

2010 Annual Report

# Monitoring of the BiH European Integration Processes



Foreign Policy  
Initiative BH  
FPI BH

<p><b>MONITORING OF THE BiH EUROPEAN INTEGRATION PROCESSES</b></p>	<p><b>2010</b></p>
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**CONTENT**

INTRODUCTION	4
<b>TITLE I</b> GENERAL PRINCIPLES	9
<b>TITLE II</b> POLITICAL DIALOGUE	13
<b>TITLE III</b> REGIONAL COOPERATION	17
<b>TITLE IV</b> FREE MOVEMENT OF GOODS	21
<b>TITLE V</b> MOVEMENT OF WORKERS, ESTABLISHMENT, SUPPLY OF SERVICES, MOVEMENT OF CAPITAL	25
Chapter 1. Movement of Workers (Articles. 47 – 49 of the SAA), Chapter 3. Supply of Services (Articles. 57 – 59 of the SAA), Chapter 5. General Provisions (Articles 63 – 69 of the SAA)	
Chapter 2. Establishment (Articles 50 – 56 of the SAA)	28
Chapter 4. Current Payments and Movement of Capital (Articles 60 – 62 of the SAA)	31
<b>TITLE VI</b> APPROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES	35
<b>TITLE VII</b> JUSTICE, FREEDOM AND SECURITY	41
<b>TITLE VIII</b> COOPERATION POLICIES	49
<b>TITLE IX</b> FINANCIAL COOPERATION	55
<b>TITLE X</b> INSTITUTIONAL, GENERAL AND FINAL PROVISIONS	59
<b>IN PLACE OF A CONCLUSION</b>	63

## Report for the time period 15. October 2009 – 15. October 2010.

### Introduction

From the aspect of the European integration processes, the last reporting period went between two opposite extremes, a positive and a negative example.

On the positive side, year 2010 will be remembered by a long awaited decision of the European Union (EU) to enable the citizens of Bosnia and Herzegovina to travel to the Schengen countries without visas. The positive effects of this decision are multiple and long-term. The Decision on Visa-free Regime gives back the feeling of belonging to Europe to the citizens of Bosnia and Herzegovina (BiH) - it finally gives them an opportunity to move freely outside the very narrow space of the close neighbourhood, and also gives a chance, primarily to young people from BiH, to personally encounter the values which exist outside the vicious circle of apathy, divisions and nationalism. We do hope that, in long run, this change will lead to creating a different perception of divisions within Bosnia and Herzegovina, and will also generate more public pressure on the government to accelerate the European integration processes. The visa-free regime also imposes the responsibility to prevent any form of abuse of confidence being granted.

On the negative side, there is the fact that in this period the Interim Agreement on Trade and Trade-related Matters (IA) with the EU was breached, which we warned about in last year's reports. Bosnia and Herzegovina has thus become the only country which breaches the Interim Agreement by failing to meet within the set deadlines the commitments it undertook. This primarily refers to the failure to implement the decision of the European Court of Human Rights (ECHR) in the case of "Sejdić and Finci versus BiH", but also to the failure to meet a technical commitment, i.e. failure of BiH to pass the Law on State Aid before July 2010. In addition to the mentioned examples of breaches of the Interim Agreement, it is also important to point out that the Council for Stabilisation and Association, whose role is to supervise the implementation of the Stabilisation and Association Agreement (SAA), has not yet been established in Bosnia and Herzegovina. After establishment of the Council, it will also be necessary to establish the Stabilisation and Association Committee and the Stabilisation and Association Parliamentary Committee.

On the basis of the findings of this report, which covers the period between December 15, 2009 and December 15, 2010, we may conclude that similar breaches of the Interim Agreement will continue in the next year, if a dramatic change in political course does not happen. That is to say, there is a threat of violation of the Stabilisation and Accession Agreement itself, which in the meantime, might come into force. However, speculations indicate the use of various measures, ranging from turning down the requested increase of quotas for fish export, to potential suspension of the SAA. What makes this situation more difficult is the fact that the removal of initial obstacles to the implementation of the SAA demands more political will than technical capacities. Our report, however, states that both were absent in the past period.

Nonetheless, at the beginning of the report we refer to the progress that was made in the past year. This primarily relates to improvement of regional cooperation, which had previously slowed down following elections in 2006. In the first chapter of this report we point out the intensified regional activities in the field of police cooperation, while the

second chapter emphasizes improvements in regional cooperation at the political level. In mid-2010, the first joint session of the BiH Council of Ministers and the Government of Croatia was held. Trilateral meetings were held with Serbia and Turkey, and Turkey and Croatia upon the initiative of Turkish authorities. This initiative resulted in appointment of a BiH ambassador to Belgrade, presence of president Tadić at the commemoration of victims of genocide in Srebrenica held in July 2010, and the passing in Serbian Parliament the resolution condemning the crimes committed in Srebrenica. Visits by Croatian President Josipović to places of suffering of the victims of all sides also contributed to strengthening of relationships between the neighbouring countries.

Although bilateral consultations were initiated with all the countries in the region, we cannot resist the feeling that those activities were only done to satisfy the form, and not to resolve the real open issues. Therefore, in the third chapter we list examples of the issues of borders and property, about which there still is no agreement with neighbouring countries, but also problems with implementation of previously signed bilateral agreements, due to the failure to pass supporting legal acts and lack of technical capacities. Generally speaking, the problem which pervades all aspects of regional cooperation at the bilateral level is a lack of systematically coordinated activities and political commitment to resolve the biggest open issues. However, bearing in mind that relationships were almost completely frozen over the past several years, creation of a better political environment in the region may be considered the first step in that direction, and should be welcome as such.

Among the concrete positive examples, we emphasise regional police cooperation which has so far resulted in the creation of a strong institutional network in the region and also yielded concrete results in combating organised crime and terrorism. There has also been progress achieved in certain aspects of free movement of goods and adoption of customs tariffs for industrial and agricultural products, i.e. reduced customs duties for imported products, which have so far gone as planned.

Progress is also evident in accepting the new approach directives, although the EU 2010 Progress Report for BiH offers a different conclusion. The fact that not all domestic and imported products are subject to testing before entering the market is given as a reason for the negative assessment. Although our findings also confirm the absence of capacities in this field, we still want to emphasise that progress has been made in the legislative area by adoption of five directives, with another four being prepared and the work being done on the next six directives from the list of priorities.

In the field of transportation, civil aviation in particular, and partly in railway transportation, progress has been made in relation to reconciling the regulations with *Acquis Communautaire*. Steps forward have also been made in the areas which relate to current payments and movement of capital, foreign currency policy, although there are still limitations on the amounts of money which non-residents may transfer abroad.

Further, it has been found that the Law on Competition is harmonised with the EU regulations, and so are the supporting by-laws, while the administration of the Competition Council was staffed in compliance with the Rulebook. The short-term priority of the European Partnership to have the Market Surveillance Agency as a fully functioning body was implemented by the deadline.

The highest level of harmonisation with the European standards in the area of internal market was in the field of intellectual property, effectiveness of the Intellectual Property Institute, raising the level of citizens' awareness, and training of judicial bodies. We consider this success a direct consequence of the absence of politicising the process of implementation of adopted laws.

In the areas of justice, freedom and security, significant progress has been made, which can be primarily attributed to meeting the requirements from the Road Map for Visa Free Regime. Out of 73 activities defined by the Action Plan for the Implementation of European Partnership, 49 have been implemented, which equals 67%, although delays of 12 to 18 months were also noticed. Progress is evident in establishing institutions and training their personnel, as well as in adopting the necessary strategies and action plans in the fields of the fight against corruption, organised crime and terrorism, specific investigative activities, and strengthening of the independence of judicial institutions. In relation to visas, border control, asylum and migrations, a series of planned activities are being progressively implemented. It is important to emphasize that meeting conditions from the Visa Free Roadmap resulted in the fulfilment of SAA commitments far before the deadlines planned by the Agreement itself.

Unfortunately, the list of positive examples is hereby exhausted. In this report again, there are far more areas in which delays in reforms and poor implementation have been recorded. However, instead of listing all negative examples, we wish to draw attention to the underlying causes, since the nature of obstructions is similar in most examples.

As mentioned earlier, in many areas we noticed that certain legal solutions were prepared for the sake of meeting the form, while their further implementation was not possible. This specifically refers to the failure to pass the by-laws due to inadequate technical capacities. For example, this phenomenon was noticed in chapters which refer to free movement of industrial goods, agriculture and fishery, as well as application of the directive on the social status of drivers. It is also obvious that due to the absence of an obligation to observe the harmonisation of by-laws with the Acquis, it happens that a law, which is harmonised, cannot be implemented because its supporting regulations are not.

Absence of personnel capacities is seen as a serious obstacle to the application of the SAA obligations in the following fields: application of laws which regulate internal market, application of technical legislation on product safety and market monitoring, civil aviation and transportation in general, as well as in many other areas.

Also, there is no communication or coordination between institutions, especially between different government levels. The most blatant example is the absence of institutionalised coordination between the state and entities at legislative, political and technical levels in the entire process of negotiation with the EU. Although an interim inter-agency body for negotiations with the EU has been established, there is still no regular, mandatory cooperation between the government institutions. Another example relates to the movement of workers and creation of a single market, since the legislation is fragmented and creates different conditions, which has put off investors so far.

Another phenomenon we mentioned in the previous reports, and which has intensified in the meantime, is the harmonisation of the RS entity legislation with the Acquis, while there is no harmonisation of legislation between the entities. This is the case in the field of establishment, and in the short-term, the RS is to be commended for that. A similar practice is repeated in setting up entity institutions for the areas which require single coordination at the state level, as is the case with the Economic-Social Council. In the long run, this practice does not lead to competitiveness of any part of the market, since the entire BiH is considered a small market, let alone when additionally fragmented.

The Federation of BiH (FBiH) also takes part of the blame for this practice, since it is much slower in harmonising its legislation with the Acquis. In the interviews made as a part of this research, a great number of interviewees complained about the indifference of institutions in the Federation of BiH when it comes to the European integration processes,

even in institutions which are explicitly in charge of coordinating these affairs. In time, this phenomenon will become particularly problematic due to the existence of ten cantons in the Federation of BiH, which will be to a large degree in charge of applying the European obligations in the areas for which they are responsible.

In comparison with the previous reporting period, there are more delays in implementing a significant number of measures relating to the public administration reform, the area of human rights and protection of minorities, the position of women and children, the fight against violence against children, monitoring of the implementation of the juvenile delinquency strategy, etc. A large number of laws whose passage was shifted from year 2009 to year 2010 have still not been implemented. This is the case with the Laws on Animal Waste, Fodder, Cultural Heritage, Veterinary Medicine, etc. For certain legal projects, deadlines have even been shifted by two years.

As in previous years, political obstruction continued to be the main reason for failure to pass a whole series of laws at the state level. We have already mentioned the example of the Law on State Aid, but there are other laws, such as the Law on Promotion of Small and Medium Enterprises and Entrepreneurship, Law on Free Legal Aid, Law on Information Society Development Agency, Law on Veterinary Medicine, Law on Environmental Protection, Gas Law, etc. The passage of framework laws was given up even in cases when entity laws were passed, harmonised mutually as well as with the Acquis, as was the case with the foreign currency policy, capital market, securities, property rights, etc. This is another practice which has intensified in the last year.

This point is best illustrated by the data on the dynamics of the passage of laws in the BiH Parliamentary Assembly. By October 2010, out of the planned 111 laws, only 27 were passed, of which only 7 European laws, which related to cooperation policies. Out of the total of 35 rejected laws, 23 were rejected through the entity voting mechanism – three of them related to fulfilling the European integration obligations, while four still remained in the procedure before the elections. A large number have never been passed by the Council of Ministers, and some of them have never left the responsible ministries, or even the working groups which were charged with preparing them. It is interesting that the laws proposed by the Council of Ministers to the Parliament were rejected there by representatives of the same parties which were part of the government.

Finally, we point out the very important conclusions from the meeting of the Interim Committee for Stabilisation and Association, which was held in June 2010 in Sarajevo. The meeting of the Interim Committee was crucial for the assessment of progress BiH was making, since many disputable issues identified at the Sub-committee meetings could have been resolved in the meantime. The most important issues identified at previous meetings were taken into consideration; however this meeting was crucial for the conclusion that BiH had violated provisions of the Interim Agreement. Due to the failure to harmonise the BiH Constitution with the European Convention on Human Rights and Basic Freedoms, it was emphasized that in such conditions, the member-states of the Union could not be expected to assist BiH by granting it additional commercial benefits (re. request for increase of fish export quotas). The Commission pointed out that this was a very important issue for the Union, and that the Union would, if the process of harmonisation took too long, consider potential consequences for BiH.

However, results of the general elections held in October 2010 offer a chance to move in the direction of more devoted implementation of the SAA commitments. The conclusion of this report coincides with the announcement by some political parties that their selection of coalition partners will be made on the basis of joint program objectives, not on the distribution of offices, as was the case until now. In that regard, we do hope that



the program objectives around which the new government will assemble will be based on meeting the European obligations, and that our next report will record progress in the European integration processes, not stagnation and delays.

For the time being, we have to conclude that in the second year after the signing of the SAA, progress was achieved only in a limited number of areas. Extremely slow fulfilment of obligations has forced us to stop recording the reform stalemate in two semi-annual reports, but instead, to start publishing, from now on, only one annual report, sufficient to cover the small number of changes which happen between the two reporting periods.

## TITLE I

### GENERAL PRINCIPLES

#### **a** Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership

Bosnia and Herzegovina is the only country in the region which, on several accounts, violates the Interim Agreement on Trade and Trade-related Matters with the European Union. In this section we emphasise the violation of Article 2 of the Interim Agreement. The Action Plan of the BiH institutions for the implementation of objectives and priorities of the European Partnership foresaw that in 2009 the Election Law should be harmonised with the European Convention on Human Rights, that the Venice Commission report should be accepted, and later also the rulings of the European Court of Human Rights related to the Sejdić-Finci case. However, the implementation of this plan was postponed to the following year. Absence of political will to harmonise the BiH Constitution with the Convention and the ruling of the Human Rights Court has its deeper reasons in disagreements about the future of BiH, its organisation and functionality. This conflict paralyses the state institutions and reduces their functionality necessary for the adoption of the European standards.

In its short-term priorities, the European Partnership puts special emphasis on legal and institutional creation of direct and indirect prerequisites for the implementation of general principles of the Agreement on Stabilisation and Association. From among those that were fulfilled after the conclusion of last year's report, we single out the adoption of the Law on Cessation of work of Ombudsman in Republika Srpska with an aim to strengthen the function of the Ombudsman for human rights in BiH. The Republika Srpska (RS) Assembly adopted the said law at its extraordinary session on December 23, 2009.



## Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

By Article 2 of the SAA, BiH undertook the obligation to fully meet the most important international conventions on human rights and freedoms: Universal Declaration on Human Rights; European Convention of Human Rights and Freedoms; Helsinki Final Act; Paris Charter for New Europe. Unfortunately, the BiH Constitution is still in direct or indirect conflict with almost each and every one of the listed conventions.

Non-compliance of the BiH Constitution with the principles on which the EU is based is a consequence of “wrong coalescing” of the society with incomplete Dayton norms which favour ethnic collectivisation, rather than the rights of individuals, irrespective of their religious or ethnic affiliation. This ‘wrong coalescence’ is the biggest obstacle to reconciling the current system with the European Convention of Human Rights, and the ruling of the European Court for Human Rights in Strasbourg. In the system which is predominantly based on collective rights, and the rights which a priori exclude minorities from the processes, it has become normal for pre-election campaigns to be inundated with political nihilism, negation of the statehood of BiH, and indirectly, its EU prospects in one part of Bosnia and Herzegovina. Elections, although organised without incidents, but in accordance with the law which has not been changed and harmonised with the European principles, unfortunately deepened the status quo and divisions in the society.

Lack of resoluteness of BiH institutions reflects on the way they approached the implementation of the ruling of the European Court of Human Rights. The Council of Ministers created a working group to draft amendments to the Constitution in accordance with the ruling of the Sejdić-Finci case. However, after three initial meetings (at the first meeting, only rules of procedure were determined), the working group did not manage to follow the set deadline, which would have made it possible for the amendments to be included in the BiH Constitution before the announcement of the general elections in April 2010. Then, the Council of Ministers asked for a new action plan to be drafted, and at a subsequent meeting of the working group, the Council of Europe explained the need to establish an ‘institutionalised’ process of altering the Constitution. Even after holding several meeting afterwards, the working group did not manage to move further than the discussion about the extent to which their work should be institutionalised, and finally, it was not possible for this group to continue its work due to the lack of a quorum.

We further single out international and regional peace and stability as prerequisites for the development of good neighbourly relations, including the level of mutual concessions in relation to movement of persons, goods and capital, especially in the domain of the fight against organised crime, corruption, money laundering, illegal migration, trafficking, especially trafficking in humans. In this chapter, emphasis is also put on efficient functioning of the entire system of internal affairs, security, citizens’ personal data, etc.

In that context, in the first half of 2010, Bosnia and Herzegovina participated in a series of regional activities which should lead to better implementation of the conventions which relate to police cooperation in Southeast Europe, and harmonisation of inter-state agreements on the so-called red arrest warrants. The process of agreement and harmonisation continues. At the third meeting of the Committee of Ministers of the Convention for Police Cooperation of States of Southeast Europe, held on May 21, 2010, important conclusions on cooperation in the field of protection of personal data were adopted, and training courses on crucial issues of the Convention were harmonised.



## Example: Granting visas to Kosovo citizens

Absence of agreement in BiH related to the recognition of Kosovo independence reflected on the issue of enabling the citizens of Kosovo, holders of a Kosovo passport, to travel through BiH. Having recognized this problem, the Ministry of Foreign Affairs of BiH (MFA) sent a letter to the BiH Presidency on March 16 in which it proposed a solution applied in other countries which also had not recognized the independence of Kosovo, but which have undertaken steps to enable its citizens to travel through their territories. In its letter, the MFA proposed to the BiH Presidency to apply this solution, which relies on the decision of the European Commission EC 333/2002.

