts should be simultaneously pursued. This will be particularly challenging given the state of corruption and government accountability in the region, but also the lack of effective mechanisms to protect the EU budget from potential misuse, both in the Western Balkan countries and the member states. Meanwhile, Bosnia and Herzegovina is on the frontline of an immigration crisis. Since the beginning of 2018, close to 70,000 (16) refugees and migrants arrived in Bosnia and Herzegovina, while approximately 8,700 (17) are currently stranded on its territory. The current state of the crisis is a plea for humanitarian intervention, as the formal accommodation capacities have been overstretched, leaving around 2,000 (18) refugees and migrants in unfavorable living conditions. In addition, the ill-treatment and human rights abuses have been reported (19), but remained with no consequences. The politics of pushbacks and anti-immigrant violence has been reported on the Croatian border, where the police has been accused of returning migrants that cross the BiH border with Croatia in attempt to enter the EU without analyzing individual circumstances or providing them with an opportunity to apply for an asylum (20). Despite published reports from different organizations and media outlets (21) discussing the pushback mechanisms and systemic violent

mistreatment, Croatian officials have denied such accusations, while the matter was not yet adequately addressed by the EU. Pushbacks are prohibited by the European Convention on Human Rights and this mechanism is a clear violation of EU law. Due to such a situation and to avoid being pushed back, it is a known fact that migrants and refugees crossing the border often fail to comply to authorities and have their fingerprints taken, which would subject them to the Dublin Protocol. With BiH, the situation is complicated by a lack of accountability and coordination at all levels of government, but also the division on ethnic lines, leaving the Una-Sana and Sarajevo canton in the Federation of BiH as the 'hotspots' of the crisis. Considerable funding and support have been provided by the EU, but the transparency of actions remains lacking. This crisis is a concern to both BiH and the EU, considering the above-mentioned situation on the Croatian border.

On the other side, migrations present a trend apparent among the domestic population, only leaving a different set of casualties behind. Four Balkan countries top global ranking with biggest brain drain and according to the Global Competitiveness Report (22) from 2019, BiH has found itself on the third place. Highly educated and qualified workers have perceived migration as the only chance to get out of a difficult economic situation that persists in the country. Unemployment, low wages, corruption and lack of opportunities have been the main drivers of emigration of young people (23) from the Balkans to European Union. Unemployment is a downward trend in all Western Balkan countries, especially among youth where this percentage amounts to 33.8% according to the 2019 International Labor Organization's Report (24). Yet, this percentage has decreased to this point over the years, due to departures of young people and not employment opportunities. In this way, BiH is stripped away of people needed to advance the current situation and deliver prosperity. Lack of strong rule of law,

increasing levels of corruption and the failure to effectively respond to all crises (immigrant, economic and COVID for that matter) that have hit the country, have only heightened internal tensions and that will surely leave devastating consequences behind.

## **V. The Conference on the Future of Europe – Western Balkans as a part of the upcoming EU initiatives**

The Conference on the Future of Europe (CoFoE) is a citizen-led series of debates and discussions that will enable people from across Europe to share their ideas and help shape the common future. The Conference is the first of its kind: as a major pan-European democratic exercise, it offers a new public forum for an open, inclusive, and transparent debate with citizens around a number of key priorities and challenges (25). If it wants to confirm the European perspective of the region, the European Union should include the countries of the Western Balkans, as well as Bosnia and Herzegovina, in the upcoming Conference on the Future of Europe and allow its leaders and citizens to actively participate in conference activities and discussions. Here, relevant is the role of the Balkan youth, as their voices are necessary to be heard at the time where all actions of the failing system are directly affecting their future prospects in the region. The 'brain drain' is a trend that is already leaving devastating socio-economic consequences for the region and including new perspectives into the discussion may contribute to forming more effective strategies in this regard. Allowing the participation of the Balkan countries in this Conference will deliver mutual benefit for the EU and the Western Balkans. Firstly, the region will feel more included and closer to the EU, what may essentially accelerate the integration process; secondly, the future of Europe is their future too,

and they will have a role in shaping it. Another thing worth mentioning is the lack of political culture and general disinterest in taking part in policy consultations in the region, that may be affected with this participation. In general, all countries in the Western Balkan region lack mechanisms that will ensure quality and proper enforcement for public consultation processes (26), leaving out the state authorities to employ their corrupt practices. Setting the example for positive practice is a step forward to boosting public interest in the integration process. The European Union would also strengthen alliances with its neighbors and consolidate its political vicinity, as would the Western Balkan countries do so among themselves by discussion over joint responses to specific common challenges. Allowing the region to witness and contribute to this initiative would also foster a sense of togetherness and partnership that has been lacking from the long, drawn-out formal accession process. More, rather than less, EU-Western Balkans cooperation and coordination will build trust and loyalty (27).

