

MONITORING OF THE B&H EUROPEAN INTEGRATION PROCESSES

2009

SECOND SEMI-ANNUAL REPORT

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Introduction

The Second Semi-Annual Report for 2009 of the Project "Monitoring of the BiH European Integration Process" provides us with the opportunity to continue monitoring trends in fulfilling the obligations from the SAA and measure the implementation level compared to our *Preliminary Report for 2008* and *First Semi-Annual Report for 2009*.

The Project "Monitoring of the BiH European Integration Process" started in November 2008 and will last to the end of 2011. During this time period, the Project intends to issue reports twice a yearl, thus measuring the progress of BiH in the European integration process. In addition to these Semi-Annual Reports, the Project will publish a Comparative Report on Monitoring once a year in order to place the state of the European integration process in BiH into the context of the expansion process in the Western Balkans and compare the efforts of the BiH institutions with the same activities of countries in the region. This report was made by ten people, well versed in their area of expertise, who are covering certain areas of the SAA obligations. The Editorial Board, made up of six members, put the Report into the shape you are receiving it today.

While making this Report, official documents of BiH and entity institutions were used, as well as the reports of the institutions of the EU, Council of Europe and other relevant reports, and interviews with the representatives of specific institutions¹. Useful materials are the information from the Regular Preparatory Meetings (RPM), meetings of the Interim Committees and thematic Sub-Committees, and other relevant documents of the BiH Council of Ministers and BiH Parliamentary Assembly. In regard to actuality of the report, it is important to mention that the deadline for processing information for this report was December 14, 2009, with efforts from the Editorial Board to complete the text with the necessary information by December 23, 2009.

Generally speaking, we can say that there has been a significant improvement concerning the implementation of the obligations under the Title VII – Justice, Freedom and Security; especially in the complementary part of the *Road Map for the Liberalization of the Visa Regime*. The progress was also made in the area of protection of the intellectual property (Title IV) and financial cooperation - the applications for the IPA Funds. The general assessment would be that the progress in the realization of the obligations under the Interim Agreement is visible in areas where there is an undivided political interest of the members of the coalition government and in expert areas where, because of the professionalism and enthusiasm of those doing the job, the political influence on the reform activities was avoided.

A positive move in this direction was also the appointing of the new Director of the Directorate for the European Integrations of BiH after several months of political tensions. DEI has also created a Communication Strategy for informing the public on BiH accession to the EU.² The European Union finds this to be an area of priority in the states aspiring to integrate with the EU. The experience of the past expansion waves shows that

The main focus of our report was on these documents: the Stabilisation and Association Agreement between EU and BiH, the Interim Agreement between EU and BiH, and the European Partnership for BiH. Along with them, our team is also considering the projections from the Action Plan for the implementation of obligations under the Interim Agreement and the SAA, Review of the activities from the Action Plan for the realization of priorities from the European Partnership for BiH document and the recently published Program of priority harmonization in legislative activities for the implementation of the European Partnership and Interim Agreement. All available at http://www.dei.gov.ba/dokumenti/?id=3267

http://www.dei.gov.ba/press/publikacije/?id=3401

successful accession and integration demand the collective effort of society as a whole. That is why the governments have the obligations to clearly, efficiently and transparently communicate with their citizens on what they are doing and why. FPI BH finds that this series of reports on monitoring is a constructive contribution of the civil sector in transparent communication with the citizens on the topic of BiH progress in the process of European integration.

Unfortunately, in this Report we can note that Bosnia and Herzegovina has made progress in only a few areas. Progress was made in the area of Justice, Freedom and Security, especially in the part of fulfilling the obligations from the Road Map for the Liberalization of the Visa Regime for BiH. On December 23, 2009, the National Assembly of Republika Srpska adopted the Law on Expiration of the Law on RS Ombudsmen through an emergency procedure, which opened the process for uniting the institution of BiH Ombudsmen on the state level and fulfilled one of the conditions. The EC Report also notes good progress in the areas of visa policy³, asylum⁴, and some limited progress in the area of border⁵ and police cooperation⁶. All this gives indications that BiH could be placed on the White List for the liberalization of the visa regime in the first half of 2010. There is evidence of progress in the areas of "financial cooperation" thanks to the focusing of the projects for resources of the IPA funds on mitigating consequences of the world economy crises through support to the Agency for Securing Deposits and small and medium businesses as well as priority infrastructure operations on road, railway and local communal infrastructure. In this way, the benefits from the EU and its funds are directed towards an ordinary person. In the areas of protection of intellectual property and consumer protection some progress has been achieved also, but it is important to continue with the efforts, so that it would not just remain a result of a few current activities. The implementation of the priorities from the titles General Principles and Political Cooperation is stagnating, while Regional Cooperation shows slight yet inadequate progress which is yet to be turned into essential progress. We raise concern regarding indicative lack of the reforms and planned activities in the area of human rights. The last Decision of the Human Rights Court in Strasbourg in the case Finici and Sejdić vs. BiH from December 22, 2009 should be an additional reason for an active involvement of the BiH Government institutions in eliminating discriminatory provisions from the BiH Constitution. In the area of free movement of goods and services, BiH is fulfilling its obligations concerning customs, quotas and foreign-policy provisions, but more effort should be made with the systematic approach. But, in the area of

[&]quot;Progress has been made by Bosnia and Herzegovina with regard to visa policy and in the wider framework of the visa liberalisation dialogue. A decrease in the number of visas issued at border crossings has continued. From January to August 2009, 169 visas have been issued. The issuance of biometric passports in line with the relevant EC and ICAO standards has only started in a test phase since July 2009 and is scheduled to be fully operational in October 2009."

^{4 &}quot;Good progress has been made as regards asylum". The number of asylum applications and decisions is constantly decreasing.

⁵ "Bosnia and Herzegovina made limited progress in the area of border management. A national Coordinator for IBM was appointed in the Ministry of Security, in charge of overseeing the implementation of the IBM action plan."

⁶ "Limited progress has been made in the area of the police. The fragmentation of the police forces and the lack of systematic cooperation and information exchange remain a serious issue. The completion of the police restructuring process depends on the reform of the current constitutional framework, which is stalling." p. 66.

⁷ "Progress in the area of judicial reform has been limited on the whole. Implementation of the Justice Sector Reform Strategy has not progressed in accordance with the agreed timelines" p. 12.

[&]quot;Bosnia and Herzegovina has made little progress in fighting corruption. A positive development has been the adoption of a new Strategy for the fight against corruption 2009-2014 and the related Action Plan. Furthermore, a draft Law on the Agency for prevention of corruption and on cooperation in the fight against corruption has been prepared and is under adoption" p. 14

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standardization, much more effort is needed in order to meet the European standards, but there is a lack of synergy and usage of institutional memory. Title V of the SAA which concerns free movement of labour, establishment, provision of services and Title VI Approximation of laws, law enforcement and competition rules, as well as Title VIII – Cooperation Policies, display chronic stagnation, and in some aspects, even regress caused by the absence of political will and necessary institutional and Parliamentary activities. Additionally, two negative assessments from the EC Report dealing with Justice reform⁷ and the Fight against corruption⁸ raise concern.

In the previous period, many of the listed topics were completely overshadowed by the renewed process of constitutional reforms called the "Butmir Process", which, after almost three months of activities, did not produce the desired effect. What seams to be necessary for the process of the BiH constitutional reforms is to enable the country for the implementation of the demands placed before the candidates for EU membership as set by Copenhagen Council in 1993 and Madrid Council in 1995. The Copenhagen Criteria requires from the candidates for EU membership the rule of law and institutional functioning, and the ability to preserve their competitiveness and to cope with market forces within the European Union, once they get there. Furthermore, the Madrid Criteria demand that the candidate countries establish functional institutions and that the adopted European legislation is not just adequately transposed into the local legal system but also effectively implemented. All other demands, which you can read about in detail in this Report just add to the fundamental conditions set in Copenhagen and Madrid.

It should be pointed out here that as of the end of October 2009, 17 states have ratified the Stabilization and the Association Agreement between the EU and BiH.⁹

Since the obligations under the SAA and the European Partnership have not changed in the reporting period, we will not list them individually this time. The *Preliminary Report for 2008*, where they are listed individually and elaborated in detail as well as our *First Semi-Annual Report for 2009* can be found on the website www.vpi.ba. All your comments, remarks or suggestions on our report can be sent to us at the e-mail monitoring@vpi.ba with notification whether you wish your comment to be made public on our website. It will be our pleasure to give you a response or provide you with additional information.

Estonia, Hungary, Slovenia, Bulgaria, Slovakia, Finland, Lithuania, Denmark, Ireland, Portugal, Cyprus, Czech Republic, Federal Republic of Germany, Austria, Sweden, The Netherlands and Romania.

TITLE I. **GENERAL PRINCIPLES**

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

Article 2 of the Stabilization and Association Agreement requires respect of human rights and fundamental freedoms, and with this, BiH confirmed the obligation under the SAA to fully carry out the international conventions of respect of human rights and freedoms: the Universal Declaration of Human Rights, European Convention on Human Rights and Freedoms, Helsinki Final Act, and Charter of Paris Convention for a New Europe.

Both in the Title of the SAA General Principles, and in the short-term priorities of the European Partnership, there is also an obligation regarding full cooperation with the International Criminal Tribunal for war crimes committed on the territory of former Yugoslavia (ICTY).

International peace and stability: this obligation primarily includes the development of good-neighbourly relations, including a level of mutual concessions concerning movement of people, goods and capital, especially in the domain of combating organized crime, corruption, money laundering, illegal emigration, illegal trade, and especially human trafficking.

Priorities of the European Partnership regarding these obligations are:

- adopting legislation on police reform on state and entity levels;
- full cooperation with the ICTY;
- removing the Decision on the Death Penalty from the RS Constitution;
- improving the implementation of the Conventions ratified by BiH;
- improving protection of women and children;
- implementing overall reform of penal institutions and construction of prisons at the state level;
- improving legal framework on minorities and fully meeting the requirements of the Council of Europe Framework Convention on National Minorities:

Insisting on so-called collective rights pushes the rights of an individual aside, and with it, the human rights conventions and the *obligations of the General Principles of the SAA and short-term and long-term* priorities of the European Partnership.

- elaboration and implementation of all sector action plans within the framework of the National Roma Strategy;
- full implementation of the National Roma Strategy;
- ensuring that national legislation is fully harmonized with the European Convention on Human Rights.



Level of realization of Action Plan

Level of realization of the obligations from the SAA

Even in the second half of 2009, BiH institutions did not manage to provide for a full implementation of the international conventions signed by BiH. The BiH Constitution is still in violation with the European Convention on Human Rights, especially concerning the election of the BiH Presidency members and the members of the House of Peoples of the BiH Parliamentary Assembly. However, other violations of human rights which are listed in the EC Progress Report for BiH in 2009 remain in the shadow of these political commitments.10

Although there was progress in the domain of development of institutions with direct competence over security, combating organized crime, terrorism, and illegal trafficking, it is impossible not to notice its exaggerated politicization at the state level, especially with those institutions and agencies which should be in charge of the carrying out of the reform process for harmonization with Shengen standards.

It is quite clear that all of the Constitutions in BiH provide for the freedom of speech, but, as was stated in the EC Progress Report, "this constitutional right is not always fully implemented". A direct indicator of that is the increase in the number of cases of physical violence and threats made against journalists and editors. The EC Report also expresses concern about the "insufficient activities of courts and law implementing bodies with investigation and criminal prosecution of these cases", "ethnic orientation of the media" and "violation of the independence of the Regulatory Agency for Communications (RAC)."

Level of realization of the obligations from the European Partnership

In September 2009, an independent body of BiH police structure was constructed, with the jurisdiction to implement procedures of electing and appointing police officials in BiH. This had a particular impact, since BiH, even a year after it was anticipated by the Action Plan, did not get a director of the Direction for Police Structures Coordination. Finally, with close to a full year's delay, in the middle of 2009, laws creating the basics for the harmonization of legislation with the principles of BiH police reform were adopted.

However, the obligation to remove the death penalty from the RS Constitution was still not fulfilled. During the first half of the year, the Amendment on removing the death penalty from the Constitution was on the Agenda of the RS National Assembly, but gained no support.

[&]quot;Again, there have been several cases where the implementation of the BiH Constitutional Court Decisions was not ensured. This led to a number of charges being raised at the European Court of Human Rights. During this reporting period, the European Court of Human Rights reached three verdicts that state that BiH has violated the European Convention of Human Rights (ECHR). Since October of 2008, at the ECHR 634 new charges were raised. By the end of 2009, nearly 2000 cases against BiH were waiting to be dealt with before this Court. The largest number of these cases deals with the old foreign currency savings. Close to 15% of these cases deals with non-implementation of the verdicts seeking payment for war damages", p.15

State legislation was not further significantly harmonized with the European Convention on Human Rights in comparison to the previous reporting period. This European Partnership priority was to have been, according to the plan of activities of the local institutions, implemented by the end of 2008. This did not happen due to political impediments.

The merger of state and entity ombudsmen was not completed and conditions for the BiH Ombudsmen Office to function normally were not created. This is one of the key priorities of the European Partnership and one of the vital obligations that local institutions marked as a priority that needed to be completed back in 2008. The state ombudsmen were appointed with a delay, but there was no integration of the entity ombudsmen into a joint functional institution for the protection of human rights at the state level. On September 14, 2009, BiH Council of Ministers decided to allocate 177,023.00 KM in order to settle the current expenditures of the BiH Ombudsmen Office.

ICTY Chief Prosecutor, Serge Brammertz welcomed the BiH National Stategy for Cooperation with the ICTY. Still, there is fear in the ICTY that this evident progress in BiH could be brought to a halt due to the constant pressure that foreign prosecutors and judges should leave BiH.

The greatest obstacle for implementing the principles set in the General Principles of the SAA and in the European Partnership is the Constitution itself. A similar conclusion was made by the Venice Commission in 2005, and it also dominates the Resolution 171 of the American Congress of May 12, 2009, and numerous other reports on conditions of human rights in BiH.

BiH adopted a Law Against Discrimination, and a Strategy of Prevention of Violence against Children was developed as well as the Action Plan for Children in 2002-2010. An Agency for Gender Equality was formed, and, at the beginning of September this year, the BiH Council of Ministers sent to parliament a proposal for amending the existing Law on Gender Equality of BiH, which even more clearly defined the obligations and jurisdictions of BiH institutions. This creates a solid frame for even more active work on fulfilling the priorities from the EP that deal with the protection of women and children and gender equality. It still needs to be mentioned that BiH has not harmonized the legal acts and bylaws and programs within the domain of labour and employment with the Law on Gender Equality in BiH.

Building of a prison at the state level has commenced, but due to political and financial problems, the implementation of this project has been delayed. Upon the Decision of the BiH Council of Ministers of September 30, 2009, negotiations began with the Development Bank of the Council of Europe for loans in the amount of 19.3 million Euros for the building of a BiH State Prison.¹¹

Certain activities were done in order to protect the Roma population. The BiH Council of Ministers adopted a Decision on manner of distribution of budget means for housing of the Roma population in BiH which granted 1.8 million KM.

Constitutional obstacles

Unfortunately, we must conclude that the greatest obstacle for implementing the principles set in the General Principles of the SAA and in the European Partnership is the Constitution itself. A similar conclusion was made by the Venice Commission, and it also dominates Resolution 171 of the American Congress of May 12, 2009, and numerous other reports on conditions of human rights in BiH.

The EC Report does state that there was "limited progress in the sense of improving the **prison system** in Bosnia and Herzegovina. Prison capacities have been increased, especially by the opening of a new prison in Tuzla, which abides by European standards, and existing prison facilities have been renovated. However, the overall prison standard remains low. There still is a problem in the lack of special penal institutions for women, juveniles, people with mental illness, disabled individuals and elderly. A new penal juvenile institution was opened in Istočno Sarajevo, but its staff has not yet had sufficient training and experience." p. 17.



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 current situation regarding the parliamentary adoption of laws that, directly or indirectly, deal with General Principles of the SAA and EP is as follows:

The Revised Strategy for the Implementation of Annex VII of the Dayton-Paris Peace Agreement, which includes the time period to 2014, has still not been adopted. Returnees still face discrimination with employment, accessing health care, education, right on pension and social protection, especially when they return to the areas where they are a minority. This is still the biggest obstacle for a viable return.

- BiH Parliamentary Assembly adopted a Law on Prevention of Money Laundering and Financing Terrorist Activities, which creates a legal framework for more efficient combat of these problems;
- BiH Law Against Discrimination was adopted;
- Law on Gender Equality has been changed;
- Changes of the BiH Election Law to ensure better gender equality of elected officials failed to get through parliamentary processing;
- Draft Law on Ensuring Proportionate Ethnic Representation in the organs of administration and local administration in BiH, which is to provide for the full implementation of the principles of the Convention on the Elimination of All Forms of Racial Discrimination, is currently in parliamentary processing.



Commentary

Despite all the activities, a basic comment on the implementation of the obligations¹² must point out the lack of implementation of one of the fundamental preconditions of human rights, and that is the return of refugees and internally displaced persons. This is the major issue where, in a state like BiH, political will and determination to respect human rights is manifested. Even after 14 years since the end of the war, this remains an unresolved issue which has created new political realities through the amnesty of history. The truth is that a lot of budget funding was given for this application, but because of that it is hard to accept the assessment of "some limited progress" stated in the EC Report:

"Some limited progress was made in regard to refugees and internally displaced persons. The Revised Strategy for the implementation of the Annex VII of the Dayton/Paris Peace Agreement, covering the period until 2014, has not been adopted yet....Despite some improvements, the supply of reconstructed housing falls short of the demand. The distribution of assistance to refugees and displaced persons lacks transparency and accountability. Returnees still face discrimination with employment, access to health care, education, pensions and social rights - especially when returning to areas where they are in a minority position. This is still the biggest obstacle to a sustainable return."13

According to the Article 1 of the Interim Agreement, which became valid on July 7, 2008 it is requested to have "Respect of democratic principles and human rights, listed in the Universal Declaration on Human Rights and defined in the European Convention on Protection of Human Rights and Fundamental Freedoms, Helsinki Final Act, and Paris Charter for New Europe, respect of international law principles including the full cooperation with the ICTY, and the rule of law and principles of market economy in accordance with the Document of CSCE Bonn Conference on economical cooperation are the basics of internal and external policies of the signees and present important elements of this Agreement."

EC Progress Report on BiH for 2009, p. 21.

TITLE II

POLITICAL DIALOGUE

European Partnership

a Introduction – General assessment of implementation of BIH obligations under SAA and Interim Agreement in regard to priorities of

General assessment of the implementation of the obligations that were taken over in this domain during 2009 could start by answering several essential questions from the SAA; its title dealing with the political dialogue: To what extent did BiH manage to approximate its stands with the stands of the EU on key issues regarding foreign policy and security?; What did BiH do in the past six months to prevent the proliferation of weapons of mass destruction, or set an efficient national control of its export?; To what extent, if at all, was the regional cooperation and expanding of good-neighbourly relations advanced? With respect to certain nuances and encouraging movements, the answers to these questions are generally negative.