The MFA letter acknowledged the position of the BiH Presidency not to recognize independent Kosovo and Kosovo passports; however it proposed granting BiH visas to the citizens of Kosovo on a special travel document in order to enable free movement of people. The travel document would be issued exclusively for the purpose of identification by responsible BiH institutions, and the MFA would define practical proposals for the application of this decision within fifteen days.

However, the then presiding member of the BiH Presidency, Mr. Nebojša Radmanović, sent a response in which he repeated that they did not recognize independent Kosovo, and Kosovo passports, and that they did not accept the MFA proposal. In this letter, concern was expressed over the validity of the documents held by Kosovo citizens, but also expressed willingness to assist the Kosovo representatives who participated in certain regional initiatives, like meetings of the Regional Cooperation Council.

Following that, the Council of Ministers passed a decision on May 8 on the basis of the position of the Presidency, in which it gave the approval to the MFA to grant visas on a special travel document to those citizens of Kosovo for whom it determined 'to be of special interest for BiH'. In accordance with that decision, the MFA sent its instruction to all diplomatic-consular missions of BiH (DCM) on granting visas to Kosovo citizens on a special form sent to them. However, in the instruction sent to the diplomatic-consular missions, the MFA stated that the Council of Ministers was in charge of determining who the persons of 'special interest for BiH' were. In line with that, the decision on each individual application for visa for a Kosovo citizen must first be approved by the Council of Ministers. Such lack of understanding that Kosovo citizens should be given the opportunity to travel through the territory of BiH in accordance with their needs, and not only in situations which are of 'special importance' to our state, seems unjust, especially from the viewpoint of a state whose citizens were only recently granted the right to freely move in the Schengen zone.



## TITLE II

### POLITICAL DIALOGUE

#### **a** Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership

Political dialogue between BiH and the European Union sets the framework and key principles of full integration of Bosnia and Herzegovina into the EU, which primarily refers to the convergence of positions and interests of contracting parties especially in the domain of joint foreign and security policies of the EU.

The general assessment of fulfilment of the accepted obligations in this domain in 2010 could be detected through answers to several crucial questions from the Stabilisation and Association Agreement, i.e. its chapter which refers to political dialogue: How successful was BiH in bringing its positions closer to the positions of the EU on crucial foreign policy and security issues? To what extent were regional cooperation and good neighbourly relations improved? Have they been improved? With recognition of certain nuances and encouraging steps forward, the answers to these questions unfortunately have not changed, compared to last year, and they remain mostly negative. The EU Progress Report for 2010 confirms this finding in most of its assessments.

In accordance with the European Partnership principles, which refer also to this SAA chapter, in the first half of this year the priority for BiH was to provide institutionalised coordination between the state and entities at legislative, political and technical levels. One cannot claim that such coordination does not exist at all, however, there are very few positive elements to call it successful. A temporary inter-agency body for negotiations with the EU has been established but there is no regular communication between the institutions. It seems that these minimal inter-institutional efforts were made only to meet the condition of having someone sitting on the other side of the table and answering the questions of the EU experts, without regular cooperation, as regulated by the rulebooks, and as defined by a joint code between the BiH institutions. This is, by itself, a consequence of the blockade constructed by different views of the state of BiH, its functionality and its future. The direct consequence is a recurring delay in taking one of the first steps in the SAA implementation, which is the formation of the Stabilisation and Association Council. In accordance to a self-imposed Action Plan, the fulfillment of this obligation is over a year late. The political dialogue should primarily happen within the Stabilisation and Association Council, once

SAA comes into force. Unfortunately, it is highly unlikely that SAA will come into force soon due to the fact that BiH is in breach of the Interim Agreement itself.

The last session of the Interim Committee for following the dynamics of the fulfilment of obligations from the IA was held in June 2010, and most probably it will not be held again. Namely, the Stabilisation and Association Agreement (SAA) with BiH has now been ratified by all member states of the EU. From now on, instead of the Interim Agreement, the SAA shall take effect, and all provisional mechanisms shall be replaced by permanent ones. This also refers to the Stabilisation and Association Council which shall be a permanent domestic controlling mechanism for fulfilment of the SAA obligations at the highest operational level (ministers, agency directors) instead of the Interim Committee, and which shall have its sub-committees at the lower levels. BiH has missed its chance to prepare well for the SAA's entry into force, and in addition to the post-election vacuum in forming the government at the state level, it has also allowed a vacuum in preparing for the fulfilment of obligations accepted by signing the aforementioned agreement, especially because the formation of the Stabilisation and Association Council is directly connected to the formation of the Council of Ministers BiH. This is where the absence of political consensus for establishing a clear horizontal and vertical coordination related to the EU integration processes is most visible. It makes the BiH institutions an undeserving partner of the EU institutions in implementing the Agreement. The BiH Progress Report for 2010 also identifies this lack of functionality through obvious lack of political will for passing the Census Law and Law on State Aid, which places BiH among the very few countries in the world which do not have census prepared.

## **b** Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

Judging by last year's progress report, whose conclusions were repeated in this year, Bosnia and Herzegovina has so far joined the positions, statements, demarches, and other decisions in the domain of joint foreign and security policies of the EU in 67 different cases.<sup>1</sup> Taking into account the complex decision-making structure, and particularly the fact that key political leaders in BiH do not often have uniform positions on foreign policy subjects, this dynamics may be considered a good result.

Steps forward were also made in the dynamics of regional cooperation. The first session of the Government of Croatia and the BiH Council of Ministers was held on June 21, 2010 in Split, when open issues of cross-border cooperation were discussed, including the joint fight against cross-border crime, and questions of international aid and readmission. A trilateral consultation mechanism was also established at the level of foreign ministers of BiH, Croatia and Turkey, as well as BiH, Serbia and Turkey. Still, this trilateral mechanism is more about the Turkish initiative, i.e. a new Turkish foreign policy strategy, than it is about a true step forward as a result of good-neighbourly self-initiative. Sometimes it seems that these trilateral meetings and their declarations exist for themselves, since the key regional issues remain open. The Council for Interstate Cooperation between BiH and Serbia, and BiH and Croatia, has not met in the last five years, and meetings of the most senior officials of Serbia and BiH were held upon Turkish initiative, or they happened on the margins of international forums. They have not been organised on a bilateral basis.

<sup>1</sup> Progress Report for 2010 (Izveštaj o napretku za 2010. godinu) ([www.dei.gov.ba](http://www.dei.gov.ba))

Bilateral political consultations were initiated, as well as consultations at the operational level, with Montenegro, Macedonia, Serbia and Croatia. However, it is difficult to resist the impression that these activities were tailored for the sake of appearance, and were not really intended to resolve problems. Basic problems are still awaiting more political will. Among these problems is also the aforementioned example of BiH which continues to negate elementary rights of Kosovo citizens who are in transit through BiH, due to the veto exercised by Serb representatives. Following exclusively the international legal norm stemming from the fact of non-recognition of Kosovo's sovereignty, BiH resorted to a violation of other international legal norms which indicate the need to make travelling easier for the citizens of a country with which there are no diplomatic relations. This is apparently a politically motivated action to force Kosovo citizens to take Serbian passports in order to be allowed to travel through or to BiH. Despite the fact that some EU member countries which have recognized the independence of Kosovo, as well as the Regional Cooperation Council (RCC), seated in Sarajevo, which frequently invites the representatives of Kosovo to attend its conferences, had suggested in good faith that this problem should be adequately resolved, sufficient internal strength could not be found to adopt the appropriate regulations, especially those which would not imply international recognition, but would help people to travel, when necessary, through BiH.



### Example:

#### Adjustment with the EU foreign policy positions

Ever since 2003, in accordance with the Thessaloniki Agenda, the European Union has been inviting the countries from the Stabilisation and Association Process to join its foreign policy positions, demarches, declarations, and even sanctions. As we mentioned earlier, BiH has reacted positively to most of the requests received so far. It is interesting that the EU requests possess authority and strength which, for a moment, dissolve all the difficulties which are otherwise connected with the process of reconciling the positions at the state level. Bosnia and Herzegovina does not have a team which would follow, analyse and submit appropriate information and analytical overview of the positions harmonised with the EU requests, to the MFA BiH and BiH Presidency. BiH does not have adequate analytical capacities either, which would support the process of weighing the EU requests, since each and every EU request does not always have to be a priori and entirely good for BiH.

Formally, it is encouraging that BiH reacts promptly to the EU requests. But in essence, the superficiality which follows that process is disastrous. It further demonstrates the absence of functionality of the system that is based on improvisation. The BiH Presidency has constitutional competences to conduct foreign policy, but has no analytical mechanisms; because they have not been foreseen by staffing plans. Therefore, the BiH Ministry of Foreign Affairs, together with the Directorate for European Integrations, should be institutions which provide analytical and technical support to the Presidency. The BiH Ministry of Foreign Affairs General Administration Department has more employees than its EU Department and Analysis and Planning Department together, although the latter are actually the only bodies which could provide the support when it comes to harmonising positions with the EU. The work of the Directorate for European Integrations (DEI) is reduced to handling only technical issues, while there is no systemic coordination between the MFA and DEI. Therefore, it is clear that BiH does harmonise its positions with those of the EU, but it does so by inertia, sometimes superficially, due to the lack of technical capacities.





## TITLE III REGIONAL COOPERATION

### **a** Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership

The European Partnership priorities of regional cooperation include strengthening of regional cooperation, reconciliation and good neighbourly relations and a tighter economic cooperation through the implementation of the Central European Free Trade Agreement (CEFTA). One of the priorities is enhancing cooperation with neighbouring countries, notably on cross-border cooperation, on the fight against organised crime, trafficking and smuggling, on judicial cooperation and border management. Furthermore, respective authorities had to find a way of properly funding the refugee return fund.

There are some visible signs of progress in good-neighbourly policy. However, BiH and Croatia still have not solved property relations, and there is also an open issue of BiH having free access to the open sea. Despite obvious borderline and property issues, bilateral relations with Croatia have generally improved. On 14 April 2010, the President of Croatia Ivo Josipovic visited BiH and paid respect to the victims of war, and in his address to BiH parliament expressed regret because of Croatia's contribution to divisions in society and innocent victims. Intensified cooperation is also evident through a number of bilateral agreements, including cooperation in the field of information society and electronic communication as well as the restoration and modernization of the Sava river waterway from Račinovci to Sisak. Very importantly, an Agreement on mutual recognition and enforcement of court rulings in criminal matters has also been signed. The Presidency of BiH has passed a decision intended to further stimulate investment protection with Croatia.<sup>2</sup> Furthermore, the two countries signed an agreement on police cooperation in the fight against cross-border crime,

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*The European path of Bosnia and Herzegovina continues to be under pressure of the basic conflict of two concepts: a strong state structure with clearly defined competencies and capacity to implement reforms, on one hand, and a weak state structure which is merely a sum of entity wills, on the other. This conflict paralyzes the state institutions and deprives them of the vigour and functionality necessary for adoption of the European standards.*

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<sup>2</sup> BiH Presidency held its 76th session, 26. August 2010.

which had been initialled at a joint session of the two governments in Split in June 2010. The Agreement defines ways of intensifying cooperation between police agencies through the exchange of information in investigations and the appointment of police liaison officers.<sup>3</sup>

There are also unresolved border issues between BiH and Serbia, and a lack of formalized dialogue through the Inter-State Council for Bilateral Relations. At the beginning of 2010, Serbia gave its agreement to a new BiH Ambassador to Belgrade, a position that had been vacant for the last three years. Also, in March 2010, the Serbian Parliament adopted a Resolution on condemning crimes committed in Srebrenica. An agreement on police cooperation between BiH and Serbia was signed in September 2010. It is intended to increase the efficacy of combating all types of criminal activities and to strengthen cooperation in the elimination of threats to public security and public order and the prevention of organised crime, terrorism and corruption. It also includes cooperation in the protection of the state border in the cross-border region and joint activities in the education and training of staff and data protection.

Bosnia and Herzegovina and Montenegro signed an agreement on regional and international cross-border traffic that will open new border crossings between the two countries. Border issues with Montenegro have been successfully solved.

A more intensive cooperation between the regional police services in 2010 contributed to the efficient battle against organised cross-border crime. Further implementation of the Police Cooperation Convention in South-Eastern Europe in 2010 was of crucial importance. Ministers of Interior of Romania, Moldavia, Macedonia, Serbia, Montenegro, Albania and the BiH Minister of Security met in Sophia (Bulgaria), in May 2010, to discuss and to analyse the implementation of the Convention and future activities that would strengthen police cooperation. During the meeting several documents were adopted in order to formalise further police cooperation and development of data protection. Bosnia was praised by the Southeast European Cooperation Initiative for its efforts in cross border police cooperation with neighbouring Croatia and for the efficient cooperation of state law enforcement agencies.

In May 2010, the presidents of Croatia, Montenegro, Serbia and the chairman of the Bosnia and Herzegovina Presidency met in Sarajevo (at the 21st session of the Igman initiative) and pledged to work closely on the European path. On 2 June, the countries of the region pledged during the EU-Western Balkans high-level conference in Sarajevo to enforce their political reforms and to strengthen regional cooperation.

According to the European Partnership, Bosnia and Herzegovina is also obliged to ensure the proper funding of refugee return, contribute to the full implementation of the Sarajevo Declaration and complete the process of refugee return and achieve significant progress towards their economic and social integration. However, according to the statistics of UNHCR (March 2010) there were still 113,594 displaced persons registered in Bosnia and Herzegovina and more than 7500 internally displaced persons continue to live in poor conditions in collective centres.<sup>4</sup> Lack of resources of the State level institutions has contributed to the prolonged displacement. Only in June 2010 (after 18 month delay) the BiH Parliament adopted the revised State Strategy for the implementation of Annex VII of the Dayton Agreement. Obstacles to return still include lack of economic prospects and access to adequate health care but also the frequent presence of a hostile attitude of the local population.

<sup>3</sup> Minister Ahmetović spoke at the press conference on the occasion of signing the Agreement between the Council of Ministers BiH and the Government of the Republic of Croatia on police cooperation in combating cross-border crime. Press release, BiH Ministry of Security, September 17, 2010.

<sup>4</sup> UNHCRs statistics as of 31 March 2010 [http://unhcr.ba/images/stories/Stats/sp\\_03\\_2010.pdf](http://unhcr.ba/images/stories/Stats/sp_03_2010.pdf)

## **b** Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

During 2010, Bosnia and Herzegovina displayed an active participation in regional initiatives. In the context of regional cooperation initiatives, Bosnia and Herzegovina still continues to be an active participant in 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 (ECAA). As of 1 January 2010, Bosnia and Herzegovina became a non-permanent member of the UN Security Council for a two-year term.

BiH is also obliged under Article 15 of the Stabilisation and Association Agreement to sign regional cooperation agreements with the other countries from the Stabilisation and Association process within the first two years of it coming into force. Croatia, for example, has signed that agreement only with Macedonia so far.

CEFTA is still a big challenge for BiH due to the fact that the BiH economy can barely cope with the competition and in addition to that the decision making process is politically perplexed. Bosnia's trade deficit with the CEFTA countries totalled 726 million KM (BAM) through the first 6 months of 2010 bringing to 5 billion KM the trade deficit accumulated since 2006, when Bosnia joined CEFTA.<sup>5</sup> BiH will have to put in additional effort in order to keep up with neighbouring countries like Serbia and Croatia. The sum of foreign investment in 2008 reached almost 700 million Euros. In the beginning of 2009 foreign investment started to fall and reached around 452 million Euros. In the first half of 2010 foreign investment reached a low of 121 million Euros which is 41% less than in the same period of 2009. At the same time neighbouring countries report a big surplus in trade with CEFTA countries and push for further liberalisation of trade.

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*In most instances, BiH has responded positively to the EU requests to harmonise foreign policy positions, join resolutions, and even international sanctions. However, the mechanism used for the aforementioned is interesting. Everything suggests superficiality according to the principle: whatever is good for the EU and its leading member countries is also good for us. Due to crucial disagreements, BiH has not yet developed mechanisms for adequate consideration and preparation of positions measured according to BiH interests as well.*

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### **c** Example: Regional police cooperation

Success that has been made so far in regional cooperation in combating organised crime and terrorism is a direct result of fulfilment of EU conditions, evidenced in the creation of a strong institutional network in the region.

A great number of regional initiatives and bodies operate within different security frameworks. This includes the coordinating activities of the Regional Cooperation Council

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<sup>5</sup> [http://www.seenews.com/news/latestnews/bosniaandherzegovina-mediareview\\_\\_\\_oct18-113441/](http://www.seenews.com/news/latestnews/bosniaandherzegovina-mediareview___oct18-113441/)

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*There are some visible signs of progress in the good-neighbourly policy, which is still deemed to be insufficient, considering that some border and property issues have not been solved for a long time. Anyhow, there is a window of opportunity after some positive signs from Serbia and Croatia.*

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(RCC), the Southeast European Cooperative Initiative Regional Centre for Combating Trans-border Crime – SECI, Centre/Southeast European Law Enforcement Centre – SELEC, the Police Cooperation Convention for South East Europe – PCC, the Southeast Europe Police Chiefs Association – SEPCA, the Southeast European Prosecutors’ Advisory Group – SEEPAG, the Regional Anti-Corruption Initiative – RAI, and the Migration, Asylum, Refugees Regional Initiative – MARRI. Furthermore, donors have launched a number of actions aimed at strengthening the regional dimension of the rule of law. These include in particular the Prosecutors’ Network of the Western Balkans, creating direct linkages among the prosecutorial services, and the setting up of the International Law Enforcement Coordination Units – ILECU, strengthening national platforms for international police and law enforcement cooperation.

This institutional framework and mutual regional endeavour has generated a few successful inter-state police actions against drug traffickers. The perpetrators accused of killing Croatian journalist Ivo Pukanić were also brought to justice thanks to the joint police action of Serbian and Croatian Police.

