COMPARATIVE REPORT FOR 2009

(Western Balkans - Bosnia and Herzegovina)

Foreign Policy Initiative BH

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

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COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

Content

Introduction	4
TITLES I AND II	
GENERAL PRINCIPLES and Political Dialogue	7
TITLE III	
Regional Cooperation	11
TITLE IV	
Free movement of goods, Industrial products, Agriculture and Fishery	17
Free Movement of Goods - Common Provisions	23
TITLEV	
Movement of workers, Supply of Services and Common Provisions	29
Chapter 2 - Right of establishment	34
Chapter 4 - Current Payments and Movement of Capital	38
TITLE VI	
Aproximation of laws, law enforcement and competition rules	43
TITLE VII	
Justice, Freedom and Security	51
TITLE VIII	
Cooperation Policies	63
TITLE IX	
Financial Cooperation	69
CONCLUSION	72
SUMMARY OF THE FOCUS GROUP FINDINGS	75
PRISM RESEARCH FOR FOREIGN POLICY INITIATIVE BH (FPI)	
Narative Summary of the Public Opinion Poll Results	97

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

Introduction

he Project "Monitoring of the BiH European Integration Processes" started in November 2008 and it will last until June 2012. In the scope of this project so far, we have published one preliminary and two semi-annual reports on the progress that BiH has achieved in the process of European integration. While preparing this project, we were guided by the optimism that BiH would fulfil the obligations under the SAA at a pace that would require them to be monitored every six months. However, already with the creation of our Second Semi-annual Report, our experts were faced with such a slow pace of progress in the adoption and implementation of the reforms that it proved to be unnecessary to record the changes every six months. Therefore, we decided to make the progress reports on BiH in European integration only once a year.

Next to the reports that monitor the progress of BiH once a year, we will also publish a Comparative Report on the state of the European integration process in all the other countries in the region as well, which primarily aims to answer the question where Bosnia and Herzegovina is in comparison to other states in Western Balkans. This is the first of such reports, and we hope that it will provide yet another dimension to the process of the monitoring of European integration. This report was also made by nine different experts from the specific areas our report deals with, who had close cooperation with a number of our collaborators from the region. As with our previous reports, this report was also prepared by our Editorial Board which has six members.

The publication of this report symbolically overlaps with the attempt of the European Union to, at least symbolically, breathe life into the process of integration of the region into the EU. While marking the tenth anniversary since the Summit in Zagreb, held on November 24, 2000, the European Union plans to have a ministerial conference on June 2, 2010 in Sarajevo, where all of the countries from the region, as well as EU member countries, will have their representatives.

However, since the time when the Zagreb Summit was held, some important changes have taken place in the region. Two new states were born, some of the countries have made remarkable progress in the European integration process, while others are significantly falling behind in comparison with their neighbours, which is clearly indicated in our report. One of the most important changes we wish to point out, in the light of the anniversary of the Zagreb Summit, is the lack of spirit of regional cooperation, which was one of the main characteristics of the Zagreb Summit.

Some historic changes in Croatia and Serbia had preceded the Zagreb Summit; changes that had brought pro-democratic forces into government, which represented the main precondition for opening of formal regional dialogue under EU sponsorship. Through that alone, in the Declaration of the Zagreb Summit, an accent was placed on reconciliation and cooperation in the region, as well as stability and peace in Europe. The Declaration of the Zagreb Summit had opened the door for a more serious and formal regional cooperation through a number of bilateral and multilateral agreements. However, the greatest importance of the Zagreb Summit was in the fact that, at the time, the road was opened for the Western Balkan countries for approximation to the EU through the Stabilization and Association Process.

The Sarajevo Conference does not come from such a positive atmosphere. On the contrary, it comes from the need to try to overcome the evident tensions and lack of dialogue between specific countries, as well as to revive the faded regional cooperation.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

The Sarajevo Conference is preceded by very tense relations between Serbia and BiH, provoked by a number of deplorable events such as the arrests of BiH citizens through warrants issued by Serbia, the four-year long absence of dialogue and interstate visit refusals, withholding the approval for candidates for BiH Ambassadors in Serbia on several occasions, not maintaining the Interstate Cooperation Council, and strong public accusations. However, for the past six months we can witness the improvements in bilateral relations through the approval for BiH Ambassador in Serbia, followed by the meeting in Mostar and declaration from Istanbul.

The Kosovo declaration of independence also rerouted the attention from essential issues of regional cooperation to protocolar and formal acrobatics in order to bring to the regional table the representatives of Serbia and Kosovo. That is why it is considered a success that the representatives of both of these delegations agreed to the offered conditions and seating arrangements at the Sarajevo Conference. The integration of Macedonia in the EU remains a hostage of the absence of compromise with Greece regarding the name of the state, while BiH remains a hostage of its own Constitutional structure and four years of stagnation in reforms.

In this context we cannot fight the imposing cynicism that raises the issue of purpose and effectiveness of the Stabilization and Association Process which, for the countries in the region, was opened in Zagreb. The fact is, that for the purpose of process transparency and equality of criteria for all of the countries in the region, the individual approach in evaluating the progress of the Copenhagen criteria fulfilment was the only approach possible. This, however, does not mean that it was sufficient. The differences in criteria fulfilment and the progress that specific countries have made, which we have registered in this report, indicate that, apart from the individualized guidance for each of the countries in the region towards the EU, there had to have been a process that would, at the same time, guide the whole region as well. Here we do not wish to lessen the significance of regional initiatives like The Stability Pact, or its successor, the Regional Cooperation Council. Nevertheless, it turns out that these are technical mechanisms for cooperation, while the political dimension has completely faded during the ten year period between the meetings in Zagreb and Sarajevo.

Suddenly, but justifiably so, the raising of the awareness of the EU representatives, and convening of the Sarajevo conference, coincides with the beginning of the still undefined process of the Lisbon Agreement implementation. Its implementation so far, in the context of this region, has indicated a number of differences in the approach between political and bureaucratic representatives of the EU and the EC, and points out the need for their better coordination, and ultimately, creation of a single strategy for the integration of the entire region into the EU. The liberalization of the visa regime for BiH was one of the first victims of this confusion with distribution of competencies between the EU institutions. We were witnesses of bombastic announcements of the Free visa regime for BiH after June, made by several Ministers of Foreign Affairs from the EU, that were readily refuted by the EC the following day. Here, we should also mention the indecisiveness in timing the decision announcement of the free visa regime for BiH in spite of the progress made, and a complete absence of awareness of consequences of different treatment of BiH in comparison with the other countries that had already got the visa free regime in the previous round.

Furthermore, in the meantime, important differences have appeared between the EU member countries regarding the enlargement to the Balkans. By referring to the alleged negative experiences with the integrations of Bulgaria, Romania and Cyprus, some of the countries advocate a slow-down of the integration process of the Balkan countries, while

MONITORING OF THE BIH EUROPEAN INTEGRATION PROCESSES

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA

others remain true to the principles they committed themselves to in Zagreb ten years ago. Both of these groups are faced with a big dilemma – on the one hand there is the issue of further stabilization of the region in the absence of clear vision of progress towards the EU, and on the other hand they are faced with the issue of stabilization of the EU itself, if it spreads to the Western Balkans where historic disputes are still pressing.

This Report is a comparative analysis of the progress that was achieved in each of the countries in the region in the first year after the signing of the SAA. In order to point out the shortcomings in the European integration of specific countries, we should recall that Croatia and Macedonia signed the SAA in 2001, Albania in 2006, and Serbia and BiH in 2008. During the second year after the signing of the SAA, Croatia had already applied for candidate status in the EU, which was approved the following year, in 2004. The estimates are that Croatia could become a full member of the EU in 2013, 12 years after the signing of the SAA.

BiH is currently in its second year after the signing of the SAA. Hypothetically speaking, if BiH were to achieve the progress and the pace of Croatia, its membership in the EU would be possible around the year 2020. However, BiH has encountered delays during the first year of implementation of the SAA, which are too large in comparison to other countries of the region to even speak of the possibility of catching up with them, or even matching their pace in the speed of progress. These are just a few examples. During the first year of the implementation of the SAA, in the area of free movement of goods, the greatest progress was achieved by Serbia, while BiH adopted four times fewer laws. Also, the number of accredited institutions in Serbia in comparison to that in BiH is eight times higher, although Montenegro and Albania show even poorer results than BiH. For the purpose of fairness, we would like to point out that there are a few positive examples in BiH, like the reforms necessary for the liberalization of the visa regime, as well as the adoption of the EN standards, where BiH and Albania are showing far greater progress than Serbia, and even Croatia at the same stage of the implementation of the SAA.

After reviewing the findings of our experts, and at the same time being aware of the dilemmas that the EU is facing, with this Report we would like to say that it is important to use the Conference in Sarajevo in order to set a clear path and establish more efficient mechanisms in order to overcome these drastic differences and make progress towards the EU easier and faster. Of course, the responsibility for slow progress in the implementation of the SAA lies primarily with the governments of the countries in the region. Nevertheless, with this report, we wish to stress the need to realistically review the overall progress of the region in the ten years after the adoption of the Declaration of the Zagreb Summit, and in the light of the principles that the EU member countries and the countries of the region committed themselves to at the time, to develop a strategy for integration of the entire Western Balkans, which will equally be followed by the representatives of the European Union and the European Commission.

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 [WESTERN BALKANS BOSNIA AND HERZEGOVINA]
TITLES I AND II GENERAL PRINCIPLES AND POLITICAL DIALOGUE

PAGE 7

TITLES I AND II

GENERAL PRINCIPLES AND POLITICAL DIALOGUE

a

General assessment

In the segment of General Principles and Political Dialogue, as well as the in the priorities under the European Partnership with the EU, all Western Balkan countries made limited progress during the first year of the implementation of the SAA and the Interim Agreement. In the process of approximation to the EU, their starting positions and obstacles in internal policies were different; therefore it is difficult to reach final results just by using a comparative method. Macedonia and Croatia had opened the negotiations, Serbia and Montenegro had applied for candidate status, while BiH and Albania were the furthest behind with fulfilling the obligations under the SAA and the European Partnership. What points us towards this conclusion are the EC Progress Reports for 2009 for all the countries in the region. If we were to make a general conclusion, although such conclusions often tend to be superficial, then, at first glance, it appears that the Western Balkans failed to accept the political criteria and general principles that the EU rests upon. Even the countries that have been the most advanced on the European road, like Croatia, have problems in fulfilling the general principles. The common denominator of weakness for all of these countries is the stand-still with regard

to human rights, the fight against corruption, functionality of the justice department and bilateral cooperation in the region. It is in this domain that the Reports of the European Commission are abstained with strong recommendations to put more effort into creating a framework for the respect of citizen and human rights and freedoms, to reduce the influence of politics to administration of justice, and to strengthen the fight against corruption.



Implementaton of the EP and SAA requirements in Western Balkan countries

Judging by the available information, Bosnia and Herzegovina is the furthest behind in the domain of obligation fulfilment from Titles I and II of the SAA, when compared to the other countries from the region. This can primarily be seen in the weak capacity of the state, which as such, is brought into question by certain political actors, and then further 'stretched' between the entities, cantons and the OHR. It is still expected that the OHR should defend, represent

The common denominator for all of the Western Balkan countries, although they have all made different progress since the signing of the SAA, are the weak results in the domain of justice reform, the fight against corruption, and the protection of human rights and the rights of minorities.

PAGE 8 COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLES I AND II GENERAL PRINCIPLES AND POLITICAL DIALOGUE

and even act as the state. Such a political system is anything but stable, because the main political actors are not competing to upgrade it but to demolish it and build a new one. The conditions under Titles I and II of the SAA, and under the European Partnership, as well as the entire European road, are collateral damage to a magnetic force which has been slowing down the processes and pulling them back. This is recognized as one of the key weaknesses of BiH in the EC Reports as well as in other analytical documents, and it is the reason why BiH is falling behind the rest of the region. Other Western Balkan countries did not have to face the essential dilemmas of system functioning during the realization of the priorities under the European Partnership and all of the Titles of the SAA in general, so we cannot speak of systematic obstacles in fulfilment of priorities and obligations. Insight in the available documentation leads towards a significant conclusion: In all of the Western Balkan countries, including Croatia, there is a visible attempt of the political elites to relativize the priorities of the European Partnership and to create tactical advantage with 'sensitive' political issues. Cooperation with the ICTY, promotion of human rights, especially the rights of minorities, and the rule of law are the areas in which the priorities under the European Partnership and the obligations under the SAA have been, conditionally speaking, quite often 'stretched'.

None of the Western Balkan countries managed to reach the required level in reform of the administration of justice or fight against corruption, while respect of human and minority rights often varied. In some countries it was more successful than in others, but it did not reach an absolutely satisfactory level in any of them. In Bosnia and Herzegovina, where international intervention in the justice reform was the most prominent, there seems to have appeared a phenomenon of successfully copied laws and established institutions, but not a successful justice system. The fact that since the justice reform in 2003 until today, the BIH administration of justice is faced with 2.5 million unsolved cases, speaks sufficiently of this phenomenon.

Even Croatia, for several years in a row, in the annual EC Progress Reports (including the one for 2009) gets a barely passing grade: "...The promotion and enforcement of human rights is often compromised by overall shortcomings in the administration of justice. This relates especially to the length of proceedings in the judicial system. (EC Progress Report for 2009)

In the EC Progress Report for Serbia for 2009, as well as in the EU Enlargement Strategy 2009-2010, it is pointed out that Serbia has an adequate institutional capacity for European integration, but that there is still great political influence present in the election of judges and prosecutors. Montenegro and Albania share that same problem. Still, Macedonia was singled out as a good example of fighting against corruption, even though, other things have been marked as negative, like weak results in the domains of freedom of expression and freedom of speech.

Generally speaking, Bosnia and Herzegovina made the least progress during the first year of the implementation of its SAA. Even a year after it signed the SAA it had not managed to secure the harmonisation of the BiH Constitution with the European Convention on Human Rights, especially where it concerns electing the members of the BiH Presidency and the Delegates in the House of Peoples. BiH was the furthest behind in the implementation of its own Action Plan, primarily due to constitutional shortcomings in distribution of competencies between the entities and the state. It is hard to make a comparison of the progress that all of the Western Balkan countries have made in all of the segments, simply because of the fact that they do not all have the same institutional capacity or the shape of the organization of the institutions that coordinate the process of the EU integration. Again, Bosnia and Herzegovina can be singled out as an example of weak institutional positioning of the European integration. The BiH Directorate for European Integration is subordinate to the BiH Council of Ministers, and at the head of this institution is a civil servant that has no voting right in the BiH Council of Ministers. In the document "Program of Informing the BiH Public about the EU Integration Process" which was created for the needs of the BiH Council of Ministers by the

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLES I AND II GENERAL PRINCIPLES AND POLITICAL DIALOGUE

aforementioned Directorate, it is pointed out that one of the key threats is the insufficient number of employees in the Directorate (page 4, Point 3.4 – Threats).

In Albania, Croatia, Serbia, Montenegro and Macedonia, the issue of European integration has been raised to a higher level. In these countries relevant ministries for EU integration were established, or the Department for EU Integration was merged with the Ministry of Foreign Affairs. For example, in Macedonia and Serbia, the coordination of the EU issues is within the work domain of one of the Vice-Premiers of the Government.

In all of the Western Balkan countries, including Croatia, there is a visible attempt of the political elites to relativize the priorities of the European Partnership and to create tactical advantage with 'sensitive' political issues.

PAGE 9



Case Study - Constitutional adjustments (the role of Parliament)

One of the key Copenhagen Criteria and conditions under the European Partnership and the SAA in general, is the stability of institutions, democracy and the rule of law. That is why there is an imperative set before all of the Western Balkan countries to strengthen the role of Parliament, and to change the Constitution where necessary in order to create the conditions for EU membership. Here, we primarily put special emphasis on two components because all of the Western Balkan countries had to go through a long-term process of transition and adjustment to democracy. It is interesting to see - and this is a thesis that could be expressed in numerical values - to what extent the European integration process has influenced the gradual strengthening of Parliament's role in the democratic processes. This can be seen, if through nothing else, through formation of additional bodies and Commissions for European Integration and through the participation of the MPs in adopting an entire set of reform laws which were a precondition for further progress along the European road. Thousands of draft laws and decisions will have to go through the Parliaments of each of the Balkan countries which are currently waiting in line, which will additionally strengthen the role of legislative power.

In the region, Bosnia and Herzegovina is the most typical example of the need for a stronger involvement of Parliament and a (sur)real impossibility of that ever happening due to constitutional mechanisms of ethnic blocking. The Parliament is hostage to the unwillingness of the political elites for constitutional changes that would, among other things, liberate the Parliamentary life of wilful ethnic veto and ethnic voting. A positive matter, however, is the fact that the BiH Parliament, even with such a complicated concept where it is hard to reach a consensus, is showing a growing interest for European integration. We can find good examples in the work of the Joint Committee for European Integration of the both Houses of the BiH Parliamentary Assembly, which has, on several occasions, given critical and argumentsupported warnings about the stand-still of executive government in fulfilling the obligations that stand before BiH. In other countries, the successes of Parliament are more substantial, primarily because they have sorted out the constitutional mechanisms of central and local governments. The European road being conditioned by strengthening of democracy has created positive effects on strengthening of Parliament's role in the overall process. Croatia, Serbia, Macedonia and Albania have made interventions in their Constitutions, and after the signing of the SAA, they have gradually changed their Election Laws in order to give more space to Parliamentary democracy.

In December 2005, almost 4 years after the signing of the SAA with the EU, the Macedonian Parliament had adopted 11 amendments and changed the Constitution in order to enable the election of judges and prosecutors to be in conformity with the priorities of the European

Monitoring of the BiH European integration processes

PAGE 10

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINAL TITLES I AND II GENERAL PRINCIPLES AND POLITICAL DIALOGUE

Partnership. Serbia managed to change its Constitution and adopt the Statute of the Autonomous Province of Vojvodina (that was granted significant rights in regard to central institutions), within a year and a half from the signing of the SAA. On the other hand, due to the lack of political will, Serbia did not manage to change the Constitution in the segment that deals with party control of the MP mandates in the Parliamentary Assembly, which was one of the remarks of the Venice Commission of the Council of Europe. It took Albania three full years from the signing of the SAA to legally prescribe a way of voter identification at polling stations. On the other hand, the Albanian Parliament demonstrated a great vitality in consideration of laws and issues from the domain of common heritage of the European communities. In 2009,

the Montenegro Parliament passed over 30% more of the reform laws from the domain of conformity with EU principles, and established a Parliamentary Committee which deliberated the issues from the SAA during every Session.

All of the countries, with the exception of Bosnia and Herzegovina, have made significant corrections to their Constitution in order to adapt to the demands of the EU. In all of the countries that have entered into this analysis, the role of Parliament in the domain of EU integration has increased, primarily through the establishment of permanent and ad hoc committees. (See more in the FPI BH Second Semi-annual report for 2009 of the Project 'Monitoring of the BiH European Integration Processes', Titles I and II.)

In all countries that entered into this analysis, the role of Parliament in the domain of European integration has increased, primarily through the establishment of permanent and ad hoc committees. The SAA and the European Partnership are to be credited for that. In almost all of these countries, the legislative power almost doubled its activities, both in adopting the so-called European laws and in using its advisory role in that regard. The Parliaments of all of the Western Balkan countries have permanent Parliamentary Committees for European Integration, while the Parliaments of Montenegro, Serbia and Albania also have active ad hoc Parliamentary bodies. Montenegro Parliament can serve as a good example where, during every Session, the Government must submit a progress report on the road of European integration, and they have also introduced the practice of inviting the Ministers of European Integration to briefings. The Committee for the European Integration of the Albanian Parliament also considers the conformity of draft laws submitted by the Government with EU norms. The Macedonian Parliament debated on the

EC Progress report twice, and consequently adopted a Conclusion to create an Action Plan for overcoming problems. The problem with all of these countries is that the Parliaments do not have the adequate staff or administrative capacities to absorb all of the activities. They are not able to employ a sufficient number of professional collaborators and experts for European integration, or better yet, for the different important areas of European integration. So, even though their role has been increased, it is still reduced to occasional consultation with the executive institutions and sometimes even to a pure formality. In Bosnia and Herzegovina, which is quite specific in all aspects because of its Constitutional structure, this simply hasn't reached the Parliamentary dynamics that exist at the level of other countries from the region. Even more so because there are at least three legislative instances in BiH that cannot coordinate their work sufficiently well, while cooperation with the executive powers is burdened by ethnically motivated overrides and vetos.

C Commentary

There is no denying credit to the SAA and the European Partnership, along with all other pre-accession mechanisms, for the strengthening of the role of the Parliament in the democratic process of decision-making. The very Acquis Communautaire represents probably the largest legislative challenge that Parliaments of the countries of this region have ever met with. This challenge will most certainly expand their function, multiply their obligations and underline the importance of the legislative power.

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MONITORING OF THE BIH EUROPEAN INTEGRATION PROCESSES

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE III REGIONAL COOPERATION PAGE |

TITLE III

Regional Cooperation

General assessment

After the Thessalonica Summit in 2003, all the Western Balkan countries received from the EU specific assignments enveloped in the document of European Partnership. The assignments represent the basic model through which the results of the government's institutions are evaluated in the process of European integration. Equal for all, the European Partnership sets short term and long term priorities, and among other priorities, it sets the imperative of regional cooperation development. This primarily includes solving border issues, open issues, cooperation with the ICTY and a tighter economic cooperation for establishment of mechanisms that allow for free movement of people, goods and capital.

These six years, in which the European Partnership has been applied as some sort of a working platform for observation of individual success or failure of the countries from the region, are a solid length of time to extract certain conclusions. The Western Balkans

have, rather than significant progress, only partially managed to achieve the dynamics of regional cooperation set in the given document. Most was achieved in creating economic connections, and CEFTA is proving to be a very useful project of Western Balkan economic coordination, that is, prior to the merging of the region with the single market of the EU. The foreign trade balance of each of the countries proves that the best trade partners are precisely the countries of the region, the closest neighbours. The Regional Cooperation Council (RCC) is another positive example of encouraging social, economic and infrastructural cohesion of the region. On the other hand, judging by the available information, there is not a single Western Balkan country included in the European Partnership that has managed to solve all of the open issues and border disputes with its neighbours. The region has created a network of numerous regional organizations, associations and initiatives. This has infused new positive energy, but it has not helped solve old issues and disputes. Turkish diplomacy managed to achieve more, at least at the level of public relations, in its

There is not a single Western Balkan country included in the European Partnership that has managed to solve all of the open issues and border disputes with its neighbours. The region has created a network of numerous regional organizations, association and initiatives, but that has not helped in resolving old problems and disputes.

MONITORING OF THE BIH EUROPEAN INTEGRATION PROCESSES

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE III REGIONAL COOPERATION

attempt to solve the open issues between BiH and Serbia, than any other regional organization was able to. It is odd that the clearly established pre-conditions set by the EU were not sufficient to achieve that success.

The Border dispute between Croatia and Slovenia had escalated to an incident and into an open threat made by Slovenia to block Croatia's negotiations with the EU. The dispute ended up in international arbitration, but in essence, it has not yet been resolved. Bosnia and Herzegovina and Croatia have not solved their property relations, and there is also the open issue of BiH having free exit to the open sea. BiH and Serbia have still not defined their borders, and the proclamation of Kosovo's independence, even though BiH has not recognised it, has created a number of events that pushed the bilateral relations between these two countries to their lowest level since they were first established. Serbia made a brave step forward by adopting a Resolution on Srebrenica in the Parliament, and the trilateral Declaration (involving the Presidents of Serbia, Turkey and BiH) from Istanbul is a continuation of moving in the right direction. Still, no progress has been made in the policy of controlling the crises in BiH with the help of the mechanisms of the so-called guarantees of the Dayton Agreement and the influence over Republika Srpska. It is important to mention here that BiH and Serbia have an established Interstate Cooperation Council that failed to meet even once in the past several years.

Macedonia is still being denied the right to its name by Greece, to its language by Bulgaria and to the independence of its Orthodox Church by Serbia. Greece vetoed Macedonian membership in NATO. Albania and Montenegro have managed to, more or less, solve border issues with their neighbours and give a positive example where border issues are concerned. All countries, with the exception of Serbia, have achieved full cooperation with the ICTY. Because of the so-called Artillery Diaries, Croatia was even threatened with the suspension of negotiations on each Title, while for Serbia, due to lack of cooperation with the ICTY, the SAA was "frozen". As long as Ratko Mladić and Goran Hadžić, who are accused of war crimes, remain at large, Serbia is faced with the threat of its EU membership candidate status being blocked.

With great delay, the Western Balkan countries entered into a bilateral regulation of cooperation in legal and criminal matters. The recent case of the issuing of an international arrest warrant for a former member of the BiH Presidency, Ejup Ganić, by Serbia, shows disrespect of the principles of the Rome Agreement and the recently concluded bilateral agreement between the two countries on processing and jurisdiction according to the place where a criminal act was purportedly committed or the citizenship of the individual accused of the crime. With much delay, and after several cases of deflection from justice, BiH and Croatia have signed a bilateral agreement on concession of cases between them in order to prevent the practice of those accused of a criminal act defecting into a neighbouring state in order to avoid court procedures.

All of the countries from the region have demonstrated great commitment to participation in the regional forums, organizations, associations and initiatives.

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE III REGIONAL COOPERATION





Implementation of the EP and SAA requirements in Western Balkan countries

All of the Western Balkan countries have signed the Stabilization and Association Agreement which in Title III (Regional Cooperation) invites an economic association of the region. CEFTA is a big challenge because it unites eight states into some sort of a customsfree union with 30 million citizens in just under 300,000 (298,148) square kilometres of space. Nevertheless, it is a good economic idea whose implementation is made difficult by politics. Aggravating circumstances are the unresolved issues of bilateral and regional cooperation. Declaratively, all of the Western Balkan countries are fully committed to the CEFTA principles and they have all signed the Memorandum of Understanding on Trade Liberalization and Facilitation, but in practice, if judged by the Progress Reports for 2009, it seems as though specific internal political mechanisms are blocking investments. This can best be seen by comparison of the ratio of investment exchange between Croatia and Serbia, which is definitely going in favour of Croatia, because last year's Report on the progress of Croatia towards the EU shows that in this country there is a resistance towards investments from Serbia, but towards investments from other countries from the region as well. Stagnation in the bilateral relations between BiH and Serbia caused a decrease in foreign trade exchange, which was recently confirmed by the Ambassador of Serbia in BiH, Mr. Grujica Spasović, in his interview for the daily newspaper Oslobođenje ('Oslobođenje' from March 24th 2010, "No One Called Tadić to Sarajevo"). If we were to put under comparative observation only this aspect of regional cooperation, we could see that Serbia and Croatia are in the lead because of the strength of their economies, and that the small economies like those of BiH, Montenegro, Albania and Macedonia will have to put in additional effort in order to keep up with them.