The BiH Council of Ministers and its agencies have to implement other measures in the sphere of non-proliferation of weapons of mass destruction and the combat against terrorism, which were adopted at the UN Security Council. At this moment, BiH lacks financial, technical and legal resources to fulfil these obligations in a timely and successful manner.



Level of realization of the Action Plan

Priorities of the European Partnership

According to the principles of the European Partnership that deal with this Title of the SAA, BiH should have, during the first half of this year, with priority, ensured an institutionalized coordination between the state and the entities on legislative, political and technical levels. However, the deadline for the implementation of this priority was extended for one year and transferred to February 2010.14

The EC Progress Report on BiH in 2009 also states: "The Coordination between different levels of government is at a minimum. The BiH Council of Ministers held thematic sessions dedicated to European Integration. Because of its limited jurisdictions, the Council of Ministers was occasionally left out of the reform negotiations led by the political party leaders." p. 10

In the majority of international issues, BiH has defined its stands according to the stands of the EU. The exception is with the international recognition of Kosovo, which is an issue on which even in the EU there was no complete consensus.

Level of the realization of obligations from the SAA

Some of the key obligations of this title of the SAA are activities on the prevention of proliferation of weapons of mass destruction. Based on the available information, it is possible to infer that this process is positive, but only in its declarative sphere. Bosnia and Herzegovina is one of the subjects in all top-priority Agreements on nonproliferation: Biological and Toxic Weapons Convention (BTWC), Chemical Weapons Convention (CWC), Comprehensive Nuclear-Test-Ban Treaty (CTBT) and Nuclear Non-Proliferation Treaty (NPT). In addition to that, the BiH Council of Ministers and its agencies have to implement other measures in the sphere of non-proliferation of weapons of mass destruction and the combat against terrorism, which were adopted by the UN Security

> Council. At this moment, BiH lacks financial, technical and legal resources in order to fulfil these obligations in a timely and successful manner.¹⁵

According to the principles of the European Partnership that deal with this Title of the SAA, BiH should have, during the first half of this year, with priority, ensured an institutionalized coordination between the state and the entities on legislative, political and technical levels. However, the deadline for the implementation of this priority was extended for one year and transferred to February 2010.

Not even all the regulations from the area of import and export of controlled chemicals have been implemented in BiH. Still, at its 58th regular session, the BiH Presidency made a decision to ratify the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, its parts, components, and ammunition which completes the UN Convention against Transnational Organized Crime. There is progress in the cooperation between the institutions, agencies and experts in the Western Balkans so that the non-material technology transfer that could aid criminal and terrorist groups in acquiring illegal abilities to create weapons of mass destruction could be controlled more successfully.



C Parliamentary processing of adopting laws that directly or indirectly concern the General Principles of the SAA and European Partnership

There are no draft laws, decisions or other documents that deal with the prevention of the proliferation of weapons of mass destruction in parliamentary processing at this moment.

BiH adopted a Comprehensive National Strategy for Weapons and Ammunition Control, but it still does not possess a comprehensive national strategy for strengthening capacities in the sphere of non-proliferation of weapons of mass destruction and the combat against terrorism.

The EC Report also states that "Small arms and light weapons as well as explosives and remnants of war remain an important issue in Bosnia and Herzegovina. A Council of Ministers Decision was adopted in June 2009 mandating the harmonisation of Entity-level regulations on arms and entrusting the development of a solution for data exchange on arms/weapons to the inter-departmental working group of the Bosnia and Herzegovina Council of Ministers in charge of finding a solution for the exchange of information between police bodies." p. 66

A Law on Control of Movement of Military Equipment was adopted, and through it, BiH took over the jurisdiction from the EUFOR in the control process of movement of weapons and military equipment.

Even though it does not fall under the direct parliamentary activities it is important to mention several activities in which the BiH Presidency took part as Commander-in-Chief of the armed forces. At the 50th regular session held on July 27, 2009, the BiH Presidency adopted the Report from the International Seminar on national implementation of obligations regarding the non-proliferation of weapons of mass destruction: Organization for the Prohibition of Chemical Weapons (OPCW) as an example of successful aid in national implementation of the CWC, which was held on Jahorina, on June 22-23, 2009.

What can be pointed out as a positive example of political dialogue of local institutions is that the BiH Presidency did, at its 60th regular session, held on August 12, 2009, consider and adopt a Joint Platform for BiH Delegation at the 64th session of the UN General Assembly, New York, on September 24, 2009.

The BiH Presidency also took notice of the Information of the BiH Ministry of Defence about activities on creating the document Defence Review, according to the Program Goal of the document Planning and Revision Process (PARP)-PG 0001 and tasked the BiH institutions, in coordination with the BiH Ministry of Defence, to take measures and activities within their jurisdiction for the successful creation of the Defence Review. Finally, at the beginning of September, in the military complex Kozara in Banja Luka, a combined exercise, "Combined Endeavour 2009" was held.

The BiH Presidency brought the Decision on Accepting the Memorandum of Understanding between the BiH Council of Minsters and Government of the Republic of Austria, Government of Republic of Croatia, Government of Kingdom of Denmark, Ministry of Foreign Affairs of the Republic of France, Government of the Republic of Hungary, Government of the Republic of Macedonia, Government of the Kingdom of the Netherlands, Government of the Kingdom of Norway, Government of the Republic of Poland, Government of the Swiss Federation, Government of the Republic of Turkey, Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the United States of America, about cooperation in the work of the Peace Support Operations Training Centre in BiH.

Commentary

Certain steps forward were made in improving regional cooperation with the purpose of removing the threat presented by proliferation of weapons of mass destruction and terrorist activities connected to it. Unfortunately this cooperation was more forced by external factors, with EU and NATO standards, than it was a product of local innovation and inventiveness.

Still, as was stated in the EC Report¹⁶, moderate progress was observed in the area of cooperation with police forces of other countries, and concrete results are visible

[&]quot;In March 2009, the Ministry of Security and Europol signed a memorandum on a mutual secure link to enable confidential information to be shared. However, the secure communication link, which is part of Europol's 'NEUS' network, is not yet operational. Progress towards the conclusion of an operational agreement with Europol has continued, albeit slowly. Effective implementation of the strategic agreement with Europol needs to be ensured." str. 66

SECOND SEMI-ANNUAL REPORT TITLE II) POLITICAL DIALOGUE

in several actions aimed against the factors of organized crime and narcotics trafficking in the region.

The BiH Presidency adopted the Conclusion on making a Formal Demand of BiH for the Action Plan for NATO membership (MAP) on June 10, 2009. The application was submitted at the end of October 2009, but was not accepted at the meeting of the Ministers of the NATO member countries on December 12, 2009 due to lack of implementation of necessary reforms.

What can be pointed out as a positive example of political dialogue of local institutions is that the BiH Presidency has, at its 60th regular session, held on August 12, 2009, considered and adopted an Joint Platform for the BiH Delegation at the 64th session of the UN General Assembly, New York, on September 24, 2009.



TITLE III REGIONAL COOPERATION

Introduction – General assessment of implementation of BiH obligations under SAA and Interim Agreement compared to the priorities of European Partnership

This Title of the SAA between the EU and BiH in Articles 14 to 17, requires BiH to work on the strengthening of regional cooperation. BiH has an obligation to promote goodneighbourly relations and regional cooperation through respecting and implementing the existing bilateral agreements, such as the Central European Free Trade Agreement – CEFTA. One of the most important activities expected from BiH is the signing of bilateral agreements on cooperation in different key areas contained within the SAA and European Partnership for BiH. It is an obligation of BiH to sign these agreements with states from the region which are potential candidates or candidates for EU membership and are included in the stabilization and association process, as well as with those that are not included in that process, such as Turkey. Bilateral agreements on cooperation and development between BiH and some EU member states are expected as well.

It this regard it can be said that BiH has made progress in signing agreements with countries from the region and promoting regional cooperation in the reporting period, but as always, the work of the appropriate Ministries is difficult concerning the implementation of certain agreements. In some cases even their ratification in the BiH Parliamentary Assembly and BiH Presidency is problematic.

Review of BiH relations with the countries of the Western Balkans would be as follows: Relations with *Albania* have been intensified. Relations with *Croatia* have remained stable, although tense due to different disputes concerning trade, especially after limitations on import of agricultural products were introduced in BiH, contrary to CEFTA regulations. The BiH Constitutional Court confirmed this standpoint ruling that the Law on the Protection of Domestic Production is not in accordance with BiH Constitution. Four protocols relating to the Agreement on Border Control between Bosnia and

The state has continued with its active participation in regional cooperation. Good-neighbourly relations prevail, but there was little progress in solving unresolved issues; especially those concerning border and property disputes.

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Herzegovina and Croatia from 2007 were ratified. However, no progress was made in solving open issues with regard to the border with Croatia. The Interstate Cooperation Council did not meet during this reporting period, which is a poor indicator. Bosnia and Herzegovina still has not ratified the Agreement on Dual Citizenship with Croatia due to a veto raised by the Bosniak Member of the BiH Presidency. Relations with *Macedonia* remain good, while the relations with Montenegro have become more intense, as could be seen from numerous bilateral agreements. It is very likely that BiH will sign the Agreement on Borders with Montenegro, and it is the first agreement of that sort that BiH will have with its neighbours. As far as dual citizenship is concerned between BiH and Montenegro, again, the Bosniak member of the BiH Presidency placed a veto on it. Observing things in general, the relations with Serbia remain stable. However, as in the case with Croatia, no meeting of the Interstate Cooperation Council was held, and there was no progress made in solving the issues dealing with property. In addition, Republika Srpska continued to have close cooperation with Serbia based on the Agreement on Special Parallel Relations and the related Cooperation Protocol.



Level of realization of the Action Plan

Bosnia and Herzegovina still continues to be an active participant in the regional cooperation initiatives, such as the South-East European Cooperation Process (SEECP), the Regional Cooperation Council (RCC), the Central European Free Trade Agreement (CEFTA), the Energy Community Agreement and the European Common Aviation Area Agreement (ECAAA). Progress was made in several areas, but it was still not enough to meet the deadlines set in the Action Plan. There are still many open issues especially concerning borders and related issues with neighbouring countries. Here we confirm the general assessment that relations with countries BiH does not share borders with are better than with those that it does. The sole exception to this is in the relations with Montenegro, where BiH is on the verge of signing a border agreement.

The BiH Presidency held the 34th extraordinary session on July 14, 2009, where it reached a Decision on initiating a procedure of carrying out negotiations for conclusion of an Additional Protocol of the Agreement on Change and Accession to the Central European Free Trade Agreement.

During the second half of 2009, Bosnia and Herzegovina displayed an active participation

Certain steps forward were made in improving regional cooperation with the purpose of removing the threat presented by the proliferation of weapons of mass destruction and terrorist activities connected to it. Unfortunately, this cooperation was more forced by the external factors, with EU and NATO standards, than it was a product of local innovation and inventiveness.

in regional initiatives. Coordinators of the working bodies for the support of regional initiatives have been appointed. Since Sarajevo is the host of the RCC Secretariat, on September 3, 2009, based on a suggestion prepared by the BiH Ministry of Foreign Affairs, the BiH Council of Ministers adopted a Decision to allow issuing visas to the citizens of Kosovo, who travel with Kosovo passports, in order for them to participate at the RCC meetings in accordance with the practice of some of the EU member countries that did not recognise Kosovo.

Bosnia and Herzegovina is a signatory to the Central European Free Trade Agreement (CEFTA). Still, in June 2009, a law was adopted which protects the domestic production of agricultural products and products connected with agriculture through reintroduction of customs which is contrary to CEFTA and the provisions of the SAA. In September 2009, the BiH Constitutional Court proclaimed this law to be unconstitutional. This prevented further violation of BiH international obligations, and expert teams found grounds and opportunity to work on solving the issues of the existing technical barriers within the framework of CEFTA mechanisms.

In the first half of 2009, Bosnia and Herzegovina was presiding over the South East Europe Energy Community. At its 58th regular session on July 10, 2009, the BiH Presidency reached a Decision on Associating BiH into the International Renewable Energy Agency (IRENA). However, Bosnia and Herzegovina is still behind in implementing its obligations from the Agreement, especially in the sector for gas. As far as the energy market is concerned, BiH is behind in implementing the Road Map for Electricity and Gas. The National Strategy on Energy Sector has been completed and presented, but there are some problems in the legislation and functioning of the Public Corporation for the Transfer of Energy TRANSCO. These issues, which are mostly political, were solved, in principle, in mid-November through the agreement of the two entity Prime Ministers.

During the past six months, the BiH Presidency made close to 40 decisions which initiate the procedure to conclude the Agreement, and accept or ratify different agreements, contacts and protocols between BiH and Countries of the Western Balkans, Turkey, and EU member states. However, most draft laws that directly or indirectly deal with regional cooperation have been subject to parliamentary processing for too long. This could bring into question Parliament's ability to complete the obligations BiH took over.

During the past six months, the BiH Presidency made close to 40 decisions¹⁷ which initiate the procedure to conclude the Agreement, and accept or ratify different agreements, contracts and protocols between BiH and Countries of the Western Balkans, Turkey, and EU member states. At its 96th session on August 20, 2009, the BiH Council of Ministers approved the basic principles for carrying out negotiations and signing agreements that followed in the time period September-December 2009.



C Parliamentary processing of adopting laws that directly or indirectly, deal with the General Principles of the SAA and the European Partnership

In 2009, only a few draft laws that directly or indirectly deal with the issues of regional cooperation and obligations of BiH towards the SAA and the European Partnership were entered into parliamentary processing.

The Agreement signed between BiH and EC on funding BiH participation in the international territorial cooperation program of South-East Europe, has been sent in the Parliamentary procedure. The implementation of this Agreement should strengthen the component of cross-border cooperation.

Table 1.

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Commentary

The perspective of joining the EU helped to maintain the belief in the will of local politicians to achieve the desired rhythm in fulfilling the demands from Title I of the SAA and the European Partnership from the second half of 2009. However, most draft laws that directly or indirectly deal with regional cooperation have been subject to parliamentary processing for too long. This could bring into question Parliament's ability to complete the obligations BiH has taken over. Although general relations with the neighbouring countries remain stable, no significant progress was made in promoting reconciliation and solving important bilateral issues which are key priorities of the European Partnership. Border disputes and good-neighbourly cooperation remain hostage to local policies of BiH and neighbouring countries. Unfortunately, regional cooperation also remains hostage to Balkan nationalism. Bosnia and Herzegovina is not an exception to this state of play. Some of the conclusions listed in the previous report still stand, and can be summarized as follows:

- Lack of institutional coherence and common interests in BiH often slows down the reform processes.
- The pace of adopting draft laws is slow in the field of regional cooperation, a requirement under the SAA and European Partnership.
- Political conflicts over competences, in particular, the repeated requests of RS to "be given back" the competences which have been transferred, additionally aggravate the situation and slow down the process even further
- In the action plans for implementation of European Partnership and Interim Agreement there are certain institutional overlapping. In other words, there are certain activities that require better interdepartmental coordination at the level of state institutions. This coordination is currently very poor.
- Some regional cooperation priorities defined under SAA (such as resolution of property issues with neighbours) are too often coloured by the agendas of daily politics and do not depend exclusively on BiH but also on the readiness of neighbouring countries to contribute to a common solution.

Nevertheless, BiH did make some attempts to encourage regional cooperation on the economic plan at the highest level. One example was the Regional Economic Forum for South-East Europe held in Sarajevo November 19-20, 2009 under the sponsorship of the BiH Presidency which was attended by the presidents of Albania, Montenegro and Croatia and by the Vice-President of Bulgaria. We can agree with the comment of the EC Progress Report on BiH in 2009, that, observing things in general "the state has continued with its active participation in regional cooperation. Good-neighbourly relations prevail, but there was little progress in solving unresolved issues, especially those concerning border and property disputes."18

EC Progress Report for BiH in 2009, p.25.

Table I. Decisions of the BiH Presidency concerning interstate agreements in the time period June-November 2009

NUMBER AND DATE OF THE SESSION R- REGULAR E- EMERGENCY	AGREEMENTS WITH THE STATES OF THE WESTERN BALKANS REGION	Number and date of the session R- regular E-emergency	AGREEMENTS WITH OTHER EUROPEAN STATES
58. R July 10, 09.	Decision on accepting the Agreement between the BiH Council of Ministers and the RS Government in the area of education, culture and sport	58. R July 10, 09.	Decision on initiating procedure of negotiation process for the conclusion of the Agreement between the BiH Council of Ministers and Government of the Kingdom of Denmark on development cooperation
58. R July 10, 09.	Decision on accepting the Agreement between BiH and Republic of Slovenia on legal aid in civil and criminal matters	58. R July 10, 09.	Decision on accepting the Agreement between BiH Ministry of Foreign Affairs and Federal Ministry for European and International Affairs of the Republic of Austria on cooperation in the area of development
58. R July 10, 09.	Decision on ratification of Protocol between the BiH Ministry of Security and Ministry of Internal Affairs and Public Administration of Montenegro on the implementation of joint patrols over the common state border.	59. R July 27, 09.	Decision on accepting the Agreement between the BiH Council of Ministers and the Government of the Kingdom of Denmark on development cooperation.
58. R July 10, 09.	Decision on ratification of the Agreement between BiH Council of Ministers and the Council of Ministers of the Republic of Albania on readmission of persons with illegal residence	59. R July 27, 09.	Decision on initiating procedure of negotiation process for the conclusion of the Agreement on international road transport between BiH and the Kingdom of Spain.
59. R July 27, 09.	Decision on accepting the Agreement between the BiH Council of Ministers and the Montenegro Government on passenger and cargo transport in international road traffic	59. R July 27, 09.	Decision on initiating procedure of negotiation process for the conclusion of the Agreement on cooperation and protection from natural and civilian catastrophes between BiH Council of Ministers and the Government of the Republic of Slovenia

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NUMBER AND DATE OF THE SESSION R- REGULAR E- EMERGENCY	AGREEMENTS WITH THE STATES OF THE WESTERN BALKANS REGION	NUMBER AND DATE OF THE SESSION R- REGULAR E-EMERGENCY	AGREEMENTS WITH OTHER EUROPEAN STATES
59. R July 27, 09.	Decision on ratification of the Agreement between BiH Council of Ministers and the Montenegro Government on conducting border controls on common border crossings	59. R July 27, 09.	Decision on initiating procedure of negotiation process for the conclusion of the Agreement on cooperation and protection from natural and civilian catastrophes between BiH Council of Ministers and the Government of the Russian Federation
59. R July 27, 09.	Decision on ratification of the Agreement between BiH Council of Ministers and the Government of the Republic of Serbia on economic cooperation	59. R July 27, 09.	Decision on accepting the Agreement between the BiH Council of Ministers and The Government of the Republic of Poland on cooperation in combat against crime, especially terrorism, illegal drug trafficking and organized crime
59. R July 27, 09.	Decision on the ratification of Protocol between BiH Ministry of Security and Ministry of Internal Affairs of the Republic of Serbia on implementing common patrols along the common state border	60. R August 12, 2009.	Decision on accepting the Agreement between the BiH Council of Ministers and the Government of the Republic of Estonia on international road transport of passengers and goods
59. R July 27, 09.	Decision on the ratification of Protocol between BiH Ministry of Security and Ministry of Internal Affairs of the Republic of Serbia on maintaining regular meetings of the border police representatives at the state, regional and local level	60. R August 12, 2009.	Decision on ratification of the Agreement between BiH Council of Ministers and the Government of the Kingdom of Belgium on international road transport
59. R July 27, 09.	Decision on ratification of the Agreement between BiH Council of Ministers and the Council of Ministers of the Republic of Albania on cooperation in combat against crime, especially terrorism, illegal drug trafficking and organized crime	60. R August 12, 2009.	Decision on ratification of the Agreement between BiH Council of Ministers and the Government of the Federal Republic of Germany on financial cooperation in 2006.

