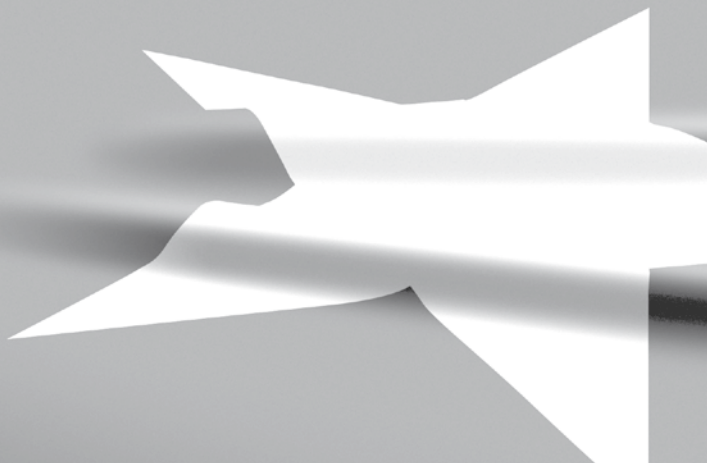


Monitoring of the BiH European Integration Processes

Annual report for 2011



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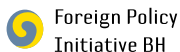
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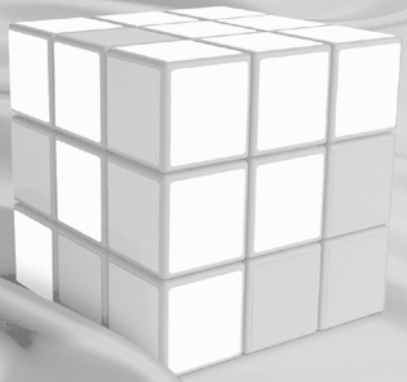


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February 2012

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Introduction

In our 2010 report we noted that the European integration process for BiH offered one positive and one negative example – the visa regime liberalisation for BiH citizens on the one hand and the violation of the Interim Agreement with the EU on the other. As we felt the need to send a positive message through our reports, relying on examples that are few and far between of the agility of the authorities and civil service in the implementation of European reforms, we have striven to stress individual examples of success however modest they may be. Unfortunately, in spite of a great desire to do so, we have failed during the reporting period to locate a modicum of positive energy in the European integration process that would justify an even partially positive tone to this report. More exactly, we found that we can no longer afford to be optimistic based on the sporadic and negligible examples of progress in reforms, considering the extent to which the EU integration process and its importance for the future of this country have been devalued. One does not join the EU based on intermittent outbursts of goodwill and examples of individual ardour of civil servants. The scope of the tasks which BiH must accomplish in order to keep up with its neighbours in the following ten years demands total political determination and systemic and technical commitment to all the requirements laid down by the EU, not just those deemed acceptable at any given moment or those that can be met by the only possible compromise available under the prevailing political conditions.

Our view is supported by the negative EC Progress Report which listed, without mincing words, all the areas in which progress was missing. The lack of any reaction

to the report by representatives of the government and political parties, as well as the media and the NGO sector, is discouraging. The question is whether such a nonchalant attitude towards the most important mechanism of European integration monitoring is the result of the general sense of resignation caused by the political situation in the country, or does it constitute a lack of seriousness in our relationship towards EU institutions and their mechanisms of reform process monitoring.

In addition to the general lack of implementation of the Interim Agreement, is the alarming fact that the Stabilisation and Association Agreement once more did not enter into force this year, although formal preconditions for this were met towards the end of 2010, by which time all EU member-states had ratified it. In our report of last year we expressed the hope that after the general elections held in October 2010 the course of reform would be re-orientated towards serious implementation of SAA obligations. In this we were not motivated by the specific result of the elections but rather by the belief that every change creates new opportunities to look at political processes from a different angle. As it transpired we were too optimistic, perhaps even naive, but we are committed to giving the new constellation of political forces an opportunity to prove their commitment to a European vision of BiH. Thus in this report we express disappointment in the processes which followed, where the conditions for the entry into force of the SAA were subordinated to the conditions for the formation of the government which stopped these processes yet again. The European integration process became a hostage to political squabbling thus wasting another year that it is impossible to get back. Bosnia and Herzegovina, with its modest technical capacities, is doubtlessly in a subordinated position compared to other countries in the region and any further delay would leave our country irreversibly trailing behind on the way to Europe.

The years-long political and institutional blockade in Bosnia and Herzegovina came to a head in 2011 and showed that the European integration process in BiH is still something to which lip service is paid, completely overshadowed by “higher political purposes” and without even the existence of a working consensus. As has been stated in previous reports, such a consensus is absent due to a lack of agreement between key political factors with regard to the present situation in, and the future of, Bosnia and Herzegovina. The European integration process remains a victim, caught between two conflicting doctrines: an ethno-territorial concept of society and state which adapts the Dayton system to its own purposes, and one which aims to build upon the Dayton framework by putting the civic concept on at least an equal footing with the ethnic one. If we add to this conflict the fact that the existing constitutional arrangements have not solved, in any functional way, the distribution of competencies between the state and the entities, the collateral damage suffered by the European integration process in Bosnia and Herzegovina becomes clearer. This is even more so since each of the conditions from the SAA depends on the

political interpretation of the extent of its fulfilment. One of the most notable cases of collateral damage in the realm of democratic principles and human rights, directly related to the preamble, the Copenhagen criteria and this particular chapter of the SAA, is the harmonisation of the constitution with the ruling of the European Court of Human Rights in the case of *Sejdić and Finci vs. Bosnia and Herzegovina* which is one of the conditions for the entry into force of the SAA.

The Committee formed specifically for this purpose can be viewed as progress only if it succeeds in making a credible effort to agree on a few common amendments from the multitude of diametrically opposite ones already tabled. However, the Committee illustrates the paradoxes connected to the BiH European integration process. At the outset it was decided that the committee would pass decisions by consensus, which highlighted the very principle that led to its formation – to remove the discriminatory provisions of the Dayton Constitution. Seeing that decisions are passed by full consensus and that viewpoints on the crucial issues are diametrically opposed, it is hard to envisage tangible progress being made during the additional period of talks which will stretch into the first two months of 2012.

There was no progress either on the other condition for the entry into force of the SAA. The continuation of work on the legal framework for state aid did not result in the passing of a law. The initial obstacles were similar to those mentioned in the previous example; negotiations centred on ethnic representation in the decision-making mechanisms instead of essential issues and technical aspects of the law. The manner of decision-making in the seven-member State Aid Council was the most problematic issue. The suggestion made by the Ministry of Foreign Trade and Economic Relations was that decisions be passed by a majority of 4 out of 7 members, as the application of EU regulations on state aid in BiH was technical rather than political in nature. On the opposite side was the suggestion of the RS representatives who wanted qualified majority of 6 out of 7, whereby each constitutive people would cast at least one vote in favour.

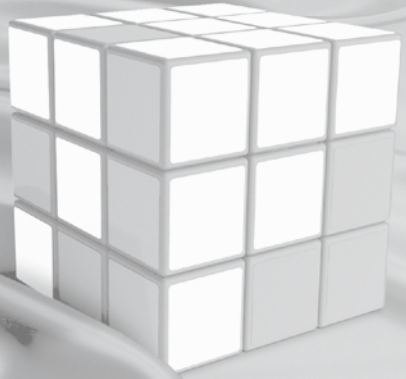
Co-operation between the EU and BiH was partially re-animated by the launch of the Structural Dialogue on Judiciary Reform. Unfortunately, the Structural Dialogue, launched as a specific mechanism designed to analyse and overcome a multitude of problems in the justice apparatus in BiH, confirmed the existence of diametrically opposed views on some key issues in this area, including the very legality and constitutionality of some of the judicial institutions in the country. In other words, the two Structural Dialogue meetings that were held reflected most explicitly the political, legislative and operational confrontation and fragmentation which burdens BiH and which go well beyond any specific sectoral framework cutting right into the very foundations on which it rests as a sovereign state. Therefore, we do not want to rate the example of the Structural Dialogue as either particularly positive or particularly negative. The fact is that the way

in which it was coerced has left a bitter taste in the mouth of a part of the BiH public, although it was ultimately presented as the much needed cure for all the ills which ail the BiH judiciary, as well as a procedural concession by the EU. Unfortunately, the implementation of the Structural Dialogue and the many disagreements which arose during the meetings support the claim that it is just one of the many clumsy moves to which the BiH European integration process has been condemned.

The Interim Committee and the relevant subcommittees continued to work, however, the process was at times unnecessarily politicised in these bodies even though they are predominantly comprised of experts. This was best illustrated during the programming and project selection for IPA 2011, when different interpretations of competencies almost caused 96 million euros in assistance for BiH to fall through. The situation which emerged during the programming of IPA 2011 funds revealed serious structural faults in the co-ordination mechanisms related to the planning and programming of EU funds. At the same time, it is an indicator of the problems which may emerge during the negotiation and integration process itself, especially with regard to the role of the European Integration Directorate (DEI) as the central co-ordinating body in all matters relating to EU integration. Specifically, although the DEI, on the basis of conclusions of the Council of Ministers, set out to define specific project proposals for IPA 2011, defined on the basis of the findings of the BiH Progress Report and the priorities from the three-year programme for use of IPA funds, RS representatives sent complaints about six projects directly to Brussels. Brussels sent an official request to the Council of Ministers to agree on the projects package, although that had already been done in line with the IPA funds programming procedure established by the EC with the DEI. This exposed the most worrisome aspect of the entire situation, i.e., the fact that the DEI was eschewed not only by the representatives of the RS but by the European Commission as well.

Finally, we should also stress the fact that the BiH authorities failed to prepare for Croatian accession to the EU in a timely manner. A number of priorities in the areas of food safety, veterinary medicine, the phytosanitary sector, environmental protection and transport and energy policy, whose fulfilment was planned for the previous year, were not realised in 2011. What is more, these issues were marginalised and they all but disappeared from public discourse last year. Moreover, it was only towards the end of 2011 that the problem of the presence of only two border crossings on the 1010 km border with Croatia, equipped for the export of food products, started being more intensively discussed. This problem will further limit the already modest potential of BiH exports and deny domestic producers access to foreign markets.

Instead of expressing unfounded hopes that circumstances will improve in 2012, we offer our readers the results of our research which focus on specific examples and illustrations of all the claims made in this introduction.



Title I

| General Principles

a) Assessment of the measures taken in the Implementation of the Interim Agreement/Stabilisation and Association Agreement

In 2011 Bosnia and Herzegovina again failed to create the necessary conditions for the Stabilisation and Association Agreement (SAA) to take effect and for the country to submit a credible application for membership of the European Union (EU). After it had been conducted in BiH at the end of 2008, the ratification procedure for the SAA was completed in December 2010 in the national parliaments of EU member states. Instead of taking effect automatically the SAA had to be temporarily blocked so as to avoid its suspension.¹ The blocking of the SAA due to the violation of a number of crucial provisions of the contractual relationship with the EU significantly slowed down the preparations of the BiH institutions for a new, potentially more progressive concept of horizontal and vertical co-ordination in EU-related activities. The Interim Committee and the relevant subcommittees continued to work, however the process was at times unnecessarily politicised in these bodies despite the fact that

¹ Although the spirit of the Agreement reduces suspension to a theoretical possibility, it still remains a formal and legal possibility in Article 129 of SAA: "This Agreement is concluded for an unlimited period. Either Party may denounce this Agreement by notifying the other Party. This Agreement shall terminate six months after the date of such notification. Either Party may suspend this Agreement, with immediate effect, in the event of non compliance by the other Party with one of the essential elements of this Agreement."

they were predominantly comprised of experts. This was best illustrated during the programming and project selection for 2011 IPA, when different interpretations of competencies almost caused 96 million euros in assistance for BiH to be withheld. The problem was solved only after the direct involvement of the leaders of the political parties.

The years-long political and institutional blockade in Bosnia and Herzegovina came to a head in 2011 and showed that the European integration process in BiH is still something to which lip service is paid, completely overshadowed by “higher political purposes” and without even the existence of a working consensus. As has been stated in previous reports, such a consensus is absent due to a lack of agreement between key political factors with regard to the present situation in, and the future of, Bosnia and Herzegovina. The European integration process remains a victim, caught between two conflicting doctrines: an ethno-territorial concept of society and state which adapts the Dayton system to its own purposes, and one which aims to build upon the Dayton framework by putting the civic concept on at least an equal footing with the ethnic one. If we add to this conflict the fact that the existing constitutional arrangements have not solved, in any functional way, the distribution of competencies between the state and the entities, the collateral damage suffered by the European integration process in Bosnia and Herzegovina becomes clearer. This is even more so since each of the conditions from the SAA depends on the political interpretation of the extent of its fulfilment. One of the most notable cases of collateral damage in the realm of democratic principles and human rights, directly related to the preamble, the Copenhagen criteria and this particular chapter of the SAA, is the harmonisation of the constitution with the ruling of the European Court of Human Rights in the case of *Sejdić and Finci vs. Bosnia and Herzegovina*.

Only after years of pressure by the international community, and with a long delay², the two houses of the Parliamentary Assembly of Bosnia and Herzegovina formed a joint interim committee for the implementation of said ruling at the end of September 2011. In addition to representatives of all thirteen political parties in both houses of the Parliament, the committee included members of the NGO sector, as well as members of the Council of National Minorities. As soon as the committee, which passes decisions by full consensus, started to work, conceptual disagreements surfaced as to how the ruling was to be incorporated into the constitutional system and how deep the changes should be. While some political parties demanded that the manner of election of BiH Presidency members be changed from direct to indirect (i.e. that they be elected in the Parliament of BiH), others insisted on keeping direct election. The differences were evident on the issue of increasing the number

² Under the Action Plan, BiH institutions set 2009 as the deadline for the harmonisation of the Election Law with the ruling of the ECHR

of delegates in the House of Peoples and the greatest differences had to do with the manner of voting in the parliamentary procedure with some suggesting the introduction of an entity veto to replace the ethnic veto provisions.

The formation of the Committee may be interpreted as a degree of progress only if it succeeds in making a credible effort³ to agree on a few common amendments from the multitude of diametrically opposite ones. Seeing that decisions are passed by full consensus and that viewpoints on crucial issues are diametrically opposed, it is difficult to expect tangible progress during the additional period of talks that will stretch into the first two months of 2012.

The structural dialogue on the justice system, started by the EU in Bosnia and Herzegovina as an additional measure, turned out to be a reflection of general helplessness in the face of obvious abuses perpetrated through the incomplete system on human rights and the judiciary. What is more, the judiciary in Bosnia and Herzegovina has been reformed on several occasions since Dayton with the help and, at times, active participation of international representatives. Is the launching of the structural dialogue an admission that the reforms undertaken were wrong, or is its aim to finally complete them? It is too early to answer this question, considering that the structural dialogue has just begun, but the way in which it was launched, and especially its immediate cause, raises doubts about its successful completion.

b) Case study: The Role of the BiH Parliament in the EU integration process

In 2011, the Parliamentary Assembly of Bosnia and Herzegovina again missed an opportunity to define its stronger role in the European integration process. The perception that the Parliament is involved in the process anyway because eventually it has to adopt every law is now proving to be a fallacy, which will become even more apparent as BiH advances towards the EU. Without Parliament's proactive engagement as a whole, from priority setting and technical as well as political co-ordination, to the eventual adoption of laws, there will not be the much needed momentum for the reform process. Examples from neighbouring countries illustrate this vividly. The European integration process in Croatia gathered the required momentum only after the establishment of the National European Integration

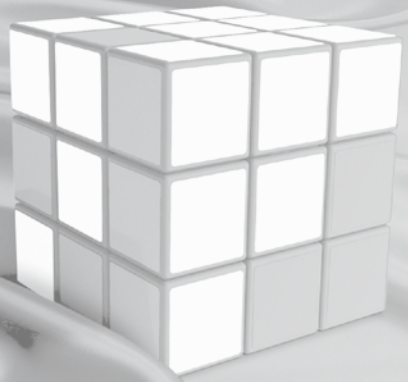
³ A phrase introduced by the EU in order to soften the requirement and make it possible to present much less than a final constitutional change and much more than the current stalemate as a success.

Committee,⁴ the supreme political and parliamentary body which not only gathers all the parliamentary parties, both those in power and in opposition, but also decides on the start and end of every reform process. The Croatian model was copied in Montenegro and the country went, in just two years, from a potential candidate to a country that is about to start membership negotiations. Unlike the Croatian and Montenegrin parliaments, Bosnia and Herzegovina faces certain problems which render the application of this successful model very difficult, if not quite impossible. These include the small number of representatives, a lack of properly trained and staffed professional services and the supremacy of party power centres over parliamentary democracy.

In spite of this, it is evident that the desire of BiH parliamentarians to be involved in the European integration process and to open it up to the academic community and the NGO sector is ever stronger. Also encouraging was the first operative/consultative meeting devoted to European integration, held in November 2011 and attended by members of a joint committee for European integration of both Houses of the BiH Parliament, the Foreign Affairs Committee of the Parliament of Bosnia and Herzegovina and the European integration committees of both entities and Brčko district. Further work of this co-ordination body, which may follow in the footsteps of Croatia, will unfortunately depend on the willingness of political leaders to seek compromise on the European reform package in the Parliament, not in their party headquarters. The European integration committee of both houses of the BiH Parliament has clearly defined competencies⁵ but no adequate political power and mandate to monitor and politically direct the entire process as in the Croatian-Montenegrin example. The parliamentary committee of Bosnia and Herzegovina for the monitoring of the EU integration process could include, in addition to joint committee members, presidents of EU integration committees of the entity and Brčko District parliaments and representatives of entity governments, the Council

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- 4 The National EU Accession Committee of the Croatian parliament has a chairperson, vice-chairperson and 13 MP members, six of them MPs from the ruling parties and six MPs from the opposition parties. The chairpersons of the Foreign Policy Committee, Inter-Parliamentary Co-operation Committee and the European Integration Committee are members of the National Committee regardless of their party affiliation. Four members are appointed to the Committee: one representative of the Office of the President of the Republic of Croatia, one representative of academia, a representative of employers' associations and a trade union representative. The appointed members have all the rights of working body members with the exception of decision-making rights. The chairperson of the National Committee is a member of an opposition party, and the vice-chairperson of the ruling party or coalition.
 - 5 Discusses general issues related to European integration; monitors the realisation of rights and obligations of Bosnia and Herzegovina under international treaties related to the Council of Europe; co-ordinates the work of parent working bodies related to European integration and sends its opinions, recommendations and warnings to those bodies; analyses the consequences of the integration strategy for Bosnia and Herzegovina and prepares comprehensive reports; monitors the drafting of feasibility studies and the implementation of the pre-accession (Stabilisation and Accession Process) and accession strategies of Bosnia and Herzegovina; will monitor the harmonisation of BH laws with the *acquis communautaire* when the conditions for this are met; co-operates with institutions in Bosnia and Herzegovina (especially the Directorate for European Integration), institutions of the EU and other countries on matters related to integration; organises presentations of public opinion on matters related to integration; monitors the use of allocated EU funds and considers other matters related to European integration.

of Ministers (Directorate for European Integration) and the Presidency of Bosnia and Herzegovina. Such a political body would lay down guidelines upon the basis of which governments would set the dynamics and put in motion the laws which would eventually be considered in parliaments. All contentious issues would be considered by this body. This would also help to facilitate discussion about the harmonisation of competencies and, more importantly, to avoid two parallel EU agendas.



Title II

| Political Dialogue

a) Assessment of the measures taken in the Implementation of the Interim Agreement/Stabilisation and Association Agreement

In 2011, the European Union made changes to its approach to and presence in Bosnia and Herzegovina. This was the result of a years-long search for a way to develop a *sui generis* approach to BiH, which stems from the need to separate the mandate of the EU Special Representative (EUSR) from that of the High Representative (HR) in BiH. The initial enthusiasm based on the premise that the establishment of the EU Delegation (EUD) headed by the EU Special Representative (EUSR) was enough to replace the Dayton phase with a European phase and thus contribute to the closure of OHR proved to be unfounded. The EUD took over the EUSR staff from the OHR building but it cannot take over the mandate of the OHR. The OHR is impossible to close partly because designated preconditions have not been adopted, but mostly due to the fact that it is functionally built into the existing constitutional system of Bosnia and Herzegovina. Therefore a tailor-made approach was developed whereby the EU Special Representative (EUSR) with a mandate from the EU Council and the High Representative with a mandate from the OUN would work, in a synergy of sorts, on different tasks: the former on European issues, the latter on those relating to Dayton. Whether or not this will happen remains to be seen. Faced with a serious standstill in Bosnia's progress to the EU, primarily due to the blockade of the SAA, the EU Delegation decided to assume the lead role in the EU process

by launching several project tasks: 1. Unblock the SAA, which entailed political pressure to meet the requirements; 2. Help create preconditions for submitting a credible membership application; 3. Help establish a better co-ordination system both for IPA and for political and technical co-ordination in EU-related matters as a whole; 4. Lead the structural dialogue as a response to the different interpretation (conflict of competencies) of a large number of issues pertaining to at least three chapters of the *Acquis*; 5. Lead the process of completion of preparatory activities on the construction of the pan-European corridor 5c which goes through Bosnia and Herzegovina.