Although by signing the SAA, each of the Western Balkan countries took over the obligation that it will sign regional cooperation agreements with the other countries from the SAA process, that hasn't happened yet. Even the countries such as Macedonia and Croatia, that signed the SAA with the EU in 2001, have not signed such agreements, regardless of the fact that the deadline for them to do so was two years after the signing of the SAA. Perhaps the reason for this delay is in the fact that there is an uneven level of cooperation in segments that the agreement was to envelop (political dialogue; establishment of a free-trade zone; concessions in regard to movement of workers, goods and capital; administration of justice; internal affairs).

There is an obvious unevenness in the domain of policy approximation with the EU and the bilateral cooperation between countries from the region. Serbia will not recognise Kosovo, while most of the other countries have recognised Kosovo and even established diplomatic relations with it. This produces numerous inconsistencies, like the fact that Serbia is doing everything to get candidate status for the EU on one hand while, on the other hand, it won't acknowledge passports and customs stamps of Kosovo which have been validated in Brussels. However, a condition for EU membership is a complete harmonization - not just of the regulations but of the views as well - with those of the EU. The representatives of Republika Srpska in the joint institutions of BiH, by insisting on refusing to acknowledge the independence of Kosovo, are making it impossible for the state institutions to acknowledge at least the travel papers of Kosovo. As a consequence, the citizens of Kosovo, even those who have the proper EU entry visas, cannot travel, or even make transit, through BiH. BiH customs authorities do not acknowledge Kosovo

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (Western Balkans - Bosnia and Herzegovina)

TITLE III REGIONAL COOPERATION

passports, while the UNMIK passports are no longer being issued. By following the Serbian strategy towards Kosovo, BiH (better yet, the RS representatives in the joint institutions) takes upon itself responsibility for disrespect of the obligations under Title III of the SAA. On the other hand, the relations of political forces in BiH are not only making it impossible to make a decision on the acknowledgement of Kosovo, but from the aspect of real-politik it is not even wise or desirable to make a decision that could cause a deep political crisis in a society already divided.

While the cooperation between BiH and Montenegro, Albania and Montenegro, Albania and Macedonia, could serve as good examples, the unresolved issues between BiH and Serbia, BiH and Croatia, Croatia and Serbia, Croatia and Slovenia, Macedonia and Greece, warn us of decades- and even centuries-old problems in the Balkans.



Case Study: ICTY and EU Integration

For the countries of this region, joining the EU depends partly on their cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). This conditionality seems to be a very fruitful mechanism for bringing about a change with regard to compliance with the standards of the ICTY. Furthermore, this brings about a change in the reconciliation process by forcing countries in the region to face up to their own atrocities committed in the name of the people and the nation. By dealing seriously with war crimes, every country needs to demonstrate its willingness to live up to the EU perspective. Since the establishment of the Court in 1993, cooperation with the Court has been put on the regional agenda by the EU, and demands in this respect have intensified from time to time. In the conclusion of the General Affairs Council of 29April 1997, cooperation with the ICTY is mentioned as one of the conditions for obtaining "contractual relations" with the European Union. The Stabilisation and Association Process (SAA) launched in 1999 included both *full cooperation* with the ICTY and *regional reconciliation*.

According to the Commissions' Progress Reports, most countries in the Region are making progress. In the past, change in policy towards the ICTY allowed **Croatia** to become candidate for EU membership and **Serbia** to progress in the EU integration process. Even in **Bosnia and Herzegovina** authorities continue to respond adequately to specific requests by the ICTY which is, no doubt, a result of making ICTY cooperation one of the main conditions for joining the EU. In the past the Federation of Bosnia and Herzegovina showed more willingness to cooperate with the ICTY than the Republika Srpska. Nowadays, it is noticeable that cooperation with ICTY is not any more a highly sensitive issue. On the other hand, compliance with ICTY is quite often seen as a purely technical issue, that of numbers and lists of criminals, but not as lesson learned from mistakes of the past. Otherwise, the officials would have never been celebrating a convicted War Criminal who has served his/her term in Jail.

Serbia's noncompliance with ICTY in cases like Mladic and Hadzic, while at the same time lobbying for candidacy status for the EU and the visa-free regime, speaks volumes about how ICTY and EU standards are perceived, not as a chance for reconciliation and self-purification, but rather as something very technical which is, above all, negotiable.

Croatia has had severe problems with the so-called "Artillery Diary", which for quite some time has been perceived as the National interest number one. It took sometime for the Croatian Government to realize that Membership Negotiations might be even stopped

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE III REGIONAL COOPERATION

if substantial improvement on this issue were not reached. Montenegro has also for quite some time neglected the atrocities committed on its soil, especially in the case of the "Hijacking of Passengers from the Train in Štrpci - 1993". Only after pressure from ICTY did the Government of Montenegro convict the main perpetrators, although it failed to prosecute those who were behind that atrocity.

The ICTY is should complete its work over the next few years and future cooperation of the countries in the region will remain a key condition to the successful accomplishment of the ICTY mandate and the completion strategy. However, this progress was held back by the lack of extradition treaties between the countries in the region. On the other hand, by the end of 2009, the countries have addressed this gap, which includes taking clear steps towards extradition agreements covering also war crime cases. The lack of extradition treaties between the countries in the region hampered the transfer of cases between countries and has allowed war criminals to escape across borders, as was the case where a convicted war criminal was able to escape from Croatia to Bosnia and Herzegovina on the basis "of having previously acquired citizenship of the latter from where he cannot be extradited." In addition, other legal barriers prevent the swift transfer of war crime cases from one State to another, leading to parallel investigations for the same crime.

The tribunal is moving towards the end of its mandate which leaves the courts of the region the only institutions dealing with the number of allegations of war crimes under international law related to the conflicts in the former republic of Yugoslavia. The task of these courts could be described as extremely difficult and sensitive to the stability and future of the whole region and the countries concerned. There has been improved cooperation regarding exchange of evidence and the transfer of some war crime cases between the prosecutors from Croatia, Bosnia and Herzegovina and Serbia.

Still, prosecuting the worst war criminals is not enough to ensure justice for all the victims. According to Juan Mendez, President of the International Centre for Transitional Justice (ICTJ), efforts are also important, such as truth-seeking, helping victims and reconciliation. This is a process that must take place across borders, cultures and religions. There are few NGOs in Bosnia, Croatia and Serbia that focus on issues of war crimes and justice. Human rights organizations from Bosnia, Croatia and Serbia proposed a Regional Commission to broaden the reconciliation process by focusing on victims and perpetrators, map war crimes, collecting facts from the archives and organizing further investigation and public hearings. But in a political structure where political figures and Government authorities openly praise and support war criminals and frankly deny war crimes, statements of regional cooperation and regional reconciliation sound more than hollow. Most of the suspected war criminals are still seen as national heroes by a large part of the society and political elite. Therefore, the ICTY has been met with great mistrust by the public which makes more difficult to bring war criminals to justice.

PAGE 15

PAGE 16 | COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE III REGIONAL COOPERATION



The general political climate is improved but still far from generating regional cooperation and regional reconciliation. Although the countries have improved their record of cooperation with the ICTY, the results are less impressive when it comes to raising public awareness of war crimes committed. Without pressure from outside (both the EU and ICTY) changes in domestic policy would have been much slower and limited. There is not a single Western Balkan country included in the European Partnership that has managed to solve all of the open issues and border disputes with its neighbours. The region has created a network of numerous regional organizations, association and initiatives, but that has not helped in resolving old problems and disputes.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE IV FREE MOVEMENT OF GOODS, INDUSTRIAL PRODUCTS, AGRICULTURE AND FISHERY

PAGE 17

TITLE IV

Free movement of goods, Industrial products, Agriculture and Fishery

a

General assessment

The most important issues within the scope of the priorities of the European Partnerships with the countries of the Western Balkans, in the area of the Free movement of goods, Title IV, Chapters 1 and 2 of the SAA, other than market liberalization, concern the establishment of the legislative framework for standardization, metrology, accreditation and licensing of products so that they would be compatible with EU standards, further approximation of the technical standards to the acquis, strengthening the capacity and quality of the institutions, and adopting European standards. Other than these issues, what is of exceptional importance for BiH is also the issue of market surveillance. Priorities from the area of the free movement of goods are, more or less, equal for all countries in the region, depending on the existing institutional capacities. Fulfilling of the latter is conditioned only by preparedness and the commitment of the governments to, within the set deadlines, prepare their internal market for the free movement of goods and become equal participants of a single EU market. In comparison with other Western Balkan countries, Bosnia and Herzegovina did not exhibit an envious level of obligation fulfilment, especially concerning issues that benefit local manufacturers oriented towards export.

The obligation fulfilment of BiH institutions from the action plan for the fulfilment of the priorities under the European

Partnership for BiH is moving very slowly. Only a small number of activities have been implemented within the set deadlines. That the issues that concern this area are under the competence of institutions at the state level proves that the BiH governments show no seriousness, preparedness or commitment to fulfiling these obligations, even though

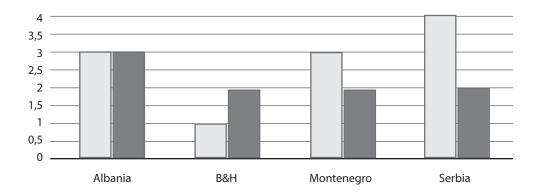
The priorities from the area of the free movement of goods are, more or less, equal for all of the countries in the region, depending of the existing institutional capacities. Fulfilling of the latter is conditioned only by preparedness and the commitment of the governments to, within the set deadlines, prepare their internal market for the free movement of goods and become equal participants of a single EU market. In comparison with the other Western Balkan countries, Bosnia and Herzegovina did not exhibit an envious level of obligation fulfilment, especially where it concerns the issues that benefit the local manufacturers oriented towards export.

Monitoring of the BiH European integration processes

PAGE 18 | COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE IV FREE MOVEMENT OF GOODS, INDUSTRIAL PRODUCTS, AGRICULTURE AND FISHERY

this further aggravates the economic instability of the country. Some countries from the region that fall subject to this analysis, where the area of free trade is concerned, had a more serious approach in fulfilling the obligations from the priorities of the European Partnership. This primarily concerns Croatia and Macedonia which have, in the moment of adoption of the decision of partnership, had a contractual relationship with the EU. This was valid at the time of the Interim Agreement of Stabilization and Association. With that alone, they were already "ahead" with an already running process of adjustment to the EU standards.



Implementation of the EP and SAA requirements in Western Balkan countries

The continuation of this analysis shows the level of obligation fulfilment for each country one year after the signing of the Stabilization and Association Agreement, that is, from the day the Interim Agreement came into force. In all of the countries that were subject to the analysis, there were no legislative or constitutional obstacles to adopt the laws that regulate the area of free movement of goods, or that are necessary for the establishment of the corresponding institutions. Fulfilment of the obligations under the SAA mainly depends on the preparedness and commitment of the government.

In *Albania*, the Interim Agreement came into force in December 2006, and only a year later, as many as 11,814 standards (EN), which is close to 72.5% of the overall number of standards that need to be adopted, were adopted. The number of companies that have the ISO 9001:2000 certificate doubled, six new laboratories were accredited, as well as one accreditation body. Three new laws were adopted, three were sent to parliamentary processing, and one is in the phase of preparation. Also, 11 bylaws were passed, while five were in process. Not a single institution was established, but there was significant reorganization and staffing of existing bodies for standardization, accreditation, metrology and market surveillance. Albania signed the Agreement of Co-Operation between the European Consortium for Accreditation (ECA), in September 2007. Albania became a joint member of the General Conference on Weights and Measures (CGPM). In

Republic of Croatia and the FYR of Macedonia had signed the SAA before the European Council gave its support to the introduction of the European Partnerships as a means to achieve European perspective for the Western Balkans countries in Thessalonica on June 19 and 20, 2003. The interim Agreement on Stabilization and Accession in Croatia came into force in March 2002, and in Macedonia in June 2001.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE IV FREE MOVEMENT OF GOODS, INDUSTRIAL PRODUCTS, AGRICULTURE AND FISHERY

PAGE 19

its Progress Report for 2007, the EC assessed that the progress in the area of free movement of goods was positive for all issues except in the area of metrology, where some progress has been made, but that the assessment shows that it was still in its initial phase and without the established legislative framework.

In January 2008, when the Interim Agreement came into force, *Montenegro* had, according to the assessment of the European Commission, achieved a modest progress in 2008 concerning the area of free movement of goods especially as regards the institutional and administrative capacities and the harmonization of the horizontal line of the legislative framework. During the time period under observation, three laws were adopted, one of which was not implemented due to the lack of bylaws, while two other laws were in preparation. Only 500 standards were adopted (EN) and six bodies for conformity assessment were accredited. Institutions for implementation of the required activities were reorganized but insufficiently staffed, except in the area of market surveillance where there was still no responsible body established. The Montenegro Institute for Standardization

Within one year after the Interim
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Only one law had been adopted
concerning the abolishment of customs
tariffs, while two other laws were in
process.

became a member of the International Electrotechnical Commission (IEC) and became a joint member of the European Committee for Standardization (CEN). The accreditation body applied for the status of joint member in the European Consortium for Accreditation (EA), while the Agency for Metrology became a joint member of the International Organization of Legal Metrology (OIML).

Croatia signed the SAA in October 2001, and the Interim Agreement came into force in March 2002. According to the priorities defined by the European Commission, within the time period of one year after the Interim Agreement came into force, 3258 standards were adopted (EN); 15 test laboratories, one calibration laboratory, two licensing organizations for system quality and one licensing organization for staff. As one of the priorities, the National Strategy for Conformity of the Technical legislation with the Acquis was created. The State Agency for Standardization and Metrology became a member of the International Laboratory Accreditation Cooperation (ILAC), and as of 1993, it is also a member of the ISO and IEC, of the European Telecommunications Standards Institute (ETSI) since 1994, and as of 1995 it is a joint member of the European organizations for standardization – CEN and CENELEC. In the area of standardization, accreditation, metrology, conformity assessment, and market surveillance, Croatia had legislation which was already, in its larger part, harmonized with European legislation, so the issues from this area were not a priority in the observed time period. Even though the National program for joining the EU, predicted in 2002 the adoption of two laws that deal with this area, the deadlines for passing those laws were prolonged.

As was the case with Croatia, *Macedonia*, after the Interim Agreement came into force in June 2001, had different priorities when compared to the other countries. In this case it was the matter of the liberalization of foreign trade; about abolishing or lowering the customs duties for imported products, of import quotas and non-customs barriers. The laws that treat the areas of standardization, metrology, accreditation and market surveillance were in the phase of preparation, as well as the institutions required for the implementation of the latter. Macedonian government adopted a National Quality Program the goal of which was to insure systematic support for the promotion of quality of the domestic products. The European Commission, in its Progress Report for

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

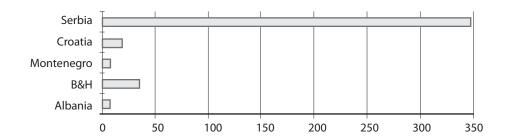
TITLE IV FREE MOVEMENT OF GOODS, INDUSTRIAL PRODUCTS, AGRICULTURE AND FISHERY

Macedonia one year after the Interim Agreement came into force, assessed that the obligation fulfilment was positive and satisfactory.

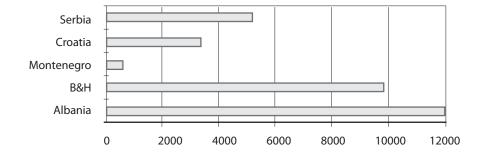
Where *Serbia* is concerned, the Interim Agreement still hasn't come into force, but it has been applied unilaterally since January 2009. Thus, in 2009, four laws had been adopted while two were in preparation, 5072 standards (EN) had been adopted, 347 conformity assessment bodies were accredited, as well as several certification bodies, and laboratories for product testing. Institutions in charge of standardization, accreditation and metrology were reorganized, but insufficiently staffed. The Accreditation body of Serbia became a member of the International Association for Laboratory Accreditation, and submitted the application for membership in the European co-operation for Accreditation. In its progress report, the European Commission stated that Serbia had made moderate progress where the area of free movement of goods is concerned and that it is necessary to further strengthen the administrative capacities and adopt the legal regulations in this area.

Within one year after the Interim Agreement came into force, according to the assessment of the European Commission, Bosnia and Herzegovina had made limited progress. This includes 9653 adopted standards (EN) and 16 test laboratories, six calibration laboratories, two certification bodies, and 11 inspection bodies accredited. Only one law had been adopted concerning the abolishment of customs tariffs, while





Standards (EN) adopted



The Interim Agreement was supposed to come into force in September 2008, but it had been suspended while all of the demands concerning the cooperation with the Hague Tribunal are not fulfilled.

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE IV FREE MOVEMENT OF GOODS, INDUSTRIAL PRODUCTS, AGRICULTURE AND FISHERY

PAGE 21

two other laws were in process. The Institute for Metrology became a joint member of European Cooperation in Legal Metrology (WELMEC). The Institute for Metrology also became a full-fledged member of the the European Association of National Metrology Institutes (EURAMET) in 2009. The Agency for market surveillance became a member of PROSAFE (Product Safety Enforcement Forum of Europe), but its work is still not based on the required legislation. Almost no progress has been made concerning conformity assessment, consumer protection, technical regulations and the directives of the new and old approach, even though back in 2004 four laws that regulate these areas had been adopted. However, the turning point came in December 2009, when, in the BiH Official Gazette, two orders were published which took over the directives for LVD (safety of low voltage devices) and machines. Only now can the whole system start functioning, and then all the flaws, in all parts of the system, including the quality infrastructure, will start to show.



Case study: Issuing certificates for agriculture products for the purpose of export in the Western Balkan countries

In 2002, the European Union had adopted a single European law on food safety and the European Food Safety Agency was established. Furthermore, the procedure for placing food products in the EU market has been defined; every country needs to fulfil the demands set before it in order to be able to export food and agricultural products in the EU. They must primarily own an HACCP certificate. For products of animal origin, it is necessary to adopt the corresponding laws and regulations on veterinary control, and the

manufacturers have to go through very strict controls by the inspections from the EU. They can export products only if they get an export licence and are registered on the list of approved production facilities. For the export of plants and seeds, the state must have regulated legislation in the area of plant health control system (phytosanitary control). The same conditions are set before all the Western Balkan countries. Bosnia and Herzegovina still hasn't created the preconditions and that is why none of the manufacturers has the licence to export agricultural products of animal origin, except for the export of fish. Domestic manufacturers in BiH are suffering significant losses and have limited markets. Nevertheless, other countries in the region have taken this issue quite seriously, and have performed the necessary activities in order for their manufacturers to be able to apply for and obtain licences for export. The fact is that

For products of animal origin, it is necessary to adopt the corresponding laws and regulations on veterinary control, and the manufacturers have to go through very strict controls by the inspections from the EU. The same conditions are set before all of the Western Balkan countries. Bosnia and Herzegovina still hasn't created the preconditions and that is why none of the manufacturers has the licence to export agricultural products of animal origin, except for the export of fish. Nevertheless, other countries in the region have taken this issue quite seriously, and have performed the necessary activities in order for their manufacturers to be able to apply for and obtain licences for export. Because of the nonexistence of the legal regulations in this area, BiH is a country where it is possible to import agricultural products of animal origin (and live animals) that do not comply with EU standards. That is why we are forced to reach the conclusion that the lack of legislation in this area in BiH is rooted in the preservation of the existing import lobbies which are protecting their financial interests.

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE IV FREE MOVEMENT OF GOODS, INDUSTRIAL PRODUCTS, AGRICULTURE AND FISHERY

the agricultural product certification is not among the issues that condition the progress of further integration, but it is definitely an issue that is of significant importance for the country and its economy. Because of the nonexistence of the legal regulations in this area, BiH is a country where it is possible to import agricultural products of animal origin (and live animals) that do not comply with EU standards. That is why we are forced to reach the conclusion that the lack of legislation in this area in BiH is rooted in the preservation of the existing import lobbies which are protecting their financial interests.



As regards the obligation fulfilment in the area of free movement of goods, BiH has opened its market and fulfilled the conditions that deal with abolishing and reducing customs, but at the same time has done very little to protect the local manufacturers and to increase the competitiveness of their products for the EU market. This has had a significant impact on the economic conditions in the country³. Compared to other Western Balkan countries, it is obvious that there is a lack of political will in BiH. A great problem is represented by the need for adoption of laws and bylaws, regulations and instructions, etc. Positive examples can be found in the cases of Croatia and Macedonia, which have introduced special procedures for adoption of laws that deal with the approximation to EU legislation, into their Parliament's Rules of Procedure. Furthermore, it can be observed that in every country there is a body within the legislative power which coordinates with the responsible institutions in the fulfilment of obligations under the SAA, which is not the case in BiH. Of course, every country from the region has prolonged the set deadlines and has encountered problems, but what distinguishes them from BiH is the existence of will and commitment to progress in the European integration process.

The Draft Law on protection of local manufacturers under CEFTA came into parliamentary proceedings, and it implied charging full MFN customs tariffs, in the export of goods from the Customs Tariff chapters 02, 04, 16.01, 16.02, 20, 22 originating from Croatia and Serbia. The adoption and application of this Law is in violation of the provisions of the CEFTA and of the SAA (Article 12 of the IA; Article 27 of the SAA). This Law was put out of force after the Constitutional Court had established how that very Law is in violation with the Blh Constitution.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE IV FREE MOVEMENT OF GOODS COMMON PROVISIONS

PAGE 23

TITLE IV

Free Movement of Goods - Common Provisions

a

General assessment

The common provisions (Articles 32 - 46) from Chapter III Title IV – Free Movement of Goods of the Stabilization and Association Agreement (SAA) between BiH and the EU have not been separately elaborated in the Action Plan for the implementation of the European Partnership priorities. The main reason for that is the fact that the implementation of most of these provisions in BiH starts automatically after entering into force of the Interim Agreement, while the European Partnership (EP) priorities are mostly related to takeover and implementation of the acquis pertaining to fulfilment of the requirements of the protection of the public interest, principally of safety of products (effect on lives and health of people, domestic animals, environment and on consumer interests), which represents the basic precondition for free movement of goods in the internal EU market.

It is clear that these activities were not a part of a well-designed strategy of B&H for the development of a functional internal market, for acquiring a good position in world trade and for increase in export. Quite the contrary - for years this has been a set of scattered measures, which did not constitute an efficient system with a clear vision of what was going to be achieved.

The fulfilment of the abovementioned requirements from the Common Provisions of the SAA is simpler in the technical sense because it deals mostly with customs tariffs, quantity limitations, etc.

However, the implementation of measures from EP requires the adoption of technical legislation regulating technical requirements for products, conformity assessment, market surveillance and the development of a complex and expensive quality infrastructure (standardization, accreditation, metrology, certification, testing and inspection).

Particular difficulties for former communist/socialist countries have been caused by radical change in certain areas:

- The old system of mandatory certification or attestation of products by the state is being replaced by a system of conformity assessment which is the manufacturer's responsibility and which, in most cases, does not require intervention by third parties (Notification Bodies which are mostly privately owned);
- A new function of governments is market surveillance through which nonconforming products that are often very dangerous are detected;

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE IV FREE MOVEMENT OF GOODS COMMON PROVISIONS

- Standards no longer have mandatory application, i.e. the European system of voluntary standardization must be taken over;
- In metrology, the focus is transferred from legal to scientific and industrial metrology.

Four years of taking part in Phare-PRAQIII Programme enabled the experts from Bosnia and Herzegovina, Macedonia and Albania to understand the necessary changes and apply newly gained knowledge in their respective countries. However, free movement of goods and, particularly, the elimination of technical barriers to trade represented a priority for other Western Balkan countries as well.

However, the countries that were not the beneficiaries of the Phare-PRAQIII Programme went through a lot of difficulties to accept and carry out the above-mentioned essential changes. It should be noted that these countries, all except Croatia, still have not reached the level at which Bosnia and Herzegovina was in 2000. That is quite understandable because at that time, during the four-year period, 30 million EURO was invested in the transfer of the required knowledge to 13 beneficiary countries covered by this programme, which comprised 52 parallel smaller or larger projects.



Implementation of the EP and SAA requirements in Western Balkan countries

In Bosnia and Herzegovina, the foundation of the system of safety of industrial products and food consists of four laws based on the European model:

- the Law on Technical Requirements for Products and Conformity Assessment
- the Law on Food,
- the Law on General Product Safety,
- the Law on Market Surveillance.

These laws were adopted in October 2004 and as such represent a precondition for the assumption of the respective directives and regulations.

In December 2009, two directives were finally adopted (Safety of Machines and Electrical Safety (LVD)) through respective BiH orders that had been ready for adoption two years earlier. This means that it is only now that the New Approach system can be "put into operation", of course, with great difficulties due to inadequate human resources within the competent ministries. That there was no strategy of building an internal market, and free movement of goods in particular, is best seen in the fact that, in 2009 as well, within MOFTER - the key ministry responsible for adopting the new Approach directives – there was no Head of the Department for takeover of EU Regulations and there was only one employee, while there was only one Head of the Department for Conformity Assessment and no employees. In the competent ministries responsible for the implementation of certain New Approach directives, there were no employees appointed specifically for these activities.