Number and date of the session R- regular E- emergency	Agreements with the states of the Western Balkans region	Number and date of the session R- regular E-emergency	Agreements with other European states
60. R August 12, 2009.	Decision on initiating procedure of negotiation process for the conclusion of the: - Agreement between BiH Council of Ministers and the Government of the Republic of Croatia on constructing the south border parts of highway on the Vc Corridor, - Agreement between BiH Council of Ministers and the Government of the Republic of Croatia on constructing an interstate bridge over the river Sava near Svilaj and the connecting parts of the border highway at the Vc Corridor	60. R August 12, 2009.	Decision on ratification of the Supplement to the Memorandum of Understanding between the Government of the Kingdom of the Netherlands and BiH Council of Ministers on the Program of Cooperation of Merging Markets (PSOM)
60. R August 12, 2009	Decision on ratification of the Agreement between BiH Council of Ministers and the Council of Ministers of the Republic of Albania on mutual travel of citizens	61. R September 9, 2009	Decision on ratification of the Agreement between BiH and the Grand Duchy of Luxembourg on social security
35. E August 28, 2009	Decision on initiating procedure of the negotiation process for the conclusion of the Agreement between BiH and the Republic of Serbia on changing the Agreement between BiH and Serbia and Montenegro on legal aid in civil and criminal matters	61. R September 9, 2009	Decision on initiating procedure of negotiation process for the conclusion of the Agreement between BiH Council of Ministers and the Government of the Republic of Bulgaria on cooperation in the area of health care.
35. E August 28, 2009	Decision on initiating the procedure of the negotiation process for the conclusion of the Agreement between BiH and the Republic of Serbia on changing the Agreement between BiH and Serbia and Montenegro on mutual implementation of court decisions in criminal matters	36. E September 30, 2009	Decision on accepting the Agreement between BiH Council of Ministers and the Government of the Federal Republic of Germany on financial cooperation in 2008

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Number and date of the session R- regular E- emergency	AGREEMENTS WITH THE STATES OF THE WESTERN BALKANS REGION	Number and date of the session R- regular E-emergency	AGREEMENTS WITH OTHER EUROPEAN STATES
35. E August 28, 2009	Decision on initiating the procedure of the negotiation process for the conclusion of the Agreement between BiH and Montenegro on changing the Agreement between BiH and Serbia and Montenegro on mutual implementation of court decisions in criminal matters	62. R October 8, 2009	Decision on ratification of the Protocol on change and addendum of the Agreement on free trade between Bosnia and Herzegovina and the Republic of Turkey.
35. E August 28, 2009	Decision on initiating the procedure of negotiation process for the conclusion of the Agreement between BiH and Montenegro on changing the Agreement between BiH and Serbia and Montenegro on legal aid in civil and criminal matters	62. R October 8, 2009	Decision on ratification of Protocol between Bosnia and Herzegovina and Czech Republic on amendment of the Agreement between BiH and Czech Republic on promotion and protection of investments
35. E August 28, 2009	Decision on initiating the procedure of negotiation process for the conclusion of the Agreement between BiH and the Republic of Croatia on changing the Agreement between BiH and the Republic of Croatia on legal aid in civil and criminal matters	63. R October 28, 2009	Decision on accepting the Agreement between BiH and the Republic of Ireland on avoiding double taxation and preventing tax evasion in regard to the taxes on income and property
35. E August 28, 2009	Decision on initiating the procedure of negotiation process for the conclusion of the Agreement between BiH and the Republic of Croatia on changing the Agreement between BiH and the Republic of Croatia on mutual implementation of court decisions in criminal matters	64. R November 17, 2009	Decision on initiating the procedure of negotiation process for the Agreement on Economic cooperation between BiH Council of Ministers and the Republic of Lithuania.

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Number and date of the session R- regular E- emergency	AGREEMENTS WITH THE STATES OF THE WESTERN BALKANS REGION	NUMBER AND DATE OF THE SESSION R- REGULAR E-EMERGENCY	Agreements with other European states
64. R November 17, 2009	Decision on initiating the procedure of negotiation process for the conclusion of the Agreement on cooperation on affairs from the area of geodesy between BiH Council of Ministers and Montenegro Government	64. R November 17, 2009	Decision on initiating the procedure of negotiation process on the Agreement of cooperation in the area of agriculture between the BiH Ministry of Foreign Trade and Economic Relations and Ministry of Agriculture and Rural Development of the Republic of Hungary
64. R November 17, 2009	Decision on initiating the procedure of negotiation process for the conclusion of the Additional Protocol between BiH and the Republic of Croatia on incentives and mutual investment protection	64. R November 17, 2009	Decision on accepting the Agreement between BiH Council of Ministers and the Government of the Republic of Macedonia on Veterinary Cooperation

MONITORING OF THE B&H EUROPEAN INTEGRATION PROCESSES 2009

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TITLE IV

Free movement of goods: Chapter I. Industrial
Products and Chapter 2. Agriculture and Fisheries
(Articles 18-31) of SAA between BiH and EU

a

Introduction – General assessment of implementation of BiH obligations under SAA compared to the priorities of European Partnership in the reporting period

As regards free movement of goods, having signed the SAA with the EU, BiH 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) of BiH, were met within the deadlines, with one exception regarding the import of motor vehicles in BiH which will be elaborated later in the text. Since the reduction of certain customs fees is being done gradually, in 2009, the following was done:

The Decision on the ban on importing motor vehicles over seven years old is still applied in BiH, which is not in compliance with the obligations taken over from the Agreement. Other obligations that came with the Signing of the Interim Agreement on July 1, 2008, that have the purpose of establishing a free trade area, have been completed within the set deadlines.

Industrial products

 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);

In 2008, in conformity with given deadlines, customs duties on the import of industrial products originating in the Community, with the exception of products listed in Annex I, (Article 3 of the IA / 18 of the SAA) were abolished along with quantitative restrictions on the import of industrial products originating from the Community, as well as of measures having equivalent effect (Article 6 of the IA / 21 of the SAA)¹⁹;

The Decision on the ban on importing motor vehicles over seven years old is still applied which is not in the compliance with the obligations which were taken over from the Agreement. In May 2008, the Ministry of Communications and Transport issued a Rulebook on Approval of Vehicles, Appliance Parts and Vehicle Equipment (BiH Official Gazette 41/08) which is the precondition for making the mentioned Decision invalid. Currently, activities are being implemented which will determine institutions in charge of the Rulebook implementation.

Processed agricultural products

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

In 2008, in compliance with the set deadlines, customs duties on processed agricultural products listed in Annex I of Protocol 1 were abolished (Article 10 of the IA / 25 of the SAA);

Agricultural and fishery products

- Customs duties on agricultural products listed in Annex III (b) were abolished (Article 12 of the IA / 27 of the SSP);
- 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);
- 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);

In 2008, in compliance with the set deadlines, quantitative restrictions and measures having equivalent effect on imports of agricultural and fishery products originating in the Community (Article 11 of the IA / 26 of the SAA) were abolished, customs duties on agricultural products listed in Annex III (a) (Article 12 of the IA / 27 of the SSP) were abolished; customs duties applicable on imports of certain agricultural products listed in Annex III (e) within the limit of the tariff quota (Article 12 of the IA / 27 of the SAA) were abolished; customs duties on high-quality sparkling wine and wine from fresh grapes from the Community, within the quota of 6,000 hl (annual increase by 1000 hl up to 8000 hl), (Article 12 of the IA / 27 of the SAA) were abolished; and customs duties on fishery products in accordance with Annex V (Article 13 of the IA / 28 of the SAA) were abolished as well.

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 in 2009, as well as unfulfilled priorities from the previous period, which are defined as follows:

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.

- Ensuring continuous progress in adopting European standards (EN).
- Establishing mechanisms of internal consultation and informing of new technical regulations before adopting measures that can affect trade.
- 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.
- 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.
- 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).

In 2008, the priority which included Adoption of the State Law on pharmaceuticals and medical devices and establishment of a State Pharmaceutical Agency was fulfilled.

Level of Realization of Action Plan

The implementation of the European Partnership priorities is defined in the Action Plan developed by the BiH 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 the end of 2009, as well as the activities which were not completed in the previous period within the set deadlines.²⁰

Within the priorities listed under the item 1 for 2009, the following activities are expected:

- 1. Adopting the Order on toy safety (MoFTER; MCA)
- 2. Adopting the Order on non-automated scales (MoFTER; IM)
- 3. Adopting the Order on gas devices safety (MoFTER)
- 4. Adopting the Order on safety of pressure-driven equipment (MoFTER)
- 5. Adopting the Order on safety of personal protection equipment (MoFTER; MCA)
- 6. Adopting the Order on safety of devices used in potentially explosive environments (MS; MoFTER)
- 7. Introducing a quality system according to the BAS EN ISO 9001:2000 standard (IS)
- 8. Strengthening the BATA staff infrastructure by hiring six new employees (BATA)
- Develop new licensing schemes (medical laboratories, administration systems for quality, environment, etc.) (BATA)

Out of the mentioned activities, the last three have been accomplished, while the adoption of the Orders is still in process and is expected to be implemented by the end of 2009.

Speaking in general, in all of the mentioned areas, it is necessary to strengthen the capacities of laboratories and inspection in the sector of food safety, *veterinary medicine and the* phytosanitary sector. Also, it is important to additionally strengthen institutional capacities and increase cooperation between the relevant institutions in order to create favourable conditions for stable internal market and free trade.

The activities which were primarily planned in 2008, and whose deadline has been prolonged for 2009 are:

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)

With each activity there is listed the institution responsible for the implementation of that activity.

- 2. Establishing of units for the implementation of new approach directives within the responsible 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)
- Adopting the order on elevator safety (MoFTER; MCT)

Out of all the listed activities, only the first two have been completed. Adopting technical rules and regulations is in process, and it is expected that they will be implemented by the end of 2009.

Within the priorities listed under Item 2, the following activities are expected in 2009:

- Raising the awareness level of the BiH public on the importance and role of standardisation through seminars, workshops, media and other contacts (IS; RISMRS)
- 2. Providing conditions for the work of competent institutions (buildings, equipment, software) (IS; RSIMRS)

The following activities have been completed.

The priorities listed under Item 3 imply the following activities:

- 1. Establishing a legal frame for an enquiry point within the Standardization Institute
- 2. Establishing contact points within the BiH institutions and appointing of a contact person for each institution in order to provide communication with the enquiry point of the Standardization Institute (IS; MoFTER; IM; MCA; MCT; MJ; MS)
- 3. Establishing a unique information system with the goal of linking the contact points of the institutions with the enquiry point within the BiH Standardisation Institute (IS; MoFTER)

The listed activities have been fulfilled.

The priorities listed under Item 4 imply the following activities:

- 1. Staffing and capacity building of the Market Surveillance Agency (MSA)
- 2. Adopting rules of procedure for internal procedures and activities upon receiving a notice of dangerous products (non-food consumer products) (MSA)
- 3. Adopting 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. The Rulebook on internal procedures and actions upon receipt of report of dangerous products was adopted, but it will not become applicable until the changes and amendments of the Law on general product safety, which are in parliamentary processing (since 25.09.2009), are adopted.

The priorities listed under Item 5 in 2009 imply the following activities:

1. Adopting new instructions: the Instruction on transport, Instruction on return of

exported goods, Instruction on return and discharge of customs debt, Instruction on simplified customs procedures (ITA)

2. Maintain the education of customs officers on simplified procedures (ITA)

Until now, the Instruction on simplified customs procedures has been adopted and published, and the education of the customs officers has been maintained. The development of other instructions is still in progress.

Deadlines from 2008 which have been extended for 2009 are for the developing and adopting of instructions on customs procedures for mail traffic, instructions on external processing, instructions on temporary imports, instructions on inspection in customs procedures, and instructions on free zones. All activities have been completed except for the instructions on temporary imports and instructions on free zones which are in their final stages.

The priorities listed under Item 6 in 2009 imply 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);
- Providing professional assistance to the BiH Ministry of Foreign Trade and Economic Relations in preparing the amendments aimed at harmonizing the Law on free zones with the *acquis* (ITA).

The listed activities were not completed. The bill for the Law on free zones was entered into parliamentary processing on 23.07.2009.

The priorities listed under Item 7 imply the following activities:

- 1. Developing an Instruction on application of the rules on origin of goods traded between EU and BiH based on the Interim Agreement (ITA)
- 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)

The instructions have been developed and published in the Official Gazette 14/09, 17/09 and 46/09.

The instructions have been developed and published in the Official Gazette 14/09, 17/09 and 46/09.

The priorities listed under Item 8. imply the education of customs officers on rules of establishing the customs value (ITA). This activity has been completed.

The priority under Item 9 implies abolishing 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

Currently, there are two laws in Parliamentary processing - the Law on Changes and Amendments of the Law on General Product Safety entered into parliamentary processing on 09/25/2009 and the Law on changes and amendments of the Law on Free Zones entered the parliamentary processing on 07/23/2009.

Legislation governing the free movement of goods has been adopted by the BiH Parliament. Currently, there are two laws in Parliamentary processing - the Law on Changes and Amendments of the Law on General Product Safety, entered into parliamentary processing on 09/25/2009 and the Law on changes and amendments of the Law on Free Zones, entered into parliamentary processing on 07/23/2009.

With regard to constitutional basis and status vs. legislation at lower levels of government, 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 BiH Constitution, while the leading competent institution is the Ministry of Foreign Trade and Economic Relations of BiH. All legislation adopted so far at the BiH level, relating to the free movement of goods, is free of incompatibility with legislation at lower levels of government.

Commentary

Even though Bosnia and Herzegovina made some progress in this field, a lot of effort must yet be made for the integration process to assume a satisfactory pace. The implementation of legislation relating to customs duties after entry into force of the Interim Agreement is at a satisfactory level. The implementation of legislation governing the field of free trade and customs duties still faces certain problems due to a lack of operational instructions that are to be adopted. With regard to the issues of standardization, market surveillance and consumer protection, certain progress was made during the reporting period, unlike the issues of accreditation, conformity assessment and metrology where progress was insignificant. One of the key issues to be additionally developed is the strengthening of institutional capacities and cooperation among relevant institutions so as to create conditions for a stable internal market and free trade..

In its Report the EC states that "some progress was made in the area of **agriculture** and rural development "21 Progress was achieved through establishing the Office for harmonization of the payment system in June 2009, which created legal bases for establishing state institutional structures for harmonizing entity measures of support and gradual harmonization with the acquis. However, there is still a need for a stronger coordination mechanism between the state level and the entities in the process of approximation with the acquis in this area.

Furthermore, with regard to fishery products, Bosnia and Herzegovina started exporting fish into the European Union, but the lack of legislation at the state level on the area of fishery of the *acquis*, has a potential to create difficulties in the future.

Speaking in general, in all of the mentioned areas, it is necessary to strengthen the capacities of laboratories and inspection in the sector of food safety, veterinary medicine and the phytosanitary sector.²²

When it comes to free trade of goods, it is important to mention that the Draft Law on Protection of Domestic Production which was in violation of the provisions of the CEFTA Agreement as well as to SAA (Article 12 of the Interim Agreement, Article 27 of SAA) was revoked after the Constitutional Court determined that this Law violates the BiH Constitution.

EC Progress Report on BiH in 2009, p. 50.

TITLE IV

Free movement of goods, Chapter 3, Common Provisions (Articles 32-46 of the SAA) between Bosnia and Herzegovina and the EU

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

The priorities of the European partnership mainly deal with meeting the demands of product safety (affecting the lives and health of people, domestic animals, environment and consumer protection) which is the main precondition for the free movement of goods in the internal market of the European Union.

General assessment from the previous report still stands: "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 exportoriented companies and by the economy in general, that is, consumers and citizens who are insufficiently protected against dangerous products".

The overall opinion is that the process of fulfilling the 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. There is a constant breaching and prolongation of deadlines.



Level of realization of the Action Plan

Level of implementation of the planned activities for 2008 for which new deadlines were given in 2009 is listed below.

Within the scope of the priorities listed under Point 1 the following activities are foreseen:

Strengthening the institutional capacity of MoFTER in order to satisfy EC demands for free movement of goods (establishing a Unit for Internal Market) (MoFTER)

In the Report for the Sub-Committee session held on March 26-27, 2009, on fulfilling the staff quota it says:

It can be said that some progress was made within MoFTER because in May 2009 the following Departments were formed: Department for Technical Regulations which still has no administrator and the **Department for Conformity** Assessment whose administrator has already taken over his duties, but still needs to be staffed with appropriate staff. By the end of 2009, administrative capacity of the Market Surveillance Agency has been strengthened to the current 17 employees.

"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, each having a total of 14 civil servants. A major problem is the 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".

It can be said that some progress was made, because in May 2009 the following Departments were formed: Department for Technical Regulations which still has no administrator and the Department for Conformity Assessment whose administrator has already taken over his duties, but still needs to be staffed with appropriate staff.

Forming units for the new approach directive implementation in competent institutions and organizationally strengthening the appropriate entity institutions (CoM; MoFTER; MCA; MCT; MS; IM; GFBH; GRS)

The absence of these units and responsible staff, that would, prior to the forming of the units, have had proper detailed training on the corresponding technical EU legislation was named, in previous FPI BH reports, as the greatest problem in the process of transposition and preparation for the implementation of the EU new approach directives²³. Furthermore, in the Sub-Committee Document, and in all other documents in general, there is no mention of the other state Ministries (MCA; MCT; MS).

We should mention again that entities have no role in establishment and work of the accreditation, standardization, scientific and industrial metrology systems²⁴ and the document deals with these issues. At the same time, no detailed analysis was made on the readiness of the most important institutions in the Market Surveillance System - entity inspectorates in charge of operations in the field and monitoring of product safety, in which most of the efforts and funds need to be invested.