This approach taken by the EU, designed after the identification of all the sectoral deadlocks caused by the politicisation of the process by some domestic factors and some earlier misconceptions of the international community, reflects the true lack of harmonisation of BiH with the Copenhagen criteria: the stability of the institutions which ensure democratic principles, rule of law, human rights and minority rights. In 2011, BiH did not make any progress in any of the criteria and the fact that the formation of a part of the executive branch at the state level (the Council of Ministers of BiH) had not been finished fifteen months after the elections represented a serious setback. The launching of the structural dialogue on the judiciary is an indicator of the inefficiency of the justice system which has been reformed in line with the demands of the international community on the one hand, and of how deep politics has penetrated this democratic sphere on the other. All in all, the SAA cannot enter into force mainly because of these essential discrepancies, which are no longer the failure of BiH alone but also of EU policies towards BiH to date.

The lack of institutional co-ordination, which was particularly stressed in the 2011⁶ progress report, is also evident in the area of the harmonisation of viewpoints with regard to the Common European Foreign and Security Policy (CEFSF). Judging by the accession database maintained by the Ministry of Foreign Affairs of Bosnia and Herzegovina, which is registered, with considerable deviation from the EC database, BiH has not yet improved the system of co-ordination in joining the statements and restrictive measures of the EU towards third countries. BiH has a law on the application of certain interim measures for more efficient implementation of the mandate of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and other international restrictive measures which regulate the manner of the implementation of said measures. What has yet to be fully regulated, and the Ministry of Foreign Affairs of BiH has started to work on it, is a system of co-ordination in deliberating whether or not to join restrictive measures, statements and decisions of the EU.

6 http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ba_rapport_2011_en.pdf

Regional co-operation and good neighbourly relations, in the spirit of this chapter, is perhaps the only aspect in which BiH has made some progress, primarily due to its proactive role in regional initiatives. The top-level meeting as part of the Igman initiative, active participation in trilateral top-level meetings between Turkey-Serbia-BH and Turkey-BH-Croatia, and bilateral top-level meetings with Serbia, Croatia and Montenegro in 2011 show that there is a positive political dynamic which does not necessarily generate positive results. This is especially so when it comes to solving open and contentious bilateral issues, primarily with Serbia and Croatia.

b) Case study: Horizontal and Vertical Co-ordination in EU-related Affairs

The establishment of an efficient system of horizontal (state-level institution) and vertical co-ordination (state level-entities-cantons-Brčko District) in EU-related affairs is absolutely imperative for the preparations for the negotiations about BiH membership of the EU. The speed and efficiency of the negotiations will depend precisely on the efficiency of the co-ordination process. On that note, we should commend the efforts of the Directorate for European Integration which has started the process of harmonisation of the co-ordination system, in co-operation with the EUD and consultants from Slovenia. This system starts from the existing constitutional system and its authors wish to connect all bodies, from cantons and entities to the state level, so as to: a) include persons who have political decision-making powers or are civil servants in high positions; b) ensure adequate expert support; c) achieve the clearest possible division of competencies; d) ensure resistance to political changes and blockades. The basic links in the chain are: 1. Responsible ministries with their European integration units; 2. Working groups divided by areas of the *Acquis*, led, if possible, by deputy ministers; 3. The Committee for European Integration, co-ordinated and chaired by the DEI; 4. The Board for the EU as the highest political body, chaired by the chairperson of the Council of Ministers of Bosnia and Herzegovina, which will include entity Prime Ministers, members of the Council of Ministers and the Mayor of the District of Brčko.

The suggested model may serve as a good starting point because it ultimately involves all the relevant levels of government in the EU co-ordination process. However, the problem is that the suggested co-ordination, mostly for reasons of political correctness, does not anticipate certain crucial problems which threaten to render it pointless. Firstly, a system of permanent (to last until the accession) co-ordination on the basis of the existing constitutional arrangements and political

will cannot be a sustainable solution,⁷ since the message of the EU is clear: a state with this kind of structure is not likely to become a member. We have undefined division of competencies, a struggle for supremacy between the entities and the state. Hence this system of co-ordination, which takes the existing system in all its incompleteness as the starting point, faces a serious challenge: creation of entity co-ordination bodies (replicas of the DEI, as it were) would make sense only if the DEI was transformed into the Ministry of European Integration of BiH and turned into a strong channel of co-ordination as well as of policy making. However, it has already been assumed that no such thing will happen because there is no political will on the part of the representatives of the RS. Thus the future co-ordination system will increasingly rely on the entity “DEIs”, which will not lead to functional decentralisation but in practice to a division into two unrelated processes. Although the technical and political dimensions of EU accession are equally pronounced, the proposed co-ordination system focuses mainly on the technical aspect and excludes the Presidency as well as the Parliament of Bosnia and Herzegovina from the entire process. We have already established that the DEI lacks adequate political power and consequently the exclusion of these two institutions further weakens the central political chain at the state level. Namely, the Board for European Integration, according to the proposal, will include neither a representative of the Presidency of Bosnia and Herzegovina nor a representative of the Parliament or any other joint body made up of representatives of the state Parliament and entity Parliaments. Furthermore, the proposal provides for consensus-based decision-making in the Board, which introduces another mechanism for potential blockades in addition to the existing constitutional mechanisms of veto. Since numerous bodies and institutions have yet to comment on the proposal, the hope remains that awareness of the need for a comprehensive approach to co-ordination which will improve rather than divide the process of EU-related reforms in BiH will prevail.

⁷ The EU General Affairs Committee (GAC) in its conclusions dated 05 12 2011, pointed to a serious discrepancy between the need to improve the system via changes to the Constitution and the need to introduce a sustainable system of co-ordination in EU-related affairs. Line 46 of the Conclusions stressed: “The Council stresses the importance of improving and strengthening the efficient functioning of the state and institutions, including through necessary constitutional changes”; while Line 47 of the Conclusions stressed: “The Council underlines that establishing an effective coordination mechanism for dealing with EU matters, including IPA related issues, is key”. See: http://consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/126577.pdf



Title III

| Regional Co-Operation

a) Assessment of the measures taken in the Implementation of the Interim Agreement/Stabilisation and Association Agreement

During the last year, activities were recorded which indicate that BiH set out to address certain issues which must be solved under the SAA on its own initiative and considerably in advance of the deadline. The signing of bilateral regional co-operation treaties is a condition under Article 15 of the SAA. To date, Croatia and Macedonia are the only countries in the region that have signed this treaty with one another. The Ministry of Foreign Affairs of BiH has started bilateral consultations on European integration with the countries participating in the SAP process and has requested an exchange of drafts of this treaty. To date, only Macedonia responded, and then only in principle, but it is expected that consultations will soon be held with Montenegro, Serbia and Albania.

Co-operation with the ICTY is still satisfactory and regional co-operation in the search for missing persons continues. November 2011 saw the signing of a declaration on the search for the 14,000 missing persons in the region. One of the positive impulses is the agreement of the leaders in the region to hold a donors' conference in mid-2012 to raise funds for the search for missing persons.

Bosnia and Herzegovina actively participated in regional co-operation initiatives, such as the Southeast Europe Co-operation process (SEECp), the Regional Co-operation

Council (RCC), the Central European Free Trade Agreement, the Agreement on the Establishment of a European Common Aviation Area, the Treaty Establishing the Energy Community and the EU Strategy for the Danube Region. Bosnia and Herzegovina has adopted the decision on the recognition of the Kosovo customs seal, important for implementation of the CEFTA.

Bosnia and Herzegovina has the greatest number of open bilateral issues with Croatia and Serbia, which hinders regional dynamics to an extent.

BiH and Croatia have still not defined their land and sea borders, an issue that has been open for a whole decade. The Croatian government, suddenly and without an

ALSO ENCOURAGING WAS THE FIRST OPERATIVE/CONSULTATIVE MEETING DEVOTED TO EUROPEAN INTEGRATION, HELD IN NOVEMBER 2011 AND ATTENDED BY MEMBERS OF A JOINT COMMITTEE FOR EUROPEAN INTEGRATION OF BOTH HOUSES OF THE BiH PARLIAMENT, THE FOREIGN AFFAIRS COMMITTEE OF THE PARLIAMENT OF BOSNIA AND HERZEGOVINA AND THE EUROPEAN INTEGRATION COMMITTEES OF BOTH ENTITIES AND BRČKO DISTRICT.

explanation, withdrew the Border Treaty with Bosnia and Herzegovina from the ratification procedure in the Parliament and subsequently sent a request to the Bosnian side to revise the already agreed upon treaty. In addition to the undefined border, which will become the border between BiH and the EU after July 2013, the two neighbouring countries have not solved property-rights issues⁸ and the status of Ploče harbour, while the transit of Croatian goods through Neum was solved by

Croatian negotiators under Chapter 35 of the SAA in direct negotiations with the EU, without including the BiH side.⁹ The chapter dealing with the issue of Border Inspection Points (BIP) was solved in a similar fashion, whereby BiH was allowed only two BIPs (Stara Gradiška and Bijača-Metković II). Bosnia's request for the designation of four BIPs per 1,000 km of border was rejected with the explanation that the BiH side should prove the need for more BIPs in an adequate analysis.

BiH has similar open issues with Serbia as with Croatia. Serbia has yet to respond to initiatives and suggestions from the Ministry of Justice of Bosnia and Herzegovina regarding a property-rights treaty. As for the Agreement on the Border, it was initialled on 02 December 2002 in Belgrade, during the State Union of Serbia and

8 These issues remain unsolved because of the decision taken by the representatives of the RS to block the proposal of the Agreement on Property Rights prepared by the Ministry of Justice of Bosnia and Herzegovina in February 2010, because the proposal did not provide for the possibility to register the RS as the owner of real estate located in Croatia.

9 Pursuant to this agreement, lorries sealed on the territory of Croatia passing through Neum must not be unsealed by the BiH customs authorities; removal of the seal results in the goods being sent back. Ploče harbour is excluded from this arrangement.

Montenegro. After the agreement was initialised, a textual description of the border between BiH and Serbia and Montenegro was to be drafted and the maps in the scale of 1:25000, which formed part of the Agreement, were to be initialised. Expert groups of both countries determined the border line. The Serbian side suggested that parts of the border line be changed in the area of the impounded lakes of Zvornik and Bajina Bašta, around the railway in Štrbac area and the area of Međurječje near Rudo (exchange of territory).

A SYSTEM OF PERMANENT (TO LAST UNTIL THE ACCESSION) CO-ORDINATION ON THE BASIS OF THE EXISTING CONSTITUTIONAL ARRANGEMENTS AND POLITICAL WILL CANNOT BE A SUSTAINABLE SOLUTION, SINCE THE MESSAGE OF THE EU IS CLEAR: A STATE WITH THIS KIND OF STRUCTURE IS NOT LIKELY TO BECOME A MEMBER.

The BiH side is of the opinion that the Agreement should be signed with the existing borders (as was done with Croatia), and then the issue of territorial exchange should be solved on the basis of the situation on the ground. Serbia is of the opinion that it is necessary to sign annexes regulating the exchange of territory in parallel with the Agreement, which would satisfy the criterion related to borders. Compromise has yet to be reached.

Communication between Serbia and Bosnia with regard to the prosecution of war crimes suspects is still difficult. This is an issue which has long since transcended legal norms and has become a first-rate political topic which burdens the relations of Bosnia and Serbia. The latest proposal of an agreement between public prosecutors' offices of BiH and Serbia on the prosecution of war crime suspects based on place of permanent residence faced criticism in both countries and thus the signing was postponed.

b) Case study: The Implications of Croatia's Impending Accession to the EU – the Border Issue

Croatian membership of the EU will doubtless have a range of positive implications for BiH and the region. BiH, as the closest neighbour, could profit the most from Croatia's membership in the EU but will also be hit the hardest if the open issues are not resolved adequately. The border issue is the most prominent of these. BiH and Croatia have the longest border in the region measuring some 1001 kilometres, which will become the border between the EU and BiH on 01 July 2013. The border is disputed in its entire length, on land as well as at sea. As yet, institutions of Bosnia and Herzegovina and Croatia have not ratified a single document concerning the contentious border issues. In June 1999, an intergovernmental diplomatic committee for the determination, marking and maintenance of the border between Bosnia and

Herzegovina and Croatia signed a proposal for a Border Agreement, which was subsequently disputed by both sides. The Croatian side disputed the areas around Neum and Zavalje, while the Bosnian side disputed the area of the Željava airport and a part of the course of the river Una.

Unfortunately, Croatia insisted on additional changes and even withdrew the document from the ratification procedure, ignoring the letter and the spirit of the 1959 Agreement on the Description of the Border between the People's Republic of Bosnia and Herzegovina and the People's Republic of Croatia. This agreement clearly defined the description of the border, especially the 'shared' rivers, and is de facto and de jure in effect until a different agreement is concluded.

CROATIA AND BiH HAVE THE LONGEST BORDER IN THE REGION MEASURING SOME 1001 KILOMETRES, WHICH WILL BECOME THE BORDER BETWEEN THE EU AND BH ON 01 JULY 2013. THE BORDER IS DISPUTED IN ITS ENTIRE LENGTH, ON LAND AS WELL AS AT SEA. AS YET, THE INSTITUTIONS OF BOSNIA AND HERZEGOVINA AND CROATIA HAVE NOT RATIFIED A SINGLE DOCUMENT CONCERNING CONTENTIOUS BORDER ISSUES.

A document, prepared by Bosnian border experts, on the possible negative implications of Croatian EU membership if open issues are not solved, states that Croatia, in March 2007, sent a note about the border in the municipality of Neum, wherein it disputed the Bosnian claim to the islands of Veliki Školj and Mali Školj, and the cape Ponta Klek in the Bay of Neum. Referring

to the 1999 Border Treaty and the international principles of demarcation contained therein, the authors of said document state that the Croatian request to change the demarcation line on the Klek and Pelješac peninsulas cannot be discussed or considered any further. They see the border issues between the two countries as closely connected to the UN Convention on the Law of the Sea¹⁰, which guarantees free access to territorial waters and open sea to all maritime and landlocked countries. In this regard, they consider that the Croatian Acts¹¹ completely disregard the sea and the Bosnian right to access to it.

The direct negative implications of the border dispute are the fact that the maritime border between BiH and Croatia does not conform to the relevant conventions and international law, which is something the EU will certainly insist on in the interim

10 UN Convention on the Law of the Sea was made open for signing on 10 December 1982 and it entered into force on 16 November 1994, after it had been ratified by 60 states; by the end of 2006 it had been ratified by 152 states. Bulletin No. 62, Law of the Sea, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, New York, 2007, pg.1-9. Bosnia and Herzegovina became party to the Convention on 12 January 1994, Croatia on 5 April 1995 (the UN Secretary General was notified that we became party to the Convention by succeeding the earlier ratification by SFR Yugoslavia).

11 Law on Maritime Assets and Seaports of the Republic of Croatia, and Maritime Code

period. BiH must prepare itself for a fierce legal and political battle, since this issue will be discussed not only with Croatia but also with the EU. Following the Slovenian-Croatian maritime border dispute in the Gulf of Piran, it is to be expected that the EU will be nothing more than a well-intentioned observer which will follow the logic of international law.

The question of BIPs is also a part of the border problem, as are the joint border crossings in Neum. In this regard, BiH and Croatia will have to conclude a new agreement on cross-border traffic which conforms to EU legislation. This issue will have to be negotiated with Brussels as well as Zagreb.

If BiH truly wants to reduce the negative implications of impending Croatian membership in the EU, its institutions must prepare legally, politically and diplomatically for serious negotiations with Zagreb and Brussels. It is also necessary to revitalise top-level bilateral mechanisms: the intergovernmental co-operation council at head of state and head of government level. The BiH Presidency and the Council of Ministers must be ready to raise this issue, with the help of experts, at the highest level of communication with Zagreb as well as Brussels.



Title IV

Free Movement of Goods

Chapter 1. Industrial Products (Articles 19-21 of the SAA)

Chapter 2. Agriculture and Fisheries (Articles 18-31 of the SAA)

a) Assessment of the measures taken in the Implementation of the Interim Agreement/Stabilisation and Association Agreement

The priorities in the area of free movement of goods for this reporting period (15 December 2010 -15 October 2011) are as follows:

- ◇ Improve and implement the legal framework for standardisation, metrology, accreditation and product certification, so as to harmonise these areas with EU standards and best practices; further approximation of technical regulations to the *Acquis*; strengthen the capacities of the infrastructure of quality and institutions, and create a legal basis for conformity assessment procedures.
- ◇ Ensure the adoption of laws which conform to European standards in the areas of food safety and animal and plant health and start the implementation of such laws.
- ◇ Ensure continuous progress in the adoption of European standards (EN).
- ◇ Continue with the establishment of quality control infrastructure, approximation of legislation to the *Acquis* in the areas of standards, certification, metrology, accreditation and conformity assessment, and with the transfer of the new and global approach directives, as well as the old approach directives.

As part of the priority under (1), it was the plan to transfer the new approach directives, which is an unfulfilled requirement from the previous reporting period. Although activities on the transfer were started in 2010, only two orders have been published thus far: The Non-automatic Weighing Instruments Directive and the Pressure Equipment Directive. The adoption of the Gas Appliances Directive, ATEX Directive, Toy Safety Directive and the Construction Products Directive are still pending. The reason for slow adoption and implementation of directives in this field is the inadequate communication and co-ordination between responsible institutions resulting from a lack of necessary institutional capacities.

ALTHOUGH A LOT OF TIME HAS ELAPSED SINCE THE INTERIM AGREEMENT ENTERED INTO FORCE, SATISFACTORY COMMUNICATION BETWEEN MINISTRIES AND INSTITUTIONS IN CHARGE OF THE ADOPTION AND IMPLEMENTATION OF DIRECTIVES HAS STILL NOT BEEN ACHIEVED. INSUFFICIENT INSTITUTIONAL CAPACITY AND UNDEFINED COMPETENCIES SLOW DOWN THE PROCESSES OF APPROXIMATION AND ENFORCEMENT OF LEGISLATION AND THUS BIH STILL FACES GREAT CHALLENGES.

When it comes to legislation in the area of veterinary medicine, another requirement from the previous reporting period, the Office of Veterinary Medicine of Bosnia and Herzegovina has still not made drafts of the laws on animal waste, animal feed and veterinary medicines, nor have the amendments to the Law on Veterinary Medicine been adopted. However, this area is covered by entity laws which largely meet EU

requirements. On the other hand, the Office of Veterinary Medicine has expressed a willingness to draft statutory instruments.

The Standardisation Institute of Bosnia and Herzegovina (BAS) has adopted 2695 European standards (EN) as national standards, which constitutes satisfactory progress. The total number of adopted EN standards is 12306 and there are 49 technical boards in total. The European Commission has rated this as a step in the right direction, as well as the fact that the Institute has conducted the first annual test of its quality management system. However, the EU stresses the need to intensify activities towards achieving full membership of the European Committee for Standardisation and the European Committee for Electrotechnical Standardisation.

Very little has been done in connection with priority (4). In 2010, the Institute for Accreditation of Bosnia and Herzegovina applied to sign the EA Multi-lateral Agreement for calibration laboratories, test laboratories and inspection bodies. The Institute invested a lot of effort and the pre-assessment conducted in 2011 was satisfactory. Full assessment by the EA is expected to be scheduled for the second half of 2012. On the other hand, the adoption of the new, global and old approach directives remains a weak link in the fulfilment of accepted obligations. Adoption of

19 directives was planned for this reporting period but the responsible ministries and institutions have still not started the necessary activities. Although a lot of time has elapsed since the Interim Agreement entered into force, satisfactory communication between ministries and institutions in charge of the adoption and implementation of directives has still not been achieved. Insufficient institutional capacity and undefined competencies have slowed down the processes of approximation and enforcement of legislation and thus BiH still faces great challenges.

b) Analysis of Measures Taken to Implement the Interim Agreement/the Stabilisation and Association Agreement

The programme of measures for the implementation of the Interim Agreement/Stabilisation and Association Agreement in the period under analysis here provides for the adoption of customs duties for industrial and agricultural products for 2011. The reduction of import duties runs as planned. Import duties on industrial products from the EU have been abolished (Annex I b of the Protocol) and reduced to 40% of the original duties (Annex I. C of the Protocol). The duties on the agricultural products referred to in Annex II and Annex III (d) of Protocol I have been reduced to 40% of the original duties and completely abolished for the products referred to in Annex III (c). Customs tariffs for industrial and agricultural products for 2011 have been adopted, as have the decisions on tariff quotas for agricultural products, wine and spirits (Protocol 7). The Ministry of Foreign Trade and Economic Relations has made a pre-draft of the Law on the Integrated Customs Tariff but at the time this report was being written it had not entered parliamentary procedure. The Law on Wine of Bosnia and Herzegovina has not yet been adopted. Although the task was to adopt only two laws in the observation period, even this was not accomplished. The Law on Wine was adopted in the House of Representatives but was rejected by the House of Peoples and the whole process returned to square one. In the meantime, the Law on Wine and Brandy of the Federation of Bosnia and

THE PLAN FOR 2012 IS TO CONTINUE THE ESTABLISHMENT OF QUALITY CONTROL INFRASTRUCTURE, APPROXIMATION OF LEGISLATION TO THE ACQUIS IN THE AREAS OF STANDARDS, CERTIFICATION, METROLOGY, ACCREDITATION AND CONFORMITY ASSESSMENT, AND WITH THE TRANSFER OF THE NEW AND GLOBAL APPROACH DIRECTIVES, AS WELL AS THE OLD APPROACH DIRECTIVES. AMONG OTHER THINGS, IT HAS BEEN PLANNED TO STRENGTHEN THE INNER MARKET UNIT AT THE MINISTRY OF FOREIGN TRADE AND ECONOMIC RELATIONS, STRENGTHEN THE UNIT FOR THE IMPLEMENTATION OF NEW APPROACH DIRECTIVES AT LINE INSTITUTIONS AND SUPPORT ECONOMIC OPERATORS IN INTRODUCING ISO STANDARDS, PRODUCT CERTIFICATION AND IN OBTAINING THE CE MARK. IT IS NOW CLEAR THAT THE SET DEADLINES WILL NOT BE MET.