Furthermore, cooperation in judicial matters has finally prevented any further possibility that perpetrators could escape prosecution only because they possess citizenship of a certain country and therefore cannot be extradited.

EU support has helped Bosnia and Herzegovina and the countries in the region to boost their joint anti-criminal capacities, as a result of which the Western Balkan countries are slowly but steadily getting out of a realm in which it was possible for criminals to seek protection in neighbouring countries.

## TITLE IV FREE MOVEMENT OF GOODS

### **a** Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership

The European Partnership priorities related to the free movement of goods for the reporting period are as follows:

1. Improve and implement the legal framework for standardisation, metrology, accreditation, and certification of products in order to harmonise them with EU standards and best practices; bring technical regulations closer to the Acquis; strengthen infrastructural capacities, quality and institutions, and create the legal basis for harmonisation of assessment procedures.
2. Provide for continuous progress in adopting the European norms (EN).
3. Establish mechanisms of internal consultations and information about new technical regulations prior to adoption of measures which have impact on trade.
4. Provide for full functionality of the Agency for Market Monitoring, and continue to undertake measures to establish market monitoring structures which meet the requirements of the Acquis for free movement of goods.
5. Adopt the State Law on Pharmaceuticals and Medical Devices, and establish the State Agency for Medical Products.

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*It is obvious that the passage of bylaws which refer to adoption of technical regulations in this field is too slow. And it makes the application of adopted laws impossible. It is noticeable that the work is going on in relation to personnel capacity strengthening of certain agencies, however we can still say that after little more than two years from the Interim Agreement's entry into force, BiH institutions are still not ready to meet the accepted obligations in this field.*

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In this area, we put focus on the need to develop a detailed long-term plan of activities with an aim to achieve certain objectives as soon as possible, such as facilitation of export of priority products, or protection of people from extremely hazardous products. Unfortunately, the implementation of planned activities becomes impossible, since what is mostly missing are technical regulations, appropriate quality infrastructure (especially test laboratories), institutions which implement those regulations (for example, appropriate departments in entity inspectorate offices), adequate knowhow and skills

of the companies for the application of new regulations, etc.

Still, certain progress was recorded in several areas in this reporting period. This primarily applies to acceptance, implementation and application of the new approach directives. In the BiH Official Gazette five instructions were published including the directives on low voltage instruments, machine safety, electro-magnetic compatibility, elevator safety and personal protective clothing. Expert teams have finished their work on adopting four other directives, and they are working on six new directives from the priority list (gas instruments, pressure equipment, toy safety, non-automatic scales, construction products, devices in explosive/hazardous atmospheres).

However, the EU 2010 Progress Report for BiH states that in this area, BiH progressed poorly despite the acceptance of several new approach directives. As a reason, it states that not all domestic or imported products are tested before they enter the market. The major weakness is the absence of a coherent system for checking product safety.

In regard to institutional capacities, our findings also confirm that the Market Surveillance Agency is practically ready for implementation and support of entity inspectorates in their implementation of the new approach directives on the ground; however the inspectorates are not yet ready for that activity, since it is essentially different from the activities they currently conduct. Additionally, there is a fear that the companies offering products to which the new approach directives apply will not have enough time or knowhow before the end of the transition period, to conform their products with the essential requirements of these directives, to successfully pass the procedure of assessment of conformance with each applicable directive, and to legally mark their products with an appropriate CE mark.

As for the personnel-related reinforcement of the ministries responsible for technical legislation, in the Ministry of Foreign Trade and Economic Relations BiH, a Department for Technical Regulations is staffed by two civil servants and one employee. By the end of 2010, it plans to employ additional two civil servants. In the Ministry of Industry, Energy and Mining of the RS, a Department for European Integration and Quality Infrastructure has been created, which is responsible, among other things, for the coordination of activities related to construction, development and maintenance of the system of quality infrastructure for industrial products and standardisation and metrology in the RS. The Department currently has three positions filled, out of five systematised workplaces, and the plan was to staff additional two workplaces by the end of the first half of 2010. The Ministry is in the final stage of employing 21 new employees.

In the veterinary area, the BiH Veterinary Office has not proposed any laws, while entity laws remain in force. Within the priorities under Item no. 2, adoption of the following laws is envisaged: Law on animal waste, Law on fodder, Law on veterinary medicines, and amendments and changes to the BiH Veterinary Law. The institutions in charge of preparation of the four laws are the Veterinary Office and the MoFTER. However, we also note the adoption of 42 by-laws and decisions in this area, all harmonised with EU regulations, out of the 58 in total prepared by the Veterinary Office.

Within the priority stated under item 3, the passage of changes and amendments to the Law on General Safety of Products has been planned; it was adopted and published in the BiH Official Gazette no 102/09.

Passage of by-laws which relate to the adoption of technical regulations from this field is a very slow process, which, by itself, makes the application of adopted laws impossible. It is obvious that work is being done on personnel-related strengthening of certain agencies, however we can say that, after little more than two years upon entry into force of the Interim Agreement, the BiH institutions are still not ready to meet the accepted obligations in this area.



## **b** Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

The program of measures for the implementation of the Interim Agreement / Stabilisation and Association Agreement in the period which is subject to analysis foresaw the adoption of customs tariffs for 2010 for industrial and agricultural products, adoption of four laws (Law on Amendments and Changes to the Customs Tariff Law BiH, Wine Law BiH, Law on Protection of Indications of Geographic Origin, Law on Trademark, and passage of the Decision on Import of Passenger Vehicles, Cargo Vehicles and Used Pneumatic Tires. All the aforementioned was implemented, except the passage of the BiH Wine Law, which entered procedure on August 17, 2010.

However, it is important to mention that the implementation of the said laws has been slowed down or even disabled due to the failure to pass the supporting by-laws. Unfortunately, we have to conclude that just a formal passage of laws is a regular practice, which prevents the continuity of the entire process, from their passage to implementation. In this sense, we point to an example of the number of actions that need to follow the adoption of the BiH Wine Law, which needs to be followed by adoption of 18 by-laws – this begs a question as to when its application could start, bearing in mind the earlier dynamics of implementation of other laws.

No proposed law related to Section IV – Free movement of goods, Chapter III Joint provisions (Articles 32-46) of the Stabilisation and Association Agreement between BiH and EU is in the parliamentary procedure in the BiH Parliament.

As for reducing import duties, these activities have so far been going on as planned. Import duties for industrial products which come from the EU were reduced to 25% of the initial duty (Appendix I.b), and to 60% of the initial duty (Appendix I.c). As for the import of agricultural products from Appendix II of Protocol I and Appendix III.d, import duties were reduced to 60% of the initial duty and to 25% of the initial duty for products listed in Appendix III.c. Customs tariffs for 2010 for industrial and agricultural products have been adopted, as well as the Decisions on Tariff Quotas for Agricultural Products, Wines and Alcoholic Beverages (Protocol 7). Judging by the aforementioned, the legislative activities were directed toward the opening of the BiH market; however, adoption and application of the laws which regulate the internal market were not at the required level. Also, BiH institutional capacities are unable to absorb all the changes that come with fulfilment of the Interim Agreement obligations. Therefore, a conclusion is drawn that the accepted obligations may not be fulfilled only by adopting the legal regulations, but that there has to be an adequate institutional reform in the sense of strengthening the implementation capacities.

We now return to the example of adoption of the new BiH Wine Law which needs to be in conformance with EU regulations, and which stems from the obligation based on Protocol 7. In the meantime, until the new law is adopted and implemented, the Law on Wine, Brandy and Other Grape and Wine Products which is insufficient and practically inapplicable, is in force; the Ministry of Foreign Trade and Economic Relations has "bridged" this period until the passage of the new law by passing a Decision by which it enabled regular placement of wine on the market, in a manner in which entity, i.e. cantonal bodies may continue to regularly issue decisions on trade in wine. The European Commission has confirmed the list of authorized institutions which may issue decisions

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*Judging by the aforementioned, legislative activities were directed toward opening of the BiH market; however, it is obvious that adoption and application of the laws which regulate the internal market are not at the required level. Failure to pass the BiH Wine Law testifies to the lack of interest of the government to regulate such an important production field in BiH, into which much time and energy was invested during the negotiations which preceded the SAA signing.*

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which follow export of wine into the EU; however this situation creates problems for the wine producers in BiH. It is clear from this example that the authorities are not interested in regulating such an important production area in BiH. Much time and energy was invested in this very area in the course of the negotiations which preceded the SAA signing. Also, the Ministry of Foreign Trade and Economic Relations, as the responsible institution, does not have sufficient personnel capacities to be able to act within the defined deadlines. It is important to emphasize that in this concrete case there are no legal or constitutional obstacles to the passage of the new law. From this, it is obvious that this problem is a consequence of the absence of political will to draft clear and timely strategies for the necessary strengthening of capacities of the institutions which are responsible for the fulfilment of accepted obligations.



### Example:

### Veterinary care in the service of export of BiH products

One of the key priorities from the field of free movement of goods relates to standardisation, metrology, accreditation and certification of products in order to comply with EU standards and best practices, and to bring them closer to the technical regulations of the Acquis. Bosnia and Herzegovina has undertaken to build the system of food safety according to a new model in force in the EU as of January 1, 2006. The Food Safety Agency (FSA) has so far drafted a large number of rulebooks by which appropriate EU regulations were adopted; fourteen of these rulebooks were adopted by the Council of Ministers and published in the BiH Official Gazette, while 32 rulebooks were delivered to the Managerial Board of the Agency for approval. The latter group also includes the rulebooks by which the EU Directive 882/2004 was taken over – Official Control of Food and Fodder, and two rulebooks on hygiene: 852/2004 and 853/2004.

However, the fact that the Technical Regulations Committee held only one session in the first half of 2010, and that, instead of the planned 100 standards per year, only a few necessary for the drafting of certain laws have been translated, speaks for itself.

However, one positive example deserves special attention. Namely, after the European Commission issued a permit for fish exports in 2008, the Inspection of the EC Veterinary Office from Dublin concluded, during its recent visit to BiH, that there had been positive steps in the sector of veterinary care, and that the conditions were created for other animal products to be proposed for export. The BiH Veterinary Office received ten recommendations, which are quite feasible, and whose fulfilment would make it possible for the requirements related to export of eggs, honey and poultry meat into the EU to be met. Although the large number of regulations were adopted or prepared for adoption, it is still possible to export fish into the EU but only from a limited number of farms. The reasons for this stem from the absence of a mid-term strategic plan for establishing a food safety system in BiH in which there would be a BiH Ministry of Health, FSA, Ministry of Agriculture BiH, BiH Veterinary Office and BiH Administration for Herbal Health. In addition to the aforementioned, it is necessary to adopt and implement a Long-term National Control Plan for the implementation of food and fodder regulations, and regulations on health and welfare of animals, and herbal health, on the ground. It is also necessary to pass instructions and/or guidelines for the implementation of Official Food and Fodder Control.

The Inspection of the EC Veterinary Office is expected to visit BiH again in 2011, when it should give its final assessment, so new exports may be expected only in 2012. What should be done in the meantime is accreditation of laboratories in BiH and creation of the appropriate framework for BiH producers so that they can be competitive in the European market. This will certainly be a test for the new BiH authorities.

## TITLE V

### MOVEMENT OF WORKERS, ESTABLISHMENT, SUPPLY OF SERVICES, MOVEMENT OF CAPITAL

#### Chapter 1. Movement of Workers

(Articles. 47 – 49 of the SAA),

#### Chapter 3. Supply of Services

(Articles. 57 – 59 of the SAA),

#### Chapter 5. General Provisions

(Articles 63 – 69 of the SAA)



#### Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership

Apart from the sector of transportation, there has been little or no progress made in relation to chapters listed here – or to say least, the progress was insufficient. This primarily refers to movement of workers, where it is difficult even to imagine significant progress as long as the legislation is fragmented and varies from entity to entity, from canton to canton. Due to political reasons and disagreements of the RS representatives, some very important documents were not accepted in this reporting period. The Parliament did not pass the document on transportation sector development policy, thus the Council of Ministers could not pass the supporting strategy and action plan. The Ministry of Communications and Transport did not accept the transportation strategy in BiH financed by European Bank for Reconstruction and Development and Japanese International Cooperation Agency (JICA), nor did it introduce it in the procedure.

The Law on Transportation of Hazardous Cargo which is again in the procedure is blocked by the RS representatives. The Law on Roads, although it is not an obligation stemming from the Acquis, was introduced in the procedure, but was not passed in the course of the reporting period either. Activities related to the EU Directive on Social Status of Drivers refer to the application of digital tachographs; BiH has

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*In the transportation sector, BiH has managed to make some progress despite a significant lack of resources.*

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not yet started to use them. The reasons are that local authorities have not prepared all the regulations necessary for the Law's application, nor have they procured appropriate readers for inspection bodies.

Necessary laws were passed in the sector of civil aviation, i.e. the Aviation Law of BiH and the Law on the Agency for the Provision of Air Navigation Services in Bosnia and Herzegovina which, according to the last monitoring mission by the EU institutions, are in compliance with the Acquis. The said laws prescribe the direct transposition of the regulations related to civil aviation, which need to be translated, since the current regulations which were transposed are in English language. The government commitment is strong, which is evident from the adopted laws (the Aviation Law for example), and reforms implemented in the field of air transport, for which it can be said that it is the most advanced field in the sector of transportation. Material resources are sufficient for the time being, but there is still a problem of personnel, since there is a great demand for experts in air transportation, and they often have a chance to earn much more money abroad. Another problem related to personnel is that the key institutions are located in Sarajevo, Banja Luka and Mostar, and potential personnel are mostly not willing to travel and change their place of residence.

As for railway transportation, there has also been progress made, and currently the EU Delegation is helping with harmonising the regulations with the Acquis through engagement of consultants, who will simultaneously harmonise the regulations to the interoperability requirements, and both the state and entity levels will thus get appropriate regulations. The current Law on Railways is not fully harmonised with the European regulations, however it allows for unhindered railway transportation.

Responsible institutions have not yet proven that the function of operator was separated from infrastructure by the creation of independent companies, i.e. accounts and property. It shall have to be proven through an independent audit.

In the course of the reporting period, the government commitment to implement necessary reforms was at a satisfactory level, with the exception of the sector of water transportation where no steps forward were made. However, an obvious problem in all transportation areas is the absence of appropriate resources and poor personnel capacities, but they still have managed to make some progress.

## **b** Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

The sector of transportation does not have any major problems with undertaking the measures; with better inter-entity cooperation, the activities might even be accomplished before deadlines; for example, the work on harmonisation of the legislation on aspects of labour. But, in case of certain delays, as in the case of application of digital tachographs falling in this field, BiH will have to pay certain penalties. In the air transportation sector, the ECAA Agreement (European Common Aviation Area) is applied, together with a certain number of activities which do not stem from the Acquis. The quality of legislation being created is increasingly better, as well as the level of conformance with the Acquis. However, a problem arises due to the absence of legal obligation to control the conformance of bylaws with the Acquis. The Directorate for European Integrations monitors the process of harmonisation of laws, but no institution has been made

responsible for monitoring the harmonisation of bylaws with the Acquis, which creates problems when laws are applied.

The European Commission assessment is that, except in the sector of railway transportation, the situation in BiH road and air transportation sectors is equal to, or even better than in the other countries in the region. However, the main problem is the low level of basic road and railway infrastructure. Reasons for delayed development of basic infrastructure relate to insufficient number of measures undertaken to implement the SAA; they vary from the lack of resources, failure to abide by tender procedures, to technical problems when conducting railway overhaul or construction of highways. As a direct consequence, we can also mention unrealised profit from the use of railways due to overhaul delays, which generate many bottlenecks. An unofficially estimated loss caused by infrastructural issues amounts to more than KM 600,000 per day, due to the failure to take over consignments in the port of Ploče.

Road infrastructure also causes loss of money due to delays in highway construction. In 2009, according to a source from the EU, the government lost EUR 5,360,000 of funds for interest subsidies for the highway loan provided by the European Investment Bank, due to slow withdrawal of loan funds.

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*Due to slow improvement of basic road and railway infrastructure, BiH is losing several hundred thousand Euros every week.*

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### Example: Transport Communication in the Neum Border Zone

Taking into account the importance of territorial continuity for Croatia, and the high price of transportation across the bridge which it plans to build over Pelješac, it is an ideal moment for resolving the issue of transportation through Neum. The European Union is trying to shift the resolution of the Neum issue more to BiH than to Croatia, and there are a number of initiatives which have not yet been made public, which aim at resolving this strategic issue. In the European Parliament Declaration on BiH there is also a paragraph about the Pelješac Bridge, where finding a joint solution by BiH and Croatia is recommended.

The EU is of the opinion that the Neum situation is a problem for BiH, although the local authorities have not yet started discussions or negotiations. The fact is that both sides have extremely large economic interest to reach an agreement. Transit through Neum is a problem that must be resolved. If an efficient solution is not found soon, BiH will risk being forced to build border crossings (two border crossings in Neum would cost EUR 9 million), excluding expropriation costs. Apart from covering a large territory and valuable soil, this expensive solution would only have short-term effects, because upon BiH's entry into the EU, crossings would have to be destroyed, since they would not have any purpose. Croatia would have to implement the same project; therefore it is doubly unproductive and unprofitable.

## TITLE V

### Chapter 2. Establishment (Articles 50 – 56 of the SAA)



#### Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership

The priority from the European Partnership from the section on Economic Criteria "Strengthening of legal reliability for local and international economic operators and improvement of business environment" relates to the sector of establishment. "Further adjustment of economic legislation with the EU legislation" is the basic activity per this priority.<sup>6</sup> The leading responsible institution is the Directorate for Economic Planning – DEP, while the institutions responsible for implementation are the Federation Ministry of Finance and RS Ministry of Finance. This priority has been partly delivered only in the RS. A question is why the entity ministries of justice have not been included in the implementation of this activity, and what the attitude toward the implementation of undertaken obligations in cantons is, where cantonal ministries of economy play a concrete role in the creation of legal reliability for local and international economic operators, and adjustment of economic legislation.