Adopting the rules of procedure for recognition of documents and conformity marks for issued abroad (MoFTER)

The document of the Sub-committee reads: "The Proposed 'draft Decision on terms and conditions for recognition of documents and conformity marks issued abroad' that is to be adopted in the following period by the BiH Council of Ministers at the proposal of the Minister of Foreign Trade and Economic Relations, has been analyzed.

Conclusion: This means that the obligation from the Action Plan of European Partnership has been transferred from 2008 to 2009 and there is no reason why this decision should not be adopted by the end of 2009.

Adopting the Regulation on the nomination of conformity assesment for bodies responsible for conformity assessment (MoFTER)

The document of the Sub-committee reads:

Ibid, p. 52.

This is the main reason why it was necessary to hold over 15 sessions for each of the four expert groups of the takeover of the four primary directives instead of the maximum of four sessions per directive.

"As for the quality infrastructure for assessing the conformity of technical and industrial products, the List of authorized bodies for conformity assessment in BiH is in its final phase and it will be distributed to CEFTA countries".

The conclusion is the same as in the previous report: 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 transposition 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 BiH²⁵.

- 5. Adopting an ordinance relating to the safety of low-voltage products (MoFTER)²⁶
- 6. Adopting an ordinance on machinery safety (MoFTER)
- 7. Adopting an ordinance on electromagnetic compatibility (MoFTER)
- 8. Adopting an ordinance on lift safety (MoFTER; MCT)

The Conclusion is the same for the Points 5 to 8: The deadline has been postponed from December 2008 to June 2009.²⁷ Even this new deadline was not met, despite the fact that the largest portion of the work was done a long time ago with the help of the EU ITR and FWC ITR projects.

The document of the Sub-committee also says: "The activities concerning the adoption of the 6 directives have been launched ... These directives should be adopted by the end of 2009."28

This deadline is unrealistic as well, given the lack of organizational units and trained staff within the line ministries of BiH (See Items 1 and 2).

Still, the fact that the expert groups have already started working with these six directives, even though they still do not have the support of the corresponding EU project, is encouraging.29



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

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 BiH and the EU is currently in processing in the BiH Parliamentary Assembly.

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 the Decision of the Council of Ministers, is in charge of implementation of new approach directives in this area.

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 BiH.

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

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

Six safety directives on: toy safety, non-automatic weighing instruments, appliances burning gaseous fuels, pressure equipment, personal protection equipment; devices intended for use in potentially explosive atmospheres. The deadline was June 2009.

For these six directives, EU ITR project experts had made a professional translation and sub-drafts of the corresponding BiH orders and presented all legal and technical aspects beforehand.

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 BiH Constitution, while the primary responsible institution is the Ministry of Foreign Trade and Economic Relations of BiH.

Commentary

At the end of the Phare-PRAQ III program in 2000 in the area of technical legislation Bosnia and Herzegovina was the most successful country in the region and equal to Slovenia. Nearly 80% of the new approach directives and 70% of the directives and regulations on food safety had been transposed.

It should be mentioned that the latest EC Progress Report on BiH in 2009 describes the standstill in this area in the same manner: "No progress was made in the acquis of the new or old approach".30 It is also pointed out in the same Report that "No progress has been made on conformity assessment. With a few exceptions, conformity assessment procedures are not performed on either locally manufactured or imported products before they are released on the market."

Regarding the issues of accreditation, metrology and market surveillance, the EC Report points out that limited progress has been achieved.³¹ Market surveillance system in Bosnia and Herzegovina is ensured by the State-level Market Surveillance Agency and by inspectorates and other administrative bodies of the Federation, Republika Srpska and Brčko District. The Entity-level bodies carry out actual market surveillance activities. Three main inspectorates exist in Bosnia and Herzegovina: the Inspectorate of the Federation (includes 10 cantonal inspection bodies), the Inspectorate of Republika Srpska (includes 5 regional inspection bodies) and the Inspectorate of Brčko District. Administrative capacity of the Market Surveillance Agency has been strengthened to the current 17 employees. Further shaping of the system remains necessary in order to conform with the demands set by the provisions of the acquis.

No detailed analysis was made on the readiness of the most important institutions in the Market Surveillance System - entity inspectorates in charge of operations in the field and monitoring of product safety, in which most of the efforts and funds need to be invested. Further shaping of the system remains necessary in order to conform with the demands set by the provisions of the acquis.

EC Progress Report on BiH in 2009, p. 35.

Ibid. p. 34.

TITLE V

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 between BiH and the EU

General assessment of implementation of BiH obligations under SAA and priorities of European Partnership in the reporting period:

This report primarily deals with movement of the labour force and service provision, particularly transportation services. In comparison with 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, and certain areas have even moved backwards.

Structural rigidities that distort the functioning of the labour market, in particular the taxation of labour, levels of social transfers, and wage-setting mechanisms, have not been dealt with yet. Almost no progress was made in the institutional, legislative and

administrative reform of the social security system and its coordination between the entities. The disparity between the entities was additionally aggravated in the Federation, due to disparity between the cantons and between the municipalities within the cantons. A positive initiative in the Federation BiH was the adoption of the Law on Single System of Registration, Control and Collection of Contributions for Social Security. The 2009 EC Progress Report for BiH specifies that "no steps have been taken towards granting social security benefits for resident family members of foreign nationals working in Bosnia and Herzegovina".

Problems still emerge in the creation of a single economic space in Bosnia and Herzegovina; the creation of which should support the free movement of goods, capital, services and persons. This area is crucial for successful business conduct of companies and the perception of our country by international investors. However, the progress in this area is limited and insufficient.

Concerning provision of services, no progress has been made in harmonization with the acquis, even though the entity agencies did adopt the strategy. The situation is similar in all other non-banking areas, where the entities have been working without any coordination (leasing, capital market, postal services, etc.).

No progress was made in approximation of the Law on Labour which exists only at the entity and cantonal level. Although there is a certain degree of cooperation at the entity *level, further fragmentation* appears at the cantonal level where local regulations regulate the issue of labour.

As far as the area of transport is concerned, there has been some movement that could point towards progress in this process. Nevertheless, if we take a closer look, main problems remain unsolved, mostly because of the opposition by entities and modest institutional capacity of the state and entity administrations.

No BiH Transport Policy document has been adopted yet. This prevents the adoption of a strategy and action plan; the preconditions for development in the area of transport in BiH. Economic development of our country depends a great deal on the development of the highway network and other means of transport. Entities are still trying to avoid coordination with the state ministries as possible, which leads to asynchronous priorities. This also shows that they are not exclusively oriented towards development and/or joining the EU. Moreover, this represents an obstacle for serious investors, because it also reveals that the state is not focusing on the nominated priorities nor is able to support their implementation in an adequate manner.



Level of realization of the Action Plan

The level of implementation of the Action Plan hardly changed compared to the previous Report. The global economy crises which often influence the list of political priorities, especially political disputes, blocked almost everything that could be blocked.

As far as the internal market is concerned - movement of workers - there is no change regarding the obligation for all workers legally employed in their territory within the European Union to have equal treatment, and likewise, with the issue of fragmented internal legislation or the social security system in BiH.

After January 2009, when the Council of Ministers decided on an annual quota of work permits for the employment of foreigners, there has been no other change. However, movement of persons within the country still remains constrained by the fragmented nature of the social security system.

As far as the other segment of the internal market is concerned - provision of services - the level of the implementation of the Action plan did not increase, because the key reforms that are needed imply introducing coordination at the state level for some areas of provision of services, which, in the current political constellation in BiH is impossible to achieve.

The creation of a 'single economic space' in the financial sector is, in addition, hampered by the fact that companies in the financial sector registered *in one entity can only* operate in the other by establishing a branch there. This constitutes a major additional administrative burden.

Area of transport was somewhat more dynamic. Slow but steady progress was made in regard to development of Trans-European transport networks.

Regulating conditions of common access to the market in air traffic is done within the ECAA Agreement which was ratified and is currently in the phase of implementation. This was rated as positive by the Monitoring Mission. Support in the implementation of the ECAA was applied for and granted through a twinning project which is to start in 2010. Activities are being carried out as planned, and the EC Delegation in BiH will provide another twinning project for the implementation of the IPA Component 3, and since the BiH Ministry of Transport and Communications has its own Project Implementation Unit (PIU), activities should be carried out as planned. This twinning project will help establish procedures, transfer knowledge and experience and improve the capacity for project implementation – enabling the local authorities to offer projects and use the available resources once the more meaningful resources from the IPA funds, within Component 3, are available to our country. For example, Poland and Bulgaria lost multimillions due to lack of preparedness at the right time.

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The Law on BiH Direction for Civil Aviation (BiH DCA) was adopted, as well as the Law on Air Navigation Services Provider (ANSP). Due to political disagreement, no member of the Board of Directors was elected, but the ANSP can function and make the BiH Civil Aviation more functional.

In progress made in the implementation of the obligations under the SAA, the activities concerning all other forms of transport fall behind the implementation of activities regarding the air transport. As far as rail transport is concerned, BiH lags far behind the region, because, after initial success, no progress was made during the last year. The situation seems worse in the FBiH than it is in the RS. The *Railway Package II Directives on Rail Safety* are still not included in the local regulations, and there is no movement forward in separating the infrastructure manager from the operator – rail company (no confirmed separation of accounting, accounts and property). So the problem of financing the construction of the infrastructure and subsidies for the operation of passenger transport has not been solved, and is currently not in harmony with EU legislation. In the area of road traffic, the companies were transformed into public companies (Public Company Direction for Roads of the FBiH and Public Company for Roads of RS).

The Railway regulatory board is functioning, and it is the only bright spot, because the creation of regulations that are to speed up the transposition of the EU Directives, interoperative ability specifications and relevant standards into local regulations was agreed, and these activities should have started on November 9. Based on these regulations that are harmonized with the *acquis*, relevant licensing of rail traffic participants according to the EU demands and practice will be made possible. Another positive thing in this area is the opening of the travel line Sarajevo – Belgrade which was announced for mid-December 2009, and also contributes to the process of regional integrations.

Disorientation in the pre-association process of the railway sector can also be seen in the initiatives of the BiH Ministry of Transport and Communications, supported by the Federal Ministry of Transport that has, together with the UNDP, initiated the construction of legal regulations in the area of safety in rail transport. According to the BiH Law on Railways, this activity falls under the jurisdiction of the Regulatory Board. According to the *acquis* the Regulatory Board has to have an independent status. All resources spent for the activities of the ministries could have been spent in vain if the responsible Regulatory Board is not included.

The EC Delegation in BiH which was, so far, very active in this area of transport, could change its focus in the following period. Local actors are showing an extremely low level of participation in the projects and lack of will to provide the missing resources and competent human resources so that the projects financed by the EU can finally be completed. It is therefore possible that the EU will turn towards other areas of transport or towards other kinds of assistance.

Road traffic was also not spared the political problems that prevent progress and implementation of activities. We should mention the problem of the creation of the main project of the Corridor Vc route (south side of the route) where political problems are involved and where the profession is used as collateral involving political disagreements.

Next to this problem, a serious analysis should be made of the capacity of local actors for project implementation and completion of the initiated ongoing works that are not being done at a satisfactory level, starting with the dynamics, quality, safety and organization of road traffic during construction work.

There is a certain progress noted in the water transport area because the project of rehabilitation of the Sava river waterway was initiated. Within the World Bank project, the EC Delegation BiH will also participate and provide the means for the demining of the required zone.



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

One of the positive things is that bilateral agreements on social insurance and social security have been signed with Austria, Turkey, Croatia, Serbia, Slovenia, Belgium, Hungary and the Former Yugoslav Republic of Macedonia. Still, it remains to be seen how their implementation will progress.

The treated areas, especially the area of provision of services, present some of the domains where almost no progress was made since the signing of the SAA. The Draft Law on Changes and Amendments of the Law on Agency of Labour and Employment of Bosnia and Herzegovina was not adopted. In comparison to the previous period, the following laws were adopted: Law on internal and naval navigation, two laws concerning BiH aviation (BH DCA and ANSA) as well as the laws on changes and amendments of the Law on the basics of traffic safety on BiH roads.

Adoption of laws in the area of civil aviation will allow for the choice of an independent flight control service provider and mark the final stage of civil aviation transformation and lead to the separation of the regulatory and flight control function, which is in accordance with the EU regulations.

As far as the legislation of road transport is concerned, regulations on digital tachographs and TIR carnets were adopted. This will provide undisturbed transit in accordance with EU directives and open access to the EU market for BiH operators.

For political reasons and because of disagreement of the RS, some very important draft laws were not accepted. The BiH Parliament, did not adopt the document on policy development of the transport sector, and because of that, the BiH Council of Ministers can not adopt the Strategy or the Action Plan.



Commentary

The area of transport was the most dynamic, and, observed globally, progress was made in comparison to the previous period, even though in certain segments the situation deteriorated. The two entities continue to resist a coordinated functioning of the state, and the time has come for the entities to understand that in this way they are inflicting harm on the quality of life of the citizens whose interests they should be representing.

One of the positive things is that bilateral agreements on social insurance and social security have been signed with Austria, Turkey, Croatia, Serbia, Slovenia, Belgium, Hungary and the Former Yugoslav Republic of Macedonia.³² Still, it remains to be seen how their implementation will progress.

BiH still has difficulties in the entire process concerning adoption, implementation and control of the application of laws, which points out systemic problems and deep problems with permanent consequences.

In almost all areas analyzed by this report, the most important steps in getting closer to the EU are yet to be taken.

EC Progress Report on BiH in 2009. p. 36.

TITLE V

Chapter 4. Current Payments and Movement of Capital (Articles 60 – 62) of the Stabilization and Association Agreement between BiH and EU

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

Concerning the implementation of Title V, Chapter 4 of the SAA, Article 1, Act 4 of the BiH Constitution provides for the existence of freedom of movement throughout our country. Bosnia and Herzegovina and its entities will not obstruct full freedom of movement of people, goods, capital, and services throughout BiH, and no entity will perform any kind of control along entity lines. In conformity with that, the European Partnership set several priorities, the most important of which deals with the establishment of a single economic space that supports free movement of goods, capital, services and people. Fulfilling this priority related to Articles 60-62 of the SAA are oriented towards achieving further progress in the elimination of limitations to capital transfers outside the state. Furthermore, within the frame of mid-term priorities, Bosnia and Herzegovina should continue with reforms in the areas of property registration, agreement implementations, bankruptcy procedures and business registration, taxation and licensing. This also includes legislation harmonization dealing with foreign currency business transactions inside BiH and with EU legislation.

With regard to the movement of capital, we cannot agree with the conclusion from the last EC Progress Report on BiH: "Overall, Bosnia and Herzegovina's preparations in the area of free movement of capital remain on track. However, further legislative initiatives are needed in order to approximate the legal framework to the acquis, to ensure countrywide harmonisation and to achieve further liberalisation".

With regard to the movement of capital, we can not agree with the conclusion from the last Progress Report on BiH: "Overall, Bosnia and Herzegovina's preparation in the area of free movement of capital remains on track. However, further legislative initiatives are needed in order to approximate the legal framework to the acquis, to ensure countrywide harmonisation and to achieve further liberalisation".

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Level of realization of the Action Plan

For the purpose of the implementation of the SAA and the European Partnership, the Directorate for European Integrations prepared a document which elaborates the Action Plan of the implementation for the period July 2008 – December 2009. In this document DEI anticipates that BiH will prepare and adopt the relevant legislation, in the area of foreign currency business transfers. This is necessary in order for BiH to approve payments and transfers on current account of payment balance between the EU and BiH in freely convertible currency, in accordance with the provisions of Article VIII of the articles of Agreement of the International Monetary Fund.

At the end of 2008, the BiH Council of Ministers adopted the Draft Law on Foreign Currency Policy in Bosnia and Herzegovina which was harmonized with Annex 1 of the EEC Directive 88/361/EEC and which significantly liberalised current and capital transactions with foreign countries. However, this law was not adopted at the session of the House of Representatives of the BiH Parliamentary Assembly on May 13, 2009, which led to a slowing of progress in this area.³³

The RS National Assembly adopted the Draft Law on changes and amendments of the Law on Foreign Currency Operations in RS, which introduces liberalisation of current and capital transactions with foreign countries. The Federation is drafting a new Law on Foreign Currency Operations.



C 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

As far as the legal regulation of determining the procedure and removing discrimination between BiH Citizens and foreign citizens and companies in regard to acquiring the right of property over real estate, the original Draft Law was prepared back in 2005 with the technical support of the GTZ.

Although - during this reporting period and by the end of 2009 – the Action Plan for the implementation of the SAA and the Interim Agreement does not anticipate activities concerning enabling of real estate purchase in BiH to the citizens of EU member states under the same conditions applied to BiH citizens, considering the fact that the SAA anticipates that activities in this plan will take place gradually over a six-year period of SAA validation, still there were some significant improvements in this area.

A Law on Property Rights was adopted in the RS on November 25, 2008, and it regulates the property rights of foreign citizens and companies in the same manner as for the BiH citizens. Articles 15-16 of the Law determine that foreign citizens and companies gain the right of property over real estate in Republika Srpska under the condition of reciprocity, unless the law or an international agreement says otherwise. The date when this law comes into force has been moved to a new deadline of January 1, 2010.

EC Progress Report on BiH in 2009.p. 38.

(TITLE V

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On the other side, the adoption of a Law on Property Rights in the FBiH is still uncertain. According to the F BiH Government Action Policy for the period 2007 – 2010, in 2007, the Ministry of Justice prepared a Preliminary Draft Law on Property Rights. After discussion, FBiH Government sent it in the form of a Draft Law for discussion to FBiH Parliament, which returned it for further processing. However, the revised law was not sent to parliamentary processing to this day. Thus the still valid Law on Property-Legal Relations of FBiH (FBiH Official Gazette 6/98 and 29/2003) continues to limit the right of acquiring property over real estate in BiH to foreign citizens who perform their business activity in the FBiH or who have permanent residence in FBiH. Implicitly, if a person is not performing a business activity in BiH or does not have permanent residence in the territory of FBiH, that person can not gain right of property over real estate. So it could happen that on January 1, 2010 we have different treatment of non-residents in the two BiH entities.34

Commentary

Even though there are no explicit conditions that BiH needs to meet in the specified time period, other than the general demand for gradual adjustment of legislation regarding property acquisition, RS has already adopted the law that regulates this area, and its implementation is anticipated for January 1, 2010. If the FBiH does not adopt the same law by that deadline, this area will be regulated by two different laws in the entities, which is not in accordance with the general obligation of harmonization in the entire territory of BiH.

There was a delay in the area of foreign currency operations, due to non-adoption of the frame Law on Foreign Currency Operations whose draft was harmonized with Annex 1 of the EEC 88/361/EEC Directive. Failure to adopt this law means that regulating the area of foreign currency operations will be the area where BiH is late in fulfilling the Action Plan for SAA implementation.

