

MONITORING OF THE B&H EUROPEAN INTEGRATION PROCESSES

2009.

FIRST SEMI-ANNUAL REPORT

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INTRODUCTION

A year has passed since the signing of the Stabilization and Accession Agreement (SAA) between Bosnia and Herzegovina (B&H) and the European Union (EU). However, many debates have risen even on this fact. Some say that "it has only been a year", and some that "it has already been a year". The first argument mostly comes from state institutions in charge, while the other comes from the civil society.

This is the First Semi-annual Report for 2009 of the 'Monitoring of the B&H European Integration Process' Project, and our first opportunity to set a trend in the obligation fulfillment process of the SAA, and to truly start measuring the level its realization compared to our Preliminary Report for 2008. The project will last until the end of 2011 and produce twice a year semiannual reports, measuring the progress of B&H in EU integration process.

In development of this reports, the official reports and documents of the B&H and Entity institutions, as well as reports of the EU institutions, Council of Europe and other relevant reports of non-governmental organizations are used, as well as interviews with representatives of reported institutions. Main focus of our monitoring is on the basic documents as Stabilization and Association Agreement, The Interim Agreement and the European Partnership for B&H. Moreover, our team takes into the consideration the official documents of B&H as institutions The Action Plan for the Realization of obligations from the Interim Agreement and SAA, The Overview of the Activities Realization of the Action plan for the Realization of the Priorities from the European Partnership with B&H, Regular Preparatory Meeting (RPM) reports, and other relevant documents of the Council of Ministers of B&H and the Parliamentary Assembly of BiH. Special attention is dedicated to the interrelation between the SAA and European Partnership.

This report is produced by ten (10) people, experts in their respective areas, who cover certain areas of the SAA, while the Editorial Board of six members made the final editing.

In this Report, we want to find the answer as to whether there has truly been some positive movement in the B&H European integration process, after the "great improvement" achieved through the signing of the SAA on June 16, 2008.

During the past six months we have received a number of recommendations, suggestions, comments, reproaches as well as new information that has helped us make this First Semi-annual Report for 2009. We use this opportunity to reflect on some of these.

First of all, we were asked to clarify the concept of interim deadlines and their difference between those in the SAA and in the Interim Agreement. As we have already mentioned, and as is also general knowledge, 80% of the SAA deals with questions of economy and what is in the EU considered to be free flow of products, services, capital and labor, single market, and market competition, that is to say the creation of a single economic space and gaining the ability to survive the market game in the EU once B&H gets there.

It is also important to point out that there are no negotiations on the essence of the obligations that B&H needs to fulfill; on over the adoption of what is known as the legal legacy of the European Union (acquis communautaire) into the B&H legislative system. The negotiations that were actually held were on interim deadlines, as to what time B&H needs in order to complete something, and as to the time B&H needs to adjust to this new market surrounding; the amounts and the levels of the gradual lowering and abolishing

of customs fees, taxes, and contingency fees; the creating of new laws, the adopting of standards, the creating of new institutions, and similar.

Bosnia and Herzegovina has negotiated the deadlines in the longest frame of six years, however, the deadlines from the SAA only formally begin after every single one of the EU member state ratifies the SAA, because the SAA is not only concluded with the EU, but with each of it 27 member states. That is why formally, and bureaucratically speaking, the deadlines from the SAA have not even begun to flow, which is something that some politicians and highly ranked officials quite often use in their defense.

However, since the EU is interested in B&H being promptly prepared for this market game within these new circumstances, and also to gain some market privileges for itself as soon as possible, there is also an Interim Agreement, which is treated exactly as this economic section of the SAA and which became fully operational the day it was signed on June 16, 2008, and its deadlines started to flow on July 1, 2008. It is important to mention that the deadlines are not longer but equal to those of SAA, so practically, the deadlines for fulfilling the obligations have been in effect for a year in the most important, and for B&H most sensitive area – the economy. Also, the section dealing with the visa regime, justice and security is not yet operational, but we do have the Road Map for the Liberalization of the Visa Regime which contains almost identical demands to those of the SAA.

So we can finally claim that for B&H citizens and its economy, the clock is ticking, although, as the B&H officials say, formally, the deadlines do not begin to flow for at least another year. The reality is different, and even if were not, there is no reason why B&H should have to wait for the last moment to fulfill its obligations, when we are already at the end of the composition of the Western Balkans, placed after the Albania. If we take into consideration the fact that all of the activities for opening our market towards the EU are already undertaken, and that protective measures for our economy are gone, we must ask ourselves why there are no engagements for fulfilling those standards which would help us be more competitive. Unfortunately, in the past 14 years, not enough has been done to create more favorable economic surroundings for our local economy within the country and towards our neighbors in the region in order for us to be more competitive. Little was done while it could have been done, and that time was instead wasted on daily political disputes. So, today, in B&H and entity institutions, only the matters dealing with the SAA obligations which would be of direct benefit to the B&H citizens - like freedom of movement, liberalization of the visa regime, improvement of transparency, justice and security, right to work, balanced economical development of all the areas in BiH, incentives for scientific research, improving education and healthcare quality and abolishing discrimination - are being delayed.

The next issue that we were asked to clarify is that some of our findings were not up to date in the moment when they were presented. The Project deals with the monitoring of the Process, so it encompasses the time frame of six months. However, the technology of creating a report and its publication does not allow it to be printed on the very day it is completed. It takes over one month for the Editing Board, after 10 experts complete their expert elaboration of the progress in the chapters, to create a report in the form that the readers have the opportunity to see it in. Next to that, the report is written in the official languages of BiH as well as in English, which demands a number of translating and editing activities. So we wish to use this opportunity to point out that the statement of facts in this report was concluded on May 29, 2009. ¹

¹ The exception is naming the three laws connected to the liberalization of the visa regime adopted on June 6, 2009.

A positive fact is that FPI BH is no longer the only organization which monitors the realization of the SAA obligations. At the beginning of this year, the Directorate for European Integration made its First Quarterly Review of fulfillment of the obligations from the SAA and the Interim Agreement. Also, several members of the B&H Parliamentary Assembly have started dealing with this progress analysis more intensively and systematically, where it concerns the adoption of necessary laws in the Parliament. Several NGOs have also become more active in imposing some issues from the European integrations to the public opinion agenda in BiH. FPI BH invites all of the civil society participants to use the arguments from our reports in their own domain to exert greater and more concrete pressure on the applicable institutions.

In the end, the trend, we have noticed, is not very promising. Many of the vital laws have not been adopted, or have been adopted in only one of the B&H Parliamentary Assembly houses, many have been returned to be re-processed, and there is no political will for them to be realigned on the entity-B&H state level from the position of the five coalition partners that make up the governing coalition. In our previous Report we stated that the Council of Ministers adopted 13 bills and seven strategy and policy drafts on December 29, 2008. However, only a small portion of those were validated in the B&H Parliament. Because of that, the deadlines from the Action Plan for the obligation fulfillment of the SAA and the European Partnership have only moved forward by several months.

We have decided not to name again all of the individual SAA obligations and European Partnership priorities in this Report, because nothing has been changed in their contents. We hope that, by doing this, we have not denied those who are reading this Report for the first time, because the Preliminary Report for 2008, where all of this is covered and elaborated in detail, can be found on our web page www.vpi.ba.



GENERAL PRINCIPLES

Introduction - General assessment of implementation of B&H obligations under SAA and Interim Agreement and priorities of European Partnership in the reporting period

Under Article 2 of the SAA, Bosnia and Herzegovina is required to respect the European Convention on Human Rights. Furthermore, it is obliged to respect principles of international law, including full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), meaning taking a proactive role in arresting those accused of war crimes. Under Article 3 Bosnia and Herzegovina is required to fight against the proliferation of weapons of mass destruction. Again, Article 4 reaffirms the importance attached to implementation of international obligations. Good neighborly relations and respect and protection of human rights and rights of minorities are highlighted in Article 5, while Article 6 calls for development of projects of common interest, notably those related to combating organized crime, corruption, money laundering, illegal migrations

and trade, including human trafficking, trafficking in small arms and light weapons as well as in illicit drugs. Article 7 reiterates the importance of the combat against terrorism. Article 8 sets the transitional period of six years for the association, meaning that all chapters should be closed by June 2014. Finally, Article 9 highlights that the Agreement must be implemented in accordance with the provisions of the World Trade Organization (WTO), in particular in line with Article 24 of the 1994 General Agreement on Tariffs and Trade (GATT 1994) and Article 5 of the General Agreement on Trade and Services.

Key priorities of the European Partnership in the area of General Principles define the priorities that Bosnia and Herzegovina must meet in order to prepare for further integration in the EU. These include full cooperation with the International Criminal Tribunal for former Yugoslavia (ICTY), functional and sustainable state structures, respect of human rights, and measures that Bosnia and Herzegovina should take, including agreement on and

Cooperation between the Parliamentary Assembly and the Council of Ministers is still very poor. No significant progress has been made, and there is still a notable lack of coordination in the legislative process, in particular between the state and entity parliaments. The State and the entities continue to adopt *legislation in a rather uncoordinated* manner, and there is a quite notable lack of coordination on the part of RS with the state and Federation authorities with regard to the EU integration process.

TITLE I)

adopting of the changes to the B&H Constitution, if necessary. As for democracy and rule of law, Bosnia and Herzegovina is required to take further steps in ensuring that Parliamentary Assembly of B&H has sufficient technical and human resources, and that there is a structured and institutionalized coordination between the State and the entities at all levels. When it comes to human rights and protection of minorities, Bosnia and Herzegovina is required improve the implementation of international conventions ratified by B&H and legal framework on minorities in order to fully meet the requirements of the Council of Europe Framework Convention on National Minorities, including the National Roma Strategy, which calls for reduction of poverty and social inclusion of Roma in B&H population. As regards elections, Bosnia and Herzegovina is required to adopt changes and amendments to the election legislation concerning the B&H Presidency members and delegates of the House of Peoples in order to ensure full respect of the European Convention on Human Rights and post-accession obligations towards the Council of Europe.



Level of realization of Action Plan

Cooperation of Bosnia and Herzegovina with the International Criminal Tribunal for former Yugoslavia (ICTY) is considered satisfactory. The cooperation between ICTY and the government at the state and entity levels is adequate, and approach to witnesses and archives is regarded as a positive one. The War Crimes Investigation Coordination Team was established based on the Action Plan adopted by Republika Srpska. On December 29, 2008 the Council of Ministers adopted the National War Crimes Prosecution Strategy for B&H. Adoption of the National War Crimes Prosecution Strategy is already late, having in mind the huge number of internally prosecuted war crime cases and forthcoming closure of ICTY. However, adoption of the National Strategy could be considered an important item in terms of establishing rule of law for transition of OHR. The Strategy defines the distribution of cases between the state and entity competencies, and it also requires that B&H authorities improve their regional cooperation in

investigating war crimes. The National War Crimes Prosecution Strategy adopted by the Council of Ministers is currently in parliamentary processing. Along with the Strategy, a Supervisory Board was established to supervise the implementation of the Strategy.

Despite some initial steps taken regarding appointment of senior officials in certain state institutions, no significant progress has been made in increasing human resources and mitigating the required reform processes. The majority of state institutions operate with minimum capacity, while some of them clearly are far below the capacity anticipated. During the reporting period, the process of strengthening administrative capacities was still ongoing. In February 2009 the Council of Ministers adopted a training plan for civil servants in the Directorate for European Integrations and other state institutions dealing with European integration matters.

Cooperation between the Parliamentary Assembly and the Council of Ministers is still very poor. No significant progress has been made, and there is still a notable lack of coordination in the legislative process, in particular between the state and

Election of the trinomial Presidency of B&H is still incompatible with Protocol 12 of ECHR for it does not allow the citizens who are not one of the three constituent nationalities to run for office and it determines the ethnic affiliation of the each candidate elected from the entity. A new element that will force local officials and representatives of the international community to take a more active role in solving this unjustifiably delayed problem is the judgment of the European Court of Human Rights in Strasbourg in the case of Finci and Sejdic vs. Bosnia and Herzegovina.

entity parliaments. The State and the entities keep adopting legislation in a rather uncoordinated manner, and there is a quite notable lack of coordination on the part of RS with the state and Federation authorities with regard to the EU integration process. Work of the parliament and inter-department groups of the executive power is colored by politics, inter-ethnic differences and lack of resources. The Commission for European Integrations still does not deal with special legislative issues concerning European integrations, while the Commission for Foreign Affairs barely deals with the strategic issues deriving from the *Stability and Accession Agreement (SAA)*, particularly with the issues of foreign policy and regional relations.

Some institutions of the B&H Council of Ministers have already moved to new premises, while the others are still in the process of moving. Completion of the new premises will enable an optimal working environment for the Parliamentary Assembly and others. With regard to the adoption of monitoring mechanisms and technical regulations for the B&H General Auditor, no further progress has been made in institutions to enable adequate response to the Auditor's remarks.

Elections are still conducted according to provisions breaching the *European Convention on Human Rights* (ECHR). Election of the trinomial Presidency of B&H is still contrary to the *Protocol 12* of ECHR, for it does not allow citizens who are not members of one of the three constituent peoples to run for office and it sets ethnic qualification for each candidate elected from the entities. No progress was made in removing the restrictions based on ethnic affiliation that stand as an obstacle for some people to run for office.

Currently, there are no indications that the entities will have harmonized their respective constitutions with the Decision of the B&H Constitutional Court from March 2006, whereby it was ruled that the entity coat of arms, flags and anthems are not in line with the B&H Constitution. Republika Srpska found a temporary solution, having adopted a temporary emblem and announced a tender for the new coat of arms. The Federation of Bosnia and Herzegovina is still in the process of considering the proposed new entity symbols. Republika Srpska took necessary steps in changing its Constitution in order to remove the death penalty provision from it, but the process has not yet been completed.

Bosnia and Herzegovina ratified all important instruments in the field of human rights, as well as all relevant UN and International conventions on human rights, including the European Convention on Human Rights and Fundamental Freedoms, but in practice human rights in Bosnia and Herzegovina are not fully respected. Bosnia and Herzegovina signed the Framework Convention on National Minorities, but the European Charter on Regional and Minority languages still awaits approval, after which it will be sent to the Parliament. The National Minority Council operates at the State level and in RS, while in the Federation this body has not yet been established. There have been and there still are occasional halts in appointment of members to the Council in the Federation. There is still no funding ensured for the Council. Members of the minorities in the State are entitled to appoint their representatives in local government, but this right does not apply to the state level. However, the level of cooperation between local government and minorities has demonstrated very limited results. Bosnia and Herzegovina adopted the strategic plan – A Decade of Roma Inclusion 2005–2015. The Council of Ministers adopted an action plan and allocated BAM 3,000,000 for solving the issues of accommodation, health services and education for the Roma population. The Council of Ministers also established a Coordination Board to monitor the implementation of the action plan. Very limited results have been achieved in terms of implementation of the Roma Strategy, notably in the field of registration and education. A working group was established to identify the educational needs of Roma and other minority groups and to find appropriate resources for this project.



Parliamentary processing and status of draft laws and international agreements with reference to constitutional basis and status vs. relevant legislation of lower levels of government

No significant progress was made in terms of ownership for reform processes to the state institutions. The whole constellation of different nationality-based interests has prevented the true partnership among politicians and governmental institutions which is required for the identified reforms. There is a notable halt in the process of preparing and adopting reform laws. During the reporting period, no visible progress was made in this regard. The 2008-2012 Action Plan for implementation of the European Partnership priorities anticipates no legislative activities under this segment of SAA.

The Constitution appears to be an obstacle to implementation of some key obligations defined under Title I of SAA. This primarily refers to harmonization of the Election Law with the European Convention on Human Rights. Election of the trinomial Presidency of B&H is incompatible with the Protocol 12 of ECHR for it does not allow the citizens who are not one of the three constituent people to run for the office and it determines the ethnic affiliation of the each candidate elected from the entities. A new element that will force local officials and representatives of the international community to take a more active role in solving this unjustifiably delayed problem is the judgment of the European Court of Human Rights in Strasbourg in the case of Finci and Sejdic vs. Bosnia and Herzegovina.

C Commentary

This report covers the period from January 1 until May 15, 2009. During the past couple of months Bosnia and Herzegovina has made little progress in meeting the reform plan. Inefficiency of government in B&H is visible in the assessment of Action plan achievements for the first quarter. In the first couple of months of 2009 we noticed partially achieved results with a descending tendency, which is the consequence of lack of political consensus on most issues discussed in this Chapter. During the reporting period we witnessed the nationalist rhetoric of politicians who argued against the constitutional establishment of Bosnia and Herzegovina.

With regard to cooperation with ICTY, the adoption of the National War Crimes Prosecution Strategy can be considered an important goal towards forthcoming closure of the Office of High Representative (OHR). In addition to that, adoption of constitutional amendments whereby the Brcko District is to be integrated into the B&H Constitution and enabled access to the Constitutional Court is another important reference point in the process of transition of the OHR to the EUSR.

No significant progress was made in terms of transferring the responsibility for reform processes to the state institutions. The whole constellation of different nationality-based interests has prevented the true partnership among politicians and governmental institutions which is required for the identified reforms.

POLITICAL DIALOGUE (TITLE II

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TITLE II POLITICAL DIALOGUE

Introduction – General assessment of implementation of B&H obligations under SAA and Interim Agreement and priorities of European Partnership in the reporting period

In accordance with key principles of the foreign and internal security policy of EU, namely Article 10, Title II of SAA, Bosnia and Herzegovina is required to harmonize its positions on international matters with those of the EU. Along with that, B&H is required to cooperate in the field of Common Foreign and Security Policy of EU (CFSP), the key targets of which are to: protect common values, independence and integrity of the Union; strengthen the security of the Union in any possible manner; preserve peace and strengthen international safety in accordance with the UN Charter, principles of the

Helsinki Final Conclusion, and Paris Treaty; promote international cooperation; develop democracy, rule of law and respect of human rights and fundamental freedoms.

Under paragraph 3 of this Article, Bosnia and Herzegovina is required to cooperate in terms of preventing the proliferation of weapons of mass destruction (WMD) and means of their delivery. Bosnia and Herzegovina is obliged to fully meet all the obligations deriving from the international treaties and agreements on removal and non-proliferation of WMDs. Paragraphs a) and b) impose an obligation on B&H to sign and ratify international instruments concerning control of proliferation of WMD if it has not done so. In paragraph b) a particular focus is put on establishment of national control system over export and transit of WMDs and related goods, including control of the end-use of dual-use technologies.