The European Commission document, which represents the best guide for EU membership candidate countries, "Guide to the main Administrative Structures required for implementing the *acquis*" says the following about the field of free movement of

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE IV FREE MOVEMENT OF GOODS COMMON PROVISIONS

NG

PAGE 25

goods: 1. "The institutional infrastructure needed to support the *acquis* in this sector is very diverse, and the ministries should have sufficient and properly trained human resources to master the technicalities of the new lawmaking".

2. "Further, the various ministries concerned should have appropriate co-ordination among themselves to elaborate the framework laws and ensure their legislative implementation".

Unfortunately, neither of these two requirements has been fulfilled in BiH.

In Slovenia, 9 ministries and 19 independent institutions took part in this activity. 572 new employees were recruited just for the purpose of this task, who in turn issued 227 laws and implementation regulations in the field of free movement of goods. This resulted in elimination of technical barriers for Slovenian products to be exported to EU.

Therefore, it is clear that these activities were not a part of a well-designed strategy of BiH for the development of a

functional internal market, for acquiring a good position in world trade and for increase in export. Quite the contrary - for years this has been a set of scattered measures, which did not constitute an efficient system with a clear vision of what was going to be achieved. The most important thing to do was to show the European Commission that BiH was doing its homework successfully and then leave the issued laws in the drawer for the next five years.

Still, BiH has one great advantage. Namely, key persons in expert groups for adoption of certain EU Directives and Regulations from the state and entity ministries and quality infrastructure institutions, as well as a number of staff in manufacturing companies, understand this new system and are able to implement it in an efficient manner.

A great achievement has also been made. In 2009, the Institute of Metrology of BiH became a full member of EURAMET⁴ (European Association of National Metrology Institutes) and an associate member of the European Cooperation in Legal Metrology (WELMEC).

With respect to the progress achieved by the other Western Balkans countries, the best source of information are the Conclusions on each country individually contained in the Communication from the Commission to the European Parliament and the Council "Enlargement Strategy and Main Challenges 2009-2010".

For Serbia it has been reported that it "has demonstrated success by undertaking key political reforms in line with European standards. Serbia has also made efforts to implement an ambitious programme for European integration. Serbia has the administrative capacity to make substantial progress towards the EU."

In particular: "There has been good progress in the field of free movement of goods".

Evaluation for Macedonia is as follows: "The former Yugoslav Republic of Macedonia has substantially addressed the key priorities of the accession partnership."

In the regular EC report on progress of Western Balkan countries it has been stated that Bosnia and Herzegovina is the only country for which the conclusion is that "A shared vision of the overall direction of the country by its leadership, and the political will to meet European integration requirements, are necessary if progress is to be made." This is probably the harshest evaluation (censure), because if there is political will, any problem, even the most difficult one, can be resolved. If, however, political will is missing, even the smallest of problems would be difficult to resolve.

The precondition for membership of EURAMET was for the Institute to practically prove that it has, within scientific metrology, successfully achieved traceability according to the relevant international standard and that it provides calibration services to various customers for the same physical unit.

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 [Western Balkans Bosnia and Herzegovina]

ITLE IV FREE MOVEMENT OF GOODS COMMON PROVISIONS

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Notwithstanding the use of diplomatic language, it can be concluded that BiH has been awarded the worst grade (satisfactory) for the *implementation of the Interim Agreement on Trade and Trade-Related Matters with EU*.

At the same time, for Albania and Montenegro it has been stated that "The implementation of the Interim Agreement is progressing smoothly on the whole."

Evaluation for Serbia is exceptionally good: "Serbia has demonstrated its commitment to bringing the country closer to the EU by building a track record in implementing the provisions of the Interim Agreement with the EU and by undertaking key political reforms in line with European standards."

And finally: "Serbia has the administrative capacity to make substantial progress towards the EU."

In Serbia's Report on the Implementation of the National Programme for Integration with the EU (NPI) for the third quarter of 2009, the level of execution of the planned adoption of laws was 79% and by-laws 88%, which represents a very high percentage, especially in comparison with BiH.



Case study: Institution building and human resources – expenditure vs. investment

Why has BiH missed so many great opportunities? Is this due to lack of political will or insufficient knowledge of expert issues regarding the adoption and implementation of *acquis* in the field of free movement of goods?

The answer to these questions is not at all easy. Namely, the competent ministries have never built the necessary institutional capacity, although these processes have been abundantly co-financed through EC projects. This especially pertains to staff training processes. Justification for this has always been associated with the lack of funds in the budget and the lack of space for this purpose. How was it possible then to establish completely new institutions for accreditation, market surveillance, food safety and intellectual property that are being financed from the budget and together have nearly a hundred employees in the meantime?

In the beginning, some influential politicians gave more importance to their "mother countries" than to Bosnia and Herzegovina, and that meant that BiH also must not get ahead of their mother country in the process of accession to EU.

"We will never accept the laws and institutions of Bosnia and Herzegovina because we have our own in Belgrade" said a member of the Working Group for drafting of the Law on Free Movement of Goods before the OHR and EC representatives a long time ago, in 1999.

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE IV FREE MOVEMENT OF GOODS COMMON PROVISIONS

However, by far the greatest contribution to the development of the quality infrastructure and translation of the EU Directives and Regulations, as well as staff training for this purpose, has been made by the Institute of Standards, Metrology and Intellectual Property of BiH, although it has not been financed from the state budget⁵.

Therefore, the following should be noted:

- With regard to required knowledge and technical expertise, BiH could have taken over the most important parts of the New Approach and the Old Approach legislation pertaining to food products even during the Phare-PRAQIII Programme (1996-2000). At that time, all these directives had been translated and there were over 30 relevant expert seminars and other forms of training held, which involved about 600 experts, also including several civil servants.
- In 1999 the Czech Republic had almost all directives and regulations in the field of industrial products safety translated and it promptly approached the transposition of these regulations into its legislation. With regard to the number of translated documents, Bosnia and Herzegovina immediately followed the Czech Republic, being well ahead of Slovenia and some other quite successful countries. Unfortunately, upon hitting the wall of resistance towards the takeover of the regulations on free movement of goods, the hardworking team of the Phare-PRAQIII Programme and the Institute of Standards, Metrology and Intellectual Property turned to the development of systems of standardization (with the help of the German DIN), accreditation (with the help of the British UKAS) and metrology (with the help of a greater number of institutions in EU).
- At the Plenary Meeting of EU/BiH CTF (Consultative Task Force) held upon the finalization of the Phare-PRAQ III Programme, a representative of MOFTER stated: "Elimination of technical barriers to trade (technical regulations, standards and conformity assessment) does not represent a priority for Bosnia and Herzegovina "6, although the Minister of Foreign Trade had previously been provided with an elaborate analysis of all technical and economic details and the beneficial effect on export of products from Bosnia and Herzegovina.
- This same representative of the above-mentioned Ministry did not even respond to the letter by which the Phare-PRAQ III Programme and the Institute of Standards, Metrology and Intellectual Property invited them to take over the translated versions of the most important directives and regulations.

After the Phare-PRAQIII Programme had been finalized in 2000, at the promotion of the most successful beneficiary countries to this programme held in Brussels, when BiH was one of the three most successful countries, EC representatives asked the BiH team the following question: "When we talk to your political leaders we get to think you are hopeless, and then we find your experts coming here for training and expert meetings to be the best or among the best. Could you help us understand what this is all about?" Maybe this question represents the best answer to the question posed at the beginning of this chapter: "Why has BiH missed so many great opportunities?"

PAGE 27

⁵ The Institute was the only such institution among 13 Phare Programme beneficiary countries that was financed from its own income realized in the market.

The priority for all the other 12 Phare-PRAQIII Programme beneficiary countries was to eliminate the technical barriers to trade as a precondition to free movement of goods.

Monitoring of the BiH European integration processes

PAGE 28 | COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE IV FREE MOVEMENT OF GOODS COMMON PROVISIONS

Commentary

With respect to free movement of goods, Bosnia and Herzegovina needs to be put back on the track on which it was put by enthusiasts without political functions in the period 1997-2000.

Never again should the civil society and citizens themselves without firm control let these activities to be taken over by any political party, and they should react forcefully to any turn aside from the planned path.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE V MOVEMENT OF WORKERS, SUPPLY OF SERVICES AND COMMON PROVISIONS PAGE 29

TITLE V

Movement of workers, Supply of Services and Common Provisions



General assessment

The area of Supply of Services, primarily transport and financial services, is of vital importance for the BiH economy and thus extremely important for local actors in politics and economics. Bosnia and Herzegovina has made progress in the fulfillment of obligations from the Action Plan, but the most important reforms and activities are yet to be implemented, except in the area of air transport where remarkable progress has been achieved already, especially when compared to other countries from the region. Other than these positive results, there are numerous cases in which BiH is falling behind the rest of the region such as: emergency action by the BiH Parliament and the Council of

The situation in our country, when compared to the region, would significantly improve if the Transport Strategy at the state level, which is currently being blocked because of political reasons, were to be urgently adopted and implemented.

Ministers is necessary in order to adopt a state strategy in the area of transport. An example of good practice in the region can be seen where Serbia and Croatia have created the document in question and it is currently being implemented.

In the end, there are also a number of specific reforms and obligations where BiH is in a position similar to other countries in the region (Albania, Croatia, Serbia...). This concerns consolidation and privatization of the banking sector, and surveillance of the same, where a lot of work has been done, considering that in the case of BiH, due to political blockages, there is still no surveillance of the banking sector at the state level.



Implementaton of the EP and SAA requirements in Western Balkan countries

Free movement of workers seems to be the area where Croatia appears to have achieved better progress than other countries in the region. Further reforms are still necessary in the areas of employment and social policy within the entire region.

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE V MOVEMENT OF WORKERS, SUPPLY OF SERVICES AND COMMON PROVISIONS

Review of the area of the free supply of services reveals that Croatia seems to be the most advanced in this area as well. Serbia and Bosnia and Herzegovina have made some progress in the transport sector as regards strengthening of the institutional structure as well as adjusting the regulatory framework, while Albania still requires significant improvements. Macedonia also achieved some progress in the implementation of the SAA in the year following immediately after the signing of the Stabilization and Association Agreement. In the area of Free Movement of Workers it introduced a business visa with a validity period of three years for specific managerial, special and executive positions, as well as a work visa with a validity period of 60 days for experts staying in Macedonia for a shorter time period.

As far as BiH is concerned, civil aviation is far ahead, and local experts are acknowledged even in the region, where they hold seminars and trainings for their colleagues from other countries. ECAA is an agreement that will result in the opening of the BiH skies for air transport. Traffic liberalization requires significant improvements as regards institutions; even in most of the EU countries, this system has not been fully established yet. This is a clearly defined and achieved priority for our country within the Partnership. As far as institutional capacity is concerned, as an example, we can use the area of transport where BiH could fulfill its obligations a lot faster than it currently does, even though the mentioned capacity is often very limited. In the area of transport, most of the institutions of the countries in the region are victims of negative staff selection in civil service where, currently, there is no way to keep and motivate the necessary quality staff. Low salary policy leads to low results, and the very structure prevents keeping of the experts. It is necessary to separate administrative and expert activities.⁷

In general, conditions have been created for making progress in rail transport as well. One of the conditions of the Partnership was the improvement of the infrastructure, where a lot has been done. The problem is in land expropriation which requires political will at the local level, and financial power of the state. Our governments have been doing more than we are showing and presenting (for example, a 'Network Statement' was created for railways). Croatia is making good progress in the area of transport, while the awareness in Serbia is not strong enough, even though there is a consensus over priorities in the area of transport. Macedonia is lagging behind all the rest, as is Kosovo, which only recently got started, while Albania is slowly making progress.

In the matter of adopting the Acquis, for now, BiH is in front of Serbia, and Albania and Kosovo are at the rear, while Croatia is currently in the lead. Montenegro is making fast progress by taking over the reforms directly from the Acquis, and it could soon catch up with Croatia, although currently, it is closer to BiH. The problem with BiH is that things are moving too slow. Many things have been prepared, but none of the local politicians dares to speed up the reforms and take over the initiative.

As for institutions, road and air traffic can be at the EU level. In theory, it is possible for the railways as well, and the biggest problem is with the entity railways that will have to separate their functions. The operators will be privatized or will completely fail, and the accounts will finally be separated, as is demanded by EU regulations.

As for the financial sector, the Albanian financial sector remains firm, with growing market

This concerns the assessment made by a "Task Manager" of the EU Delegation in BiH who witnessed the departure of a couple of quality technical staff members in the area of air transport. After receiving specific quality education, those staff members went to international organizations that deal with air transport where they received salaries 4-5 times higher than those in BiH. Of course, BiH cannot compete with these salaries, but it could, with a smarter organization in this area, create a more favourable situation for these experts, who cannot be replaced in a short time period.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE V MOVEMENT OF WORKERS, SUPPLY OF SERVICES AND COMMON PROVISIONS

PAGE 31

transparency. Some progress was made in BiH, but the main priorities here were not achieved, such as a single or joint banking market surveillance. Serbia and Croatia have also continued making progress in this area. In the case of Macedonia, conditions for the modernization of the banking sector were set by the Banking Law which represented a sector with a high concentration level (three of the largest banks held 65% of the market share). Trust in the banking sector grew, even though the consequences of certain structural economic problems could still be felt.

In the end, we can freely say that the priorities under the European Partnership for BiH were not taken seriously enough by the majority of politicians who, in practice, regularly show that they do not find the issue of European integration to be a priority in their scope of work. Local governments exhibit extreme levels of immaturity and ignorance of the matter where the EU integration process is concerned, except in the area of air transport. If we are to speak of commitment of the RS government, through legislative activities at the entity level, they obstruct the reforms that should take place at the state level, and the society is made captive to a particularism preservation policy in one part of the BiH territory.

The resonance that the area treated in this chapter has in the public eye is very significant for the internal policy of BiH, but the majority of the initiatives end in theory and empty words. The example for that is in the area of transport, primarily road transport (Corridor Vc), which has been written about for years, but still no significant progress has been achieved. As for the entire region, we bear witness that, for example, in Croatia, the transport sector, primarily the sector of road transport, has far better support and is more efficient in implementing reforms and projects.

The rate of priority realization in BiH is definitely below, not just the desired level, but, unfortunately, below the possible level as well. For most of the areas, technically speaking, there is a capacity for things to start moving forward, but it does not happen for the aforementioned reasons.

The area of **internal market**, and the area of fragmented internal legislature and the system of social security, have not made any significant progress in Bosnia and Herzegovina. The area of **free movement of workers** has made limited progress in Serbia and in Croatia.⁸

As for obligations from the other segment of the internal market, that is, **supply of services**, the level of the fulfillment of the action plan shows no progress because the key reforms that need to happen require the introduction of coordination at the state level for specific areas of the supply of services, which, with the current political constellation in BiH, is impossible to achieve.

The area of **transport** has been somewhat more dynamic in BiH and in Croatia, where authorities have put in significant effort, and progress was achieved in the area of road infrastructure as well as in the area of the liberalization of the telecommunications sector. The Croatian economy was assessed as well integrated into the EU economy. The priority for the Croatian government in this area was the adoption of bylaws in the area of transport where it was necessary to secure full conformity with the Acquis. Serbia, in some areas of transport, seems to be more advanced than BiH because the Government had adopted the program for the implementation of the Strategy for Development of

The terminology 'limited progress' was taken from the EC reports. The reason for this limited progress was the fact that the laws were in parliamentary processing but were not adopted on time.

MONITORING OF THE BIH EUROPEAN INTEGRATION PROCESSES

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE V MOVEMENT OF WORKERS, SUPPLY OF SERVICES AND COMMON PROVISIONS

Railway, Road, Water, Air and Intermodal Transport, while, for example, BiH still has no Strategy. The rest of the obligations from this area Serbia is fulfilling according to the plan, except for the area of the air transport, where it still encounters difficulties in the implementation of the ECAA (which, again, is the area where BiH is the most advanced).

In the sphere of financial services the progress of Croatia was seen in the limited number of legal acts in the area of banking and security as well as in the efforts to strengthen the market surveillance. In the time period that followed after the signing of the SAA, the reports show that Croatia had, already, fulfilled great deal of its obligations and contributed to a more successful functioning of different common institutions. There had been some problems in the area of competition and supply of services. Strong banking sector and established surveillance over the latter were already present in Croatia, and over 90% of bank capital belonged to the foreign investors. In Serbia, the banking sector was also profitable and relatively healthy, while the privatization of the remaining banks progressed slowly. BiH and the rest of the countries in the region are in a similar position, or are trying to get there. In BiH there remains to be the problem of surveillance at the state level where no progress has been achieved.

The road traffic in BiH is catching up with the best practices in the region, although the affair with the licenses will slightly inhibit the progress. Namely, the BiH Ministry of Communications and Transport was accused of irregularities during the awarding of the CEMT licenses in 2009 (These are licenses which enable companies to transport goods in the international cargo transport between the CEMT member countries). After that, the Minister, Mr. Rudo Vidović, had suspended the seven accused officers. The selection and the awarding of the mentioned licenses in 2010 went by without any problems or complaints.

In comparison with other countries from our surroundings, the state of things in transport is not that bad. According to the opinion of the consulted experts, in some segments, BiH is better than some its competition in the region, and in some segments it is worse, which classifies it somewhere in the middle of the list. However, unlike in the countries from the region, there is a significant lack of promotion of the successfully implemented activities and reforms, which creates the perception that BiH is worse off than it actually is.⁹

C

Case Study : European Common Aviation Area – ECAA

Although the European integration process of BiH, especially in comparison with successful countries in the region, seems to abound with bad examples, this case study will treat one significant success of BiH at the regional level. This success is of even greater significance because it concerns the area which is of great internal importance, as well as of significant importance for the EU countries. It is about the signing of the Agreement for the establishment of the European Common Aviation Area – ECAA.

Having in mind the fact that the future of air traffic in BiH will be based on European legislation (which rests on the principles of liberalization, abolishing administrative limitations and harmonization), the Directorate of Civil Aviation (BHDCA) did a number of preparative activities which would lead to easier integration of BiH in the area of civil aviation into the European system. The Action Plan for transfer and implementation of

⁹ This concerns the impressions of several experts from this area recorded during the interview.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINAL

MOVEMENT OF WORKERS, SUPPLY OF SERVICES AND COMMON PROVISIONS

PAGE 33

the ECAA Agreement has been made, and the next steps include changes and amendments of the Aviation Law. The European Mission which was monitoring the ECAA reforms in BiH was pleased with the results achieved and the situation in 2009, so in 2010 it does not anticipate coming into BiH, something which rarely happens.

This case has, to a large extent, avoided the usual political blockages and games, and all of the necessary activities developed successfully. In this particular case, the main actor was the Directorate of Civil Aviation which belongs to the BiH Ministry of Communications and Transport. This is also a commendable example for our authorities that have proved that we can make fast progress and fulfill the priorities in the European integration process.



C Commentary

The situation in our country, when compared to the region, would significantly improve if the Transport Strategy at the state level, which is currently being blocked because of political reasons, were to be urgently adopted and implemented.

If the practice of parallel actions in establishment of new institutions continues to happen, by blocking the state level at the same time, BiH will, very soon, find itself at the rear in the region, and the citizens as well as the transporters will be on the losing end of things.

A concrete example of creating parallel institutions, which are doing at the entity level what the state institutions should be doing at the state level, can be seen in the entity institutions for highway planning and construction. It is well known that the RS Government had gone far in its negotiation with 'Strabag' that was supposed to get the concession and build the entire highway network in the RS.

A concrete example of difficulties created by the RS in the work of the institutions and achieving progress at the state level is the way that the activities aimed towards the development of the BiH Transport Strategy are being slowed down.

The process of conducting reforms in the area of air traffic shows that BiH has the necessary capacity to be the leader in the region when there is a political will for it.

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (Western Balkans - Bosnia and Herzegovina)

TITLE V CHAPTER 2 RIGHT OF ESTABLISHMENT

TITLE V

Chapter 2 - Right of establishment



General assessment

According to the Treaty establishing the European Community, restrictions on the freedom of establishment of nationals from one Member State in the territory of another Member State are prohibited. This prohibition applies also to restrictions on the setting up of agencies, branches and subsidiaries by nationals from one Member State in the territory of another Member State. Freedom of establishment includes the right to take up and pursue activities as self-employed persons and to set up and manage enterprises under the conditions laid down for its own nationals by the law of the country where such an establishment is effected.

Nevertheless, the right of establishment has significant importance not only for the EU integration process, but also for the restructuring and the economic growth of the Western Balkan countries. The granting of the national treatment regime with respect to the registration of new foreign companies and self-employed persons, as well as the free provision of services on a non-discriminatory basis, have the potential to stimulate economic recovery and to promote new technologies and more qualified managers to operate in the Western Balkan countries.

Although the Western Balkan countries have adopted a quite liberal regime with respect to the right of establishment, there are a number of discriminatory restrictions that differ from one country to another. On the other hand, all of them have the same effect not only of discriminating against foreign companies and self-employed persons, but also of limiting penetration of foreign capital in the respective economies.¹⁰

The European partnership for BiH in the section "Economic Criteria" requires from the state to "Strengthen legal certainty for local and foreign economic operators and improve the business environment." Moreover in the European Standards section, entitled Internal market, with the subtitle "Movement of persons, services and right of establishment", the European partnership indicates the need to:

"Create a consistent legislative and regulatory framework for the capital markets to ensure the existence of a single economic area and create an adequate institutional setting for coordination of capital market policies and legislation." 12

Integration of Western Balkans in the Internal Market - Support to Promotion of reciprocal understanding between the European Union and Western Balkans, November 2004.

¹¹ COUNCIL DECISION of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina and repealing Decision 2006/55/EC (2008/211/EC) pg. 23

¹² Ibid. pg 23

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINAL TITLE V CHAPTER 2 RIGHT OF ESTABLISHMENT

PAGE 35



Implementaton of the EP and SAA requirements in Western Balkan countries

Albanian legislation is relatively open in terms of establishment. EU firms can already establish themselves following similar procedures to those required for Albanian companies. According to the Albanian authorities, no discrimination exists between foreign and Albanian firms. This open approach also seems to apply to sensitive sectors such as finance and transport. However, this liberal approach is seriously undermined by the lack of proper implementation of legislation and by unclear procedures. Investors operating in Albania claim that far too many decisions regarding establishment remain dependent on personal contacts.¹³

Two different systems of establishment apply in the entities, which creates problems for the companies that want to operate throughout the entire territory of BiH, thus putting obstacles to the creation of a single economic space in BiH.

Bosnia and Herzegovina applies a non-discriminatory regime on the right of establishment. The EU and other foreign companies may establish themselves and operate on the basis of national treatment. The main particularity of this country is the existence of different Entity laws as well as some laws on a State level. Although during recent years a lot of steps have been undertaken to avoid duplicate licences within the country and to harmonise the Entity laws, the situation today is that two different systems of establishment apply in the entities which creates problems for the companies that want to operate throughout the entire territory of BiH. Such practices undermine the process of harmonization of legislation, puts obstacle to the creation of a single economic space in BiH, and make foreign investments difficult. This is contrary to the requirements of both Title V, Chapter 2. and the European partnership for BiH.

The liberal regime with regard to freedom of establishment represents an important part of the progress for Croatia towards an EU membership. There were, however, some entry barriers even in Croatian legislation. One of them was in the area of securities, where any company that is established in Croatia and that has more than 100 shareholders and a share capital of around 4 million euro should be listed on a stock exchange. However this was changed later.

The legislation in the former Yugoslav Republic of Macedonia was also gradually transposing the EU principles and rules in the area of freedom of establishment. The implementation, however, of a new Company Law that corresponds to a great extent to the acquis was postponed for additional review of its texts.

Although foreign investors enjoyed a liberal regime with respect to the freedom of establishment in Serbia and Montenegro - at that time one country - the right of establishment was seriously hampered by the need for duplicate licences for operating in the two republics, as well as by the lack of a direct link between the two corporate registers. The same barriers applied to many other sectors and one of the few exceptions is the mutual recognition for accountant and auditor licences. After the break, both independent countries continued with a liberal more effective regime with respect to the freedom of establishment, particularly Montenegro. Serbia applied the provisions under its SAA unilaterally until recently when the SAA (interim) was restarted.

Taken from EU Report: Albania: SAP, March 2004, available at http://www.westernbalkans.info/htmls/page.php?category=336&target=341&page=6

PAGE 36

MONITORING OF THE BIH EUROPEAN INTEGRATION PROCESSES

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE V CHAPTER 2 RIGHT OF ESTABLISHMENT



Case study - Freedom to provide services and purchase land

The six Western Balkan countries have made substantial progress with respect to the right of establishment. However, different kinds of indirect limitations to the national treatment principle exist, but they are subject to gradual approximation.

The EU law also prohibits restrictions with respect to the freedom to provide services.

According to the Treaty establishing the European Community, restrictions on freedom to provide services in respect of nationals from a Member State that are established in a State other than that of the person for whom the services are intended should be prohibited. However in a number of cases although the general policy of the country is to introduce EU standards, in practical implementation investors face indirect obstacles from the socialist or early transition times where the control of companies, media, and land was a matter of political or national pride.

In **Albania** some limitations existed in the area of radio and television broadcasting. According to the Law on Public and Private Radio and Television in the Republic of Albania, in order to obtain a broadcasting licence an entity had to be a joint stock company that is registered in Albania. The explicit requirement for registration under Albanian law represents a barrier for the free provision of services.

The **former Yugoslav Republic of Macedonia** has in recent years made good progress in many service areas like insurance and accounting. Further efforts for gradual liberalisation are still needed, which is also recognised in the Association and Stabilisation Agreement that foresees progressive measures in the services sector.

The legislation in **Bosnia and Herzegovina** in terms of freedom to provide services is also characterised by the national treatment principle. One of the main exceptions with this regard is the limitation on foreign ownership to 49% in services companies. Also a foreigner cannot purchase and register real estate in Bosnia and Herzegovina.

In **Croatia** agricultural land is still not eligible to be sold to foreigners, although there is a large area of agricultural land that is unused. In contrast, **Montenegro** is fully liberalized. Lastly, the unilateral application of SAA by **Serbia** is yet to be assessed in this area.