These discrepancies are harmful to the BiH business climate.

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TITLE V

Chapter 2. Establishment (Articles 50 – 56 of the SAA between Bosnia and Herzegovina and European Unionl



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

As in the previous report we established that the requirements deriving from 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 nondiscriminatory treatment of aliens, since they can establish a business only upon special approval. This means that local residents establish businesses according to a normative system, while for aliens a concession system applies. We can agree with the conclusion from the last EC Progress Report that no significant changes have been made in regard to the right to establish businesses.

There is still no refined text of the Law on changes and amendments of the Law on Companies made, even though it should have been done during the previous reporting period.



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 BiH Federation can be the holder of the ownership

EC Progress Report on BiH in 2009, available at www.dei.gov.ba.

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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 are not registered for such activities, or have status of legal persons.

The issue of renting real property is not prohibited in the current 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 FBiH Parliamentary Assembly adopted the Proposed Law on Amendments to the Law on Companies of FBiH. In December 2008 the Law on changes and amendments to the Law on Companies was adopted, although not in the initially proposed text, and published in the Official Gazette of FBiH No. 84/08. There were no other parliamentary activities at any government level. The reason for that can be the fact that this issue is not a subject of the SAA.



Commentary

Again we have to conclude that, 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 businesses from the EU, to establish their businesses in Bosnia and Herzegovina. A similar assessment was made by the EC in its last Progress Report. However, because of the things we have already mentioned, we can not fully agree with the EC Progress Report conclusion that "EU companies can perform business activities in BiH with same rights and obligations as BiH companies". Perhaps they can perform business activities equally, but the question is whether they receive equal treatment. Local and foreign companies and self-employed individuals are still burdened by excessive administrative procedures for gaining permits and licenses for business operations. Companies that wish to operate in both entities must register separately in each entity. There is no single registration that applies to the entire state. As far as business operation problems are concerned, they do receive equal treatment.

LAW ENFORCEMENT AND COMPETITION RULES

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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

No significant progress in developing a single economic space in Bosnia and Herzegovina which allows free movement of goods, capital, services and persons was achieved during this reporting period either, even though it is a key short-term priority from the European Partnership in this area. It is important to mention here that many provisions from this title of the SAA are the subject of the Interim Agreement and the transitional deadlines began July 1, 2008. Even though the harmonization and implementation of laws and abiding by the rules of competition are the mechanism for fulfilling this short-term priority, the prediction made in the First Semi-Annual Report was confirmed. This short-term priority will become a longterm one because there is still lack of political will for harmonizing laws and significant systematic and legal obstacles in implementation.

Priorities of the European Partnership dealing with economic criteria demand strengthening of legal security for business subjects and creation of a favourable business environment. This was not achieved, mainly due to the turbulent political situation created during the previous reporting period. Furthermore, according to the Competitiveness Index, based on the

methodology of the World Economic Forum, Bosnia and Herzegovina is in the 109th place out of 133 analyzed countries. Finally, the priorities dealing with European standards encompass a number of specific demands in the area of competition, public procurements, protection of intellectual property and social policy which are partially in the process of being fulfilled.

There are no changes in the functioning of the single public procurements system. Implementation of the Law on Public Procurements in Bosnia and Herzegovina is, to a large extent, secured and respected, thus the assessment from the previous report still stands.

Implementation of the Law on Public Procurements in Bosnia and Herzegovina is, to large extent, secured and respected and there is no pronounced obstruction of the Law due to political reasons. In this reporting period, no new regulations in the area of Public Procurements were adopted. There was a certain progress in the area of competition, while no progress was made in the area of state aid. In fact, a decline was noted which will most probably result in the first breach of the deadlines from the Interim Agreement between BiH and the EU of July 1, 2010.

In the end, protection of rights of intellectual property and social policy are still at the low priorities of government institutions. However, it is important to point out that some progress is achieved in the adoption of the legal framework in the area of intellectual property rights through BiH accepting international conventions and strengthening the Institute for the Protection of Intellectual Property. The efforts this institution is putting in the promotion of intellectual property rights are evident, and it presents a true challenge in a general situation concerning law implementation in Bosnia and Herzegovina. In the area of social policy, the situation declined and became more complicated with the global economic crises, even though there were some adoptions of conventions and adjustments to the changes of provisions of the International Labour Organization.



Level of realization of the Action Plan

Non-adoption of a state-level law on state aid will cause this matter to become the first subject of SAA violation because the transition deadline of two years for adopting a law and defining the competent institution for state aid expires on July 1, 2010.

In the area of competition, progress was made in the segment of filling the capacities of the BiH Competition Council (BiH CC). The employment processing of two other civil servants in the BiH CC headquarters has been finalized.³⁵ Through analyzing BiH CC decisions, it can be concluded that during this reporting period, the trend identified in the previous First Semi-Annual Report for 2009 has been continued. In the time period May-November 2009 BiH CC made 32 decisions³⁶, 21 resolution, 7 opinions and 4 conclusions. Out of those decisions, 23 deal with concentrations (mergers) of business subjects; one of which was initiated on official duty as a consequence of discoveries made by the media. Three decisions deal with dominant market position abuse, while two deal with illegal agreements. Concerning the decisions in other categories, two decisions were made in regard to refusing to implement a BiH CC resolution, one opinion on initiating procedure and

one opinion on changes and amendments of the BiH Law on Road Transport which the BiH CC found not to be harmonized with the Law on Competition.³⁷ In regard to the implementation of the obligations aimed at creation of state aid system, legislation and institutions, no progress was made.

Special regulations regarding the Law on Public Procurements where the treatment of the economic societies from the EU would be less favourable than the treatment of economic societies from BiH, even though discrimination is present in practice, still have not been adopted.38

³⁶ Decisions available at www.bihkonk.gov.ba

It was concluded that deciding minimum prices of taxi services by state institutions was violation of competition.

According to the Article 37 of the Law "preferential treatment for domestic companies can only be applied to the extent allowed by the bylaws". In regard to that BiH Council of Ministers passed the Decision on Mandatory Application of Preferential Treatment in the procurement procedure in all sectors except for electricity. Article 6 of the Law on Public Procurement in BiH sets value classes as criteria or opening an international competition procedure. Consequently, the value classes appear as discriminatory criteria, i.e., criteria of last favourable 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 BiH in the tender procedure.

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In the area of intellectual property protection, it is important to point out that the agreement on authors' rights and performances and phonograms of the World Intellectual Property Organization (WIPO) came into force for Bosnia and Herzegovina on November 25 2009. Bosnia and Herzegovina thus joined 70 other member states of the WIPO Agreement on authors' rights and 68 state members of the WIPO Agreement on performances and phonograms. BiH Government deposited its instruments of accession with the WIPO Head Director on August 25 this year.

As a result of promotional activities of the Institute for Protection of Intellectual Property, on October 13, 2009 the project "AmCham BiH Intellectual Property Campaign" in which the BiH Institute for Protection of Intellectual Property participated, won second place in the "Golden Drum" Festival in Portorož in the Category of PR, subcategory "Public involvement and participation".

The Intellectual Property Rights Committee which operates within the American Chamber of Commerce, BiH, in cooperation with the BiH Institute for Protection of Intellectual Property led a campaign with the goal of raising the level of public awareness on the importance of protection of intellectual property at a higher level and instigating better regional cooperation concerning the protection of intellectual property rights. 145,000 graphic novels for children, which in a very amusing and entertaining way treat different forms of international property rights, were prepared and distributed in primary schools. Furthermore, by organizing special school classes in three different cities of BiH – Sarajevo, Banja Luka and Mostar – on April 24, 2009, the World Day of the Protection of Intellectual Property Rights was celebrated.

The Institute has continued with implementation its obligations of institutional education through a workshop entitled "Reaching a Verdict in Cases of Violation of Intellectual Property Rights" in cooperation with the Centre for Education of Judges and Prosecutors in BiH and the US Embassy in BiH, through an aid program of the Department for Commercial Law Development Program (CLDP) of the US Ministry of Finance and Commerce. This workshop was held in Sarajevo, lasting 4 days (November 9-12, 2009) in the public institution of the Centre for Education of Judges and Prosecutors in FBiH and was prepared together with the Centre for Education of Judges and Prosecutors in RS and the Judicial Commission of Brčko District BiH. Through further implementation of the Strategy of the BiH Institute for Protection of Intellectual Property it will be possible to establish, develop and implement a new intellectual property system and use it for economic development in accordance with the practice used in the countries of competition economy environment, in the EU and globally.³⁹

The situation seems to be the worst in the area dealing with education, employment and social policies.⁴⁰ This is confirmed by the EC Progress Report on BiH for 2009: "As regards **social policies** little progress has been achieved. There has been no progress in approximating *labour law*. Little progress has been made regarding *health and safety at work*, which is under the competence of the Entities."

This is confirmed by the results of the EC Progress Report on BiH in 2009 p. 44 "The Institute for Intellectual Property has increased its staff from 32 to 42 employees, with staff working in Mostar headquarters and in Sarajevo and Banja Luka branch offices. A number of measures have been taken to improve the functioning of the Institute and to disseminate intellectual property-related information. Some training actions have been carried out. However, the administrative and operational capacity of the central and regional offices needs to be improved and further training has to be provided. In July 2009 Bosnia and Herzegovina adopted the Strategy on Development of the Institute for Intellectual Property (2008-2015)."

There is no information whether the obligations in the process of creating the necessary institutional framework for the protection of mental health have been completed; whether the Council for General Education has been established or whether the Work Group for the Creation of analytical information for overcoming the phenomenon of 'two schools under one roof' has completed its task. Deadlines for the completion of these activities expired last year.



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 Law on changes and amendments to the Law on Competition, partially harmonized with the provisions of the SAA, after it had been adopted in the 71st session of the BiH Council of Ministers held on December 29, 2008, passed through parliamentary processing and was adopted at the 60th session of the House of Representatives of the BiH Parliamentary Assembly on September 16, 2009. and the 36th session of the House of Peoples of the BiH Parliamentary Assembly on October 1, 2009.

Law harmonization and implementation remains one of the weakest links in the process of SAA implementation. There are some positive examples in areas of intellectual property and consumer protection, as well as constancy of work in the area of competition, but they depend primarily on the enthusiasm of the people who lead the process or institution establishment.

The Law on the BiH State Aid System is still under consideration at the Working Group level because of disagreements on which elements of the state aid system need to be under the competence of the state institutions and regulated through law at the state level. In order to overcome this standstill, through a TAIEX Program⁴¹ seminar and counselling on state aid was held in Banja Luka on September 3-4, 2009. The seminar was attended by the representatives of the Working Groups from competent institutions, members of the BiH Parliamentary Assembly, RS National Assembly, and FBiH Parliament, and representatives of the BiH Presidency. Unfortunately, no progress was made. Furthermore, it turned out that that there are political reasons for not adopting this law at the state level, and obvious administrative oversights as between the Working Group led by the MoFTER on one side and the EC Delegation in BiH and the Directorate General for Competition in Bruxelles on the other side. The draft law that was sent as the basis for consideration of the TAIEX experts was not the working version of the BiH draft law on state aid prepared

by the Working Group at its official sessions with the support of the Project "EU Support for Competition and State Aid" concluded in May 2008. It remains unclear whether the members of the Working Group for the creation of the draft law on the state aid system have ever, somewhere, somehow, according to the rules of procedure, made some declared decision to discard the draft that was worked on for 2.5 years and to take as a basis a completely new concept in the creation of which all members of the Working Group were not included. It is also unknown whether MoFTER verified with one of its decisions the new draft delivered to the TAIEX experts through the EC Delegation. Lack of a coordinated approach resulted in adoption of the Law on State Aids in the RS at the NARS session in November 2009 despite a strict warning from Bruxelles that the Law on State Aids - and the institutions that will be in charge of the control of approval of aid should be set at the state level and not the entity level, in accordance with the provisions of Article 71 of the SAA.⁴² It is important to mention that the law adopted in the RS is not in accordance with EU standards and it currently regulates unnecessary segments of the state aid policy in opposition to the time schedule set by the transit deadlines of the SAA and the Interim Agreement. At the same time, the segments of equal economic

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At the beginning of 2009, the RS National Assembly adopted a Draft Law on State Aid in the RS on first reading, at the suggestion of RS Government on December 12, 2008. The second reading was postponed for an entire year.

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development of the RS are in the interest of all of its citizens. In the end, non-adoption of state-level law on state aid will cause this matter to become the first subject of SAA violation, because the transition deadline of two years for adopting a law and defining the competent institution for state aid, with the power to grant state aid and order the return of illegal state aid, expires on July 1, 2010. The constitutional and legal consequence of this is that a new matter, like the state aid concept, specifically required by the EU to be at the state level of BiH, and unknown in the existing terminology and practical application as a concept in the BiH territory, has now received its foundation in the legislative framework of an entity, which will require a long-term process of political consultation in order to provide sufficient political support for transfer of this, now-new competence from entity to state level.

The EC Progress Report on BiH in 2009 states that: "Limited progress has been made in the area of public procurement. The basic structure of the current public procurement law is sound but its operation in daily practice needs to be improved." The **Draft Law on Public Procurements** passed the procedure of public debate, but there have been no further legislative activities on this.

In the area of consumer protection which had stagnated in the previous period, progress was noted in establishment, case solving, and activity promotion of consumer rights. Ombudsmen Office for consumer protection played an important part in activities related to client lawsuits against commercial banks that raised interest rates on previously granted loans justifying this with the world economy crises. The EC Progress Report on BiH in 2009 also confirms that this institution adopted criteria and instructions on case solving and decision making procedures and gave guidelines and recommendations in the sector of consumer loans in due time. The same Report states that the efficiency of the Ombudsmen's Office has increased in comparison with previous years, thanks to an increase of staff.

Commentary

BiH Law on Public Procurements is to a great extent, but not fully harmonized with the *acquis communautaire* or EU Directives in this area. Preferential treatment of local products is completely excluded from the Directives, but it is accounted for in BiH law as a protective measure for local subjects with the purpose of strengthening their market position, and renewal and protection of BiH economy development. Such a measure would definitely have to be temporary, and in that sense there are some hints that in the new/revised law on public procurements it will be erased, especially when having in mind that CEFTA anticipates complete abolishment of preferential treatment for its members by 2010.

It is especially important to point out the flaw of the Law on Public Procurements dealing with the appeal procedure, considering how bleakly it had been made. This leads to lack of clarity and different interpretations by contracting organs and institutions established by the Law.

The Draft law on State Aid System, made in accordance with EU standards is still in BiH MoFTER, therefore failing to meet any of the deadlines from the Action Plan

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and it seems obvious that it will be the first of the transition deadlines from the Interim Agreement that will be broken.⁴³ After adopting the Law on State Aid at the level of RS in November 2009, which is not harmonized with EU standards, the fulfilment of this obligation seems unlikely for a long period of time.

Again, the biggest losers are BiH citizens, because due to the lack of a Law on State Aid, political officials create diametrically opposed policies of economic development, social and industrial policy. Therefore, they invest in sectors that do not generate new production, employment and development in undeveloped areas.44

However, certain progress was made in the area of competition, intellectual property protection and consumer rights promotion, but, in general, law harmonization and implementation remains one of the weakest links in the process of SAA implementation.

A preliminary Draft of the Law and accompanying economic, fiscal and socio-statistical analyses was created by foreign and local experts for state aid in cooperation with representatives of the eight competent institutions within the Project of "EU Support for Competition and State Aid in BiH" which lasted for 2.5 years and cost 1.3 million Euros.

EC Progress Report on BiH in 2009 on page 33 points out a very modest assessment. "Limited progress has been made in reducing state influence in the economy. Legislation to ensure transparent monitoring of state aid has not been adopted and the establishment of an operationally independent, public state aid authority – as required by the Interim Agreement to the SAA – is pending." Furthermore, on page 44 in the next assessment it is stated: "Regarding **State aid**, no progress has been made. Statelevel legislation has been prepared, but has not been adopted. The establishment of a State-level, operationally independent public State aid authority is pending. Preparations need to be speeded up in order for Bosnia and Herzegovina to be able to respond to the requirements of the Stabilisation and Association Agreement."



TITLE VII

"Justice, Freedom and Security" (Articles 78 - 85.)

a Introduction - General assessment of implementation of BiH obligations under SAA compared to the 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, migration and asylum, border management and combat against crime and terrorism. However, only the Interim Agreement or the Interim Trade Agreement is in force in the current phase of bringing BiH closer to the EU, and it primarily focuses on gradual liberalization on trade relations between the contract parties with the ultimate goal of establishing a free trade zone by January 1, 2013; other, more direct, obligations of Bosnia and Herzegovina in the field of "freedom, security and justice" are contained in some other relevant documents, both of contract and non-contract character, such as the document "European Partnership for BiH" and Road Map for the Liberalization of the Visa Regime, as well as a series of international conventions where BiH appears as one of the contractual sides.

Concretization of the prospect of placing BiH on the so-called "White Schengen List" most certainly presented a positive impulse for more intense action of BiH institutions towards fulfilling the defined obligations.

Level of realization of the Action Plan

The BiH Council of Ministers has adopted appropriate action plans for realization of the priorities and obligations contained both in the document "European Partnership" and in the Road Map for the Liberalization of the Visa Regime as well as the quarterly and semi-annual reports on their implementation. Part of the obligations contained in the listed documents match each other identically or in a similar form; however, the deadlines for their realization are not always identical.

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A part of the Action plan for implementation of priorities under the European Partnership in the area of "Justice, Freedom and Security", including the political criteria, comprises 34 priorities and 241 activities (measures) adopted to specify and more accurately implement the defined priorities. Out of the total number of listed activities, according to the Action Plan dynamics, 98 were scheduled for implementation by December 31, 2009 (86 by the end of July 1, and 12 in the second half of 2009). This includes the activities whose implementation encountered difficulties in the previous period and whose implementation deadlines had been prolonged. For the purpose of this analysis the activities were observed as thematic wholes and the degree of their implementation was assessed based on the implementation of the majority of specific actions they comprise.