Priorities of the European Partnership do not explicitly treat the provision of SAA concerning policy dialogue, and consequently the Action Plan for the Realization of European Partnership does not treat this topic separately either. However, among the European Partnership priorities one could recognize the elements that indirectly refer to the EU Common

When compared to the first assessment made in December 2008, Bosnia and Herzegovina is still willing to meet all the principles of policy dialogue, in particular the goals of Common Foreign and Security Policy and the part that refers to nonproliferation of weapons of mass destruction. During the reporting period, namely on January 5, 2009, the Presidency of B&H decided to accede to the Convention on Nuclear Safety and accordingly it decided that B&H should join the Convention on the Physical Protection of Nuclear Material.

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Foreign and Security Policy, which are separately elaborated and listed in the same order as in the Stabilization and Association Agreement (Title VII: Justice, Freedom and Security, that is Articles 78-83), and the same applies to the Action plan for implementation of SAA. This primarily refers to fulfillment of the principles of the EU Common Foreign and Security Policy.



Level of realization of the Action Plan

Transfer of competencies from the entity to the state level with regard to military arms, ammunition, explosives and other movable property agreed and signed in March 2008 by and between the Council of Ministers and entity governments was disputed by RS government during the parliamentary process regarding the Law on control of movement of weapons and military equipment. RS government argues that the competencies such as import and export of military arms were illegally transferred to the state level. This Agreement also provides for the destruction of obsolete and dangerous ammunition.

Although the Action plan, as mentioned earlier, does not treat any of the issues discussed in this chapter explicitly, it is important to highlight that B&H acceded to and applies nine conventions and agreements on nonproliferation of WMDs. Also it is important to highlight that a part of the requirements in this field (other than human rights) are not part of the transitional agreement and consequently their deadlines have not started running yet, although B&H gradually assumes international obligations from this field through compliance with the international treaties.



Parliamentary process and status of draft laws and international agreements with reference to constitutional basis and status vs. relevant legislation of lower levels of government

There were a few draft laws treating this field and obligations deriving from the Common Foreign and Security Policy of the EU in parliamentary processing.

Laws in process	Status as of May 29, 2005.
Law on Border	In the Parliamentary Assembly procedure since April 2008.
ControlAdopted at the 41st session of the B&H Council of Ministers.	Rejected in the first reading at the House of Representatives of PA B&H on April 1, 2009.
	Adopted by the House of Representatives of PA B&H on June 10th and House of People on June 15th 2009 in urgent procedure.
Law on control of movement of weapons and military equipment	Adopted at the 41st session of the B&H Council of Ministers.
	In the Parliamentary Assembly procedure since June 2008.
	Adopted by the House of Representatives in the first reading on February 4, 2009.
	House of Peoples rejected it in the first reading on May 20, 2009.
	Adopted by the House of Representatives of PA B&H on June 10 and House of People on June 15 2009 in urgent procedure.
Law on arms	Adopted at the 68th session of the B&H Council of Ministers
	In the Parliamentary Assembly procedure since December 18, 2008.
	Rejected in the first reading at the House of Representatives of PA B&H on February 18, 2009.
Law on transport of dangerous substances	Adopted at the 71st session of the B&H Council of Ministers
	In the Parliamentary Assembly procedure since January 28, 2009.
	Rejected in the first reading at the House of Representatives of PA B&H on March 4, 2009.
Law international legal aid in criminal matters	Adopted at the 79th session of the B&H Council of Ministers
	In the Parliamentary Assembly procedure since January 19, 2009.
	Rejected in the second reading at the House of Representatives of PA B&H on March 4, 2009.
	Adopted by the House of Representatives of PA B&H on June 10th and House of People on June 15th 2009 in urgent procedure.

Due to permanent problems in the process of adoption of national legislation e.g. the Law on arms, Law on transport of dangerous substances and Law on control of movement of weapons and military equipment none of the laws passed the Parliamentary Assembly of B&H because of objections on the part of RS parties until mid of June. As a direct consequence of this, Bosnia and Herzegovina was placed in the second cycle of the visa liberalization regime, that is, from the second half of 2010 B&H will be in the same group with Kosovo. This situation attributes a negative image to B&H and prevents B&H citizens from enjoying freedom of movement. Finally, this situation provides a platform for rather pessimistic analyses on security in B&H and aggravates the position of B&H and its citizenry.

These laws are necessary for meeting the requirements of the Road Map for liberalization of visa regime, and as such are not bound to deadlines of the Stabilization and Accession Agreement, but they are very eagerly anticipated by the citizens of B&H. The Anti-discrimination law is in processing since May 27, 2009; it directly relates to the provisions of the European Convention on Human Rights and Fundamental Freedoms, which is an integral part of the B&H Constitution. Compliance with this convention is *inter alia* an obligation deriving from the key principles of the EU Common Foreign and Security Policy.

The aforementioned laws are directly connected to implementation of the 2008-2012 Strategy and Action Plan for control of small and light weapons in Bosnia and Herzegovina. On May 14th and 15th, 2009 in Međugorje a workshop on implementation of the Strategy and Action Plan of the Parliamentary Security Commission took place for representatives of competent institutions. In this meeting seven (7) conclusions were made with regard to the need for better coordination of entity and state institutions that can be established through adoption of required legislation and allocation of more budgetary resources for collection and destruction of weapons, mines and other explosive devices. One of the strategic and longterm problems for citizens of B&H is concerning the large amount of small and light weapons (SALW)² in the possession of civilians. There are over 350,000 pieces of registered small and light weapons in possession of

civilians in Bosnia and Herzegovina, and some estimates suggest that there is approximately the same amount of such weapons in unregistered possession. As of 2007 over 50,000 items of weapons had been collected, and these activities are still ongoing.



Commentary

As noted in the first assessment made in December 2008, Bosnia and Herzegovina is still willing to meet all the principles of policy dialogue, in particular the goals of the *Common Foreign and Security Policy* and the part that refers to non-proliferation of weapons of mass destruction. During this reporting period, namely on January 5, 2009, the Presidency of B&H decided to accede to the Convention on Nuclear Safety and accordingly it decided that B&H should join the Convention on the Physical Protection of Nuclear Material.³

Despite constant political tensions in B&H, the Joint Parliamentary Committee on Defense and the Security and Intelligence Committee have continued to perform their functions in an appropriate manner. The B&H Parliamentary Committee in charge of supervision of work of the Security and Intelligence Agency still does announced and unannounced inspections of the Agency. Amendments to the Law on the Intelligence and Security Agency as well as the amendments to the Law on

data protection in B&H, harmonizing it with the NATO standards.

protection of confidential data came into force on February 10, 2009. The first regulates the reporting obligations of the Intelligence and Security Agency, state level executives and parliamentary bodies. The latter has expanded the scope of

Transfer of competencies from the entity to the state level with regard to military arms, ammunition, explosives and other movable property agreed and signed in March 2008 by and between the Council of Ministers and entity governments was disputed by RS government. RS government argues that the competencies such as import and export of military arms were illegally transferred to the state level. This Agreement also anticipates destruction of obsolete and dangerous ammunition. Inability to resolve the issue of transfer of immovable military property to the state jurisdiction (the second of five goals and two requirements for transition of OHR) and lack of financial resources remain unresolved and a significant obstacle to reform process. Due to constant obstruction in the process of adoption of national legislation e.g. the Law on arms, Law on transport of dangerous substances and Law on control of movement of weapons and military equipment, none of the laws passed the Parliamentary Assembly of B&H because of disagreement on the part of RS parties, until mid June 2009. The Law on Border Control, as well as the Law on International Cooperation on Criminal Matters, Law on Movement of Weapons and Military Equipment, and the Law on Prevention of Money Laundering and Financing Terrorist Organizations were adopted in the first half of June in urgent procedure. The Council of Ministers has, due to the lack of agreement on adopting a single law at the state level, adopted a Decision on mutual alignment with international standards of entity, canton and Brčko District regulations on weapons on June 4th 2009.

As a direct consequence of this prolongation, Bosnia and Herzegovina was placed in the second cycle of the visa liberalization regime,⁴ that is, from the second half 2010 B&H will be in the same group with Albania.5 This situation attributes a negative image to B&H and prevents B&H citizens from enjoying freedom of movement. Finally, this situation provides a platform for rather pessimistic analyses on security in B&H and aggravates the position of B&H and its citizenry. The problem is not about the analyses but about the situation on the ground and the problems that B&H institutions can hardly tackle without a more coordinated approach and clearly demonstrated political will.

Small and light weapons

⁽Presidency of B&H, 50th regular session, January 5, 2009, http://www.predsjednistvobih.ba).

In the first cycle, by the end of this year, there will be Serbia, Montenegro, Macedonia and Albania.

Kosovo was not recognized by the following EU member states: Spain, Romania, Slovakia, Greece, and among the potential candidates who have not recognized Kosovo are Serbia and Bosnia and Herzegovina. Therefore, it has special status.

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TITLE III REGIONAL COOPERATION



a Introduction – General assessment of implementation of B&H obligations under SAA and Interim Agreement and priorities of European Partnership in the reporting period

Title III, under Articles 14-17 of the Stabilization and Association Agreement (SAA) with EU, as a crucial requirement imposes that Bosnia and Herzegovina should work on strengthening regional cooperation. Bosnia and Herzegovina is obliged to promote good neighborly relations and regional cooperation, the existing free trade agreements with the countries in the region, as well as the Central European Free Trade Agreement (CEFTA). One of the preconditions is signing of the standardized bilateral agreements on regional cooperation, which contain the key elements of SAA and European Partnership, with countries in the region and other European partners. Relations in the region are very tense due to unresolved border disputes and some other open issues, therefore one of the priorities of regional cooperation is a bona fide approach to so-called border matters. Among priorities of the European Partnership with Bosnia and Herzegovina is sustainable return of refugees, which implies a continuous allocation of funding for the Return Fund and appropriate implementation of the Sarajevo Declaration.

Regional cooperation, unfortunately, remains a hostage to Balkan nationalisms. Bosnia and Herzegovina is not an exception to this bad rule, which ultimately has its effects. Lack of institutional coherence and homogeneity of interests within B&H often slows down the reform processes and postpones the discussion on some essential issues. This lack of homogeneity is often misused or misinterpreted on the part of neighboring countries. Internally, the lack of homogeneity is manifested in lack of political will or in obstruction, which ultimately results in an extremely slow pace of activities.



Level of realization of the Action Plan

The B&H Council of Ministers adopted an Action Plan whereby the inter-department activities concerning the obligations assumed are prescribed. In the field of regional

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cooperation, most of the obligations and responsibilities have been entrusted to the Ministry of Foreign Affairs, Ministry of Human Rights and Refugees and Ministry of Foreign Trade and Economic Relations.

A certain progress was noted in this regard, yet it is insufficient given the dynamics required by the deadlines set forth. Implementation of the priorities to a great extent depends on a broader context and political will not only within B&H but also in the countries of the region.

The Ministry of Foreign Affairs of B&H started, but has not yet completed, the activities regarding the preparation of bilateral agreements on regional cooperation with the states that signed SAA with EU. This process is supposed to be completed by June 2010, and this is realistically possible should the B&H Ministry of Foreign Affairs develop certain human resources in organizational units which directly or indirectly deal with this matter.

The following requirements have been met:

- Ministry of Foreign Affairs of B&H completed the appointment of B&H coordinators in regional initiatives and supporting working bodies.
- Agreements with the countries in the region whereby the status of regional initiatives and the seat of the Regional Cooperation Council have been regulated were ratified.
- Ministry of Foreign Trade and Economic Relations of B&H developed a program of measures for implementation of the CEFTA agreement, which includes, among other things, the action plan for implementation of the agreement with attachments. Proposed measures are grouped into five general groups: measures aimed at attracting foreign investments, agro-complex products, measures in the field of sanitary and phyto-sanitary protection and measures for technical industry products.

The following requirements have been partially met:

- Bosnia and Herzegovina applies the Central Europe Free Trade Agreement (CEFTA) and the European Common Aviation Area (ECAA). Bosnia and Herzegovina signed the Energy Community Agreement. In a majority of the segments Bosnia and Herzegovina lags behind with implementation of the Road Map for electricity and gas, which was adopted as Item 4 at the session of the Council of Ministers held on November 17, 2006 in Skopje, but due to refusal of Republika Srpska it also lags behind in fulfilling its obligations under the Agreement, particularly in the sector of gas. The national Study on the Energy Sector has been successfully completed and presented, but due to obstructions the National Energy Strategy has not yet been developed.
- A Returns Fund was established as an independent self-governing organization at the level of Bosnia and Herzegovina. There are 47,000 families, that is, 153,000 persons, waiting for sustainable return. For the very first time the Council of Ministers invested 5.5 million KM into 81 sustainable return projects in B&H. The global financial and economic crisis, which has affected B&H as well, has significantly slowed down the activities on sustainable return, which are funded from the budget.
- The B&H Strategy for implementation of Annex VII of the Dayton Peace Accord was revised. In October 2007, with adoption of an action plan for revision, the activities on

revision of the Strategy were officially launched, however the final document was completed and addressed to parliamentary procedure only in March 2009. The revised Strategy anticipates activities in the following fields: reconstruction of housings units for refugees, which implies closing down the collective centers and resolving the issue of alternative housing facilities; completing the process of return of property and tenancy rights of returnees; installing electricity in returnee settlements and individual households of returnees; reconstruction of infrastructure in places of interest for return of refugees, displaced persons and returnees; health protection of displaced persons and returnees; social protection of displaced persons and returnees; education of displaced persons and returnees; right to work and employment of displaced persons and returnees; and demining of the areas of return.

- Due to problems with incomes of the Federation budget, allocations to the Return Fund have been suspended. Little progress was made in relation to the previous year's report, especially in terms of fundraising for implementation of the 81 projects of self-sustainable return.
- An agreement was signed on cooperation in the project of installing electricity in the locations/facilities where return took place in 2008.
- There is an ongoing approval procedure over the bilateral agreement on economic cooperation with Serbia, and the B&H Presidency already approved the Protocol on regular meetings of the border police forces between Serbia and B&H.
- The B&H Presidency also approved the signing of an agreement between the B&H Council of Ministers and Council of Ministers of the Republic of Albania on cooperation in fighting crime, especially terrorism, illicit drug trafficking and organized crime, as well as of an agreement on re-admission of persons illegally residing in the country and the relevant implementation protocol.
- The procedure of defining and concluding an agreement on protection of confidential data, exchanged between the Council of Ministers of Bosnia and Herzegovina and Government of Republic of Greece, has been launched, as well as the procedure of concluding an agreement on social security between Bosnia and Herzegovina and the Grand Duchy of Luxembourg.
- Due to a very restrictive visa regime towards citizens of Kosovo, imposed primarily by politicians from RS in the joint institutions, Bosnia and Herzegovina has brought into question its role as a good host for the Regional Cooperation Council (RCC). Representatives from Kosovo, who were supposed to attend a consultation meeting of working bodies of RCC were denied entry visas to B&H because B&H does not recognize the travel documents of the Republic of Kosovo. The problem was partly solved only after pressure exerted from the EU, when it was decided that visas could be issued on a separate travel list and only in exceptional situations and under special procedures.

The following requirements have not been met:

- Property relations with Serbia and Croatia have not been resolved yet, mainly due to political reasons, as noted in last year's B&H Progress Report. In the first four months of this year no progress was made in this regard.
- Agreement on dual citizenship between Bosnia and Herzegovina and Montenegro was not supported due to objections of a Presidency member, Mr. Haris Silajdžić and the Party for B&H.



Parliamentary processing and status of draft laws and international agreements with reference to constitutional basis and status vs. relevant legislation of lower levels of government

Currently, there are a few bills in the parliamentary procedure which directly or indirectly deal with the issue of regional cooperation and obligations of B&H under SAA and European Partnership. However, since none of these bills has been adopted, we can consider that the requirements in this field have only been partly met.

The Draft law on control of foreign trade of goods and services is of a strategic importance for security of B&H, for legal control under this law is extended to trade of weapons, explosive devices and all hazardous substances threatening general safety. The law began processing through parliamentary procedure on March 17, 2009.

The Draft law on weapons has been in parliamentary processing since December 18, 2008. This Law is a result of the need for harmonization of B&H legislation with the conclusions of the regional forum on the control of light weapons, and accordingly the law is fully harmonized with the Directive 91/477/EEC of EU Council on control of procurement and possession of weapons and Directive 2008/51/EC of the European Parliament and Council as of 21.5.2008 on changes and amendments to the Directive of the Council 91/447/EEC on control of procurement and possession of weapons.

The draft law on protection of domestic products within the CEFTA Agreement is in parliamentary processing since December 18, 2008. and was adopted mid of June. This draft law provoked many reactions on the part of neighboring countries and some representatives in the European Parliament who consider this law to be contradictory to the principles of CEFTA and WTO. Proponents of the draft law, however, believe this law is an important step for the protection of domestic production which cannot be considered a competitor to imported goods.

The draft law on border control is in parliamentary processing since April 24, 2008. and finally adopted on June 15th 2009. This is, in fact, an amendment to the existing legal solutions harmonized with certain EU standards and based upon proposal of Schengen acquis experts. This law is one of the requirements for liberalization of the visa regime, that is, putting Bosnia on the so-called "white list" of countries that require no visa for entering the Schengen area.

An agreement signed between Bosnia and Herzegovina and the ECC on funding the participation of B&H in the international territorial cooperation program – Southeast Europe is also in parliamentary ratification processing. Implementation of this agreement is to strengthen the component of cross-border cooperation.

State institutions are fully authorized, under the Constitution of B&H, to sign relevant agreements on bilateral cooperation with the countries in the region. There is no constitutional obstacle to implementation of the goals defined under SAA.



The report on the pace of implementation of requirements under Title III of SAA and European Partnership in the first six months of 2009 unfortunately is not much different from the previous report. The desired pace has not been achieved. We have identified some more draft laws that, directly or indirectly, deal with regional cooperation, but due to the very slow pace of their adoption they must be placed into the category of partly fulfilled requirements.

Regional cooperation, unfortunately, remains a hostage to the Balkan nationalisms. Bosnia and Herzegovina is not an exception to this bad rule, and this certainly affects the level of fulfillment of requirements assumed under SAA and European Partnership. A lack of institutional coherence and homogeneity of interests in B&H often slows down the reform processes, while these interests are often misused or misinterpreted by neighboring countries. While there are many issues of concern, we will mention just some of them: Croatia and B&H dispute regarding the interest of B&H in having an exit to international waters and acknowledging the sea borders between these two countries; Serbia and BiH dispute regarding the obligations assumed under the Rome Agreement, whereby the countries in conflict are prevented from prosecuting war crimes without prior approval of ICTY, and issues Interpol warrants against citizens of B&H; B&H, on the other hand, unable to cope with the fact that as host to an important regional body of RCC it must allow the official representatives of Kosovo to travel into its territory, despite the fact that B&H has not recognized the independence of Kosovo, etc.