The Directorate for Economic Planning as a lead institution, and the BiH Ministry of Justice as a responsible institution, are in charge of another two similar measures in this field, which are indirectly complementary with the right of establishment. One of these activities is "Standardisation and Further Support to One-Stop-Shop Service in BiH (all services in one location) which will support starting business in BiH". Implementation of this activity was shifted from February 2010 to December 2010, because the state institutions did not submit the required information by the defined deadline. Another activity refers to the requirement for "Strengthening of legislative framework through changes and amendments to the Law on Direct Foreign Investment Policy in BiH"; it has been implemented because the Law on Amendments and Changes to the Law on Direct Foreign Investments Policy in BiH took effect on June 22, 2010.<sup>7</sup>

At the same time, in the Federation of Bosnia and Herzegovina no progress has been made in this field since the Law on Changes and Amendments to the Law on Business Companies<sup>8</sup> was passed, which did not bring any changes needed for conformance with European regulations.

Jurisdictions over economic processes, legislation and economic judiciary have been determined at the entity level. It is notable that the RS government is trying to harmonise the legal framework of economic law with the EU regulations, without waiting for adjustment with the FBiH. In the short-term, this practice is positive for the RS, because it thus provides, at least in theory and for the time being, a known legal framework for investors from the EU, while it creates competitiveness problems for local businesses. In

<sup>6</sup> Semi-annual overview of the implementation of activities from the Action Plan for Delivery of Priorities from the document European Partnership with BiH January 1, 2010 – June 30, 2010. BiH Council of Ministers, Sarajevo, July 2010. pg. 65

<sup>7</sup> Official Gazette BiH, no 48/10.

<sup>8</sup> Official Gazette F BiH, 84/08

the long run, it is hard to believe that this practice may lead to a desired economic, and not simply political, progress. Until the rules of the right of establishment and legal security are harmonised in both entities and Brčko District, it is impossible to expect a significant positive trend, since the entire BiH with its market of 3.7 million people is too small, let alone the interest for the RS market which covers around 1.2 million people. However, when compared to the Federation of BiH, such efforts of the RS Government are commendable, since they are not waiting until the last minute to implement activities which could improve the legislative framework in the business sector. The Federation of BiH must rid itself of its indifferent attitude toward the European integration processes and strengthening of legal security in business, especially because of the existence of its ten cantons which all have their ministries of economy which are directly responsible for providing a secure business environment, transparent and equally available to all, to both local and international companies or their branches.

We may conclude that delivery of this European priority has been inadequate, so that such a situation, with all other problems related to competitiveness of the BiH economy, does not contribute to the legal security which is one of the important prerequisites for all investors, both international, primarily from the EU, and local ones.

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*The example of the FBiH Law on Enterprises illustrates how the FBiH Government decided to resolve a current problem and “put out the fire”, instead of deciding to build a system which would guarantee legal security of business entities. There is also a question as to what extent such a decision hinders the legal security of local and international economic operators and the creation of a positive business environment.*

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## **b** Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

The undertaking of measures in the sector of business establishment is partial. As of January 1, 2010, the Law on Enterprises<sup>9</sup> which is harmonised with seven EU company directives is in force. In accordance with the Law on Courts of RS<sup>10</sup>, on May 1, 2010, five district commercial courts started their work (Banja Luka, Doboj, Bijeljina, Trebinje and East Sarajevo), as well as one Higher Commercial Court seated in Banja Luka.

There were neither legislative nor any other activities in this field in the Federation BiH. As for state level activities, the deadline for passing the Law on Changes and Amendments to the Law on Direct Foreign Investment Policy in BiH was February 2010, while the Law finally took effect on June 22, 2010. In this period there were no other legislative activities relevant to business establishment.

The 2010 Progress Report for BiH also states the following<sup>11</sup>: “No progress was made in the sector of the right of establishment. Administrative procedures for licensing and obtaining permits for international and local companies, as well as self-employed, must be harmonised. Absence of a single system of company registration for the entire country continues to aggravate business activities. Bosnia and Herzegovina has not progressed

<sup>9</sup> Official Gazette RS, no.127/08 and 58/09

<sup>10</sup> Official Gazette RS br. 114/04, 109/05, 37/06, 119/08

<sup>11</sup> 2010 Progress Report for BiH. Working document of the Commission's staff, Brussels, November 2010. SEC (2010) 1331, pg. 36



towards recognition of the EU professional qualifications.”

The main, though not justifying reason for no progress in the field of establishment is that these issues are not the subject of the Interim Agreement, but the SAA. Still, the government should not use it as an excuse for not working on the improvement of business environment, and for waiting till the last moment.



### Example: Privatization and Laws on Companies

In the Federation of BiH, there were neither legislative, nor any other activities in the field of right of establishment; generally, there was no improvement of the business environment. Furthermore, a series of privatization affairs and a three-year long soap opera in the electrical energy sector in the Federation of BiH completely destroyed the business reputation of FBiH as a favourable economic environment. Many attempts to produce results overnight led to irregular tendering, absence of decisions of competent bodies, compromising of the work of privatization agencies, and unrealised and terminated contracts, where the victims were mostly workers.<sup>12</sup> Overall FBiH Government activities could be perceived as attempts to extinguish the fire which was caused by this very structure. Lack of strategy and vision in conducting economic and industrial policies, as well as legal insecurity were the main characteristics of all the activities. Absence of legal regulations which are harmonised with EU practice rejected respectable European companies, and attracted strategic partners who also wanted to earn profit overnight.

At the end of September 2010, changes to the Law on Enterprises in FBiH were passed, and thus a burning problem was resolved, but a very bad message was sent about legal security in the FBiH. Namely, upon the request by prime minister of the FBiH, Mr. Mustafa Mujeginovic, on September 23, 2010, the eighteenth extraordinary session of the FBiH Parliament House of Peoples was held, so that the delegates could reconsider the bill on amendments to the Law on Enterprises, for which there was not the required majority at the session of the House of Peoples held on September 14, 2010. This item was included in the agenda with an aim to save 1900 jobs in “Krivaja 1884” d.o.o. Zavidovici. These amendments provided for a part of the company which is bankrupt to separate and privatize, while the other part is left for restoration. The House accepted the request by the FBiH Government, and the majority in the FBiH Parliament House of Peoples voted for the said proposal.

<sup>12</sup> Federation Ministry of Energy, Economy and Mining sent to the Federation Parliament the proposals for strategic investments into electrical energy sector, restoration of old and construction of new capacities, and selection of strategic partners, without prior consultations and decisions of the Assembly and Supervisory Board of Elektroprivreda BiH. Non-transparent selection of partners from Kazakhstan was the culmination which ended by cancellation of the whole process in the FBiH Parliament, and a request for a prior drafting of electrical energy sector development strategy. Such absence of strategic and serious planning, negative results of privatization processes, as in the case of Feroelektro, and finally, the recently discovered irregularities on the Sarajevo Stock Market further compromised the FBiH business environment.

## TITLE V

### Chapter 4. Current Payments and Movement of Capital (Articles 60 – 62 of the SAA)



#### Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership

In its Progress Report for Bosnia and Herzegovina for 2010, the European Commission assessed that progress was made in certain areas related to current payments and movement of capital in BiH<sup>13</sup>. In comparison to 2009, when it was determined that “there were no significant changes in the field of movement of capital”<sup>14</sup> this represents a positive step.

The draft of the six-month Review of the Implementation of Activities from the Action Plan on Implementation of Priorities from the European Partnership document for the period 1 January, 2010 - 30 June, 2010, which was submitted by the Directorate for European Integration (DEI) to the Council of Ministers<sup>15</sup>, states that a complete harmonisation of regulations between the two entities was done, as well as with the Acquis in the field of foreign currency policy and operations, and that thus the final imposed obstacles, for now, to unimpeded flow of capital to and from abroad were removed. However, the EU 2010 Progress Report for BiH states that restrictions still exist in entity laws on foreign currency operations relating to amounts of foreign currency that non-residents may transfer abroad, that a complete harmonisation with the EU requirements has not been performed, and that there is a lack of coordination in planning and implementing of legal reforms in this area<sup>16</sup>.

Neither the reports from the European Commission, or the DEI<sup>17</sup>, mention the Law on the Framework of Foreign Currency Policy in BiH that was the subject of discussion and parliamentary debate in late 2009. However, the conclusions of the European Commission about the need for further coordination of reforms in this area may revert this issue to which the implicit position of the relevant institutions is, obviously, that the Law is not necessary for the complete regulation of this area and that the regulation of this issue at the entity level is a sufficient solution.

That is the reason that the Law was not sent back to the parliamentary procedure in 2010. Just as a reminder, the Draft Law that was forwarded by the Council of Ministers to the House of Representatives of the Parliamentary Assembly of BiH on 17 April, 2009, and was adopted by the Commission for Finances and Budget at the 46th meeting held on 8 May, 2009, was rejected by the House of Representatives at the 53rd meeting held on 30 May, 2009, because the Law did not receive a sufficient entity majority<sup>18</sup>.

<sup>13</sup> European Commission, (2010) “2010 Progress Report for Bosnia and Herzegovina”. p. 36.

<sup>14</sup> European Commission, (2009) “2009 Progress Report for Bosnia and Herzegovina”. p. 38.

<sup>15</sup> Directorate for European Integration, (2010) “Review of the Implementation of Activities from the Action Plan on Implementation of Priorities from the European Partnership Document for the period 1 January, 2010 - 30 June, 2010”. p. 76.

<sup>16</sup> European Commission, (2010) “2010 Progress Report for Bosnia and Herzegovina”. p. 37.

<sup>17</sup> Directorate for European Integration, (2009) “Follow up report on the Implementation of the Interim Agreement/the SSP for the period July 2009 – 31 December 2009”. p. 5 – 6.

<sup>18</sup> 21 votes from the Federation of BiH in favor and 11 against by the parliamentary members from Republika Srpska.



The main objective of the aforementioned Law should have been to "introduce a code of conduct in economic relations, as well as standards at the monetary level which seek to eliminate foreign currency restrictions and to regulate basic laws of the Federation of BiH and Republika Srpska based on those standards" <sup>19</sup>. The Law defined the basic principles of foreign currency operations, namely: 1) principle of freedom of foreign currency operations, 2) principle of residence, 3) principle of equal treatment of natural and legal persons, 4) principle that all capital transactions are identified with their economic effects, and 5) principle of unity and uniformity. Furthermore, the law introduced a unique nomenclature of terms in the field of foreign currency policy and operations in accordance with Annex 1 of Directive 88/361/EEC.

The final position was that the Law is actually redundant, as Changes and Amendments to the Law on the Foreign Currency Operations (which, at the time of discussion, were already in force in Republika Srpska) were fairly in compliance with the principles that were taken from relevant EU directives, and that the Law on the Central Bank of Bosnia and Herzegovina, with subsequent changes and amendments already regulated issues of jurisdiction and responsibility of the Central Bank in this field <sup>20</sup>. Repeated changes and amendments to the Law on Foreign Currency Operations of Republika Srpska were adopted in September of that year, and thus the "final" harmonisation with EU requirements was done. Finally, the Parliament of the Federation of Bosnia and Herzegovina adopted the Law on Foreign Currency Operations in July, 2010, which then entered into force on 1 October, 2010.

One of the important issues that were regulated by the Draft Law was the issue of application of protective measures. The Draft Law gave the possibility to the Central Bank of BiH, by a special law, to prescribe and enforce protective measures <sup>21</sup> in cases when movement of capital causes or threatens to cause "serious difficulties in implementing monetary policy or foreign currency policy", or to enforce sanctions of the United Nations and other international organisations in which BiH is a member.

This solution is compatible with the solutions in neighbouring countries where the above-mentioned protective measures for the preventing of serious problems in the implementation of foreign currency or monetary policies are made and executed by the national or central bank. The entity laws envisage certain restrictions, but they are not explicitly defined as protective measures; neither the prerequisites for the adoption of such protective measures nor the limitations for the period of validity of the same are defined, as is prescribed by the provisions and requirements of the Stabilisation and Association Agreement. Furthermore, the authorisation to make certain restrictions is entrusted with the relevant entity ministries, and ministers of finance.

With regard to the functioning of capital markets, the Draft Report on the Six-Month Implementation of the EP found that: "The whole institutional infrastructure (the securities commission, the stock market, the central securities register) is regulated by entity laws on securities, which provide legal safety for emission and traffic of bonds at the entity level, and in accordance with constitutional responsibilities and legal authorities" <sup>22</sup>.

<sup>19</sup> Draft Law on the Framework of the Foreign Currency Policy in Bosnia and Herzegovina, Article 2.

<sup>20</sup> See the transcripts from the 53rd session of the House of Representatives of the Parliamentary Assembly of BiH, held on 30 May 2009.

<sup>21</sup> Protective measures may be: 1) restriction of payments under current and capital transactions, 2) restriction and ban of transfer of funds or securities abroad, 3) limitation to residents to dispose of the funds abroad or on foreign currency accounts, 4) restriction of credit operations between residents and non-residents, 5) limitation and ban on buying and selling foreign currency and effective foreign money, 6) limitation on giving guarantees or affidavits, pledges or other securities on resident accounts, 7) limitation and ban on forward foreign exchange operations and 8) other necessary measures.

<sup>22</sup> Directorate for European Integration, (2010) "Review of the Implementation of Activities from the Action Plan on Implementation of Priorities from the European Partnership Document for the period 1 January, 2010 - 30 June, 2010". p. 76.

However, the 2010 Progress Report states that capital markets in BiH are still not fully functional<sup>23</sup>. Consequently, the Sarajevo Stock Exchange announced at the beginning of October, 2010, that the Coordinating Working Group for the promotion of the capital market of the Federation of BiH was established with the aim, as stated: "to overcome the difficult situation in the capital market of the Federation of BiH". In addition to the Securities Commission of the Federation of BiH, the meeting was attended by representatives of the FBiH Securities Register, the Sarajevo Securities Stock Exchange, the Association of Professional Intermediaries in Securities Trading, and the Association of Companies for the Management of Funds, who will also be the members of the aforementioned Coordinating Body. The meeting was not attended by representatives of the Federal Ministry of Finance.

## **b** Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

Articles 60 to 62 of the Stabilisation and Association Agreement, which govern the matters of current payments and movement of capital, suggest that some of the key requirements that are set before the BiH authorities in this period have been fulfilled in this field. However, the following fields still remain unresolved:

1. Regarding foreign direct investments, the limitations remain to the ratio of foreign capital in the media sector<sup>24</sup>, making this segment not in full conformity with Article 61, paragraph 1 of the SAA.
2. Article 61, Paragraph 2, stipulates that nationals of Member States of the European Union are allowed to own property in BiH, although a period of six years after the entry into force of the SAA is left as a deadline for the BiH authorities to adapt their legislation "in relation to the acquisition of property in Bosnia and Herzegovina in order to ensure to nationals of Member States the same treatment as to its own citizens." This should be regulated by entity laws on property rights which, according to the latest available information, have been either adopted but have not yet entered into force (in Republika Srpska), or were not adopted at all (in the Federation of BiH).
3. As far as the same provision of the SAA, the entity laws on foreign exchange transactions in the RS ensured the fulfilment of the obligation under Article 61 of the SAA, which refers to the liberalisation of financial loans with maturities longer than one year, while the granting of short-term financial loans will not be subject to liberalisation until the expiration of five years from the entry of the SAA in force, and in the meantime the implementation of measures that enable the creation of necessary conditions for further gradual application of the Community rules on free movement of capital, in accordance with Article 62 of the SAA<sup>25</sup>, will continue.

<sup>23</sup> European Commission, (2010). "2010 Progress Report for Bosnia and Herzegovina". p. 37.

<sup>24</sup> European Commission, (2010). "2010 Progress Report for Bosnia and Herzegovina". p. 37.

<sup>25</sup> Directorate for European Integration, (2010) "Review of the Implementation of Activities from the Action Plan on Implementation of Priorities from the European Partnership Document for the period 1 January, 2010 - 30 June, 2010". p. 76.

4. Protective measures prescribed by Article 61, Paragraph 5, remained non-defined because there was no adoption of the Draft Law that regulated this issue by Articles 17 and 18.
5. In accordance with Article 62, Paragraph 2, after the expiry of five years from the date of entry into force of the SAA, the Stabilisation and Association Council (VSP) will determine detailed arrangements for the full application of the Community rules on the movement of capital. According to the activity plan of the Action Plan for implementing the European Partnership, the VSP should have already been established as early as March, 2009, but the deadline was prolonged till December 2010. Furthermore, the VSP is mentioned in the Program of Measures for the Implementation of the Interim Agreement/SAA for the period 1 January, 2010 - 31 December, 2011, as a carrier of certain activities during this period, indicating that its establishment should have been resolved in 2009. Based on the information available to date, it is not known what actions were undertaken regarding its establishment.



### Example: Safety Measures in Foreign Currency Operations

The Law on Foreign Currency Operations of the Republic of Croatia (Official Gazette of the Republic of Croatia, No. 96/03) defines the following preconditions for undertaking protective measures (Article 47):

1. If movement of capital causes or threatens to cause serious difficulties in conducting monetary and foreign currency policies.
2. If they are necessary to enforce sanctions of the UN and other international organisations in which the Republic of Croatia is a member.

Protective measures that the Croatian National Bank may undertake include (Article 48):

1. limitation on residents to dispose of the funds deposited in foreign accounts or in foreign currency accounts in the Republic of Croatia,
2. obligation of banks to sell foreign currencies to the Croatian National Bank based on exchange transactions of banks and authorized exchange offices,
3. restriction of credit transactions between residents and non-residents,
4. restriction of payments and payment of liabilities and receivables in business operations abroad,
5. restriction of the transfer of securities, foreign currency and gold in and from the Republic of Croatia,
6. restriction of transactions with securities and gold between residents and non-residents,
7. restriction of guarantees or warranties, pledges or other securities on behalf of non-residents

Protective measures are set for a period of six months, provided that this period may be exceptionally extended with the approval of the Croatian Parliament. The National Bank has an obligation to inform the Government of the Republic of Croatia and the Securities Commission of the Republic of Croatia before passing a decision on the application of protective measures.