Herzegovina was adopted, which solved to a certain extent the problems of distillers in the Federation, but regulating this area legislatively at the state level remains a priority.

IN ORDER TO HARMONISE THE LAW ON CONSUMER PROTECTION OF BiH WITH THE ACQUIS, THE MINISTRY FORMED TWO WORKING GROUPS: THE WORKING GROUP FOR THE DRAFTING OF THE LAW ON AMENDMENTS TO THE LAW ON CONSUMER PROTECTION IN BiH, AND THE WORKING GROUP FOR THE DRAFTING OF THE LAW ON ILLEGAL ADVERTISING. REPRESENTATIVES OF RELEVANT INSTITUTIONS FROM BOTH ENTITIES WERE APPOINTED TO THESE WORKING GROUPS, BUT NEITHER OF THE TWO SUCCEEDED IN DRAFTING THEIR RESPECTIVE LAWS, AS THE REPRESENTATIVES, NAMELY WORKING GROUP MEMBERS FROM THE REPUBLIKA SRPSKA, WITHDREW FROM THE ACTIVITIES, EXPLAINING THAT THE PROCESS CONSTITUTED A TRANSFER OF COMPETENCIES. IT IS PERHAPS UNREALISTIC TO EXPECT THAT THE AREA OF FREE MOVEMENT OF GOODS WILL BE REGULATED IN SUCH A WAY AS TO CREATE A UNIFIED ECONOMIC AREA BEFORE POLITICAL PRECONDITIONS ARE MET. AT THE MOMENT IT IS DIFFICULT TO PREDICT WHEN THIS MAY HAPPEN.

The practice from the preceding period remains unchanged – the opening of the market proceeds as planned, but problems arise in the regulation of the inner market. The EC's Progress Report stresses the need to establish dialogue on market demands between the public and the private sector. Problems were identified in the implementation of the adopted measures because the private sector still lacks the know-how required to implement the adopted directives, i.e. to adapt its products to the requirements of the directives in order to pass conformity assessment procedures. Conformity assessment is currently not conducted for either domestic or imported products prior to their placement on the market because appropriate procedures for the designation of conformity assessment bodies have not yet been defined. As was stressed in every

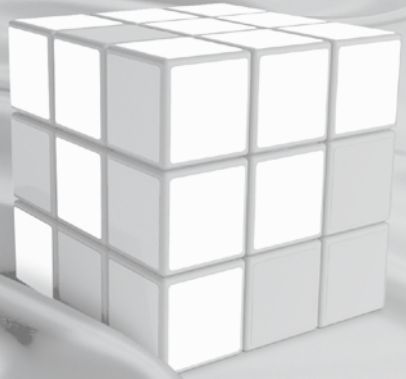
report thus far, BiH is simply ill-prepared institutionally for the fulfilment of accepted obligations within the set deadlines. In most cases there is a lack of co-ordination between responsible institutions and the harmonisation of legal regulations is not adapted to the priorities and needs of the market. There has been some progress in certain areas during the reporting period, especially in the area of consumer protection; however, generally speaking, this is not at a satisfactory level.

In the forthcoming period Bosnia and Herzegovina must invest great efforts to realise all the planned activities on the implementation of the Interim Agreement in the area of free movement of goods. The plan for 2012 is to continue the establishment of quality control infrastructure, approximation of legislation to the *Acquis* in the areas of standards, certification, metrology, accreditation and conformity assessment, and with the transfer of the new and global approach directives, as well as the old approach directives. Among other things, it is planned to strengthen the Inner

Market Unit at the Ministry of Foreign Trade and Economic Relations, strengthen the Unit for the Implementation of New Approach Directives at responsible institutions and support economic operators in introducing ISO standards, product certification and in obtaining the CE mark. It is now clear that the set deadlines will not be met.

c) Case Study: Consumer Protection in BiH – Successes and Challenges

When it comes to the free movement of goods, BiH has made the greatest progress in the area of consumer protection. As is stated in the progress report, the technical capacities of the responsible institutions at state and entity level have been increased, as have their public relations activities. The Office of the Ombudsman for Consumer Protection has been sufficiently empowered to discharge its duties under the Law on Consumer Protection. In 2010, the Office worked on 317 cases, 295 of which were solved. The Ombudsman issued 35 expert opinions, 880 pieces of legal advice and responded to 1515 information requests. An annual national consumer protection programme for 2011 has been adopted, as well as a report on the realisation of the annual national consumer protection programme for 2010. The Department of Market Monitoring, Consumer Protection and Competition at the Ministry of Foreign Trade and Economic Relations co-ordinated the drafting of a document on the realisation of the Annual National Consumer Protection Programme for 2010, as operative/expert support to the Consumer Protection Council of Bosnia and Herzegovina. Generally speaking, all institutions have achieved their goals, but in this case, too, it seems that political problems could not be avoided. Namely, in order to harmonise the Law on Consumer Protection of BiH with the *Acquis*, the Ministry formed two working groups: the Working Group for the Drafting of the Law on Amendments to the Law on Consumer Protection in BiH and the Working Group for the Drafting of the Law on Illegal Advertising. Representatives of relevant institutions from both entities were appointed to these working groups but neither of the two succeeded in drafting their respective laws, as the representatives, namely working group members from the Republika Srpska, withdrew from the activities, explaining that the process constituted a transfer of competencies. It is perhaps unrealistic to expect that the area of free movement of goods will be regulated in such a way as to create a unified economic area before political preconditions are met. At the moment it is difficult to predict when this may happen.



Title V

Movement of Workers, Supply of Services, General Provisions

Chapter 1. Movement of Labour (Articles 47 – 49 of the SAA)

Chapter 3. Provision of Services (Articles 57 – 59 of the SAA)

Chapter 5. Common Provisions (Articles 63 – 69 of the SAA)

a) Assessment of the measures taken in the Implementation of the Interim Agreement/Stabilisation and Association Agreement

With the exception of the area of transport, which is treated here in more detail on account of its special importance, progress in other areas covered by this chapter has been negligible. This is especially true of the area of movement of labour, where it is difficult to even conceive of significant progress as long as the legislation is fragmented and divergent across entities and cantons. At the European Employment Forum, the most important meeting of actors in the area of employment in the EU held on 22 and 23 November 2011, the area of workforce mobility was stressed as one of the EU priorities and additional specific measures were taken to improve the situation in this area at the EU level. Specifically, this means that the gap will widen further as the stagnation in BiH continues whilst the EU makes progress and improves its labour market. Not a single representative of BiH authorities attended the above-mentioned conference, which speaks volumes about the willingness and effort expended to improve the situation in the area of employment in BiH.

In the area of transport, BiH institutions are making more effort; however, they are facing numerous problems which are usually beyond their control such as a lack of

political agreement or a lack of resources. Initial drafts of the necessary documents have been prepared and now it is up to higher bodies to continue the drafting and approximation process. For political reasons and because of opposition from the representatives of the RS, some documents have not been accepted such as the 'Transport Policy and Strategy', which is why the EU Delegation will finance the drafting of the transport strategy from the 2012 IPA funds.

There has been no progress in legislative activities. The draft law on International and

Inter-entity Road Transport was not supported by MPs from the RS in the House of Representatives. Their explanation was that they objected to the very idea of a law regulating this area at the state level.

- COMPARED TO EU STANDARDS AND PRACTICES, THE LABOUR MARKET IN BiH IS IN A CATASTROPHIC STATE; ITS FRAGMENTED NATURE, IN CONJUNCTION WITH LOW LABOUR FORCE MOBILITY, PRESENTS AN OBSTACLE TO ECONOMIC DEVELOPMENT.
- DUE TO SLOW IMPROVEMENTS OF BASIC ROAD AND RAILWAY INFRASTRUCTURE BiH LOSES SEVERAL HUNDRED THOUSAND EUROS EVERY WEEK.
- IT IS NECESSARY TO URGENTLY SOLVE THE STATUS OF NEUM; THE MOST FAVOURABLE AND COST-EFFECTIVE SOLUTION FOR BOTH BiH AND CROATIA WOULD BE AN EXCHANGE OF CONCESSIONS, WHERE CROATIA WOULD BUILD AND ENJOY A CONCESSION TO A TUNNEL IN THE NEUM HINTERLAND WHICH WOULD BYPASS BiH TERRITORY, AND BiH WOULD ENJOY THE USE OF PLOČE HARBOUR, ALSO OF STRATEGIC IMPORTANCE.
- URGENTLY RAISE THE ISSUE OF THE EXCHANGE OF CONCESSIONS BETWEEN BiH AND CROATIA AS LAID OUT IN THE CASE STUDY ABOVE (NEUM – PLOČE HARBOUR)

An important step forward which will have to be followed through is the harmonisation of railway regulations with the *Acquis*. Said regulations will have to be translated into the languages of the constitutive peoples of BiH, then edited and adopted as official regulations. These tasks are included in the 2012 work plan of the Regulatory Board. There are also pecuniary difficulties due to which railway companies in both entities lack funds for many activities and we have seen recently that there is not enough money for remuneration of workers.

The civil aviation sector is doing well as regards the realisation of priorities; the transposition of the *Acquis* has been conducted, i.e. the *Acquis* has entered into force and all that is left to do is to translate it from English to the local languages.

b) Analysis of Measures Taken to Implement the Interim Agreement/the Stabilisation and Association Agreement

It is the finding of the European Commission that the situation in Bosnia and Herzegovina in the area of road and air transport (but not railway transport) is equal to, or even better than, that in the rest of the region. After negotiations with EU representatives, Croatia made certain decisions in the area of transport which had catastrophic consequences for the economy of BiH, most notably in exporting goods. Only two border crossings were designated for export, one of them at Bijača where a proper border checkpoint does not exist at the moment, as is also the case in Gradiška where nobody knows when the checkpoint is going to be built. All goods intended for export to the EU will have to pass through these two crossings which already present a problem which has to be solved. It is important to note that this decision partly resulted from the irresponsibility of BiH authorities who were unable to react adequately at the appropriate time when an opportunity arose to prove that the country needed more border crossings with Croatia. Namely, BiH authorities had an opportunity to offer an analysis proving that our country needs more than the two border crossings which were proposed. However, because this analysis was never made Croatia used this to its advantage.

During the recent visit of a delegation of the European Commission in charge of the monitoring progress in BiH it was concluded that BiH has achieved progress in the implementation of the Multi-lateral Agreement on the European Common Aviation Area. As regards aviation, the delegation, made up of experts from several areas of civil aviation (economic matters, airports, air safety, aviation management, aircraft operations, aviation accidents and incidents and airworthiness) found that BiH has achieved progress in the implementation of the ECAA Agreement when compared to the previous year. Progress in the area of air safety is also evident though suggestions were made regarding the obligation to introduce penal clauses in the Law on Aviation of Bosnia and Herzegovina in order to facilitate adequate monitoring. Thus BiH is the regional leader in the transposition of European regulations in the area of aviation.

Furthermore, progress in the transposition of EU regulations in the area of air safety as well as aviation management was noted, although these are not obligations arising from the first phase of the Agreement.

With regard to road transport, work to improve the transport network (building of bridges on the river Sava, border crossings Gradiška and Svilaj), and to strengthen the network of roads to Montenegro and Albania (in accordance with the tripartite Agreement on the Construction of a Road Network Between BiH, Montenegro and Albania) is under way.

The outstanding problem is the underdeveloped road and railway infrastructure. The reasons for the delay in the development of basic infrastructure are connected with an insufficient level of realisation of measures for the implementation of the SAA owing to lack of funds, long tender procedures and technical aspects of railway replacement and road construction. As a concrete consequence of this there has been a loss of profit for railway companies due to the delayed overhaul of the system and the resultant bottlenecks. It is estimated that said losses amount to a minimum of 600,000 KM per day because companies are not taking over cargo in Ploče harbour, according to data from the management of BiH and Federation of BiH Railway Corporations: for example losses have been caused because the tunnel at Ivan is not large enough for freight containers. Poor road infrastructure also causes financial losses as road tolls are only collected on a limited stretch of highway and there have been delays in construction. Better developed infrastructure may serve as a significant source of revenue and this is something to which attention needs to be devoted.

Progress in the area of railway transport has been satisfactory; what is more, in certain aspects, BiH is the regional leader (for example the licensing of other railway operators). The only reason that this activity has not started yet is the fact that other railway regulatory boards in the region are not able to license other operators nor are they harmonised with the Acquis.

The problem in BiH is the fact that although entity railway companies have formally met the requirements under the Acquis and have allocated activities to infrastructure managers and operators, the illegal practice of funnelling money from one category into the other persists. The process has not been fully completed and the advice of the Delegation of the European Union in BiH regarding the division of activities and unavoidable downsizing was rejected. The Delegation also suggested that there should be only one infrastructure manager at the BiH level, without requiring that the entities forgo their railway infrastructure; a safer and more efficient solution. However, yet again, a solution was chosen which is more expensive and damaging for the economy.

The inadequate railway infrastructure network is becoming increasingly problematic considering the constant growth of railway transport and the atrocious infrastructure that has to be used, necessitating urgent overhaul of the rest of the tracks. The EU delegation is trying to speed up the process and invest in the production of drafts and blueprints for the Corridor Vc for both railways and roads. An obstacle to investment in the railway sector in the Federation of Bosnia and Herzegovina is the poor attitude of the management of the Federal Railway Company, who do not base their decision-making on analyses, studies and facts and thus cause damage to the economy of the entire country.

As regards water transport, the EU is about to sign an agreement with the World Bank on the de-mining of the bank of the Sava and a waterway reconstruction project, as one of the pre-conditions for the realisation of works financed by the World Bank.

c)Case Study: Transport Communication in the Neum Border Zone

Considering the often-stressed importance of territorial continuity for Croatia and the high potential cost of construction and operation of the bridge across the Pelješac peninsula which Croatia wishes to build, it is the ideal moment to solve the issue of passage through Neum.

Croatia is already building border crossings in Neum and the ferry port in Trpanj has been extended, but the use of this will be minimal for Croatia for a number of reasons. If an adequate solution for the Neum issue is not negotiated with the BiH authorities, losses will be several times greater and will be incurred by both sides. According to most experts, the construction of Pelješac bridge would be too expensive and unprofitable but the fact remains that Croatia will have to connect its territory, bringing us back to the mutually beneficial solution proposed in this example, which guarantees territorial continuity to Croatia and access to the sea via one port to Bosnia and Herzegovina.

ANTICIPATION OF OBLIGATIONS FOR 2012:

IN THE AREA OF THE LABOUR MARKET AND EMPLOYMENT IT IS NECESSARY TO HARMONISE LABOUR LAWS WITH EU STANDARDS. SAID LAWS ARE UNDER THE JURISDICTION OF ENTITIES AND THEIR MODERNISATION AND HARMONISATION ARE MUCH NEEDED. FOR INSTANCE IT IS NECESSARY TO ADOPT AT LEAST TWENTY-FIVE AMENDMENTS TO BOTH LAWS, WHICH WOULD CONTRIBUTE TO THE CREATION OF A USEFUL AND UP-TO-DATE LEGAL FRAMEWORK IN THIS AREA AND A BETTER BUSINESS ENVIRONMENT FOR DOMESTIC AS WELL AS FOREIGN INVESTORS.

STOP SOCIAL SPENDING AND ABOLISH TAXES BURDENING JOB CENTRES IN BiH. JOB CENTRES SPEND MOST OF THEIR BUDGETS ON CATEGORIES OF THE POPULATION THAT DO NOT SEEK EMPLOYMENT (E.G. HEALTH CARE BENEFICIARIES CLAIM THEIR RIGHTS THROUGH JOB CENTRES) WHICH RENDERS IMPOSSIBLE THE FINANCING OF ACTIVE MEASURES FOR THE LABOUR MARKET AIMED AT REDUCING UNEMPLOYMENT.

The European Union is trying to persuade Bosnia to shoulder responsibility for a greater part of the Neum issue than Croatia and there are a number of initiatives, as yet not open to public, to solve this strategic issue. The Declaration on Bosnia and Herzegovina issued by the European Parliament contains a paragraph on Pelješac bridge which recommends finding a mutually acceptable solution between Croatia and BiH.

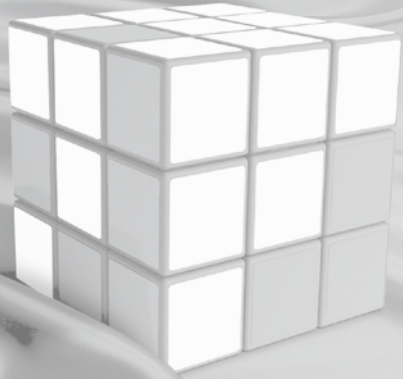
There is a solution proposed by experts which would be the simplest and most efficient – an agreement on exchange of concessions where Croatia would build a tunnel to bypass Neum and BiH would be allowed to use terminals in Ploče harbour.

The EU considers the Neum situation to be a problem for BiH, but the authorities have still not initiated talks or informal negotiations. A concession for the construction and exploitation of a tunnel in the Neum hinterland in exchange for the right to use Ploče harbour would be much more cost-effective than the hypothetical bridge which Croatia is unlikely to build in the near future. Thus, both sides have an important economic interest in such an arrangement and there are no negative consequences for either side. The BiH authorities have still not initiated talks about this issue, although they were offered assistance by the EU institutions who even proposed the foregoing solution.

Passage through Neum is a problem which must be solved. An arrangement like this would not cost BiH anything because Croatia would build the tunnel with its own funds. This would suit Croatia well because this solution is much cheaper than building a bridge across Pelješac, the current proposal. On the other hand, by giving Bosnia a concession for use of terminals in Ploče harbour, Croatia risks nothing because terminals, being recorded as national assets, cannot change ownership.

We should warn of the perils of not opting for the above solution. We risk being forced to build border crossings (two crossings in Neum which would cost around 9 million Euros) without expropriation costs. In addition to taking up a large area of precious land, this expensive solution would be short-lived since the crossings would have to be knocked down after BiH joins the EU. The same project would also have to be undertaken by Croatia, making such a solution doubly unproductive and unprofitable.

Finally, there is the possibility of the EU making a 100 million Euro investment in the project, which Croatia would gladly accept, and the project would be a win-win situation as the likelihood of a bad outcome is limited due to interconnection and interdependence.



Title V

Movement of Workers, Supply of Services, General Provisions

Chapter 2, Establishment (Articles 50-56 of the SAA)

a) Assessment of the measures taken in the Implementation of the Interim Agreement/Stabilisation and Association Agreement

The Stabilisation and Association Agreement is an integral part of the EU enlargement strategy, which applies to the Western Balkans countries. For the signatory countries of the Agreement this means the way of gradual adjustment of their political and economic system to the EU acquis. The economic adjustment means creation of a single internal economic space that allows easy mobility of goods, services, capital, and labour. Therefore, the efficient application of Articles 50 through 56 of the Agreement concluded between BiH and EU in 2008, which relate to the right of establishment, is one of the most important components for creation of a single economic space. Title V, Chapter II of the Agreement defines the right to establishment as a right to take up economic activities by means of the setting up of new undertakings, or setting up of branches, and subsidiaries.¹² In practical terms, the implementation of the said Articles means equal treatment of resident and non-resident companies in relation to the establishment of a company.

Despite ambition to conclude political and economic transition in BiH by full membership in the EU, its economic space remains fragmented, burdened with administrative lack

¹² Stabilisation and Association Agreement, Article 50, paragraph d.

of efficiency and non-harmonised pace in harmonising domestic legislation with the *acquis*. In relation to establishment, many problems that have slowed down the process of creating favourable business environment in previous years are still present. Some of the most important are: inconsistent practical application of laws (among courts, and sometimes even among different judges), costs associated with mandatory participation of notary in the company registration process, trivial errors in software for electronic document registration in course of company registration process, and problems associated with degree validation process for non-residents in BiH.