These problems slow down the pace of implementation of obligations on regional cooperation under SAA and European Partnership. In B&H there is political will for regional cooperation expressed through participation of B&H in all relevant regional initiatives, forums and organizations. The problem is, however, in the slow pace of adopting draft laws in the field of regional cooperation, which are a requirement under the SAA and European Partnership. The majority of the aforementioned draft laws have been in parliamentary processing for too long, which seriously brings into question the ability of the Parliament to handle all the obligations assumed by B&H. Political conflict over jurisdiction, in particular, the repeated requests of RS to "be given back" the jurisdictions which have been transferred, additionally aggravates the situation and slows down the processes.

Unfortunately, our conclusion in our previous report on overlapping jurisdictions is still evident. In the action plans for implementation of European Partnership and Interim Agreement there are certain institutional overlappings. In other words, there are certain activities that require better inter-department coordination at the level of state institutions, and this coordination is currently very poor. Lack of coordination and insufficient number of staff are problems of some of the ministries that were specifically assigned with coordinating these activities.

Some regional cooperation priorities defined under SAA (such as resolution of property relations with neighbors) are too often colored by the agendas of daily politics and do not depend exclusively on B&H but rather on the readiness of neighboring countries to contribute to a common solution.

With regard to peaceful solution of border disputes, good neighboring cooperation is still a hostage of local politics in both B&H and neighboring countries. Lack of progress in terms of open border-related issues with Croatia and Serbia mentioned in the 2008 Progress Report is still evident. The 2005 Agreement between Bosnia and Herzegovina and Croatia on determination of land and river borders has not yet been ratified. Moreover, the dispute over two islands - Veliki školj and Mali školj – remains unresolved, as well as the issue over the border on the Una River. There is still no agreement signed about the border between B&H and Serbia. Serbia has been building special/parallel relations with the B&H entity, Republika Srpska, at the expense of bilateral relations with the State of Bosnia and Herzegovina. Therefore, the Council for bilateral cooperation between B&H and Serbia on the senior level have not met for over a year, while a similar body for relations with Republika Srpska is active.

Bosnia and Herzegovina is still an active participant in the regional cooperation initiatives such as transfer of the Stability Pact to a more regionally-owned framework - Southeast European Cooperation Process (SEECP) and Regional Cooperation Council (RCC), as well as Central European Initiative (CEI), Adriatic-Ionic Initiative and Danube Cooperation Process. The Regional Cooperation Council, seated in Bosnia and Herzegovina, Sarajevo, was officially opened in February 2008. Bosnia and Herzegovina ratified the agreement on being a host-country in April 2008.

Bosnia and Herzegovina acceded to the Barcelona Process: Union for the Mediterranean in July 2008.

Relations with Montenegro are good and are getting more intensive. There are agreements signed on defense, police cooperation, civil protection and crossborder cooperation. Ratification of the Agreement on dual citizenship between the two countries has been suspended in the B&H Parliament.

Relations with Macedonia both bilateral and regional are good. There are agreements signed on re-admission, police cooperation and civil protection.

Relations with Albania have been intensified, and Bosnia and Herzegovina decided to open an embassy in Tirana, but this will have to be postponed for a while due to the very difficult financial situation in B&H.

Negotiations on succession of diplomatic property of former SFRY have been relaunched. Serbia failed to meet any of the assumed obligations, and until recently it showed no interest in continuation of the process.

TITLE IV

- Free movement of goods: Chapter I. Industrial products and A) Chapter 2. Agriculture and Fisheries (Articles 18-31) of SAA between B&H and EU
- Introduction General assessment of implementation of B&H obligations under SAA and Interim Agreement and priorities of European Partnership in the reporting period

As regards free movement of goods, having signed the SAA with the EU, B&H undertook obligations aiming at establishing a free trade area in conformity with the SAA provisions and provisions of the GATT 1994 and the WTO. The obligations that followed, after the entering into force of the Interim Agreement (IA) B&H, were met within the deadlines. Since the reduction of certain customs fees is to take place gradually, we can report that the following was implemented up until June 30, 2009:

Industrial products

- 1. Customs duties on the import of industrial products originating in the Community, with the exception of products listed in Annex, were abolished (Article 3 of the IA / 18 of the SAA);
- 2. Customs duties on the import of industrial products into Bosnia and Herzegovina listed in Annex I (a), (b) and (c) were reduced to 80 percent of the customs duty on the day the Agreement was signed (Article 6 of the IA / 21 of the SAA);
- 3. Quantitative restrictions on the import of industrial products originating from the Community, as well as of measures having equivalent effect, were abolished (Article 6 of the IA / 21 of the SAA);

Processed agricultural products

1. Customs duties on processed agricultural products listed in Annex I of Protocol 1 were abolished (Article 10 of the IA / 25 of the SAA);

The obligations that followed from the entering into force of the Interim Agreement (IA) B&H on July 1, 2008, aimed at establishing free zone area in line with the provisions of GATT 1994 and WTO, were met within the deadlines.

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2. Customs duties on processed agricultural products listed in Annex II of Protocol 1 were reduced down to 80 percent of the customs duty on the day the Agreement was signed (Article 10 of the IA / 25 of the SAA);

Agricultural and fishery products

- 1. Quantitative restrictions and measures having equivalent effect on imports of agricultural and fishery products originating in the Community were abolished (Article 11 of the IA / 26 of the SAA);
- 2. Customs duties on agricultural products listed in Annex III (a) were abolished (Article 12 of the IA / 27 of the SSP);
- 3. Customs duties on agricultural products listed in Annex III (b), were abolished (Article 12 of the IA / 27 of the SSP);
- 4. Custom duties on agricultural products listed in Annex III (c) were reduced to 50 percent of the customs duty on the day the Agreement was signed (Article 12 of the IA / 27 of the SAA);
- 5. Custom duties on agricultural products listed in Annex III (d) were reduced to 80 percent of the customs duty on the day the Agreement was signed (Article 12 of the IA / 27 of the SAA);
- 6. Customs duties applicable on imports of certain agricultural products listed in Annex III (e) within the limit of the tariff quota were abolished (Article 12 of the IA / 27 of the SAA);
- 7. Customs duties on high-quality sparkling wine and wine from fresh grapes within the quota of 6,000 hl were abolished (annual increase by 1000 hl up to 8000 hl), (Article 12 of the IA / 27 of the SAA); and
- 8. Customs duties on fishery products in accordance with Annex V were abolished (Article 13 of the IA / 28 of the SAA).

In order to prepare for further integration in EU, B&H committed to priorities defined by the Council's Decision on principles, priorities and requirements contained in the European Partnership with Bosnia and Herzegovina (2008/211/EC), passed on February 18, 2008. Subject to further consideration are the following short-term priorities (expected to be fulfilled by June 30, 2009):

- Improving and implementing the legal framework for standardization, metrology, accreditation and certification of products to bring it into line with EU standards and best practice; Further approximation (conformity) of technical regulations to those of the acquis communautaire; Enhancing the capacity of the institutions, and creating the legal basis for conformity assessment procedures.
- 2. Ensuring that the market surveillance agency is fully functioning and continuing to take steps to establish a market surveillance structure responding to the requirements of the acquis on free movement of goods.
- 3. Adopting the State law on pharmaceutical and medical devices and establishing a State Pharmaceutical Agency.
- 4. Further approximation of customs and tax legislation and procedures with the acquis and ensuring that the Bosnia and Herzegovina tariff is timely updated on the basis of the most recent Combined Nomenclature.

- 5. Ensuring that the legal framework for free zones is compatible to EU standards and that there is an adequate free zone supervision system in place.
- 6. Ensuring an appropriate implementation of the rules of origin, including diagonal cumulation.
- 7. Implementing the rules of establishing customs value in line with international standards and practice.
- 8. Abolishing taxes the effects of which are equal to customs charges (customs charges for customs declaration processing).



Level of realization of Action Plan

The implementation of the European Partnership priorities is defined in the Action Plan developed by the B&H Directorate for European Integration, pursuant to the Council Decision (2008/211/EC) of 18 February 2008. This section gives an overview of the implementation level for activities planned to be completed by June 30, 2009.6

The priority listed under item 1 implies the following activities:

- Strengthening of the institutional capacity of the MoFTER in order to meet the requirements of the European Commission (EC) pertaining to free movement of goods (setting up an internal market unit) (MoFTER);
- 2. Establishing of units for the implementation of new approach directives within competent institutions, and strengthening the organization of the relevant entity institutions (CoM; MoFTER; MCA; MCT; MS; IM; GFBH; GRS);
- 3. Adopting the rules of procedure for recognition of documents and conformity criteria for documents issued abroad (MoFTER);
- 4. Adopting the regulation on appointment of bodies responsible for conformity assessment (MoFTER);
- 5. Adopting the order on low-voltage product safety (MoFTER);
- 6. Adopting the order on machine safety (MoFTER);
- 7. Adopting the order on electromagnetic compatibility (MoFTER);
- 8. Adopting the order on elevator safety (MoFTER; MCT);
- 9. Adopting the order on toys safety (MoFTER; MCA)

Implementation of the priorities under the European Partnership defined in the Action plan is still not at a satisfactory level, especially when it comes to the issues of standardization, accreditation, conformity assessment, metrology, market surveillance and consumer protection, nor in terms of approximation of technical regulations with those of acquis. One of the key issues to be additionally developed might be the strengthening of institutional capacities and cooperation among relevant institutions so as to create conditions for a stable internal market and free trade.

Next to each activity the institution in charge of implementation thereof is mentioned.

- 10. Adopting the order on non-automated scales (MoFTER; IM)
- 11. Adopting the order on gas devices safety (MoFTER)
- 12. Adopting the order on safety of pressure-driven equipment (MoFTER)
- 13. Adopting the order on safety of personal protection equipment (MoFTER; MCA)
- 14. Adopting the order on safety of devices used in potentially explosive environment (MS; MoFTER)
- 15. Establishing a standardization council (IS);
- 16. Hiring staff for the B&H Institute for Standardization (IS);
- 17. Hiring staff for the RS Institute for standardization and metrology (RISMRS).

Of all the above activities only three were carried out. With regard to the adoption of technical regulations and establishing mechanisms of internal consultation and reporting, no sufficient progress was made within the set deadline. There are ongoing activities concerning the orders under 5, 6, 7 and 8.

The priority under item 2 implies the following activities:

- 1. Staffing and capacity building of the Market surveillance agency (MSA)
- 2. Adopting the rules of procedure for internal procedures and activities upon receiving a notice on dangerous products (non-food consumer products) (MSA)
- 3. Adopting the changes and amendments to the Law on general product safety (integrating the Directive on dangerous imitations and improving and providing more precise definitions of certain parts of the Law) (MSA);

Staffing procedure has been completed and the Rulebook on internal procedures and actions upon receipt of report on dangerous product was adopted, but it will not become applicable until the changes and amendments of the Law on general product safety are adopted.

The priority under item 3 implies the following activities:

- 1. Adopting the law on pharmaceutical and medical devices (MoFTER; MCA)
- 2. Establishing the agency for pharmaceutical and medical devices (MoFTER; MCA)

The above activities were carried out, noting that a simpler application of this law requires the adoption of additional by-laws. The law is published in the Official Gazette No. 58/08.

The priority under item 4 implies the following activities:

 Developing and adopting the following new instructions: instructions on customs procedures for mail traffic, instructions on external processing, instructions on temporary imports, instructions on inspection in customs procedures, instructions on free zones (ITA);

- 2. Offering expert assistance to the Ministry of Foreign Trade and Economic Relations with timely update of the Customs Tariff in B&H in accordance with the latest EU Combined Nomenclature (ITA);
- 3. Develop a manual for goods classification (ITA).

The new instructions are in the final phase of production, while the other activities have been carried out.

The priority under item 5 implies the following activities:

- 1. Adopting the Law on changes and amendments to the Law on free zones in order to harmonize it with the acquis (MoFTER);
- 2. Providing professional assistance to the competent B&H Ministry of foreign trade and economic relations in preparing the amendments aimed at harmonizing the Law on free zones with the acquis (ITA).

The aforementioned activities have not been completed.

The priority under item 6 implies the following activities:

- 1. Developing an Instruction on application of the rules on origin of goods traded between EU and B&H based on the Interim Agreement (ITA);
- 2. Developing an Instruction on separate accounting statements, an Instruction on authorized exporters; Instruction on issuing a direct transportation certificate (ITA);
- 3. Organizing the education of customs officers on origin of goods (ITA).

A new Instruction on application of the rules on origin of goods traded between EU and B&H has not yet been developed. Other activities are completed. The instructions were published in the Official Gazette Nos. 14/09 and 17/09.

The priority under item 7 implies education of customs officers on rules of establishing the customs value (ITA). This activity has been completed.

The priority under item 8 implies abolishment of a 1% charge for customs recording of the goods imported from EU, in line with the Interim Agreement and SAA (ITA). This activity has been completed.



Parliamentary processing and status of draft laws and international agreements with reference to constitutional basis and status vs. relevant legislation of lower levels of government

The foreign trade and customs policies fall within the exclusive jurisdiction of the state of Bosnia and Herzegovina, Article 3 Item 1 (b) and (c) of the B&H Constitution, while the leading competent institution is the Ministry of Foreign Trade and Economic Relations of B&H. All legislation adopted so far at the B&H *level, relating to the free movement of* goods, is free of incompatibility with legislation at lower levels of government.

Legislation governing the free movement of goods has been adopted by the B&H Parliament. No legislative proposal relating to this field is currently in parliamentary processing. With regard to the constitutional basis and status vs. legislation at lower levels of government, the foreign trade and customs policies fall within the exclusive jurisdiction of the state of Bosnia and Herzegovina, Article 3 Item 1 (b) and (c) of the B&H Constitution, while the leading competent institution is the Ministry of Foreign Trade and Economic Relations of B&H. All legislation adopted so far at the B&H level, relating to the free movement of goods, is free of incompatibility with legislation at lower levels of government.



Commentary

Bosnia and Herzegovina has made a certain amount of progress in this field, but a lot of effort must yet be made for the integration process to assume a satisfactory pace. One of the key issues to be additionally developed might be the strengthening of institutional capacities and cooperation among relevant institutions so as to create conditions for a stable internal market and free trade. The implementation of legislation relating to customs duties after the entry into force of the Interim Agreement is at a satisfactory level. With regard to the implementation of legislation governing the field of free trade and customs duties, it should be noted that there are certain problems with their implementation due to a lack of operational instructions that are to be adopted. B&H has not yet made satisfactory progress with regard to the issues of standardization, accreditation, conformity assessment, metrology, market surveillance and consumer protection, nor in terms of approximation of technical regulations with those of acquis.

When it comes to free trade of goods it is important to mention that the House of Peoples of the B&H Parliamentary Assembly adopted, in the first reading, the Draft Law on protection of domestic production within the CEFTA Agreement, which implies chagrining of a full MFN fee on the imported goods described under the Customs Tariffs chapters 02, 04, 16.01, 16.02, 20, 22 originating from Republic of Croatia and Republic of Serbia. Adoption and application of this Law is contrary to the provisions of the CEFTA Agreement as well as to SAA (Article 12 of the Interim Agreement, Article 27 of SAA). This could seriously deteriorate the trade relations in the region, as well as relations between B&H and EU, for this would be a breach of international agreements.

Title IV

Bì Free movement of goods, Chapter III, Common Provisions (Articles 32-46 of the SAA)



Introduction - General assessment of implementation of B&H obligations under SAA and Interim Agreement and priorities of European Partnership in the reporting period

A significant novelty in the monitoring of the fulfillment of obligations of Bosnia and Herzegovina under SAA and EP priorities was the establishment of an interim Joint Committee of Signatories of the Interim Agreement.

Pursuant to Article 40 of the Interim Agreement, EC and Bosnia and Herzegovina established an Interim Board. One of the five sub-committees established pursuant to Article 43 of IA is the Sub-committee for trade, industry, customs, taxes and cooperation with other candidate countries. The first meeting of the Sub-committee for trade, industry, customs, taxes and cooperation with other candidate countries (hereinafter referred to as the Sub-committee) took place on March 26-27, 2009 in Sarajevo. The B&H side prepared the document that was used as a basis for discussion at this meeting. Priorities under the European Partnership are mainly related to fulfillment of requirements concerning product safety (impact on life and health of people, animals, environment and consumers' interests), for it is the main precondition for free movement of

The overall opinion is that the process of fulfilling these preconditions is still very slow and it is not a part of clear policy or strategy in this area, and the consequences of this situation are suffered by all, primarily by export-oriented companies and the economy in general, that is, consumers and citizens who are insufficiently protected against dangerous products.

goods in the internal market of the European Union. The overall opinion is that the process of fulfilling these preconditions is still very slow and it is not part of a clear policy or strategy in this area, and the consequences of this situation are suffered by all, primarily by export-oriented companies and by the economy in general, that is, consumers and citizens who are insufficiently protected against dangerous products.



Level of realization of the Action Plan

Each priority from the list of European Partnership has been compared against the Chapter "Progress achieved in the period April 2008 – March 2009" of the document produced by the Sub-committee.

Expert comments were provided in the previous (first) report for 2008, and this document offers comments on feasibility of new deadlines and key obstacles to continuation of these reforms.

This report considers the short-term priorities (planned to be fulfilled by the end of 2008), and they are defined as follows:7

- 1. Improving and implementing the legal framework for standardization, metrology, accreditation and certification of products to bring it into line with EU standards and best practice;
- 2. Enhancing the capacity of the institutions, and creating the legal basis for conformity assessment procedures.

Institutes for standardization, metrology, and accreditation and the market surveillance agency are the best part of the system, and the major problem is with finding the funding for their activities and procuring the equipment for capacity building, especially for the Metrology Institute which requires an urgent investment of a few million KM. It is unclear. however, why there was no detailed analysis on readiness of the entity inspectorates in charge of operations in the field and monitoring of product safety.

Ensuring that the market surveillance agency is fully functioning and continuing to take steps to establish a market surveillance structure responding to the requirements of the acquis on free movement of goods.

A joint comment on items 1 and 2 is the following: the Institutes for standardization, metrology, and accreditation and the Market Surveillance Agency are the best part of the system and a major problem is the funding for their activities and procuring the equipment for capacity building, especially for the Metrology Institute that requires an urgent investment of a few million KM.

Adopting the State law on pharmaceutical and medical devices and establishing the State Pharmaceutical Agency.

Medical devices are governed by three directives with the new approach and the Law on medicines (with the old approach). Since there is no ministry of health at the state level, coordination will prove to be very difficult, especially since no one has even mentioned a state strategy for adopting and applying these three very important and complex directives.