## TITLE VI

### APPROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES

#### **a** Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership

A key priority of the European Partnership in areas covered by Title VI of the SAA is to: "Achieve substantial progress in creating a single economic space in Bosnia and Herzegovina, which supports free movement of goods, capital, services and persons." The main activity focused on the implementation of this priority is to "Continue the harmonisation of regulations in the areas that regulate the movement of goods, capital and services with EU regulations". The main institution responsible for the implementation of activities is the Ministry of Foreign Trade and Economic Relations of BiH<sup>26</sup>, but the implementation of this activity is postponed from February to December 2010.<sup>27</sup> Furthermore, the Ministry of Finance and Treasury is responsible to "adopt and carry out a series of measures and regulations of the secondary legislation which will ensure the functioning of the internal market in legal and technical terms" but the realisation of these activities has also been postponed from February to December 2010. The Council of Ministers of BiH tasked the DEI to prepare, in cooperation with competent state and entity ministries and institutions, tables of mutual harmonisation of regulations among entities and the harmonisation of these regulations with the Acquis in the field of internal market, which will be submitted to the European Commission.<sup>28</sup>

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*Almost all activities with deadlines in 2009 and the beginning of 2010 are extended until late 2010, or even 2011. The only exceptions are activities related to the implementation of the Intellectual Property Law and the strengthening of the Institute for the Protection of Intellectual Property.*

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<sup>26</sup> The responsibility is divided between the Ministry of Civil Affairs of BiH, Ministry of Finance and Treasury of BiH, Ministry of Justice of BiH, ministries of finance of the entities and entity ministries of justice, as well as the Agency for Indirect Taxation.

<sup>27</sup> DEI BiH. Six-Month Review of the Implementation of Activities from the Action Plan on Implementation of Priorities from the European Partnership Document for the period 1 January, 2010 - 30 June, 2010. Council of Ministers BiH, Sarajevo July 2010. p. 13.

<sup>28</sup> DEI BiH p. 13.

In the case of the Economic Priorities relevant to Title 6, it is requested to "strengthen the legal reliability of local and foreign businesses and improve the business environment." Within this priority five activities<sup>29</sup> were defined out of which two were implemented, and three were extended from the beginning to the end of 2010.<sup>30</sup> In terms of European standards that deal with internal market, the focus is on the competition policy, state aid, agency for market surveillance, public procurement of intellectual property, mental health, employment, and social policy.

The short-term priority is to improve the existing anti-trust legislation in accordance with the requirements of the Stabilisation and Association Agreement and to strengthen the administrative capacity of the Competition Council. At the regular preparatory meeting (RPM) it was determined that the Law on Competition is harmonised with the EU regulations<sup>31</sup> as well as the bylaws, and that the administrative capacities of the Competition Council are filled in accordance with the Rulebook. For the continuous education of civil servants in the field of competition, 65 million KM were allocated in the budget for 2010. Here it remains unclear who is to receive education in the field of competition, officials of the Competition Council (CC) or other government officials who have to comply with the Law on Competition in their daily work?

As a medium-term priority it is requested to implement the legislation on state aid, and to ensure that the state aid monitoring body functions effectively. There are plenty of loopholes related to this priority, both in planning and in implementation.<sup>32</sup> Namely, the Competition Council of BiH appears as the holder of activities, although the workload and scope of civil legal aid stretches beyond the jurisdiction of the Competition Council. The holder of activities should be the Ministry of Foreign Trade and Economic Relations, and the CC BiH should be only one of the institutions involved in the process, as part of the mechanism of control of state aid which is at the end of the chain of establishment of the state aid system in BiH. Furthermore, it is stated that the activity is to "fill in the vacancies for the monitoring positions in the state aid body in order to enable it to function effectively," which does not correspond to the truth and the status of this subject in the process of implementation of the SAA. Namely the Law on State Aid System was not passed, the responsible party is not appointed, and it therefore cannot "fill in" or "effectively function", so it had to be prolonged to December, 2010.

The short-term priority for the Agency that monitors the market to be fully functional is realised within the planned deadline. The Ministry of Foreign Trade and Economic Relations and the Agency carried out the planned training activities and provided conditions for work. However, the medium-term priority on the establishment of a market surveillance system in accordance with European standards is only partly realised. It is performed through IPA funds. However, an analysis of deficiencies and needs of the Agency was postponed from June to November, 2010.

One of the key priorities is to ensure that a single public procurement system is functioning properly and to implement legislation and procedures on public procurement. Two activities of the Public Procurement Agency were prolonged for 2011.<sup>33</sup>

<sup>29</sup> Changes and amendments to the Law on Foreign Direct Investment in BiH on 22 June 2010. (Official Gazette of BiH, number 48/10); Promote the benefits of alternative dispute resolution at the level of executive authorities in BiH. DEI BiH p. 62.

<sup>30</sup> There is continuous work being done to improve laws and by-laws that regulate this field and promote the benefits of alternative dispute resolution; standardise and further support the One-Stop-Shop Service in BiH; provide strategic guidance for the development of alternative dispute resolution.

<sup>31</sup> Official Gazette of BiH 80/09 and 34/10

<sup>32</sup> DEI BiH p. 81.

<sup>33</sup> Providing technical and advisory assistance to contracting authorities and bidders on June 2011 and the implementation of training programs in public procurement in November 2011 is conditioned by the adoption of the new draft Law on Public Procurement. DEI BiH p. 82.

The highest degree of fulfilling the requirements of European standards in terms of the internal market is again in the field of Intellectual Property as one of the key priorities.<sup>34</sup> Specifically, the main priority is to "ensure that the Institute for Intellectual Property is fully operational so that it can perform its tasks effectively, and to implement the existing legal framework" and to ensure that all activities relating to the standards of the World Intellectual Property Organisation (WIPO)<sup>35</sup> are carried out through adopting the necessary laws and strengthening of the awareness of public opinion and partially, also, through the training of judges, prosecutors, and customs officers.

In the area of Employment and Social Policy the delay of the implementation of the activities until the end of 2010 is evident and the activities are, therefore, only partly carried out, mainly those related to planning and creating of strategies. Given that this is an area that requires a multidimensional approach and includes dozens of parties from various levels of government, it is apparent that there are some uncertainties in the creation of mechanisms for cooperation among institutions as a prerequisite for the realisation of plans and activities.<sup>36</sup> The basic priority is, therefore, defined very broadly, both in the area of consumer protection and mental health care.

All activities regarding the implementation of priorities in the field of "Education and Research" are prolonged from 2009 to the end of 2010 and some, such as those concerning the "application of the generic qualified framework for higher education in four specific areas of study" are prolonged until December, 2011, despite the fact that important funds from the IPA 2007 are provided for these activities.

In general, the analysis of the implementation of Priority Programs for Legislative Harmonisation Activities for the implementation of the European Partnership and the Interim Agreement leads to a conclusion that almost all the activities with deadlines in 2009 and the beginning of 2010 are prolonged until late 2010, or even 2011. This tells us something about the stagnation and lack of political will and administrative capacity to implement activities in this field. The only exceptions are activities related to the implementation of the Law on Intellectual Property and the Law on Competition and the strengthening of institutions of the Institute for the Protection of Intellectual Property, Competition Council, and the Agency for Market Surveillance. This may be attributed to the absence of politicisation of the process of applying the laws that are in their job description.

## **b** Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

The general level of adoption of key legislation in areas falling under Title VI of the SAA can be evaluated as unsatisfactory. Out of 25 laws adopted in 2010, seven of them relate to Title VI of the SAA. Out of those seven laws, six laws cover the field of intellectual property<sup>38</sup> and one law covers the area of public procurement<sup>39</sup>.

<sup>34</sup> DEI x

<sup>35</sup> World Intellectual Property Organisation

<sup>36</sup> Agency for Statistics of BiH, Government of DB, FBiH Government, RS Government, Min. of Civil Affairs, RS Min. for Economic Coordination, FBiH Min. of Finance, Min. RS Ministry of Finance, BiH Min. of Finance and Treasury, relevant ministries of labor and social policy in the entities and cantons.

<sup>37</sup> "Further develop social inclusion and social protection" and the activities to "develop and implement all the sectoral action plans under the national Strategy for Poverty Reduction and Social Inclusion"

<sup>38</sup> Law on Copyright and Related Rights, Law on Collective Realisation of Copyright and Related Rights, Law on Patent, Law on Trademarks, Law on Industrial Design, Law on Protection of Indications of Geographical Origin.

<sup>39</sup> Law on Amendments to the Law on Public Procurement of Bosnia and Herzegovina



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*Out of 25 laws adopted in 2010, seven of them are relevant to Title IV of the SAA. Out of 12 laws that are currently in procedure, not a single one is relevant to the topics of Title VI of the SAA. There is no progress in key areas of state aid.*

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This again underlines the conclusion that the area of intellectual property rights has the highest degree of implementation of all areas of the partnership and the Interim Agreement in 2010, with regards to Title VI. Out of 12 laws that are currently in procedure, none of them cover the area of Title VI of the SAA.

However, it is necessary to single out one of the key priorities, which was very much in the focus during a given period, in terms of breaking deadlines, or a variety of political, media, or international pressures. It is the matter of fulfilling obligations under Article 71 of the SAA (Article 36 of the Interim Agreement), i.e. of adopting the Law on State Aid System and of establishing an independent regulatory body. Namely, Bosnia and Herzegovina has committed in Article 71 of the SAA (Article 36 of the Interim Agreement) to pass the Law on State Aid that will define an

independent authority to control state aid within two years of entry into force of the Interim Agreement. This deadline expired on 1 July, 2010. The importance of passing this law is also demonstrated by the fact that the European Commission started the Project to Support Competition and State Aid in BiH that costs 1.5 million euro for two and a half years, as early as 2006. The project resulted in the preparation of all necessary legal and analytical documents positively evaluated, but never sent to the Council of Ministers, because the representatives of the Working Group from the institutions (especially RS) failed to agree about the institution responsible for control.

At the beginning of 2010 Mr. Olli Rhen, Enlargement Commissioner at the time, wrote to the Chairman of the Council of Ministers of BiH, the Minister of Foreign Trade and Economic Relations of BiH and the RS Prime Minister (all from the ruling SNSD party) to annul the Law on State Aid in RS and to adopt the Law on State Aid of BiH pursuant to the requirements of the SAA and the European Partnership, in the Parliament of BiH, before the expiry of the deadline on 1 July, 2010. A Draft Law on State Aid was prepared by the Cabinet of the Minister of MoFTER BiH and sent to the European Commission for assessment at end of the year, and it was returned with a negative response. Finally, the issue of state aid was one of the priorities in the talks in October between BiH officials, the EU Enlargement Commissioner, Stefan Fule, and the President of the European Council, Van Rompuy.

In terms of strengthening the capacity and quality of the Competition Council of BiH (CC) it can be seen that there is a positive shift in quality, but also a reduction in the quantity of decisions. Namely, the past working practice of the CC was focused on decisions in the field of permissibility of concentration (almost double that of others) while a very small number of cases referred to the issue of banned activities, and a rare number of opinions. From 26 January to 13 October, 2010, the CC BiH rendered 22 decisions, which is 50% less compared to same period in 2009<sup>40</sup>. We can see that the CC BiH managed cases against BH Telekom and Telekomunikacija RS regarding the abuse of dominant positions and cases in the sensitive area of Forestry Public Companies. We can also assess as positive the provision of two thematic opinions.<sup>41</sup> Finally, it should be noted that the CC BiH passed through a re-election of members of the Competition Council, during the reporting period, and that it held the founding session with the new membership on 1 October, 2010.

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<sup>40</sup> Eight solutions, out of which six in the area of abuse of dominant position and two in the area of concentrations, which is contrary to the trend in the last year. Eight opinions, out of which one is in the area of prohibited agreements, five are in the area of concentrations, and two are thematic ones. Three notifications and three conclusions were also passed.

<sup>41</sup> Opinion on the assessment of the telecommunication market HT Mostar and Opinion on the Decision on Changes and Amendments of the Decision on Taxi Transport in Sarajevo Canton





## Example: Law on State Aid System

This case shows what damage a lack of knowledge on the matter can cause, as well as the rejection of help and practice of other countries in the region that adopted this law a long time ago in favour of transparency of government spending and planned subsidising of those businesses when there is a real need to achieve balanced economic development of the country and stimulate employment.

Given that the state aid is about the control of transparency and usefulness of state subsidies to public and private undertakings, so that they do not affect market competition between BiH and the EU, i.e. the Member States, the question of jurisdiction was raised. Given that this matter concerns a foreign trade element, i.e. that one needs to ensure that there is no distortion of competition between BiH and the EU through banned excessive subsidies, the representatives of the MoFTER BiH and the EC, as well as domestic and foreign experts, took a stand that, in accordance with the Constitution of BiH and the jurisdiction in foreign trade, this is a clear and unambiguous responsibility of state institutions, as well as the requirement itself that is stated in Article 71 of the SAA. Furthermore, the practice is such that there is no country that aspires to join which does not have this institution at the state level, and with entry into the EU, this jurisdiction is transferred directly to the Directorate General for Competition, which says enough about the importance of this area for the EU.

On the other hand, the RS representatives claimed that the State of BiH does not have available funds for these purposes, because only the Budget of Institution and International Obligations of BiH exists, while the effective means and mechanisms for subsidies and support for the economy or the exemption from taxes are at the level of the entities and Brčko District, and so they demanded the establishment of three separate independent bodies. Accordingly, in December, 2009, the National Assembly of RS passed the Law on State Assistance for Business Entities in the RS, contrary to explicit requests of the Commission not to do so, and the law itself is entirely out of line with EU standards, and generally not adequate for the needs of an entity in the field of state aid.

Prohibited state aid is any allocation, at any level of government, from the budget or extra budgetary funds, or exemption from taxes directed towards favouritism of certain public or private enterprises, or production of certain products, which aims to put the recipients of state aid in a privileged position that may result in distortions of competition in the unified market of the EU. In doing so, the amount of assistance, i.e. the exemption from taxes which would lead to a ban, changed over time, and it currently amounts to 400,000 Euro per company during a period of three years.

The essence of the state aid system and the control of funds allocated from the public treasury to private and public companies is not a ban of state aid, but rather its direction to where it is needed, in a transparent manner, in order to increase employment and achieve balanced economic development all over the European Union. If we start from that assumption, the Law on State Aid has never been as necessary to a country, as it is to Bosnia and Herzegovina today. What the system of state aid requires, is not only legislation and the establishment of an independent authority for state assistance, which will have the authority to approve and order the return of illegal state aid. The essence of the process is the creation of a social and economic analysis of development in certain

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*The Law on State Aid has never been as necessary to a country as it is to Bosnia and Herzegovina today. What the state aid system requires is not only the adoption of legislation but also of conditions for balanced economic development of BiH.*

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parts of BiH by combining data on GDP, purchasing power per capita, and unemployment. This should result in social and economic maps that will identify more or less undeveloped parts of BiH, whereby the undeveloped parts would be entitled to more state aid, and government investments in capital investment, as well as support to foreign investors who create work places.

Unfortunately two years were lost due to the understanding of the relevant institutions and political elites that it is the law that will define who prohibits to whom, and how they prohibit the disposal of public assets by allowing lump-sum payments and lack of transparency of current disposal of citizens' money. Therefore, we are witnesses that today the favour of media can be bought by politicians, that debts of public companies are written off to be bought by strategic partners from abroad favoured by the leading parties, that money is being spent on companies - bottomless pits, which are not competitive in delivering their functions, rather than on new technologies and environmental programs. The end result is a general increase in unemployment and regional differences in the development of the country, which promotes the migration of population and lack of transparency in the investment of public funds to the detriment of all citizens.

## TITLE VII

### JUSTICE, FREEDOM, AND SECURITY



#### Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership

Analysis of implementation of the underlying obligations from the document "European Partnership with BiH" in the given reporting period indicates that the main impetus for the realisation of the majority of defined obligations was their conformity with commitments and actions contained in the Roadmap for Visa Liberalisation, i.e. the perspective of ensuring a visa-free regime for citizens of BiH. Out of 73 activities defined in the Action Plan for the implementation of the "European Partnership with BiH" document in the subject area, 49 of them were implemented in the reporting period, which means that 67% of obligations were realised. However, at the same time, an average delay of 12 to 18 months was observed with regard to the initial deadlines of implementation as defined by the Action Plan, while the main reasons for non-achievement of the originally defined deadlines for the implementation of the underlying priorities and activities of the "European Partnership" are to be found at several levels: overambitious planning during the developing of the Action Plan itself, which did not sufficiently take into account the constitutional and legal, as well as financial and political framework in which the political and legislative processes in BiH are taking place, as well as a number of technical factors that came into focus in the process of implementation of specific priorities.

Observed by regions, and their normative and institutional level of the defined obligations, one very important moment was when action toward the completion of the reform process of the police bodies in BiH was taken, with the appointment of the Director and two Deputy Directors of the Directorate for Coordination of Police Bodies in BiH, the Deputy of the State Investigation and Protection Agency (SIPA), as well as Director and Deputy Director of the Border Police of BiH. The Council of Ministers of BiH adopted the Regulation on Internal Organisation of the Directorate for Coordination of Police Bodies in BiH, which opened the space for the complete and functional training of

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*Only thanks to the specific prospect of ending up on the "white Schengen list", for which there was a realistic consensus of the most relevant political entities in BiH, there was some progress in the field of Justice, Liberty and Security recorded in the reporting period.*

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its staff. As anticipated, the Directorate will include 1270 persons, and the filling of vacant positions shall be realised by taking over a certain number of staff from the State Investigation and Protection Agency (SIPA), and through open job advertisements.