However, the latest Progress Report on BiH Membership to EU issued by the European Commission finds limited progress in the area of establishment and mobility of services. Thus, for example, the Law on Enterprises is partially harmonised with the EU *acquis* and between the Entities. In this regard, it is estimated that there has been some progress in terms of procedures relating to company registration, which can be an outcome of the improved inter-entity coordination in the field of legislation adoption. In the course of 2011 the Federation of BiH has established the Chamber of Auditors to supervise the quality of the auditing of companies by certified auditors. In Republika Srpska the supervision of the auditors is conducted by the Association of Accountants and Auditors.¹³

IN ADDITION TO THE LIMITED PROGRESS IN THE AREA OF ESTABLISHMENT, THE PROBLEM OF FRAGMENTED AND INEFFICIENT ADMINISTRATIVE STRUCTURE, INTER-ENTITY LACK OF LEGISLATIVE HARMONISATION RELATING TO THE RIGHTS OF FOREIGNERS IN ESTABLISHING COMPANIES, AND MANDATORY PARTICIPATION OF NOTARY IN THE REGISTRATION OF COMPANIES, STILL REMAINS.

Both Entities have adopted amendments to the existing laws regulating coordination of the banking supervision. Even though some progress was made towards harmonisation of the existing legislation relating to the registration of companies by non-residents and acquiring work permits in FBiH, the business environment still seems to be unfavourable. In mid 2011, in

cooperation with the International Finance Corporation, the Federal Employment Bureau has succeeded in harmonising legislation relating to acquiring work permits for non-residents, reducing the number of required documents from 18 to 8 and providing a 15-day deadline for the work permit to be issued from the day of application.¹⁴ Although this can be emphasised as a positive example towards creating favourable business environment in FBiH, the fact that each Canton keeps right to define costs of fees for issuing work permit does not contribute to creation of a single economic space. Furthermore, BiH has not yet made a significant progress when it comes to preparing for transposition of the Services Directive.

¹³ European Commission, Bosnia and Herzegovina 2011 Progress Report: Enlargement Strategy and Main Challenges 2011-2012.

¹⁴ Federal Employment Bureau, Procedures for Issuing Work Permits, in force since 06 June 2011.

In addition to the limited progress in the area of establishment, the problem of fragmented and inefficient administrative structure, inter-entity lack of legislative harmonisation relating to the rights of foreigners in establishing companies, and mandatory participation of notary in the registration of companies, still remains. From the above it appears that solving problems relating to establishment is not on the priority list of the competent authorities.

b) Analysis of Measures Taken to Implement the Interim Agreement/the Stabilisation and Association Agreement

Creating a more favorable business environment in B&H should be imperative for the institutions competent for the implementation of economic criteria of SAA. The World Bank's *Ease of Doing Business* report for 2011 has ranked Bosnia and Herzegovina 127th among a total of 183 countries, and the component of the Report pertaining to the assessment of ease of starting business puts B&H in the 162nd place. This is by no means an enviable position, particularly if one considers the registered reduction in foreign direct investment (FDI) in B&H during 2011 in comparison to the same period in 2010. According to the data provided by the Ministry of Foreign Trade and Economic Relations of B&H, foreign direct investment amounted to 65 million KM in the first semester of 2011, which means 19.5% less investment in comparison to the same period last year, while the second semester of 2011 shows a mild increasing trend in foreign direct investment. During 2011, there was a 15% decrease in investment from EU countries recorded when compared to the previous year.¹⁵

Table 1: Overview of registered foreign companies in B&H for the period 01/01/2011 – 30/06/2011

Territory	New companies with significant amount of capital	New companies with minimum founding capital	Number of registered companies that carried out recapitalization	Total number of registered foreign companies
FB&H	14	73	256	343
RS	1	35	76	112
BD	2	25	38	65
B&H	17	133	370	520

Source: MOFTER

¹⁵ Directorate for Economic Planning, Bosnia and Herzegovina: Economic Trends, January – June 2011

From the observation of the structure of foreign direct investment, it is evident that there is the highest concentration of business subjects with minimum founding capital (KM 2,000.00), while there is the fewest number of the newly established high capital business subjects. Lack of significant interest in B&H by foreign investors is a result of disorganization of the economic system, integral part of which is the issue of (non)fulfillment of provisions relating to establishment.

Table 2: The most significant problems in the domain of establishment

BUSINESS REGISTRATION		
Problems	Recommendations	Institution
LEGISLATION		
Instituting a lien over shares in a limited liability company (FB&H and RS)	Amendment to the Law on Registration enabling registration of lien over shares with registration courts (FB&H and RS)	FB&H and RS ministries of justice
Imprecise defining of the cause of registration process interruption (FB&H)	Precise identification of specific cases that may interrupt the registration process (FB&H)	FB&H Ministry of Justice
Participation of a notary public in the registration process (FB&H)	Amendments to the Law on Notaries Public and regulations on registration in the way to minimize the participation of notaries public in the processing of founding acts and statutes of business subjects as well as their respective amendments (FB&H)	FB&H Ministry of Justice Registration courts
IN PRACTICE		
Inadequate availability of information on business subjects' registration process and application of principle of public access to information (FB&H and RS)	Publishing information on websites i.e. contact points for more details on registration process and basic information on registered subjects (FB&H and RS)	Competent registration courts and competent ministries of justice
Inconsistency in processing registration requests (FB&H and RS)	Simplification and unification of registration related bureaucratic procedure (FB&H and RS)	Competent registration courts and competent ministries of justice
Consultations with registration judges at the Municipal Court of Sarajevo	In other courts, consultations with the Registration Judge is the usual practice; therefore, the same practice should be introduced at the Municipal Court of Sarajevo	Municipal Court of Sarajevo

16 For example, in FB&H, a non-resident first needs to obtain a residence permit and then sign an employment contract in order to finally obtain a work permit. On the other hand, in the Republic of Croatia, a work permit and a residence permit represent the same document..

TEMPORARY RESIDENCE AND WORK PERMITS		
In specific cases, issuance of work permit is conditioned by signing the employment agreement (FB&H, RS, BD) ¹⁶	Amendment to the Law on Movement and Stay of Aliens and Asylum in B&H or amendment to the Law on Employment of Foreigners of FB&H	Parliamentary Assembly of B&H and Parliament of FB&H, Competent ministries
Inconsistency in meeting legally prescribed deadlines for the duration of the procedure for approval or extension of temporary residence and lack of information exchange among relevant institutions	Improve mutual coordination and communication between the Service for Foreigners' Affairs and the courts competent for the registration of business subjects	Ministry of Security of B&H Courts competent for the registration of business subjects Service for Foreigners' Affairs
Disharmony between the law and practice in relation to the procedure for obtaining a work permit before obtaining a temporary residence permit (Sarajevo Canton, FB&H)	Harmonize the Law on Movement and Stay of Aliens and Asylum in B&H and the Law on Employment of Foreigners of FB&H with respect to obtaining a work permit for the first time	Competent ministries Canton Sarajevo Employment Agency

With its last amendment, the Law on Foreign Direct Investment Policy of B&H releases foreign investors of the obligation to register their individual investments with the Ministry of Foreign Trade and Economic Relations of B&H. Foreign investors still remain obligated to register their investments with the competent registration courts, which, according to official duty, inform the Ministry of Foreign Trade and Economic Relations of B&H thereof. In order for a non-resident to be able to start a business in B&H, 12 procedures need to be carried out during a 60 days period, while the total cost amounts to 15.75% GDP per capita.¹⁷

Although certain progress has been achieved in terms of the harmonization of registration regulations (at the territory of FB&H in particular), there is still a gap between legal regulations and their application in practice. Laws on registration of business subjects (FB&H and RS) require registration

courts to issue a decision on registration of both local and foreign business subjects under the urgent procedure i.e. within 5 days. In practice, obtaining of a registration decision takes up to 20 days for the first entry into the register of business subjects, while status change registrations sometimes take even longer. Obligatory participation of notaries public in the first-time registration of business subjects and in each of their subsequent changes of status brings additional complications and costs to the whole process.

IT IS NOTED IN PRACTICE THAT A NUMBER OF NON-RESIDENTS CONSCIOUSLY RENOUNCE TO VALIDATE DEGREE AND OPT TO APPLY FOR WORK PERMIT AS UNSKILLED WORKERS FOR THE REASON OF COMPLEX PROCEDURE FOR DEGREE VALIDATION.

¹⁷ Foreign Investors Council, *White Paper for 2010-2011*.

European Commission's Progress Report on B&H for 2011 noted that no progress has been made as regards recognition of professional qualifications. Practice shows that, due to complicated procedure of diploma recognition, a certain number of non-residents consciously withdraw from it and apply for a work permit as non-qualified workers instead.¹⁸

c) Case study: The FBiH Law on Notary

The FBiH Law on Notary provides for mandatory participation of notary in both, the process of registration of companies and status changes in the company. In practice, such legal provisions complicate and increase costs of work of the company especially because in most cases the role of notary is limited to mere copying of decisions issued by the management bodies of the company. For example, this means that a decision on establishing a new branch as well as on changing the authorised representative of the company have to be verified by the notary. A large number of

foreign investors consider this type of formalism unnecessary burden to their business. With amendments to the Law on Notary and legislation relating to the registration this formalism could be avoided, whereby notaries can retain the role to verify the signature of the authorised representative of the company.

SHOULD BiH REDUCES CURRENT 12 PROCEDURES FOR REGISTRATION OF A COMPANY DOWN TO 6, AND REDUCES CURRENT 40 DAYS NEEDED FOR REGISTRATION DOWN TO 20, IT WOULD IMPROVE ITS POSITION FROM THE CURRENT 125TH PLACE TO 118TH PLACE OUT OF 183 COUNTRIES IN TOTAL COVERED BY THIS REPORT.

By reducing the number of procedures and time necessary for establishing a company, BiH could significantly improve its ranking on the World Bank's Ease of Doing Business Rank. For example, if BiH reduces current 12 procedures for registration of a company down to 6, and reduces current 40 days needed for registration down to 20, it would improve its position from the current 125th place to 118th place out of 183 countries in total covered by this Report.¹⁹

When it comes to starting a business there are certain differences among cities in BiH.

¹⁸ Employment Agency, Federal Employment Institute.

¹⁹ Calculated by use of the Doing Business Reform Simulator.

Table 3. Procedures and Costs of Registration of Companies in Three Cities in BiH

	Banja Luka	Mostar	Sarajevo	Eastern Europe Average
Ease of Doing Business (Ranking among 26 other European Cities)	18	20	19	
Procedures	10	12	12	6
Time (days)	21	47	50	16
Cost (% of GDP per capita)	16	22.1	15.4	8.3
Stipulate a Founding Act and have it Notarised (in BAM)	335	335	400	
Court Registration with Competent Court (in BAM)	500	1055	555	
Company Stamp (in BAM)	40	40	40	
Statistical Number of Business (in BAM)	70	--	--	
Work Permit issued by Municipal Authority (in BAM)	102	--	--	
Statistical Number of Company (in BAM)	70	--	--	
Drafting Statute by Lawyer (in BAM)	250	250	250	

Source: World Bank's Doing Business Report Database

Despite the fact that fulfilling requirements relating to the harmonisation in the area of establishment with the EU acquis represents an important precondition for creating a competitive market, this fails to be on the top of the list of priorities of competent institutions. In the coming period it will be necessary to pay particular attention to continuation of reforms in the area of registration of property and companies, enforcement of contracts, the bankruptcy procedure, and licensing of companies. The abolition of dual legislation enforced by complex government structure is of particular importance (e.g. taxation of income and payment of contributions for a RS resident employed in the FBiH).



Title V

Movement of Workers, Establishment, Supply of Services, Movement of Capital

Chapter 4. Current payments and movement of capital (Articles 60-62 of the SAA)

a) Assessment of the measures taken in the Implementation of the Interim Agreement/Stabilisation and Association Agreement

In comparison to 2010, no significant progress was made in relation to the fulfilment of the obligations pertaining to current payments and movement of capital. The European Commission (EC) has reported modest progress in terms of preparations for full capital market liberalisation in Bosnia and Herzegovina (BiH). According to EC estimates, areas in which progress slowed include the privatisation of companies that still have state-owned capital, as well as the existence of certain restrictions on outward transfers by residents, restrictions on holding accounts abroad and limits to the amount that non-residents may freely transfer.²⁰ The EC concludes that there is a need for better co-ordination when it comes to attracting foreign investment throughout the country, particularly in designing and implementing legal reforms in this area, and that generally speaking, capital markets in BiH are not fully functional.

The BiH Law on Foreign Direct Investment Policy, adopted in 1998 and subsequently amended in 2003 and 2010, defines basic foreign investment policies in BiH; key segments of this Law are harmonised with the relevant EU regulations in this field.

²⁰ European Commission, (2011). „Bosnia and Herzegovina 2011 Progress Report“.

Entity laws on foreign investments – the Republika Srpska Law on Foreign Investments and the FBiH Law on Foreign Investments are harmonised with the provisions of the Law on Foreign Direct Investment Policy, with the latest amendments initiated by the Republika Srpska (RS) in 2011.

Provisions of this law guarantee foreign investors numerous rights such as:

- ♦ real estate ownership rights;
- ♦ the right to open accounts in any commercial bank denominated in national or any convertible currency;
- ♦ the right to freely convert the national currency in BiH into any other convertible currency for the purpose of payments related to their investments in BiH;
- ♦ the right to transfer abroad in a convertible currency the profit resulting from their investment, including income in the form of profit, dividends, interests, etc;
- ♦ the right to transfer abroad in a convertible currency the funds received by investors after partial or full liquidation of their investments in BiH, or sale of property, i.e. property rights and
- ♦ the right that investments will not be subject to nationalisation, expropriation or requisition or other measures which have similar effects, except in the public interest and in accordance with applicable laws and with payment of appropriate compensation.²¹

In 2010, the BiH Law on Foreign Direct Investment Policy was amended in order to repeal all earlier procedures for registration of foreign investments with the Ministry of Foreign Trade and Economic Relations of BiH²², and this responsibility was transferred to entity courts which are required *ex officio* to provide the Ministry of Foreign Trade and Economic Relations of BiH and competent entity authorities with information on foreign investment. What is interesting is that one of the project proposals for financing under IPA 2011 was the proposal for financing of the acquisition of equipment and programmes for the establishment of business registers in entity courts. It is assumed that these business registers would assist with complete and timely registration of foreign investments. However, this project was one of the few projects that representatives of RS objected to, on account of the issue of competencies, and in the end it was not approved for financing under IPA 2011.

21 Source: www.fipa.gov.ba

22 Which was regulated by the Instruction on Registration of Foreign Direct Investments ("Official Gazette of BiH" no. 22/99 and 21/00)

In terms of the functioning of the capital market, in 2011 Brcko District initiated the adoption of the Law on Securities Commission and Law on Takeover of Joint Stock Companies which are harmonised with EU regulations²³. On the other side, for the most part of 2011, the Republika Srpska Securities Commission operated on a “technical mandate” and as a consequence, the courts declared the Commission decisions adopted in that period null and void. It is not known whether the National Assembly of Republika Srpska has, in the meantime, appointed new members of the Securities Commission. The latest information available indicates that there is a similar situation with the Federation of BiH Securities Commission.

The table below contains a detailed overview of the implementation of the obligations under the Stabilisation and Association Agreement (SAA) and further necessary measures for their complete fulfilment.

GENERALLY SPEAKING, BIH HAS MADE MODERATE PROGRESS TOWARDS THE FULFILMENT OF OBLIGATIONS IN THIS AREA. HOWEVER, THERE ARE SEVERAL VERY IMPORTANT ISSUES FOR WHICH IT IS NECESSARY TO DEFINE A COMMON POLICY, PRIOR TO INITIATING FURTHER ACTIVITIES TOWARDS CAPITAL MARKET LIBERALISATION. THESE INCLUDE: RESTRICTIONS ON FOREIGN OWNERSHIP IN CERTAIN TYPES OF COMPANIES, EFFECTS OF THE LIBERALISATION OF THE REAL ESTATE MARKET ON THE LOCAL POPULATION, INTRODUCTION OF SAFEGUARD MEASURES UNDER ARTICLE 61, PARAGRAPH 5 OF THE SAA AND THE ESTABLISHMENT OF THE STABILISATION AND ASSOCIATION COUNCIL. IN THE LONG-TERM THERE HAS TO BE A CLEAR COMMON POSITION WITH REGARD TO THE CONSEQUENCES OF CAPITAL MARKET LIBERALISATION ON THE EXISTING REGULATORY FRAMEWORK.

²³ Information on Semi-Annual Review of Implementation of Activities under the Action Plan for Implementation of the Priorities under the European Partnership with BiH for the period 01.01.2011 – 30.06.2011 delivered to the European Integration Committee of the Parliamentary Assembly of BiH.

SAA Provision	SAA Requirement	Degree of harmonisation of national legislation
Article 60	The Parties undertake to authorise, in freely convertible currency, in accordance with the provisions of Article VIII of the Articles of Agreement of the International Monetary Fund, any payments and transfers on the current account of balance of payments between the Community and Bosnia and Herzegovina.	According to the findings of the latest BiH Progress Report, the European Commission established that "Bosnia and Herzegovina has a modern payment system for giro clearing and real-time gross settlement operations" and that these transactions accounted for "31% of the number of transactions and 36% of the value of internal traffic in the country". ¹⁶
Article 61		
Paragraph 1	With regard to transactions on the capital and financial account of balance of payments, from the entry into force of this Agreement, the Parties shall ensure the free movement of capital relating to direct investments made in companies formed in accordance with the laws of the host country and investments made in accordance with the provisions of Chapter II of Title V, and the liquidation or repatriation of these investments and of any profit stemming there from.	The BiH Law on Foreign Direct Investment Policy (entity laws on foreign investments being harmonised with this law) is harmonised with the requirements of this provision. The exception is Article 4 of the BiH Law on Foreign Direct Investment Policy which limits the portion of foreign ownership in certain types of companies. The European Commission points out this restriction in the Progress Report; however if this provision is a part of the agreed policy at the level of BiH, then these are the positions which, supported by clearly defined arguments, have to be taken when negotiations in this area begin.
Paragraph 2	With regard to transactions on the capital and financial account of balance of payments, from the entry into force of this Agreement, the Parties shall ensure the free movement of capital relating to credits related to commercial transactions or to the provision of services in which a resident of one of the Parties is participating, and to financial loans and credits, with maturity longer than a year.	The obligations under this Article are fulfilled though harmonisation of entity regulations.