- 4. Further approximation of the customs and tax legislation and procedures with the acquis and ensuring that the Bosnia and Herzegovina tariff is updated in a timely manner on the basis of the most recent Combined Nomenclature.
- 5. Dismantling taxes with an effect equivalent to a customs duty (customs fees for the processing of customs declarations).

The following is the report on the level of fulfillment of the activities planned for 2008.

In the previous report for 2008, expert comments were given on each proposed measure.

The priority under item 1 anticipated the following activities:

1. Strengthening of the institutional capacity of the MoFTER in order to meet the EC requirements for the free movement of goods (establish an internal market unit) (MoFTER).

The Report on the Session of the Sub-committee held on March 26-27, 2009 in the section dealing with staff states the following:⁸

B&H Ministry of Foreign Trade and Economic Relations

	Number of employees			
Name of institution / Sector (department, section)	Anticipated by job systematization	Real number of employees	2009 employment plan	
Sector for economic development and entrepreneurship (Department for technical support to economic development)	6	3	Depends on adoption of the new Rulebook and budget	

«A new draft Rulebook on job systematization in the B&H Ministry of Foreign Trade and Economic Relations has been developed, whereby it is anticipated that two new departments in the Sector for Economic Development and Entrepreneurship are to be established: the Department for technical regulations and the Department for conformity assessment both having a total of 14 civil servants.

A major problem is the fact that there is a lack of resources in the budget for development of institutional and administrative capacities, as well as a lack of premises to accommodate the critical mass of people required for the European integration process.»

Commentary: Hereby the Ministry implicitly states that future reports will probably repeat the same conclusion about the inability of making progress in all areas assigned to the Ministry, for an Army cannot wage wars without soldiers, and a football team cannot play without players, etc. Therefore, there is a need for an urgent political decision to unblock the process of enabling free trade of goods, for example by hiring *ad hoc* external experts and involving some of the competent institutions of Bosnia and Herzegovina in the transitional period, that is, until the vacant positions are filled and staff is trained, which in the best case scenario can take up to 12 months.

2. Establishing the units for implementation of the new approach directives within appropriate institutions, and strengthening the organization of appropriate entity institutions (CoM; MoFTER; MCA; MCT; MS; IM; GFBH; GRS)

Commentary: In a previous report of the Foreign Policy Initiative, the lack of these units and staff being thoroughly trained on the relevant technical legislation of the EU was highlighted as the major problem in the process of taking over the new approach

Excerpts from the document prepared for session of the Sub-committee on March 26-27 are given in italic.

directives of the EU.⁹ Therefore it is not clear why the document of the Sub-committee does not mention other state ministries, e.g. MCA; MCT; MS, while significant attention has been paid to capacity analysis of the entity ministries and other institutions that play no significant role in implementation of the EU technical legislation.

It is important to mention that the entities have no role in the establishing and functioning of the system for accreditation, standardization, scientific and industrial metrology.¹⁰

It is unclear, however, why there was no detailed analysis on the readiness of entity inspectorates in charge of operations in the field and monitoring of product safety, since most of the efforts and funds will need to be invested into these very bodies, regardless of the fact that they will have the full support of the extremely competent Market Surveillance Agency.¹¹

3. Adopting the rules of procedure for recognition of documents and conformity criteria for documents issued abroad (MoFTER)

The document of the Sub-committee reads: «The Proposed draft Decision on terms and conditions for recognition of documents and conformity criteria for documents issued abroad", is to be adopted in the following period by the B/H Council of Ministers at the proposal of the Ministry of Foreign Trade and Economic Relations.

Commentary: This means that the obligation from the Action Plan of European Partnership has been transferred from 2008 to 2009.

4. Adopting the regulation on the appointment procedure for bodies responsible for conformity assessment (MoFTER)

The document of the Sub-committee reads: «As for the infrastructure for assessing the quality of technical and industrial products, the List of authorized bodies for conformity assessment in B&H is in its final phase and it will be distributed to CEFTA countries. »

Commentary: This was not done in 2008 as planned. The regulation should be first made for technical regulations from former Yugoslavia that are still in force, and then for EU regulations, as soon as the takeover process is complete and the first EU new approach directive is in force. It is hard to expect that CEFTA countries will agree to this regulation given the fact that with some rare exceptions neither the former nor the latter is applied in B&H.¹²

This is the main reason due to which each of four expert groups for taking over the four priority directives held over 15 sessions each instead of having a maximum of four per each directive.

The entities have jurisdiction only in terms of verification of measuring instruments in the legal metrology and control of articles of precious metals, while the Institute, pursuant to Decision of the Council of Ministers, is in charge of implementation of new approach directives in this area.

In Slovenia, the major problem was about changing the qualifications of inspectors who earlier worked according to regulations of SFRY and who needed to change not only working methodology but also the surveillance philosophy.

There is no single lab with the list of mandatory equipment for the orders from former Yugoslavia, and bodies for conformity assessment according to the new approach directives are not yet emerging in B&H.

- 5. Adopting an ordinance relating to the safety of low-voltage products (MoFTER)¹³
- 6. Adopting an ordinance on machine safety (MoFTER)
- 7. Adopting an ordinance on electromagnetic compatibility (MoFTER)
- 8. Adopting an ordinance on elevator safety (MoFTER; MCT)

Here the commentary is the same as for items 5 to 8: the deadline has been postponed from December 2008 to June 2009¹⁴ and it is quite realistic provided there is good will.

The document of Sub-committee also says: «the activities concerning the adoption of the following 6 directives have been launched:

- Toys Safety Directive,
- Directive on non-automatic weighing instruments,
- Directive on appliances burning gaseous fuels,
- Directive on pressure equipment,
- Directive on personal protection equipment,
- Directive on devices intended for use in potentially explosive atmospheres.

Commentary: This deadline is unrealistic, given the lack of organizational units and trained staff within the applicable ministries of B&H (See Items 1 and 2).

Establishing a standardization council (IS)

Staffing the Institute for Standardization of B&H (IS)

Staffing the RS Institute for Standardization and Metrology (RISMRS)

Commentary: The title of the institution, the RS Institute for Standardization and Metrology, is rather pretentious, as the Institute has no jurisdiction in terms of adopting international and European standards, and in the field of metrology it has no jurisdiction in terms of scientific and industrial metrology, while in terms of legislative metrology it only takes part in periodic verification of measuring instruments under state control.

Of all, only the three last activities have been implemented. Regarding the adoption of technical regulations and establishing of internal consultation and reporting mechanisms, no satisfactory progress was made within the deadline.

[&]quot;These directives should be adopted by the end of 2009."

¹³ This Order and the Order on elecro-magentic compatibility cover over 90% of products on the market in the field of technical legislation by the new approach (products with CE label).

¹⁴ The Sub-committee document reads: "It is planned that these directives be adopted by the end of June 2009".



Parliamentary process and status of draft laws and international agreements with reference to constitutional basis and status vs. relevant legislation of lower levels of government

The four adopted laws on industrial product and food safety and four drafted regulations on industrial product safety, which are a prerequisite for the free movement of goods, are at the level of Bosnia and Herzegovina, while their implementation is harmonized with lower levels of government.

No legislative proposal relating to Title IV – Free Movement of Goods, Chapter III – Common Provisions (Articles 32-46) of the Stabilization and Association Agreement between B&H and the EU is currently in processing in the B&H Parliamentary Assembly.

The foreign trade and customs policies fall within the exclusive jurisdiction of the state of Bosnia and Herzegovina, Article 3 Item 1 (b) and (c) of the B&H Constitution, while the primary responsible institution is the Ministry of Foreign Trade and Economic Relations of B&H. The four adopted laws on industrial product and food safety and four drafted regulations on industrial product safety, which are a prerequisite for the free movement of goods, are at the level of Bosnia and Herzegovina, while their implementation is harmonized with lower levels of government.

These regulations are adopted by the minister of Foreign Trade and Economic Relations.



C Commentary

The best comment is a comparative overview of the progress of B&H provided in EC reports, in the section on free movement of goods over the three-year period:

- 2006: Little has been achieved in terms of ensuring free movement of goods.
- 2007: There are some developments in the area of free movement of goods.
- 2008: Very limited progress has been made in the area of free movement of goods.

Bosnia and Herzegovina still does not have a strategy or a holistic approach to the establishment of the system of free movement of goods, particularly not with regard to assuming and implementing EU technical legislation. Only two orders (machines and electric safety) are complemented with an analysis of the results of their implementation, which was done within a project funded by the EU. It is hard to imagine what would have happened if, simultaneously with the regulations on safety of technical and industrial products we undertook the regulations on chemicals controlled by the new EU REACH directives, and motor vehicles and cosmetics, which are regulated by old sector-related directives, but in this field not even the first step has been taken.

The process of taking over the acquis relating to the free movement of goods in Slovenia involved nine ministries and nineteen other institutions, with more than 500 officers and technical experts, while Bosnia and Herzegovina has no more than five full-time officers working on these tasks.

MONITORING OF THE B&H EUROPEAN INTEGRATION PROCESSES 2009.



- A) Chapter I Movement of Workers (Articles 47–49),
 Chapter III Supply of Services (Articles 57–59),
 Chapter V General Provisions (Articles 63–69) of the SAA)
- General assessment of implementation of BGH obligations under SAA and priorities of European Partnership in the reporting period:

This report primarily deals with two major areas: the labor market, that is, movement of the labor force and service provision, particularly transportation services.

In comparing the findings in the previous report, it can be seen that no significant progress has been made in this area in terms of fulfilling the obligations deriving from SAA.

The first big challenge for B&H is primarily reduction of structural rigidities that distort the functioning of the labor market, in particular the taxation of labor, levels of social transfers and wage-setting mechanisms. The second challenge is creation of a single economic space in Bosnia and Herzegovina, supporting the free movement of goods, capital, services and persons.

There were some results indicating that certain progress was made in this process, but looking more carefully, one can see that there are still many crucial problems pending mainly due to adverse positions and political priorities on the part of RS and very modest institutional capacities in the Federation. Here we particularly refer to failure to adopt the B&H Transportation Policy required for adoption of strategy and a specific action plan, which are prerequisites for transportation development in Bosnia and Herzegovina. Economic development of our country greatly depends on the development of the motorways network and other

In the area of transport there is urgent need for adoption of a Transport Policy for B&H, which will result in a Transport Strategy and an Action Plan for implementation thereof. The interested investors want to see that B&H has an organized approach and a clearly defined list of priorities.

means of transport. The procedure has failed in a very destructive manner, since neither amendments nor constructive criticism or proposals for a common solution have been offered. With regard to transport, the entities try to do as much as possible without coordination with the state ministry, which ultimately leads to different priorities and interests that are not exclusively oriented towards development and/or accession to EU. These adverse interests stand as an obstacle to serious investors, for they clearly convey the message that the state neither stands behind these important priorities nor is it able to support their implementation in an adequate manner.

The general view is that the process of implementation of obligations in the areas treated in this report will progress very slowly, due to lack of capacities in the B&H institutions. There is a lack of human resources at both the macro and the micro levels, especially at the micro level where the majority of officials lack the technical knowledge and better interpersonal skills required for improvement of productivity, and thereby an accelerated process of the implementation of obligations.



Level of realization of the Action Plan

The level of implementation of the Action Plan hardly changed in relation to the findings provided in the last report. The steps B&H is supposed to take are very demanding, longterm and comprehensive, therefore even with the best political will it would be hard to make more visible progress in such a short term, especially in the context of the global economic crisis which often affects the list of political priorities.

Decision-makers in B&H should, as soon as possible, be brought to understand the importance of a single economic space, for otherwise outsiders will find it ridiculous to have so much legislation for a micro market, and ultimately the citizens of B&H will bear the consequences.

As for the internal market, that is, the **labor force**, and ensuring equal treatment to all lawfully employed persons within their respective territories, there has been no progress made, and the same is true for the fragmented internal legislation and social security system.

With regard to the second segment of the internal market – **service provision**, the level of implementation of the Action Plan has not changed because the key reforms require coordination with the state level in certain areas of services, which in the current political constellations in B&H is impossible to achieve.

The terms for joint access to the market in the area of air traffic are set forth in ECAA, and this Agreement has been ratified and positively evaluated by the Monitoring Commission. Support for implementation

of ECCA was requested and approved through a twinning project which is to start in 2010. Adoption of the law in this area will enable selection of an independent flight control service provider, wrap up the final phase of the transformation of civil aviation and separate the regulatory function from the flight control function in line with EU regulations.

Progress-wise, the other forms of transportation significantly lag behind that of air transport. More significant progress in the area of railways is expected only upon adaptation of domestic legislation. With regard to adoption of the Railway Package II Directives stagnation is noted and it seems that progress will hardly be made without the assistance of the Delegation of the European Commission in B&H. Some progress has been made because infrastructure managers were appointed and a Regulatory Committee was established. Additional changes in domestic legislation in the area of railways will be required at both the

state and entity levels. Currently, the EU is working on drafting a package of regulations for railways (a new project), whereby the operators and infrastructure managers will have to work according to the same rules. Also, financing of infrastructure construction and providing subsidies for operations is still a problem, for this has not yet been harmonized with EU legislation (as with the matter of subsidizing passenger and cargo transport). The same problem occurs in the area of road transport, especially in FB&H, where the companies are yet to be transformed into public companies.



Parliamentary processing and status of draft laws and international agreements with reference to constitutional basis and status vs. relevant legislation of lower levels of government

The fields in question, particularly the supply of services, represent fields in which almost no progress has been made since the signing of the SAA. In relation to the previous report, there has been some significant progress, for some proposed laws were adopted, though there is still much room for improvement given the fact that due to political reasons and dissent of RS some very important proposed laws have not yet been adopted. Also, a new draft law is being processed, and below is given a more detailed overview of developments in this area:

Proposed law on internal and maritime transport – The law establishes legal, institutional and operational mechanisms, which is significant in the context of harmonization of methodologies while developing rules for navigation and adopting measures for system improvement in

accordance with EU directives. The proposal was rejected due to lack of political will on the part of Republika Srpska.

Proposed law on aviation of B&H – This draft law, as well as the draft Law on airports, has been adopted, but it is still unknown when it will come into force.

Proposed law on amendments to the Law on deposit **insurance in banks of B&H** – This law would provide for a more efficient procedure and better protection of natural persons, and it focuses on the harmonization of norms in this field with EU legislation. The proposal was rejected due to lack of political will on the part of Republika Srpska.

Proposed law on amendments to the Law on the basis of traffic safety on roads of B&H – This law would result in more professional instructors and more skilled drivers in B&H, which is in accordance with Community legislation. The proposal was adopted, but it will require amendments in some parts.

In relation to previous report, we need to mention that one more proposed law which was entered in parliamentary processing:

Proposed law on changes and amendments to the Law on Labor Agency and Employment in Bosnia and Herzegovina. Adoption of this Law would increase the responsibility of all stakeholders in the problem-solving process in the area of employment.

In some areas only a little more effort is needed for major steps to be made, but frequent resistance to adoption of crucial laws on the part of RS, often without valid argument, has negative effects on both entities.

TITLE V



C Commentary

In 2008 the Council of Minister referred about 50% of the necessary laws to parliamentary processing, which means that from the very beginning certain areas have been scarcely touched. The situation is additionally aggravated by the fact that a part of the laws pending in parliamentary procedure (processing) are inapplicable. Most of experts consulted believe that even if a law is "passed" in parliamentary procedure, it is often not applicable and if such a law would allow true progress for B&H it is usually "rejected" due to inter-entity antagonisms. RS can be very constructive up until the point when a law is to be transferred from the entity to the state level.

Bosnia and Herzegovina is approaching difficult times, for it will have to make up for time lost, while problems are still present in all relevant phases of harmonization of domestic legislation with EU legislation: There are problems about (not) adopting legislation, and then even if adopted control over the application thereof remains an issue.

In nearly all areas observed in this report the most important steps in the process of approximation to the EU are yet to be made.

TITLE V

Chapter 2 - Establishment (Articles 50 - 56 of SAA) B)



General assessment of implementation of B&H obligations under SAA and priorities of European Partnership in the reporting period

In the previous report we established that requirements deriving under Article 51. t. 1 and 2 in relation to Article 52. t. 3 of SAA were not met, in other words, no conditions were created for equal and non-discriminatory treatment of aliens, since they can establish a business only upon special approval. In other words, local residents establish businesses according to a normative system, while to aliens a concession system applies.

The field of companies at the level of Bosnia and Herzegovina is not regulated by a single regulation, but by entity laws. Therefore, there can be no harmonization of domestic legislation with the acquis communautaire before our own regulations are harmonized. In this regard, the proposed amendments to the Federation Law on Companies, primarily those dealing with subsidiary companies, are a step forward towards the approximation of legislation in the territory of Bosnia and Herzegovina. Namely, the Law on Companies in RS dedicated a whole section to affiliated companies (inspired by the commercial legislation of the Republic of Serbia), anticipating better solutions than the Federation Law on Companies, which regulated this matter in only six Articles. The Law on changes and amendments to the Law on Companies in the Federation defines four types of affiliated companies – a main and subsidiary company, a joint share company, a holding and a concern. In the earlier text, the section of the law regulating these forms of affiliation was named "Subsidiary companies", while in the new text this title was changed to "Affiliated companies". One step further towards harmonization of entity laws is a novelty in the Law on changes and amendments to the Law on Companies, which regulates business associations, whereby EU regulations are anticipated (specifically, Council Regulation 2137/85 on the European Interest Grouping). The best solution would be to adopt a single law at the state level, which would enable full implementation of OECD principles of corporate management and EU directives. This position is supported by the European Commission.

No conditions were created for equal and non-discriminatory treatment of aliens, since they can establish a business only upon special approval. Subsidiary companies and branches are implicitly prevented from acquiring ownership rights over real property if they do not pursue economic activities, provided that they are registered for such activities, which grants them the status of legal persons. In December 2008 the Law on changes and amendments to the Law on Companies was adopted (not in the initially proposed text though), and published in the Official Gazette of FB&H No. 84/08.

TITLE V

Since the last reporting period, there have been some developments in this area, namely the aforementioned Law on changes and amendments to the Law on Companies in the Federation of B&H was adopted.



Level of realization of the Action Plan

No separate regulations have been adopted.

Pursuant to Article 2.2 of the Law on Companies of the FB&H, foreign natural and legal persons can in principle establish companies unless otherwise prescribed by law. Therefore, this law does not prescribe separate requirements but leaves a possibility for other laws to do so (in this sense, the laws relating to foreign investments and certain other activities). The Law on Companies of Republika Srpska contains similar solutions.

No separate regulations have been adopted relating to acquiring ownership rights over real property and renting real property on the part of subsidiary companies and branches. Pursuant to the Law on Ownership Relations, a foreign natural or legal person pursuing economic activities in the B&H Federation can be the holder of the ownership right over business buildings, business premises, apartments and apartment blocks. According to this provision, subsidiary companies and branches are implicitly prevented from acquiring the ownership right over real property if they do not pursue economic activities (implying they are registered for such activities, which grants them the status of legal persons).