## **VI. Way forward for the EU and Germany**

The following section entails some of the recommendations that may contribute with progress to the ongoing stagnation in Bosnia and Herzegovina and ensure building of a more credible and stable relationship between the EU and the region. Each of these targets a specific issue that requires an adequate response by all parties involved.

- Western Balkans countries, including Bosnia and Herzegovina should be, as observers or other proper role, invited and included into debate “on the future of Europe”. Generally, there should be more participation in the work of different EU bodies. That can contribute to better mutual understanding and strengthen feeling of belonging to the European family.

Also, number of problems and issues EU is facing with cannot be successfully resolved without joint work, be it fighting organized crime, migration, environment protection, infrastructure connection, etc (28).

- Ensure transparent allocation of resources, enabled by the emergency funding for the refugee and migrant crisis, by making it an obligation for all stakeholders to publish the financial statements and program reports. This will greatly impact the evaluation of capacity levels to respond to the crisis and primarily, address if the allocated funds are distributed within the approved budget schemes (i.e. whether the majority of funding is covering the needs of migrants and refugees). Also, this will address transparency of actions and state conditionalities.
- Build and support mechanisms to prevent human rights abuses by taking accountability and addressing the needs of migrants and refugees. This also includes assistance in building adequate crisis response mechanisms and implementing asylum policies in accordance with EU laws. This also includes the review of “pushbacks” allegations and imposing sanctions on Croatia for the mistreatment of migrants and refugees and violation of international laws and human rights.
- Furthermore, the EU should take a more active role in Bosnia and Herzegovina and insist on implementing reforms defined in the Priorities and through EC Bosnia and Herzegovina Reports, as well as work more closely with the United States of America on applying pressure to institutions and politicians in Bosnia and Herzegovina, as most of the significant reforms were done that way – the last example is holding local elections in Mostar after 12 years.
- As stated above, BiH politicians have been promising their constituencies that Bosnia and Herzegovina will get the candidate status very soon. The European Union should use this and condition the candidate status with a number of

meaningful reforms, i.e. a serious progress in regard to 14 key priorities.

- A more active role of the EU Delegation could also be accomplished by reinstating weekly meetings between the Head of the EU Delegation and the Chairman of the Council of Ministers of BiH with weekly briefs on made progress, as it was an earlier practice, and would also give a new dynamic to the process. Instead of meeting often with main political leaders, the real partners should be ministers, deputy ministers, assistant ministers and directors of the key state agencies who are legally and institutionally in charge of the reform processes. This would empower civil service administration or mid executive level, as well as technocrat-oriented politicians in the BiH Council of Ministers. This would also add to the strengthening of state institutions as well as people's belief that there are other people of importance aside of few political leaders who are perceived as the owners of our destiny.
- The European Union should, from its side, limit the negative influence of Croatia and Serbia on Bosnia and Herzegovina (on its respective ethnic groups), especially Croatia as a member state of the EU. Croat politicians from BiH condition all the reforms with solving certain issues their way as reforming the Election Law so it would ensure electing "legitimate Croats" and they have the support of Croatia and that ultimately blocks the progress of BiH toward the EU.
- European Union should consider with its partners in the Peace Implementation Council that it is very important for the Office of the High Representative (OHR) to stay in Bosnia and Herzegovina until the conditions for its closure (29) are fulfilled because of its role of the security and stability factor since we are still witnessing a very aggressive national rhetoric in public space which exceeds to threats of secession.

The role of the Office of the High Representative should be better articulated and structured, with a plan for controlled and gradual hand over of authorities to domestic institutions, especially when it comes to the nationalist statements of individual politicians and political parties in Bosnia and Herzegovina.