24 European Commission (2011). „Bosnia and Herzegovina 2011 Progress Report“.

SAA Provision	SAA Requirement	Degree of harmonisation of national legislation
Paragraph 3	<p>As from the entry into force of this Agreement, Bosnia and Herzegovina shall authorise, by making full and expedient use of its existing rules and procedures, the acquisition of real estate in Bosnia and Herzegovina by nationals of Member States.</p> <p>Within six years from the entry into force of this Agreement, Bosnia and Herzegovina shall progressively adjust its legislation concerning the acquisition of real estate in Bosnia and Herzegovina by nationals of the Member States to ensure the same treatment as its own nationals.</p> <p>The Parties shall also ensure, from the fifth year after the entry into force of this Agreement, free movement of capital.</p>	<p>According to last year's DEI report on fulfilment of the obligations under the SAA, these issues were to be resolved in entity laws governing real estate rights. However, judging by the experience of other countries¹⁷, BiH needs to take certain measures to protect itself from the possible negative consequences to the local population resulting from liberalisation of the real estate market.</p> <p>Prior to this liberalisation and when entering the negotiations, BiH, as a whole, has to clearly establish any possible economic, sociological and environmental effects of the liberalisation of the real estate market and, based on that, clearly define the national interests that can be protected during the negotiations.</p> <p>Although the deadline for the fulfilment of the obligation to ensure free movement of capital relating to portfolio investment and financial loans and credits with maturity shorter than a year is five years after the entry into force of the Agreement, it is not known what activities have been undertaken in this area.</p>
Paragraph 4	<p>Without prejudice to paragraph 1, the Parties shall not introduce any new restrictions on the movement of capital and current payments between residents of the Community and Bosnia and Herzegovina and shall not make the existing arrangements more restrictive.</p>	<p>The issue of regulation of the movement of capital and current payments fall under the competence of the entities and there are no formal mechanisms for harmonisation of policies and regulations. Thus the question remains what institutional guarantees BiH has for the fulfilment of this obligation.</p>

SAA Provision	SAA Requirement	Degree of harmonisation of national legislation
Paragraph 5	Without prejudice to the provisions of Article 60 and of this Article, where, in exceptional circumstances, movements of capital between the Community and Bosnia and Herzegovina cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy in the Community or Bosnia and Herzegovina, the Community and Bosnia and Herzegovina, respectively, may take safeguard measures with regard to movements of capital between the Community and Bosnia and Herzegovina for a period not exceeding six months if such measures are strictly necessary.	Articles 16 and 18 of the Law on Framework Foreign Currency Policy of Bosnia and Herzegovina, which was not adopted in the Parliamentary Assembly of BiH in 2010 and which was not re-introduced in the parliamentary procedure, contained the provisions for safeguard measures. However, failure to adopt this Law means that this question remains open. The issue of regulation of safeguard measures was not raised during 2011.
Paragraph 6	Nothing in the above provisions shall be taken to limit the rights of economic operators of the Parties from benefiting from any more favourable treatment that may be provided for in any existing bilateral or multilateral agreement involving Parties to this Agreement.	Although the reverse, this is a similar issue as in the case of paragraph 4, Article 61, i.e. which institutional mechanisms do the BiH authorities have for the use of more favourable treatment considering the absence of formal co-ordination?
Paragraph 7	The Parties shall consult each other with a view to facilitating the movement of capital between the Community and Bosnia and Herzegovina in order to promote the objectives of this Agreement.	Mechanisms for this type of consultation and the methods of co-ordination between levels have not been determined.
Article 62		
Paragraph 1	During the first five years following the date of entry into force of this Agreement, the Parties shall take measures permitting the creation of the necessary conditions for the further gradual application of Community rules relating to the free movement of capital.	It is assumed that these measures will be defined within the institutional frameworks established for the further EU accession process.
Paragraph 2	By the end of the fifth year following the date of entry into force of this Agreement, the Stabilisation and Association Council shall determine the detailed arrangements for full application of Community rules on the movement of capital.	Again, no activities were undertaken concerning the establishment of the Stabilisation and Association Council, so the deadline was extended until the end of 2011.

b) Analysis of Measures Taken to Implement the Interim Agreement/the Stabilisation and Association Agreement

For the implementation of Articles 60 and 62 of the Stabilisation and Association Agreement (SAA) governing the issue of current payments and movement of capital, it is necessary in the forthcoming period, particularly at the level of the Interim Committee and Interim Sub-committee in charge of this issue, to urgently resolve the following issues:

- ◊ In terms of foreign direct investment, the restrictions to the share of foreign capital in companies involved in production and sale of weapons, ammunition, explosives for military application, military equipment and public information remain in force. Provided these restrictions are in the general interest of the public, they should be defined as a part of the common policy and that position should be taken, with appropriate arguments, during the accession process. This position should be established at the next meeting of the Interim Committee and/or Interim Sub-committee.
- ◊ With regard to the acquisition of real estate in Bosnia and Herzegovina by citizens of European Union (EU) member countries, it is necessary to define a common policy which would protect the local population from any possible negative consequences of the liberalisation of the real estate market. This would, for example, include imposing taxes for resale of real estate within a short time period or agreeing a moratorium on purchase of land of special interest (such as agricultural land). The position concerning this issue should be determined by the Interim Committee and/or Interim Sub-committee.
- ◊ The safeguard measures under Article 61, paragraph 5, remain undefined because the Law on Framework Foreign Currency Policy was not adopted in 2010. At the next meeting, the Interim Sub-committee should discuss this issue and find an adequate legislative solution for defining the safeguard measures, so that BiH would have enough time to use these safeguard measures prior to their expiration in accordance with the provisions of the SAA.²⁶
- ◊ The Stabilisation and Association Council (SAC) should have been established in 2009. This deadline was extended first until the end of 2010, and then the end of 2011. The SAC is required to, in accordance with the SAA, determine the detailed arrangements for full application of Community rules relating to the movement of capital. Therefore, activities to establish this body need to be initiated and completed without any further delay.

²⁶ See the FPI Monitoring Report for 2010 which contains explanation of the role of the safeguard measures and the manner of their regulation on the example of Croatia.

c) Long-term issues to be considered

In any economy the financial markets are, rightly, one of the segments which is subject to the most rigorous controls and the highest degree of regulation. Financial market regulation implies several elements: protection of individuals (protection of creditors, investors and insured persons), ensuring stability of the system and ensuring uninterrupted functioning of the financial markets. Accordingly, legal provisions can have two functions, to limit risk and to limit the damage that can be incurred by financial transactions. Due to globalisation there are an ever increasing number of cross-border links among financial markets and international standards have a substantial impact on financial market regulation.²⁷

Regulation and, more importantly, control of financial markets in BiH is decentralised within three legal frameworks (Federation of BiH, RS and District Brcko). If there is an intention to expand and increase the significance of the financial market in BiH, which is currently small and underdeveloped, the issue of decentralisation will have to be considered, particularly in the light of the fact that the Central Bank of BiH operates in accordance with the principles of the currency board without regulatory or supervisory competencies over banking and capital markets. This issue is relevant from the aspect of the monitoring and prevention of money laundering and financing of terrorism, which requires, as a minimum, a consolidated regulatory framework in BiH. It is recommended that the BiH Parliamentary Assembly should initiate expert level talks on this issue in the light of the wider social and economic implications of the continuously increasing financial market liberalisation. Talks should also focus on the suitability of the existing regulatory frameworks to respond to such implications.

²⁷ Adapted from <http://www.sif.admin.ch/themen/00489/index.html?lang=en>.



Title VI

Approximation Of Laws, Law Enforcement And Competition Rules

a) Assessment of the measures taken in the Implementation of the Interim Agreement/Stabilisation and Association Agreement

The implementation of priority legislative activities in the process of fulfilment of the obligations under the SAA in this field could be assessed as partial, incomplete and insufficient. It should be emphasised that outstanding progress has been made in some segments such as intellectual property protection. On the other side, only partial results were achieved in the fields of competition and protection of mental health and no concrete results were achieved with regard to the issue of state aid. It can be said that harmonisation and implementation of legislation continues to suffer serious stagnation caused by the Council of Ministers operating under a technical mandate and the delayed formation of the Parliamentary Assembly of BiH which considers legislative proposals introduced primarily by the Council of Ministers. The Bosnia and Herzegovina 2011 Progress Report assesses that: “Overall, the functioning of market mechanisms remained hampered by distortions, the excessive role of the State and lack of competition, not allowing efficient allocation of resources.”²⁸

For some time now there has been continuous progress made in the adoption and

28 Bosnia and Herzegovina 2011 Progress Report. Accompanying the document communication from the Commission to the European Parliament and the Council, Brussels, 12.10.2011. SEC (2011)1206, <http://www.dei.gov.ba/dokumenti/?id=8562> p. 27

implementation of laws pertaining to the protection of intellectual property.²⁹ These laws are fully harmonised with the WIPO³⁰ requirements and the capacities of the institution are gradually increasing.

After a while, progress was made in the area of mental health protection due to the adoption of the legal framework both at state and entity level and the establishment of the necessary institutions and co-ordination mechanisms in the region. This was also highlighted in the European Commission Report.³¹ In addition, complementary progress has been made in the area of employment of persons with disabilities. Namely, the Managing Board of the Fund for Professional Rehabilitation and Employment of Persons with Disabilities made a decision to publish calls for proposals for employment and professional rehabilitation of persons with disabilities. The amount of 850,000 KM is to be allocated for financing and co-financing of programmes and projects and an additional 150,000 KM for financial incentives. The purpose of the call for financing and co-financing is to maintain the existing level of employment of persons with disabilities, while the call for financial incentives is intended for legal and other entities to employ persons with a degree of disability of 60% or more.³²

The BiH Competition Council has achieved further progress in terms of harmonisation of its own secondary legislation with EU practice. During the reporting period, the Competition Council adopted a Decision on Amendments to the Decision on Administrative Fees in Relation to Procedural Actions before the Competition Council.

The Competition Council had almost the same number of cases, but it is facing a lack of resources which limits the number of cases that can be processed. The same thing is reported in the EU Report, but it should be added that by 20 November 2011 the Competition Council of BiH adopted a total of 48 findings. Out of that number, there were 20 opinions, 12 decisions, 13 conclusions and 3 notices. In comparison

29 European Commission reports in the BiH 2011 Progress Report the following: *Progress was made in intellectual property rights. State-level laws governing industrial property and copyright and related rights entered into force and implementing regulations were adopted. Three Councils were established as advisory and coordination bodies of the Institute for Intellectual Property and began to implement their work programmes. Training of these Council members was initiated. Further measures were taken to improve the functioning of the Institute for Intellectual Property and to disseminate information about intellectual property. The institute expanded its premises and increased its staff from 48 to 50. However, another 22 posts remain to be filled. P. 34.*

30 WIPO – World Intellectual Property Organization

31 *Progress can be reported in the area of mental health. The Federation amended the Law on protection of persons with mental disorders improving the protection of human rights and dignity of persons with mental disorders as well as the legal protection of legally incapacitated adults. The Regional Health Development Centre for Mental Health in South-Eastern Europe in Sarajevo became operational. However, further actions remain to be taken towards promoting inclusion of people with mental health problems and their empowerment. Community based mental health services of high quality that are focused on recovery need further support. P. 36.*

32 <http://www.fzzz.ba/>

to the previous year, it is noticeable that there were a disproportionate number of opinions in comparison to other types of findings regarding the resolution of cases of abuse of dominant position and merger of companies. Still, part of the opinions and decisions issued by the Competition Council was related to the issue of competition within public institutions and public companies, which is positive from the aspect of introduction of competition rules in the public sector (last column in Table 1).³³

The new Law on Public Procurement, which should completely eliminate the shortcomings of the existing law, has been in parliamentary procedure for a long time. Consequently, operation of the Agency and Procurement Review Body remained at the same level as in the previous reporting period. Although the Commission's Progress Report harshly criticised the stagnation of the reform of public procurement legislation and work of the competent institutions,

it has to be said that the public procurement process somehow functions within the prescribed legal and institutional framework despite facing myriad problems caused by identified ambiguities in the application of regulations. The problems occur due to the failure to remove the identified shortcomings in the procedures and application of the 2004 and 2007 public procurement *acquis*.

THE ABSENCE OF THE LAW ON STATE AID WILL DETER FOREIGN INVESTORS WHO ARE AFRAID THAT SOME COMPANIES MIGHT HAVE A PRIVILEGED STATUS WITHIN THE GOODS AND SERVICES MARKET IN THE REGION AND THAT IT WILL ENDANGER FAIR MARKET COMPETITION, CONSIDERING THAT BOSNIA AND HERZEGOVINA IS THE ONLY COUNTRY IN THE REGION THAT HAS NOT ADOPTED THIS LAW. BESIDES, NOT HAVING THIS LAW FACILITATES CORRUPTION AND A LACK OF TRANSPARENCY IN ALLOCATION OF FINANCIAL INCENTIVES TO PRIVATE AND PUBLIC COMPANIES.

33 According to the data available on the official website of the CC BiH www.bhkonk.gov.ba

Comparison of findings presented in the BiH Progress Report with regard to the activities of the Public Procurement Agency and Competition Council – Table 1

Public Procurement Agency	Competition Council
No progress was made in the area of public procurement.	Some progress was recorded in the area of antitrust.
Guidelines on electronic public procurement were adopted and the technical preparations for electronic publication of tender notices on the Public Procurement Agency website were completed.	The Competition Law is mostly in line with EU <i>acquis</i> , but needs further adjustment.
The Public Procurement Agency and the Public Procurement Review Body retained their staffing levels.	The Competition Council's activities focused on mergers and abuses of dominant market positions.
Implementation of the Strategy for Development of the Public Procurement System for 2010-2015 has been delayed. The 2004 and 2007 public procurement <i>acquis</i> remain to be transposed.	The Competition Council's administrative capacity with a total of 26 staff appears insufficient to carry out the tasks assigned to it.
Provisions concerning public-private partnerships and services and works concessions at all levels neither guarantee competitive and transparent procedures nor an independent review of the procedure in line with the <i>acquis</i> .	CC staff needs further training to increase the authority's investigative capacity.
Neither the Public Procurement Agency nor the Procurement Review Body are sufficiently proactive in disseminating information on the public procurement system and providing contracting authorities and economic operators with practical assistance. Cooperation between the Public Procurement Agency and the Procurement Review Body is not functioning efficiently.	Opinion on the Draft Decision on Supply of Qualified Buyers in Brcko District of 20.10.2011 Decision on the request of the economic operator of radio-television of Bosnia and Herzegovina, Sarajevo, for initiation of the procedure against economic operators radio-television of the Federation BiH, Pink BH Company d.o.o, Mreža plus d.o.o, OBN d.d. and Hayat TV for distortion of competition of 05.05.2011 Opinion on the Request of the Regulatory Commission for Electricity of the Federation of BiH – FERK of 05.04.2011 Opinion on the Rulebook on Conditions, Manner and Specificities of Organisation of Public Transportation in Sarajevo Canton ("Official Gazette of Sarajevo Canton" no. 28709) of 23.03.2011 Conclusion on the rejection of the request of the economic operator Akt.online d.o.o. Sarajevo for initiation of the procedure against the economic operator BH Telecom d.d. Sarajevo on suspicion of abuse of dominant position of 02.03.2011 Decision on the request of "Elektrokontakt SA" d.o.o. Sarajevo for initiation of the procedure against public enterprise "Elektroprivreda BiH" d.d." Sarajevo, "Elektroprivreda BiH" subsidiary company "Eldis-tehnika" d.o.o. Sarajevo to establish the abuse of dominant position of 25.02.2011

No substantial progress was made with regard to the establishment of a legal framework governing state aid, which would have resulted in the adoption of the law.³⁴ The working group, led by the Ministry of Foreign Trade and Economic Relations (MoFTER), finalised its activities on the development of a draft law in June and July, after which the Ministry delivered the draft to the Council of Ministers of BiH. The proposal delivered to the Council of Ministers was harmonised with the *acquis* in this area, but it also contained two issues for the Council of Ministers of BiH to consider. The first issue is related to the decision-making in a seven-member council. Proposal of the MoFTER and representatives of the Federation of BiH was that the decisions should be made by a majority of 4 out of 7 members because the issue here is not political, but the professional application of EU regulations on state aid in BiH. On the other side, the proposal of the RS representatives was that the decision making should be based on the principle of qualified majority, i.e. 6 out of 7 members, with the request that at least one vote is from each of the constituent peoples. The justification was that this decision making system is already applied and functioning in the work of the BiH Competition Council where it is the requirement that 5 out of 6 members vote for any decision with at least one vote from each constituent people.

BiH MISSED BY SIX MONTHS THE 01 JULY 2011 DEADLINE TO APPLY THE PRINCIPLES OF COMPETITION POLICY AND LAW ESTABLISHED BY THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY TO PUBLIC UNDERTAKINGS AND UNDERTAKINGS TO WHICH SPECIAL AND EXCLUSIVE RIGHTS HAD BEEN GRANTED, I.E. TO WHICH CERTAIN MONOPOLISTIC POSITIONS HAD BEEN GIVEN.

The second issue which proved to be even more complex is related to the manner of financing of the State Aid Council. The proposal of the MoFTER, the Ministry of Finance and Treasury of BiH and representatives of the Federation of BiH was that this institution should be financed by the Budget of Institutions and International Obligations of BiH as stipulated by Article III, 1. e) of the Constitution of BiH³⁵. On the other side, the proposal of the representatives of the RS was that the Budget of BiH, RS and the Federation of BiH should each finance 1/3 of the State Aid Council budget, as is the case with the system applied for the BiH Fiscal Council.

³⁴ Little progress was made in the field of state aid. The Council of Ministers adopted a draft State Aid Law, however, it remains to be adopted by the Parliament. A state-level operationally independent authority for the control of state aid, in line with the Interim Agreement, remains to be established. Transparency of all state aid granted in Bosnia and Herzegovina is not ensured.

³⁵ The Constitution of BiH in Article III Responsibilities of and Relations between the Institutions of Bosnia and Herzegovina and the Entities, point 1. Responsibilities of the Institutions of Bosnia and Herzegovina, explicitly says:
„The following matters are the responsibility of the institutions of Bosnia and Herzegovina:..
e) Financing of the institutions and the international obligations of Bosnia and Herzegovina.“

However, by analysing the constitutional provisions and compatibility of the solution applied for the BiH Fiscal Council, it can be concluded that there are few similarities between the two, because the Fiscal Council is a coordination body comprised of state and entity prime ministers and ministers of finances, and the Mayor of Brcko District. Unlike the Fiscal Council, the State Aid Council is, as emphasised by the SAA itself, an “operationally independent authority” that Bosnia and Herzegovina is required to establish. The European Commission expressed its concern that financing from entity budgets might lead to dependency of the Council’s work on the will of those financing it to give their annual contribution for the budget of this authority, which would thus endanger its operational independence and would not be in compliance with Article 36 of the Interim Agreement between BiH and the EU. Entities and BD are the largest providers of state aid and therefore it is impermissible that they can influence the decision making of this authority by obstructing the financing of the State Aid Council. Even more so, the Budget of Institutions and International Obligations of BiH is the right place to include the budget of the State Aid Council because the state level in BiH does not provide state aid and subsidies. It only finances the institutions and international obligations and therefore it is neutral towards the work of the Council, as requested by Article 36 of the Interim Agreement and Article 71 of the Stabilisation and Association Agreement between the EU and BiH.

Taking into account all these elements, the Council of Ministers adopted the draft Law on State Aid, foreseeing the 6 out of 7 majority for decision making in the State Aid Council and financing from the Budget of Institutions and International Obligations of BiH. A certain number of ministers abstained from voting, but there were enough votes for the Law to be forwarded into parliamentary procedure. The competent committee of the House of Peoples of the National Assembly of BiH supported the proposal. However, in the further procedure in the competent committee of the House of Representatives, representatives from the RS presented the same requirements as in the earlier phases of development of the law, with an additional request for a greater influence of civil servants in the work of the Council. For these reasons, on 12 November, voting in the House of Representatives of the Parliamentary Assembly was postponed until 24 November 2011 only to be postponed again for one of the forthcoming sessions.

b) Analysis of Measures Taken to Implement the Interim Agreement/the Stabilisation and Association Agreement

The general level of adoption of the key legislative acts under Title VI, related to the fulfilment of the obligations under the SAA, can be assessed as unacceptable. Namely, no strategic legislative act has been adopted and no new institution has been established. With regard to the adoption of appropriate rulebooks, it can be

said that only individual agencies did something in this area, while the Council of Ministers of BiH did not adopt any of the necessary secondary legislation.

Particular emphasis was placed on the draft Law on State Aid as a key priority. It should be stressed that, due to the expiry of the deadline for adoption of the law and establishment of the operationally independent authority, the Law caught considerable media attention through different political, media or international community actions. The Council of Ministers of BiH forwarded the draft of this Law into parliamentary procedure. All European officials and representatives of the European Commission in Brussels and the EC Delegation in Sarajevo emphasised that the Law on State Aid was one of the most important priorities. Unfortunately, the Law itself was a part of the package of political negotiations pertaining to the establishment of the new BiH Council of Ministers, together with the Law on Census and amendments to the Constitution to implement the Sejdić-Finci judgement. Due to the two opposed positions, the constitutional obstacles for the adoption of the necessary legislative framework and the establishment of the necessary institution were also implied. The position held by the experts, state institutions and the Federation of BiH is that the operationally independent authority should be a state institution because this is a matter of foreign trade. On the other side, the representatives of the RS institutions have a different opinion and think that it is necessary to establish co-ordination between the entities in this area, because the economy and finance fall under the competence of the entities. The European Commission agrees with the experts and is of the opinion that this a foreign trade matter which falls under the competence of BiH institutions although the model of internal organisation of institutions is a matter for political agreement within BiH, as long it does not violate the rules of the state aid *acquis*, which comprise a mandatory part of the Law that has to be adopted.

The result of the foregoing is that Bosnia and Herzegovina missed all deadlines for fulfilment of its obligations under the Stabilisation and Association Agreement. BiH was supposed to adopt the Law and establish the operationally independent authority for state aid in July 2010. At the same time, BiH is also in violation of the Central European Free Trade Agreement as well as the Treaty establishing the Energy Community of South East Europe, both of which stipulate the obligations pertaining to the establishment of the state aid system. Failure to establish this system is also an obstacle in further negotiations of BiH for membership in the World Trade Organisation. Furthermore, the Council of Ministers of BiH, at its 151st session on 25 May 2011, took note of the Information of the Directorate for European Integration on Initiation of the Procedure against Bosnia and Herzegovina for Violation of the Energy Community Treaty in the area of state aid.³⁶

36 http://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/?id=11572

In the end, the absence of the Law on State Aid will deter foreign investors who are afraid that some companies might have a privileged status within the goods and services market in the region and that it will endanger fair market competition, considering that Bosnia and Herzegovina is the only country in the region that has not adopted this law. Besides, not having this law facilitates corruption and a lack of transparency in allocation of financial incentives to private and public companies.