The issue of renting real property is not prohibited in applicable legislation.



Parliamentary processing and status of draft laws and international agreements with reference to constitutional basis and status vs. relevant legislation of lower levels of government

In October 2008, the House of Representatives of the FB&H Parliamentary Assembly, in its 16th session held on 29 October 2008, adopted the Proposed Law on Amendments to the Law on Companies, with four amendments of the FB&H Government making an integral part of the proposed law. (The SDP Caucus submitted 17 amendments to this proposed law. The FB&H Government fully approved amendments IV, VI, IX and partly approved amendments I, II, V, VII, VIII, XIV, and XVI). 15 In December 2008 the Law on changes and amendments to the Law on Companies was adopted (not in the initially proposed text though), and published in the Official Gazette of FB&H No. 84/08.

Unlike the Law on Companies, the proposed law contains provisions related to subsidiary companies. In the text of the applicable Law on Companies, Title VI Subsidiary Companies, four articles regulate association of companies, focusing on the relation between the main and subsidiary companies, while these amendments foresee additional forms of association. The model was mainly taken over from the Law on

The Law was removed from parliamentary processing upon the request of Prime Minister N. Branković and the initiative of Minister Vahid Hećo.

Companies of Republika Srpska and partly from the Law on Companies of the Republic of Croatia, being adjusted to the applicable provisions of the Law on Companies.

The constitutional grounds for passing this law can be found in the provisions of Item c) of Amendment VIII to the Constitution of the Federation of Bosnia and Herzegovina, according to which the B&H Federation has exclusive jurisdiction for creating economic policy, including planning and reconstruction, as well as the policy of land usage at the Federation level.



Commentary

In relation to the last report no significant progress was made in terms of meeting the obligations from Article 51 of SAA that would facilitate persons from the EU to establish their businesses in Bosnia and Herzegovina. In other words, branch offices of companies from the EU in order to run their business in Bosnia must be registered as companies in the Federation of Bosnia and Herzegovina, or in Republika Srpska. This means that they have to acquire the status of a legal person, which according to our legislation branch offices cannot have. In reality, this implies that they have to go through the registration process as if they were newly established companies. Since these are foreign companies, their capital has to be registered at the Ministry of Foreign Trade. The same applies to subsidiary companies from the EU, which should not be, in any way, mistaken for a branch office. They must undergo the registration procedure with the aim of acquiring the status of a legal subject. By analogy, subsidiary companies and branches are implicitly prevented from acquiring the ownership right over real property, unless registered as legal persons.

From this we can conclude that Bosnia and Herzegovina has not provided branches and subsidiaries from the EU treatment which is not less favorable than that provided to local branches and subsidiaries. The same applies to establishing of businesses by companies from the EU, where the regular registration procedure must be followed by the registration of capital with competent authorities. Were there no such restrictions, we could assume that there would be many more companies from the EU present in the B&H market, whereby conditions would be met for integration of Bosnia and Herzegovina into the joint market of the EU.

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APPROXIMATION OF LAWS, (TITLE VI LAW ENFORCEMENT AND COMPETITION RULES

FIRST SEMI-ANNUAL REPORT

TITLE VI Approximation of laws, law enforcement and competition rules (Articles 70 - 77 of SAA)

General assessment of implementation of B&H obligations under SAA and priorities of European Partnership in the reporting period

The short-term priority under the European Partnership is "Achieving significant progress in developing a single economic space in Bosnia and Herzegovina which allows free movement of goods, capital, services and persons." This short-term priority can be achieved only through harmonization and implementation of laws and compliance with competition rules. Priorities concerning economic criteria require the strengthening of legal reliability for local and foreign companies and improving the business environment. Priorities in the area of European standards include a series of specific requirements in the fields of competition, public procurement, intellectual property protection and social policy.

European Partnership priorities in the domain of European standards application and internal market anticipate that Bosnia and Herzegovina should ensure that a single system of public procurement functions properly and that legislation and procedures on public procurement are appropriately applied, including continuing development of administrative capacities. In this regard, the anticipated obligation has been fulfilled, for the Law on Public Procurement in Bosnia and Herzegovina was adopted at the state level. The Law on Public Procurement in Bosnia and Herzegovina is being implemented to a great extent The Law on Public Procurement in Bosnia and Herzegovina is being implemented to a great extent and there are no political obstructions to implementation thereof. With regard to public procurement of small value, the authorities are not obliged to conduct an international procedure, in other words, they are not obliged to enable participation of companies outside of Bosnia and Herzegovina in the tender procedure. On October 4, 2008 the Constitutional Court rejected the motion for assessment of constitutionality of the Law on Public Procurement for Bosnia and Herzegovina filed by Mr. Živković.

and there are no political obstructions to implementation thereof. The obligation concerning administrative capacity development has also been fulfilled to a significant extent. The bodies anticipated by the law have been established, although with a slight delay, and now they perform the tasks in their respective jurisdictions.

In the fields of competition and state aid there has not been necessary cooperation required in application of the Law on Competition due to lack of a competition policy and Law on State Aid.

Finally, protection of intellectual property and social policy are at the fringe of activities, although there is a gradual takeover of the legal framework through acceding to international conventions.



Level of realization of the Action Plan

Failure to adopt the Law on State Aid is purely a political problem since the entities do not want to give up their *jurisdiction in developing economic* and social policy. This situation is most detrimental to companies that are exposed to non-transparent allocation of funds, as such behavior breaches the rules of competition and market fair play. Ultimately, the biggest losers are the citizens of B&H because in the absence of a law on state aid and an amended law on competition, politicians develop completely adverse economic development policies, and social and industrial policies. The consequence is that the investments do not go in sectors that generate new production, employment or development in underdeveloped areas and economy sectors, but instead, to richest city centers and short-term most profitable branches such as construction of shopping centers and office space buildings. In the field of competition progress was made in terms of staffing of the Competition Council of B&H. Two civil servants were hired to the HQ office in Sarajevo and two more to the Mostar Office for Competition, a part of the B&H Competition Council. The ongoing procedure for recruiting two more civil servants to the HQ office in Sarajevo is in the final phase.¹⁶ Analyzing the decision of the B&H Competition Council in this reporting period we can establish the same trend identified in the 2008 Preliminary Report. Specifically, in this reporting period the B&H CC rendered 21 decisions¹⁷, of which 18 formal decisions, two opinions and one conclusion. 18 Of these, 19 were about concentration, that is, merger or takeover of companies, while two were about abuse of a dominant position in the market. With regard to implementation of obligations directed towards creating the state aid system, legislation and institutions, there has been no progress.

Special regulations according to which companies from the Community would not have less favorable treatment than companies from Bosnia and Herzegovina were not adopted:

According to the existing Law on Public Procurement, companies from the Community are not provided with the same treatment, i.e. access to procedures for awarding contracts is less favorable than that provided to companies from Bosnia and Herzegovina. Pursuant to Article 37 of the Law, "preferential treatment for domestic companies can be applied only to the extent allowed by bylaws." In 2006 the B&H Council of Ministers passed the Decision on Mandatory Application of Preferential Treatment in the procurement procedure in all sectors, except for electricity.

First quarterly overview of SAA obligations fulfilled. DEI BiH.

Decisions available at www.bihkonk.gov.ba

Four decisions were passed in November 2008, two in December, four in January 2009, three in February 2009 and two in April 2009. One opinion was provided in November 2008, and a second one in April 2009, while one conclusion was brought in January 2009.

Article 6 of the Law on Public Procurement in Bosnia and Herzegovina sets value classes as criteria for opening an international competition procedure. Consequently, the value classes appear as discriminatory criteria, i.e. criteria of less favorable treatment for companies from the Community. With regard to public procurement of small value, the authorities are not obliged to conduct an international procedure, in other words, they are not obliged to enable participation of companies outside of Bosnia and Herzegovina in the tender procedure.

In the field of employment and social policies there are several ongoing activities concerning protection of mental health. The policy on protection of mental health is still under development, but it is expected that it will be completed and adopted by the end of this reporting period, as well as the Action Plan for the Federation of B&H. In December 2008 the Declaration on the Long-term Program of Regional Cooperation and Mental Health Development in Southeast Europe was signed. Also, by the end of the reporting period, a Regional Mental Health Center in B&H is to be established. In December 2008 a Center for coordination of the work of mental health centers in RS was established and by the end of the reporting period it is expected that the 2009-2015 Mental Health Development Strategy will be adopted.

Bosnia and Herzegovina is required to implement the national Law on Higher Education and thereby provide room for implementation of the main components of the Bologna Process and Lisbon Convention on diploma recognition. B&H is also required to register its Agency for higher education development and quality assurance in the European Register of Quality Assurance Agencies and to join the quality assurance network. Furthermore, B&H is required to solve the issue of a fragmented education system and overlapping functions among organizations on different levels in order to enable policy development and strategic planning, improve the overall quality of education and establish a General Education Council by the end of the reporting period.

Finally, one of the particularly important requirements refers to a practice present in some areas of B&H and it requires that B&H take necessary measures to prevent separation of children in schools based on their ethnic background. The Ministry of Civil Affairs of B&H assumed the obligation through the Conference of Education Ministers in B&H to develop recommendations for overcoming the phenomenon of "two schools under the same roof". To that end, the Conference of Education Ministers discussed this matter in three sessions and formed a Working Group tasked with developing analytical information. The Working Group failed to complete its task by December 31, 2008, so the deadline was extended to June 2009.



Parliamentary processing and status of draft laws and international agreements with reference to constitutional basis and status vs. relevant legislation of lower levels of government

Adoption of the Law on changes and amendments to the Law on Competition harmonized with the requirements of SAA is one of requirements necessary for improvement of results in this area, but not the only one. Without discussing the quality and priority of the solutions contained in the Law on changes and amendments to the Law on Competition adopted in the 71st session of the B&H Council of Ministers held on December 29, 2008, the parliamentary processing should be continued.

APPROXIMATION OF LAWS,
LAW ENFORCEMENT AND COMPETITION RULES

The Law on State Aid in B&H is still at the level of the working group because representatives from RS refuse to assign state institutions with establishing a state aid system and regulating its work through legislation at the state level. Moreover, at the beginning of 2009 the National Assembly of RS adopted the draft Law on State Aid in RS, which RS Government proposed December 30, 2008. At the same time, a sub-group of the Working Group (representatives of some B&H institutions) made its own draft law, completely opposite, proposing a system of absolute control over state aid, which is currently unnecessary and inapplicable in B&H.

At a session held January 5, 2009 the Presidency of B&H adopted a Decision on B&H joining the WIPO Copyright Treaty and a Decision on B&H joining WIPO Performances and Phonograms Treaty. Also, at a session held February 11, 2009 the B&H Presidency passed a Decision on B&H joining the European Convention on protection of the audio-

Finally, one of the particularly important requirements refers to a practice present in some areas of B&H and it requires that B&H should take necessary measures to prevent separation of children in schools based on their ethnic background. The Ministry of Civil Affairs of B&H assumed the obligation through the Conference of Education Ministers in B&H to develop recommendations for overcoming the phenomenon of "two schools under the same roof". To that end, the Conference of Education Ministers discussed this matter in three sessions and formed a Working Group tasked with developing analytical information. The Working Group failed to complete its task by December 31, 2008, so the deadline was extended to June 2009.

visual heritage. The aforementioned treaties were ratified by the Presidency at the 57th session held May 20, 2009. Furthermore, at the 54th regular session held March 17, 2009 the Presidency passed a decision on ratification of the Memorandum of Understanding signed between Bosnia and Herzegovina and European Community on B&H joining the 7th Framework Program of EC for research, technological development and experimental activities.

On January 23, 2009 the Parliamentary Assembly of Bosnia and Herzegovina received a draft Law on public procurement, proposed by the Council of Ministers of Bosnia and Herzegovina, which is to be considered in the regular legislative procedure. This draft law was also considered by the Constitutional Commission at its 62nd session held February 11, 2009. After consideration of the bill, the Commission established that there is a valid constitutional basis for adoption of the Law and that the proposed draft law is in line with the Constitution and legal system. The Finance and Budget Commission which, as the responsible commission, also received a copy of the proposed Law, agreed on the principles of the proposed law and forwarded the text of the Law for further legislative processing. As of the time of the writing of this report, the Law has not yet been adopted, but it has passed the public discussion stage.

The constitutional basis for adoption of this Law is contained in Article I. Item 4, Article III. Item 5. Sub-paragraph a) and Article IV. 4. a) of the B&H Constitution, whereby it is specified that Bosnia and Herzegovina shall not impede full freedom of

movement of persons, goods, services, and capital throughout Bosnia and Herzegovina, and that it shall assume responsibility for such other matters as are agreed by the Entities, i.e. that the Parliamentary Assembly shall have responsibility for enacting legislation.

Based on Article IV 4. a) of the B&H Constitution, the Parliamentary Assembly of B&H, at the 41st session of the House of Representatives held December 3, 2008 and also at the 24th session of the House of Peoples held January 29, 2009 adopted **the Law on changes and amendments to the Law on Public Procurement for Bosnia and Herzegovina.**

On May 8, 2007 the Constitutional Court of Bosnia and Herzegovina received a motion filed by Mr. Milorad Živković, (at the time of submission the first deputy of the Chair of the

House of Representatives of PA B&H), requesting the assessment of the constitutionality of the Law on Public Procurement for Bosnia and Herzegovina. The Constitutional Commission of the House of Representatives of PA B&H, at a session held February 29, 2008 considered this motion and found that the adopted Law is in agreement with the Constitution. The Constitutional Commission of the House of Peoples of PA B&H, at a session held April 4, 2008 also discussed this motion and supported the initiative of Mr. Milorad Živković. On October 4, 2008 the Constitutional Court rejected the motion for assessment of constitutionality of the Law on Public Procurement for Bosnia and Herzegovina filed by Mr. Živković.

Commentary

Public procurement in Bosnia and Herzegovina is regulated at the state level, which should be highlighted as a multi-valued fact, especially if we have in mind that there are just a few laws adopted at the state level. Therefore, this Law is a step forward in integration of Bosnia and Herzegovina itself and a progress in meeting the requirements for membership in the EU. Political reasons aside, the Law on Public Procurement of B&H is, to a great extent but not entirely, harmonized with acquis communautaire, and the EU directives in this area.

Namely, preferential treatment of local firms is completely excluded from the Directives, but it is anticipated in B&H Law as a protective measure for local subjects that strengthens their market position, recovers and protects the development of the B&H economy. This measure should certainly be temporary, and there are already some indications that it will be deleted from the new/amended law on public procurement, particularly because CEFTA anticipates complete abolishment of preferential treatment for its membership by 2010.

The existing Law on Public Procurement should be urgently amended not only due to the aforementioned reasons but also for removal of several other shortcomings identified during the application thereof. However, adoption of the new law in the parliamentary procedure is probably politically conditioned and disputed. The truth is, this Law underwent some changes and amendments, but none of them were essential. The prior changes were mainly about the extention of deadlines for establishing and setting into motion of the bodies anticipated by the Law, because with the original text the Law could not be implemented. Changes to the Law on Public Procurement were also made in terms of the value classes, as can be seen in the last change made in February 2009. In order to simplify the process of changing this law, we believe that value classes should be regulated through bylaws rather than by the Law as such. Here we should stress that the value classes in Bosnia and Herzegovina are used as criteria for international competition, whereas in the EU they are used for application of supranational regulations, i.e. directives.

The most visible shortcoming of the Law on Public Procurement is the appellate procedure which is very generally regulated. This provision leads to a lack of clarity and different interpretations not only on the part of the contracting parties but also on the part of the institutions established by this law.

As for the Competition Policy and Law, B&H must as soon as possible adapt changes and amendments to the Law on Competition in order to harmonize it

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with EU standards and remove the obstacles that prevent appropriate application of competition rights in B&H. Lack of Competition Policy and lack of the appropriate capacity within the Competition Council of B&H to launch the development of such a policy are to be blamed for the present situation. Over the past 6 months there were only two cases of abuse of dominant position and 19 decisions on concentration (mergers). Some of the decisions interfere with the basic principles of state aid policies in the EU because there are neither laws to regulate this matter nor subsidies for so-called services of common interest, which are mistakenly related to some provisions of the Competition Law, although it can be considered that they are not in actual breach of competition.

At the RPM meeting in Brussels, RS was requested to withdraw its draft Law on state aid from further procedure in the RS National Assembly so that the law could be adopted at the state level. Assistance was offered in development of the Law, although a draft law harmonized with EU standards and corroborated with relevant arguments tied to EU legislation already exists in the Ministry of Foreign Trade and Economic Relations. In this way, the deadlines set forth in the Action Plan have been continuously prolonged. We are getting closer to the deadlines set forth in the Interim Agreement without making any progress in terms of establishing a state aid system.¹⁹

Failure to adopt the Law on State Aid is purely a political problem since the entities do not want to give up their jurisdiction in developing economic and social policy. This situation is most detrimental to companies that are exposed to non-transparent allocation of funds, as such behavior breaches the rules of competition and market fair play. Ultimately, the biggest losers are the citizens of B&H because in the absence of a law on state aid and an amended law on competition, politicians develop completely adverse economic development policies, and social and industrial policies. The consequence is that the investments do not go in sectors that generate new production, employment or development in underdeveloped areas and economy sectors, but instead, to richest city centers and short-term most profitable branches such as construction of shopping centers and office space buildings.

Should Bosnia and Herzegovina continue to invest only about 0,05% to 0,1% of GDP²⁰ to these purposes, while in the EU this percentage is about 3% (60 times more), raw materials and semi-finished products will remain as its major export. Rare enthusiasts who, despite everything, keep creating top products have an additional (psychological) obstacle in their path to European and world markets – a bad image of the country of origin. At the Western Balkans Conference held in Belgrade (October 2008), Bosnia and Herzegovina did not have a representative to speak about the indicators of the European Research Area (ERA). The desperate situation in the area of research and technology development (RTD) was presented separately by representatives of FB&H and RS, which additionally spoiled the image of our country in this field.

Preliminary draft Law and relevant economic, fiscal and socio-statistical analyses were made by foreign and local experts for state aid in cooperation with representatives of 8 competent institutions within the 1,3 million EUR worth project "Support to competition and state aid in B&H" which lasted 2,5 years.

B&H does not have statistical data on RTD, and the existing estimates vary from one another up to 200%.



Title VII of SAA "Justice, Freedom and Security" (Articles 78 - 85.)