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

Implemented activities:

- The Independent Board was established, its President appointed and its Work Rulebook adopted;
- Boards for Citizens Complaints and Police Officers Complaints were established;
- BiH Council of Ministers adopted the Strategy for Combating Corruption for the time period 2009 – 2014 and the Action Plan for the implementation of the Strategy for Combating Corruption 2009 – 2014; produced a Bill on the Agency for Prevention of Corruption and Coordination in Combating Corruption, and sent it to the BiH Parliamentary Assembly to be considered in the basic processing;
- BiH Council of Ministers adopted a Strategy for Combating Organized Crime 2009 2012:
- The Law on Changes and Amendments to the Law on Prevention of Money Laundering and Financing Terrorist Organizations was adopted, while the adoption of the bylaws is in progress; BiH Council of Ministers adopted a Strategy for the Prevention of Money Laundering and Financing Terrorist Organizations in BiH 2009 - 2013, as well as the Action Plan for the Prevention of Money Laundering and Financing Terrorist Organizations in BiH 2009 - 2013; Phase III of the AMLS and software update has been completed, start of the final phase - Phase IV - is expected;
- "BiH Migration Profile" adopted; Decision on Obligation of Submitting Statistical Data on Migrations and International Protection reached; the Migration Information System established and activated; the second phase of the construction of the Immigration Centre has been completed;
- Agreement on Establishing a System of Electronic Data Exchange from the Police and Prosecution Records has been signed; Agency for Identification Documents Registers and Data Exchange (IDDEEA) is set to be the headquarters of the system;
- BiH Council of Ministers adopted a Strategy on the Reintegration of Returnees Based on the Readmission Agreement;
- Law on Changes and Amendments to the Law on BiH State Investigation and Protection Agency (SIPA) adopted;
- Law on Changes and Amendments to the Law on BiH Border Police adopted;

- Law on International Legal Aid in Criminal Matters adopted;
- Law on Changes and Amendments to the Law of BiH Police Servants adopted;
- Adopted the Law on Changes of the BiH Law on Execution of Criminal Sanctions, Detention and Other Measures with the aim of approximation to the recommendations of the Council of Europe 2006, as well as the accompanying bylaws; texts of the Law and relevant bylaws made and refined as an additional contribution to their better implementation and approximation of the bylaws with the Law;
- Law on Changes and Amendments of the Law on Ministries and other BiH Government institutions adopted;
- Law on Agency for the Prevention of Corruption and Coordination of the Combat against Corruption adopted;
- Law on Changes and Amendments of the Law on Criminal Proceedings adopted;
- New building of the Centre for Illegal Aliens opened;
- BiH Council of Ministers adopted a new Rulebook on Internal Organization of the BiH Ministry of Security; the procedure of employing new staff in the Department for Immigration of the Ministry has been completed; an estimated number of 185 employees in the Service for Foreigners Affairs of the BiH Ministry of Safety, in accordance with the Rulebook on Service Systemizing, has been reached; however, despite the fact that the application for financing the construction of the Service for Foreigners Affairs from IPA funds was sent on time, the project was not approved;
- The remaining bylaws were adopted in accordance with the Law on Movement and Stay of Aliens in the Asylum: Rulebook on covering the costs, removal of aliens or placing aliens under supervision, Rulebook on obligation of the transport companies and organizers of tourist or
 - similar travels, Rulebook on central database on aliens, Decision of the minimal amount of means for maintaining aliens during their intended stay in BiH, Rulebook on international protection (asylum) in BiH, Rulebook on issuing visas for long-term stay (D visa) and treatment of such visas, and Rulebook on issuing visas in diplomaticconsular representative bodies in BiH;
- Decision on Appointing a Coordination Body for monitoring the implementation of the Strategy in the area of immigration, asylum and the related Action Plan for the period 2008 – 2011 was adopted; meetings of the Coordination Body are held monthly;
- In accordance with staff potentials, available budget funds and placement capacities, a partial recruitment of the Financial-Information Unit, Department of prevention and investigation of criminal acts of money laundering and financing terrorism, and Administrative Department of SIPA (expert advisor for international cooperation in the Department for prevention and investigation of criminal acts, deputy chief of

Within the established working groups and ministry conferences certain corresponding modes were found for fulfilling a number of obligations that were in a serious hold-up in the previous period. At the same time, this kind of mode defining that pleases all sides in BiH, as well as the European Commission, points towards the necessity of securing more intensive dialogue and better quality coordination between different levels of government organization in BiH and the European Commission.

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General political instability caused by interaction of local actors and international factors present in BiH, and the upcoming general elections scheduled in 2010 present significant aggravating circumstances for future shortterm progress of BiH in fulfilling the obligations in the process of European Integrations.

the Financial-Information Unit, and three employees from the Department for prevention and investigation of criminal acts transferred to SIPA Criminal Investigation Department) was accomplished;

- By extending the transitional deadline for SIPA employments, after adopting the Law on Changes and Amendments of the Law on Police Officials, vacancies were announced for the employment of 109 police officials in SIPA, in accordance with the modified Dynamic Employment Plan for employing police officials in 2009;
- Action Plan for implementation of the Strategy of Supervision of Drugs harmonized and referred to the relevant institutions for an opinion; the Strategy infers that the supervision over strategy implementation is done by the Department for Narcotics, and not by a separate commission;
- Staffing of the SIPA Witness Protection Department in the reporting period completed to a level of about 70%;
- Joint Risk Analysis Centre for integrated border management established;
- Infrastructure and professional capacities of the Agency for Protection of personal Data strengthened;

Unimplemented activities:

- Law on Changes and Amendments of the Law on BiH Witness Protection Program (returned to the BiH Ministry of Justice for further processing), and the adoption of the appropriate bylaws;
- Law on Changes and Amendments of the BiH Criminal Law;
- Law on Changes and Amendments of the Law on the BiH Court;
- Law on Changes and Amendments of the Law on the BiH Prosecutor's Office;
- Appointing the Head of the Directorate for the Coordination of Police Bodies;
- Appointing the Director of the Agency for Schooling and Expert Education;
- Establishing a Centre for Asylum Seekers (delays in regard to the defined deadlines);
- Instead of the Commission for regular monitoring, reporting and revising of the Strategy of supervision of drugs, prevention and combating drug abuse, the Strategy infers that the monitoring of its implementation should be done by the Department for Narcotics:
- Harmonizing Banking Laws of the FBiH and the RS.



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 parliamentary processing:

- Law on the Agency for control and ensuring the forced seizure of property gained through criminal activities and administering the seized property;
- Law on Changes and Amendments of the Law on BiH Criminal Procedure;
- Law on Changes and Amendments of the Law on the BiH Prosecutor's Office;
- Law on Changes of the Law on the BiH Court;
- Law on Changes and Amendments of the Law on the BiH Public Attorney's Office;
- Law on Changes and Amendments of the BiH Criminal Law

Constitutional basis and status compared to relevant laws of the lower levels of government

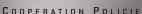
Constitutional basis for adoption of the aforementioned acts is Article IV 4 a) of the Constitution of Bosnia and Herzegovina. The nature of the majority of the normative acts necessary to be adopted and implemented in the coming period, especially those in parliamentary processing, have either a changing or amending character compared to the existing legislation in specific areas.

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There is notable progress in the implementation of the defined obligations by the BiH institutions in the area "Justice, Freedom and Security" compared to the previous reporting period. A positive impulse to a more dynamic realization of the defined obligations by the BiH institutions, most certainly, was the concretization of the prospect of liberation from the visa regime for the remaining countries of the Western Balkans, because, as was previously pointed out, a significant part of the obligations contained in the document "European Partnership for BiH" is similar (in places even identical) to the obligations from the Road Map for the liberalization of the visa regime. Another positive step is the final solution of certain disputable issues that could not have been solved in the previous period within the frame of interdepartmental work groups, or whose regulation modes did not have satisfactory support in the BiH Parliamentary Assembly (Agency for prevention of corruption and coordination of combating corruption, Decision on the location of server for data exchange of police and prosecution agencies, etc). Problems identified in the previous Report, primarily referring to attempts of jurisdiction transfers outside of the procedures defined by the existing BiH Constitution, are still present. General political instability caused by interaction of local actors and international factors present in BiH, and the upcoming general elections scheduled in 2010 present significant aggravating circumstances for future short-term progress of BiH in fulfilling the obligations in the process of European Integrations.









TITLE VIII **COOPERATION POLICIES**

General assessment of implementation of BiH obligations under SAA and priorities of European **Partnership**

The SAA envisages establishment of close cooperation between BiH and the EU aimed at development and progress of BiH. The title "Cooperation Policies" defines 25 areas in which BiH should harmonize its policies and legislation with acquis communautaire of the EU. For each area, the EU Council Decision of February 18, 2008 on principles, priorities and conditions contained in the European Partnership with B&H established

short-term (to be completed within a deadline of one or two years) and mid-term priorities (to be completed within a deadline of three to four years). In regard to that, the Council of Ministers adopted an Action Plan for implementation of the priorities contained in the document European Partnership with precisely determined deadlines for the fulfilment of specific activities and obligations.

Level of realization of the Action Plan

The Action Plan for the implementation of the priorities from the European Partnership in the area of cooperation policy covers 58 short-term and 28 mid-term priorities and over 600 different activities (measures). The predicted activities include, on one side, creation and/or improvement of the legislative framework, and on the other side, establishment and strengthening of

The Action Plan for the implementation of the priorities from the European Partnership in the area of Cooperation Policies comprises 58 short-term and 28 mid-term priorities and over 600 activities (measures). Analysis results indicate that despite the progress made in certain areas, the implementation level of the Action Plan is far below 50%. Particular underdevelopment is notable in the process of the creation of normative outline, which is illustrated by the fact that only six laws were adopted through the parliamentary processing.

institutional mechanisms and capacities in defined areas. Considering the fact that Title VIII, Cooperation Policies, treats 25 different areas where it is necessary to perform harmonization of legislation and legal regulations with the acqus communautaire, and that the responsibility for their implementation is divided between different ministries on state, entity and canton levels, the general assessment is that progress in this area is limited and uneven. There is a notable satisfactory pace in fulfilling the SAA obligations and the obligations of the European Partnership, for example, in the areas of customs and taxes, education, audits and financial control, while in other areas, especially in the areas of agriculture, energy and the industrial sector, social policy, employment, and protection of the living environment, there is not.

Certain steps forward were made in the area of Cooperation Policy in establishing and ensuring the operative level and strengthening human and material capacities of some state-level institutions, like the BiH Veterinary Office, Office of Public Administration Coordinators, the Regulatory Board for Railways, and Administration for Indirect Taxation. On the other hand, a certain number of institutions, like the environment protection agency, regional centre for mental health or agency for information society development, are not yet established, due to non-adoption of the corresponding normative frame.

As in the previous reporting periods, our impression is that the basic cause of the lack of progress has to do with the blockage of reform processes at all levels and the lack of political consensus regarding the transfer of certain competences from entity to state level.

1. Economy and trade policy

The document "European Partnership with BiH" contains seven short-term priorities in the area of economy and trade policy (that concern strengthening of macroeconomic stability, speeding up the privatization process, developing fiscal mechanisms, public debt control, company management, strengthening trade courts and the legal system) for the implementation of which 59 activities and measures were programmed by the Action Plan.

- a) Macroeconomic stability
- Real growth of GDP in 2008 dropped to 5.4% compared to 6.8% in 2007.
- In the FBiH there was a noted drop of industrial production of 10.5% during the first nine months of 2008, while in the RS, the industrial production increased by 16.7%.
- Deficit of the current account has increased to 14.7% in 2008 compared to the previous 12.7%.
- External public debt amounts to 17.5% of GDP.
- The unemployment rate measured by the ILO poll increased in 2008 from 23.4% to 24.1%.
- In July, the annual inflation was -1.2%.
- The ratio between the income and expenditures in the government sector in 2008 was 46% compared to the current 50%. That is, now there is a 4% deficit.
- In 2009, the public debt was increased compared to the 27.8% GDP in 2008, due to a significant budget deficit and the credit agreement with the IMF.

b) Privatization

- In the time period April 2008 May 2009, in the RS one strategic and ten smaller companies were privatized. In total, 69% of the initial mass of the state capital has been privatized.
- In the FBiH the privatization process has been slow, partly because the Government did not adopt a privatization strategy.

c) Free market entry and exit

- Obtaining a construction licence has been simplified by simplifying the registration of new buildings into land and ownership registries.
- Ownership transfer is more efficient as a result of the computerization of the land registry.
- The RS Government adopted a Law on companies, which simplifies the process of founding a new company.
- In the RS the project of "administrative guillotine", with the goal of reducing the administrative burden, was conducted, while the same project in the FBiH was started in the middle of 2009.

d) Legal System

Activities on the improvement of legal certainty are not being implemented at the anticipated tempo, despite the introduction of the new Case Administration System.

2. Cooperation in the area of Statistics (Article 88)

For the implementation of 4 short-term and 2 mid-term priorities in this area, the Action Plan anticipates 25 different activities. The following was (not) implemented:

- Although the first short-term priority concerns improvement in the work of the Agency for Statistics, activities on strengthening the cooperation between the entity agencies for statistics and the state Agency for Statistics are not fully implemented and have not provided adequate results.
- The Perennial master plan for creation of national accounts is not being implemented.
- Activities which concern the development of statistics, agriculture, education, health and energy are not being implemented in sufficient measure.
- The Work plan for 2009-2012 for the Agency for Statistics was adopted.
- A Register of business subjects was created.
- Dates have been set for performing a population census and workgroups have been formed for the preparation of the census.
- Certain measures are being taken to improve statistics in the following areas: industry, construction industry and structural business statistics.

3. Cooperation in the area of banking, insurance and other financial services

In regard to the strengthening of institutional cooperation, limited progress was registered in the domain of strengthening of human and material capacities of the existing institutions (RAC, IDA, Veterinary Office, Public Administration Coordinator's Office).

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The Action Plan for the realization of five short-term and three mid-term priorities in this area foresees 55 and 53 activities respectively. The following were carried out:

- Stability of the financial system was secured despite the international crises in the financial sector.
- The RS Government established a system for improvement of coordination between its supervising agencies.
- Activities for strengthening the (analytical) capacities of BiH Central Bank have been implemented.
- Activities for establishing a state supervision over the financial market have not been implemented; the supervision of the financial market is still under the jurisdiction of the entities.

4. Cooperation in the Area of Audit and Financial Control

For the implementation of two short-term priorities in this area, the Action Plan foresees six activities. During the reporting period, the following were carried out:

- Activities aimed at establishing the mechanisms of Public Internal Financial Control (PIFC) were implemented in significant number: laws on internal audits at entity and state level are implemented; Strategy on PIFC action policy was established on entity and state level.
- At the state level and the level of the RS, Central Harmonization Units (CHU) were established, while in the FBiH, these still need to be established.
- Activities aimed at ensuring that external audits are performed in continuity and in a satisfactory manner have been undertaken, while there is an obvious shortcoming in regard to the implementation of measures that concern abiding by the recommendations of the institutions of the head auditor.

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

In this area there are three short-term and two mid-term priorities defined, but the measures for their implementation have not been made concrete yet. In regard to the forseen priorities we can infer the following:

- An overall BiH Economic Development Strategy has not yet been developed.
- There was no harmonization of entity legislation.
- National codex for company management has not been created.

Measures that would put into place a joint company registration in the entire country have not yet been undertaken.

Cooperation in the area of Agriculture and Fishing (Articles 95 and 96)

In the European Partnership with BiH 5 short-term and 4 mid-term priorities are listed in the area of agriculture and agriculture-industrial sector. The Action Plan for their implementation anticipates that their realization will be made possible by implementing 63 different measures with short-term priorities and 36 different measures with mid-term priorities. Out of the anticipated activities, within the set timeframe the following were (or were not) implemented:

- The accompanying legislation for the implementation of the Outline Law on Agriculture, Food and Rural Development of BiH was not made.
- Activities aiming towards establishing state Ministry of Agriculture, Food and Rural Development were not implemented.
- Activities for the establishment of farm and client registry at the state level were not implemented.
- Activities for the harmonization of the land registry systems were not implemented.
- The implementing legislation on food hygiene and official control that would make the implementation of the Law on Genetically Modified Organisms possible was not adopted.
- The human capacities in the Agency for Food Safety were not strengthened.
- The state Law on Veterinary Medicine is not fully harmonised with the acquis.
- Human capacities in the Veterinary Office were strengthened, and the state Administration for Health Protection became operational.
- The implemental legislation for the prevention of harmful organisms, use of mineral fertilizers, and rulebook on seed sales was adopted.
- The Advisory Council for Agriculture, Food and Rural Development was established.

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

In the area of customs and taxes, the European Partnership with BiH contains 8 shortterm and 2 mid-term priorities, the implementation of which, where the short-term priorities are concerned, was to be provided through the implementation of 57 activities and measures, according to the Action Plan + 16 activities for the implementation of the mid-term priorities. Out of those, the following were (or were not) implemented:

- The Istanbul Convention on ATA Carnet for temporary admission of goods was not signed.
- Activities aimed towards strengthening of the human and information capacities of the UIO were not fully implemented, especially in regard to internal audit, risk analysis and inquiry work.
- The Convention on the International Transport of Goods under the TIR Carnets was signed.
- Activities on harmonizing nomenclatures for sorting of goods in BiH with combined EU nomenclature were implemented.
- The Law on Excise Duties that provides a greater, but not a complete, level of harmonization with the acquis was adopted.
- Agreements were signed on avoiding double taxation and preventing fiscal fraud with Albania, Kuwait, Austria, Algeria and Lithuania.

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

For this area, the European Partnership identifies 4 short-term and 1 midterm priority. Key issues are development of policies of social inclusion and social protection, social dialogue mechanism and improvement of the situation for people with disabilities through the implementation of 22 different activities. The following was (or was not) achieved:

- Entity and canton labour laws were not harmonised.
- The Governments of FBiH, RS and Brčko District adopted separate employment strategies for 2009-2013, but they did not implement the activities on the creation of a state employment strategy, or harmonize the entity strategies.
- Measures aiming at the improvement of social dialogue at the state level were not implemented.
- Activities for the reform of social protection were not implemented.
- The Economic Social Council at the level of the state of BiH was not formed.
- In the area of the health care system, the Road Map made in 2008 is still not adopted.
- A Strategic plan for the development of health care system at the state level has still not been made, and the entity development strategies in the health care system are still in the process of being made.
- Activities in the area of the protection of mental health and deinstitutionalization were not implemented.
- Measures for establishment and functioning of a regional cooperation centre in the area of mental health in BiH were not implemented.
- RS established the Socio-Economic Council at the entity level.
- The Law on Antidiscrimination was adopted.
- The UN Convention on the Rights of Persons with Disabilities was signed.
- State Strategy for drug control and prevention of the abuse of narcotics has been adopted.
- A State Commission for the implementation of international regulations of the World Health Organization (WHO) was established.
- The Outline Convention of the WHO on Tobacco Control was ratified.
- A State Regulatory Agency for Radiation and Nuclear Safety was established.

9. Cooperation in the area of education and research (Article 100)

For the area of education and research, five short-term and two mid-term priorities were defined. Of the activities anticipated in the Action Plan, the following were (or were not) implemented:

Cooperation at the level of ministry conference is more intense and improved, resulting in adoption of the following documents: Agreement for establishing a general education council in BiH; Agreement of the common plan and program core for preschool education.