- For BiH to move beyond the reform stalemate, the EU Delegation in BiH needs to clearly point to those political actors who are obstructing the work on the 14 priorities. As long as it is left to political players to interpretate the fundamental European values in their own understanding and to disseminate fake information to wider population, a coherent civil society platform for promoting EU integration cannot win this fight. Therefore, the EU Delegation needs to change completely its PR outreach and fight false interpretation of the 14 priorities.
- The EU needs to coordinate more intensely with the Council of Europe in regard to the implementation of the ECHR rulings in a way that enables for any proposal for the constitutional change to be crosschecked with the Council of Europe / Venice Commission experts in order not to waste time for the proposals that do not satisfy the ECHR rulings implementation. So far, we are witnessing months of negotiations over inappropriate constitutional change proposals to see their failure at the end. At the same time, political players are raising tensions through the miss-interpretations of their proposals.
- The EU needs to provide clear political and legal interpretation of what is the status of the SAA in the light of its expired deadlines and the "new approach" to enlargement that has replaced the previous one.
- Continuous support to "Berlin process" and the increased role of the Regional Cooperation Council, CEFTA and Transport Community in their endeavor to streamline the regional efforts after the Summit in Sofia. In parallel to discourage

misinterpretations of “Mini-Schengen” declaration as the replacement for the “Berlin process”.

- The EU needs an ally in BiH, for this moment, the civil society organizations, who are the real “champions of EU integrations,” are being left behind and replaced by those political players who are denying European values on daily bases. Now again, the EU integration process described in the 14 priorities from the EC Opinion and the Analytical document needs to be demystified in a same manner that the SAA negotiation process was 14 years ago.

## Endnotes

- [1] Parliament assembly of Bosnia and Herzegovina and European Union, Key events in the relations between BiH and European Union
- [2] Delegation of the European Union to Bosnia and Herzegovina and European Union Special Representative in Bosnia and Herzegovina, Key dates
- [3] European Commission (2019), Opinion on Bosnia and Herzegovina’s EU membership application
- [4] 2020 BiH local election results
- [5] BHRT (2020), The development of the Program for the Integration of BiH into the EU has begun
- [6] EU Statement on the adoption of the Rules of Procedure of the Stabilisation and Association Parliamentary Committee
- [7] Constitution of the RS
- [8] European Western Balkans Interview with Johann Sattler: Leaders of Bosnia and Herzegovina must have the courage to compromise
- [9] Topčagić, O. & Foreign Policy Initiative (2016), Policy Analysis - EU Membership Candidate Status: Between Challenges and Weaknesses
- [10] The 2009 decision by the European Court of Human Rights, ruled that the constitution of BiH violates the European Convention on Human Rights by not allowing ethnic minorities to run for the tripartite Presidency and the House of Peoples.
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- [14] Ibid.
- [15] Ibid.
- [16] European Union (2021), Factsheet on Bosnia and Herzegovina, European Civil Protection and Humanitarian Aid Operations
- [17] IOM data, 2021
- [18] ACAPS data on Bosnia and Herzegovina, January 22, 2021
- [19] The Council of Europe’s Commissioner for Human Rights, Dunja Mijatović, addressed this issue and reported her concerns about the situation to the European Court of Human Rights on January 11, 2021. The Commissioner stated that the forcible returns are being done without a formal asylum procedure, thus violating the rights guaranteed by international law and the human rights conventions whose signatories are the countries in question.
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- [22] Schwab, K. (2019), The Global Competitiveness Report, World Economic Forum
- [23] As the data for youth unemployment is taken from reports of the International Labour Organization, their indicator on young people is used and considers the age group 15 to 24.

[24] International Labour Organization (2019), ILOSTAT database, Unemployment of youth, Country Report on Bosnia and Herzegovina

[25] European Commission's priorities 2019-2024, Conference on the Future of Europe

[26] Think for Europe Network (2019), Curbing the executive bias in EU enlargement policy for a stronger democracy in the Western Balkans

[27] Think for Europe Network (2020), The Conference on the Future of Europe: Is the EU still serious about the Balkans?

[28] Osman Topćagić, speech at the General Assembly of the International Paneuropean Union, Strassbourg, France, 2020

[29] Office of the High Representative, Agenda 5+2