This shows different priorities of Western Balkan countries in meeting and understanding EU standards in the area of establishment. The main indicators are unclear licencing and registration procedures and lengthy procedures for registration. This results in situations that *de jure* non-discrimination between foreign and national companies may turn to *de facto* discrimination through unfair and non-transparent administrative practices based on other side laws or bylaws that were not subject to standardization.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE V CHAPTER 2 RIGHT OF ESTABLISHMENT

PAGE 37



Commentary

The six Western Balkan countries that participate in the EU integration process have made substantial progress with respect to the right of establishment. They have developed some financial services legislation, but not all of them have been adopted and implemented to the necessary degree. However, different kinds of indirect limitations to the national treatment principle between foreign and national companies exist, but they are subject to gradual approximation.

> Foreigner cannot purchase and register real estate in Bosnia and Herzegovina.

PAGE 38 | COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS

BOSNIA AND HERZEGOVINAI

TITLE V CHAPTER 4 CURRENT PAYMENTS AND MOVEMENT OF CAPITAL

TITLE V

Chapter 4 - Current Payments and Movement of Capital



Introduction

Freedom in Movement of capital is one of the four freedoms which are the foundation of the Single Market principle. It provides for the establishment of integrated, open, competitive and efficient European financial markets and services, which should benefit all citizens.

Freedom in movement of capital, other than for payments and money transfers across state borders also includes property transfers of different kinds of property and financial obligations (like investments in companies and real estate or investment portfolio).

One of the basic differences in the area of the Movement of Capital between the European Partnership and the SAA is how they treat the prevention of money laundering. In the European Partnership, this issue is a part of this title, while in the SAA it is treated under a different title.

For the purpose of the implementation of Title V, Chapter 4 of the SAA, the Directorate for European Integrations prepared a document which elaborates the Action Plan of the implementation for the period July 2008 – December 2009. In this document DEI anticipates that – in order to approve payments and transfers on current account of payment balance between the EU and BiH in freely convertible currency, in accordance with "Article VIII of the IMF's Articles of Agreement" - BiH will prepare and adopt relevant legislation, in the area of foreign currency business transfers. It is necessary to adopt three laws that regulate foreign currency business transfers, one at the BiH state level, and one for each of the entity levels.

At the end of 2008, the BiH Council of Ministers adopted the Draft Law on Foreign Currency Policy in Bosnia and Herzegovina which was harmonized with Annex 1 of the EEC Directive 88/361/EEC and which significantly liberalised current and capital transactions. However, this Law was not adopted at the session of the House of Representatives of the BiH Parliamentary Assembly on May 13, 2009, which led to a slow-down of progress in this area. The RS National Assembly adopted the Draft Law on changes and amendments of the Law on Foreign Currency Operations in RS. The Federation of BiH is drafting a new Law on Foreign Currency Operations.

Unfortunately, BiH is falling behind in fulfilment of priorities in this area. As regards the comparison of the countries in the region, the image is quite diverse – starting with Croatia, which had, during the first year of the implementation of the SAA, achieved the best progress, to Serbia, which had no planned activities at all.

A far as this area is concerned, during the first year of the implementation of the SAA, there were no big controversial issues in the region. We could say that BiH had the biggest problem, because the Parliament overturned the Law on Foreign Currency Operations.

COMPARATIVE REPORT FOR 2009 (Western Balkans BOSNIA AND HERZEGOVINAL

CURRENT PAYMENTS AND MOVEMENT OF CAPITAL CHAPTER 4

PAGE 39



Implementaton of the EP and SAA requirements in Western Balkan countries

The European Partnership from 2004 did not set any obligations before BiH in the area of current payments and movement of capital. In the time period 2000-2002, BiH went through a large number of reforms directly pertaining to the areas of current payments and movement of capital. At the time when the European Partnership was created, there were no tasks of priority in this area in the first year.

The main recommendation for progress in this area has to do with removal of the remaining barriers for transfers of capital towards foreign countries. BiH was expected to develop a plan of a full liberalization of the movement of capital within a mid-term

In other countries from the region, the picture is quite diverse pertaining the area of current payments and movement of capital. In Croatia, the European Partnership in this area gives special attention to the issue of the fight against money laundering, and sets as the first short-term priority, the obligation to improve the legal framework for the fight against money laundering as well as to complete the establishment of an efficient system for the fight against money laundering. However, regardless of the fact that some changes were made in the legislation, in the Progress Report on Croatia, they were evaluated as insufficient, and further activities were required in the legal framework of the area. There was also a problem of filling the capacities of the Financial Intelligence Unit, because, even though a certain number of people were employed, the Unit has a high rate of staff change due to low salaries. The EC was concerned because of the low efficiency in the work of the Unit, and the reasons for that can be found in the high level of corruption in the public sector, as well as in the low awareness of the Unit, especially in the banks that should be reporting suspicious transactions.

In 2004, Serbia and Montenegro were still one state, and for them, the recommendations of the European Partnership were concentrated on the internal movement of capital. The main recommendation was about the system of the correspondent accounts. It was required of the two Central Banks to make an agreement on that issue in order to provide for unobstructed flow of capital between the Republics. However, this activity was never implemented, and even though each of the Republics had made progress in this area individually, the main activity under the European Partnership was never implemented.

In Macedonia and Albania, the European Partnership did not set any goals in this area.

The basis for analysis of this area is very narrow due to the fact that the priorities from this area are clearly stated only in two states, and their implementation in both cases encountered delays and problems. In the case of Croatia, the delay was caused by the very work mode of the public administration and its flaws. In the case of Montenegro and Serbia, it is safe to conclude that that even then the chill in the relationship had an impact on the implementation of the priorities that demanded cooperation between the Republics.

In the area of current payments and movement of capital, during the first year after the signing of the SAA, Bosnia and Herzegovina had a one clear obligation - to adopt the Outline Law on Foreign Currency Operations whose draft was harmonized with Annex 1 of the EEC 88/361/EEC Directive. This law failed to pass the Parliamentary processing, and

PAGE 40

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE V CHAPTER 4 CURRENT PAYMENTS AND MOVEMENT OF CAPITAL

the failure to adopt this law means that regulating the area of foreign currency operations will be the area where BiH is falling behind in fulfilling the Action Plan for SAA implementation.

In the observation of the western Balkan region, Croatia stands out as a true champion in regard to the number of completed activities during the first year after the signing of the SAA in the sphere of movement of capital. In that time period, Croatia had adopted five laws; the sixth law was about to have its second reading in the Parliament, while the seventh was being drafted. Furthermore, the Plan for that time period required that those laws be drafted, but Croatia went a step further, and the laws were created, five of them were adopted and their implementation began immediately. The sixth law was going through the adoption process at the time the report was created. Only the seventh law was following the dynamics set by the Plan. Next to the obligation to create the legal regulation, Croatia also had the assignment to establish a mechanism for regular consultation with the EU in order to facilitate the free movement of capital, which had been achieved within the set deadline.

In Albania, the Central Bank is the institution responsible for the implementation of the obligations from the area of movement of capital and current payments, except for the issues that concern property, where the institution responsible is the Ministry of Agriculture.

Albania has adopted one law and four rulebooks, which was the responsibility of the Central Bank.

Furthermore, two main activities were set as tasks:

- Improve the surveillance of the financial sector
- Further measures to reduce the usage of cash in the economy

These two activities did not have clearly defined deadlines, but in their nature, these are activities that can be performed steadily, and a lot of sub-activities can be implemented within their scope. The EC Report for Albania in this time period states that not a lot had been done pertaining to these two issues, and that further progress is necessary.

One of the main flaws mentioned in the EC report in this area is not removing the obstacles for foreign citizens to buy property, even though the SAA defined that the deadline for removing these obstacles was seven years after the signing of the SAA, so, in the short term, this activity was not a priority for Albania.

The Montenegro National Program for Integration (NPI), in the area of free movement of capital and current payments, contains plans for the adoption of two laws, one of which has been adopted, while the other was in the adoption process at the time the Report was written. Next to those two laws that were planned in the section pertaining to the movement of capital, two other laws were mentioned as well (as a precondition for liberalization of conditions for acquiring property). One of those two laws has been adopted, while the other was sent back by the Parliament for further processing.

It is also interesting to monitor the treatment of the issue of the fight against money laundering in the EC Progress Reports. In the Report for 2007 this area was mentioned within the sphere of movement of capital, while in the Report for 2008, it is not. Further, the Montenegro NPI places the issue of the fight against money laundering in the area of free movement of capital, even though the SAA does not cover this issue there.

In the area of the fight against money laundering, the NPI contained plans for the

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE V CHAPTER 4 CURRENT PAYMENTS AND MOVEMENT OF CAPITAL

adoption of one law, three rulebooks and employment of 22 new employees in the Administration for the Prevention of Money Laundering. The law was passed, but the EC Report stresses the urgency of passing two bylaws in this area and improving the work of the Office for the Prevention and Control of Money Laundering.

In Serbia, the NPI did not not contain the activities in this area within the short-term deadline. However, in the NPI of Serbia, this area also includes the fight against money laundering, even though the SAA itself treats this issue under Article 84 of Title VII – Justice, Freedom and Security. Adoption of one law was planned in this area, but that law was stopped in Parliametary processing and was not adopted within the planned deadline. The NPI also elaborates in detail the administrative capacities, the exisitng ones and those necessery for this activity. Based on the tables presented, the conclusion can be drawn that it was thought that the existing capacities were sufficient for the implementation of the SAA, considering that no new employments were planned in the MF or in the Central Bank during the first year after the signing of the SAA.

In the area of free movement of capital and current payments, the only obligation Macedonia had was the implementation of Article 58 which requires that:

"Parties commit to approve all payments transfers to current account of payment balance between the EU and the Former Yugoslav Republic of Macedonia in freely convertible currency, in accordance with the provisions of Article VIII of the IMF Statute."

This Article did not imply concrete activities within a plan, other than the obligation for the Ministry of Finance to fully implement it. It is important to mention that the first EC Progress Report was made in 2002, and this area was mentioned as the area where the parties will consider the way in which the rules of free movement of capital will be fully implemented.

C

Case Study - Fight against money laundering

Through the National Integration Plans of two countries (Serbia and Montenegro) and EC Progress reports on three countries (Montenegro, Serbia and Croatia), the fight against money laundering is included in the area of free movement of capital.

Title four of the "Aquis Communautaire" elaborates on four freedoms, and within them the freedom of movement of capital. The issue of the fight against money laundering was introduced through the 2005/60/EC Directive on Prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Although these two issues (free movement of capital and the fight against money laundering) are separated in the SAAs of these three countries, the EC Progress Reports, and in two of these states, the National Programs for Integration, place these issues under the same frame – free movement of capital.

At first glance, this connection seems illogical; on the one hand there is a liberalization of the EU internal market, and on the other side is the fight against (in most cases organized) crime; there is a certain connection. under the same conditions applied to BiH citizens, considering the fact that the SAA anticipates that activities in this plan will take place gradually over a six-year period of SAA validation, still there were some significant improvements in this area.

PAGE 41

PAGE **42**

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE V CHAPTER 4 CURRENT PAYMENTS AND MOVEMENT OF CAPITAL

The goal of establishing new, more liberal rules for the movement of capital is definitely commendable. However, the link created here in the EC Reports stresses the need to simultaneously form systems that will secure that these freedoms will not be abused, so that it would not come to the situation where in some candidate countries a lot is done on one side (liberalization) while the other side (survellance and control) is falling behind.

In Bosnia and Herzegovina, these issues have been strictly separated also through the implementation plans for the SAA. This kind of parallel could be useful in BiH as well.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE VI APROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES

PAGE 43

TITLE VI

Aproximation of laws, law enforcement and competition rules

a

General Assessment

The issue of Implementation and enforcement of laws and market competition is one of the crucial elements in the creation of free market conditions. This is directly linked with the four basic values of the EU. Title VI of the SAA is almost identical for all the Western Balkan countries. It deals with Competition, state aid, public procurements, intellectual property laws, and social policies. Moreover, in the European Partnership for BiH in the European standards section, the following requirements are identified:¹⁴

"Competition

- Improve existing anti-trust legislation in line with the requirements of the Stabilisation and Association Agreement and strengthen the administrative capacity of the Competition Council.
- Accelerate preparation in the field of state aid, notably by adopting the necessary legislation, by establishing an operationally independent public state aid monitoring authority and by ensuring the transparency of all aid granted in Bosnia and Herzegovina.

Public procurement

 Ensure that the single public procurement system functions properly and implement public procurement legislation and procedures. Continue developing administrative capacity.

Intellectual property law

 Make the Institute for Intellectual Property fully operational so that it can carry out its tasks effectively and implement and enforce the current legal framework.

COUNCIL DECISION of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina and repealing Decision 2006/55/EC (2008/211/EC) pg. 24

PAGE 44

TITLE VI APROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES

- Prepare an action plan for building the necessary capacity to implement and enforce intellectual property laws, with particular focus on the need to provide specialised training for law enforcement bodies, judges, prosecutors and customs officials.
- Improve cooperation among law enforcement bodies and between all relevant stakeholders with the aim of strengthening enforcement and start developing public awareness campaigns.

Employment and social policies

- Further develop social inclusion and social protection policies.
- Develop mechanisms for social dialogue.
- Make further efforts to improve the situation of persons with disabilities.
- Develop adequate administrative structures and capacity in the field of consumer and health protection.

Education and research

- Implement the state level Law on higher education, paving the way for implementation of the main components of the Bologna process and the Lisbon Recognition Convention.
- Resolve fragmentation of the educational system and the overlap of functions between different levels of organisation. Strengthen policy development and strategic planning to improve the quality of education.
- Take measures to prevent segregation of children along ethnic lines at school.
- Sign and ratify the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression.
- Start designing an integrated research policy.

WTO issues

 Continue the reforms necessary to comply with WTO rules and obligations and continue the work towards achieving WTO accession."



Implementation of the EP and SAA requirements in Western Balkan countries

Due to the extensive scope of title VI in the SAA the focus of comparative assessment will be on four issues: competition, state aid, public procurement, and intellectual property laws. Title VI of the SAA is subject to the Interim agreement which is usually enforced up to three months after the signing of the SAA. This means that all transition deadlines start to flow before the SAA comes into force.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE VI APROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES

PAGE 45

Table 1. shows the comparative view on signing and enforcing SAA and Interim agreement for Western Balkan countries.

Stage/States	Albania	BiH	Croatia	FYROM	Montenegro	Serbia
Signed SAA	June 2006	June 2008	October 2001	April 2001	October 2007	April 2008
Interim Agreement enforced	2007	July 1 st 2008	March 2002	June 2001	2007	200815
SAA comes into force			September 2004	April 2004		
Candidate status achieved			June 2004	December 2005		

Table 2. shows the timing of the adoption of relevant legislation and should be cross viewed with Table 1.

Laws/States	Albania	BiH	Croatia	FYROM	Montenegro	Serbia
Competition	July 2003 ¹⁶	July 2005 ¹⁷	August 2003 ¹⁸	April 2002 ¹⁹	January 2006 ²⁰	September 2005
State aid	April 2005 ²¹	Absent ²²	April 2003 ²³	April 2003 ²⁴	May 2007 ²⁵	July 2009
Public procurements	May 2003 ²⁶	April 2005 ²⁷	2001	1998 ²⁸		
Intellectual property laws	2005	2002	2003			

In April 2008, Serbia therefore decided to start unilaterally the implementation of the Interim Agreement without waiting for its entry into force.

¹⁶ **Albania** adopted in July 28, 2003 a new Law on Protection of Competition, which repealed the initial anti-monopoly law from December 7, 1995.

Replacing the first inadequate Law from 2003, that had only general provisions and without any sanctions defined.

Competition Act -Official Gazette (OG) No. 122/ 2003, which entered into force on 01.08.2003 after it was concluded that the old competition law from 1998 did not correspond to the European requirements

In the Republic of Macedonia (the Former Yugoslav Republic of Macedonia) a Law Against Limiting Competition was adopted in December 1999, and entered into force on 01.04.2000, amended in April and June of 2002

²⁰ Amended in May 2007

Applied as of 2006

²² Under the Interim agreement deadline is July 1st 2010.

²³ State Aid Act adopted on 02.04 2003 and regulation on state aid adopted on 01.08.2003, OG 121/2003

²⁴ Applying as of January 1, 2004

Law on State Aid and Supports Control OJ 26/07 http://www.mf.gov.me/organizacija/odjeljenje-za-pripremu-drzavne-pomoci/87774/168469.html

Law amending the Law "On Public Procurement" no. 7971, dated 26.07.1995.

Public procurement law of BiH, BiH OJ 19/05, amended 2006, 2009, and 2010.

Public procurement Law, OJ 26/98 amended in 2002.

PAGE 46 | COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE VI APROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES

Short term priorities of European partnership for BiH require:

Competition

- Implement state aid legislation and ensure that the state aid monitoring authority functions effectively.
- Produce a comprehensive state aid inventory.

Public procurement

 Ensure that the legal framework for public procurement is compatible with the acquis and that public procurement procedures are implemented properly."²⁹

Competition

In the area of competition policy and law each of the western Balkan countries developed its Competition laws relatively early in the Stabilization and Association Process. Some of them even before signing the SAA, as Albania, BiH, Montenegro and Serbia, while the leaders in the group, Croatia and Macedonia, developed their laws after signing SAA. Nevertheless a number of those countries updated competition laws a few times by 2009. Some of the countries have passed a long and complicated way of legal establishment and institutional strengthening of the national competition authorities, but all of them were established before the expiration of deadlines from the Interim agreement. Although the enforcement record differs from country to country, it is a subject of constant improvement. Yet, it still needs focus on significant cases.

State aid

State aid regulation has been introduced in all Western Balkan countries except in Bosnia and Herzegovina. Again in Albania and Montenegro it was before the interim agreement and in the other countries after the Interim agreement came into force. All the states established independent regulators except for BiH. Some of the regulators are independent agencies, as in Croatia,³⁰ or a semi-independent commission, as in Macedonia³¹, or departments under the ministries of finance, as in Montenegro, or two balanced authorities – an independent Commission and a Department in the Ministry for Economy as in Albania. Some of the countries have been reporting on state aid for a few years, as Croatia, Macedonia, Montenegro, while others started only recently. Bosnia and Herzegovina is not reporting due to the absence of a state aid law which was supposed to be adopted (and an independent institution was supposed to be established by July 1st 2010), according to the Interim agreement.

Public procurement

Public procurement plays a significant role in the economy of each country and is a powerful tool for state and local authorities to encourage economic development. The lack of open and effective competition in awarding governmental contracts is one of the most obvious obstacles to the completion of the single market. Opening up public

²⁹ COUNCIL DECISION of 18 February 2008. pg 29

Agency for the protection of market competition which is a Competition authority.

The control over state aid has been entrusted to the specially established State Aid Commission. The Commission is composed of three members, two appointed by the Ministry of Economy, and one by the Ministry of Finance.

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE VI APROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES

PAGE **47**

procurement to competition is first and foremost a matter of creating incentives for public purchasers, as well as for entities with special or exclusive rights to adopt competitive tendering procedures.

The level of transposition of EU acquis in the field is far from being completed in the past few years. There are more exceptions from the application of the procurement rules and procedures than the corresponding EU Directives permit. All of the Western Balkan countries adopted the necessary laws which are more or less in accordance with EU standards. They also established necessary agencies. However, this matter is subject to constant change from two directions. One is from the EU side – asking for better implementation of EU standards. The other line of change is from the governments, trying to overcome deficiencies that arose from the application of early public procurement laws. Only this year BiH removed privileged treatment for local companies in public procurement. This was one of the short-term priorities in the European partnership for BiH.

Two different systems of establishment apply in the entities, which creates problems for the companies that want to operate throughout the entire territory of BiH, thus putting obstacles In the area of competition policy and law, each of the western Balkan countries developed its Competition laws relatively early in the Stabilization and Association Process. State aid regulation is introduced in all Western Balkan countries except in Bosnia and Herzegovina.

Intellectual property rights

The protection of intellectual property is governed by many international conventions. The World Intellectual Property Organisation (WIPO) and the World Trade Organisation are responsible for implementing numerous international conventions and treaties. As regards the protection of industrial property, attention of the EU is focused on trademarks. The measures adopted are designed to establish a Community trademark and to harmonise laws on national trademarks.

Albania, BiH and Croatia started early harmonization and therefore achieved significant results in legislation, international agreements and awareness, although the enforcement is lagging behind. According to the Croatian National Strategy for the harmonisation of technical legislation, which was adopted in the beginning of 2003, five framework laws, the Act on Technical Requirements for Products and on Conformity Assessment (Official Gazette 158/03), the Standardisation Act (Official Gazette 163/03), the Accreditation Act (Official Gazette 158/03), the Act on Metrology (Official Gazette 163/03) and the General Product Safety Act (Official Gazette 158/03) were passed, setting the legal basis for further harmonisation of Croatian legislation with the New Approach Directives.

Moreover, The State office for standardization and metrology has been reorganized and the new governmental body, the State office for metrology (DZM), and two new public institutions were established: the Croatian Standards Institute (HZN) as the Croatian national standards body and the Croatian Accreditation Agency (HAA) as the Croatian national accreditation service. The governmental decrees on their establishment were issued in October 2004 (Official Gazette (hereinafter: OG) 154/04 and 158/04).³²

The Report of the Albanian Council of Ministers states that "Albania has also ratified a number of important international agreements and conventions in the field of property rights, such as the Hague Agreement on the International Deposit of Industrial Design; the Nice Agreement on the International Classification of Goods and Services; the Madrid Protocol on the International Registration of Trademarks; and the Budapest Treaty on

http://www.westernbalkans.info/htmls/page.php?category=398&target=343&page=3

PAGE 48

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE VI APROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES

International Recognition of the Deposit of Micro-organisms. Adherence to the Geneva Act on Industrial Design, to the Strasbourg Agreement on International Patent Classification, and to the International Convention for the Protection of New Varieties of Plants (UPOV Geneva Act, 1991) planned for 2004, is an important step towards meeting the requirements of the EU in this field. Therefore, a new law on "Industrial Property Rights" is already drafted, being in complete conformity with the EU acquis and also with the TRIPS requirements. A new draft-law on "Author's Rights and Related Rights" in conformity with the EU acquis is also prepared. Both drafts are expected to come into force in the first half of 2005." (Republic of Albania, Council of Ministers: Action Plan for the implementation of European Partnership Priorities, August 2004).

Bosnia and Herzegovina adopted the first laws regulating this area in 2002 and established one Institute for Standardization, Metrology and Intellectual property. Later on it was split into three independent agencies, while the laws have been updated to meet EU standards. This is one of the better examples of the implementation of the Interim agreement in BiH.

The six Western Balkan countries that are participating in the EU integration process have made progress during the last years in the area of intellectual property rights, especially by membership in international organisations and conventions on protection of those rights. The legislative framework has also been set up. However, this framework needs further amendments in order to achieve compliance with the EU rules. Priority should be given to build the administrative capacity of the responsible institutions and to improve the low level of enforcement of intellectual property rights.



Case Study - Importance of the development of a State Aid System in BiH

The development of a State Aid System in BiH is a required part of the process of EU Integration being undertaken in the country, and this is a clear obligation from the EU/BiH Stabilisation and Association Agreement. A BiH State aid system, along similar lines, is also required *de facto* by the CEFTA 2006 agreement. Full Association to the WTO, in turn, will require further regular reporting on industrial subsidies, primarily in the context of the WTO Subsidies and Countervailing Measures Agreement. Accordingly, the international reporting process will have to become a regular annual process for BiH in the near future.

Given the complexity of international requirements in regard to state aid and subsidy regulation, it is important to mention that considerable efforts have been made since early 2006 to prepare the foundations of the BiH State Aid Supervision System. The Ministry for Foreign Trade and Economic Relations has received substantial EU-funded technical assistance in that regard from the Project: "Support for Competition and State Aid in Bosnia and Herzegovina". Thus, by May 2008 progress was made in a number of important areas related to the creation of a BiH State Aid Supervision System. This has included:

- The completion of a Preliminary State Aid Inventory (PSAI) for BiH covering state aid granted by some 100 different institutions across the 14 main levels of government in BiH
- The draft State Aid System Law was prepared by external advisors in cooperation with the working group that was formed by the Ministry for Foreign Trade and

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE VI APROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES

PAGE 49

Economic Relations (MOFTER) to develop final legislative proposals for the introduction of the State Aid system in BiH.

- A Report on the issues and options for BiH in regard to SAA State Aid Mapping requirements was prepared, indicating, inter alia, how this mapping exercise should be completed in future.
- Draft State Aid Annual Report of BiH for the EU.

Finally, beside the fulfillment of international obligations on reporting on state aid, Bosnia and Herzegovina needs a comprehensive insight into the categories, amounts and purposes of state aid that are provided at different layers of government, in order to identify priorities, produce cost benefit analysis of the impact of given state aids, as well to strategically coordinate industrial and development policy of the country, which is by the constitution given in the authority to three levels of government.

Bosnia and Herzegovina fails to meet the requirement to adopt the state aid law and establish an independent regulator on the state level due to the internal political disputes involving state and entity constitutional authorities over the issue. From the experts' point of view, state aid is a foreign trade issue clearly under the constitutional authority of the BiH State institutions as the SAA envisages it, in accordance with EU state aid policy and law.

The Interim (SAA) agreement is in force since 1. 7. 2008. and provisions regarding state aid are subject to the Interim Agreement. Therefore, Bosnia and Herzegovina is facing the situation that on 1.7.2010. it enters into the first official breach of obligation determined by the transition deadline of two years during which BiH was supposed to adopt the state aid law and to establish an independent operative body for state aid at the level of the BiH state.

The situation today is that none of the above-mentioned documents, already prepared, is being taken under consideration nor has the activity on the draft State Aid System Law been finalized, nor has an independent regulator been established. Instead, the Republika Srpska entity has adopted its own entity law on state aid at the end of 2009, (non-complementary to EU provisions) while at the same time opposing the adoption of the law and creating of the institution at the BiH state level.

PAGE 50

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE VI APROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES



Although the implementation and enforcement of laws and market competition is a challenging activity in the creation of free market conditions for transition states, improvements can be seen. This improvement is mostly regarding the legal framework and strengthening of independent national authorities. However, the real impact of the reforms through the enforcement record is yet to be seen, since it is related to the functioning of other institutions and the overall enforcement system.