General assessment of implementation of B&H obligations under SAA and priorities of European Partnership in the reporting period

Under Title VII of the Stabilization and Accession Agreement Bosnia and Herzegovina assumed a series of obligations in the area of strengthening of institutions and rule of law, migrations and asylum, border management and combat against crime and terrorism. However, currently only the Interim Agreement is in force and it primarily regulates economic and trade relations of the contracting parties with an aim to establish a free trade zone by January 1, 2013, while more direct obligations of Bosnia and Herzegovina in the field of "freedom, security and justice" are contained in the document of European Partnership and relevant conventions of the Council of Europe (so-called post-accession obligations) or in the EC documents and conclusions on the process of liberalization of the visa regime.

Results of the analysis suggest that at the end of the first half of 2009 about 50% of obligations under the Action Plan relevant for priorities of the European Partnership for Bosnia and Herzegovina have been met.



Level of realization of the Action Plan

A part of the Action plan for implementation of priorities under the European Partnership in the area of justice, freedom and security, as well as in the fields identified as political criteria of short-term priorities, comprises 34 priorities and 241 activities (measures) adopted to specify and more accurately implement the defined goals. Out of the total number of activities, 86 were scheduled for implementation by July 1, 2009 (75 by the end of 2008 and 11 in the first half of 2009). For the purpose of this analysis the measures were observed as thematic wholes and their implementation was assessed based on the implementation of the majority of specific actions aimed at implementation of a certain goal.

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In relation to the period covered by the previous report, analysis suggests that the following results were achieved:

Implemented activities:

- Directors and deputy directors of the Political Support Agency and Forensic Investigation Agency were appointed, as well as the deputy director of the Agency for schools and professional education;
- The 2008-2011 Strategy and Action Plan on migrations and asylum were adopted and the appropriate coordination body was established;
- The Border Management Committee was established;
- The Law on changes and amendments to the Code of Criminal Procedure of B&H was adopted;
- The Law on changes and amendments to the Law on Protection of Confidential Data was adopted;
- The Law on changes and amendments to the Law on Conflict of Interest in Institutions of B&H was adopted and entity laws were accordingly adjusted to the changes and amendments of the state-level Law;
- Republika Srpska fully harmonized its Law on Enforcement of Criminal Sanctions with the existing state law; harmonization of the Federation Law and Law of Brcko District is still in progress;
- A Memorandum of Understanding on establishing a safe communication link between B&H and EUROPOL was signed – a precondition for implementation of the Strategic Cooperation Agreement;
- The 2008-2012 Action Plan on combat against human trafficking was adopted, but not the 2009 Operation Plan; Updating, monitoring and reporting on implementation of the Action Plan goes through the Office of the National Coordinator for combat against human trafficking and National Task Force and sector sub-groups;
- Within IPA 2009, an application was submitted for funding of the construction of a building - HQ of the Office for Aliens Affairs;
- Republika Srpska adopted the Strategy and Action Plan for combat against narcotics; the RS Commission for combat against narcotics was established; a special antinarcotics department was established within the RS Ministry of Interior; the Federation government agreed on the draft National Strategy for supervision over narcotics and associated Action Plan;
- RS Government adopted the entity Strategy on combat against corruption and associated action and operation plans;
- Operations and patrolling of the border police in the areas of security sectors has been intensified;
- The Law on Border Control was adopted.

Activities planned but not implemented are the following:

- Election of the director of the Directorate for coordination of police bodies; election of members to the Independent Committee and Civil Complaints Committee;
- Appointment of the director to the Agency for schools and professional education;
- Appointment of members to the Independent Committee and Civil Complaints Committee;
- Adopting of a new Rulebook on internal organization of the B&H Ministry of Security and strengthening of the capacities of Immigration Sector and Office for Aliens Affairs; developing all necessary programs and training modules for staff in the B&H Ministry of Security;
- Asylum Center (establishing and equipping: preliminary preparations are completed, co-funding from B&H budget + IPA funds);
- Adopting the relevant bylaws related to the Law on Border Control;
- Adopting changes and amendments to the Rulebook on data, information and other (minimum) indicators required for efficient implementation of the Law on changes and amendments to the Law on Money Laundering;
- Adopting a revised Strategy on supervision of narcotics and the Action Plan;
- Establishing a Commission for regular monitoring, reporting, and revising of the Strategy on supervision of narcotics, preventing and combating abuse of narcotics;
- Changing and amending the Dynamic Plan for filling vacancies in the Investigation and Protection Agency; full implementation of the process of strengthening of personal and professional capacities (recruitment procedures for a certain number of employees are in progress); filling vacancies in the SIPA Financial and Investigative Unit and the SIPA Witness Protection Department; and strengthening the anti-terrorism and antiatomic, biological and chemical warfare means & materials;
- Adopting the Law on changes and amendments to the Law on Witness Protection Program and relevant bylaws;
- Adopting the Law on changes and amendments to the Law on Enforcement of Criminal Sanctions, Detention and Other Measures of B&H in order to harmonize them with the 2006 recommendations of CoE;
- Harmonizing the laws on banking of the Federation and RS;
- Establishing an efficient system for data exchange among border police and other police units, and ensuring appropriate funding for the work of the border police;
- Providing the full capacities of the Agency for Personal Data Protection.

The constitutional basis for adoption of the aforementioned acts is Article IV. 4 a) of the Constitution of Bosnia and Herzegovina. The majority of acts that are to be adopted and implemented in the coming period pursuant to the Action Plan, especially those in the parliamentary agenda, are amendments to existing legislation in specific areas.



Parliamentary process and status of draft laws and international agreements with reference to constitutional basis and status vs. relevant legislation of lower levels of government

The following bills are currently in the parliamentary procedure of the B&H Parliamentary Assembly:

- Law on changes and amendments to the Law on police officers in B&H
- National strategy on supervision over narcotics and Action Plan
- Law on changes and amendments to the Law on enforcement of criminal sanctions (2006 CoE recommendations)
- Law on changes and amendments to the Law on Witness Protection in B&H
- Law on changes and amendments to the Law on State Investigation and Protection Agency (SIPA)
- Supplemented Report on Ad Hoc Joint Commission for appointment of Independent Committee and Civil Complaints Committee, as independent bodies of police structure in B&H;
- Draft Strategy on supervision over narcotics, preventing and combating abuse of narcotics; Proposed list of candidates for membership in the Commission for regular monitoring, reporting and revising;
- Law on changes and amendments to the Law on border police of Bosnia and Herzegovina.

The current delay of B&H institutions in meeting deadlines set forth in the Action *Plan varies between 6-12* months, as illustrated by several documents pending on the parliamentary agenda, the adoption of which fulfills, or partly fulfills, the obligations that were due in mid-2008 or at the end of 2008 according to the Action Plan.

Constitutional basis for adoption of aforementioned acts is Article IV 4 a) of the Constitution of Bosnia and Herzegovina. Majority of acts that are to be adopted and implemented in the coming period pursuant to Action Plan, especially those in the parliamentary procedure, are amendments to the existing legislation in specific areas.



Results of the analysis suggest that at the end of the first half of 2009 about 50% of the obligations under the Action Plan relevant for priorities of the European Partnership for Bosnia and Herzegovina have been met. Defined obligations for this period imply, primarily, development and improvement of regulations in relevant fields and establishment and strengthening of necessary institutional structures. The progress made in terms of regulations is manifested in adoption of certain strategic documents and respective action plans (e.g. in the field of immigrations and asylum, combat against human trafficking), as well as laws and relevant bylaws (e.g. criminal procedure code, protection of confidential data). As for the strengthening of institutional structure, limited progress was noted in establishing new bodies (e.g. single police structure, Border Management Commission), and improving structural, administrative and personnel capacities of the existing institutions (visas, border management, readmission, protection of personal data, combat against terrorism and drug abuse). However, successful and timely implementation of obligations defined in SAA and European Partnership requires far more intensive activities on the part of institutions in B&H in both legislative procedure and the strengthening of institutional capacities. The current delay of B&H institutions in meeting deadlines set forth in the Action Plan varies between 6-12 months, as illustrated by several documents pending in parliamentary processing, the adoption of which fulfills, or partly fulfills, the obligations that were due in mid-2008 or at the end of 2008 according to the Action Plan. Apart from the complexity of legislative procedure in Bosnia and Herzegovina, other factors that partly influence the delay in implementation of obligations under the Action Plan for implementation of EP priorities could undoubtedly be found at the political level - requirements deriving from European Partnership that are not adjusted to the existing constitutional and legal structure, the division of power between Bosnia and Herzegovina and its entities, and resistance caused by direct and indirect attempts of "transfer of jurisdiction". Along with this, the overall political situation in Bosnia and Herzegovina and gradual positioning of leading political subjects before the 2010 general elections are elements that additionally aggravate the implementation of obligations under SAA in many segments.

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COOPERATION POLICIES (TITLE VIII

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a General assessment of implementation of B&H obligations under SAA and priorities of European Partnership in the reporting period

The SAA envisages establishment of close cooperation between B&H and the EU aimed at development and progress of B&H. Policies of cooperation define the areas in which B&H should harmonize its policies and legislation with acquis communautaire of the EU. The Agreement specifies 25 policies of cooperation, and for each area, the Council Decision of February 18, 2008 on principles, priorities and conditions contained in the European Partnership with B&H established short-term and midterm priorities.

The Council of Ministers adopted an Action Plan for implementation of the priorities contained in the document European Partnership as well as an Action Plan for implementation of the obligations deriving from SAA and the Interim Agreement.

Analysis of results achieved in the first half of 2009 in the implementation of priorities, i.e. in the implementation of the activities and measures envisaged by the Action Plan, was provided based on insight into the following documents: Stabilization and Association Agreement of B&H with EU, Council Decision on principles, priorities and conditions contained in the European Partnership with B&H, Action Plan for implementation of the priorities contained in the European Partnership, the First Quarterly Report on implementation of activities from the Action Plan on implementation of EP priorities (DEI), and the Report on Implementation of the Interim Agreement and SAA (DEI), 2008 Economic and Fiscal program (Council of Ministers); the Report and Recommendations from the First Sector RPM meeting (DEI), relevant reports on the work Although institutions in charge of implementation of activities and measures in the area of Cooperation Policies have made uneven progress, the level of realization of the Action Plan is generally unsatisfactory. For example, in the first five months of 2009 the Parliament of B&H adopted only ONE law in 25 areas covered in the Chapter Cooperation Policies! An institutional structure for implementation of pre-accession obligations is needed, namely through urgent work after the establishment of the seven Sub committees for stabilization and association within the responsible B&H institutions, as named in previous report.

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of the Council of Ministers, B&H Parliamentary Assembly, entity governments, and information delivered by the responsible state and entity ministries. In view of the above, we will assess the degree of implementation of the short-term and mid-term priorities in the same order they were cited in SAA.

Priorities from the Document "European Partnership with B&H"

1. Economic and Trade Policy

Regarding the requirement of macroeconomic stability following can be reported:

- The actual GDP growth in 2007 was 6.8%,
- In the first half of 2008 the industrial production in B&H grew to 5.8%. Comparing this to the previous year, there was an increase noted in the Federation of B&H (4.9%) and an accelerated growth in RS (8%).
- In the first half of 2008 there was an increased increase of salaries of 14,5%, whereby the average net salary grew to KM 720.00. The trend of equalizing the salaries in the entities was continued, and in February 2008 the average salary in RS for the first time exceeded the average salary in the Federation of B&H.
- According to the Survey on the Labor Force in B&H, the unemployment rate in B&H was 23.4%.
- The average inflation rate in the first nine months of 2008 was 8.1%, which is the highest growth noted in the last year. The average inflation measured against the consumer price index (CPI) in 2007 was 1.5%.
- The total monetary mass (M2) in 2008 had an increasing trend, somewhat slower though than last year. At the end of 2007 a growth of 21.6% was noted, while in August 2008 it was 14.7%.
- The external debt as of May 1, 2008 was KM 3904 million.
- Public spending is still increasing, from 36.9% GDP in 2005 to 40.8% GDP in 2008, mainly due to obligations assumed, particularly in the sphere of social transfers.

In the context of B&H obligations in the process of European integration, the following has (or has not) been met:

- Special privatization programs for strategic companies have been prepared;
- The "Policy on privatization of state capital in the Federation (FB&H) with the program of priority investments" has not been adopted by the Federation Parliament, although supported by the Federation Government;
- In RS an option was introduced to re-allocate the projected funds for securities according to general liabilities, and successive securities for general liabilities. So far there the securities were issued three times on the account of old foreign currency savings, the total value of which was BAM 252.2 million, and in December 2008 the first series of securities was issued based on war damage worth BAM 40.8 million.
- Government of FB&H submitted the Law on Settling Liabilities on the account of old foreign currency savings.

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In Brčko district, the internal debt is to be paid in cash.

2. Cooperation in the field of statistics (Article 88)

- Through a twinning project, the statistics on prices of agricultural products based on seven pilot studies conducted in this field was introduced;
- The quality of data and scope of statistical data of consolidated national accounts was improved through adoption of a 2009-2012 master plan;
- On November 13, 2008 the Council of Ministers adopted a Decision on conducting a census;
- At the level of the institutions for statistics, relevant bodies were established for conducting a census, but not yet in the Central Registry Bureau at the level of B&H, because the Council of Ministers have not yet passed the decision;
- A Working Group for drafting a Law on Census was established and verified January 15, 2009;
- Working groups for drafting methodologies and census instruments in line with EC recommendations were developed and have started with their work.

3. Cooperation in the area of banking, insurance and other financial services (Article 89)

- The Council of Ministers have submitted the following draft laws: the Law on Foreign Currency Framework in B&H, the Law on Financial Leasing, the Law on changes and amendments to the Law on Establishing of an Export-credit Agency of B&H.
- The Parliament of the Federation (FB&H) adopted the Law on the Securities Market, the Law on Investment Funds and the Law on Leasing, all of which came into force in January 2009.
- The 2015 Strategy on Development of an Intellectual Property Institute is currently pending at the Council of Ministers;
- Drafting of a Law on Copyrights and Related Rights is in progress.

4. Cooperation in the Area of Audit and Financial Control (Art. 90)

- The Strategy of Public Internal Financial Control (PIFC) has not been adopted, although laws on internal audit have been adopted at all levels, imposing an obligation to all major budgetary users to establish their own internal audit units. The law imposes an obligation to establish central harmonization units (CHUs) at the state and entity level, and a Coordination Committee composed of directors of CHUs, responsible for harmonization of legislation in the area of accountancy and internal audit with EU standards.
- The B&H Council of Ministers made a decision April 14th forming the Central Harmonization Unit for the B&H Ministry of Finance and Treasury, with certain corrections. The ministry of Finance and Treasury is in charge of the preparation of the Bill for amending the Law on Ministries and other Administrative Organs of Bosnia and Herzegovina, through which, within Article 11, a Central Harmonization Unit will be stipulated within the Ministry of Finance and Treasury, and thus this Law will be aligned with the Law on

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Internal Audit of the B&H Institutions. By reaching this Decision, the obligation undertaken through the Stabilization and Association Agreement concerning the establishment of cooperation in the area of audits and financial control will be fulfilled. Through this Decision, a Central Harmonization Unit (CHU) will be formed which will be in charge of development of management and coordination of internal audit and introduction of financial management and control systems within the B&H institutions.

- There is an ongoing project of UNDP E-government, the integral component of which is global resource management system (GRMS), which includes development of software for automation of the Public Investment Program of B&H institutions.
- Having adopted the Law on Fiscal Council, the precondition was met for the work of the most important state fiscal authority. This institution prepares a draft document "Global framework of fiscal balance and policy in B&H" that covers the period of three years and which is to be adopted in the form of an agreement between the Council of Ministers and entity governments.
- In the Federation of B&H a Body for fiscal coordination at the sub-entity level was established to help improve the efficiency of the fiscal coordination.

5. Cooperation in the area of industry (Article 92), and small and medium enterprises (Article 93)

- The B&H Economic Development Strategy has not yet been developed.
- The B&H Strategy on Development of SMEs was adopted (16.04.2009.)

6. Agriculture, Agricultural-Industrial Sector and Fishing (Art. 95 and 96)

- The 2008-2010 Strategic Plan of B&H for harmonization of the Law on Agriculture, Food and Rural Development, the 2008-2010 Operation Program for Agriculture, Food and Rural Development, and changes to the Rulebook on internal organization of the Sector for agriculture, food and rural development 2008-2010 have not been adopted within the prescribed deadline, so the deadline was extended to April 2009 (but until present none of the documents was adopted);
- Development of a Plan for harmonization of regulations for production sub-groups has been postponed for June 2009;
- A Law on Well-being of Animals was adopted on February 26, 2009;
- The Veterinary Office is fully staffed: during 2008 ten vets civil servants were hired and in the competition announced January 9, 2009 nine more officials were hired.
- Adoption of four more regulations in the area of phyto-sanitary policy has not been completed and the process was postponed for May 2009;
- The deadline for development of the training program for phyto-sanitary sector has been extended to March 2009, but it has not been completed until present;
- On February 26, 2009 the Law on GMOs was adopted;
- Out of 30 Rulebooks developed based on the Law on Food Safety, the Agency adopted only eight, which were referred to the Council of Ministers for adoption December 25, 2008.

- The Plan for transposition of EU regulations into B&H legislation in the area of veterinary services is still under development;
- The passing of a Decision on establishing an agricultural and market information center and Development of Strategy for Advisory Services has been prolonged to June 2009.

7. Cooperation in the area of customs (Article 97) **and taxes** (Article 98)

- The following instructions have been developed and submitted for adoption: Instruction on Customs Procedure for Mail Transportation, Instruction on External Processing, and Instruction on Controls in Customs Procedures. The Instruction on Free Zones in still in the drafting phase;
- The Council of Ministers and the Parliament of B&H have adopted the B&H Customs Tariff for 2009;
- A Manual on Categorization of Goods has been developed;
- The Law on Income Tax in the Federation of B&H was harmonized with the principles of the Code of Conduct in Taxation of Companies;
- A new Law on Taxation and a Law on Income Tax have created more favorable conditions for foreign investors and provide a strengthening of a single market in B&H;
- In RS, with the introduction of fiscal counters, the fiscal policy aimed at increasing the collection of taxes and reducing the grey economy has been completed.

8. Cooperation in the area of employment and social policy (Article 99)

- In the Federation of B&H a Mental Health Policy and an Action Plan have been developed, but they are not yet adopted;
- A situation analysis and mental health assessment in the community have been developed, but the report on results has not yet been presented.
- A Declaration on the Long-term Program of Regional Cooperation and Mental Health Development has been signed.
- A regional mental health center has not yet been established due to delayed signing of the Declaration.
- The 2009-2015 Strategy on Mental Health Development in RS has been adopted, and a Center for Coordination of Mental Health Centers in RS was established.
- The Government of Federation B&H adopted an Action Plan for Roma Issues in the area employment, housing and health protection.