Bosnia and Herzegovina failed to adhere to the deadlines set for the fulfilment of yet another strategic requirement under Article 72 of the SAA, i.e. 37 of the Interim Agreement.³⁷ The same is also reported in the Bosnia and Herzegovina 2011 Progress Report.³⁸ Namely, Bosnia and Herzegovina has to apply to public undertakings and undertakings to which special and exclusive rights have been granted, i.e. certain monopolistic positions, principles and rights of competition as established under the Treaty Establishing the European Community, i.e. Treaty on the Functioning of the European Union. This means that all public monopolies have to be opened to market competition. Bosnia and Herzegovina should have adopted regulations enabling this by 01 July 2011 but this obligation was not fulfilled. Only certain sectors are open to competition by means of individual regulations, such as telecommunications, mobile and landline telephony. Another example is the sectors open for competition only in one part of the territory of BiH, e.g. the segment of the market providing services of maintenance of common areas of residential buildings in Sarajevo Canton, in accordance with the competencies of this level of government. The National Assembly of Republika Srpska adopted the Law on Amendments to the Law on Public Undertakings thereby partially initiating the work of harmonisation of these regulations. The Government of the Federation of BiH forwarded the Draft Law on Amendments to the Law on Economic Operators to the Parliament in urgent procedure, but the Parliament returned the law to regular procedure requesting a statement on harmonisation of the new law with SAA requirements.

There have not been any disagreements with regard to the issue of these laws, as the process of the development of these laws was not among the political priorities of the authorities in BiH and these are mainly direct competencies of entity and cantonal levels of government.

³⁷ Public Undertakings: By the end of the third year following the entry into force of this Agreement, Bosnia and Herzegovina shall apply to public undertakings and undertakings to which special and exclusive rights have been granted the principles set out in the EC Treaty, with particular reference to Article 86.

Special rights of public undertakings during the transitional period shall not include the possibility to impose quantitative restrictions or measures having an equivalent effect on imports from the Community into Bosnia and Herzegovina.

³⁸ BiH 2011 Progress Report states that *Bosnia and Herzegovina did not fulfil its commitment under the Interim Agreement, to apply, by 1 July 2011, Community principles to public undertakings and undertakings to which special and exclusive rights were granted.*

c) Case Study: Consequences of the failure to adopt priority laws on the needs of citizens

Discussion about laws governing competition, state aid, consumer protection and public procurement has been in the public domain in the context of the fulfilment of BiH's international obligations and in relation to political processes. However, little attention has been paid to how these laws, or more precisely their absence and/or non-implementation, affect the lives and needs of citizens of BiH.

For example, the application of EU competition policy and the law on public undertakings and undertakings to which special and exclusive rights have been granted is an integral part of the state aid system through the exemption of the services of general economic interest from strict state aid control.

Implementation of EU regulations in this area would help to break up the monopoly and would facilitate the entry of a greater number of suppliers of goods and services into certain markets with the result that services would improve and lower prices would ensue. Breaking up the monopoly in the area of telecommunications, mobile and landline telephony across the whole of the country demonstrated a success of this concept which made state companies compete with the private sector and which provided for the possibility of the selection of a supplier.

It is believed that the application of this concept would improve public transportation services in larger cities, for example in Sarajevo Canton, where GRAS holds the monopoly on public transportation and owns part of the infrastructure such as bus and tram stops. The same situation applies to District Heating, SarajevoGas and others. The main principle in the EU is that the infrastructure network used for the provision of services to citizens should remain under public ownership and not that of public companies. This enables private service providers to use the public infrastructure network under the same conditions and to provide the same quality of service as determined by the state. The result of such an approach is the enhancement of both competition and the well-being of consumers, who are no longer limited to using only one service provider that cannot be changed. Why shouldn't private transportation companies be allowed to run part of the bus network currently controlled by transportation monopolists and why shouldn't a thermal plant at Kakanj supply Sarajevo with thermal energy?

Of course there are the vested interests of the private companies who want to exploit only the most profitable part of a service, e.g. transportation routes in the city centre rather than in rural areas and around city hills. This is where the rules for services of general interest apply. These rules provide for state incentives for those who are willing to provide less lucrative services so that the overall service to citizens would not be adversely affected.

This is related to legislation in the field of public procurement and concessions, the intention being to ensure transparency and efficiency in public procurement procedures and to prevent abuse, thus ensuring that budgetary resources provided by taxpayers are directed towards achieving the best outcome for the people.

GENERALLY SPEAKING, FAILURE TO FULFIL THE OBLIGATIONS UNDER THE INTERIM AGREEMENT HAS A DIRECT INFLUENCE ON THE QUALITY OF LIFE OF THE CITIZENS OF BOSNIA AND HERZEGOVINA. ANOTHER CONCERN IS THE CONSTANT FAILURE TO MEET DEADLINES DUE TO THE NON-ADOPTION OF NECESSARY LAWS. THIS LEADS TO AN INABILITY TO ESTABLISH INSTITUTIONS AND TO ADOPT SECONDARY LEGISLATION, THE STAGNATION OF REFORM PROCESSES, DETERRING OF FOREIGN INVESTORS, DECREASED EMPLOYMENT AND POORER QUALITY OF SERVICES AND, IN THE END, A LOWER QUALITY OF LIFE. BOSNIA AND HERZEGOVINA IS EXPECTED TO CATCH UP IN THE NEXT YEAR ON MISSED DEADLINES.

Ultimately, our country has had a Law on Protection of Consumers for some time as well as the Office of the Ombudsperson for Protection of Consumers and several citizens' associations for protection of consumers at state and entity level. However, consumer protection remains at a low level due to the non-harmonisation of regulations and insufficient capacities of the Institute for Standardisation combined with a lack of inspection control of the quality of products and services available on the market. Although the number of consumer disputes before the

Office of the Ombudsperson indicates increased awareness of consumers, generally speaking the situation is not satisfactory, which emphasises the importance of the role of the judicial system in the implementation and enforcement of laws.

Generally speaking, failure to fulfil the obligations under the Interim Agreement has a direct influence on the quality of life of the citizens of Bosnia and Herzegovina. Another concern is the constant failure to meet deadlines due to the non-adoption of necessary laws. This leads to an inability to establish institutions and to adopt secondary legislation, the stagnation of reform processes, deterring of foreign investors, decreased employment and poorer quality of services and, in the end, a lower quality of life. Bosnia and Herzegovina is expected to catch up in the next year on missed deadlines.

Table 2. Obligations, deadlines and assessed delays for the Title VI

Obligation	Deadline	Missed / Assessment
Adoption of the law and establishment of an operationally independent authority for state aid	1 July 2010	18 months
Establishment of the State Aid Council and adoption of the operational rulebook that has to be adopted by the Council of Minister	6 months following the adoption of the law	12 months
BiH will establish an inventory of aid schemes	1 July 2012	This requires a minimum of 12 months from the beginning of the work of the State Aid Council
BiH will harmonise the aid schemes with Community criteria concerning competition rules	1 July 2012	It was estimated that this would require 24 months from the beginning of the work of the State Aid Council, provided there is the utmost political will
Apply to public undertakings and undertakings to which special and exclusive rights have been granted, principles and rights of competition as established under the EC Treaty, with particular emphasis on Article 86	1 July 2011	6 months
BiH is to guarantee the same level of protection of intellectual, industrial and commercial property rights as exists in the Community, including effective enforcement.	1 July 2013	Feasible within the set deadline

Generally speaking, failure to fulfil the obligations under the Interim Agreement has a direct influence on the quality of life of the citizens of Bosnia and Herzegovina. Another concern is the constant failure to meet deadlines due to the non-adoption of necessary laws. This leads to an inability to establish institutions and to adopt secondary legislation, the stagnation of reform processes, deterring of foreign investors, decreased employment and poorer quality of services and, in the end, a lower quality of life. Bosnia and Herzegovina is expected to catch up in the next year on missed deadlines.



Title VII

Justice, Freedom and Security

a) Assessment of the measures taken in the Implementation of the Interim Agreement/Stabilisation and Association Agreement

Generally speaking, in this reporting period the level of implementation of the activities foreseen in the Action Plan for Implementation of Priorities under the European Partnership in the area of “Justice, Freedom and Security” is not satisfactory. Reasons for a severe setback in the implementation of the defined activities have to be identified at the political level in the opposing platforms and perceptions of political actors with regard to BiH and its legislative and institutional development. There has also been an absence of a direct trade off for any potential departure of political actors from their political positions and for their agreeing to compromises in order to fulfil the obligations from the so called “European agenda”, as was the case with the fulfilment of the requirements towards the inclusion of BiH on the so called “White Schengen List”. It is also necessary to take into account the general circumstances of institutional and financial and budgetary functioning of the common institutions of BiH during the larger part of the reporting period, as well as the external factor of the financial and political crises in the European Union itself and its real, psychological and interpretative impact on the “European perspective” of BiH and other countries in the region of the Western Balkans.

Observing priorities and the activities necessary for their implementation, in line with thematic units in the areas of visas, border control, asylum and migration, it can be seen that some of them are being implemented on a continuous basis. In terms of the conclusion and implementation of readmission agreements and accompanying implementation protocols, implementation of the Readmission Agreement with the European Union was satisfactory. Activities directed towards conclusion of similar agreements with North African countries have been intensified, while the text of an agreement with Turkey was finalised and its signing is expected to take place soon. In addition, there is continuous implementation of activities aimed at improving the integrated system of state border control. Out of a total of 55 international border crossing points, 29 are covered by video surveillance and 49 are equipped with biometric passport readers and are connected to the integrated system of control of state border crossings and with all organisational units of the Border Police. Thanks to the greater involvement of the IT Sector of the BiH Ministry of Security, BiH is working on improving the software system for integrated border management and improving the different data bases utilised within the system.

THE UNSATISFACTORY RESULTS AND SERIOUS DELAYS IN IMPLEMENTING A MAJOR PART OF THE OBLIGATIONS WITHIN THE FRAMEWORK OF 'JUSTICE, FREEDOM AND SECURITY' ON THE PART OF THE BiH INSTITUTIONS IN THE GIVEN PERIOD ARE EXPLAINED PRIMARILY BY THE OPPOSING POLITICAL PERCEPTIONS REGARDING THE FURTHER INSTITUTIONAL AND LEGISLATIVE DEVELOPMENT OF THE COUNTRY, THE INABILITY TO ESTABLISH A NEW COUNCIL OF MINISTERS IN BiH FOR MORE THAN A YEAR AFTER STATE ELECTIONS AND THE FINANCIAL CONSTRAINTS OF THE STATE-LEVEL INSTITUTIONS.

In the area of asylum, the establishment of a permanent asylum centre in Trnovo, which will meet all international standards, is in the final phase of preparation despite some delays and it is expected that it will open during 2012. In contrast, in the area of the fight against money laundering, there are serious delays in the implementation of priorities in relation to staffing and strengthening of the Financial Intelligence Unit: in this reporting period only 66% of the positions were

filled, even though the original deadline for the implementation of priorities has been continuously postponed since December 2008. In addition, some weaknesses have been detected in the methodology of reporting of suspicious financial transactions applied in the Unit, because it does not include the appropriate statistical indicators based upon which it would be possible to conduct a risk assessment and to make decisions. The fourth phase of the development of the AMLS³⁹ has not begun yet, although the initial deadline in the Action Plan was December 2008. Installation of the

39 AMLS - Anti – Money Laundering System, is a system for exchange of data on suspicious financial transactions in the banking sector in BiH, which requires banking institutions in BiH to submit all relevant data on suspicious financial transaction to the Financial Intelligence Unit within SIPA.

ORACLE licence, which is directly conditioned by completion of the fourth phase of the AMLS development, has not yet begun either.

The existing financial and budgetary situation of the common institutions of BiH stands as a fundamental obstacle in the implementation of activities in terms of the priorities in the area of the fight against trafficking in human beings, for example the improvement of the system of indemnification of human trafficking victims. Namely, despite the allocation of budgetary resources for the re-integration and rehabilitation of victims of human trafficking and sexual violence, which can be paid in the form of a grant or emergency funds, these funds are not available for payment because a temporary financing decision is in force.

Following the 2010 rejection of the proposed Law on Amendments to the Law on the Witness Protection Programme in the House of Representatives of the National Assembly of BiH by the political parties from Republika Srpska, with the explanation that it implies the transfer of competencies, the establishment of a new working group tasked with drafting a new law was initiated. As a result of this the initial deadline for the implementation of this obligation under the Action Plan was postponed until December 2011. However, it was obvious that it would not be fulfilled by this deadline either. Delays in the adoption of the aforesaid piece of legislation have caused a delay in the implementation of the obligation to adopt secondary legislation by means of which the law would be implemented.

The absence of political will is the main reason for uneven implementation of the priorities in relation to the adoption of adequate legislative regulations that will govern the issue of confiscation of illegally acquired assets. Although the initial deadline was postponed from February 2009 to December 2011, an adequate law was only adopted in Republika Srpska and has been in force since 01 July 2010⁴⁰. At the state level and the level of the Federation of BiH this has not been done. At the level of the common institutions, this matter is partly regulated by the BiH Criminal Code and Law on Criminal Proceedings. The initiatives of different parliamentary caucuses for the adoption of a separate law which would govern this issue and establish an operational authority at the level of BiH did not get the necessary support from other relevant political actors in the parliament. In the Federation of BiH, a more determined fight against organised crime was highlighted as one of the programmatic objectives of the political actors that formed the government following the October 2010 elections, as a result of which it can be expected that the appropriate legislative solution might be adopted relatively soon.

⁴⁰ According to the data of the RS Ministry of Interior from May 2011, pursuant to the Law on Confiscation of Proceeds of Crime, a temporary measure forbidding the alienation and disposal of assets was issued for the assets in the approximate amount of 20,000,000 KM.

Due to the aggravated financial situation, the implementation of the priority related to increasing the number of staff in the State Investigation and Protection Agency (SIPA) of BiH has been delayed. During the reporting period 18 new officers were hired with the rank of junior inspector. The procedure for the recruitment of new cadets to be trained at the police academy is ongoing and, following the completion of their training, their engagement in SIPA is planned to be finalised by July 2012. A selection procedure for the new director of SIPA is also ongoing although this process has not been free from different political influences.

In terms of improvement in co-operation with EUROPOL, BiH is still waiting for an assessment of the Draft Roadmap for the Implementation of the Strategic Agreement with EUROPOL, partly due to the fact that EUROPOL itself was in the process of institutional re-organisation and re-organisation of human resources. Implementation of the Roadmap would create conditions for signing the mutual operational agreement. Besides, the communication link with EUROPOL is still not operational.

b) Analysis of Measures Taken to Implement the Interim Agreement/the Stabilisation and Association Agreement

Given that the only document currently in force is the Interim Agreement, which does not cover the area of “Justice, Freedom and Security”, and that the part of the Action Plan pertaining to the obligations not covered by the Interim Agreement does not include clearly defined deadlines for their implementation, it is objectively impossible to identify to what degree obligations referred to in Title VII of the Stabilisation and Association Agreement (articles 78 -85) have been met.

When it comes to strengthening the institutions and the rule of law, cooperation between BiH and the European Union, provided for in Article 78 of the Stabilisation and Association Agreement, was implemented by launching the structural dialogue on judicial reform. The first meetings were held on June 6th and 7th in Banja Luka and the second on November 10th and 11th 2011 in Sarajevo. The issues discussed at the meetings included implementation of the Justice Sector Reform Strategy in BiH and the National War Crimes Strategy (NWCS), judicial and regional cooperation, fundamental freedoms and security, and the functioning of judicial institutions. Following the meetings, the European Union submitted its recommendations to the institutions in BiH. The implementation of these recommendations should contribute towards ensuring the efficiency of the judicial apparatus in BiH, thus reaching European standards in this area. Regrettably, even the structural dialogue itself, launched as a specific mechanism aimed at analysing and overcoming a series of problems in the judicial apparatus of BiH, just reaffirmed the entirely opposing views

regarding some of the key issues in this area, including the very constitutionality and legality of the work of some central judicial institutions in the country. In other words, it is precisely these two structural dialogue meetings on judicial reform that most explicitly reflect the political, but also legislative and operational, contradiction and fragmentation that are putting a severe strain on BiH. This goes far beyond any specific sectoral framework, affecting the very foundations of BiH as a state. In order for the recommendations of the European Commission resulting from structural dialogue meetings to be reviewed, it is necessary to develop a separate analytical document; we will therefore only refer here to the most important recommendations from the meeting held in Sarajevo that pertain to the area of strengthening the institutions and the rule of law, referred to in Article 78 of SAA:

THE CONTINUITY IN IMPLEMENTATION OF OBLIGATIONS BY THE BiH INSTITUTIONS MAY BE EXPLAINED IN THE CONTEXT OF PRESERVATION OF THE PREFERRED VISA LIBERALISATION REGIME FOR BiH CITIZENS IN THE SCHENGEN AREA, DUE BOTH TO INTENSIVE MONITORING BY THE EUROPEAN COMMISSION AND TO THE FAR MORE IMPORTANT AND REALISTIC POSSIBILITY THAT, SHOULD THE OBLIGATIONS IN QUESTION NOT BE FULFILLED, SUCH A REGIME, REPRESENTING THE FIRST EXPLICIT AND MATERIALISED 'EUROPEAN PERSPECTIVE' FOR BiH CITIZENS, MAY BE LOST.

FBiH needs to promptly regulate the work of Prosecutor's Offices by adopting a single law, whereby better legal security will be ensured throughout the entity⁴¹, and to adopt the new Law on Execution of Criminal Sanctions;

- ◊ it is necessary to adopt the Framework Law on Legal Aid at BiH level and take prompt actions to overcome the existing situation where some cantons in FBiH lack specific provisions on free legal aid;
- ◊ it is imperative to speed up construction of the High-Security State Prison and address the issue of cost overruns;
- ◊ it is essential to strengthen cooperation between police agencies and Prosecutor's Offices, inter alia, through joint training initiatives covering specific modules and areas;
- ◊ it is necessary that Prosecutor's Office of BiH promptly enters into a protocol with the War Crimes Prosecutor's Office of Serbia, and it is essential to further enter into bilateral agreements with neighbouring countries to address the issue of extradition of their own nationals.;
- ◊ establishment of new judicial institutions at entity level has to be performed in cooperation with HJPC, after having first reviewed the financial ramifications

⁴¹ The Minister of Justice of the Federation of BiH announced at the second structural dialogue meeting that the legislative procedure, in this context, will be launched in February 2012, in line with the respective Action Plan.

and long-term sustainability;

- ❖ it is essential to overcome the issue of retroactivity when it comes to war crimes trials, before the European Court of Human Rights (ECtHR) renders its judgement in the case of *Maktouf vs. BiH*;
- ❖ it is necessary to address the issue of appellate courts at the level of BiH, thus contributing to the introduction of legal security throughout the country;
- ❖ an independent, efficient, impartial, accountable and professional judiciary cannot be fully achieved unless uniform and adequate financial resources and budget funds are at the disposal of judicial institutions.

Under Article 79 of the Agreement, BiH accepted the obligation to harmonise its legislation in the area of personal data protection with European and international standards and to establish independent supervisory and operational bodies in

this area. In the reporting period, Amendments to the Law on Personal Data Protection were adopted whereby the Law was further harmonised with the relevant *acquis* and certain progress was made in the context of strengthening of the position of internal data protection officials, the regulation of data from the SFRY and strengthening of the independence of the data protection commissioner. In addition, in the context of adoption of international standards in this area, it was important that BiH ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The Personal Data Protection Agency raised its staffing level to a third of its targeted number of

THE LACK OF AGREEMENT ON ESTABLISHING NEW INSTITUTIONS AT THE STATE LEVEL AND THE LACK OF GOVERNMENTAL ORGANISATION HAS TO BE COMPENSATED FOR BY FAR MORE INTENSIVE CO-OPERATION AND CO-ORDINATION AMONG THE EXISTING INSTITUTIONS AND STRUCTURES. THIS APPLIES TO THE LEGISLATIVE BRANCH AS WELL AS TO THE IMPLEMENTATION OF OPERATIONAL ACTIVITIES AND NEEDS TO BE FOLLOWED BY ELIMINATION OF DAILY POLITICAL MANIPULATIONS WHICH ARE HINDERING THE PROCESS OF BiH JOINING THE EUROPEAN UNION TO A GREATER DEGREE THAN IS THE CASE FOR ANY OTHER COUNTRY IN THE REGION. IF THIS DOES NOT HAPPEN, EITHER IN 'JUSTICE, FREEDOM AND SECURITY' OR IN ALL THE OTHER FIELDS COVERED BY THE DIFFERENT STATE ORGANISATION IN BIH, IT IS NOT POSSIBLE TO FORESEE SIGNIFICANT PROGRESS IN THE FUTURE.

staff. Further to this, in order to create a better legislative framework in this area, it is necessary to enable the Personal Data Protection Agency to participate in legislative processes in a meaningful way and also to ensure the implementation of the personal data protection regulations in all areas and fields of work, including certain police and investigation agencies. The Council of Ministers of BiH adopted a new Strategy of Development of Identification Documents in BiH for the period 2010-2015. The

adoption procedure of the legislative amendments is ongoing and provides for the issuance of the newly enhanced identification documents containing biometric data as of 2013, as well as of the amendments which would further regulate the issue of permanent and temporary place of residence of BiH citizens.⁴²

In the area of visas, border management, asylum and migration, governed by Article 80 of the Stabilisation and Association Agreement, BiH is for the most part successfully fulfilling the obligations implied by the visa liberalisation regime, including the harmonisation of positive and negative lists with European Union lists. However, there are certain problems in the implementation of some obligations such as the obligation to establish a data exchange system between police agencies and prosecutors in BiH based on the Agreement on Electronic Data Exchange. These problems are only present within certain cantons in the Federation of BiH and not at the level of BiH as a whole. In addition, in BiH, just like in other countries in the region, there have been attempts to abuse visa liberalisation by individuals and groups who have tried to secure long-term residence within the Schengen area on the basis of a request for political asylum. However, the number of negative incidents was reduced in a timely and adequate manner.