The issue of appointment of the Director of the Agency for Prevention of Corruption and the Coordination of the Fight against Corruption also indicates the importance of the prospect of ending up on the "white Schengen list" in the context of meeting the priorities contained in the Roadmap and the European Partnership. However, since there was a delay in the drafting of the underlying law which regulates the jurisdiction and organisation of the Agency, and since afterwards there was also a delay in the creation of normative and institutional conditions for the initiation of proceedings for the election of its Director, due to political reasons, no one was elected for this function in the time period before the general elections in BiH, but the mandate of the Acting Director was extended, in order to implement the condition from the Roadmap, and the appointment of the new Director in full capacity remains to be implemented as soon as possible.

It is important to state, as an important example of the same perspective of liberalisation of the visa regime for the fulfilment of complementary or identical obligations under the European Partnership, albeit this time on the legislative level, the harmonisation of entity criminal laws with the amended Criminal Code of BiH, which ensured compliance of the criminal law in BiH with the requirements of international legal instruments adopted by BiH, including the recommendations of the Group of States Against Corruption (GRECO) and the relevant conventions of the United Nations and the Council of Europe. In addition to this, a number of other important activities during the reporting period were implemented in this area, starting from the fact that the Law on the Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption also resolved the issue of providing an efficient system for the conducting of criminal statistics in the field of corruption, that actions were taken towards the drafting and adoption of codes of ethics and conduct of officials and appointed persons at all levels, that teams for criminal analysis are strengthened, that public campaigns about the problem of corruption at all levels of government organisation are implemented, that specialised trainings were organised for judges and prosecutors regarding the fight against corruption, to the fact that the Agreement on the Establishment of Electronic Databases between police authorities and agencies in BiH and Strategies for the Fight Against Corruption is in the implementation phase, that works towards the introduction of an appropriate system of financial reports of state officials and appointees is being performed, and that activities are undertaken to raise awareness of the problem of corruption.

In the area of money laundering, in the reporting period work was performed towards the strengthening of institutional and professional capacities of the Financial and Intelligence Division of the State Investigation and Protection Agency, in the sense that the Chief of the Division was elected, but all of the systematised vacancies have not yet been filled, primarily due to financial reasons. The situation is similar when it comes to other organisational structures of the Agency, in the sense that the realisation of a dynamic plan, when it comes to filling systematised vacant positions, takes place under difficult financial and budgetary conditions, although the percentage of projected occupancy capacities of the Agency of 85.53% is likely to be reached by the end 2010.

In the field of combating organised crime and terrorism, following the adoption of the revised Strategy for Combating Organised Crime 2009 - 2012, the Council of Ministers of BiH adopted in February, 2010, the Action Plan for its implementation, and the monitoring of the implementation of the Strategy and Action Plan will be performed by the Working Group, formed by a decision of the Council of Ministers, which drafted the Action Plan.

The Agreement on the Establishment of Electronic Exchange of Data from the records of police authorities and prosecutors, between all police agencies in BiH, the High Judicial and Prosecutorial Council (HJPC), and the Department for Foreigners, was concluded, and the installation of appropriate information systems and the training of employees are

ongoing. The implementation of the agreement with EUROPOL is ongoing, and the establishment of the so-called secure communication network for the exchange of data is also currently taking place.

In the domain of special investigative measures, a series of by-laws was adopted to define the mechanisms and conditions for their implementation, and the operational capacities of the BiH Border Police are also put into function in order to monitor communications, which meet the standards of the European Institute for Standardisation in Telecommunications (ETSI). At the same time, an initiative was launched to establish a working group at the level of the Council of Ministers of BiH, which would be responsible for the drafting of the new Law on Witness Protection Program in BiH and the Guidelines on the Issuance of the Temporary Change of Certificates and other documents necessary for the creation or maintenance of temporarily changed identities of persons under protection and of employees in the Unit for Witness Protection.

The Strategy for Preventing and Combating Terrorism 2009 – 2013 was also adopted, and the Department of the State Investigation and Protection Agency (SIPA) for the fight against terrorism has filled almost 90% of systematised positions.

In the field of the fight against drugs, the following documents will be drafted by 2010, with the assistance of the project of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA): the Action Plan for the Establishment of an Information System on Drugs, Survey of Drug Abuse in BiH in 2009, and amendment of the Information Map. The drafting of the Law on Amendments to the Law on Prevention and Suppression of Drug Abuse, which sets a legal basis for the establishment of an Office for Drugs as a central coordinating body for the unification of all efforts to prevent drug abuse in BiH, is also underway, and it will also be in charge of the drafting of the Action Plan for the Establishment of an Information System. Entity strategies for the fight against drugs are being carried out within the planned schedule.

When it comes to the reform of the judicial system in BiH, a series of activities are being carried out with the aim of strengthening the independence of the judiciary in BiH, especially as regards the programming, use and implementation of budgetary resources of the judicial institutions in BiH, the advancing of the discipline and responsibilities of judges and prosecutors, primarily through changes and amendments to the Law on the High Judicial and Prosecutorial Council of BiH, and to the defining of clear time indicators for addressing certain categories of criminal cases through the drafting and implementation of the Rulebook on the framework criteria for the work of judges, consultants and other employees in the lower courts in BiH. In the period from April to June, 2010, the Rulebook was initially implemented in seven pilot judicial authorities at different levels of government. At the Conference of Ministers of Justice of BiH in June, 2010, changes and amendments to the Action Plan for Justice Sector Reform in BiH were defined, and their primary objective is the reduction of backlog of cases in BiH courts. There are ongoing activities that should lead to the development of a new Medium-Term Strategy for the Initial Training and Professional Development for the period 2011 - 2014, the drafting and adoption of which is expected by the end of 2010.

Finally, in the area of visas, border control, asylum and migration, in accordance with the defined schedule, a series of trainings and professional education for employees is being continuously carried out in all BiH institutions dealing with issues of asylum and immigration, in cooperation with the European Union and the individual Member States. The capacities of the Immigration Centre were strengthened, but the construction of the Asylum Centre, its equipment and putting into operation are still in delay. The Strategy for Integrated Border Management through its Action Plan, as well as the Convention on Police Cooperation in Southeast Europe is being steadily implemented. Furthermore, steps have been taken towards strengthening of the capacity of infrastructure of border crossings, biometric passport readers are being installed, and their full functionality will be provided following the installation of a new software package, KPDG2011. All by-laws provided by the Law on

Border Control were adopted and entered into force, but after the amendments to the Law on Border Control were adopted, it was discovered that 12 rather than 13 by-laws, as originally planned, are necessary for its implementation, because the issue of border marks and their placement along the border line must be resolved through an agreement or contractual act with the other side. Through the internal regulations and agreements that BiH concluded with all neighbouring countries, BiH achieved the categorisation of all its border crossings. Successful cooperation with the neighbouring countries has been achieved in the areas of control and improvement of border crossings, as evidenced by the two agreements on these issues recently signed with Montenegro.

From the briefly listed implemented activities envisaged by the Action Plan for Implementation of Priorities from the European Partnership in the subject area, it is clear that a significant part of the commitments have been fulfilled, and that the rest are currently being implemented. However, the fact is that complementarity of commitments in this area with the obligations of the Roadmap for the Liberalisation of the Visa Regime, as well as the effort of political subjects in BiH to realise the commitments in a dynamic framework that is determined not only by the Roadmap and its Action Plan, but also by actions and announcements of the European Commission and other relevant institutions and entities of the European Union on this issue, gave the decisive "wind in our sails".

In this context, taking into account the complexity of the legislative process at the level of common institutions and the lack of readiness of political entities at the entity level to make any transfer of authority to the state level during the process of implementation of commitments, which are the main problems and obstacles that were identified in the previous period of implementation of tasks in this area, doubts in the quality and speed of implementation of the remaining priorities from the European Partnership which are not covered by the Roadmap for the Liberalisation of the Visa Regime, can be openly expressed.

The fulfilling of obligations from the Roadmap for the Visa Liberalisation indicates that, despite certain problems that may occur, if there is a unique and strong commitment of all relevant political subjects in BiH to the implementation of the required actions and the appropriate mode of implementation of defined obligations, compromise could be achieved. Of course, the responsibilities that implied direct or indirect transfer of responsibilities from entity to state level, and the establishment of new or strengthening of the existing competencies of state institutions required the most effort for ensuring a compromise. In fact, the central area of political struggle in this context was the Parliamentary Assembly of BiH, namely, its House of Representatives to a smaller extent, and the House of Peoples to a far greater extent, which often led to delays in legislative proceedings or in the procedure of the appointment of holders of key positions in newly established institutions. On the other hand, although the House of Peoples is the most visible "culprit" for the delays in the implementation of obligations, the Council of Ministers of BiH also bears a significant share of responsibility, primarily due to inadequate preparation of draft legislation in the context of ensuring a proper balance between the needs of the implementation of obligations from the Roadmap, on one hand, and the constitutional and legal structure of BiH, as well as political platforms of the most relevant political subjects, on the other. This lack of preparation, especially in the reform of the police structure in BiH, often required additional efforts to reach compromise solutions, primarily through the organisation of conferences and ministerial meetings, as mechanisms outside the existing institutional structure within which the legislative process at the level of BiH takes place. Besides that, an aggravating factor for the implementation of the defined obligations was certainly manifested through direct and indirect pre-election activities of political subjects in BiH, which further reduced the space for providing the necessary compromises on certain issues.

Finally, we should not neglect the fact that, apart from difficulties related to the absence of



a common will of the relevant political entities in BiH, the difficult financial and economic situation, whose budgetary repercussions certainly slowed down or even temporarily stopped the implementation of activities that require additional budget allocations, have been a very important aggravating factor for the realisation of defined obligations, especially those relating to the establishment of new institutions and agencies at state level, and their infrastructural equipping and staffing. Among other things, this fact is also shown through the current general situation regarding the relation of the stated needs versus the systematisation and staffing of most of the newly established institutions at state level.

## **b** Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

Taking into account the fact that BiH is at stage of EU integrations governed by the Interim Agreement, which does not deal with the area of "Justice, Freedom and Security", and that the part of the Action Plan for the Implementation of the SAA which refers to obligations not covered by the Interim Agreement does not have clearly defined deadlines for their realisation, it is objectively impossible to assess the degree of fulfilment of obligations from Title VII of the Stabilisation and Association Agreement. As is the case with the obligations from the European Partnership document, it is also obvious that the fulfilment of obligations from the Roadmap for the Visa Liberalisation also contributed to a parallel implementation of certain contractual obligations before they formally entered into force. In some cases, there is complete realisation, while in other cases there is partial or on-going realisation of the defined contractual obligations. In this context, for example, it is possible to identify a high degree of implementation of commitments in the area of protection of personal data, which requires the establishment of an independent supervisory body, and the harmonisation of BiH legislation with the European legislation and other relevant international standards (Article 79 of the SAA). The situation is similar when it comes to the conclusion and implementation of readmission agreements with the EU and countries encompassed by the Stabilisation and Association Process (Article 81 of the SAA), while more permanent liabilities are those relating to judicial reform and ensuring its independence, the fight against all forms of crime and terrorism, and the control of the area of visas, border management, asylum and migration, within which the reaching of European standards requires a relatively long period of time (Articles 78, 80, 82 -85 of the SAA), as is demonstrated through the example of some countries in the region that are relatively close to full membership in the European Union.

On the other hand, taking into account the above mentioned fact that the indirect implementation of obligations from Title VII of the SAA, to a greater or lesser extent, is carried out through the implementation of complementary obligations from the Roadmap for the Liberalisation of the Visa Regime even before the obligations from Title VII formally entered into force, there is no doubt that the relevant institutions in BiH will have more than a favourable start for the continuation of contractual obligations once the SAA enters into force and once the time indicators for the implementation of activities from the Action Plan in the areas of Justice, Freedom and Security are specifically defined.

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*The opposition of political platforms of the most relevant political subjects, the different perceptions of modalities of its actions toward the implementation of obligations in the process of accession to the European Union, the complex legislative process, and insistence on the day-to-day political interests as opposed to the general demands of the European integration process, need to be pointed out as the most important aggravating factors that obstruct a faster implementation of not only the obligations from Title VII of the SAA, but of all of the obligations of BiH in the accession process and, at a later stage, in the process of joining the European Union.*

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## Example: Agency for Prevention of Corruption and Coordination of the Fight Against Corruption

The obligation of establishing the Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption was based on several legal grounds and documents, the most important of them being the Roadmap for the Liberalisation of the Visa Regime, the European Partnership with BiH, and the recommendations of the Group of States against Corruption (GRECO) formalised through the relevant documents of the Council of Europe. Notwithstanding the importance of these obligations (and the general problem of corruption not only at all levels in BiH, but also in other countries in the region) opposed political concepts, as well as different perceptions of the roles and responsibilities of independent administrative authorities which would deal with the issue of corruption - and which could be identified with different political entities, not only at the vertical line of the entities' state institutions, but also within the common institutions themselves - were the main reason for the delay in the process of creating a legal framework for its establishment and in the process of ensuring its full functionality.

The initial draft version of the underlying legislative act, which provided for the future institution to have at its disposal strong investigative, administrative and operational powers, was rejected by the representatives of Republika Srpska, who did not accept any solution that would imply a transfer of authority from the entity Ministry of Interior to the future agency, especially taking into account the fact that Republika Srpska previously adopted its own strategic document regarding the fight against corruption, and established a separate committee which would deal with the issue of its implementation. Instead of the initial rejected proposal, a compromise solution was reached at the state level, which put the prevention and coordination of the fight against corruption into the focus of future agencies, along with the preservation of investigative and other responsibilities of the entity and other police authorities, in accordance with the existing constitutional and legal arrangements. The harmonised Law on Agency for Prevention of Corruption and Coordination of the Fight against Corruption<sup>42</sup> was finally adopted in mid-December of 2009, after which the operational setting and the appointment of managerial functions began. The Commission for the Election and Monitoring of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, established on the basis of the underlying legislative act, began with the realisation of the task of election of the Director of the Anti-Corruption Body of BiH.

At the same time, during the process of evaluation of the achieved results of institutions in BiH in the context of meeting the obligations from the Roadmap for the Liberalisation of the Visa Regime, which was conducted by representatives of the European Commission, the Deputy Minister of Security of BiH was appointed as Acting Director of the Agency with a limited mandate until 1 August, 2010, because it was expected that during this period the process of election of the director which would serve in full capacity would be completed. However, due to the slow implementation of the competition process that involved several institutions (the Parliamentary Assembly of BiH, Central Election Commission of BiH, State Agency for Investigation and Protection...), the selection from a large number of candidates and, in particular, due to conflicting interests of the most relevant political subjects, the defined deadline was not respected, and there was a risk that one of the most important conditions for the liberalisation of the visa regime would not be implemented. This situation also caused a specific reaction of

<sup>42</sup> Published in Official Gazette of BiH no. 103/09.

the representatives of the European Union who gave their opinion on this issue and urged the political entities in BiH to come up with a solution as soon as possible, so that the placement on the white Schengen list would not be compromised due to the lack of implementation of this requirement. As a result of the pressure of not receiving a positive report from the European Commission about the level of fulfilment of conditions for the liberalisation of the visa regime, but also due to the pressure from the general elections which were to be held in BiH, a partial solution was found to extend the mandate of the Acting Director, first by the House of Representatives, and then, after further political friction and cancellation of meetings due to the absence of Serb representatives, and then also of Bosniak representatives, finally by the House of Peoples of the Parliamentary Assembly of BiH. This provided a superficial fulfilment of the requirements of the Roadmap regarding the election of the Director of the Agency, which was satisfactory for the European Commission for the time being, but the obligation of electing the Director remains one of the primary obligations of the new session of the Parliamentary Assembly of BiH.

The issues of adopting laws and electing the Director of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, substantially and fully reflect the fundamental problems which the implementation of a large number of commitments in the process of accession to the European Union faces: strong opposition of political concepts of the most relevant political entities with respect to the form and manner in which the state should operate, and also with respect to modalities of its internal organisation and functioning in the context of fulfilling the obligations that the process of EU accession entails, and a complex legislative process in a legally, politically and institutionally complex country, which requires extra efforts and additional time for its completion.

The fact which led to a temporary solution in this case was that it was a condition for the realisation of a specific and realistic prospect of liberalisation of the Schengen visa regime, for which there was a real interest of all political subjects, and, consequently, there was a slightly wider space for ensuring consensus. In other cases, where the obligations refer only to a general and still unclear European prospect for BiH, achieving a consensus on particular issues is much harder.

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*The example of the liberalisation of the visa regime clearly indicates that better results and compromises can be achieved, even when it comes to the most complex issues that involve the transfer of authority and the establishment of new institutions at the state level, if a specific and realistic prospect of achieving an immediate and relatively quick benefit for the citizens of BiH is within reach. On the other hand, a more general European perspective, rest on not so realistic grounds, not only in BiH but also in a large part of other countries in the region, does not provide an attractive goal, especially taking into account both the general situation in the European Union and the attitudes of the most relevant member states.*

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## TITLE VIII COOPERATION POLICIES

### **a** Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership

The analysis of compliance with the measures from the "Program of Priorities of Harmonisation of Legislative Activities for the Implementation of the European Partnership" for the period from 15 December, 2009, to 15 October, 2010, points out some serious problems of stakeholders of the legislative process in BiH in fulfilling their obligations. In the previous reported period the observed legislative paralysis at the state level was intensified and it culminated in mid-2010.

This is best illustrated by the data on the laws adopted by the Parliamentary Assembly of BiH: During 2010 out of the planned 111 laws only 27 laws were adopted, of which only seven are European laws related to the Policy of Cooperation<sup>43</sup>, out of 35 rejected laws, there are 23 laws that were rejected through the entity voting mechanism, of which there were three European laws from this area.<sup>44</sup> Furthermore, four European laws, which are important for the Policy of Cooperation<sup>45</sup>, are still in parliamentary procedure.