- Directors and the boards of directors of the following agencies were appointed: Agency for Development of Higher Education and Quality Assurance, Agency for Preschool, Primary and Secondary Education and Centre for informing and document recognition in the area of higher education.
- The Law on Changes and Amendments of the Outline Law on Higher Education in BiH was adopted.
- Part of the implemental legislation for the implementation of the Outline Law on Secondary Technical Education and Training was adopted: Rulebook on establishing and organizing a network of technical high schools in BiH and the Rulebook on regulations and methods of registering associations of technical high schools in BiH.
- Cantonal laws on preschool, high school and higher education are not harmonized with the outline laws at the state level, while in some cantons, the nine-year plan and program of primary education is still not being applied.
- The Working Group for the development of analytical information to solve the problem of "two schools under one roof" gave suggestions for certain activities which are being implemented.
- The Law on Cultural Heritage of BiH was not adopted.
- The Outline law on basics of science and research activity and the coordination of the internal and the external scientific cooperation of BiH was not adopted.
- The Law on science and technology was not adopted.
- A strategy for science development was not created.

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

The European Partnership for BiH contains three short-term and three mid-term priorities in the area of the information society, media and audiovisual services. Out of the planned activities for their implementation, the following were (or were not) implemented:

- The Law on public radio and television service of the FBiH is not completely harmonized with the Law on radio television system of BiH.
- The independence of the Regulatory Agency for Communications (RAC) is compromised by the fact that neither the members of the Council nor the general director have yet been appointed..
- Because of this, activities on the adoption and implementation of a set of acts in the area of broadcasting and telecommunications that were prepared within the agency were delayed.

Through the EU Multi-year *Indicative Planning Document for* 2009-2011, BiH was granted 89.1 million Euros within the IPA programs in the area of public administration, constitutional reform, rule of law, civil society, culture, development of small and medium businesses, labour market and legislation harmonization in 2009. However, it still remains to be seen whether that support will help precipitate the reform processes in the current political circumstances.

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- A State law on development of information society was not adopted.
- A State agency for the development of the information society was not established.
- The UNESCO Convention on protection and promotion of diversity of cultural expression was ratified.
- Regulations on conditions of offering and distributing audiovisual and RTV programs were adopted.
- The RS Government formed an agency for development of the information society at the entity level.
- Implementing legislation that would provide the implementation of the Law on electronic business transactions was not adopted.
- The RS Government adopted the Law on electronic business transactions at the entity level and created a strategy for an e-government.

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

In the area of transport policy, the European Partnership identifies four short-term and three mid-term priorities. Short-term priorities mainly deal with the approximation of local legislation to the *acquis* in the area of road, railway and air transportation.

- Vertical integration of the railways was not done.
- The SOLAS (safety of life at sea) International Conventions and the International Code for Safety of Ships and Port Facilities were not signed.
- A Five Year Plan for 2009-2013 was adopted and is being implemented.
- Specific activities on establishing the TIR carnet system and application of digital tachographs were implemented.
- The RS government adopted a Law on transport and road traffic as well as the Traffic Safety Program on RS roads.
- Law on civilian aviation and Law on agency for providing services in the BiH air navigation were adopted.
- Law on civilian navigation was adopted, but it needs to be harmonized in order to create bases for establishment of an independent body for investigations on accidents in civil aviation.

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

In the European Partnership for BiH, there are two short-term priorities identified in this area: 1. Complete the obligations of the Agreement on Energy Community of July 1, 2007 in regards to complete implementation of the acquis on internal market of gas and electricity, and cross-border trade of electricity; and 2. Create and adopt a comprehensive energy strategy. In the Action Plan, these priorities are still not at an operative level. However, through our analysis of the progress made in the energy sector it is possible to conclude the following:

Due to political blockage, the work of the state company for transport of energy

(TRANSCO) was blocked until the end of November.

- No state law was adopted on gas nor was there a state regulator established in this area.
- A State strategy for the development of the energy sector was not created.
- No secondary legislation was adopted for the implementation of the Law of Protection from Radiation and Nuclear Safety in BiH.
- The following Conventions were signed: Convention on early Notification of Nuclear Accidents, Convention on Protection from Nuclear Materials and Convention on Aid in the Case of Nuclear Accident or Radiological Danger.

13. Cooperation in the Area of the Environment

In the European Partnership for BiH, five short-term and three mid-term priorities are identified in the area of the environment. Out of the activities anticipated in the Action Plan, the following were (or were not) implemented:

- ESPOO Convention on the Environmental Impact Assessment in the cross-border context and Stockholm Convention on Persistent Organic Pollutants were not ratified.
- The EU Directive on Strategic Environmental Assessment (SEA) was not transferred to the state legislation.
- Entity legislation on air quality was not adopted.
- Activities in the area of control over industrial pollution and risk management, chemicals and noise were not implemented.
- A State Law on environment protection was not adopted nor was a State agency for environmental protection established.
- Water Agencies in FBiH are operative while the establishing of the agency in the RS is still ongoing.
- The Agency for the water area of the Sava river was established.
- Implementing legislation for the implementation of the Law on waters, water prices, dangerous materials and the maximum allowed level of those materials at the water surface has been adopted.
- State strategy and action plan for the protection of biological and landscape diversity of BiH were adopted.

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

The European Partnership with BiH holds among its key priorities the reform of public administration and the following short-term priorities were defined: - Provide the Public Reform Coordinator's Office with necessary human and material resources; - Further improve employment procedures based on the criteria of objectivity, quality and transparency; - Harmonize the laws on civil service; - Complete the merger of the state and entity ombudsmen and secure the work of the Office of Ombudsmen at the state level plus a mid-term priority: Implement public administration reform and provide its

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sustainability, increase the capacities for its gradual harmonization with the acquis. The implementation of the listed priorities was made operational through 12 (+4) different activities. Out of those, the following were (or were not) implemented:

- Activities on establishing more efficient employment procedures of civil servants, their modernization and greater degree of cooperation between different administration levels were not implemented.
- Human and material resources were strengthened in the Public Administration Reform Coordinator's Office (PARCO).
- Laws on Civil Service were harmonized.
- The appointment of high level civil servants to the key institutions (IDA and RAC) was blocked by political influences.



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

During this reporting period, the BiH Parliamentary Assembly has adopted the following laws relevant to the areas covered by the Cooperation Policies: Law Against Discrimination, Law on Protection of Domestic Production within the CEFTA, Law on Excise Duties, Aviation Law and Law on Agency for Provision of Services in Air Navigation, Law on Foundations of Scientific and Research Activities and Coordination of International Research Cooperation of BiH. Following the entity voting, as many as five bills harmonized with the EU acquis, the adoption of which was anticipated by the Action Plan, were rejected in parliamentary processing. These were: Bill on transport of dangerous matters, the Bill on labour and employment, Bill on internal and naval traffic, Bill on public roads, Bill on Agency for the development of BiH Information Society.

Still subkect to parliamentary processing are: the Bill on Pupil and Student Standards in BiH, Bill on Tobacco, Bill on General Product Safety and Bill on Free Zones, the adoption of which is quite uncertain due to a general climate of political instability and lack of inter-entity cooperation.

Aggravated, slow, and ultimately inefficient parliamentary process also results from of the fact that for many areas covered by the Cooperation Policies, there is no constitutional competence at the state level. In addition, legislative and executive responsibility is divided between the entities, and entities and cantons. The constant rejection of the need to transfer specific competences from entity to the state level by the RS Government, and lack of harmonization of entity and canton legislation explain the problems of speeding up the reform processes and also reveals the only declarative nature of the support for BiH EU integration.



Our analysis shows that despite the progress made in certain areas, the level of the implementation of the Action Plan remains generally unsatisfactory. Defined obligations mainly deal with the creation of the legislative outline and establishing and strengthening the institutional structure. Particular underdevelopment is notable in the process of the creation of normative outline, considering the fact that only six laws were adopted through parliamentary processing (the Law Against Discrimination, Law on Protection of Domestic Production within the CEFTA, Law on Excise Duties, Aviation Law and Law on the Agency for Provision of Services in Air Navigation, and Law on Foundations of Scientific and Research Activities and Coordination of the International Research Cooperation of BiH). On the other hand, this blocks the establishment of new institutions that cannot function until the corresponding legislative outline is adopted. In regard to the strengthening of institutional cooperation, limited progress was registered in the domain of human and material capacities of the existing institutions (RAC, IDA, Veterinary Office, Public Administration Coordinator's Office).

Certain steps were also taken in the direction of raising the operative level and functionality of institutional structures for the implementation of the pre-accession obligations regulated by the SAA and European Partnership, especially of the Reform Process Monitoring (RPM). During 2009, a single plenary RPM meeting, six sector RPM meetings, five interim subcommittee meetings, and one meeting of the Interim Committee were held. Although there was the assumption that establishment and functioning of these bodies would help speed up the process of fulfilling the pre-accession obligations, it is quite evident that the key factor for the success of their implementation is the existence of the political will and consensus for their implementation between the entities. Unfortunately, the heated political climate and its culmination in the second half of 2009 had a negative effect, because the area of Cooperation Policy covers areas where, in most cases, there is no state legislative or executive competence.

Through the EU Multi-year Indicative Planning Document for 2009-2011, BiH was granted 89.1 million Euros within the IPA programs in the area of public administration, constitutional reform, rule of law, civil society, culture, development of small and medium businesses, labour market and legislation harmonization in 2009. However, it still remains to be seen whether that support will help precipitate the reform processes in the current political circumstances.

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TITLE IX

Financial Cooperation (Articles II2 - II4) of the Stabilization and Association Agreement between BiH and the EU



General assessment of implementation of BiH obligations under SAA and priorities of European Partnership in the reporting period

With regard to providing 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 Multi-Annual 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, BiH and EU signed a Financing Agreement. The European Partnership provides Bosnia and Herzegovina an access to regional and horizontal programs.

For the IPA Component I for assistance to transition and strengthening of institutions 287.3 million Euros was given, and a smaller part of those means was separated for the IPA Component II dealing with cross-border cooperation -15.9 million Euros.

As a potential candidate state, Bosnia and Herzegovina has access to IPA funds. Indicative distribution for BiH according to the 2008-2011 Multi-Annual Indicative Financial Framework (MIFF) is 303.2 million Euros. Main areas for which this aid is aimed are for: political reforms and support for establishing democratic institutions, economy reform and aid to the state to meet the demands of the association process – approximating to European standards in the area of internal market, sector policies, justice, freedom and security. Special component of the program will finance cross-border cooperation. ⁴⁵

Financial support given through the IPA (Instrument of Preliminary Assistance) in the defined areas follows the priorities defined through the European Partnership, the annual

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Generally, it can be said that Bosnia and Herzegovina implements, to a satisfactory degree, the obligations under SAA and EP in the area of financial cooperation.

Progress Report assessments and the SAA. For the IPA Component I for assistance to transition and strengthening of institutions 287.3 million Euros was given, and a smaller part of those means was separated for the IPA Component II dealing with cross-border cooperation – 15.9 million Euros.

The Commission implements the Instrument of Preliminary Assistance (IPA) in Bosnia and Herzegovina through the EC Delegation in our country. The government has 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, it can be said that Bosnia and Herzegovina implements, to a satisfactory degree, the obligations under the SAA and the EP in the area of financial cooperation.



Level of realization of the Action Plan

For the purpose of implementation of the SAA and Interim Agreement, the Directorate for European Integrations prepared a document which elaborates the Action Plan for the period July 2008 - December 2009. However, the action plan does not anticipate activities in this area during that time period.



C 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 the area of Financial Cooperation, the BiH Parliament mainly only has the obligation to give its consent in the case of cross-border cooperation with other states. Parliamentary consent is not necessary for the projects conducted solely within BiH. For example, The House of Representatives of the BiH Parliamentary Assembly, at it session held on October 14, 2009, gave its approval for the ratification of the following agreements necessary for the implementation of cross-border cooperation with neighbouring states:

- a) Financing Agreement between Bosnia and Herzegovina and Commission of the European Communities in regard to cross-border programs between Bosnia and Herzegovina and the Republic of Croatia based on the component of cross-border cooperation within the framework of the IPA for 2008,
- Financing Agreement between Bosnia and Herzegovina and Commission of the European Communities in regard to cross-border program between Bosnia and Herzegovina and the Republic of Serbia based on the component of cross-border cooperation within the framework of the IPA for 2008,

Financing Agreement between Bosnia and Herzegovina and Commission of the European Communities in regard to crossborder program between Bosnia and Herzegovina and Montenegro based on the component of the cross-border cooperation within the framework of the IPA for 2008,

Based on the approval of the BiH Parliamentary Assembly, the aforementioned agreements were ratified by the BiH Presidency at the regular 63rd regular session on October 28, 2009. Also, at the 64th regular session, on November 11, 2009, the BiH Presidency made a Decision on Accepting Financing Agreements between Bosnia and Herzegovina and the Commission of the European Communities in regard to the state cooperation program (Part I) for 2009 within the framework of the IPA. This act provided for the opening of financial engagement for the following year.

It is a positive thing that the means from the Financing Agreement between Bosnia and Herzegovina and the Commission of the European Communities, in regard to the state cooperation program (Part I) for 2009 within the IPA framework, are focused on fighting against the economic crises and for infrastructural projects.



Commentary

Significant progress relevant to the dynamics of inflow of funds from the EU has been made in all areas of application of SAA and European Partnership, as well as in terms of meeting the Copenhagen political criteria. However, monitoring of the process and meeting preconditions in regard to coordination of assistance and information is assigned to an appropriate body within the BiH Ministry of Finance and Treasury.

It is important to mention that the Working Group, composed of the representatives of all government levels, created a document on action policy on Public Internal Financial Control (PIFC) for the state level and for the two entities. Now, it is important to aim the reform to developing management systems and structures for Financial Management Control. As the EC Progress Report on BiH for 2009 states: "Central Harmonisation Units (CHUs) have been created at the State level and in Republika Srpska, but are insufficiently staffed. The CHU in the Federation is yet to be established."46

According to the Multi-Annual Indicative Financial Framework, means assigned for BiH in the time period 2009-2011 are greater than the means that were assigned for the time period 2008-2010.

It is a positive thing that the means from the Financing Agreement between Bosnia and Herzegovina and the Commission of the European Communities, in regard to the state cooperation program (Part I) for 2009 within the IPA framework, are focused on fighting against the economic crises and for infrastructural projects.⁴⁷

EC Progress Report on BiH in 2009, p.59.

Two Million KM were given for the support of small and medium businesses, and one million for the support of the Deposit Insurance Agency. Fourteen million KM was given for transport infrastructure, out of which, 5 million for the road and 9 for railway infrastructure (it is important to mention that the IPA funds cover up to the 20% of this amount, while the rest are credit loans). Construction and reconstruction of water and sewage network in Bijeljina, Banja Luka, Zenica, Zavidovići, Visoko, Olovo, Usora, Doboj South, Doboj East, Posušje, Široki Brijeg, Mostar, Velika Kladuša, Bosanski Petrovac, Bosanska Krupa, Orašje and Tomislavgrad, will be supported with 16.5 million KM, which is close to 15% of the investment value, while the rest of the means come from credit loans and budget.

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TITLE X

INSTITUTIONAL, GENERAL AND FINAL PROVISIONS (Articles II5-I35 of the SAA / Articles 40-52 of the Interim Agreement)

General assessment of implementation of BiH obligations under SAA and Interim Agreement

The Stabilization and Accession Agreement anticipates that the following bodies be established, but only after the SAA comes into force: The Stabilization and Accession Council, Stabilization and Accession Committee and sub-committees and Stabilization and Accession Parliamentary Committee.

With the Interim Agreement (Articles 40-48), an Interim Committee and five sub-committees were established and put in charge of the matters included in the Interim Agreement, while the other issues will continue to 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 meetings for 2009 was adopted. At the request of the European Commission it was agreed that the meetings of the sub-committees and RPM be held together. By the end of 2008 the process of forming the sub-committees was completed and their meetings, within the first six months of 2009 were held according to the adopted program.

Implementation of the obligation during the reporting period

During the second half of the year, the following meetings were held:

- Sub-committee for economy and financial issues and statistics (Economy dialogue),
 June 8-9, 2009;
- Sub-committee and sector RPM in the areas of employment and social policy, information society and media, statistics, education and research, June 25-26, 2009;
- Second meeting of the Interim Committee, Sarajevo, November 16-17, 2009.

Agenda and Conclusions

Sub-committee for economy and financial issues and statistics (Economy dialogue), June 8-9, 2009

The meeting was dedicated to the economic aspects of the BiH accession process to the European Union, economic and fiscal development, fiscal management and feasibility, monetary development, balance of payments, BiH relations with international financial institutions, control of internal public finances and external audit, movement of capital and payments, establishing a functional market economy in BiH and making it competitive.

General conclusions of the Commission made at the end of the meeting were as follows:

- In regard to fiscal development and fiscal movement, it was concluded that the activities that BiH is implementing are comforting, and that budget rebalancing for the decrease of public expenditure is a step in a positive direction.
- Measures taken in regard to change of rates of obligatory reserves that maintain macroeconomic sustainability were appraised as a proper move in a given moment, with the recommendation to revise these measures once we clear the crises.
- As far as structural reforms are concerned, the difference between the entities, in regard to implementing reforms in the areas of internal control, pension system and budget incomes give rise to concern. It was pointed out that the listed differences must be overcome in the shortest possible time.

Sub-committee and sector RPM in the areas of employment and social policy, information society and media, statistics, education and research, June 25-26, 2009

At the meeting, the issues of employment, social policy, public health and consumer protection, information society and media, statistics, education and professional training and research were discussed.

At the end of the meeting, The European Commission made several recommendations for the BiH institutions:

- Employment and social policies: Provide better coordination between entities and between FBiH and its cantons in this area.
- Social dialogue: The European Commission expressed its regret at the lack of establishment of Economic Social Dialogue in BiH, that would allow BiH to participate in a number of similar forums, like the Economic Social Dialogue of the European Union. What was also pointed out was the necessity of establishing a joint union organization at the state level, and all additional information on the progress made in that area must be delivered to the European Commission by the BiH Ministry of Justice.
- Law on labour, health and security: The Commission concluded that little progress has been made in this area, and that it is necessary to put in additional effort on the issue of harmonization with the Union legislation as well as the improvement of coordination between all government structures in BiH.
- Social protection and social inclusion: The Commission warned that the standards of the International Labour Organization can only be the basis for the harmonization of the BiH legislation in this area with international standards, but that the job of the BiH institutions does not end there, because the legislation of the Union is far more

concrete and more elaborated, and it is necessary to put in additional efforts both in achieving better coordination within BiH and in harmonization with the Union legislation.