The Integrated Border Management Strategy was adopted and amended as well as the accompanying Action Plan and BiH Migration Profile for 2010.⁴³ The Law on Amendments to the Law on Movement and Stay of Aliens and Asylum is being developed. The capacities of the Asylum Sector in the Ministry of Security of BiH have been increased in the sense that it is almost fully staffed. The asylum module of the Migration Information System is fully functional and it is being used by an increasing number of institutions. In contrast, serious difficulties have been encountered in terms of the fight against money laundering and the financing of terrorism. Legislative acts governing the issue of confiscation of illegally acquired assets are uneven in different parts of the country and due to the objection of the representatives of Republika Srpska, the SIPA Financial Intelligence Unit has not been transformed into an independent organisational unit.

In addition, the Law on Amendments to the Law on Prevention of Money Laundering and Financing of Terrorist Activities, in accordance with the recommendations of the

42 On December 6th 2011, in addition to the proposed Law on Amendments to the Law on Permanent and Temporary Place of Residents of Citizens of BiH, the Constitutional – Legal Committee of the House of Representatives of the National Assembly of BiH also adopted the proposed Law on Amendments to the Law on Identification Cards of BiH Citizens, together with the amendments of the Council of Ministers of BiH, according to which, in the new ID cards, it would be possible to include citizenship of the entities, in addition to the citizenship of BiH, and enter the data in both Cyrillic and Latin script. However, discussion in the National Assembly of BiH about these laws was postponed to allow for achievement of agreement between the political parties with opposing positions on these issues, which would enable the adoption of these laws.

43 148th session of the Council of Ministers of BiH, of 14 April 2011.

MONEYVAL,⁴⁴ remains to be adopted. Political differences are the main obstacle to building the institutional capacities for the fight against drugs, particularly in relation to the establishment of the Commission/Office for Drugs at the common level of BiH. According to both political representatives and the institutions of Republika Srpska, tasks that are to be performed by the Commission can be carried out by the existing sector within the Ministry of Security of BiH and there is no need to establish a new institution at the level of BiH. Due to this stance, the adoption of the Law on Amendments to the Law on Prevention and Suppression of the Abuse of Narcotic Drugs is in question and it is this Law that foresees the establishment of the Office for Drugs, as a potentially more efficient co-ordinator in the process of implementation of the Strategy on Supervision over Narcotic Drugs, Prevention and Suppression of the Abuse of Narcotic Drugs in BiH for the period 2009-2013 and its Action Plan. Adoption of the law governing the issue of the transfer of weapons at the level of BiH was also characterised by the absence of political will: institutions of Republika Srpska believe that there is no need for the adoption of this law at the level of BiH because the transfer of weapons for civilian use is already regulated by the BiH Law on Border Control and in Republika Srpska by the Law on Weapons.

In the area of the fight against organised crime regulated under Article 84 of the Agreement, the main weaknesses stem from the fragmentation of law enforcement agencies in BiH and the fact the BiH is not a party to several relevant international legal instruments, for example the Council of Europe Convention on the international validity of criminal judgments or the additional protocol to the Council of Europe Convention on the transfer of sentenced persons. In addition, legislation at the common level, unlike that at the entity level in Republic Srpska, is not harmonised with the Council of Europe Convention on Cybercrime. There are also shortcomings in cooperation between police and prosecutors, while the Memorandum foreseeing the establishment of an international law enforcement co-ordination unit in BiH, signed by several competent institutions at the common and entity level, has not been implemented for both financial and political reasons. Although the institutions of BiH adopted the solutions provided in the relevant resolutions and decisions of the UN Security Council sanctioning individuals suspected of co-operation with Al-Qaida, fragmentation of the police and insufficient co-operation of police agencies in the country with regard to this matter represent serious obstacles to a more successful fight against terrorism.

44 Committee of Experts on the Evaluation of Anti – Money Laundering Measures and the Financing of Terrorism established in 1997.

c) Case Study: Fight Against Illegal Drug-Trafficking

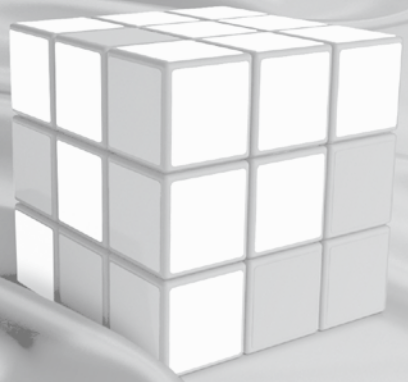
According to the European Commission Bosnia-Herzegovina 2011 Progress Report, BiH made little progress in the fight to combat narcotic drugs trafficking and, as such, stands as one of the central routes of international narcotic drugs trafficking in this part of Europe. Certainly the reasons for this are, among other factors, found in the inner, fragmented character of the state police and security system and the lack of sufficient co-ordination and co-operation among different police agencies at the state, entity and cantonal levels. Such cooperation and coordination are lacking due to different political perceptions of BiH and its future institutional and normative development. That is why it is frequently reported by the European Commission and other relevant international actors that the police agencies in BiH cooperate more successfully with international and police agencies of other countries than with each other.

Narcotic drugs trafficking is a deviant phenomenon resulting in negative trends that affect not only political but administrative entities. The struggle to suppress this trafficking is a complex process without an additional and unnecessary political burden. For example the database on perpetrators of drug related offences in BiH has been updated. However, its functional value is ultimately relative in light of the fact that not all police agencies in the country are using it. Those responsible for enforcing the state law; the Federation police and the majority of Cantons in the Federation, make use of the database whereas the Republika Srpska police are not connected to the same network and are using a separate drug-user database that involves the existing registries from rehabilitation centres.

What is more, one of the most evident weak points in implementing the narcotic drugs monitoring strategy for the prevention and suppression of narcotic drugs abuse in BiH for 2009-2013 and its action plan, is the lack of a corresponding, co-ordinating body at the state level, i.e. the Office for Drugs, whose establishment was planned in this documents. In order for the Office to be established, it is essential to enforce The Draft Law on Amendments to the Law on the Prevention and Combat of Abuse of Narcotic Drugs. However, taking the different political views in BiH into consideration - i.e. the opposing tendencies towards reinforcing the state government on the one hand and preserving regulatory autonomy together with a refusal to establish new institutions at the state level on the other, - this issue remains unsolved. During the 155th meeting held on July 17th 2011, the Council of Ministers adopted the Draft Law on Amendments to the Law on the Prevention and Combat of the Abuse of Narcotic Drugs, which was drafted in co-operation with European Commission experts. The Draft Law has been submitted for regular Parliamentary procedure. Although this issue will be discussed during one of the following Parliamentary sessions, it is not certain that the Law will be adopted any time soon. The lack of political will that would help create corresponding systematic, normative and operational solutions at the state level, the fragmentation of police apparatus and, far more dangerous,

the lack of active co-ordination among existing police agencies, all undoubtedly contribute to the lack of results achieved in suppressing narcotic drugs trafficking.

Of course one should attribute other factors to this which are without doubt not devoid of the political burden, for instance the lack of sufficient finance to support the implementation of the Rulebook on Confiscated Narcotics, which has been adopted by all the relevant bodies at both the state and entity level, as well as by Brčko District. For that reason, large amounts of illicit substances, confiscated after the Law on the Prevention and Combat of the Abuse of Narcotic Drugs was adopted, are still waiting to be destroyed.



Title VIII

| Cooperation Policies

a) Assessment of the measures taken in the Implementation of the Interim Agreement/Stabilisation and Association Agreement

In the process of EU integration, the fundamental role of the Parliament as the supreme legislative authority in a state is in harmonising state legislation with *acquis*, i.e. adopting European standards in industry, agriculture, fisheries, transportation, the energy sector, information society, statistics and so on, as well as adopting corresponding documents on development and strategy in the respective fields. The intensified legislative paralysis from the previous year brought to a complete halt the legislative process at the state level in 2011. Although a General Election was held at the beginning of October 2010, the process of establishing the Parliamentary Council of BiH wasn't completed during the first half of 2011. The eight month delay in forming the key legislative body which has the sole capacity to adopt European legislation and the evident political discord regarding essential reform-related issues were the main factors in bringing a complete halt to the legislative process at the state level. To this one should add the fact that the establishment of the executive branch, as the second central axis at the state level, was also delayed.

The effect of this, from within imposed self-destruction, and the negation of the legislative (and executive) capacity of state institutions is most clearly manifested by the fact that in the reporting period, i.e. from the moment of the inauguration of

both houses of the Parliamentary Council of BiH until the finalisation of this report, this body adopted not a single ‘European’ law nor another accompanying act or draft of co-operation policies. Since the executive branch of the government is in its so-called *technical mandate*, numerous legislative acts or legislation that was to be implemented, have not been realised (Law on Environment, Gas Law, Veterinary Law). The activities of the Council of Ministers and competent ministries/institutions at the state level in the given period was more oriented towards technical rather than reform-related issues from the European agenda due to the lack of political legitimacy and the expected redistribution of power. At the same time, due to the political paralysis that BiH found itself in as a result of the lack of agreement on the government structure at the state level, all other subjects, including the ‘European’ ones, were pushed aside. The ‘only’ exception was the set of laws necessary for

submitting an EU membership application. Considering the great delay in terms of the fulfilment of obligations, it seems that in the existing constellation of political powers it is impossible to discuss even rhetorically the overriding need to introduce the legislative process through which the laws on conforming to the legislative heritage of the EU could be enforced promptly through emergency legislation.

THE EIGHT-MONTH DELAY IN ESTABLISHING THE KEY LEGISLATIVE BODY, BEING THE ONLY BODY COMPETENT TO ADOPT EUROPEAN LEGISLATION, AND POLITICAL DISCORD OVER ESSENTIAL REFORM ISSUES HAVE PARALYSED THE LEGISLATIVE PROCESS AT STATE LEVEL COMPLETELY. THE FACT THAT DURING THE REPORTING PERIOD, FROM THE INAUGURATION OF BOTH HOUSES OF THE PARLIAMENTARY ASSEMBLY OF BiH UNTIL TODAY, NOT A SINGLE „EUROPEAN“ LAW OR CORRESPONDING SECONDARY LEGISLATION AND/OR DEVELOPMENT PAPER IN THE AREA OF COOPERATION POLICY HAS BEEN ADOPTED, REFLECTS THE MAGNITUDE OF THE INTERNALLY IMPOSED SELF-DESTRUCTION AND ATROPHY OF THE LEGISLATIVE (AND EXECUTIVE) CAPACITIES OF THE STATE INSTITUTIONS.

The authenticity of BiH institutions and political elites in the process of EU integration should be manifested through timely and energetic legislative reforms and their practical implementation. The political dead

end caused by divergent political stands on crucial issues, affected by FBIH/RS relations, in the process of EU integration is most clearly manifested in co-operation policies. Namely, the achievements in this field, considering the split in entity/state competencies, are most directly interconnected with political will and the agreement (of entities) on the strengthening of the role of the state in certain areas. European standards relating to various co-operation policies demand a greater degree of centralisation than is acceptable to the RS political parties, which is why it is not possible to achieve a political consensus on the ongoing reforms and plans for their implementation and also why BiH cannot move further than the initial phase of legislative adjustments. Likewise, decentralised government and divided competencies, without the corresponding

necessary mechanisms of inter-entity and inter-sectoral co-operation and co-ordination, hinder progress.

It is not wrong to state that the existing disagreement on the distribution of competencies is, essentially, a discord about the structure of the state. It is clear that the 'Europeanisation' of BiH by means of adjusting to the EU implies *per se* a greater degree of integration within the country, notwithstanding the post-war torn social fabric of Bosnia-Herzegovina. The key obstacle to the 'Europeanisation' process is a lack of willingness on the part of the political establishment of the RS to actively/constructively participate in it.

b) Analysis of Measures Taken to Implement the Interim Agreement/the Stabilisation and Association Agreement

Analysis of the measures and activities taken to implement the Interim Agreement/Agreement on Stabilisation and Association related to sectoral politics (Chapter VIII) for the period from January 1st to December 31st 2011, shows that the degree of realisation is zero: in the given period not a single co-operation policy or legislative act was adopted. Failure to adopt the planned legislative and sub-legislative acts meant that the opportunity to implement other measures from the programme was lost. This related to enactment of corresponding strategic documents and their implementation at lower levels, following the subsidiary principle. Besides this, other sub-legislative acts that would have enabled efficient implementation of previously adopted legislation were not adopted either during the period under review. As a result of this, a number of priorities relating to the food industry as well as the veterinary, phytosanitary, environment, transport and energy sectors that were supposed to be addressed in the previous year were once more passed over. During the period these issues were marginalised and almost completely non-existent in public discourse. Rather worryingly BiH authorities have not been preparing for the entry of Croatia into the EU. On July 1st 2013 the Republic of Croatia will become a full member of the EU and the implementation of European legislation on foreign trade with BiH will have a series of negative (and positive) implications for BiH. The negative consequences of this process will be especially significant in the agro-industrial sector, of great importance to BiH in view of the fact that it exports 16% of its output to Croatia. Left without its biggest export market, this sector will inevitably face great losses. The implementation of the European regulation on the import of goods into Croatia from BiH will, from January 1st 2013, drastically affect the already rapidly declining level of exports from BiH due mainly to incompatible legislation and the failure to provide the necessary conditions for export of products to the EU (the incompatibility of the whole system of quality infrastructure). In addition, one needs to bear in mind the significant obstacle of the presence of only two border crossing

points, along the 1010 km border with Croatia, which will be specially equipped for controlling exports. In the given period there were no significant positive trends in terms of reinforcing the institutional capacities of the relevant agencies/institutions at the state level aimed at ensuring a more efficient practical implementation of European standards. Therefore, despite the fact that there was a programme of measures to implement the Temporary agreement/Agreement on Stabilisation and Association meant to reinforce human resources in the areas of agriculture, the food industry, forestry and rural development, all falling within the scope of work of the Ministry of Foreign Trade, these attempts failed and thus did not contribute to increasing capacities at the state level to develop policies and co-ordination in the agricultural sector. Similar examples are to be found in other sectors as well. So, for instance, although included in the document, the Environmental Protection Agency, which would make it possible to establish a functional system of monitoring and implementation of a harmonised legal framework to protect the environment, has not been established. Activities aimed at increasing the capacity of human resources at the Ministry of Transportation and Communications in the area of the information society and the media were not implemented while, at the same time, by means of political pressure, the institutional and financial independence of the Communications Regulatory Agency was weakened.

What is more, the atmosphere in certain sectors, for example energy, is, due to political pressure, heating up and may lead to an international or European scandal. It is often stated that, in the global crisis for renewable sources, BiH has a significant advantage over other countries: the energy sector has an abundant capacity for development, especially in terms of hydro power. According to the existing legislative framework, the energy sector is governed by the entities and there are substantial differences between the FBiH and RS in terms of ownership, organisation and legislation in this branch. Therefore, one of the key short-term priorities from the European Partnership Agreement (2008) focuses directly on the development of an all-encompassing energy sector strategy, whereas the Agreement on Stabilisation and Association implies adoption of European legislation and standards in this area. Bearing in mind the complex nature of the energy sector, which includes several mutually interconnected subsectors (oil, gas, coal, remote power control, electric energy and hydro power), development in the realisation of planned activities is extremely slow, burdensome and laden with (political) difficulties. This is most evident in the drawn out implementation of the law on electric energy and difficulties in establishing implementing bodies/agencies at the state level (DERK, NOS, FERK, Elektroprenos).

Even more drastic is the political pressure on the hydro power sector, which, due to its international dimension, may have significant implications for EU institutions as well. On February 11th in Belgrade, the representatives of the Italian, Serbian and Republika Srpska governments signed a temporary agreement on co-operation

in building hydro power plants, at a value of 820 million euros, along the middle stretch of the Drina river. The Agreement implies joint ventures in building hydro power plants on the Rogačica, the Tegara and the Dubravica rivers. This area is on the border between BiH and Serbia.

The three strategic partners held negotiations while completely ignoring the state institutions: the BiH state authorities were not asked to grant the necessary permission and the state institutions were not informed about the negotiation process at all, regardless of the fact that, due to the area in question being along the border, a request

WORRYINGLY BIH AUTHORITIES FAILED TO TAKE TIMELY ACCOUNT OF CROATIA'S PENDING EU ACCESSION AND TO SUITABLY PREPARE FOR IT. THIS PROCESS WILL HAVE PARTICULARLY NEGATIVE EFFECTS ON THE AGRO-INDUSTRIAL SECTOR WHICH IS OF SPECIAL IMPORTANCE FOR BIH GIVEN THAT IT ACCOUNTS FOR 16% OF EXPORTS TO CROATIA.

for such permission was obligatory under both the Constitution and state legislation. The situation is further complicated by the fact that Elektroprivreda BiH had, at the beginning of 2009, submitted a proposal to obtain a concession to build hydro power plants at Kozluk and Tegare, the construction of which had been planned together with Elektroprivreda RS and Elektroprivreda Serbia. The value of the plants was estimated at 759 million euros. The request of Elektroprivreda BiH to be granted the concession mentioned above was held back in the state Ministry of Foreign Trade and Economics for months. It was eventually sent to the RS Government who the state minister of the sector determined was competent for solving this issue. There has not been an answer from the RS Government to the request of Elektroprivreda BiH so the management of the company filed a complaint to the Appellate Council of the Council of Ministers against the decision of the state minister. In the procedure that followed the appeal was accepted and the Ministry of Foreign Trade and Economics was ordered to act in accordance with the law within 15 days in relation to the original request of Elektroprivreda BiH. The Ministry for Resource Management has not, to this day, made a single statement on this issue, while the RS authorities have, in the meantime, and without the consent of the state, reached an agreement with their strategic partners from Serbia and Italy to the value of more than one hundred million euros.

Should this scenario turn out positively and the European integration process become unblocked, the legislative and executive branch at the state level would have to work promptly to fulfil the pending current priorities and measures. This would require the following:

- ♦ adoption of corresponding legislative acts not realised in 2009 and 2010 (e.g. the Law on Small and Medium-size Enterprise, the Law on Wine, the Law on

International and Local Traffic and the Law on the Agency for Information Society Development);

- ❖ development of a new legal framework in accordance with the EU legislative heritage in the environmental, veterinary, agricultural, pyhtopharmaceutical and energy sectors;
- ❖ elaboration and enactment of corresponding strategic/development documents in certain fields and their timely implementation;
- ❖ 4. development of an institutional framework and equipping corresponding agencies and institutions at the state level sufficiently to enable implementation and monitoring of new legislation.

c) Case Study: Blocking Legislation; Example of the (non) Adoption of the Law on Population Census

One of the four short-term priorities under the European Partnership 2008 was the adoption of the appropriate legal framework and agreement on the time frame and implementation of the preparatory activities to carry out a population census. Unofficially

this is a key condition for submission of an EU membership application. In spite of this, the lack of will to achieve political agreement on the proposed Law on Census of Population and Households threatens to result in the fact that not only will BiH be the only country in Europe not to carry out a census in 2011, but to also put a stop to the European integration process, i.e. submission of an EU membership application.

REPRESENTATIVES OF SERBIA, ITALY AND THE RS SIGNED A PRELIMINARY PARTNERSHIP AGREEMENT FOR THE CONSTRUCTION OF HYDRO POWER STATIONS ALONG THE MIDDLE STRETCH OF THE DRINA RIVER (ROGAČICA, TEGARE AND DUBRAVICE), TO THE VALUE OF APPROXIMATELY 820 MILLION EUROS. THE THREE STRATEGIC PARTNERS HELD NEGOTIATIONS WHILE COMPLETELY IGNORING THE STATE INSTITUTIONS. THE SITUATION IS FURTHER COMPLICATED BY THE FACT THAT ELEKTROPRIVREDA BiH HAD, AT THE BEGINNING OF 2009, SUBMITTED A PROPOSAL TO OBTAIN A CONCESSION TO BUILD HYDRO POWER PLANTS AT KOZLUK AND TEGARE, THE CONSTRUCTION OF WHICH HAD BEEN PLANNED TOGETHER WITH ELEKTROPRIVREDA RS AND ELEKTROPRIVREDA SERBIA. THE VALUE OF THE PLANTS WAS ESTIMATED AT 759 MILLION EUROS. THE REQUEST OF ELEKTROPRIVREDA BiH TO BE GRANTED THE CONCESSION MENTIONED ABOVE WAS HELD BACK IN THE STATE MINISTRY OF FOREIGN TRADE AND ECONOMICS FOR MONTHS. IT WAS EVENTUALLY SENT TO THE RS GOVERNMENT WHO THE STATE MINISTER OF THE SECTOR DETERMINED WAS COMPETENT FOR SOLVING THIS ISSUE.