In the area of competition policy and law, each of the western Balkan countries developed its Competition laws relatively early in the Stabilization and Association Process. State aid regulation is introduced in all Western Balkan countries except in Bosnia and Herzegovina. All of the Western Balkan countries have adopted the necessary laws which are more or less in accordance with EU standards. They have also established the necessary agencies. The six Western Balkan countries that are participating in the EU integration process have made progress during the last years in the area of intellectual property rights, especially by membership in international organisations and conventions on protection of those rights.

Priority should be given to building the administrative capacity of the responsible institutions and to improving the current low level of enforcement in all of these areas.

Finally, Bosnia and Herzegovina fails to meet the requirement to adopt the state aid law and establish an independent regulator on the state level due to the internal political disputes involving state and entity constitutional authorities over the issue. From the experts' point of view, state aid is a foreign trade issue clearly under the constitutional authority of the BiH State institutions as the SAA envisages it, in accordance with EU state aid policy and law.

COMPARATIVE REPORT FOR 2009 (Western Balkans - Bosnia and Herzegovina)

TITLE VII JUSTICE, FREEDOM AND SECURITY

PAGE 51

TITLE VII

Justice, Freedom and Security



General assessment

A fundamental element of the legislative and political transition of the countries from the region and their progress in the process of approximation to the European Union is the establishment of the rule of law, stable, efficient and democratic institutions, the fight against organized crime, corruption and terrorism, and providing for the safety of borders and people's movement regime according to European and international standards in general. What emphasizes the importance and the imperative of assuming and implementing the standards in these areas is the fact that almost identical obligations in this area are, directly or indirectly, contained in the founding documents and relevant conventions of the Council of Europe and the Organization for Security and Co-operation in Europe, as well as in a number of EU documents. In the scope of the process of EU Association, the obligations of the Western Balkan countries in this particular area are contained in Title VII of the Stabilization and Association Agreement (SAA), the document "European Partnership" and the Road Map for the Liberalization of the Visa Regime. Unlike the countries of Eastern and Middle Europe, which have, after the ending of the Cold War, entered strongly into a transition and reform process with clear commitment to rapid inclusion in international structures which, until yesterday, were reserved exclusively for western democracies, most of the Western Balkan countries, in different forms and time periods, were caught up in destructive war making their association with the EU, not only postponed, but significantly more difficult as well. War, economic instability and the nonexistence of efficient institutions made fertile ground for development and strengthening of a number of deviant social phenomena and practices. The rooting out of these phenomena and practices should, among other things, be accomplished precisely as a result of quality implementation of the normative demands and standards of the European Union in the area of Justice, Freedom and Security.

Analyses and reports made by the European Commission during the past few years give a clear indication that almost all of the Western Balkan countries, including Croatia, that got the furthest along in the process of approximation to the EU, chronically suffer from an insufficiently reformed and political-influence-free justice system, corruption at all levels and, in comparison to European standards, insufficiently efficient administration. In addition to the common obligations, fulfilling contractual and other relevant obligations from the area Justice, Freedom and Security in all of the countries in the region has entailed individual problems and difficulties of primarily political but also of a technical nature. Bosnia and Herzegovina, with its legal and political prerequisites and specific qualities, represents the most obvious example of extreme domination of

PAGE 52

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE VII JUSTICE, FREEDOM AND SECURITY

political and legal burdens over technical burdens in the process of obligation fulfilment, not just in the area of Justice, Freedom and Security, but in everything generally implied by the European integration process.



Implementation of the EP and SAA requirements in Western Balkan countries

In the areas that fall under the scope of 'Justice, Freedom and Security', European and Association partnerships for Western Balkan countries impose the necessity to regulate border management according to European demands and standards, to sign and implement the Readmission Agreement, to strengthen institutional capacities and adopt and implement strategic and operative laws and bylaws in the areas of the fight against organized crime, corruption, terrorism, illegal trafficking and drug abuse, as well as implementing appropriate reforms in the areas of administration of justice, visas, asylum and migration. Furthermore, in addition to the obligations of BiH, Serbia, Montenegro and Croatia to cooperate with the Hague Tribunal, other specific individual obligations were defined according to their specific qualities in certain areas.

Analyses and reports made by the European Commission on the topic of the progress of the Western Balkan countries in the European integration process during the past few years give a clear indication that the political elites and the institutions of the majority of the countries in the region (with the exception of Croatia) made most progress in the area of 'Justice, Freedom and Security' not because of the implementation of the SAA and the provisions of its Title VII, or even of the corresponding provisions of the European Partnership document, but by working on the realization of a more concrete, and thus more politically interesting, perspective embodied in the possibility of gaining the visafree regime for their citizens. In some of the countries in the region only the Interim Agreement is in force, and it does not deal with the issues of 'Justice, Freedom and Security'. At the same time, numerous priorities of the European Partnership, especially where Bosnia and Herzegovina is concerned, are conceived in such a manner that they do not sufficiently take into consideration all of its politically and legally sensitive constituents, which have produced various difficulties in their implementation. The Road Map for the Liberalization of the Visa Regime and the Action Plans for its implementation also contain certain obligations the realization of which demands additional political efforts and compromise. However, analyses show that the political elites in the region have rather selectively chosen the realization of the obligations contained in the Road Map and fulfilling the conditions for the placement on the 'white Schengen List,' rather than prying into politically sensitive issues from the European Partnership. In other words, for most of the Western Balkan countries, one can speak of a quality and timely realization of priorities from the European Partnership document in the area Justice, Freedom and Security' only to the extent that these obligations overlap with the obligations from the Road Map for the Liberalization of the Visa Regime, i.e., the action plans for its implementation.

The examples of the countries that were granted the visa-free regime – Serbia, Montenegro and Macedonia - are clear evidence of that. Bosnia and Herzegovina, which is expecting the decision of the visa-free regime to be passed in the next few months for its citizens as well, also confirms this thesis, because the political subjects and the institutions of this country have made the greatest progress in the 'Justice, Freedom and Security' area precisely under the influence of the possibility of making it onto the 'white

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE VII JUSTICE, FREEDOM AND SECURITY

PAGE 53

Schengen List'. Obligations from the Road Map for the Liberalization of the Visa Regime, which had, in the form of priorities under the European Partnership, been waiting for their implementation for several years, have been implemented through ministry conferences, Working Groups and more intense committee and plenary work within the institutions at the state and entity level. From everything that was previously mentioned, it is possible to draw at least two conclusions:

- First, the political elites in most of the Western Balkan countries are committed to the realization of a more concrete, even if fragmented and partial, perspective regarding the European integration process, like the liberalization of the visa regime, than they are to taking significant political risk by trying to solve the sensitive issues contained in the 'European Partnership' document. This is of special relevance in conditions where, under the influence of past political and institutional, and still present economic crisis in the European Union, the general 'European perspective' has not been fully profiled yet;
- Second, achieving progress in the area of 'Justice, Freedom and Security' through implementation of the Road Map for the Liberalization of the Visa Regime, and not through a concrete and concentrated realization of the priorities from the 'European Partnership' document is very limited in time and materials. All further progress of the Western European countries towards the European Union, especially after the 'entire' SAA comes into force, will demand a different modality of political, strategic and operative action, and above all, a different attitude towards the demands from the 'European Partnership' and Title VII of the Stabilization and the Association Agreement.

In the case of Bosnia and Herzegovina, the 'European Partnership' document and the corresponding Action Plan for its implementation contain 34 priorities, or 241 activities, that concern the area of Justice, Freedom and Security. At the time of the creation of this Report, the level of implementation of the Action Plan for realization of the priorities under the 'European Partnership' from the area of 'Justice, Freedom and Security' was at about 60%. With slight differences, a similar number of priorities from the area of Justice, Freedom and Security' can be identified in the European Partnerships of other countries from the region. Bosnia and Herzegovina, however, due to its complicated legal and political structure and distribution of competencies between the state and the entities on one hand, and the discrepancies of the demands of the 'European Partnership' with the constitutional, legal and political assumptions this country rests upon on the other, quite clearly represents a unique regional example of a specific quality of the reasons for the delays in realization of the priorities under the 'European Partnership'. Unlike in BiH, in other countries from the region, the delays in the realization of specific priorities are the result of the absence of technical and material preconditions³³ or political circumstances that do not overstep the reasons for early elections (Croatia and Serbia for example) or a legitimate political fight by the opposition in the Parliament within the boundaries defined in the Constitution or by law (Serbia until changes were made in the Rules of Procedures of the Republic of Serbia National Assembly).

However, the main reason for delay in realization of specific priorities from the area of 'Justice, Freedom and Security' in BiH is in the complicated state structure and in the attempts for the obligations under the European Partnership to be interpreted in a way that suits only specific political subjects.

Especially where it concerns the implementation of normative framework in the areas of border control, visas, asylum and migrations.

PAGE 54 | COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS

Bosnia and Herzegovina)

TITLE VII JUSTICE, FREEDOM AND SECURITY

Those attempts, preconditioned by the intentions of daily politics and specific ideological and national interests, and not by the formal and material meeting of European standards, make the already complicated activities of the BiH institutions aimed towards the implementation of the assumed international obligations, even more difficult and more complicated. On the other hand, the efforts that the BiH institutions and political subjects have made in the process of fulfilment of the obligations under the Road Map or the Liberalization of the Visa Regime, which significantly overlap with the obligations under the 'European Partnership' document, show that it is more than possible, with the proper political will, to find a realistic modality for the realization of the European obligations.³⁴

As is well known, until the ratification and coming into force of the "entire" SAA, the Interim Agreement is in force, but the provisions of the Interim Agreement do not regulate the area of "Justice, Freedom, and Security". Even though, as a rule, after the signing of the SAA, the countries from the region have made the corresponding plans for the implementation of the entire SAA, experience so far shows us that the central, basic documents for the realization of the obligations in the area of Justice, Freedom and Security, in the time period following after the signing of the SAA, are, to a lesser extent, the European Partnership, and a more dominant one, the Road Map for Visa Regime Liberalization, and not the SAA itself. The reasons for this should be sought in the time period necessary for the ratification of the Agreement - or the assumed obligations from this area officially coming into force - as well as in the fact that the European Partnership and the Road Map for Visa Regime Liberalization are documents of a 'more operative' character, and they prescribe somewhat more dynamic deadlines for fulfilment of specific obligations. In other words, officially - legal and contractual circumstances demanded that the countries from the region, after the signing of the SAA, primarily focus on fulfilling the trade and trade-affiliated obligations from the Interim Agreement, while the realization of the general obligations from the area of Justice, Freedom and Security was, to a lesser extent, based on the implementation of the SAA, and far more on the implementation of the priorities and measures from the European Partnership and the Road Map for Visa Regime Liberalization. This, most certainly, does not mean that the mentioned obligations under the SAA are "on hold", but rather that they are indirectly implemented through fulfilling the obligations from the other two documents. Of course, next to the complementarity of these three documents in their contents and material, there is a difference between them in the obligations they contain, and it is manifested in their legal basis and operability level, the moment that they come into force, and the deadline anticipated for their implementation.

Considering that the area of Justice, Freedom and Security is not included in the Interim Agreement, and that the SAA will come into force only after a complicated ratification process by the country from the region, the EU member countries and by the European Parliament which usually lasts for 2-3 years, there are no precise indicators on the level of the implementation of Title VII of the SAA during the first year after the signing of the SAA.³⁵ In the section that follows, we will indicate the achieved results, but also some problems identified by the European Commission in the countries from the region during the first year after the signing of the SAA:

Look at: Case study: "Liberalization of the Visa Regime" in the continuation of the text

As we have already mentioned, experience so far indicates that the countries from the region, after the signing of the SAA and the Interim Agreement, have created Action Plans for the implementation of the "entire" SAA. However, precise quarterly and semi-annual reports on the realization of the aforementioned Action Plans, during the validity period of the Interim Agreement only, primarily relate to the dynamics and the quality of its implementation while the level of implementation of the areas of the SAA not included in the Interim Agreement can better be seen elsewhere, as in the EC Annual Reports, in the reports on the implementation of priorities under the European Partnership and the Road Map for the Visa Regime Liberalization where appropriate.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE VII JUSTICE, FREEDOM AND SECURITY

PAGE 55

Country	Year after the signing of the SAA	The most important achieved results according to the EC assessment	Negative trend
Croatia	2001/2002	- A rudimentary progress achieved in the matter of a better normative and strategic regulation in the area of asylum and fight against corruption, even though, due to lack of political will, the fight against corruption is not being implemented at the higher political and institutional level;	- Insufficient legislative activity of the Government and Parliament which is supposed to lead to the creation of an adequate legislative framework; inefficient implementation of the existing normative framework; - Inadequate institutional and staff capacities; - Delays in justice reform; - Political influence in the work of courts, especially with cases concerning war crimes;
Serbia	2008/2009	- Beginning of the implementation of the Readmission Agreement with the EU; - Starting to issue biometric passports; - Initiated dialogue on visa liberalization; - Law on Control of the State Border adopted and Staff training in this area completed; - Law on foreigners adopted along with the corresponding bylaws;	- Early presidential and parliamentary elections and the obstruction of the opposition in the Parliament have significantly slowed down the legislative activities; - Insufficient institutional capacities of the services for issuing biometric passports and border control; - Delays in the implementation of the Integrated Border Management Strategy; - Delays in the adoption of laws in the area of fight against money laundering and financing terrorism, and fight against drug trafficking; -Delays in the implementation of the reorganization of the police apparatus; - Insufficient institutional capacities for dealing with illegal immigrants;

PAGE 56

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE VII JUSTICE, FREEDOM AND SECURITY

Country

Year after the signing of the SAA

The most important achieved results according to the EC assessment

Negative trend

- A number of strategic and legal acts adopted, such as the Strategy for **Integrated Migration** Management, Law on Prevention of Money Laundering and Financing of Terrorism, National Strategic Response to Drugs and the corresponding Action Plan, Action plan for the implementation of the Programme for the fight against corruption and organized crime 2008-2009, Law on Citizenship, Law on
- Starting to issue biometric passports;

of asylum and migration;

Citizens` Temporary and Permanent Residence, as well as a number of bylaws, especially in the areas

- Beginning of the implementation of the Readmission Agreement with the EU;
- Commenced implementation of the Integrated Border Management Strategy;

- Delays in adoption of the Law on State Border Control, Law on Foreigners, and Law on Protection of Personal Data;
- Delays in creation and implementation of bylaws through which legal solutions could be implemented;
- Inefficient fight against corruption and organized crime;

Montenegro

2007/2008

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE VII JUSTICE, FREEDOM AND SECURITY

Country	Year after the signing of the SAA	The most important achieved results according to the EC assessment	Negative trend
Macedonia	2001/2002	- Adoption of the Law on Prevention of Money Laundering and the corresponding bylaws, and the establishment of Money Laundering Prevention Directorate within the Ministry of Finance; - Government's Committee for Fight against Drug Trafficking established; - Demonstrated strong operative commitment for fight against terrorism according to the principles of the EU and the USA;	- Delays in approximation of legislation in the area of visas with the EU standards; - Inefficient border control, especially towards Albania and Kosovo where the control outside of the official border crossings was nonexistent; - Delays in creation of bylaws through which the legal solutions could be implemented; - Insufficient operative activities in the areas of fight against human trafficking, drug trafficking and smuggling taxable goods; - Delays in the adoption of the new Law on Asylum;
Albania	2006/2007	- Registered operative progress in fight against organized crime; - Partial enhancement of institutional capacities in the area of asylum; - Registered further movements forward towards more efficient implementation of the Readmission Agreement with the EU;	Delays in the adjustment of the Law on Foreigners, Law on Protection of Personal Data and Integrated Border Management Strategy to EU demands; - Delays in the creation and adoption of the corresponding legal solutions in the area of the fight against corruption and requisition of illegally-acquired property; - Slow and inefficient implementation of the existing legislative framework; - Delays in the reorganization of the police apparatus; - Failure to standardize the border crossings according to EU standards;

PAGE **57**

PAGE 58

COMPARATIVE REPORT FOR 2009 [Western Balkans Bosnia and Herzegovina]

TITLE VII JUSTICE, FREEDOM AND SECURITY

Country

Year after the signing of the SAA

The most important achieved results according to the EC assessment

Negative trend

- Continuation of police reform and establishment of new police bodies and making them operational;
- Adopted Migration & Asylum Strategy and Action Plan 2008-2011;
- Established Committee for Integrated Border Management;
- Improved legal solutions that regulate the areas of criminal proceedings, protection of confidential data, conflict of interests in BiH institutions, prevention of money laundering;
- Adopted the Action Plan for Fight Against Human Trafficking 2008 – 2012;
- Improved operative action and patrolling of the Border police in the areas of security sectors;
- Adopted strategic documents in the areas of the fight against corruption, organized crime, prevention of money laundering;
- Adopted BiH Migration Profile and Strategy for the Reintegration of Returnees in accordance with the Readmission Agreement;

- Delays in appointing directors of specific police bodies;
- Delays in the adoption and improvement of system acts in the area of border control. prevention of money laundering, prevention of drug trafficking, witness protection, execution of criminal sanctions, and in approximation of the RS and FBiH legislation in the area of banking and transparent financial transactions;
- Delays in the strengthening of institutional and administrative capacities of SIPA and other police bodies, as well as of the Personal Data Protection Agency;
- Delays in the construction of the Asylum Centre;
- Delays in the establishment of data exchange systems between police agencies in BiH;
- Delays in the adoption of changes and amendments of the BiH Criminal Law, and the Law on the Court of BiH;

BiH

2008/2009

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE VII JUSTICE, FREEDOM AND SECURITY

PAGE 59



Case Study: Liberalization of the Visa Regime for the Western Balkan Countries

Liberalization of the visa regime for travelling into the Schengen space (and then in the other countries of the EU that do not participate in the Schengen project) is the first, direct, concrete benefit that the citizens of this region gain through the approximation of their country to the EU; that is, by the fulfilment of the obligations implied by placement on the 'white Schengen List'. Clear differences can be observed in the treatment of countries from the region where liberalization of the visa regime is concerned. With the exception of Croatia, whose citizens have had visa-free regime for the Schengen space since it got its independence, for all other countries of the region the Road Map for the Liberalization of Visa Regime and the corresponding Action Plan (with over 700 individual activities divided into 4 thematic units) was created. The adoption of a positive resolution on

The predominant foundation for the achievement of progress for most of the countries in the region in the area of 'Justice, Freedom and Security', in the time period immediately following the signing of the SAA, was the realization of the perspective of liberation from the Schengen visa regime

placing of a specific country from the region on the 'white Schengen List' depends on the quality and efficient implementation of these activities). Monitoring of the progress each country has made, in the process of fulfilling the obligations defined in the Road Map, is achieved through various instruments; primarily through a joint body that consists of representatives of the European Commission and of the specific country from the region, the monitoring mission of the European Commission, and its regular Annual Reports on the progress the countries from the region have made in the process of European integration. In the second half of 2008, after they were officially assigned with the Road Map which opened up the dialogue for the liberalization of the visa regime, Serbia, Montenegro, Macedonia, Albania and BiH entered into a process of intense action directed towards fulfilment of all of the relevant obligations which the Road Map implies. A little over a year later, Serbia, Montenegro and Macedonia were successful in completing this task, while for Albania and BiH it was established that they had not fully implemented the assumed obligations, with a conclusion that a positive resolution for these two countries will be made after the completion of the set tasks.

The work process of BiH institutions on the implementation of the obligations contained in the Road Map for the Liberalization of Visa Regime has demonstrated the entire complexity of the legal and political conditions on which the progress of this country in the process of European integration depends. The obligations that proved themselves to be the most demanding to implement are those which were earlier, for example in the scope of the European Partnership, identified as problematic due to their non-conformity with the Constitutional structure of the country and the Constitutional competencies of specific levels of BiH Government, as well as those obligations whose implementation different political subjects tried to use for the purpose of daily politics.³⁷ All of this led to an

The Lisbon Agreement strengthens the position of the European Parliament in this context because, unlike during the pre-Lisbon period, when it only had a consulting role, it is now able to, within the scope of the so-called standard procedure, based on suggestions by the European Commission, be an equal participant along with the Council of Ministers, in the making of the decisions to put a specific country on the white Schengen List.

For example, what led to delays in the implementation of the activities for the finalization of police reform in BiH was objection by the RS institution to solve this issue in a way that would imply transfer of competencies from the entity to the state level. On the other side, what led to serious delays of adoption of the Law on changes and amendments of the BiH Criminal Law were the intentions of some political subjects from the Federation of BiH to incorporate into this legal solution some contents which were not necessary for the fulfilment of the 'European obligation' in question (such as criminal law regulation of negating of decided genocide cases).

PAGE 60 | COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE VII JUSTICE, FREEDOM AND SECURITY

unnecessary waste of time during the adoption of the necessary normative solutions, partly in the Council of Ministers, but mostly in the BiH Parliamentary Assembly. Nevertheless, the liberalization of the visa regime proved that the institutions in BiH, the representatives of different ethnic groups, and the representatives of the government at all levels, are more than capable, even in aggravated circumstances, to find appropriate modalities for completing the defined tasks, regardless of whether they will do it through 'ministry conferences', or Working Groups, or through abandoning disputable political claims that are not directly connected with the content of the 'European obligation' in question. Some of the main reasons why BiH institutions are falling behind in the process of fulfilment of the obligations under the Road Map for Liberalization of the Visa Regime are: legislative procedure being burdened by elements of daily politics, as well as some other technical difficulties such as biometric passport booklets arriving with delay from the printing house in Germany, which is why, when the test phase of biometric passport issuing began in BiH, Serbia, for example, had already issued several hundred thousand passport units. Of course, here we must keep in mind the fact that the establishment and efficient functioning of the system for issuing and protecting biometric travel identification documents is a basic component of Title I of the Road Map - "Document Safety".

At the time this Report was created, the institutions of Bosnia and Herzegovina had fully implemented nearly all of the obligations under the Road Map for the Liberalization of the Visa Regime. In March 2010, the EC Monitoring Teams had spent some time in BiH in order to get an insight in the field on the level of implementation of the defined obligations by BiH institutions. Based on the data gathered by the monitoring teams, and the information received through meetings with the members of the BiH Working Group for the Liberalization of Visa Regime, the EC is making its final report and giving its recommendation for the making of the decision to place BiH on the 'white Schengen List'. According to the latest, and still unofficial announcements, it is expected that the EC Report and the decision on liberation from the Schengen visa regime are to be positive, with the assessment that Bosnia and Herzegovina, in that moment in time, had made more significant progress than Serbia, Montenegro and Macedonia had when the decision to abolish the visa regime for their citizens was made. Furthermore, it is expected that these much-desired recommendations for Bosnia and Herzegovina will be published at the beginning of June 2010, when a Conference, devoted to the progress made by the Western Balkan Countries in the European Integration Process, is scheduled to be held in Sarajevo. This however, according to the unofficial announcements from Brussels, does not mean that the institutions in BiH, in the following time period, should not put in additional efforts in some of the areas such as the fight against corruption and organized crime. If the appropriate recommendation of the EC is made within the announced deadline, the final decision, on placing BiH on the 'white Schengen List', will probably be adopted in the autumn of this year. The European Parliament and its Committees of Internal Affairs, Justice, and Foreign Policy gave strong support for placing BiH and Albania on the 'white Schengen List'. However, we must not lose sight of the fact that the Lisbon procedure on adopting a decision on liberation of a specific country from a visa regime demands a longer period of time than the one that was applied before this EU Founding Document came into force. On the other hand, there were some interesting demands made by certain civil society representatives in BiH, demands directed towards the European institutions, to prolong the making of the decision on the liberation of the visa regime for BiH until after the elections, which will be held at the beginning of October 2010, with the explanation that the existing governing structures in BiH could use this decision on abolishing the visa regime in their pre-election campaigns. In any case, any further denial for BiH citizens to travel freely in the EU, the way the citizens of

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE VII JUSTICE, FREEDOM AND SECURITY

PAGE 61

other countries of the region are able to do, especially if that denial is based on informal insisting on demands not contained in the Road Map³⁸, and that may have been heard from representatives of some EU member countries, would be counterproductive and would additionally impoverish the still very abstract "European Perspective" of Bosnia and Herzegovina. Removing the visa barriers would represent the first real step towards the approximation of the EU to the BiH citizens at the everyday level and would offer them some sort of verification of the 'cost effectiveness' of reform efforts and activities that institutions and political subjects in Bosnia and Herzegovina are taking on themselves with the aforementioned difficulties.

With further progress of BiH in the process of approximation to the EU, the obligations in the area of 'Justice, Freedom and Security' will rapidly become more complicated and the criteria for the assessment of progress achieved will become stricter.

In the case of Albania, in its Reports from May 2009, the EC gave this country the lowest scores where the level of implementation of the conditions from the Road Map for the Liberalization of Visa Regime is concerned. Just as in BiH, in Albania also there were serious delays in issuing the biometric passports within the set deadlines. Albania started issuing biometric passports in April 2009, but the issuing process itself was slow, and citizens showed a greater interest in obtaining the new, electronic ID cards they needed to participate in the elections announced for the end of June. Next to document safety, the central problem identified by the EC had to do with poor border and migration control, and the unsatisfactory situation concerning the issues of public order and safety, foreign affairs and the implementation of the assumed international obligations and conditions in the area of protection of human rights. Perhaps the problem that is of the greatest significance for the citizens of Albania is the fact that, according to the latest assessments from Brussels, Albania is still seriously behind in the realization of its obligations in the process of the liberalization of visa regime.

Nevertheless, we must not lose sight of the fact that the common migration and safety "buckle" for Albania, Macedonia, Montenegro and Serbia are Kosovo and Metohija with which the dialogue on the liberalization of the visa regime has not yet even started, nor has a separate Road Map been created for it. The decision to include Serbia on the 'white Schengen List' does not include Kosovo and Metohija, whose citizens, regardless of their nationality, cannot apply for or get the biometric passport of the Republic of Serbia. Even though the European Parliament has adopted the political recommendations along that line, the EC still has not reached a decision to open the dialogue on visa liberalization with Kosovo and Metohija. However, the interim Kosovo institutions decided to make a document on their own, a document that would correspond to the Road Map made for the countries in the region, and to take action in regard to its implementation.