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*Analysis of compliance with the measures from the "Program of Priorities of Harmonisation of Legislation Activities for the Implementation of the European Partnership" for the period 15 December, 2009 - 15 October, 2010, points out serious problems of stakeholders of the legislative process in BiH in fulfilling their obligations. The legislative paralysis that was observed at the state level in the previous reporting period was intensified, and it culminated in 2010.*

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<sup>43</sup> Law on Copyright and Related Rights, Law on Collective Realisation of Copyright and Related Rights, Law on Working Hours, Mandatory Resting Periods for Mobile Workers and Recording Equipment in Road Transport, Law on Patent, Law on Trademarks, Law on Industrial Design, Law on Protection of Indications of Geographical Origin.

<sup>44</sup> Draft Framework Law on Free Legal Assistance, Draft Law on Volunteerism, Draft Law on Promotion of Small and Medium Enterprises and Entrepreneurship.

<sup>45</sup> Draft Law on Wine, Draft Law on International and Inter-Entity Road Transport, Draft Law on Census, Households and Apartments in BiH in 2011, Draft Law on Application of Results of Deoxyribonucleic Acid in Judicial Proceedings.

The observed legislative paralysis manifests itself in several ways:

First, a certain number of laws from the "Program of Priorities of Harmonisation of Legislative Activities for the Implementation of the European Partnership", although established by the Council of Ministers, were rejected in the Parliamentary Assembly of BiH, namely: the Draft Law on Promotion of Small and Medium Enterprises and Entrepreneurship, the Draft Law on Free Legal Assistance, the Draft Law on Agency for Development of Information Society in BiH. It is interesting that some of these draft laws went through several legal procedures and were rejected through the entity voting mechanism. For example, the Law on Free Legal Aid, which regulates subjects and beneficiaries of free legal aid, the conditions and manner of implementation, the financing and control of free legal aid, and the institutional management and supervision of law enforcement, was first rejected in March, 2009, and then in July, 2010.

Second, a certain number of legal acts, although planned within various ministries at the state level, were never realised. In this group we can include the following laws: the Law on Environmental Protection, the Law on State Aid System, the Gas Law, the Veterinary Law of Bosnia and Herzegovina, the Law on Veterinary Medicine, Law on Customs Tariff, and the Law on Phytopharmaceutical Products.

Third, the implementation of a number of European laws that were not adopted on schedule in 2009, was not foreseen in 2010 (the Law on Animal Waste, the Animal Feed Law, the Law on Cultural Heritage, the Law on Cultural Institutions of General Importance for BiH).

Fourth, in addition to delays in the preparation and adoption of the envisaged legislation, deadlines for the adoption of supporting by-laws and other documents (e.g. the Action Plan for Persons with Disabilities, the Strategy on Roma in BiH - revised, the Strategy on Youth Policy in BiH, the Agreement on Health System Reform in BiH, the Agreement on the Economic and Social Council of BiH) are shifted and prolonged.

Fifth, a dangerous practice is being introduced gradually in the political reality of BiH in the way that, when an agreement on the establishment of state institutions in specific areas that require legislative harmonisation with EU standards is blocked, these institutions are established at the entity level. Thus, for example, having blocked the achievement of political consensus on the establishment of the Economic and Social Council at the state level, the RS entity authorities established this body at the entity level.

Generally, compared to the previous reporting period when a difficult and slow process of normative adjustment and harmonisation between different government levels in BiH with the *Acquis communautaire* was observed, there was a total regression in the implementation of defined duties in 2010, which is most clearly reflected by the fact that the legislative process at the state level is completely blocked and disabled.

Since all key areas are regulated by entity and/or cantonal legislation, the meeting of planned measures and activities is prevented by an increasing political disagreement over the transfer of competencies from the cantonal and entity level to the state level. Because of that, BiH is still lagging behind in harmonisation with the *Acquis* in the field of environmental protection (the State Environmental Law is not adopted, which would, among other things, enable the establishment of the State Environmental Protection Agency), transport policy (the BiH Gas Law and the National Strategy on the Area of Energy Policy), information society (the State Law on Information Society and the supporting state agency), agriculture (the Veterinary Law), labour legislation, etc.

Furthermore, the parliamentary process is characterized to the greatest extent possible not only by weak and diffuse coordination between the two chambers of the Parliamentary Assembly, but also by reinforced lack of coordination between the Council of Ministers and the Parliamentary Assembly, which is reflected in the number of rejected laws that are proposed by the Council of Ministers itself.

## **b** Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

The analysis of compliance with measures and activities planned by the "Program of Measures for Implementation of the Interim Agreement/the Stabilisation and Association Agreement for the period from 1 January - 31 December, 2010" document, in areas covered by Policies of Cooperation, shows an uneven and limited progress in their implementation.

In comparison with the previous reporting period, a prolonged execution of a significant number of measures was observed in almost all sectoral policies. We highlight examples in the field of public administration in which the adoption of programs for the improvement of quality of administrative decision-making in BiH was delayed; in the field of human rights and minority protection the establishment of the department of children's rights was delayed, as was monitoring of implementation of strategies on juvenile delinquency, establishment of an electronic database on the status of women and children, and the adoption of a national strategy to combat violence against children. In the field of agriculture, the implementation of a set of measures concerning the implementation of a comprehensive national strategy for rural development was prolonged, as was the adoption of the Veterinary Law, etc.).

As our previous reports also pointed out, some progress has been noticeable in the areas of customs, audit, financial control, and transport policy, while a backlog in the field of energy and the industrial sector, agriculture, social policy and employment, and environmental protection is also noticeable. These areas are also detected as "critical" in previous reports, not only in terms of harmonisation of legal regulations with the Acquis, but also in the field of developing and strengthening of human material capacities of institutions at the state level, and of inter-sectoral cooperation.

The main cause lies in the fact that, despite the understanding of the inevitability of the European path of BiH, political opinions differ regarding how this could be achieved. While politicians from the Federation of Bosnia and Herzegovina generally accept only those steps that guarantee the establishment and strengthening of state competencies in the European integration process, the political representatives from Republika Srpska consider the necessary transfer of responsibilities from the entity to the state level to be problematic and unacceptable. Therefore, the implementation of a significant number of measures and activities, through which legislative harmonisation at the state level and/or creation and strengthening of national institutional capacities is planned, and whose implementation requires closer, faster, and more effective inter-sectoral cooperation, appears to be an impossible mission.

The above mentioned can be illustratively presented through some examples. In the field of industry, this is best shown by the failure to create a coherent legislative and

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institutional framework for small and medium enterprises. Although the Draft Law on the Promotion of Small and Medium Enterprises and Entrepreneurship in BiH was determined at a session of the Council of Ministers held on 22 December, 2009, this Law was rejected by the Parliamentary Assembly on 16 June, 2010, through the entity voting mechanism by representatives from Republika Srpska. The absurdity of such a parliamentary outcome is reinforced by the fact that this Law was proposed by a Minister from one of the parties that later voted against that same Law and thereby stopped its passage through entity voting.

In the field of energy we can also find a similar example when it comes to the (non)existence of a political consensus for the adoption of the State Law on Gas and the way to resolve the organisation of the gas sector at the state level, which is the basis for the fulfilment of other measures undertaken in this area.



### Example: Legislative blockage in the example of the (non)adoption of the Law on Census and possible political implications

Preparing and conducting the census is one of the key priorities in the field of statistics in the European Partnership document, especially since a census of citizens, households and apartments will be conducted at the global level, in 2011. Opposition continues despite the fact that the leaders of the European Union and the European Commission have continuously emphasised the necessity of adopting the legal basis for the implementation of the census, indicating that the lack of political will to implement the census would be a major defeat for BiH, which would, in that case, not be entered into the global database, and, more importantly, would leave it without the data necessary for the planning of program support. Many European and Western Balkan countries will carry out a census in 2011, although, they each had different census practices in the past. For example, Denmark updates their census through different register data, which is accurate enough to be reliable. In France, partial census is carried out every year. Germany had been using population samples in combination with statistical data in place of a full census, and a similar method is used in Netherlands.

However, given the demographic changes and mobility of population in BiH since 1992, and the fact that many records were misplaced or destroyed during war, the census in BiH is central to the establishment of reliable statistics overall. In spite of the urgency of having a census, and EU pressures towards that end, census continues to be an issue of contention. The reason for that lays in the divergent political views and lack of consensus among political parties about the principles on which census should be based. The political debates have polarised around the questions of whether the census should include questions about religious, ethnic and linguistic affiliation, whether and how to implement the census among the BiH diaspora, and questions of which principles the government structures of BiH should be formed on.

During the process of drafting and harmonisation of the text of the draft law, it was not acceptable to the representatives of the Bosniak political parties to make a census on religious, ethnic, and language affiliation, and the argument which was cited most often was the fact that Annex 7 of the Dayton Agreement is not implemented, and that the inclusion of such elements would, under such circumstances, imply the legalisation of ethnic cleansing.



Although the census of religious and ethnic/national structure is not mandatory according to European standards, the representatives of the Croat and Serb political parties agree on the fact that the census should include these elements, but their views are diametrically opposed with regard to the implications of these elements on the ethnic representation in the assembling of the government. While it is unacceptable to the Croat and Bosniak politicians to legalise the consequences of war and ethnic cleansing, and while they demand that the government is constituted based on the 1991 election results until the adoption of a new Constitution, this idea is objectionable to political leaders from Republika Srpska, since, according to them, the question of the structure of government bodies is regulated by the constitutional and specific individual laws, and it is not directly related to the census.

The process of political negotiations resulted in the final adoption of the Draft Law on Census of Population, Households and Dwellings at the session of the House of Representatives held on 30 June, 2010, which, along with all the questions required by Eurostat, allows for citizens to voluntarily declare their ethnic, religious, and linguistic orientation. The issue of implementing the census in the diaspora is resolved by this Proposal so that the census of this category of BiH citizens would be conducted separately from the census of the resident population, while it is stipulated by Article 48 of the Draft Law that the results of the 1991 census are to be used as the basis for the constitution of the common institutions of government by national representation.

Although the Draft Law on Census of Population, Households and Dwellings received the green light in the House of Representatives of the BiH Parliamentary Assembly, the Chairwoman of the House of Peoples interrupted the session of this House, when the adoption of this Law was on the Agenda, with the explanation that the "delegates from the Serb ethnic group in this House need to consult the position of the National Assembly of Republika Srpska on the mentioned Law, which will be mandatory for all delegates." At the session held on 7 September, 2010, the National Assembly of Republika Srpska adopted a conclusion that requests the RS representatives in the House of Peoples not to support the Law on Census at the BiH level with the disputed Article 48 in the proposed form. The adoption of the BiH Law on Census is conditioned by the abolishing of this Article or its reduction to all levels of government below the joint institutions of BiH, while its application is limited to the year 2014.

Noting that the Law on Census at the state level would not be adopted before the 2010 General Elections, the delegates of the RS National Assembly adopted a law regulating this issue at the entity level on 1 September, 2010, despite the warnings of the European Commission that the census is not an issue that can be resolved at the level of entities or regions, and that partial census cannot replace the census of the whole country.



## TITLE IX FINANCIAL COOPERATION

### **a** Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership

The part concerning financial cooperation was not the subject matter of the European Partnership, primarily because the SAA itself also mentions the assistance of the Community of European States in the context of its conditionality "in meeting the Copenhagen political criteria, and particularly in achieving progress by meeting specific priorities of the European Partnership."

However, Article 114 emphasizes the need for "close coordination with contributions from other sources", and the need for "regular exchange of information on all sources of assistance." In this context, and for the purpose of comprehensive financial planning and monitoring, finance ministries at all levels should prepare medium-term public investment programs within their medium-term budget planning activities, in which they should present all the public expenditures that are financed from external sources. Furthermore, the Donor Coordination Forum was established at the level of the Ministry of Finance and Treasury, with technical and financial support of international donor organisations, and consisting of "twenty major bilateral and multilateral donors, who contribute to the reform process in BiH" <sup>46</sup>.

The responsibility for the management of the Donor Coordination Forum was, already in 2007, transferred to the Ministry of Finance and Treasury through the decision of the Parliamentary Assembly of BiH, and with this aim, the Sector for Coordination of International Economic Aid (SCIA) was established in 2008, which consists of two internal organisational units, namely: the Department for Preparation and Implementation of Public Investment Programs and the Department for Coordination and Mobilization of International Aid. The latest report on the activities of donors (Donor Mapping Report) was prepared for 2008 and 2009, and it represents the first report that the Ministry of

<sup>46</sup> From the Overview of Donor Activities for 2008 and 2009, which was written by the BiH Ministry of Finance and Treasury.

Finance and Treasury drafted independently as a primary holder, with the technical assistance from the Department for International Development (DfID) and the United Nations Development Program (UNDP).

In the area of coordination of donor assistance the primary importance is still the ensuring of the infrastructure and coordination system in which the programming and coordination of aid is performed in close relations with the planned mid-term budget (i.e. the developed public investment programs – the PiPs - along with the medium-term budgets) and that the overall process of aid coordination and resource planning, i.e. the budget, reflects general development and reform strategies and policies.

It is also important that there is regular communication with donor forums set up in those sectors which were not covered by the initial efforts for the establishing of state mechanisms for the coordination of foreign assistance, such as the forum for coordination of aid in the justice sector. Activities that are related to the coordination of international economic aid to BiH are performed within the Sector for Coordination of International Economic Aid of the Ministry of Finance and Treasury of BiH, except for the part relating to EU assistance. In this context it is important to ensure that there is synergy between these two, essentially, parallel processes of coordination of international assistance, and that both processes are based on unique development strategies and policies.

## **b** Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

Certainly the most important aspect of financial cooperation in the context of the Interim Agreement, or the SAA, is the application of the Decentralized Implementation System (DIS) of the EU funds. Although the activities in this field are not explicitly listed as a requirement, neither in the EP, nor in the SAA, the decision of the EU to allow domestic institutions to take over tasks regarding the invitation to tenders and the monitoring of the implementation of EU projects is certainly a strong indicator of the progress of the state in EU integrations.

The DIS is carried out in two key phases: a) the establishment phase and b) the accreditation phase.<sup>47</sup> The first phase has been almost fully implemented in BiH by now, through the adoption of the Strategy on Introduction of DIS, the establishing of institutional structures and the amendment of regulations, and by strengthening human capacities (both in numbers and in skills)<sup>48</sup>. The DIS involves the transfer of one part of the responsibilities for the management of funds from the European Commission to the beneficiary country, which includes:

1. public procurement/invitations to tenders, concluding contracts, drafting of the budget and allocation of funds of the Community, which are carried out by the institution established for this purpose: the Central Financing and Contracting Unit (CFCU) and
2. demand and management of funds of the Commission and submission of financial reports, which is carried out by the institution established for this purpose: the National Fund (NF).

<sup>47</sup> ACIPS, (2010). "Decentralized System for Management of Funds of the European Union (DIS) – Analytical Overview of its Importance and Development in BiH" p. 4.

<sup>48</sup> Ibid.

As pointed out by the Strategy for Introduction of DIS Assistance Programs of the EU in BiH, "the goal of shifting from the centralized to the decentralized system of implementation is a gradual preparation of Bosnia and Herzegovina to take over responsibilities for the management of EU assistance from the Commission at the time of entering the EU", and by "taking over part of the responsibility for the management of funds, Bosnia and Herzegovina gets the opportunity to establish and implement in practice the necessary internal procedures and structures."<sup>49</sup>

The Strategy specifies that full establishment of DIS requires the appointment of holders of certain responsibilities, and it also defines the creation of special units in the existing institutions:

1. National Aid Coordinator (NAC),
2. National Fund (NF), managed by the National Accreditation Officer (NAO),
3. Central Financing and Contracting Unit (CFCU), managed by the Project Accreditation Officer (PAO),
4. senior officers in competent ministries, in charge of management of assistance programs (SPO - program managers),
5. beneficiaries and
6. Joint Monitoring Commission.



### Example: Decentralized Implementation System of the EU Funds

In the context of BiH it can be concluded that, until now, significant efforts have been achieved in the establishment of the DIS system for management, programming, and monitoring of the EU assistance funds. However, it is important to maintain a high degree of political will not only for the adoption of a formal framework, but also for the strengthening of absorption capacities in order to ensure that institutions in BiH are able to fully exploit the potential of the EU funds.

The experiences of countries that already went down this road point out the potential difficulties the new member states have with the absorption of EU funds if appropriate political efforts are not aimed at the strengthening of these capacities<sup>50</sup>. The most significant obstacles to the strengthening of absorption capacities are the following<sup>51</sup>:

1. lack of comprehensive long-term strategy of national development,
2. lack of funding for co-financing of projects,
3. inefficient, and in some cases non-existent, horizontal and vertical coordination between ministries and different levels of government in the country, and, finally,
4. lack of professional human resources involved in the management of EU funds in the relevant departments at all levels.

<sup>49</sup> Strategy for Introduction of DIS by Assistance Programs of the EU in BiH.

<sup>50</sup> Knežević, I. (2010). "Absorption capacities of Serbia for Using the EU Funds – Practical Experiences from Slovakia". European Movement in Serbia, page

<sup>51</sup> Ibid.

In that context there are three very important criteria for the absorption power of a country to use the EU funds. The first is the macroeconomic absorption capacity "which defines the total amount of EU funds which can be assigned to a particular member state and which is determined as a percentage of GDP of the country."<sup>52</sup> The second is the administrative absorption capacity which implies that all government bodies at all levels are able to prepare "adequate plans, programs and projects within the established deadlines", that they can define priorities and possess mechanisms for efficient cooperation and communication with all key external and internal stakeholders, and that they generally have adequate capacities for the management, control, and monitoring of its work and activities<sup>53</sup>. Finally, an important financial absorption capacity is the ratio by which a Member State may participate in projects co-financed by EU funds from domestic budgetary resources.

All of the above-mentioned in fact just underlines the importance which the public administration reform has in the strengthening of absorption capacities to use EU funds,<sup>54</sup> especially the administrative and financial ones. In that context, the improvement of systems and processes of strategic planning and policy development, human resource management, budgeting and financial management, the improvement of information technology, and external and internal communication, are of special importance. Therefore, in the context of BiH, it is necessary for the responsible governments to show far greater commitment to these reform initiatives than is currently the case, if they are to exploit the potential of EU funding, once BiH becomes a member country.