9. Education and Research (Article 100)

- The ECTS system has been introduced in all public universities in B&H
- Council of Ministers joined European Quality Assurance Registry (EQAR) in higher education.

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- Agreement on establishing of a Primary Education Council has been signed by ten ministers, and signature of four more ministers is expected soon.
- Conference of Education Ministries in B&H established a working group for development of analytical information about overcoming the problem of "two schools under the same roof", but the working group failed to complete its task within given deadline.
- Proposed B&H Framework law on basics of scientific and research activities and coordination between the internal and international scientific and research cooperation is currently in parliamentary procedure.

10. Cooperation in the Area of Audio and Visual Services and Media (Article 102) and the Information Society (Article 103)

- The Rule on Transfer of Telephone Numbers and the Rule on Access to a Separate Local Loop were adopted.
- Activities related to introduction of virtual mobile network operators have not been completed, and the drafting of relevant regulations is still in progress.
- Market analysis has not been made.
- CRA and MCT are institutions of B&H verified by the Council of Ministers and tasked with implementing the Convention on Cross-border TV and the Directive on TV Without Borders.
- The Steering Board of RTFB&H has not yet been appointed.

11. Cooperation in the area of transportation policy (Article 106)

- On December 3, 2008 B&H became a full member of the Joint Aviation Authorities, and thereby bound to apply all air transportation regulations in the area of flight security.
- The Draft Law on Civil Aviation and the Draft Law on Establishment of the Agency for Air Traffic Services are on the parliamentary agenda (but have not yet been adopted).
- A proposed Law on the Agency for Air Traffic Services was adopted by the Council of Ministers, but it was not supported in the Parliament of B&H.
- Strategies on road traffic safety have been adopted in both entities.
- The Regulatory Board for Railways is now operational.
- A Council for Intermodal Transportation in B&H has not yet been established.
- B&H has not signed the SOLAS Conventions and ISPS Code, nor the Convention on Safety of Life at Sea and the International Code of Ship Safety and Port Facilities.

12. Cooperation in the area of Energy (Article 107)

A Road Map for Electricity and Internal Action Plan of B&H for implementation of the Road Map for Electricity have been adopted.

- At the entity level an Action Plan was adopted for re-structuring of the energy sector.
- An Agreement on Energy Policy has been signed between the entities.
- At the entity level studies on the energy sector were conducted but have not yet been adopted.
- No activities were launched in terms of drafting the Strategy on Energy Sector Development in B&H, although the EC offered its assistance in development of a study.
- A draft Law on Oil and Oil Derivatives and Law on Energy have been adopted in RS.
- Changes and amendments to the Law on Electricity in the Federation of B&H in line with EU directives are in the process of being drafted.
- The principle of establishing the buy-off price of electricity has not been introduced.
- The Law on Gas, based on which the Road Map for Gas should be implemented, has not been adopted.

13. Cooperation in the Area of the Environment (Art. 109)

- An initiative was launched to sign the ESPOO Convention.
- A Strategy on Environmental Protection and RS Strategy on Air are in parliamentary processing.
- A Strategy on Environmental Protection in FB&H is being drafted, while the FB&H Strategy on Air and Waste Management is in parliamentary processing.
- A Preliminary feasibility study for implementation of a bio-hazardous waste management scheme in B&H has been developed, as well as a program for medical waste management within the IPA (Instrument for Preliminary Assistance) program.
- Entity laws on water were adopted, while water management strategies are being drafted.
- A Law on genetically modified organisms (GMOs) was adopted.
- A state Law on Environmental Protection is being drafted, and the final draft should be completed and delivered to the Council of Ministers by June 2009 (initially, the working group was supposed to complete its task by October 31, 2008, but due to lack of consensus at the entity level the work was delayed).
- A state Agency for Environment Protection has not been formed, nor has a body/department within the state ministries been tasked with monitoring, data collection and reporting (Draft law on environment protection anticipates establishment of such an Agency)
- The EU Directive on Environmental Impact Assessment (EIA) has been almost completely transposed to entity legislation.
- The EU Framework directive on waters has been fully transposed to RS legislation, and almost fully to the legislation of FB&H.

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14. Cooperation in the area of public administration (Article 111)

- The Office of the Coordinator for Public Administration is now operational.
- The Fund for Public Administration Reform, administered by the Office of Action Plan 1 of the EU Coordinator, has EUR 4.5 mil for funding of Action Plan 1 of the Public Administration Reform.
- The Office of the Coordinator began activities on developing Action Plan 2 of the Public Administration Reform, which will deal with sector capacity reform.
- The Law on Termination of the Institute of RS Ombudsperson and transfer of jurisdiction to the B&H Ombudsmen for Human Rights has not yet been adopted.



Level of realization of the Action Plan

Since Chapter VIII – Cooperation policies, treats a large number of different areas in which the EU and B&H decided to cooperate, it is evident that the institutions tasked to implement certain activities and measures in the process of harmonizing legal regulations and legislation of B&H with acquis communautaire have achieved uneven progress. An increasing pace in implementation of obligations under SAA and EP is evident only in the areas of statistics and customs and taxation, while in the other areas some progress was made, and there were many delays and extensions of deadlines. It is important to mention that in the first half of 2009 many activities and measures were not implemented in the area of Cooperation Policy that were supposed to be completed by December 31, 2008. Harmonization of legislation with EU acquis communautaire is a rather complex process that requires not only adoption of new laws in the majority of areas, but also alignment of entity and sub-entity legislation with European standards, adoption of strategies and appropriate implementation thereof.

Several years of blocking of the reform processes at the state and entity levels, (ethno)politicizing of certain issues, lack of consensus about transfer of certain jurisdictions from entity to the state level, lack of consensus among political parties represented in legislative bodies about adoption of appropriate legal solutions necessary for faster progress towards European integration ... led to a halt in implementation of the obligations assumed by SAA and EP. The most obvious illustration of this is the fact that in the first half of 2009 only one state law was adopted in this area - the Law on Genetically Modified Organisms (GMO), which was approved in the House of Representatives January 21, 2009, and later in the House of Peoples February 26, 2009. In the same session of the House of Peoples, the Law on Protection and Well-being of Animals was adopted, which was two months earlier approved in the House of Representatives (17.12.2008). Other reform laws are still pending in the parliamentary processing or have not got the support of a parliamentary majority, e.g. the Law on Motorways. Progress is more visible when it comes to harmonizing entity legislation with EU regulations. It is important to mention that in both entities laws on water were adopted, as well as appropriate strategies in the energy sector.

In the area of Cooperation Policy certain progress was made in ensuring the operation and functionality of certain institutions such as the Office of the Public Administration Coordinator, the Veterinary Office, and the Regulatory Board for Railways. At the same time, certain institutions were not at all established due to failure to adopt appropriate legislation to support their establishment, e.g. the Environmental Protection Agency or the Regional Center for Mental Health in B&H.



Parliamentary processing and status of draft laws and international agreements with reference to constitutional basis and status vs. relevant legislation of lower levels of government

In 2008 there were 120 laws pending in parliamentary processing, of which 41 were approved in both Houses of the Parliamentary Assembly, while 28 were rejected (won no support of the PA), 12 were withdrawn from the agenda, 4 were suspended and 35 remained pending at the end of March 2009 when this information was received. In the work of the Parliamentary Assembly there is a large number of rejected and withdrawn laws (40), namely eleven of 28 were rejected by PA B&H due to lack of an entity majority, that is lack of consensus of representatives from RS on the proposed legal solutions.

Of 42 adopted laws, a very small number dealt with approximation with acquis and meeting the priorities under European Partnership. The following laws were related to Cooperation Policy: the Law on Wine, Brandy and Other Products Made of Grapes, the Law on Medicines and Medical Means, the Law on Agriculture, Food and Rural Development and the Law on the B&H Agency for Identification Documents, Records and Exchange of Data.

After negative review and EC report from June 2008, the following laws were adopted: the Law on Genetically Modified Organisms, the Law on Protection and Well-Being of Animals, the Law on changes and amendments to the Law on Customs Policy, the Law on Fiscal Council, and the Law on Protection of Rights of National Minorities.

Laws still pending in parliamentary processing are: the Proposed Law on VAT, the Proposed Framework Law on Basics of RTD Activities and coordination of internal and international RTD cooperation of B&H, the Proposed Law on changes and amendments to the Law on Sports, the Proposed Law on Financial Leasing, the Proposed Law on Posts, the Proposed Law on Protection of Domestic Production within CEFTA, the Proposed Law on Aviation of B&H, the Proposed Law on Air Traffic Services, the Proposed Law on Fiscal Counters. A certain number of laws from the area of Cooperation Policy have been withdrawn from the parliamentary agenda or have not been approved by a parliament majority, such as the Proposed Law on Public Motorways.

Declarative "readiness" for integration of our country into the EU is demonstrated by the far too slow implementation of the obligations assumed and failure to implement 30 EC priorities upon signing and ratification of SAA.²¹ Faster fulfillment of obligations requires, among other things, changes in the work of the Parliamentary Assembly of B&H, because the current rulebooks do not correspond to the need for a faster adoption of European laws. To that end, new rulebooks on work of both Houses of the PA of B&H should be adopted as soon as possible, and a Joint Commission of both Houses of the PA should be established and assigned to consider European Laws, refer them to the PA of B&H, and the Parliament should adopt them in an urgent procedure as in neighboring countries.

In order to improve the process of implementation of obligations under SAA and European Partnership, there should be a stronger and more comprehensive cooperation between the Parliamentary Assembly, as a legislative body, and the Council of Ministers,

In 2008 the Republic of Croatia adopted 18 times more "European laws" than B&H, and the Republic of Serbia, which signed SAA with EU at approximately the same time as B&H, in the first six months after the signing adopted three times more "European laws".

TITLE VIII) COOPERATION POLICIES

as an executive body, and the Directorate for European Integrations, which would ensure continuous and better quality implementation of the legal requirements of PA B&H in the context of European integration.

In many fields covered by the Cooperation Policy there is no constitutional jurisdiction, and instead the legislative and executive responsibility is assigned to the entities, or to the entities and cantons in FB&H (e.g. economic policy, the energy sector, banking, agriculture, education and research, social policy, culture, telecommunications, information society, etc.).

The establishment of certain institutions at the state level (the State Agency for Statistics, RAC, Fiscal Council, Office of Coordinator for Public Administration Reform, Agency for Preschool, Elementary and Secondary Education) has facilitated the process of harmonization with EU legislation.

C Commentary

Although there are some significant developments in certain areas, the level of realization of the Action Plan is generally unsatisfactory. In the text above we spoke of the reasons for this situation. To that end, we should also mention the fact that institutional structures for implementation of pre-accession obligations regulated by SAA and EP have not been created on time. So far a Decision was passed on a Commission for European Integrations within the Interim Committee for Stabilization and Accession, as well as a Decision on establishing organization units for European integrations within the institutions of B&H. A decision on establishing seven working groups for European integrations that will work within subcommittees is still being processed. Out of seven working groups, six are tied to Cooperation Policies (trade, industry, customs and taxes, and cooperation with other candidate countries; agriculture, security, food and fisheries; internal market and competition; economic and fiscal affairs and statistics; innovation, technological development and social policy; and transportation). Although establishment of the aforementioned groups could mean a significant step forward in the process of implementation of obligations assumed, any delay in terms of their establishment, operations and functionality additionally contribute to a significant delay in realization of the Action Plans for implementation of obligations under SAA and the Interim Agreement, as well as the Action Plan for implementation of priorities of European Partnership.

TITLE IX. FINANCIAL COOPERATION (Articles II2 - II4) and Title V Chapter 4. Current payments and movement of capital (Articles 60 - 62)

Introduction - General assessment of implementation of B&H obligations under SAA and priorities of European Partnership in the reporting period

In relation to implementation of Title 5, Chapter 4 of SAA, Article 1, Paragraph 4 of the Constitution of Bosnia and Herzegovina anticipates freedom of movement throughout Bosnia and Herzegovina. Bosnia and Herzegovina shall not impede full freedom of movement of persons, goods, services, and capital throughout Bosnia and Herzegovina, and no entity will conduct any type of control at the cross-entity border. In line with that, the European Partnership imposed onto B&H several priorities, the most important of which is establishment of a single economic space that promotes free movement of goods, capital, services and persons, and requirements in relation to fulfillment of this priority under Articles 60-62 of SAA refer to further progress in elimination of restrictions

imposed on transfers outside the country. Furthermore, within the mid-term priorities, Bosnia and Herzegovina should continue its reforms in areas of property registration, implementation of contracts, bankruptcy procedure, registration, taxation and business licensing. This also implies harmonization of legislation on foreign currency transactions within the country and harmonization with EU legislation.

With regard to financial assistance, the European Partnership requires development of procedures and administrative capacities that will ensure an efficient protection of financial interests of the EU, while the Bosnia and Herzegovina fulfills, to a satisfactory degree, the obligations under SAA and EP concerning current payments and movement of capital and financial cooperation. Additional legislative initiatives are needed in the area of movement of capital in order to harmonize local legislation with acquis and ensure full liberalization.

TITLE IX) FINANCIAL COOPERATION

Multi-year Indicative Planning Document (MIPD) establishes a general framework for assistance provision. As for the financial assistance provision, special conditions are specified in individual annual programs. In order to make this assistance operational, B&H and EU signed a Financing Agreement. European Partnership provides Bosnia and Herzegovina an access to regional and horizontal programs.

As a potential candidate, Bosnia and Herzegovina has access to the first two components of IPA: Component I – assistance to transition and strengthening of institutions and Component II – cross-border cooperation. According to 2008-2010 Mid-term Indicative Financial Framework (MIFF),²² Bosnia and Herzegovina could have access to EUR 269.9 million. Of this amount, 30-40% is indicatively allocated as assistance to the state to fulfill the political requirements from SAA, 25-30% goes for economic requirements, 35-45% for requirements related to acquis communitaire, and 6% for cross-border cooperation. The Strategy

Pre-accession Assistance follows the recommendations from the Report on Strategy on Enlargement and Progress, priorities of the European Partnership, and will also take into consideration the requirements under the Interim Agreement.

The Commission implements the Instrument of Preliminary Assistance (IPA) in Bosnia and Herzegovina through its Delegation, as a centrally administered program. The government appointed an IPA coordinator who acts as a representative of Bosnia and Herzegovina before the Commission. Support to the Coordinator is provided by the Directorate for European Integrations (DEI). In order to ensure adequate coordination in Community assistance programming, the European Commission and Bosnia and Herzegovina established a Committee for Programming Management and a Committee for Project Management, both comprising representatives of DEI and the Delegation.

Generally, one can say that Bosnia and Herzegovina implements, to a satisfactory degree, the obligations under SAA and EP in the areas of current payments and movement of capital and financial cooperation. As for movement of capital, the Overall conclusion is that additional legislative initiatives need to be made concerning movement of capital in order to harmonize legislative framework with acquis, ensure full harmonization of laws within the state and full liberalization.²³

The Council of Ministers defined a draft Law on Foreign Currency Transactions, whereby current and capital transactions outside the country are fully liberalized. Republika Srpska prepared amendments to the existing Law on foreign currency transactions and referred them to public discussion, while FB&H is still in the phase of drafting this piece of legislation.



Level of realization of the Action Plan

For the purpose of implementation of SAA and Interim Agreement, the Directorate for European integrations prepared a document with an Action Plan for the period July 2008 -December 2009. This document anticipates that Bosnia and Herzegovina shall, in order to authorize any payments and transfers to the current account of balance of payments between the Community and B&H in freely convertible currency and in line with the provisions of Article VII of the IMF Statute prepare and adopt relevant legislation in the area of foreign currency transactions. At the end of 2008 the Council of Ministers adopted a draft Law on Foreign Currency Policy in Bosnia and Herzegovina, which is adjusted to Annex I to Directive 88/361/EEC and which

²³ 2008 Progress Report on B&H, Brussel, 05.11.2008, pp. 37.

significantly liberalizes current and capital transactions. The Law will be, in the form of a proposal, referred to the Parliaments of B&H for adoption.

A new draft Law on foreign currency transactions in the Federation is still in the drafting phase. It anticipates significant liberalization of current and capital transactions outside the country.

Finally, acting upon a Conclusion of the National Assembly of RS, the RS Ministry of Finance prepared and RS Government and National Assembly adopted a draft Law on changes and amendments to the Law on Foreign Currency Transactions from 2006 as a first phase of liberalization of current and capital transactions outside the country. After public discussion, this Law will be referred to the National Assembly of RS for final adoption.



Parliamentary process and status of draft laws and international agreements with reference to constitutional basis and status vs. relevant legislation of lower levels of government

As regards the legislation that regulates the procedure and prevents discrimination between B&H nationals and foreign natural and legal persons in terms of acquiring ownership rights over real property, the original draft law was prepared in 2005 with technical assistance of GTZ. Although the Action Plan for implementation of SAA and Interim Agreement does not anticipate any activities related to enabling citizens of Member States to purchase real property in B&H under the same terms as citizens of B&H – because SAA anticipates that the activities in this area will develop gradually over the six-year period after coming into force of SAA, there have been some significant developments in the area. The Law on real rights was adopted in RS on November 25, 2008 and it regulates the real rights (ownership rights) of foreign nationals and companies in the same manner as the rights of B&H residents. Articles 15

Republika Srpska adopted the Law on Real Rights in line with the requirements of the EU. Adoption of a similar law in FB&H is still in question. Consequently, as of July 1, 2009 it is possible that a non-resident will be treated differently in the two entities.

and 16 stipulate that foreign legal persons, as well as natural persons, acquire ownership rights over real property in RS under the condition of reciprocity, unless otherwise prescribed by Law or international agreement. This Law will be applicable as of July 1, 2009. Therefore, the conclusion from the previous Progress report in which it was stated that RS was still very efficient in the area of adopting relevant legislation is still valid.

On the other hand, in the Federation of B&H the adoption of the Law on real rights is still uncertain. In line with 2007-2010 Work Policy of the Federation Government, the Ministry of Justice prepared a preliminary draft Law on real rights. Having considered this document, the Federation Government referred it to the Federation Parliament, which returned the document for revision. However, the revised version of the document has not been referred back to the parliament up until the present. Meanwhile, the existing Law on property relations of the Federation of B&H (Official Gazette of FB&H Nos. 6/98 and 29/2003) continues to restrict the ownership rights over real property to the foreign nationals working in the Federation or those with permanent residence in B&H. In other words, if a foreign national does not work in B&H, or on the territory of the Federation of B&H, or if he does not have permanent residence, he cannot acquire ownership rights over real property.