In the end, in some political circles in the EU (a small number of them), lately there has emerged a fear of opening the EU borders to Albanian citizens. This fear is the result of the attempt of abuse of the visa free regime by the Albanian population that live in the south of Serbia and in Macedonia. A large number has been registered of the individuals from these areas who have tried to use the visa free movement in the European Union to secure political asylum and permanent residence in the EU.

One of such demands which could be heard in informal communication with Brussels, which was not included in the Road Map, was resolving the status of refugees from Kosovo and Metohija. During 2007, BiH abolished temporary reception for several hundreds of refugees from Kosovo and Metohija, their appeal for gaining asylum was denied, but those individuals were never exiled from BiH territory. The Service for Foreigners Affairs is identifying the number of people in question, because there is an estimate that the majority of them had already left BiH. The EC is insisting on resolving the status of these individuals according to BiH legislation, without special demands from Brussels about how this issue should be resolved.

PAGE 62

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINAL

JUSTICE, FREEDOM AND SECURITY



Commentary

The predominant foundation for the achievement of progress for most of the countries in the region in the area of 'Justice, Freedom and Security', in the time period immediately following the signing of the SAA, was the realization of the perspective of liberation from the Schengen visa regime; that is, the Road Map for Liberalization of the Visa Regime, and to a smaller extent, the European Partnership, and not the Stabilization and Association Agreement per se.

The political burdening of the generally complicated legislative and implementation process is the most serious problem BiH is facing in the implementation of its obligations in the process of approximation to the EU, including the area of 'Justice, Freedom and Security'. The activities that the state and entity institutions have managed to implement successfully in a relatively short time period, within the context of fulfilling the conditions from the Road Map for the Liberalization of the Visa Regime, give evidence that, with proper political will, and quality coordination of the work of the different levels of Government, BiH, in its efficiency, does not have to fall behind the other countries from the region that have a far simpler legal and political structure.

With further progress of BiH in the process of approximation to the EU, the obligations in the area of 'Justice, Freedom and Security' will rapidly become more complicated and the criteria for the assessment of progress achieved will become stricter. Bosnia and Herzegovina, like the majority of the other countries from the region, suffers from insufficient institutional capacities through which the necessary system and strategic documents should be implemented in practice and through which the gap between the legislative and the implementation level of the 'European obligation' fulfilment should be bridged, which exists in almost all of the areas implied under the Title 'Justice, Freedom and Security'.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE VIII COOPERATION POLICIES PAGE 63

TITLE VIII

Cooperation Policies



General assessment

A general conclusion can be drawn from the analysis of the available reports made by the government agencies of the countries that entered into this analysis, as well as from the reports made by the European Commission on the progress achieved by the Western Balkan countries in 2005 in the area of Cooperation Policies, that during a year and a half from the signing of the European Partnership, these countries have made uneven progress in the realization of the assumed obligations. All of these countries have, more or less, encountered standstills in the implementation of the priorities.

During the mentioned time period, Macedonia faced a significant standstill in the implementation of obligations under the European Partnership in the area of Cooperation Policies, even though, at the moment of the signing of the European

A general conclusion can be drawn that the Western Balkan countries, a year after the signing of the European Partnership, have made uneven progress in the realization of the assumed obligations. All of these countries have, more or less, experienced standstills in the implementation of the set priorities.

Partnership, it had already been in its pre-accession negotiations with the EU for three years. Here, it appears as though the approximation of the legislation with the acquis and the adoption of the corresponding strategic documents is the easier part of the job, compared with their implementation and enforcement in practice. Therefore, it is not surprising that, for example, despite the adoption of the new Labour Relations Act and the National Employment Action Plan, or the Employment Agencies reform, no significant progress was made in the areas of labour and employment. Even though supporting legislation was adopted in the areas of internal market, technical norms and standards, public administration, energy, telecommunications and social policy, the institutional capacity for their clear application in practice is still lacking. Generally speaking, there is an evident lack of material and human capacities that would provide for faster adoption and implementation of the reforms.

In Croatia, there is a similar situation. Even though much progress was achieved in the approximation of the legislation with the acquis, establishment and strengthening of the institutional capacities and legal structures, everything has been moving at a noticeably slow pace.

Albania is putting significant effort into fulfilling the assumed obligations from the Cooperation Policies during the first year after the signing of the European Partnership. PAGE 64

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (Western Balkans - Bosnia and Herzegovina)

TITLE VIII COOPERATION POLICIES

It has secured macroeconomic stability, introduced market oriented reforms, intensified the process of privatization and liberalization of the telecommunications market, sped up the process of adopting new legislation in conformity with the acquis, transposed 57% of the European standards (EN) into national legislation and implemented several key strategic documents where special emphasis needs to be placed on the Energy Strategy. However, it failed to implement key reforms in the areas of labour, employment, social cohesion and social protection, public administration and environment.

The implementation process of the obligations under the European Partnership was a challenge for the state community of Serbia and Montenegro, which, at the moment of the signing of the European Partnership, was one state. Even though significant progress was made in the realization of the short term priorities, the basic problems they faced were the following: insufficient effort for the adoption of legislation in conformity with the acquis, absence of administrative capacities for their implementation and insufficient level of cooperation between the state community and the republics, caused by a latent obstruction by Montenegro that was preparing itself to exit the state community. Like all the other Western Balkan countries, it has managed to maintain its macroeconomic stability, but reform efforts directed towards restructuring and privatization of companies have had very little effect, as is also the case for the establishment of a stable functioning of the property and real estate market. A number of laws were adopted in the areas of agriculture, transport, energy, telecommunications and media, but their implementation has been slow due to the nonexistent and/or insufficient institutional capacities.

Bosnia and Herzegovina is falling far behind all the rest in fulfilment of the assumed obligations in the area of Cooperation Policies. Unlike the other countries of the region where the reform processes, at least concerning the legislation approximation to the legal heritage of the EU is faster and more efficient, in Bosnia and Herzegovina there is an evident absence of political will to adopt the necessary laws as well as to create and strengthen the corresponding mechanisms necessary for their implementation. This standstill is evident in almost all the areas covered by the title Cooperation Policies: free movement of people, goods, and services, taxes and customs, social policies, industry, agriculture, environment. A (small) number of activities have been implemented in the areas of transport policy, public administration, energy, statistics and financial control.



Implementation of the EP and SAA requirements in Western Balkan countries

Based on the available reports made by the government agencies and the European Commission on the progress achieved in the area of Cooperation Policy, it is possible to draw a conclusion that these countries have managed to achieve the set goals to a partial and varied extent. Here, it is important to mention that the political climate, that is the constellation of political forces and relations in the country, appears to be a factor of crucial importance for success of the implementation of the assumed obligations.

That the political factor is not only key, but also crucial as well, is seen in the example of Macedonia. In this country, after the signing of the SAA, some significant crises emerged that pushed the process of European integration into the sidelines. What speaks to this fact is the information that one year after the signing of the SAA, not a single new "European" law was adopted in Macedonia ("Annual Reports on the Work of the Macedonian Parliament 2002-2006 available at www.sobranie.mk). One year after the

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE VIII COOPERATION POLICIES

PAGE 65

signing of the SAA, the legislative framework of Macedonia was still based on the legislation of the former Socialist Federal Republic of Yugoslavia (not in conformity with the EU), and it was also falling behind in adopting some of the necessary strategic documents in the areas of internal market and trade, intellectual property and sector policies (SME, agriculture, environment, transport, etc...). Small movements forward will happen only after the resolution of the crises through finding a compromise on the constitution of the state itself and a way of dealing with the ethno-national conflicts between Macedonians and Albanians.

This initial thesis is confirmed by the case of Serbia and Montenegro. While they were still in a single state, the Progress Reports on implementing the priorities under the European Partnership pointed to an uneven and aggravated process of fulfilment of the assumed obligations. Silent blocking of the common institutions by Montenegro, which was preparing grounds to leave the common state, was limiting and slowing down the process of progression. This can particularly be seen in the area of Cooperation Policies where, for the majority of the reform processes, there were divided competencies between the Republics (Serbia and Montenegro) and the

It is important to mention that the political climate, that is, the constellation of political forces and relations in the country, appears to be a factor of crucial importance for success of implementation of the assumed obligations. In the majority of the other countries, the reform processes have picked up a strong pace from the moment either all of the internal political conflicts were resolved (as in the example of Serbia and Montenegro after the separation) or after the leading political elites turned their, up until that point, declarative commitment for joining the EU into real and concrete efforts to fulfil the set conditions (as it was in the case of Croatia).

common state. There was also a need for better coordination, compromise and acceptance of specific solutions. Complicated political structure and several levels of government, where it was necessary to adjust and implement the reforms, were hindering this process and were making it more difficult. After the political crisis was solved, both of these countries, as independent states, demonstrated strong reform impulses, and this can best be seen through comparison of the degree of the fulfilment of the obligations assumed from the SAA. This particularly concerns Montenegro, where the process of legislation approximation to the legal heritage of the EU and adopting new legal and other regulations has significantly sped up, and where institutional and administrative capacities have been developed and strengthened through the establishment of new institutions and/or their staffing and material strengthening. In the area of Cooperation Policies, both countries have achieved significant progress by adopting legislation in the areas of: transport, consumer protection, internal market, customs and taxes, employment, energy, agriculture and rural development and statistics. A substantial portion of these activities was implemented; activities directed towards enhancing administrative capacities in the areas of key importance for the implementation of the SAA.

Comparing to the other Western Balkan countries, only Albania and Bosnia and Herzegovina show an extremely slow pace of reforms during the first year after the signing of the SAA. Thus, in Albania, some progress was achieved in fulfilment of the obligations under the SAA only in the areas of transport and statistics, while all of the other areas have been evaluated as areas with "zero or minimal progress" (like free movement of people, services, and capital; agriculture and rural development; information society and the media), and areas with "some progress", like customs and taxes, public administration, the Law on Intellectual Property, employment, education, environment, energy, and small and medium enterprises.

In the EC Report titled "Enlargement Strategy and Main Challenges 2009-2010," it is pointed out how "Bosnia and Herzegovina has made limited progress in aligning its

PAGE 66

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE VIII COOPERATION POLICIES

legislation and policies with European standards." Some progress has been made in areas such as transport, customs, taxation, education and culture. Particular efforts remain necessary as regards movement of goods, persons and services, social and employment policies, state aid, energy and environment, agriculture and industry. In addition to failing to adopt the corresponding normative acts, there is also the problem of insufficient and/or nonexistent administrative capacities necessary to achieve a strong track record of SAA implementation.



Case Study - The importance of efficient legislative process

For more meaningful progress in the reform process, it is extremely important to have a fast and efficient legislative process that is to serve as a basis for further reform efforts. Therefore it is understandable that the majority of the assumed obligations under the SAA and the priorities of the European Partnership in the area of Cooperation Policies have to do with adopting laws and strategic documents in various areas. In that sense, the level of obligation fulfilment - that is, the number of adopted laws - can serve as one of the indicators of how successful the reforms have been in specific countries. That is why it is interesting to make a comparison of data for each of the countries separately.³⁹

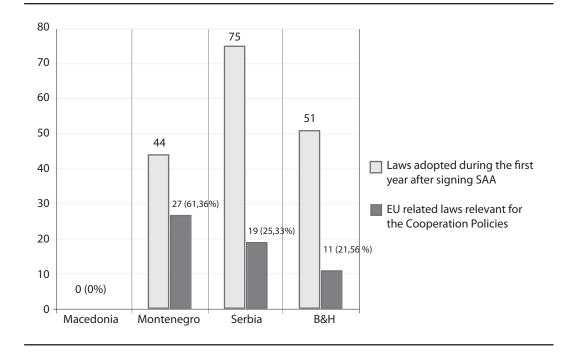


Table shows the number of adopted laws during first year after signing SAA (blue) and laws related to the area of Cooperation Policies (red) in Macedonia, Montenegro, Serbia and Bosnia and Herzegovina.

Due to the fact that in the moment of the making of this Report, we were not able to get the necessary information on the adopted legislation in Croatia for the time period October 2001 – October 2002, and in Albania for the time period June 2006 - June 2007, the following chart only contains the data for Macedonia, Montenegro, Serbia and Bosnia and Herzegovina.

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE VIII COOPERATION POLICIES

PAGE **67**

The data indicates that, with the exception of Macedonia, where the political crisis and a latent armed conflict caused the parliamentary proceedings to be diverted from the European integration towards finding a peaceful solution, Bosnia and Herzegovina shows a far lower percentage/number of adopted new European laws during the first year after the signing of the SAA. Keeping this fact in mind, it is interesting to observe the process of adopting legal regulations in the countries that have signed the SAA last: Serbia and Bosnia and Herzegovina.

According to the First Annual Report made by the Government of the Republic of Serbia on the implementation of the National Program of European Integration, 29% of the Action Plan has been achieved, with 26 out of the planned 89 regulations adopted. The Government of the Republic of Serbia approved 49 of the planned 64 laws, and the National Assembly, as a legislative body adopted 17 of them. Compared to earlier years, when the success of the legislative power was measured by the number of adopted laws,

Contrary to the sped-up reform process that Croatia, Montenegro and Serbia have achieved in the area of Cooperation Policies in the legislative and institutional segment, Bosnia and Herzegovina, a year after the signing of the SAA, along with Macedonia and Albania, has ranked itself among the countries that have not reached a satisfactory level in the fulfilment of the planned obligations.

in the time period 2003-2007, the highest rate of success was 24%, while in 2008 it was 29%. The Ministries that worked the most for the implementation of the mentioned activities are the Ministry of Finance, Ministry of Agriculture, Forestry and Water Management and the Ministry of Environment and Spatial Planning.

In contrast to the Republic of Serbia, the legislative activity in BiH is very sluggish. For example, during the first nine months of 2009, the BiH Council of Ministers approved 42 laws, out of which only 15 were adopted in the parliamentary processing. Only 18 of those 42 laws were new laws. In the other cases it was only a matter of changes and amendments of existing laws. It is evident that this includes only a small number of the so-called European laws.

In the areas of the Cooperation Policies for the time period June 2008 – June 2009, only 15 laws were adopted by the BiH Parliamentary Assembly that were in conformity with the Acquis Communitaire. The information that is of special importance is that a certain number of laws that were prepared in the Council of Ministers failed to get parliamentary approval: 12 European laws relevant for the area of Cooperation Policies failed to get the approval at the BiH Parliamentary Assembly; they were refused through the mechanism of entity voting; most of them being blocked by the Representatives from the RS.⁴⁰

Unlike the clearly blocked legislative process in BiH, in Serbia, according to the Government's Report, 79% of the National Program of European Integration from July 2008 to December 2009 has been completed, because out of the planned 149 laws, 109 were adopted (75% of the laws) while out of the planned 199 bylaws, 164 were adopted (82%). This huge increase in the fulfilment of the national plan in the second half of 2009 is the result of a more responsible attitude of the institutions/ministries towards their obligations ("they plan less, but try to fulfil all that is planned") on one side, and a more responsible work of the National Assembly, after the Rulebook on Work has been changed, on the other, which provides for a faster legislative activity. A direct result of this can be seen in the information that out of 113 bills sent to parliamentary processing, 109 were adopted (96%)

Those were the following bills: Bill on Public Procurements, Bill on Garantee Funds, Bill on the Framework of Foreign Currency Policy in BiH, Bill on Financial Leasing, Bill on Changes and Amendments of the Law on Establishment of the Export Credit Agency of BiH, Bill on Public Roads, Bill on the Agency for the Development of the Information Society, Bill on Transport of Hazardous Materials, Bill on BiH Post Offices, Bill on Internal and Naval Navigation, Outline Law on Secondary Professional Education and Training in BiH, and the Bill on the Protection of Distribution Plans for Integrated Circuits.

PAGE 68

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

TITLE VIII COOPERATION POLICIES



Commentary

This analysis shows that the Western Balkan countries, during the first year after the signing of the SAA and the European Partnership have achieved different results concerning the progress achieved in reform processes in the area of Cooperation Policies. It is evident that the pace of the reforms was not properly harmonized with the adopted national programs for the implementation of the assumed obligations. This can be seen in greater or lesser deviations in the implementation of the predicted activities in the reports of national and European structures in charge of monitoring the integration process. In this regard, Bosnia and Herzegovina is no exception.

However, it is important to point out the fact that, in the majority of the other countries, the reform processes have picked up a strong pace from the moment either all of the internal political conflicts were resolved, (as in the example of Serbia and Montenegro after the separation) or after the leading political elites turned their, up until that point, declarative commitment for joining the EU into real and concrete efforts to fulfil the set conditions (as it was in the case of Croatia).

The majority of the activities under the SAA and the EP concerns the approximation of legislation with the legal heritage of the EU and establishment and/or strengthening of institutional capacities (in staff and materials) for practical implementation of the reforms. Contrary to the sped-up reform process these countries have shown in the legislative and institutional segment, Bosnia and Herzegovina, a year after the signing of the SAA, along with Macedonia and Albania, has ranked itself among the countries that have not reached a satisfactory level in fulfilment of the planned obligations. What is especially humiliating is the fact that the work of the key institution in the reform process - the BiH Parliamentary Assembly – has been blocked and paralysed for political reasons, as was discussed in the previously presented data. This has alarming consequences for the areas regulated by Cooperation Policies, in view of the fact that there is no constitutional competence at the state level, or if there is, it is very limited.

Having in mind all the dissonant and conflicting ideas of the (ethno) political elites on the manner in which the assumed obligations can be implemented, the limited competences of the state relative to the entities in the area of Cooperation Policies, the complicated political structure determined by the four levels of government, and sluggish and unmotivated administration at all levels, from the state to municipal level, there is no denying that such a result was to be expected.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

TITLE IX FINANCIAL COOPERATION PAGE 69

TITLE IX

Financial Cooperation



General assessment

Title IX of the SAA deals with the financial cooperation between the countries which are going through the process of stabilization and association to the EU. The assistance provided by the EC is tightly bound to the priorities of the European Partnership. It is also dependent on the conditions of the Stabilization and Association Process, where special emphasis is placed on the implementation of reform processes. This assistance is designed for meeting the identified needs and agreed priorities.

The European Union provides assistance through multiannual programs and packages. The assistance program through which BiH and other countries from the region receive the support is the IPA (Instrument of Preliminary Assistance) which, in the defined areas, follows the priorities defined through the European Partnership, the annual Progress Report assessments and the SAA.

One of the main differences between the countries in the region in this area is that in the SAAs of the countries which have signed it before the European Partnership came to life, its priorities are not mentioned in the area of financial cooperation.

Another big difference is the way these funds are managed. Assistance programs are implemented in two ways. The first is the centralized implementation system, where all the decisions on procurement, contracting and payments are made by the European Commission. The second is the decentralized implementation system (DIS) where the institutions in the beneficiary countries are directly in charge of the procurement, contracting and payments. As for the countries in the region, the EC has transferred the authorizations and competencies for most of the assistance programs to its diplomatic representative body in specific countries (European Commission Delegations). This arrangement still implies the centralized implementation system, but that system is dispersed.

While the CARDS Program, which was being implemented at the time when some of the countries in the region were in the process of signing the SAA, was implemented through a centralized system, one of the goals of the IPA Program is to transfer the responsibility for managing the assistance funds to the beneficiary country through establishment and strengthening of the DIS, which is most often established within the Ministry of Finance. In Bosnia and Herzegovina, DIS is currently being established within the BiH Ministry of Finance and Treasury.

PAGE 70

COMPARATIVE REPORT FOR 2009 [WESTERN BALKANS BOSNIA AND HERZEGOVINA]

TITLE IX FINANCIAL COOPERATION



Implementation of the EP and SAA requirements in Western Balkan countries

With regard to providing financial assistance, the European Partnership requires development of procedures and administrative capacities that will ensure an efficient protection of the financial interests of the EU in providing that assistance, while the *Multi-Annual Indicative Planning Document* (MIPD) establishes a general framework for assistance provision. As for the financial assistance provision, special conditions are specified in individual annual programs. In order to make this assistance operational, BiH and the EU signed a Financing Agreement. The European Partnership provides Bosnia and Herzegovina an access to the funds of regional and horizontal programs.

The European Partnerships from 2004 did not have any priorities that needed to be implemented in the area of financing.

It can be said here that the assistance program for each of the countries that signed the European Partnership was definitely guided by the priorities set by the European Partnership. However, they did not include the financial aid, nor did they set the priorities in this area.

Title IX of the SAA deals with the financial cooperation between the countries which are going through the process of stabilization and association to the EU. The assistance provided by the EC is tightly bound to the priorities of the European Partnership. It is also dependent on the conditions of the Stabilization and Association Process, where special emphasis is placed on the implementation of reform processes. This assistance is designed for meeting identified needs and agreed priorities.

At the time when the potential candidate states from the region were signing the SAA, two assistance programs were in force; the CARDS Program during the first half of the decade and the IPA Program at the end of this decade.

The main goal of the IPA Program is providing assistance to the candidate states, as well as to potential candidate states, which is aimed towards harmonization with the regulations of the EU, establishment of institutions, promoting regional and cross-border cooperation, civil society development; as well as assistance aimed towards the preparation for the usage of structural funds.



Case study - EU financial assistance during the first year after the signing of the SAA

Table 1 shows the amounts given to potential candidate states through the assistance programs during the first year after the signing of the SAA. One can see a big discrepancy between the amounts, from the highest amount that Serbia got, to the lowest amount that was assigned to Montenegro. Bosnia and Herzegovina is in second place in regard to the extent of assistance received, with 89.1 million EUROS.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINAL

> TITLE IX FINANCIAL COOPERATION

Table 1 – Amounts given through the assistance programs during the first year after the signing of the SAA

State	Amount (in millions of EUROS) Year	Program
BiH	89.1	2009	IPA
Croatia	59	2002	CARDS
Montenegro	32.6	2008	IPA
Serbia	190.9	2008	IPA
Albania	61	2007	IPA
FYROM	56.2	2001	CARDS

The only two states that had any activities planned in this area were the two states that started the stabilization and the association process first - Macedonia and Croatia. These two countries had, within the plans for the implementation of the SAA, measures regarding financial cooperation. However, those measures were generalized and they mainly repeat the provisions of the SAA in this area and appoint the institution responsible for the implementation and cooperation in the preparation of the financing program, as well as for working together with the EC on the next CARDS program for that particular state. Those activities have been implemented.



C Commentary

The EU financial assistance requires development of procedures and administrative capacities that will ensure an efficient protection of the financial interests of the EU in providing that assistance. Moreover, it requires meaningful projects that would be positively assessed in order to use resources which are provided. The introduction Decentralised Implementation System - DIS in future will require development of additional institutional and human capacities in Bosnia and Herzegovina. The amounts provided are conditional involving development of clear policies, strategic planning, structural priorities and transparency.

PAGE 71

PAGE 72

MONITORING OF THE BIH EUROPEAN INTEGRATION PROCESSES

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA

Conclusion

The Western Balkan countries, during the first year of the implementation of the SAA and the Interim Agreement have made uneven progress, primarily due to the fact that their starting positions were different. Not all of them could have put equal commitment to the European road, because in some countries, like BiH and Serbia, the internal political instability (in Serbia because of Kosovo, and in BiH because of the disputes on competences of state institutions) were slowing down the pace. Comparative analysis shows that the biggest progress was achieved in the countries that had stabile government, stabile majority in the Parliament and a functional political system. Macedonia and Croatia had opened the negotiations, Serbia and Montenegro had applied for candidate status, while BiH and Albania were the furthest behind with fulfilling the obligations under the SAA and the European Partnership. The Western Balkans failed to accept the political criteria and general principles that the EU rests upon. Even the countries that have been the most advanced on the European road, like Croatia, have problems in fulfilling the general principles. The common denominator of weakness for all of these countries is the stand-still with regard to human rights, the fight against corruption, functionality of the justice department and bilateral cooperation in the region.

The Western Balkan EU integration process has, for a long time, been followed by the attempts of the political elites to relativize the priorities of the European Partnership and to create tactical advantage with 'sensitive' political issues. On the other hand, the influence of the European road, and all of the corresponding conditions of the SAA and the European Partnership on speeding up of the reforms, can be almost mathematically measured. All of the countries, with the exception of Bosnia and Herzegovina, have made significant corrections to their Constitution in order to adapt to the demands of the EU. In all of the countries that have entered into this analysis, the role of Parliament in the domain of EU integration has increased. Political manoeuvrings are getting weaker, and the European perspective is becoming an imperative, especially after the first wave of visa liberalization. In Serbia, Montenegro and Macedonia, the Euro-scepticism has dropped, while the support for the European road and painful reforms that the governments need to implement has increased by 20% in average.

This success is being tested every day, especially in the field of open issues of regional cooperation where, unfortunately, only partial success has been achieved. The economic alignment can be seen as the exception to this gloomy conclusion, especially CEFTA as a very useful project of the Western Balkan economic coordination. The foreign trade balance of each of the countries proves that the best trade partners are precisely the countries of the region, the closest neighbours. The Regional Cooperation Council (RCC) is another positive example of encouraging social, economic and infrastructural cohesion of the region. Bosnia and Herzegovina must make additional efforts in order to catch up with the dynamics of the region in fulfilling the obligations from the area of free movement of goods and capital, especially concerning issues that benefit local manufacturers oriented towards export. The entire region, except for Albania and Macedonia, where the European Partnership did not set these conditions, is falling behind with the obligation fulfilment of improving the legal framework in fight against money laundering. Croatia is an absolute champion in the number of achieved reforms in the domain of movement of capital, and together with Serbia it forms a regional bearing pole in the area of transport and communications. There are also a number of specific reforms and obligations where BiH is in a position similar to other countries in the

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

region. This concerns consolidation and privatization of the banking sector, and surveillance of the same, where a lot of work has been done, considering that in the case of BiH, due to political blockages, there is still no surveillance of the banking sector at the state level. The process of conducting reforms in the area of air traffic shows that BiH has the necessary capacity to be the leader in the region when there is a political will for it.