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<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

## TITLE X

### INSTITUTIONAL, GENERAL AND FINAL PROVISIONS



#### **Assessment of fulfilment of priorities in legal harmonisation for the implementation of the European Partnership**

In 2010, all subcommittees, as well as the Interim Committee, were held in accordance with the adopted plan. In the period January – June, 2010, the meetings of the Subcommittee on Transportation, Energy, Environment and Regional Development, the Subcommittee on Agriculture and Fisheries, the Subcommittee on Commerce, Industry, Customs, Taxes and Cooperation with other candidate countries, the Subcommittee for the Internal market and Competition, the Subcommittee on Economic and Financial Issues, and the Subcommittee on Innovation, Information Society, Social Affairs and Health, were held.

At the meetings of the above-mentioned subcommittees all the matters covered by the Interim Agreement and the SAA were considered, and this was also an opportunity to consider all the problems and delays that are caused by insufficient efforts to meet the priorities or the discrepancy between the different levels of government regarding the distribution of responsibilities. In accordance with the findings of the previous chapters which analyse each of the areas of the SAA, in this Title we summarise the views of the European Commission on individual issues that were the topics of the Subcommittee, and we present their ratings.





## Analysis of Measures Undertaken to Implement the Interim Agreement/the Stabilisation and Association Agreement

During the six meetings of the subcommittee held during the period from January to June, 2010, the European Commission gave a negative assessment regarding the majority of discussed issues (here we present a few of the most important ones), which is consistent with our findings from the previous Titles. We highlight four areas in which limited progress has been identified, and seven areas in which there was significant progress.

Areas in which the European Commission expressed dissatisfaction and regret due to the failure to meet obligations include:

1. Lack of the harmonisation of the Constitution of BiH with the European Convention on Human Rights and Fundamental Freedoms, or the failure to implement the decision of the European Court of Human Rights in the Sejdić/Finci case.
2. Law on State Aid System in BiH.
3. Law on Transport of Dangerous Goods at the level of BiH.
4. The strategy, policy and action plan at the level of BiH in the area of transport.
5. Open questions with the Republic of Croatia on finding solutions for the transit traffic through the so-called Neum corridor.
6. The energy strategy at the level of BiH.
7. The Gas Law at the level of BiH.
8. The Law on Environmental Protection at the level of BiH.
9. The Policy on export subsidies in the area of agriculture at the level of BiH.
10. Population census, including census of farms and lands and other relevant indicators.
11. Issuing of double registrations of companies in BiH, or non-functioning of a unified economic space.
12. Lack of harmonisation of the entity laws on public radio and television broadcasting services with state law.
13. Strategy of the telecommunications sector at the state level and the accompanying action plan.
14. Problems over the appointment of the Communications Regulatory Agency management, and the status of this institution, the unwillingness of the authorities in BiH to resolve this issue, and the increase of political pressure on the CRA.
15. Establishment of the Agency for Information Society at the state level.
16. Problems in the area of education caused by lack of harmonisation of the cantonal laws and the lack of implementation of legislation and strategies at the state level.

17. Absence of progress in the area of social dialogue, as well as regarding the establishing of the Economic and Social Council at the level of BiH.
18. Absence of adequate statistical data pertaining to the implementation of legal acts regulating issues of non-discrimination, gender equality, etc.

Partial progress was made in a very few areas, but the European Commission pointed out specific problems that have been set as an obstacle for the further implementation of these obligations:

1. It is pointed out that the previous transposition of legislation in the field of market surveillance was primarily focused on product safety, but that special attention should be paid to the adoption of the directive on Market Surveillance (765/2008), which is most important in this area.
2. The trade part of the Interim Agreement between BiH and the EU is generally well implemented, but the European Commission has expressed its surprise and indignation regarding the fact that the BiH side did not inform it about the adoption of the Law on Amendments to the Customs Tariff Law, which reduced certain MFN tariff rates to the level of the customs rates of the EU. According to the Commission, this is a unilateral act of BiH which violated the provisions from Article 3, Paragraph 7, of the PS, which specifies the obligation of the contract parties to inform each other about their basic customs rates and any changes thereof.
3. In the area of customs, it is pointed out that BiH has to quickly adapt to changes which have occurred in this area in the European Union, while in the area of indirect taxes it is indicated that the ITA BiH will have to go through a complete reorganisation in the context of preparations for its functioning in accordance with standards applicable in the EU.
4. The Commission recommended the drafting of a table, at least for the field of the internal market in BiH, that will contain a comparative review of the mutual harmonisation of regulations among entities and their harmonisation with the regulations of the Union, and it is suggested that the transposition of the Acquis into the national legislation must be carried out in a harmonised way across the country.

According to views of the European Commission expressed at the meetings of the Subcommittee, progress has been made in several areas, including:

1. Adoption of the Revised Strategy for the implementation of Annex 7;
2. Law on Tachographs;
3. Metrology and Intellectual Property;
4. Regional cooperation in terms of judicial cooperation and legal assistance;
5. Anti-Discrimination Law;
6. Establishment of the Council for National Minorities.



## Example: Meeting of the Interim Committee for Stabilisation and Association

At the end we point out the very important conclusions of the meeting of the Interim Committee for Stabilisation and Association held in June, 2010, in Sarajevo. The Interim Committee meeting is essential to the review of the progress of BiH, because many contentious issues, identified at the subcommittee meetings, could be resolved in the meantime. The most important issues identified at previous meetings were considered, but this meeting is critical to the assessment on whether BiH has violated the provisions of the Interim Agreement.

The Commission has expressed its concern and disapproval regarding the violation of provisions of the IC and the SAA, but also other relevant documents, made by BiH by failing to adopt the Law on State Aid System in BiH and by not respecting the deadlines that are contractually defined. Also, representatives of the Commission pointed out that, despite the delivery of the new draft, the Commission must record that there was a flagrant violation of the IA and the SAA, and notify, accordingly, the representatives of the Governments of the Member States.

Both sides expressed dissatisfaction and great concern regarding the problems with the adoption of the Law on Census, so the authorities of BiH were warned that they should not allow further delay, and to implement the census, at any rate, within the prescribed deadlines. It was reiterated that a census, made at the entity level, would have no significance for the Commission and the Eurostat.

Because of the lack of harmonisation of the BiH Constitution with the European Convention on Human Rights and Fundamental Freedoms, it was pointed out that in such circumstances it cannot be expected that the EU member countries meet the interests of BiH by giving it additional trade benefits (in response to a request to increase the export quota of fish). The Commission noted that this issue is very important for the Union, and that the Union will, if the harmonisation process lasts for too long, consider possible consequences for BiH.

## In Place of a Conclusion

The European integration process in Bosnia and Herzegovina is the most specific European integration process in the region because it is running simultaneously with the attempt of authorities to solve many essential matters relevant to a proper functioning of the state in a rather complex social context. Unlike in neighbouring countries, the political elites in Bosnia and Herzegovina share the same vision of EU membership, but they have a completely different view of the state and its functioning, and hence have a completely different view of how Bosnia and Herzegovina should become an integral part of the EU. The lack of political will is a common denominator of all the difficulties that will be described in the text below. In the areas where progress is noted, it can be attributed to the fact that initiative was taken by the professionals. Just as was the case with all previous reports, we are concluding this monitoring report, by a general statement that BiH only partially fulfils commitments under the Interim Agreement and European Partnership.

Bosnia and Herzegovina is the only country in region that breaches the Interim Agreement on trade and trade matters with the EU. This primarily refers to the violation of Article 2, which requires that the Constitution and the Election Law be harmonised with the European Convention on Human Rights, but it also refers to the failure of BiH to adopt the Law on State Aid before July 2010.

Despite the establishment of a temporary inter-ministerial body for negotiations with EU, there is still no regular communication among the institutions. A direct consequence of this failure is further delay of one of the crucial steps in implementation of the SAA – establishing a Stabilisation and Association Council. This obligation has been delayed for over a year.

In the majority of areas, the problems with fulfilling the obligations are due to a lack of long-term planning of activities to achieve individual goals. The failure to make long-term planning of activities is due to a lack of technical regulations, appropriate infrastructure, and institutional capacities to implement this legislation - and lack of adequate knowledge and skills to apply the new legislation.

Based on findings in each of the ten chapters of this report, we would like to highlight a few positive and negative examples that have characterised the European integrations of Bosnia and Herzegovina over the last year:

- In the reporting period, a certain progress is noted in several areas. Bosnia and Herzegovina participated in the series of regional activities aimed at improving implementation of the conventions on police cooperation in Southeast Europe and harmonising international agreements on so-called “red warrants”.
- Furthermore, Bosnia and Herzegovina has so far taken part in 67 different positions, statements, demarches and other decisions related to common foreign and security policies of the EU. Bilateral political and operational consultations were initiated with Montenegro, Macedonia, Serbia and Croatia. However, it is hard not to observe that these activities are implemented merely as a formality rather than as a serious attempt to solve the problems. The essential problems are still awaiting political willingness.
- Progress is noted in terms of transposition, implementation and application of the New Approach Directives. The Market Surveillance Agency is practically

ready to start implementation and provide support to entity inspectorates in implementing the New Approach Directives in the field. However, the inspectorates are still not ready for the job, which is essentially different from the job they currently perform.

- When it comes to reduction of import customs fees, these activities are so far going according to the plan.
- Based on our findings, legislative activities that open up the BiH market are up-to-date, but it is obvious that neither adoption nor implementation of the laws that regulate the internal market are at satisfactory level.
- Parliament did not approve a single document on transport development policy and consequently the Council of Ministers could not adopt the corresponding strategy or action plan. A certain progress has been made in the segment of railway transport but the current legislation is not fully harmonised with the European regulations. Law on transport of hazardous cargo, which is again in the parliamentary procedure, has been blocked by the RS representatives.
- In the civil aviation area, the European Common Aviation Area Agreement is applied as well as a certain number of activities that do not derive from the Acquis. The quality of the newly created legislation as well as approximation of the legislation with the Acquis is getting better. However, problems occur where there is no legal obligation for approximating the bylaws with the Acquis.
- It is evident that authorities of Republika Srpska are attempting to harmonise their legislative framework in agriculture with the EU regulations, without harmonising it with the respective legislation of the Federation of Bosnia and Herzegovina first. Such a practice may be positive for RS in the short run because in this way the RS, at least in theory, ensures a familiar legislative framework for EU investors and exposes its own businesspeople to competition. However, in the long run, until the rules of business establishment and legal security are harmonized in both entities and Brčko District, no significant positive trend can be expected, because even the entire Bosnia and Herzegovina is a very small market, not to mention the interest in the market of Republika Srpska alone.
- Measures in the area of the right of establishment are partially fulfilled. Without excusing this, the main reason for not having any progress in this area is because it is not the subject of the Interim Agreement but of the Stabilization and Accession Agreement.
- FBiH Law on business companies is an example that shows the way in which the Government of the Federation of BiH decided to tackle a burning problem and simply “put out the fire” instead of building a system that would guarantee legal security to businesses.
- There are still certain restrictions in the entity laws on foreign currency operations, which limit the amount of money that non-residents can take out of country.
- When it comes to direct foreign investments, there are still restrictions in terms of foreign capital ratio in the media sector, due to which this segment is not fully harmonised with Article 61, paragraph 1 of the SAA.
- A short-term priority, which required that the Market Surveillance Agency become fully functional, has been implemented within the anticipated deadline.
- One of the key priorities was to ensure a functional single public procurement

system and appropriate application of public procurement legislation. The two activities of the Public Procurement Agency have been postponed to 2011.

- The highest level of fulfilment of European standards is noted in the segment of intellectual property, which was one of the key priorities.
- In the area of employment and social policy the activities have been postponed to the end of 2010. Some of the activities have been partially implemented, mainly those related to planning and strategy development.
- During 2010, out of 111 planned laws only 27 were adopted, of which 7 related to cooperation policy. Out of 35 rejected laws, 23 were rejected based on entity voting and among them there were three European laws related to cooperation policy. In the parliamentary procedure, still on the agenda, there are four more European laws that are relevant to cooperation policy.
- Analysing the implementation of the Program of priorities for harmonisation under European partnership and Interim Agreement one can conclude that nearly all activities that were scheduled for 2009 and the beginning of 2010 have been postponed to the end of 2010 or even 2011.
- As for the strengthening of capacity and quality of work of the BiH Competition Council, there is a positive trend in terms of quality of decisions, but negative trend in terms of quantity of their decisions.
- No progress has been made in the key area of state aid. The Law on State Aid is now more than ever needed in Bosnia and Herzegovina. The system of state aid requires not only adoption of the Law but also creation of conditions for a balanced economic development of Bosnia and Herzegovina.
- In the segment of money laundering, during the reporting period institutional and professional capacities of the Financial Intelligence Unit of the State Investigation and Protection Agency have been strengthened but the implementation of a dynamic plan, i.e. filling of vacant positions, is further aggravated due to a lack of financial and budgetary means.
- When it comes to the combat against organised crime and terrorism, after adoption of a revised 2009-2012 Strategy for combat against organised crime, in February 2010 the Council of Ministers of BiH adopted an Action Plan for implementation of the Strategy. Monitoring of the implementation of the Strategy and Action Plan shall be carried out by a Working Group established by a decision of the Council of Ministers, the same one that developed the Action Plan.
- In the domain of special investigative actions, a series of bylaws has been adopted, defining the mechanisms and terms under which these mechanisms can be used. Operational capacities of the BiH Border Police for communication surveillance have been put in place.
- The 2009-2013 Strategy for prevention and combat against terrorism has been adopted, and Anti-terrorism Unit of the State Investigation and Protection Agency filled almost 90% of vacant positions.
- Finally, in the field of visas, border control, asylum and migrations, in line with the defined dynamics, a series of training and education programs has been carried out in all institutions of BiH dealing with asylum and immigration. These programs were organised in cooperation with EU and individual Member States. Capacities of the Immigration centre have been reinforced, although



construction and putting into function of an asylum centre is still delayed.

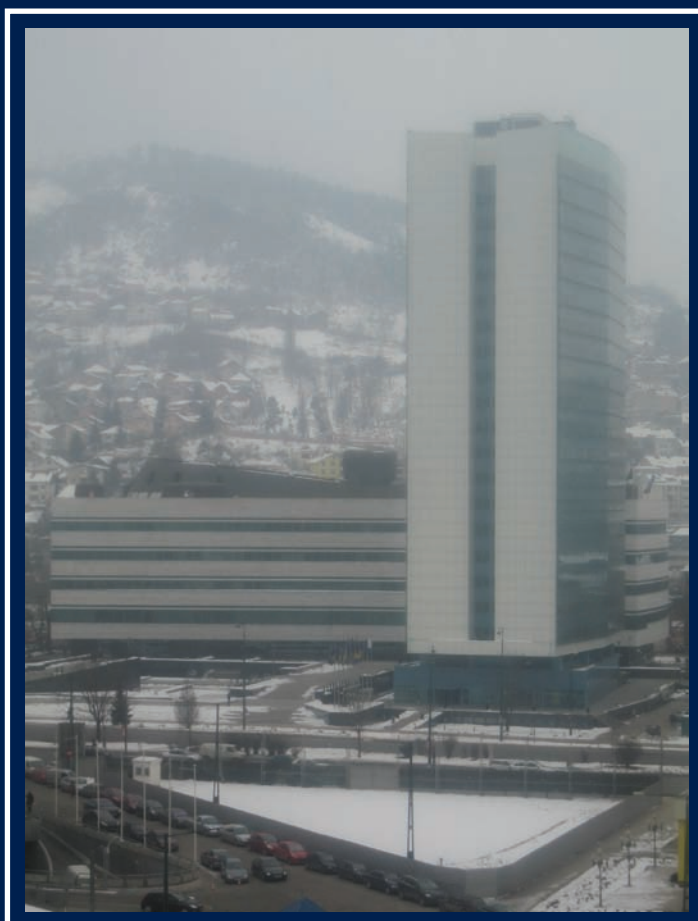
- A high level of implementation has been achieved in terms of protection of personal data, which required the establishing of an independent supervisory body and harmonisation of the BiH legislation with that of the EU.

However, the progress made in the area of justice, freedom and security during the reporting period is exclusively due to the prospect of getting on a “white Schengen list”. Fulfilling obligations under the Roadmap for liberalisation of the visa regime demonstrates that as long as there is a uniform and strong determination of all relevant political subjects in BiH to meet required tasks, despite all problems, it is possible to find an appropriate approach and make compromises in order to meet the obligations.

In the place of a conclusion, we would like to emphasise some phenomena that are present in all areas of European integrations and often stand as an obstacle to these processes:

- In the parliamentary process there is not only a very weak and diffused coordination between the two Houses of Parliamentary Assembly but also extremely poor coordination between the Council of Ministers and the Parliamentary Assembly, which is reflected in an increased number of rejected legislative acts proposed by the Council of Ministers.
- A certain number of legislative acts, although planned within different state-level ministries, have never been realised;
- A significant number of European laws were not adopted within the planned deadline in 2009, nor was the legislative procedure related to these laws carried out in 2010;
- In addition to delayed preparation and adoption of anticipated legislations, deadlines for adoption of relevant bylaws and other documents are being delayed as well;
- A disastrous practice is gradually entering the political reality of Bosnia and Herzegovina. Namely, once agreement has failed on establishing state institutions in the areas where harmonisation with EU standards is required, these institutions are instead established at the entity level;
- Unlike the previous reporting period when we established that the process of harmonisation with the Acquis and harmonisation between different levels of government in BiH is proceeding very slowly, in 2010 we established a total regression in implementation of defined obligations, which is most clearly reflected in the fact that the legislative process at the state level is fully blocked and obstructed.

In the end, we should not disregard the fact that despite all above-mentioned difficulties, a very significant, aggravating factor that hinders the implementation of defined obligations, in particular those related to establishing and putting into function the new institutions and agencies at the state level, is the difficult financial and economic situation, the budgetary repercussions of which have slowed down or even temporarily halted the implementation of the activities anticipated under the Interim Agreement.



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