TITLE IX) FINANCIAL COOPERATION



Commentary

Although there were no explicit conditions that B&H should meet within the mentioned period, other than requirements for gradual harmonization of legislation on real property, RS has already adopted the Law that regulates this area, which will come into force in July 2009. Should the Federation fail to adopt the same Law by this deadline, this matter will be regulated by two different entity laws, which is contrary to the requirement for harmonization of legislation within B&H.

As for financial cooperation and financial assistance, although there are no specific deadlines set for 2009, the Stabilization and Accession Agreement anticipates that the contracting parties will cooperate in the priority areas related to acquis - in the area of internal Public Sector Financial Control (PIFC) and external audit, through development and adoption of relevant regulations in line with internationally recognized standards of control and audit, methodology and best practice of EU²⁴.

Significant progress relevant to the dynamics of inflow of funds from the Community has been made in all areas of application of SAA and EP, as well as in terms of meeting political criteria from Copenhagen. However, monitoring of the process and coordination of assistance and information is assigned to an appropriate body within the B&H Ministry of Finance and Treasury.

For status of implementation of measures from this area, see the section of report that deals with financial audit and control.

TITLE X INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

General assessment of implementation of B&H obligations under SAA and priorities of European Partnership in the reporting period

The Stabilization and Accession Agreement anticipates that the following bodies be established as soon as the SAA comes into force: establishment of the following: The Stabilization and Accession Council, Stabilization and Accession Committee and subcommittees and Stabilization and Accession Parliamentary Committee.

Pursuant to the Interim Agreement (Articles 40-48), an Interim Committee and five subcommittees were established and tasked with the matters included in the Interim Agreement, while the other issues will be discussed in meetings of the Reform Process Monitoring (RPM) until the SAA comes into force. In the first meeting of the Interim Committee in October 2008, the program of sub-committees for 2009 was adopted. At the request of the European Commission it was agreed that the meetings of the subcommittees and RPM be held together. By the end of 2008 the sub-committees were formed and their meetings are taking place in line with their program.



Level of realization of the Action Plan

Schedule of the meetings of the Interim Committee, Sub-committees and RPMs and agendas for the period 01.01.2009. - 01.06.2009.

	Interim Committee /Plenary RPM	Sub/committees/ Sector RPM	Items on the agendas
22.–23. 1. 2009. Sarajevo		Subcommittee – Transport	Transit traffic
		Sector RPM	Transport, energy, environment and regional development
19. 02. 2009. Brussels	Plenary RPM		
23-24. 02. 2009. Brussels		Sub-committee – agriculture and fishery	Agricultural products, fish products, processed agricultural products, wine and alcoholic drinks, protection of geographic labels of agricultural, fish and food products other than wine and alcoholic drinks.
		Sector RPM	Food safety, veterinary and phytosanitary policy, rural development
26-27. 03. 2009. Sarajevo		Sub-committees - Trade, industry, customs, taxation and cooperation with other candidate countries	Free movement of goods, industrial products, trade related issues, taxation, customs, cooperation with other candidate countries
		Sector RPM	Industry, SMEs and standardization
27-28. 04. 2009. Brussels		Sub-committees – Internal market and competition	Other issues related to Chapter 3 of the Interim Agreement, competition, state aid and the steel industry, intellectual, industrial and trade property
		Sector RPM	Services, business establishment and public procurement
25-26. 05. 2009. Sarajevo		Sub-committee – economic and financial issues and statistics	Movement of capital and payments
		Sector RPM	Economic dialogue, statistical cooperation and financial control



C Commentary

In line with the constitutional jurisdictions, in the work of the sub-committees both the entity and state level institutions were involved. In the place of a commentary, we share with you a request of the European Commission from the previous meeting whereby it was requested that the RPM meetings be conducted in English and that positions be sent in writing and in advance so that the EC could respond to them and save precious time. It seems that more coordination and preparation is needed among the institutions of B&H.

CONCLUSION Returning to the Issue of True Political Will for the B&H EU Integration Process

Last year, when we started our work on the Project 'Monitoring of the B&H European Integration Process', thanks to the financial support of the Swedish Development Cooperation Agency (SIDA), we believed that a six-month review was a sufficient time frame for monitoring the institutional dynamics in fulfilling the obligations from the SAA and the European Partnership with the EU. We started from the fact that in B&H there is almost an absolute political consensus that B&H should become a member of the EU. Based on this absolute political consensus, the conclusion that the relevant institutions would work overtime to catch up with the neighboring states and compensate for the obvious B&H backlog on the road to Europe seemed logical.

B&H signed the Stabilization and Accession Agreement with the European Union on June 16, 2008. It has been a year; we have finalized our First Semi-annual Report for 2009, after the Preliminary Report in 2008 that treated the first six months of the process. During that period of time, around fifteen EU member states have either completely finished or brought close to the finish line the ratification of the SAA, but, unfortunately, we are not able to claim that B&H has made the expected progress. To rephrase that, the B&H institutions have continued with their half-hearted progress which in some cases resembles serious stagnation. During the writing process of this Report, we were forced, instead of speed, to measure slowness, to count the same obstacles and repeat the same conclusions. Sometimes we wondered whether six months is too brief time frame for measuring B&H stagnation. However, we refused to think along those lines, because we refuse to fall into the trap of adjusting the time to fit ourselves, instead of adapting ourselves to the demands of time. Bosnia and Herzegovina has run out of time to lose, and it is especially noticeable in the of European integration process. We have remained loyal to the given methodology and time frame, because they allow us to bring up to the surface the reasons and the problems that hold B&H at the very end of the Balkan EU convoy. Still, stagnation can also be observed as movement. In the case of Bosnia and Herzegovina, this movement around the Dayton ethno-nationalism which takes over for itself even the road to Europe, or to put it better, around the Dayton ambiguity which allows everyone to bring into question the entire state and its functionality. A frame within which there is a complete volunteerism on the issue of interpretation and use of authority does not promise fast movement on the road to Europe. This can best be seen from the main conclusions of the First Semi-annual Report for 2009.

- 1. In first couple of months of 2009 we noticed half-reached results with a descending tendency, the consequence of lack of political consensus on most issues discussed in Chapter One. During the reporting period we witnessed nationalist rhetoric of politicians who argued against the constitutional establishment of Bosnia and Herzegovina. No significant progress was made in the transfer of jurisdictions for the reform process on state institutions.
- Bosnia and Herzegovina is still willing to meet all the principles of policy dialogue, in particular the goals of Common Foreign and Security Policy and the part that refers to non-proliferation of weapons of mass destruction. During the reporting period,

namely on January 5, 2009 the Presidency of B&H brought the decision to accede to the Convention on Nuclear Safety and accordingly the decision that B&H should join the Convention on the Physical Protection of Nuclear Material. Transfer of jurisdictions from the entity to the state level with regard to the military arms, ammunition, explosives and other movable property agreed and signed in March 2008 by and between the Council of Ministers and entity governments was disputed by RS Government. RS Government argues that the jurisdictions such as import and export of military arms were illegally transferred to the state level. This Agreement also anticipates the destruction of obsolete and dangerous ammunition. This inability to solve the issue of unmovable military property under the state jurisdiction (the second of five goals and two conditions for the transition of OHR) and lack of financial resources continue to be significant obstacles to the reform process.

- 3. The report on the pace of implementation of the requirements under Title III of SAA and European Partnership in the first six months of 2009 unfortunately is not much different from the previous report. Regional cooperation, unfortunately, remains a hostage to the Balkan nationalisms. Bosnia and Herzegovina is not an exception to this bad rule, and this certainly affects the level of fulfillment of the requirements assumed under SAA and European Partnership.
- 4. In Chapter IV Free Movement of Goods (industry and fishing), Bosnia and Herzegovina has made a certain progress, but a lot of effort must yet be made for the integration process to assume a satisfactory pace. B&H has not yet made satisfactory progress with regard to the issues of standardization, accreditation, conformity assessment, metrology, market surveillance and consumer protection, nor in terms of approximation of technical regulations with those of *acquis*. The House of Peoples of the B&H Parliamentary Assembly adopted the Draft Law on Protection of Domestic Production within the CEFTA Agreement, which implies chagrining of a full MFN fee on the imported goods described under the Customs Tariffs chapters 02, 04, 16.01, 16.02, 20, 22 originating from the Republic of Croatia and the Republic of Serbia. Adoption and application of this Law is contrary to the provisions of the CEFTA Agreement as well as to SAA (Article 12 of the Interim Agreement, Article 27 of SAA). The best comment is a comparative overview of the progress of B&H provided in EC reports, in the section on free movements of goods over the three-year period:

2006: Little has been achieved in terms of ensuring free movement of goods.

2007: There are some developments in the area of free movement of goods.

2008: A very limited progress has been made in the area of free movement of goods.

The main reason is the fact that Bosnia and Herzegovina still does not have a strategy or a holistic approach to the establishment of the system of free movement of goods, particularly not with regard to adopting and implementing EU technical legislation.

5. In the area of free movement of workers, no significant progress was made in terms of fulfilling the obligations deriving from SAA. The first big challenge for B&H is primarily reduction of the structural rigidities that distort the functioning of the labor market, in particular the taxation of labor, levels of social transfers and wage-setting mechanisms. The second challenge is creation of a single economic space in Bosnia and Herzegovina, supporting the free movement of goods, capital, services and persons.

CONCLUSION)

- 6. In 2008 the Council of Minister sent about 50% of the necessary laws to the parliament for processing, which means that from the very beginning certain areas have been left behind. The situation is additionally aggravated by the fact that part of laws pending for processing through the parliament cannot be applied. Most experts consulted believe that even if a law is "passed" in parliament, it often cannot be applied and if such a law would allow true progress for B&H it is usually "rejected" due to inter-entity antagonisms. RS can be very constructive up until the point when a law is to be transferred from the entity to the state level.
- 7. With regard to the meeting the obligations from Article 51 of SAA that would facilitate persons from the Community to establish their businesses in Bosnia and Herzegovina relative to the last report no significant progress has been made. In other words, branch offices of the companies from the Community in order to run their business in Bosnia must be registered as companies in the Federation of Bosnia and Herzegovina, or in Republika Srpska. This means that they have to acquire the status of a legal person, which according to our legislation branch offices cannot have. Subsidiary companies and branches are implicitly prevented from acquiring ownership rights over real property, unless registered as legal persons. Bosnia and Herzegovina does not provide branches and subsidiaries from the Community treatment which is not less favorable than that provided to local branches and subsidiaries.
- 8. Political reasons aside, the B&H Law on Public Procurement is, to a great extent but not entirely, harmonized with *acquis communautaire*, i.e. EU directives in this area. The existing Law on Public Procurement should be urgently amended due to several shortcomings that were identified during its being put into effect. However, the parliamentary procedure of adoption of a new law is probably politically conditioned and disputed. The truth is, this law has undergone some changes and amendments, but none of them were essential. The prior changes were mainly about the prolongation of deadlines for establishing and setting in motion the bodies anticipated by the law, because with the original text the law could not be implemented. The most visible shortcoming of the Law on Public Procurement is the procedure for appeals which is very vaguely regulated. This provision leads to lack of clarity and different interpretations not only on the part of contracting parties but also on the part of the institutions established by this law.
- 9. B&H must, as soon as possible, adopt changes and amendments to the Law on Competition in order to harmonize it with EU standards and remove the obstacles that prevent appropriate application of competition rights in B&H. Lack of a competition policy and lack of appropriate capacities within the Competition Council of B&H to launch the development of such a policy are to blame for the present situation. Over the past six months there were only two cases solved for abuse of dominant position and 19 decisions on concentration (mergers). Failure to adopt the Law on State Aid is a purely political problem since the entities do not want to relinquish their jurisdiction in developing economic and social policy.
- 10. Although the institutions in charge of implementation of activities and measures in the area of Cooperation Policies have made uneven progress, the level of realization of the Action Plan on realization of obligations from SAA is generally unsatisfactory. For example, in the first five months of 2009 Parliament of B&H adopted only ONE law in 25 areas covered in the Chapter Cooperation Policies! It is necessary to develop an institutional structure for implementation of pre-accession obligations, namely through an urgent establishment of seven working groups for European integration within the responsible B&H institutions.

USION FIRST SEMI-ANNUAL REPORT

- 11. Results of analysis suggest that at the end of the first half of 2009 about 50% of the obligations under the Action Plan on realization of obligations from SAA relevant for the priorities of the European Partnership for Bosnia and Herzegovina have been met. The obligations defined for this period imply, primarily, development and improvement of regulations in relevant fields and establishment and strengthening of necessary institutional structures. The progress made in terms of regulations is manifested in adoption of certain strategic documents and respective action plans (e.g. in the field of immigrations and asylum, the combat against human trafficking), as well as laws and relevant bylaws (e.g. in the area of criminal proceedings, and protection of confidential data). As for the strengthening of institutional structure, limited progress was noted in establishing new bodies (e.g. a single police structure, the Border Management Commission), and improving the structural, administrative and personnel capacities of existing institutions (visas, border management, readmission, protection of personal data, combat against terrorism and drug abuse). However, successful and timely implementation of obligations defined in SAA and European Partnership requires far more intensive activities on the part of institutions in B&H in both legislative procedure and strengthening of institutional capacities. The current delay of B&H institutions in meeting the deadlines set forth in the Action Plan on realization of SAA varies between 6-12 months, as illustrated by several documents pending in parliament, the adoption of which fulfills, or partially fulfills, obligations that were due in mid-2008 or at the end of 2008 according to the Action Plan. Apart from the complexity of legislative procedure in Bosnia and Herzegovina, other factors that partly influence the delay in implementation of obligations under the Action Plan for implementation of EP priorities could undoubtedly be found at the political level - requirements deriving from European Partnership that are not adjusted to the existing constitutional and legal structure and division of power between Bosnia and Herzegovina and its entities, and resistance caused by direct and indirect attempts for "transfer of jurisdiction". Along with this, the overall political situation in Bosnia and Herzegovina and gradual positioning of leading political actors before the 2010 general elections are elements that additionally aggravate the implementation of obligations under SAA in many segments.
- 12. Although there are some significant developments in certain areas, the level of realization of Action Plan on realization of obligations from SAA is generally unsatisfactory. In the text above we spoke of the reasons for this situation. To that end, we should also mention the fact that institutional structures for implementation of preaccession obligations regulated by SAA and EP have not been created on time. So far there has been reached a "Decision on the Commission for European Integrations within the Interim Committee for Stabilization and Accession", as well as a "Decision on Establishing Organization Units for European Integration within the Institutions of BiH". A decision on establishing the seven working groups for European integration that will work within sub-committees is still in work. Out of the seven working groups six are connected with Cooperation Policies (trade, industry, customs and taxes, and cooperation with other candidate countries; agriculture, security, food and the fishing industry; internal market and competition; economic and fiscal affairs and statistics; innovation, technological development and social policy; and transportation). Although establishment of the aforementioned groups could mean a significant step forward in the process of implementation of the obligations assumed, any delay in terms of their establishment, operation and functionality additionally contributes to a significant delay in realization of the Action Plans for implementation of obligations under SAA and Interim Agreement, as well as the Action Plan for implementation of priorities of European Partnership.

CONCLUSION)

- 13. Although there were no explicit conditions that B&H should meet within the mentioned period, other than requirements for gradual harmonization of legislation on real property, RS has already adopted the law that regulates this area, which will come into force in July 2009. Should the Federation fail to adopt the same law by this deadline, this matter will be regulated by two different entity laws, which is contrary to the requirement for harmonization of legislation within BiH.
- 14. As for financial cooperation and financial assistance, although there are no specific deadlines set for 2009, the Stabilization and Accession Agreement anticipates that the contracting parties will cooperate in the priority areas related to *acquis* in the area of internal Public Sector Financial Control (PIFC) and external audit, especially through development and adoption of relevant regulations in line with internationally recognized standards of control and audit, methodology and best practice of the EU. Significant progress relevant for the dynamics of inflow of funds from the Community has been made in all areas of application of SAA and EP, as well as in terms of meeting political criteria from Copenhagen. Monitoring of the process and coordination of assistance and information is assigned to the responsible body within the B&H Ministry of Finance and Treasury.

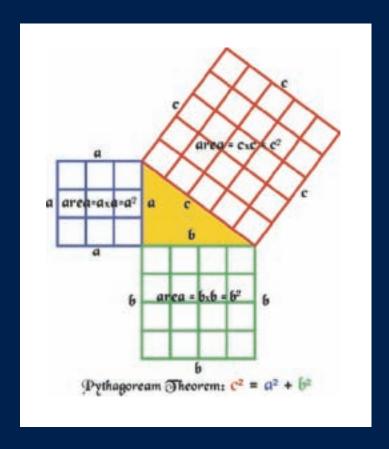
Having in mind the basic findings from this Report, it is necessary to point out the basic message which significantly modifies our messages from the previous report. Up until now there was a political will for the European integration process, and the responsibility for failing was mostly ascribed to an understaffed administration and a complicated constitutional and legislative framework. In the timeframe covered by this Report we must point out that even despite the progress made through the adoption of certain laws, and even amendments to the Constitution,²⁵ what we see now is an indifference towards the stabilization and association, demonstrated publically by some politicians. The only exception for this is the effort for the liberalization of the visa regime. Every mention of a need for a more functional state with the goal of fulfilling the demands of the EU integration process is labeled as "unitarism". At the same time, by stalling the adoption of the necessary laws and not enabling the state institutions to function properly, what is present on the stage is a "functional" destabilization of the B&H institutions. Along with that, the basic problem seems to be the issue of Constitutional jurisdictions which has, in the sense of daily politics, preoccupied public attention in the past, and which we have warned about in the previous Report for 2008.

The European Parliament's Resolution on the situation in Bosnia and Herzegovina from March 2009 points out how, since a constant deterioration of the political climate in B&H is a cause of concern in the Parliament, it "regrets, therefore, the inability of B&H politicians to agree on a common political vision for their country, compromising for reasons of short-sighted nationalism the objective of joining the EU, an objective which would bring peace, stability and prosperity to B&H citizens." The Resolution also points out that "the prospect of EU membership has been offered to B&H as a single country, not to its constituent parts".

Solving this problem is the main pre-condition for the continuation of the European integration process of B&H. The present situation cannot be in the interest of B&H citizens, or political elites.

²⁵ Amendment to the Constitution which regulates the status of Brčko District that was adopted in the B&H Parliamentary Assembly after 14 years is proof that every progress in B&H depends on political will of the political elites and a long-term politicized process how to reach a consensus.

²⁶ European Parliament Resolution on Bosnia and Herzegovina from March 17, 2009.







This Independent study has been prepared by the Foreign Policy Initiative BH with the financial support of Sida. The views expressed here are those of the Foreign Policy Initiative BH and are not to be understood as in any way reflecting the views of Sida.