All the countries in Western Balkans developed their competition laws and authorities early in the SA process. This was followed by the introduction of state aid legislation and authorities for state aid. However, Bosnia and Herzegovina still did not adopt the State aid law and did not establish the independent state aid regulator although the transitional deadline from the Interim agreement is July 1st 2010.

Almost all of the Western Balkan countries, including Croatia, that got the furthest along in the process of approximation to the EU, chronically suffer from an insufficiently reformed and political-influence-free justice system, corruption at all levels and, in comparison to European standards, insufficiently efficient administration. In addition to the common obligations, fulfilling contractual and other relevant obligations from the area Justice, Freedom and Security in all of the countries in the region has entailed individual problems and difficulties of primarily political but also of a technical nature.

Bosnia and Herzegovina is falling far behind all the rest in fulfilment of the assumed obligations in the area of Cooperation Policies. Unlike the other countries of the region where the reform processes, at least concerning the legislation approximation to the legal heritage of the EU is faster and more efficient, in Bosnia and Herzegovina there is an evident absence of political will to adopt the necessary laws as well as to create and strengthen the corresponding mechanisms necessary for their implementation. This standstill is evident in almost all the areas covered by the title Cooperation Policies: free movement of people, goods, and services, taxes and customs, social policies, industry, agriculture and environment. A (small) number of activities have been implemented in the areas of transport policy, public administration, energy, statistics and financial control.

As for the financial cooperation between the countries which are going through the process of stabilization and association to the EU, the assistance provided by the EC is tightly bound to the priorities of the European Partnership. It is also dependent on the conditions of the Stabilization and Association Process, where special emphasis is placed on the implementation of reform processes. The only two states that had any activities planned in this area were the two states that started the stabilization and the association process first – Macedonia and Croatia.

Therefore, there is some progress, but it is very uneven. Regional balance in the approximation to the EU is very important, because only a balanced approach can provide long term stability. This is a lesson we all must learn equally, the Western Balkan countries and the EU. The EU needs to start thinking about new more innovative and balanced concepts of European Partnership in Western Balkan.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 [WESTERN BALKANS BOSNIA AND HERZEGOVINA]

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE 75

SUMMARY OF THE FOCUS GROUP FINDINGS

I. INTRODUCTION

The Foreign Policy Initiative of Bosnia and Herzegovina (FPI BH) has, within the realization of the Project "Monitoring of the BiH European Integration Processes" started making a Comparative Report on the process of European integration of Bosnia and Herzegovina compared to the other countries in the region. This component included organizing six focus groups where the citizens, businessmen and civil servants of Bosnia and Herzegovina would give their opinions on a series of questions through which we were trying to evaluate their point of view regarding the European integration of the countries from the region. The research was done during the time period October-November 2009 at different locations in Bosnia and Herzegovina: Mostar, Zenica, Doboj, Brčko and Sarajevo.

The Report was made based on the analysis of the focus groups' transcripts. The groups were audio recorded, and during the making of the focus group research, the moderator was taking notes as well. The recordings have been reviewed and transcribed, and the Report you have before you is the result of that work.

Focus group, as a method, has some limitations that need to be considered. The main limitation is that it is a method which, in its essence, is very descriptive and illustrative. It does not provide the general overview of the researched group. Focus groups create an image of the topic that is being researched and give a clear indication where to focus attention in the future. Focus groups do not provide the absolutely correct answers, and this must be taken into consideration as well.

Focus groups that were conducted during this research provided us with an abundance of useful information on topics that were being researched, and although they do not provide us with a statistical reliability, they do provide us with important indicators from which, for the purpose of this research, we point out the main findings.

PAGE 76

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS

SUMMARY OF THE FOCUS GROUP FINDINGS

II. INTEGRATION OF THE ENTIRE REGION INTO THE EU OR PRIOR RESOLUTION OF HISTORICAL DISPUTES?

BOSNIA AND HERZEGOVINAL

It is the opinion of the majority of the focus group participants that the regional problems, in the long run, can be resolved only by all of the countries in the region joining the EU, without previously solving the disputes they have among themselves. Those who suggested this kind of solution support the assumption that by joining the EU all of the problems that now seem big will become marginalized or will entirely disappear.

"It is my opinion that the EU should let all of these states join in one package, and I am certain that these issues would no longer even come up. They would simply disappear, it would happen naturally, and I am sure that it would happen even in the case of the countries of former Yugoslavia if they were all to be integrated into the EU." Doboj

Some participants even pointed out that the EU, while making its decisions about the Balkans, should keep in mind that the recent Balkan history had, on numerous occasions, seemed to be dangerously walking on the brink of an abyss, and that the walls created during this time are going to be hard to break, unless the entire region becomes a part of the European mentality. The EU needs to be aware of the fact that if it keeps insisting upon all of the disputes between the Balkan countries being resolved before it opens its doors to them, there will be a risk of new and even bigger antagonisms appearing which can, between some of the states, turn into "games without borders". What is quite striking is that for all of the participants who supported the need to deal with the problems and resolve the open issues first, the issues of geographic boundaries seemed to be the most important thing, while punishing war criminals was not even mentioned.

III. GENERAL FINDINGS

From the ample reports made during the individual focus groups, we extracted the general findings which came from the overall discussion on questions that the participants answered:

There seems to be a common opinion amongst all of the focus group participants that those responsible for the fact that BiH is late in the process of European integrations, when compared with the other countries, should be sought exclusively within the boundaries of BiH. In public, there is a clear understanding that the conditions of European integration are purely technical and are equal for all of the countries. According to that, despite the strong media campaign which tried to show how other countries from the region getting the visa free regime before BiH is an injustice committed by the EU, the citizens are aware that it is a process where decisions are made based on the criteria that our country failed to meet in time.

"I believe that the European Union in reality makes no difference between the countries. The same rules apply to all of the countries, and they need to be followed in order for those countries to join the EU."

 However, it is quite clear that the participants of Serbian nationality see the Dayton Constitution as a "holy relic", whereas the Bosniaks demand the change of the Dayton concept of the state. It is important to point out that, compared to the previous research work done by the FPI BH (especially in the time period prior to the 2006

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE **77**

elections), the participants of Serbian nationality demonstrated public support for the division of Bosnia and Herzegovina.

The highest level of agreement between the participants in all of the groups was reached on the question of guilt of the politicians and the voters. All of the focus groups mentioned the stories of bad politicians, their political trading and obstruction, corruption, irresponsible behaviour, making false promises. Still, they find that the essence of failure at the European road needs to be sought in the fact that the political leaders in BiH make statements that they do have political consensus on European integration, even though reality shows that concrete reforms on that road are subservient to the interests of individual political parties and entities.

"I have a feeling that our governing coalition has no interest in BiH entering Europe. I feel that they just say to us that they are all working together to achieve this, but in reality, they are sticking to their own back yard, and they can't agree on how we can as a compact unit, actually join the EU." Brčko

It is interesting to see to what extent the participants are trying to attach guilt to the ordinary citizens as well. The most common opinion is that the citizens, with their "irrational and immature" election behaviour, consciously prolong political survival of the politicians who make political crises and instigate existential nervousness with most of the citizens. There were many examples of how people were unhappy because they have no jobs, they live badly, they can not travel without visas, but still, those unsatisfied people mainly vote for "their own lot" at the elections. The vast majority of the interviewees also recognize the fact that considering how the ethnic division in BiH is more visible than it is in the other countries in the region, it again poses another reason why our country is falling behind when compared with our neighbours. They clearly stated that BiH, unlike other countries in the region, did not reach the necessary level of internal social integration.

"I believe that now we can say one thing, but when we go out to the street we will say something completely different. We will elect the same people as we did before. And then again, when we attend a rally or a meeting, we will criticize our leaders and presidents and who knows who else, but we will be saying something different again. People's morale is very low. Regardless of the level of education they have." Brčko

- Even though the subject of this research was the European integration of the countries from the region, which is a matter of equal concern for the members of all the ethnic groups in BiH, we have noticed a strong influence of national background on all answers given by the focus groups" participants. In most cases we can divide the answers in groups of different nationalities, even when they answer questions that are purely technical.
- We have also observed the notion among the participants that the issue of European integration is connected to a certain sense of justice being done, that is, correcting the wrongs that were made as a consequence of war; regardless whether they are political or social; or conditions for further progress of some countries towards the EU. Even though there is some level of understanding that European integration is

PAGE **78**

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

SUMMARY OF THE FOCUS GROUP FINDINGS

a technical process based on objective criteria, through answers given in additional questions, we have noted that there is some form of anticipation with the representatives of all the ethnic groups that the EU should show more sensitivity towards specific national (ethnic) 'injustices'.

What was also observed was the unity of the participants in their initial responses on the questions regarding the integration of the entire region into the EU, which demonstrated an interest in a rapid and unconditional integration of all of the countries from the region into the EU. However, subsequent questions revealed significant differences between the ethnic groups, that have demonstrated a certain dose of the sense of injustice among the Bosniaks if the neighbouring countries were to make faster progress than BiH.

"I do not think that Serbia or Croatia was placed in a better position by the EU, or that they were offered better conditions than BiH." Brčko

- Also, through the answers of the participants of Serbian nationality, we noticed a greater interest and support for European integration of Serbia than for the integration of BiH. This shows to what extent the interests of the citizens are subservient to their 'ethnic' rather then their existential issues.
- Our previous finding also shows that European integration is still not viewed by the citizens as something that will, in some time, affect the quality of their lives. They see it more as a political process that only concerns the state and is not related to their quality of life. For example, it was interesting to see that only the participants of Bosniak nationality had a strong reaction to the issue of the visa liberalization regime, even though this decision is the same for all of the citizens of BiH. Participants of Serbian nationality thus supported the decision of EC to grant Serbia the free visa regime sooner than to BiH, even though it is known that the majority of BiH citizens of Serbian nationality do not have citizenship of the Republic of Serbia, and that this decision will not provide them with free access to Schengen countries.
- Differences in these answers point towards yet another interesting distinction. From the answers that support the unconditional and rapid integration of the entire region into the EU, we could conclude that the preoccupation with the issues of European integration would in fact have an impact on diminishing national tensions if that would clearly lead towards integration into structures that would make those issues irrelevant. However, the fact that within that very process there are so many issues that carry a strong nationality charge tells us that, within that process, there are a great many issues that, within themselves, have a national dimension. For example, this finding supports the thesis that EC was supposed to be aware that it, itself, was infusing the national charge into technical conditions, when it provided the free visa regime to Serbia and Montenegro but not to BiH. With this, we are not trying to challenge the importance of the criteria for fulfilling the Road Map for the free visa regime, but we are using this example to show in what way the EU is falling into a trap of further contributing to the creation of national tensions. We find that this required strategic thought long before the criteria were evaluated, and it should have been considered what kind of consequences that decision could bring.
- The encouraging finding is that the citizens can recognize the successes that the countries in the region have achieved in their common fight against cross-border crime and through cooperation of police structures.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE **79**

- Notwithstanding the very emotional responses on all of the questions that had even the slightest hint of national interests, most of the participants did, however, state that the economic issues are the most important for the citizens of Bosnia and Herzegovina. Participants of all of the groups, regardless of where they were from or their age and sex, have expressed great disappointment in the condition of the economy in BiH.
- The advantage that the participants give to domestic products shows their interest in strengthening the local economy and supports the previous finding that economic issues do play a significant role in the lives of the citizens. However, even this view needs to be taken with some dose of reserve, because the participants, when asked what influences their choice to buy foreign products, stated motives and reasons that have more to do with national identity than with product quality. Participants explain this by saying that foreign products are more recognizable, and they have grown into the habit of buying them, even though there is a notable level of national preference in their choice. Nevertheless, in the end, most of the participants agreed that their choice is mainly based on the price of the product, and that, in that sense, their attitude towards foreign trademarks is almost the same as it is with the domestic ones.
- The focus group where the participants were civil servants has, in a very illustrative manner, disclosed the essential problems in BiH administration. Although there is a general public opinion that the capacities of civil service are one of the main obstacles for European integration, an honest discussion within this focus group indicated that one of the main reasons for such condition is in the bad solutions of the Law on Civil Service. It was stated that the inflow of substandard and inadequate staff resulted in a large number of employees that have, in number, increased the scope of administration but have not improved its quality. An unselective gathering of such staff is cemented by the Law on Civil Service which has 'legalized' the existing status. Thus we repeat: a special dimension to this finding was given by the fact that it came from the discussion of the participants who work in civil service.
- This same discussion raised a suspicion that the intention of the Law on Civil Service was more to legalize the existing relations than to improve the quality of administration. What is especially indicative of this is a discussion on professional education of civil servants, the way they are evaluated, lack of mechanisms to prevent the draining of the quality staff into the private sector and the lack of clearly and adequately defined lines of responsibility in certain organizations considering the enormous competencies that were transferred to the Civil Service Agency.
- Although this may be an apparent and expected problem, we do wish to place special emphasis on the following finding. Civil servants have complained that due to the fact that they do not have a knowledge of the English language, they do not have access to the documents of the EU legal legacy. So, even with all of their willingness to, at least, get familiarized with its contents, they are not able to do so because of the language barrier. Considering this practical problem, we want to point out the expectation that the civil servants had that the state (which was certainly quite aware of this issue) could partially compensate for this and soften this problem by starting to translate the necessary documents sooner.

Monitoring of the BiH European integration processes

PAGE 80

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

SUMMARY OF THE FOCUS GROUP FINDINGS

IV. JUSTICE, FREEDOM AND SECURITY

Departure of foreign judges and prosecutors?

Judging by the participants' comments it is obvious that those who did debate on this issue mainly based their answers on their national background.

"I support the stay of foreign judges. We were all involved in these conflicts, whether we care to admit that or not. The foreign judges are here, and I expect them to introduce something new into our courts. They will, most certainly, teach our people the practices which exist in the world and are unknown to us. I vote for foreign judges to stay." Zenica

The participants who were Croats and Serbs found that the presence of foreign prosecutors and judges is an anomaly and thought they should leave. What is striking, though, is the contradiction in their opinion. They have a problem with foreign judges and prosecutors where it concerns cases of war crimes, but they are not sure that the processing of crime and corruption cases could be done without them.

"In my opinion, that is where all of the charges and verdicts over Serbs for war crimes come from. There were crimes on every side, and no one can deny that. Just observe the duration of the sentences that were passed – Serbs got over a thousand years, Croats got 140 and the Muslims only a measly 50 years. I think that the sooner they leave the better." Doboj

"I, personally, would remove all foreign judges from those positions and would not let them stay in the BiH Court because I think that we have enough of our own adequately educated people." Mostar

Most of the participants think that the departure of foreign judges and prosecutors will weaken the ability of the BiH justice system to fight against organized crime, economic crime and corruption. It is believed that the local judicial system, while processing crimes of corruption, often agrees on compromises because it does not have the courage to see the matters through to the end. There is an opinion that the local justice system was built on partisanship and subservient relations and that, because of that, the politicians are mainly 'untouchable' for the justice system.

"If we are to observe this crime milieu, it is very easy for the criminals to make bonds or connections, and our justice system must have the strength to deal with them, and that is why I believe that we still need the foreign judges." Zenica

As an example of a significant involvement of politics in the justice system, the participants mentioned the appointing of certain judges whose main recommendation for a particular function was their membership or partisanship with a specific political party. Within the context of this question, some of the participants mentioned that the judicial systems of Croatia and Serbia are much more resolved to deal with this issue and that our judicial system should benefit from their good practice.

Abuse of dual citizenship

The participants in all of the groups agreed that the abuse of dual citizenship represents a significant burden on the international relations between the countries in the region, especially on those of Bosnia and Herzegovina, Croatia, Serbia and Montenegro. They also think that it is not all right for the people with dual citizenship to avoid court procedures or prison time by fleeing to another state, where that other state will offer them protection. They do agree that these abuses would not have been tolerated if it was not for the support of the politicians and the state governments who offer protection

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE 81

to such individuals. There were also some opinions that another thing that facilitates this phenomenon is the fact that constitutions and other regulations of some countries in the region either completely forbid or significantly aggravate the extradition of people who have their citizenship. The majority of the participants find that the only solution for this issue is in the signing of international agreements which would regulate this and many other issues that emerge from dual citizenship, but some of them stated that it would be best to completely abolish dual citizenship. They are bothered by the instrument of dual citizenship, because they find that it gives the 'dual' citizens the privilege of voting in several states.

Most of them pointed out that there is a lack of political will to prevent the abuse of dual citizenship. Some participants feel that the people who have abused dual citizenship could not have done it without the support of the politicians and state government who provide protection to such individuals before the law.

"I don't think that's any kind of running. In my opinion, they should agree amongst themselves. He can not run from one state to another, with the other state accepting him. It's all about the government. How can he come from Sarajevo to Ljubuški without anyone knowing who he is? It really is all about the government." Doboj

Cross-border crime

Even though several participants mentioned some of the more successful actions of the BiH police and police forces of other states in the region, that did not change the opinion of the majority that it is impossible to find an efficient formula to prevent this phenomenon as long as the criminals use their illegally acquired money to buy protection and hide from criminal prosecution.

"The most common situation today is that such crime is usually supported by the people who are at the very top, in the government, and it is not only the case in our country, but in the neighbouring countries as well. They are in charge of that big crime, smuggling tobacco, drugs and other things; everything that is included in big criminal operations. To put it in contemporary terms, there are even some high officials involved." Zenica

It is a common opinion that, next to using this corruptibility of state officials, the criminal groups also use all of the shortcomings in the organization of the border services. Although they did not deny the fact that significant progress was made in improving the general situation, it is the general opinion of the participants that the operative capacities of the BiH state border services are insufficient to cover the entire border lines with the neighbouring states.

"If we are to observe our policeman, border police – he is not interested. He has a measly salary, and he is not willing to climb over that terrain. Sometimes they are even unarmed and they will be required to shoot sometimes, depending on the situation." Brčko

The participants find that due to financial and technical problems, its development is not complete, and criminals, who are very well connected, know how to use that. In the end, the participants agreed that due to the multidimensional and international character of this phenomenon, one cannot even start building a national policy to prevent it, unless there is a strong cooperation of police forces in the region.

"All those activities concerning illegal border crossing happen to us because our state does not function. So, the state needs to function and then everything will be all right." Doboj

PAGE 82

COMPARATIVE REPORT FOR 2009 [WESTERN BALKANS BOSNIA AND HERZEGOVINA]

SUMMARY OF THE FOCUS GROUP FINDINGS

Cooperation with the Hague Tribunal

The question of whether cooperation with the Hague Tribunal should be a condition for further integration of the countries from the region into the EU provoked different answers from the participants depending on their national background (ethnicity). Those of Serbian nationality find that cooperation with the Hague Tribunal should not be a condition for further European integration of the countries from the region. Although their opinion could point to different conclusions, they did not dispute the need for further processing of those charged with war crimes. They only disputed that the Hague Tribunal should continue to do that. In that sense, they suggested that all of the cases from the Hague Tribunal should be directed towards some other country that would be located either in the home country of the accused or in some other country that was not involved in the conflict. As reasons why they felt so negative about the Tribunal, they mentioned that it was unjust and biased where the accused of Serbian nationality were concerned.

"It should not be a condition for the continuation of integration because the Hague Tribunal, in principle, is a ridiculous court, and it is absolutely insane. When you observe some of their prosecutors, some of our trainees would do a better job than some of their judges. Somebody before me said that it is just a way for money laundering. A political court and that is that. That is my opinion, even though some may think differently. It all comes down to politics. If that is the way we need to do things, then let's prosecute all crimes. We can not be selective and say these are guilty and these are not. How can I be guilty just by being a Serb?" Doboj

Bosniak participants had a different opinion. They were against all continuation of European integration unless it was conditioned by cooperation with the Hague Tribunal.

"Until all war criminals are caught, there is simply no way for things to end well, especially in some specific countries. I believe that it would be illogical and unjust towards us in BiH if they were to move forward before we do. That we, who are the victims, should stay behind, and they, who are guilty, should move forward."

Unblocking European integration of Serbia or arresting Ratko Mladić?

When asked what they thought about the proposition of the European Commission to unblock the process of European integration for Serbia, even though Ratko Mladić has not been arrested, the participants of Bosniak and Serbian nationality again expressed their difference of opinions.

The participants of Serbian nationality were happy because of this proposition of the European Commission. Even though they did not directly say whether they were for or against the arrest of Ratko Mladić, they clearly indicated that Serbia should be given a second chance because it should not be a hostage of one man. The guilt must be placed on the individual in order to remove the collective guilt from the Serbian people.

"I think that the international community should not blackmail any of the countries in the region, especially not over European integration and some cooperation with us. It is a crazy blackmail. Who has the right to order for innocent people to suffer because of that creature? Why should the innocent people of some state suffer because of them?" Brčko

"We must not identify an individual with an entire nation. I stand for that." Doboj

The Bosniaks are against this proposal. They think that, with this, the European Commission is rewarding Serbia, even though it was leading the politics of war in the region. Arresting The Hague fugitive Ratko Mladić still needs to remain as a "big

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE 83

obligation of Serbia and its exclusive condition to enter into EU". Their answer to this question does not correspond to their earlier opinion on unconditional entering of all of the states from the region into the EU. The Bosniaks are also opposed to the possibility that Serbia should enter the EU before Bosnia and Herzegovina.

"I personally believe that it is a pure injustice and a great concession to Serbia. If Croatia gave up all of its greatest generals who were suspected of committing war crimes, I wonder why the EU turned a blind eye where Serbia is concerned, if there is still crime and corruption in the country. It seems as though they have transferred the problems of Serbia through the RS to us, so that we would deal with ourselves and not see that they have given them free pass and that they do not have to fulfil that condition." Zenica

Visa liberalization regime

Judging by the comments, the visa liberalization regime is a very important question for the citizens of Bosnia and Herzegovina, especially for the Bosniaks. Even the groups that were less involved in the discussion became alive when the moderator asked them to comment on the decision of the European Commission to leave out Bosnia and Herzegovina, unlike Serbia, Montenegro and Macedonia, from the group of countries for which they have proposed the visa liberalization regime.

"I personally believe that they could have, considering that the technical barriers were surpassed. They keep appealing to this problem of starting to issue the biometric passports. In fact, they should be consistent now, in order to remove all doubts about how this is a political thing."

Bosniak participants had a very strong reaction. Most of them found it hard to find words that could describe their discontent and disappointment with this decision. They have repeated, on several occasions, that, for them, it is a very discriminatory decision from the aspect of equality with the other constitutive peoples of Bosnia and Herzegovina.

"Honestly, we, in Bosnia and Herzegovina, are devastated by this decision. As victims of aggression, we expected that the EU will give a positive sign to BiH, that we will get at least something before Serbia, but that did not happen. Serbia and Croatia got that, which now creates even bigger insecurity for us, because all of those who have dual citizenship can now freely walk all across the Europe, while the Bosniaks, who cannot have Serbian or Croatian citizenship, still remain in some small enclave state. I think that there is a general bitterness in BiH because of that decision." Zenica

The participants mentioned some other consequences of this decision. They named limited opportunities for education and professional training, establishing business connections, contacts with people of different cultures, occasional work contracts...etc. Although many of them did not see themselves as direct beneficiaries of the visa free movement, they estimate that a more liberal visa regime would be of a great benefit for young people.

"This decision denies the citizens of some of the possibilities that could improve their quality of life and professional enhancement. If a person was even considering going to a professional training program or additional education, he/she would have to go through a lot of trouble to get a visa." Zenica

Even though the participant stated that the European Commission was mainly to blame for this, there were a lot of comments that the responsibility for this decision is on the BiH government as well.

PAGE 84 | COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS

Bosnia and Herzegovina)

SUMMARY OF THE FOCUS GROUP FINDINGS

"Even though they were aware that mistakes were made by the government's fault, some politicians used this decision to heat up the tensions and politicize this decision. I think that they did not grant us with the visa free regime because we did not meet the conditions. Of course, now, many politicians are trying to politicize this out of their own political party interests."

"But if we did not meet the conditions, then the European Community does not wish to make any concession to us, because we know no limits, and we would immediately ask for more."

Most of the civil servants did not even try to debate whether the decision was justified or not. They rather discussed the problems they have when they try to secure visas for official travels abroad.

"This is another instance where we encounter a lack of understanding by the EU and its member states that know that we, as civil servants go where we are called for some official matters. They give us a visa that is valid for 3 days only or they put us through elaborate procedures as if we have requested to immigrate into their country. I find that to be absurd."

V. ECONOMIC INTEGRATION

Obstacles in development of BiH economy

This is one of the areas where the participants did show a high level of agreement regardless of which ethnicity or entity they belonged to. Furthermore, this is the area where the citizens exhibited a high level of knowledge and understanding for the stand-still in the economic development of BiH, and they attribute it to a number of reasons:

Absence of development concept. The state has no systematic approach to development of the economy and still has not offered any efficient model that could bridge the gaps created through the disintegration of the economic system of former Yugoslavia where the BiH companies were highly integrated before the war. Although they have demonstrated understanding for the difficulties of transition that BiH is going through, most of the participants were not ready to accept that nothing more could have been done to build the economic structures that could generate bigger investments, activate economic resources of the country and provide for better employment.

"What kind of policy is this? What kind of politicians are these when they are not able to revive business and the economy? It is no wonder then that Europe and the EU are setting before us these kinds of criteria because we, as we are now, cannot hang as a weight around their necks." Brčko

The state does not have a positive response towards people who are in business. The participants did not deny that depending on foreign investments is just a "life vest" that needs to be held on to, but they did emphasize that the state should not disregard internal potentials that could also boost development.

"The state is holding back the companies that operate successfully. It is preventing further development. I work in a foreign-trade company and I know that the state is holding us back wherever it can. If the state was to deal more with the economy, if it was to support the businessmen, we would be doing just fine." Zenica

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE 85

- Contents of the laws that regulate the business environment often depend on the pressure of specific political sponsors and they do not create conditions for the growth of the economy.
- High tax rates policy prevents the development of the local economy. Lowering or abolishment of tax rates would greatly improve the performances of companies and preserve a lot of jobs.
- Politics has a hard time giving up its influence over the economy. The practice
 of protecting the privileged business subjects is not only suffocating the competitive
 spirit, but also leads many companies that are not in the protected group into failure.
- Privatization in BiH was not a method for restructuring the economy, but a way
 to support the interests of some people in government and the tycoons that were
 close to the government.