The issue of the adoption of the legal framework for carrying out the census was intensified during 2010 and the political struggles and disputes lasted for months. These focused mainly on the issues of whether the census should include questions on nationality, religion and language, when to start implementation of the census results at lower levels of government and whether to include both residents

and BiH citizens in diaspora in the census. In the end a compromise was achieved and the proposed Law included the provision that citizens of BiH would voluntarily provide information about nationality, religion and language, while Article 48 stipulated that the national structure of employees in state administration in accordance with the census results would be applicable upon completion of the return of refugees and displaced persons. This proposal of the Law was adopted in the House of Representatives of the BiH National Assembly in June 2010. However, its adoption was stopped in the House of Peoples with the explanation that Serb delegates in this body needed the opinion and position of the National Assembly of the RS.

Subsequently the parties entered an election campaign and since November 2010 they have been involved in the post-electoral process of political negotiations about the formation of the state level government. Simultaneous to the political discussions about the establishment of the Council of Ministers, there has been a discussion between the political parties and the entities about the set of laws necessary for an EU membership application, including the law on population census but these negotiations have not yielded any results thus far. The law on population census should have been on the agenda at the session of the House of Peoples of 14 September 2011 but the Joint Committee for Economic Reforms decided to remove this item from the agenda because of the objective concern that it would not be supported by the delegates from the RS and so they asked the House of Peoples to extend the amendment phase for 30 days.⁴⁵ In the meantime over 40 amendments to the law have been submitted. Although the political positions over this issue have been approximated, it seems that the proposed legislative framework is still not acceptable to everyone. At the request of the political parties from the RS (SNSD and SDS), to delete the disputable Article 48⁴⁶ from the proposed law, Croat and Bosniak parties represented in the competent Committee expressed their readiness to compromise and accept the deletion of this Article, provided that the government at entity level be formed based on the 1991 national composition until the adoption of the new constitutional framework. However, new amendments and new conditions were raised in the process, for example an amendment determining the entities as census units. Positions were again diametrically opposed: the condition set by the RS political parties was that entities comprise census units while for representatives of the Bosniak people the deletion of Article 48 was as far as they would go in order

45 Upon expiration of the period for submission of amendments, the Committee extended the amendments phase for an additional 30 days, hoping that a solution would be found "in the package" arising from the political negotiations about the formation of the Council of Ministers and set of laws related to an application for EU membership. In the meantime, the Head of the EU Delegation to BiH, Peter Sorensen, put forward the suggestion that the agreement on the issues that are required for the application should be separated from the political negotiations about the formation of the Council of Ministers in order to unblock the EU integration process.

46 Article 48 stipulates that the 1991 census results on ethnic composition of the population should be applied to the formation of the government in BiH until finalisation of the process of return of refugees and displaced persons.

to achieve compromise and they would not agree to the request that the RS be a separate statistical unit. Nobody is thinking now about how, without the relevant statistical data, it would be possible to provide sustainable developmental policies (economic, social, demographic, educational and cultural) or fill in questionnaires in the context of EU accession negotiations or about the use of pre-accession funds.



Title IX

| Financial Cooperation

a) Assessment of the measures taken in the Implementation of the Interim Agreement/Stabilisation and Association Agreement

A severe political crisis in BiH affected all aspects of European integration including IPA fund programming. The year 2011 saw a huge political crisis emerging for the first time since IPA programming was implemented and it could have potentially resulted in the loss of 8 million euros of IPA funds. The crisis, which unfolded during IPA programming for 2011, revealed serious structural disadvantages in coordination mechanisms, pertaining to planning and programming of EU funds. This situation simultaneously indicates potential problems that may arise in the very process of negotiation and integration, in particular concerning the role of the Directorate for European Integration (DEI) as the central coordination body when it comes to issues relevant for European integration.

Representatives from the RS submitted remarks on 6 projects at the very end of the fund programming process, when the package including projects to be financed in 2011 was nearly complete. This happened notwithstanding the fact that the IPA programming and planning procedure was complied with and all necessary consultations were made both at the technical level, between the SPOs and representatives of the relevant institutions and the political level, between the Coordination Board for IPA and the Council of Ministers of BiH. At its 151st session, held on May 25th 2011, the Council of Ministers of BiH adopted Information on Absorption of 2011 -2013 IPA Financial Assistance in the

Three-year Period and the Annual Programme inclusive of the list of IPA 2011 projects. In line with the conclusions of the Council of Ministers of BiH, the DEI engaged in defining specific project proposals for IPA 2011. These proposals were to be defined in line with the findings of the BiH Progress Monitoring Report and priorities referred to in the three-year IPA programme. However, following this process, representatives of the RS filed a complaint regarding 6 projects directly to Brussels. The European Commission in Brussels sent an official request to the Council of Ministers for harmonisation of the project package, although this had already been done in line with the IPA fund programming procedure, established by the European Commission and DEI. Surely the most worrying aspect of the situation as a whole is that not only was the DEI bypassed by the representatives of the RS but also by the European Commission.

There were some technical reasons that led to such a situation. The first was the fact that the programming methodology was changed and the EC imposed an obligation of sectoral planning. Initially, the planning was intended to cover a three-year period but subsequently it had to be done for each year. The EC also introduced the obligation of developing sectoral proposals that would constitute the foundation for developing individual project proposals. BiH was the first country in the region where the new approach was tested in 2011.

After the shift of power, changes of staff took place. The IPA Coordination Board in particular saw changes in membership. As a result, new people, who were likely to be less familiar with the process and principles of IPA programming, assumed decision-making positions. The fact that management positions in the EU Delegation in BiH were vacant at this critical time did not help the situation. However, the entire situation, which developed around 2011 IPA projects, undoubtedly had a political dimension. The representatives of the RS argued that 6 (subsequently, this number was reduced to 4) projects were aimed at strengthening state institutions in areas that did not fall within the constitutional competence of BiH. The disputable projects which were eventually removed from the IPA 2011 financing package are as follows:

- ◊ Component “Statistics” of the “Strengthening Public Financial Management” project;
- ◊ Project “Agriculture” as a whole;
- ◊ Component “Employment” in the “Employment and Education” project
- ◊ Component “Business Registry” in the “Support to the Justice Sector Reform” project.

Given the methodology of IPA fund programming, it is difficult to foresee circumstances under which the planned project activities will go beyond the constitutional competencies and/or international obligations of BiH. This is primarily because IPA

priorities are set in line with the areas that the EC deems as highly important for further integration of BiH into the EU. These are the priorities which are, as a rule, set forth in the relevant national strategies that are always harmonised with the entities and as such, these priorities are adopted by the Council of Ministers or Parliamentary Assembly of BiH. However, it most commonly includes projects aimed at assisting institutions (at all levels) to strengthen capacities (through technical assistance and equipment) in order to meet obligations imposed by either the EC or one of the international financial institutions, for instance the International Monetary Fund in the case of managing statistics for public sector and public finances.

THE SITUATION WHICH DEVELOPED IN RELATION TO IPA 2011 REFLECTS THE WEAKNESS OF THE EXISTING IPA COORDINATION STRUCTURES WHICH WERE COMPLETELY IGNORED IN THE PROCESS OF DEFINING THE FINAL PACKAGE OF PROJECTS TO BE FINANCED IN 2011. THE EUROPEAN COMMISSION PROVIDED A SET OF RECOMMENDATIONS AIMED AT ADDRESSING THESE STRUCTURAL DISADVANTAGES HOWEVER, TAKING THE LONG-TERM VIEW, THESE PROPOSALS MAY HAVE A SIGNIFICANT EFFECT ON THE FUTURE POSITION OF THE DEI AS THE CENTRAL EU INTEGRATION COORDINATION BODY. IN ADDITION, IT IS OF THE UTMOST IMPORTANCE THAT THE ISSUE OF SPOs WITHIN THE SYSTEM BE ADDRESSED. THE ISSUES OF COORDINATION OF EU FINANCIAL ASSISTANCE HAVE TO BE CAREFULLY ADDRESSED AS THEY WILL CONSTITUTE A MODEL FOR STRUCTURING THE FUTURE SYSTEM OF FURTHER EU NEGOTIATIONS.

In the end the changes to the final project package were agreed (although the Federation of BiH was against it) by the leaders of the political parties rather than by the bodies and mechanisms specifically established for the purpose of IPA programming and planning. If this becomes a common practice it will create a very bad (and potentially dangerous) precedent for all future activities, not only IPA programming and planning, but for all other activities concerning EU integration. This is important because any future aspect of EU integration may easily be manipulated and obstructed by politicians. Establishment of functional, stable and, above all, transparent mechanisms for coordination of both EU financing and other EU integration efforts has gained in importance due to the developments regarding IPA 2011.

b) Analysis of Measures Taken to Implement the Interim Agreement/the Stabilisation and Association Agreement

In the last months of 2011 the EC organised several meetings dealing with the issue of coordination of IPA funds. Due to the need to initiate activities on programming for 2012 and 2013 IPA funds, the EC launched these discussions deeply aware of how important it was to establish robust coordination mechanisms in order to avoid similar or even greater problems to those of 2011 occurring in the further process of

integration. At a meeting held on November 14th 2011 concerning the methodology to establish efficient mechanisms of coordination of EU funds and other issues relevant for European integration, attended by EC representatives and official from all levels of government in BiH, the European Commission proposed a series of measures for improving coordination. The most important of these are as follows:

- ◊ Concerning the issues relevant for EU integration, consensus between the different levels of government has to be secured in accordance with the constitutional framework of BiH;
- ◊ a member of the Council of Ministers should be tasked to ensure comprehensive coordination of the European integration process (this person should also perform the role of National IPA Coordinator) and should have the technical support of the Directorate for European Integration. That particular member of the Council of Ministers should be the EU's direct political partner during dialogue;
- ◊ it is necessary to launch a dialogue between the Council of Ministers and the entity governments in order to strengthen the system of coordination with regard to issues relevant for EU integration; the EU is willing to help the participants in this dialogue;
- ◊ all government institutions at all levels responsible for issues relevant for EU integration should have either units or persons in charge of EU integration;
- ◊ BiH authorities should examine what options are provided for in legislation that would help facilitate the signing of a Financing Agreement with the EU, bearing in mind the option of modification of framework agreements as required.

Given that IPA 2012 and 2013 includes a new sectoral approach, it was suggested that working groups be established that would be comprised of the relevant SPO, representatives of the DEI and representatives of the relevant beneficiary institutions at state and entity levels, in line with respective institutional competencies. The IPA Coordination Board is to be consulted during the key stages of programming should there be a need to address problems that may arise during the implementation of EU-funded projects. The EC also recommends that the Rules of Procedure of the IPA Coordination Board be adopted.

The priorities for IPA financing set by the EC for the 2011–2013 period are as follows:

- ◊ Support to strengthening the rule of law by assisting the country to implement reforms of the judiciary sector and in the fight against organised crime and corruption;
- ◊ Improve the capacities and the efficiency of public administration and establish a professional civil service in order to support the country's efforts to improve functioning of institutions at all levels;

- ◇ Support to social and economic development, in particular assistance to the development of the SME sector to reduce unemployment and reform the education system in order to harmonise the qualifications system with the needs of the labour market and invest in transport and environmental infrastructure.

Based on these priorities, in the context of 2011 – 2013 IPA, the EC decided to focus assistance on the following sectors:

- ◇ justice and home affairs;
- ◇ public administration reform;
- ◇ development of the private sector;
- ◇ transport;
- ◇ environment and climate change;
- ◇ social development.

The funds were allocated to priority sectors in line with the 2011 – 2013 Multi-annual Indicative Planning Document (MIPD), as follows:

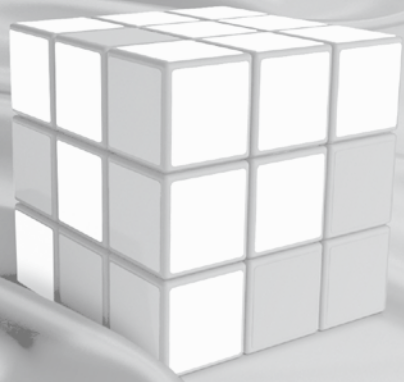
In millions of €

Priority sectors in 2011 – 2013 period	Allocated for 2007 - 2010 period	Allocated for 2011 – 2013 period	
Justice and home affairs	38.64	55.00	17.5%
Public administration reform	51.55	40.00	12.7%
Development of the private sector	28.10	50.00	15.9%
Transport	22.30	35.00	11.1%
Environment and climate change;	72.70	54.22	17.3%
Social development	46.75	40.00	12.7%
Related to acquis and other activities	52.54	40.00	12.7%
TOTAL	312.58	314.22	100.0%

c) Long-term Issues for Consideration

Although many of the recommendations given by the EC will result in improved coordination when it comes to EU-relevant issues, some may have very severe long-term, maybe even short-term, implications. In practice, the recommendation that one of the members of the Council of Ministers should be given the task of comprehensive and overall coordination of the EU integration process (this person should also be given a role of National IPA Coordinator), supported by the Directorate of European Integration and should also be the EU's direct political partner in dialogue, would imply an extension of the competencies of the Chairman of the Council of Ministers. This would equally apply to some of the other ministers whose portfolios include harmonisation of issues relevant to EU integration at the political level whereas the DEI, as presumed, would retain an operational and technical role in the coordination of EU integration affairs. The question arises as to how this would affect the role of the DEI as the "main operational counterpart to the European Commission institutions in the Stabilisation and Association Process", as provided for in Article 18 of the Law on Ministries and Other Bodies of Administration of BiH. This may lead to the emergence of parallel operational and technical structures – the "formal" structure within the DEI and another "informal" one in the Cabinet of the Chairman of the Council of Ministers or some other relevant ministry. Either way, there is the risk that the DEI may be weakened in the further process of EU integration instead of being strengthened in becoming the main expert and technical "champion" of the EU integration process. This brings even greater pressure on the DEI to develop its capacities within expert, specialised areas of the EU integration process, in order to successfully coordinate and direct activities of other institutions.

Furthermore, the current status of SPOs may challenge the efficiency of work and validity of decisions made by the newly formed working groups. The majority of SPOs are lower-ranking civil servants in the state ministries and programming and coordination of IPA funds do not fall under their primary responsibilities (they usually perform these duties along with the other responsibilities described in the systematisation of their job). Bearing in mind the role that these sectoral groups may have in creating the necessary consensus and defining the technical priorities, such a status of SPOs may pose a serious hindrance to the work. The work and duties of SPOs need to be officially recognised and as such people who occupy the position of SPO should be permanent members of staff, rather than being those who are moved around with each organisational change in the institutions; this has sometimes been the case in the past. Alternatively SPOs should perform these duties with higher-ranking civil servants (assistant ministers or secretaries) who would take on the role of chairing these working groups assuming that they possess the knowledge and skills required in the areas of IPA programming and the EU integration process.



Conclusion

The absence of political will to act upon one's words and find working consensus in the process of European integration has marked 2011. Different views regarding the political process and a lack of vital consensus on division of competencies between the state and entities resulted in repeated reprogramming of the priorities from Stabilisation and Association Agreement (SAA) and European Partnership which should have been implemented a long time ago. Bosnia and Herzegovina failed to create the necessary conditions for the Stabilisation and Association Agreement (SAA) to take effect and for the country to submit a credible application for its membership in the European Union (EU). After having been completed in BiH first, in late 2008, the ratification procedure in the parliaments of EU member states was completed in December 2010. Instead of taking immediate effect, the SAA had to be temporarily blocked so as to avoid its suspension.⁴⁷ The blocking of the SAA, due to the violation of a number of vital provisions of the contractual relationship with the EU, significantly slowed down the preparations of BiH institutions for a new, potentially more progressive, concept of horizontal and vertical co-ordination in EU affairs. In addition, problems regarding coordination of pre-accession assistance (IPA) came to the surface. The situation, which developed in relation to IPA 2011, reflects the

⁴⁷ Although the spirit of the Agreement reduces suspension to a theoretical possibility, it still remains a formal and legal possibility provided in Article 129 of SAA: *"Either Party may denounce this Agreement by notifying the other Party. This Agreement shall terminate six months after the date of such notification. Either Party may suspend this Agreement, with immediate effect, in the event of non-compliance by the other Party with one of the essential elements of this Agreement."*

magnitude of the weakness plaguing the existing IPA coordination structures which were completely ignored in the process of defining the final package of projects to be financed in 2011.

BiH was not able to submit a credible application for EU-membership because not only was it in violation of the fundamental provisions of the SAA (the Constitution is non-compliant with the European Convention on Human Rights, non-compliance with the principles of free competition), but it was also in violation of the Copenhagen criteria. One of these fundamental principles is enshrined in the Law on State Aid which, unfortunately, was made part of the political negotiations over the establishment of the new Council of Ministers. The result of the aforementioned is that BiH missed all deadlines to establish an operationally independent authority for state aid. In the process, BiH also violated the CEFTA Agreement as well as the Treaty establishing the Energy Community of Southeast Europe, both of which stipulate the obligations pertaining to the establishment of the state aid system. Failure to establish this system is also an obstacle in the further negotiations of BiH for membership in the World Trade Organisation. Moreover, Bosnia and Herzegovina was to apply to public undertakings and undertakings to which special and exclusive rights have been granted, i.e. certain monopolistic positions, the principles and rights of competition as established under the Treaty Establishing the European Community, i.e. Treaty on the Functioning of the European Union.

Thus far, BiH has made modest progress in fulfilling its obligations in the area of the capital market. The issues that remain unsolved include restrictions on foreign ownership in certain types of companies, effects of the liberalisation of the real estate market on the local population, introduction of safeguard measures under Article 61, paragraph 5 of the SAA and the issue of the establishment of the Stabilisation and Association Council. In the long-term, there has to be a clear common position with regard to the consequences of capital market liberalisation on the existing regulatory framework.

In the area of *the fight against money laundering* there have been serious delays in the implementation of priorities in relation to staffing and strengthening of the Financial Intelligence Unit: in this reporting period only 66% of the positions were filled despite the fact that the original deadline for the implementation of these priorities has been continuously postponed since December 2008. In the area of *the fight against organised crime* regulated under Article 84 of the Agreement, the main weaknesses stem from the fragmentation of law enforcement agencies in BiH and the fact that BiH is not a party to several relevant international legal instruments, for example, the Council of Europe Convention on the International Validity of Criminal Judgments or the additional protocol to the Council of Europe Convention on the Transfer of Sentenced Persons.

The creation of a more favourable business environment in BiH should be a must for all institutions responsible for the implementation of the SAA economic criteria. In the 2011 *Ease of Doing Business* Report, produced by the World Bank, Bosnia and Herzegovina was ranked 127th out of 183 countries. When it came to the section of the report concerning ease of starting a business, Bosnia and Herzegovina was ranked 162nd. Speaking of establishment, amendments to the Law on Business Registration are urgently needed. These would enable registration of possessory lien over shares in court registers (FBiH and RS); identification of specific cases where the registration process can be suspended (FBiH); amendment of the Law on Notary in order to minimise the participation of notaries in the processing of the articles of incorporation and enterprise by-laws; simplification and unification of registration procedures (FBiH and RS) and harmonisation of the Law on Amendments to the Law on Movement and Stay of Aliens and Asylum and the Law on Employment of Foreign Nationals in FBiH with regard to the issue of obtaining a work permit for the first time. Failure to make adequate improvements, in line with EU standards and practice, was also observed in the area of movement of labour. The labour market in BiH is highly fragmented and if we take into account the poor mobility of the labour force as well, these, in the end, are obstacles to economic development.

The area of transport sees limited progress year in year out, which is almost tantamount to stagnation. The Road Traffic Law has not been adopted, thus hindering any improvement in the area of transport at the state level. An important step forward, which will have to be followed through, is the harmonisation of railway regulations with the *Acquis*. Due to the slow improvement of basic road and railway infrastructure, BiH loses several hundred thousand euros every week.

In light of all the above mentioned, the future EU membership of Croatia may have extremely negative implications for BiH, given the fact that the country failed to properly prepare for export to the EU market and failed to develop its responses to a number of pending bilateral issues ranging from maritime and land borders to property issues.

In order to jumpstart the EU integration process and break the current deadlock, BiH will have to do as follows:

- ◊ with regard to the European integration process, politicians have to tailor their actions to their words and find a working consensus which implies that the politicians create the necessary environment and the experts and professionals act within it;
- ◊ create, without delay, the necessary conditions for the SAA to take effect;
- ◊ fulfil requirements for a credible application for EU membership by mid-2012;
- ◊ establish a sustainable system of horizontal and vertical coordination in

EU- related affairs including the link between the technical and political/ institutional aspects ;

- ◇ identify coherently all negative implications of the future EU membership of Croatia and design inter-sectoral measures to overcome these implications;
- ◇ improve the area of transport and communication, particularly state-level legislation;
- ◇ cut red-tape when it comes to establishment;
- ◇ create the necessary minimum requirements to start the long-term and painstaking process of harmonisation with EU principles of competition.