- Law Against Discrimination: During the time when the meeting was being held, the Law was in parliamentary processing, but it was later adopted by both Houses of the BIH Parliamentary Assembly and published in the BiH Official Gazette.
- Public Health and Consumer Protection: The Commission gave BiH a questionnaire, the filling of which will determine the degree of harmonization of the BiH legislation with the legislation of the EU in this area. Also, the necessity to supply the Commission with the Road Map of Public Health Care System was pointed out.
- Information society and media: The European Commission made a request for the Law on Electronic Communication to be submitted once it's created, and expressed concern because of the unresolved issue of appointing the director of RAC.
- Audiovisual policy and the media: The necessity of harmonizing the legislation on FBiH Public Radio Television with the state legislation was pointed out.
- Statistics: The Commission praised the progress made in this area, but at the same time, it pointed out the necessity to provide better coordination between Agencies for Statistics in BiH, especially while presenting statistical data in the area of agriculture, and pressed for adoption of the Law on Population Census as soon as possible.
- Education and training: It is necessary to achieve better harmony of the entity and canton legal solutions for an Outline Law on Education in BiH and Law on Preschool Education.
- Research: Organization-wise, it is necessary to prepare BiH for participation in the FP7 program in the shortest possible period of time.

Second meeting of the Interim Committee, Sarajevo, November 16-17, 2009

At the Second meeting of the Interim Committee different political and economic issues in Bosnia and Herzegovina were examined; bilateral trade issues, customs, rules of origin and diagonal cumulation, transition traffic and monitoring of obligations including issues from the areas of energy and environment, issues of internal market and competition, competition and state aid, public companies, the right of intellectual property, and banking sector, WTO and CEFTA; adoption of approved meeting records from the meetings of the sub-committees and the schedule of the subcomittees for 2010.



Commentary

It is obvious that not all sub-committees have the same meeting dynamics which is probably conditioned by the dynamics of the Action Plan for the implementation of the obligations from the SAA and the European Partership. It seems strange that the institutions involved in the work of the sub-committees did not even consider the obligations from the area of human rights. The sub-committee for justice and internal affairs, in some way, has special dynamics conditioned by the activities that come from the Road Map for the liberalization of the visa regime which the local public pays the most attention to.

SECOND SEMI-ANNUAL REPORT CONCLUSION

CONCLUSION

Rare movements despite institutional destabilization

The First Semi-Annual Report for 2009 that treated the progress in the European integration during the first six months of this year was concluded with the assessment that by procrastinating with the adoption of the necessary laws and not enabling the functioning of the state institutions we now have a "functional" destabilization of the BiH institutions. With this new conclusion, we can only add to our assessment from the previous Report that during this reporting period the "functional" destabilization became institutionalized and demonstrated just how far it can paralyse the basic reform directions BiH had been taking over the past ten years: integration into EU and NATO. In that regard, three big failures mark this period of time – the so-called Butmir Process, not getting BiH placed on the "white Schengen list", and the postponement of the invitation for BiH to approach the Action Plan for NATO Membership (MAP).

Unfortunately, through these three failures by the BiH government and by the international community as well, FPI's warning from the previous reports came true. In its political and institutional sense, BiH has reached the peak of the existing capacities to integrate further into international structures. That is why we can observe these events as turning points that indicate that for fulfilling BiH's international obligations towards the EU and NATO, substantial changes of the Constitution and general political relations are necessary. Similar conclusions are made by the EU in the Progress Report for BiH in 2009, which, among other things, states: "Overall, there has been little progress in addressing the key European partnership priority of more functional and sustainable state structures and better respect for human rights and fundamental freedoms, including by agreeing and adopting the necessary constitutional changes".

As a result of such general political and security situation, the Peace Implementation Council in November this year decided not to close the OHR, while the UN Security Council decided on extending the EUFOR mandate to the end of 2010.

The above indicates that other predictions from our previous reports are also coming true, namely that the Dayton ethno-nationalisms put themselves even before the European road; that is that Dayton incompleteness provides for putting the state, its functionality and the entire European integrations into question. Considering the fact that this is the third report within this Project, we risk repeating ourselves, since the reform processes are moving so slowly that even in the three reports, each covering a period of six months, it is hard to mark significant changes. But, we are aware of the fact that this repetition comes from the slowness of the process we are monitoring, so we will not be reluctant to point out this time as well: - The largest obstacle in achieving all principles set in the General Principles of the SAA and in the European Partnership, is in the current BiH Constitution. The BiH Constitution is still in contradiction with the European Convention on Human Rights, especially in the part concerning election of the members of the BiH Presidency and the members of the House of Peoples of the BiH Parliamentary Assembly. Insisting on the so-called collective rights pushes the rights of individuals as well as the conventions on human rights aside. Therefore, it makes the implementation of the obligations regarding the Title I, General Principles of the SAA, as well as the short-term and long-term priorities of the European Partnership difficult.

However, what we have become aware of as a community in this period of time in a relatively harsh manner is that we have finally reached a point where further integrations SECOND SEMI-ANNUAL REPORT

into EU and NATO exclusively depend on changes of the Constitution that would provide for greater functionality of the state and its institutions. Delaying the introduction of visa free regime for BiH citizens and postponing the MAP process are hard lessons, and their greatest victims are the citizens of BiH. The destructive political climate and the lack of political will to provide for at least minimal functioning of the state institutions with the purpose of fulfilling the basic goals of the European Integration have had a negative impact on most of the areas we have been monitoring, and it can be seen in the following conclusions:

- 1. Although there was progress in the domain of development of institutions with direct competence over security, combating organized crime, terrorism, and illegal trafficking, it is impossible not to notice its exaggerated politicization at the state level, especially with those institutions and agencies which should be in charge of the carrying out of the reform process for harmonization with Shengen standards.
- The Revised Strategy for the implementation of the Annex VII of the Dayton/Paris Peace Agreement, covering the period until 2014, has not been adopted yet. Returnees still face discrimination with employment, access to health care, education, pensions and social rights - especially when returning to areas where they are in a minority position. This is still the biggest obstacle to a sustainable return.
- BiH lacks financial, technical and legal resources to fulfil the obligations in the sphere of non-proliferation of weapons of mass destruction and the combat against terrorism, which were adopted at the UN Security Council. BiH should have, during the first half of this year, ensured an institutionalized coordination between the state and the entities on the legislative, political and technical level. The deadline for the implementation of this priority was extended for one year to February 2010.
- 4. A positive example of political dialogue between local institutions is that the BiH Presidency did, at its 60th regular session, held on August 12, 2009, consider and adopt a Joint Platform for a BiH Delegation at the 64th session of the UN General Assembly, New York, on September 24, 2009.
- The state has also continued with its active participation in regional cooperation. Good-neighbourly relations prevail, but there was little progress in solving unresolved issues, especially those concerning border and property disputes. In the light of the experience of the Croatian-Slovenian border dispute, it seems important to resolve border issues between EU candidate states and potential candidates. The Interstate Cooperation Councils between BiH and Croatia, as well as BiH and Serbia, did not meet in this reporting period either. Relations with Montenegro have become more active, which could be seen from numerous cross-state agreements, but the Bosniak member of the BiH Presidency placed a veto on ratification of dual citizenship agreements with Montenegro and Croatia. Solving border disputes and good-neighbourly cooperation remain hostage to local policies of BiH and neighbouring countries. Most draft laws that deal with regional cooperation have been in parliamentary processing for too long.
- The implementation of legislation relating to customs duties after entry into force of the Interim Agreement is at a satisfactory level. The implementation of legislation governing the field of free trade and customs duties still faces certain problems due to a lack of operational instructions that are to be adopted. The Decision on the ban on importing motor vehicles over seven years old is still applied in BiH, which is not

in compliance with the assumed obligations.

- Regarding the areas of standardization, market surveillance and consumer protection in the reporting period, some progress has been achieved, in contrast to the issues of accreditation, harmonization assessment and metrology where results have been insignificant. One of the key things that needs to be worked upon is additional strengthening of institutional capacities and increased cooperation between relevant institutions in order to create favourable conditions for a stable internal market and free trade.
- Some progress was made in the areas of agriculture, rural development and fishery. However, even though Bosnia and Herzegovina has begun exporting fish to the European Union, the lack of legislation at the state level in the area of fishery, in accordance with the acquis, has the potential to create difficulties in the future.
- Also, no detailed analysis was made on the readiness of the most important institutions in the Market Surveillance System - entity inspectorates in charge of operations in the field and monitoring of product safety, in which most of the efforts and funds need to be invested. Further reshaping of the system remains necessary in order to conform to the demands set by the provisions of the acquis.
- 10. Problems still emerge in the creation of a single economic space in Bosnia and Herzegovina; the creation of which should support the free movement of goods, capital, services and persons. This area is crucial for successful business conduct of companies and the perception of our country by international investors. However, the progress in this area is limited and insufficient.
- 11. Concerning provision of services, no progress has been made in harmonization with the acquis, even though the entity agencies did adopt the strategy. The situation is similar in all other non-banking areas, where the entities continue to work without any coordination (Leasing, capital market, postal services...). The level of the implementation of the Action plan did not increase, because the key reforms that are needed imply introducing coordination at the state level for some areas of provision of services, which, in the current political constellation in BiH is impossible to achieve.
- 12. As far as the area of transport is concerned, there have been certain movements that could point to progress in this process. However, a closer inspection, reveals that a lot of main issues remain at a modest level of progress, mainly because of the political reluctance of the entities and modest institutional capacity of the state and entity administrations. A positive event in this area is the opening of the train line Sarajevo – Belgrade in December 2009, which contributes to the process of regional integration. On the other hand, road traffic was not spared the political problems that prevent progress and implementation of planned activities. We should mention the problem of the creation of the main project of the Vc Corridor route (south side of the route) where political problems are involved and where the profession is used as collateral for political disagreements.
- 13. No progress was made in approximation of the Law on Labour which still exists only at the entity and canton level. Although there is a certain degree of cooperation at the entity level, further fragmentation appears at the canton level where local regulations regulate the issues of labour.
- 14. The creation of a 'single economic space' in the financial sector is also hampered by the fact that financial sector companies registered in one entity can only operate in

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- the other by establishing a branch there. This creates an additional administrative burden on business operations.
- 15. One positive matter is that bilateral agreements on social insurance and social security have been signed with Austria, Turkey, Croatia, Serbia, Slovenia, Belgium, Hungary and the Former Yugoslav Republic of Macedonia. Still, it remains to be seen how these agreements will be implemented.
- 16. As in the previous reporting period, we have established that no improvement were made for equal treatment of business subjects without discrimination in regard to local residents, considering the fact that foreigners can establish businesses with special permissions. The result is that local residents establish businesses according to a normative, and foreigners by a concessional, establishment system.
- 17. The Draft law on State Aid System, made in accordance with EU standards, is still with BiH MoFTER, therefore failing to meet any of the deadlines from the Action Plan. It seems obvious that this will be the first broken transition deadline of the Interim Agreement. Again, the biggest losers are BiH citizens, because due to the absence of a Law on State Aid, political officials continue to create diametrically opposed policies of economic development, social and industrial policy and therefore invest in sectors that do not generate new production, employment and development in undeveloped areas.
- 18. There is notable progress in the implementation of the obligations of BiH institutions in the area "Justice, Freedom and Security" compared to the previous reporting period. A positive impulse to a more dynamic realization of the obligations was certainly the concretization of the perspective of a visa free regime for the remaining countries of the Western Balkans.
- 19. Aggravated, slow, and ultimately inefficient parliamentary process is also the result of the fact that for a many areas covered by the Cooperation Policies there is no constitutional competence at the state level. In addition, legislative and executive responsibility is divided between the entities, and entities and cantons. A permanent refusal of the need to transfer specific competences from entity to the state level by the RS Government and lack of harmonization of entity and canton legislation in Federation BiH explain the problem of speeding up the reform processes and also reveals the declarative nature of the support for BiH's EU integration.
- 20. Certain steps were also made regarding the operative level and the functionality of the institutional structures for the implementation of the pre-accession obligations regulated by the SAA and European Partnership, especially of the Reform Process Monitoring (RPM). Although there was an assumption that the establishment and functioning of these bodies would help speed up the process of fulfilling the preaccession obligations, it is quite evident that the key factor for the success of their implementation is actually the existence of political will and consensus for their implementation between the entities.
- 21. Significant progress relevant to the dynamics of inflow of funds from the EU has been made in all areas of application of SAA and European Partnership, as well as in terms of meeting the Copenhagen political criteria. However, monitoring of the process and meeting preconditions in regard to coordination of assistance and information is assigned to an appropriate body within the BiH Ministry of Finance and Treasury. Generally, it can be said that Bosnia and Herzegovina implements, to a satisfactory degree, the obligations under SAA and EP in the area of financial cooperation.

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Our findings in the areas of legislative activities in the process of the monitoring of the European integration correspond to the findings of the Centres for Civic Initiatives. In their report published on November 20, 2009, the CCI BiH pointed out that "the state functions despite, and not thanks to, the government".

According to the CCI BiH, "during the first 9 months of 2009, out of 42 laws identified by the Council of Ministers and submited to parliamentary processing, barely one third (15) were adopted at the Parliamentary Assembly. Out of these 15...only six came from the Work Program of the Council of Ministers. (So out of 96 laws from the Work Program of the Council of Ministers for 2009, during the first 9 months of 2009, the BiH Parliamentary Assembly adopted 6!). Such a low degree of productivity led to the situation that only three months before the end of the year, up to 90 laws from the Work Program of the BiH Parliamentary Assembly have not been adopted."

Fortunately, there are conditions that need to be fulfilled and certain institutions and agencies are outside of the legislative domain, and that is where interdependence in functionality of the agencies and the enthusiasm of individuals on one side, and results on the other, can be observed.

At the Summit of the Heads of State or Government Members of the EU (European Council) held in Bruxelles on December 10-11, the conclusions of the European Council for General Affairs from December 7 and 8, on the expansion, stabilization and association process were accepted. As regards BiH, we refer to Conclusions 38 and 39.

- "38. The Council is still concerned with the development of the political situation and invites BiH to speed up the key reforms as soon as possible. If progress is the goal, then a single vision of leadership on a common future of the country and political will to meet the demands of the European integrations are necessary. The Council has acknowledged that BiH has made progress in fulfilling the measures set in the framework of dialogue on the liberalization of the visa regime."
- "39. The Council invites BiH to fulfil the remaining goals and conditions necessary for the closure of the OHR in accordance with the statement of the Peace Implementation Council from November 18 and 19, 2009. The Council, again, points out its full support to the High Representative/Special Representative of the EU (HR/EUSR) Valentin Inzko. The Council points out that it will not be in the position to consider BiH membership application until a decision is made on the OHR transition into a stronger EU presence. Even though it is underlined that constitutional reform is not part of the conditions for closing of the OHR, Bosnia and Herzegovina must make the initial set of constitutional changes in order to create a functional state and harmonize its constitutional frame with the European Convention on Human Rights. Particularly, the state must be able to adopt, implement and impose the laws and regulation of the EU. These reforms would contribute to a faster integration of the state into the EU..."

We believe that thanks to the "progress in fulfilling the measures set in the framework of dialogue for the liberalization of the visa regime" BiH citizens will soon become equal in status and possibilities with the citizens of other countries of the Western Balkans, despite the current political situation. We hope that Bosnia and Herzegovina will find "the ability to adopt, implement and impose the laws and regulations of the EU" allowing for a faster integration into the EU and thus a better future of all of us. Let's start again from human rights and fundamental freedoms.

Acknowledgements

During the past six months we have received mainly praise and suggestions. What is particularly gratifying for us is that some state institutions have sent us their own assessments and information on the realization of their obligations and thus have helped us create the *Second Semi-Annual Report for 2009*. First of all, we would like to thank the BiH Ministry of Justice, Sector for Execution of Criminal Sanctions and Work of the Penal Institutions for the information they provided that showed us how some institutions implement their obligations even before the given deadlines. So, for example, the Refined text of BiH Law on Execution of Criminal Sanctions, Detention and Other Measures (BiH Official Gazette No: 13/05,53/07,97/07 and 37/09), was sent to the Constitutional-Legal Commission of the BiH Parliamentary Assembly House of Representatives and the House of Peoples for confirmation and official publication. The listed activity was planned for second mid-term of 2009, but it was done in the first mid-term, which represents an additional contribution to easier and more expert application of the Law in practice of the Agency, that is application of the rights of prisoners and detainees.

We would also like to point out the good cooperation with the Joint Commission for European Integrations of the BiH Parliamentary Assembly presided by Mr. Halid Genjac. It is commendable that the Chairman of this Commission publically supports the need to create a Program of Implementation of the obligations under the SAA which would be more than the mere list of activities, deadlines and repositories that we currently have in the Action Plan. We are joining this idea of creating a Program of Implementation of the Obligations under the SAA which must contain a coordinated approach of the institutions and have absolute political and institutional support of competent institutions. Even more so, because the EC Progress Report on BiH in 2009 states: "Coordination between different levels of government is minimal". Further on, in the Report it is stated:

"Lack of coordination, ethnic tensions and lack of resources continue to delay reform. Fragmented policy-making between the State and the Entities remains the main obstacle to efficient work by the State government. The frequent duplication of competencies leads to increased administrative costs."

In the end, we would also like to use this opportunity to thank Mr Željko Komšić, Chairman of the BiH Presidency, who agreed to be our guest at the presentation of the First Semi-Annual Report for 2009 held in the BiH Parliament on July 22, 2009, and to give an introductory lecture on the topic of the Perspective of European integrations of BiH. On this occasion it was pointed out that there is no alternative to European integration and that BiH cannot stay outside this process if it wishes to achieve social and economic growth and better standards for its citizens. It was also pointed out that the responsibility for regulations and standards harmonization lies not just with the institutions of BiH, but also of the entities, Brčko District, and cantons, all the way to the

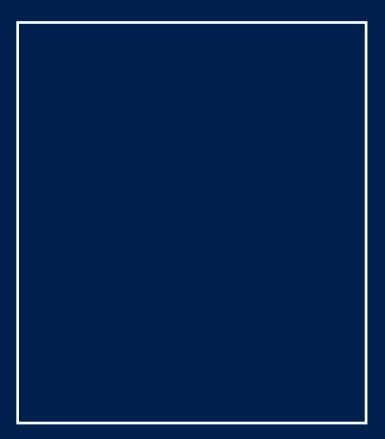
lzvještaj Evropske komisije Vijeću o napretku Bosne i Hercegovine u 2009. godini str. 10.

⁴⁹ Ibid. p.10.

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municipal level of government. The key assessment is that the competent institutions must start doing their job responsibly, fulfil their obligations under the Interim Agreement - SAA on time and create a European aura in BiH.

Many NGOs expressed their appreciation for the opportunity to participate in a forum where civil society does not talk of itself, but discusses, learns and comments on the process of EU integration along with the representatives of state institutions, the academic community and representatives of the international community, primarily the EC Delegation. In cooperation with the BiH EU Info Centres, during the last reporting period, the FPI BiH has had the opportunity to present its reports to the citizens in Brčko, Zvornik and Mostar. In this way, through open conversation on problems we have on this common road, European values are promoted, and we reach a better understanding between all actors in the process of European integration. We use this opportunity to express or gratitude to all of them.







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