Most participants find that, even though there will be difficulties for European standards to be applied in BiH, these standards will force the businessmen to function in a completely different way. Basic advantages of introducing EU Standards, in their opinion, are easier business transactions and better security with the flow of capital, goods and labour.

"No one will come from the outside and introduce capital into BiH until we are in the European Union. EU membership is a sign of security to those who invest capital." Zenica

Let's buy domestic products!

Most of the participants, in principle, did show tendency to buy domestic products, especially where food is concerned. If, in a wide spectrum of the offered products, a domestic product is competitive in price and quality, the majority of the participants stated that they would give their trust to a domestic product.

"I pay attention to buying domestic products, preferably produced as close as possible to where I live. Of course, this only includes food. As far as other products are concerned I simply know either the region or the manufacturer I want to buy, and that is the product I go for." Zenica

"If it is of the same quality, of course we will choose domestic products." Zenica

However, if a domestic product is bad, or a lot more expensive than similar foreign products, they will never buy it. An important reason for giving advantage to domestic products is the fact that it can have multiple positive effects on strengthening of domestic production.

If there are no alternative domestic products, the participants are most likely to choose products from countries with which they feel they have specific cultural similarity. In that sense, they mentioned products from the countries of former Yugoslavia. The participants find that the logic behind this kind of preference should be sought in decades of connection with the states created by the disintegration of former Yugoslavia. They see this attachment to those products either as a habit or as an expression of trust in the quality of goods that had been produced in former Yugoslavia.

"I believe that, for example, the majority of people in Mostar see products from Croatia as a domestic product. At least they do in my surroundings. I think it's a matter of habit." Mostar

However, when asked which factors influence their decision when they shop, their answers were different. Some participants give advantage to quality, others to the

Monitoring of the BiH European integration processes

PAGE 86 C

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

SUMMARY OF THE FOCUS GROUP FINDINGS

country where the product came from, or even to a specific brand, but for the majority of people, the main factor is the price. Where prices are concerned, their view of foreign brands is almost the same as for domestic brands.

The majority of participants believe that it is possible to influence the increase of popularity of domestic products, and they have pointed out the significance of advertising and organizing campaigns that promote domestic products. In that sense, the remarks of the majority of the participants were about the indolent behaviour of the BiH manufacturers towards the importance of advertising. The interviewees demonstrated a significant level of discontent with the behaviour of politicians who give bad examples to the public, because they choose not to buy domestic products, even though in public, they often call upon economic patriotism of that sort.

"I believe that marketing and promotion of domestic production in these areas are far beneath the level of other developed countries." Doboj

However, the participants in the focus group of businessmen pointed out how, even though the BiH consumers support buying domestic products in words, they often do not behave accordingly. Some think that the reason for this kind of behaviour is in a still undeveloped awareness of local consumers of the economic significance of buying domestic products, while others attribute it to some sort of economic patriotism towards the neighbouring countries. There were also some who found that the reasons for this were in insufficient usage of marketing.

"There used to be a campaign 'Let's buy domestic products'. There were also some initiatives by political parties to introduce customs to specific kinds of products. There were many activities, but I am not sure how successful they have been. For example, in Sarajevo there is a campaign to promote buying domestic products; a fair is held, only 200 people come to visit, and it fails, yet again." Mostar

The businessmen agreed that a far too liberal foreign trade policy led to a strong input of foreign competition and suffocation of the local market. Due to the expansion of cheap foreign products, very little or no space was left for the placement of domestic products. Even with this subject, the participants place most of the blame on the state. Some participants complained directly of the lack of state control over foreign trade transactions and some supported the introduction of anti-dumping measures and technical barriers.

The application of CEFTA

The participants from the group of businessmen could not give their estimate of the application of CEFTA, justifying this by the short amount of time that has passed since it came into force, but in principle, they had a positive opinion about it. Most of them think that CEFTA is a good model of internal trade between the countries in the region, because it abolishes customs on ready-made products, production materials and equipment.

"First of all, I have to say that if CEFTA, as an Agreement, was to be fully applied, without any manipulations, it would be of great benefit for Bosnia and Herzegovina. Naturally, it reduces the customs for ready-made products, production materials and equipment, and if Bosnia and Herzegovina had a strategy for a dynamic development, it would be of great benefit for this state."

The possibility of easier entrance into neighbouring markets was also mentioned as one of the benefits of this Agreement. Nevertheless, the preparedness of BiH to apply this and similar customs free agreements has been estimated as negative. Bosnia and

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE 87

Herzegovina had commenced the implementation process of this Agreement without the necessary institutions.

"However, there are several Articles in that Agreement that Bosnia and Herzegovina either does not wish to fulfil, or simply is not able to do so. I would say, it doesn't want to fulfil them. This concerns the establishment of the institutions for quality control, product certification and their mutual validation. According to one of those Articles from the former Free Trade Agreement, we were obligated to establish those institutions, make them operational, educate them and accredit them so that they can perform the control of the products that enter into Bosnia and Herzegovina. If we had done that, we now would not have this junk which comes from Europe and is sold at cheap prices and makes people sick, or food of suspicious quality, or any products of suspicious quality whatsoever."

Even though, in general, they had a positive opinion of CEFTA, several participants indicated that there are many other things that BiH needs to work on in order to get some of the positive results this Agreement can help achieve. The participants spoke of how the BiH businessmen, especially those who are in production and trade of food, are exposed to great problems when they try to launch their products in the CEFTA countries. Among other things, at the state border crossings with the CEFTA countries, the businessmen are required to prove the quality of their products with a certificate issued by internationally accredited institutions, which still have not been established in BiH, such as, for example, a laboratory for product quality control. Because such documents issued in BiH are not valid, when a BiH product is to enter into the EU or some of the CEFTA countries, the quality control of the product is tested in the accredited laboratories of those countries. Each shipment of such products needs to be tested in their laboratories, which is a time consuming and expensive process.

"Of course, when you have to get the certificates abroad, it demands significant funds. That is just another way that capital is drained from this country. Another way to lose capital is when you have to get certificates in other countries, and in order to get their quality certificate, you have to meet some technical conditions which their companies probably don't have to. A third way to lose capital is that, quite often, it is required that you are directly present during that type of testing. This again requires significant funds."

It was interesting to hear the opinions of the participants from the other groups who found that the Decision of the BiH Constitutional Court to put out of force the Law on Protection of Domestic Production in regard to CEFTA is justified. The participants pointed out that CEFTA is an international Agreement we can not longer disregard, and all of those who are trying to do things differently will have to face specific sanctions from the EU. The majority of the participants agreed that Bosnia and Herzegovina must protect domestic production from excessive import of agricultural products from Serbia and Croatia, but this can in no way be done by passing a law that would violate the provisions of CEFTA.

In the opinion of the majority of the participants, CEFTA opens up a wide spectrum of possibilities for manufacturers from Bosnia and Herzegovina. An important condition that has to be met in order to use these possibilities is raising the level of competitiveness of local manufacturers. They also agreed that CEFTA is a big threat for companies with low level of competitiveness, but it is also an opportunity for them to find business or strategic partners in newly opened markets with whom they will be able to enter into a new business cycle of better quality.

When asked what they think about how the Foreign Trade Chamber monitors the effects that CEFTA has had on the BiH economy so far, most of the participants said that those

PAGE 88

COMPARATIVE REPORT FOR 2009 [WESTERN BALKANS BOSNIA AND HERZEGOVINA]

SUMMARY OF THE FOCUS GROUP FINDINGS

are mainly superficial analyses. The fact that Foreign Trade Chamber does not have its representative body in the countries of the CEFTA region is also a sign of a frivolous approach of the state towards the possibilities that this Agreement can bring to the economy of Bosnia and Herzegovina.

The banking sector

Judging by the comments, being financed by the banks is a painful topic for the businessmen. Despite the fact that not all of them agreed on specific arguments, most of them feel that the banking sector cannot meet the needs of businessmen. There were many comments on how banks are oriented more towards general population where the interest rates are higher, and the possibility to make profit is better. They do not want to work with business subjects because of the higher risk. Some even suspect that, because most of these banks are foreign banks, there is no patriotic feeling towards Bosnia and Herzegovina.

"In this case, banks really play no part in the support and development of the BiH economy because they are not Bosnian banks. Banks operate according to their own principles and they do not share patriotic feeling towards Bosnia and Herzegovina. During the process of privatization we did not pay attention to how many banks to privatize. In principle, they should have been privatized in a way that a foreigner would have 51% interest, and we were to remain with 49% interest, so that we can have that golden share that would allow us to create policies and determine the interest rates."

All of them agreed that the interest rates are extremely high.

"Interest rates are very high. All companies that come to Bosnia and Herzegovina and offer their products here take loans in their home countries. Even mixed companies in Bosnia and Herzegovina do not take loans in Bosnia and Herzegovina because of the high interest rates. They take those loans in their home countries where the interest rates are much more favourable."

Although the businessmen had hoped that the situation would get better once the development banks were established, that did not happen. The participants accused the Federal Development Bank of granting loans in an unselective and politically orchestrated manner.

"The Development Bank was not established for commercial activities, but for providing support to the economy and agriculture. We cannot see any effects of that, there is no system. Of course, every bank will fight for its own profit; that is why they are called banks."

The businessmen were very critical of the FBiH tax system. They had a lot of complaints on the high income tax, tax on profit and the lack of tax rebates. However, the rate of VAT is not too high, and some even think that it is among the lowest in Europe.

Obstacles to export?

The majority of the participants stated that Bosnia and Herzegovina would be able to achieve a significantly higher export rate with a significantly different export-production structure than it has now. Export, which is currently dominated by raw materials and semi-manufactured products, products in lower phases of processing, should no longer be the basic foreign trade orientation of Bosnia and Herzegovina. For many participants, the information that BiH has a significant deficit in product exchange with foreign countries was an argument to support the claim that significant improvement of conditions has to take place in this area. The majority thought that the cause of this

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE 89

problem is neglect by the state and its institutions, but there were also those who suggested that we should speak openly, and say that the majority of BiH companies need to work on raising their competitiveness.

"I spent seven days last week in Ljubljana and Maribor. The only BiH product I had found in all of the stores I visited was Bimal oil. I almost wanted to write those people a card and ask them how they did it. I found it in Merkator. Of course, in smaller stores, I don't even have to say; there are no BiH products."

"In the same way that you found that product, in Montenegro I found only Violeta handkerchiefs, so that I can wipe my own tears with them, tears from BiH in Montenegro."

The state does not provide any export incentives or loans for exporters. Some participants think that the reason that financial state aid was denied to exporters is the foreign trade deficit. Still, some of them said that some exporters do get by even when they are denied financial support.

"If we had introduced the instruments through which the government would co-finance or give incentives to exporters, we probably would not have had this kind of unbalance in foreign trade. Since we have none, then we have to pray to God for the foreign organizations to stay. I am not talking about the OHR, but of other institutions that, practically, lead the economic policy of this country."

The participants also mentioned several measures of direct assistance to exporters, which the state either provides in limits or does not provide at all. This mainly refers to the incompleteness in establishing the institutions that should provide for education and training of exporters and should enable them to have an organized appearance in foreign markets. The participants pointed out that the manufacturers who, now, mainly export directly, do not manage very well in foreign markets. They are often unable to recognize the 'traps' that can appear, they don't know how to respond or who to turn to in situations when they face business damage, or how to run arbitration processes. BiH also lacks a foreign-trade network of institutions that could help exporters in some markets and promote the BiH economy abroad.

The businessmen complained that they have a lot of problems to secure visas for travelling abroad.

The question of export financing stimulated a discussion on foreign investments. Based on the large number of examples they have provided, the participants agreed that in conditions of poor local accumulation of funds, the inflow of foreign capital is the only cure that can heal the economy and provide for its future development. They also agreed that Bosnia and Herzegovina did not impose itself as an attractive area for foreign investments. In part, this is because of political instability, inadequate infrastructure and legislative and regulatory barriers.

"Many investors have given up investing in our country because of the procedures we have made so complicated so that they deflect rather than attract foreign investments."

The businessmen who participated in the discussion were not pleased with the effects of the work of FIPA, so they recommended better usage of the experiences of similar agencies in the region, especially those of SIEPA from Serbia.

"States from the region have much better results in attracting foreign investors. As a positive example they mentioned Serbia which, as far as the inflow of greenfield investments are concerned, is the leader in the region."

PAGE 90 | COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS

SUMMARY OF THE FOCUS GROUP FINDINGS

"All of the countries that wanted to attract foreign investors have invested in their own infrastructure. They made exhibition halls. They contact the foreign investors before they arrive and ask them which branch they have an intention to invest in and what they will produce. They educate the necessary staff and create other conditions that will make the investor wish to come. Nobody comes here out of love or strategic goals. They come here, so that they can make more money here than they would in some other countries."

BOSNIA AND HERZEGOVINAL

The low level of competitiveness of BiH companies is also one of the barriers in achieving better export results. The participants gave numerous examples of how BiH companies are neglecting important areas of business transactions like building human resources, education, marketing, promotion and raising the level of technological preparedness.

"As employers, we know that the establishment of the Economic-Social Council at the state level is an important condition for us. The deadline for its establishment was September 30th last year. Up until today, this Economic-Social Council has not been established, and we suffer the direct consequences of that, because we do not have the opportunity to develop partnership and dialogue with the government at the state level to solve the issues which are under its responsibility."

The majority of the participants stated that the private sector is now facing a problem of providing the staff that has the adequate level of knowledge and skills necessary for a more serious appearance in the world market, because the labour market does not offer the necessary staff profiles. A great many participants complained that the staff, which is currently being educated, is not prepared to work in business. They also mentioned the phenomenon that educated people prefer working as civil servants.

Corruption.

The theme of corruption was one of the most inspiring for the participants. Discussions mainly remained at the descriptive level of this issue, and there were very few of those who offered solutions on how to fight it. They mostly blamed the politicians and the state administration, although the health sector was often mentioned as one of the areas where corruption is very pronounced.

"Not only are the public tenders tailored by specific measures, but suppliers have preferential treatment by the same principle. If you make a bad tender that will be overturned, according to that law, until a new tender is made, the previousy selected supplier continues to supply that company. This is where the law is on the side of corruption quite publicly and openly."

As for the contents of the Law on Public Procurements, the participants mostly had words of praise. They find that corruption is not produced by a bad law, but by bad enforcement of the law, enforcement that adjusts itself to the interests of those who offer bribes. The participants complained about the work of the Office for Complaints. The majority feels that there have been some improvements in its work, but the Office is still not performing the function it is supposed to perform. The participants attribute this to its many years of idleness, which have resulted in a huge backlog of cases, and there was even some criticism of the competence of people who work there.

"Not to mention the public procurements. In public procurements more work is done through the annexes of contracts than through the main tender. Those who prepare the documentation for the tenders have already received a certain amount of bribe, and they create the tender according to the design of the company they intend to buy things from. The only thing missing from a tender is a picture of that company. And another thing. Those who did not win the tender can block the person that did for months, because the Office for Complaints is piled up with complaints."

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE 91

The thing we noticed is that the participants did not mention collusion between the judicial system and politics which is what we usually hear when the same question is asked in focus groups with ordinary citizens.

VI. PUBLIC ADMINISTRATION

It was hard to conclude, from the discussions, who was the intended target of criticism; whether it was public officials or civil servants; but the participants clearly indicated that progress in the process of European integration will be limited by the current capacities of the BiH administration. The participants from all focus groups demonstrated a surprisingly unified opinion that the public administration is a stumbling block in all attempts for things in BiH to get to a normal state. Through summarizing their comments we are able to give a description of what they see as the key characteristic traits of the BiH administration. The civil service is characterized by a high level of politicization at all levels of hierarchy, a lack of staff with adequate knowledge and skills to push this process forward, and both inefficiency and inertness in all attempts towards modernization.

"I think that the BiH institutions have big problems with staff policy, regardless of whether they are civil servants or regular employees. I think it starts with the education system in BiH that truly produces inadequate staff. Generation after generation come, but they are not meeting the real needs of the state administration or the BiH economy. If we were to observe the institutions separately, then we could see that, even among those few civil servants in mainly understaffed institutions, the majority of them are not able to perform the tasks they are supposed to perform, in adequate manner."

At the beginning of the discussion on this topic in the group of civil servants, the moderator asked the participants to give their comments on the results of some studies that show that the state administration is not prepared enough to work on fulfilling the demands under the SAA. Even though not all of them agreed with the statement made by the moderator, the general opinion was that BiH has reasons for concern. The administrative capacities of Bosnia and Herzegovina are significantly weaker than those necessary for a country that has the aspiration to become a member of the EU. Although the process of administration modernization started long before BiH ever entered into the process of European integration, it still has not reached the level of preparedness necessary for such serious work. The participants agreed that the institutions suffered from a lack of qualified staff. They pointed out how during previous years, a lot of people that were employed did not have adequate skills. That is why, in the majority of institutions, there is a much larger number of the employees whose jobs are in essence logistical, while there are not enough highly qualified people who are capable of planning and implementing policies.

Although many had expected that things will get better, as far as staff policy was concerned, once the Civil Service Agency was formed, the actual practice so far has failed to meet their expectations. In fact, it was quite the opposite; the introduction of the Agency made things in the staff policy even worse. Even though they did not try to describe the details, the participants mentioned that the Ministers, before the establishment of the Agency, had a lot more freedom in choosing their co-workers.

"The Law on Civil Service introduced the Civil Service Agency. However, it did not contribute to the making of a better staff policy. One of my colleagues told me that the situation was a lot better before this Law on Civil Service was introduced, because the Minister had the right to bring in a person he knew to be a true expert in the field. Now the Agency brings us all sorts of people. The Agency, itself, is an example of how weak and understaffed we really are."

Monitoring of the BiH European integration processes

PAGE 92 | COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS

BOSNIA AND HERZEGOVINAL

SUMMARY OF THE FOCUS GROUP FINDINGS

The lack of legitimate ways to evaluate the work and the results decreases the enthusiasm of employees. Salaries and work conditions in administrative services do not follow the conditions present in the private sector, which is why there is not only a lack in the motivation of the employees, but also a drain and loss of quality staff.

"There is no systematic approach to staff policy. The system of values is seriously damaged, so some follow the logic that sometimes it is better to do nothing. Let me give you my example. The more I work, the more I am exposed to some sort of psychological pressure. Those who don't go through a professional burn-out are better off."

"Civil servants do not fall into apathy because of the assignments that are before them and that need to be completed, but because they have to carry more responsibility than the rest, and they are not adequately rewarded or protected for doing so. Now we come to the fact that people are going to question their sanity and their actions and whether it's worth it to do any kind of activities if there is absolutely no system of rewards and promotions and there never has been."

Even though they have identified that the biggest problem is the lack of qualified staff, they also spoke a lot about insufficient and inadequate education. Training in different departments is not systematically organized or conducted according to the real needs.

"I cannot even start talking about the state of the equipment or education, it is simply humiliating. We still do things by foot, we have no IT equipment and the education is nonexistent. The only thing that a civil servant has to have, according to the Law, is to pass the state exam. But nothing is said about the professional education. People are not educated, they don't know, and you have to help them in their work."

"I believe that, in general, all of the BiH institutions are falling behind with technical preparations, and especially with staff education. They are falling behind in all aspects of training and education, acquiring any kind of literature and rulebooks, any kind of instructions, staff policy or introducing people to the developments in specific sectors."

Training and education are mainly implemented thanks to international help which, again, is often inappropriate and inapplicable. The institutions of the European Union were reproached that they did not do quality preparations for the transfer of knowledge to the local staff. Experts hired by the European Commission are sometimes 'not coping very well' where educating local staff is concerned. Many examples were mentioned of how the international experts force the application of some European solutions, which are in a complete contrast and contradiction to our reality. The participants who had such experiences say that it made them become more cautious when accepting such demands.

"From the experience I have had so far, I have to say, that these people that come from European institutions are not well enough prepared in order to transfer the knowledge to us. And I must say, for us, that is unacceptable, it is not clear, the language is strange. It is bad enough that we still did not get things in order since the end of the war, to now get such bad instructions."

The participants also complained that they do not have access or the instructions to the directives they need to approximate the legal regulations of Bosnia and Herzegovina with the legal heritage of the European Union, because they started translating them late in BiH. The Directorate for European Integration was not of great assistance to them there. It mainly refers them to consult with their colleagues from Croatia and Serbia who have got a lot further along with the process.

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE 93

"I am a member of several Working Groups whose task is to harmonize our laws from different areas with the European directives. So, what are the problems we lawyers face where harmonization of local regulations with the regulations of the EU is concerned? As far as I know, we have some sort of a transition period of six years to fulfil the demands under the SAA. Nevertheless, it seems to me that it is impossible to achieve this in that period considering the fact that we do not have these regulations translated. We do not have a document with which we can harmonize the local regulations."

The participants pointed out that the lack of substantial, clear and continuous communication and coordination within and between different departments is yet another problem. They said that some parties do not judge the laws according to the quality of their content, but on whether they suit their political interests and subjects under their protection. It is the general opinion that the Members of Parliament are not behaving responsibly and that this is the reason why so few laws get adopted even though they are prepared regularly and on time.

"At the beginning of this year, the Federal Ministry of Development and Entrepreneurship had adopted the Entrepreneurship Development Program for the next 5 years. I dare say that they did it quite well and by taking over all of the European directives that regulate that specific area. However, the problem is in the fact that the document should have been a part of the overall Strategy for Industrial Development in the Federation. As a civil servant in the Ministry in question, I followed this for several months, and at this moment, I am not sure whether this Development Strategy has been adopted even as of today."

"I have no idea what my people in the administration are doing. I know that there are a lot of them, but whenever I need something, there is no one around. I have to call them five times on the telephone, then I send them a fax, and they tell me that they did not get it. This is where I have a problem. On the other hand, there are people who I work with, and they want to work even more than it is expected of them, but we do not have the adequate access to the valid regulations. Those regulations exist, but I never received any of them; I had to download them from the internet. My administration never passed any rulebook, not even those that can be passed by the Director. I think that this is a big problem, and that it is being orchestrated by the politics from the higher levels."

VII. CAUSES FOR FAILURE OF BIH ON THE EUROPEAN ROAD?

"The conditions that Bosnia and Herzegovina needs to fulfil should be public, should be revealed to all. It would also be good to explain what the Road Map exactly is. If everything was done publicly, then every citizen would be familiar with this."

It came to us as a surprise that out of the obligations under the SAA that will be hardest to fulfil for Bosnia and Herzegovina, the first one that was mentioned was ecology. The participants explain this by arguing that BiH is ecologically a 'neglected' country, that the citizens and the government have a low level of sensitivity for the issues of environmental protection, that the system of ecological protection in Bosnia and Herzegovina is not in accordance with EU standards, and that adjustment to the EU standards is, financially, a very demanding undertaking.

"In the area of ecology, there were never any real legislative or even practical activities. Even in this area we are falling behind the others and we seem to have a huge void there."

"Ecology for example. There are so many problems there. They cannot find any sort of agreement at the local level. Nobody wants to accept having a garbage disposal site that

PAGE 94 | COMPARATIVE

COMPARATIVE REPORT FOR 2009 (Western Balkans - Bosnia and Herzegovina)

SUMMARY OF THE FOCUS GROUP FINDINGS

fulfils all of the EU standards in their territory. They think it is enough just to dump their garbage in a field and that's the end of it."

Agriculture and protection of domestic production have also been mentioned as some of the areas where BiH could have big problems. Most of the participants think that agriculture in BiH is not in a good strategic position, and that its adjustment to the demands of the European Union will be a long and, for the agricultural manufacturers, very painful process. In the end, they agreed that the least problem will be the adoption of economic standards, because that process does not depend on the will of the BiH government as much as it does on the activities of the market mechanisms.

"Considering how the majority of the SAA represents some sort of a trade agreement between the EU and BiH, I think that this part will not bring us many problems. We should say that this is a classic trade agreement where we will, in time, and without problems, apply these provisions in this free trade. I think that most of the problems will be encountered during the implementation and the enforcement of the Acquis and the EU standards in all of the institutions and sectors in BiH."

There are significant differences in the answers of the participants of different nationalities when asked where else to look for the reasons for failure of BiH.

The group of participants of Serbian nationality is unanimous in the discontent expressed with the involvement of the international community. They have opened the question of the real ability of the international community to influence the development of events in Bosnia and Herzegovina. The goals and the scope of engagement of the international communty have not been precisely defined or shared with the public in a clear and open manner. Their tendency to make *ad hoc* solutions has often been counter-productive. Another reason for resentment towards the international community is that it has made a lot of mistakes in identifying and imposing priorities on how the transition of BiH should be done. It is believed that the economy and business development are the areas that the international community has particularly neglected. The participants gave a very negative assessment of the essence of a number of reform projects that had been implemented under the patronage of the international community. In that context, they were mainly criticizing the judicial and police reforms.

"Generally speaking, there were numerous mistakes in the approach of the European Union, its institutions and the international community towards Bosnia and Herzegovina. It is evident that they are ignorant of some of the basic notions of Bosnia and Herzegovina, our structure - constitutional and legislative - as well as of the overall events that have marked the latest historical period in BiH."

A lot of participants of other nationalities feel that the international governance is not only limiting the state sovereignty of Bosnia and Herzegovina, but it is also very questionable, on the 'technical' side of things, whether it has, with that kind of 'mentorship', made BiH acceptable for the European Union. Most of them think that there have been a lot of political improvisations, double standards and unprincipled pressures in its policy towards BiH, and that the international community sees BiH with eyes full of prejudice. Even though they have no doubt as to the good intentions of the international community to help Bosnia and Herzegovina, a lot of participants point out that the strategy which the international community had made for BiH did not always suit the needs of this country.

"As we are now witnesses of this Butmir Process, when they actually tried, with all available means, to offer us a new solution within 15 days or a month - a solution that is supposed to

COMPARATIVE REPORT FOR 2009 [Western Balkans Bosnia and Herzegovina]

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE 95

last for years and years. And they tried to do so in the years that are the most important for us, right in the time of the European integration process."

There are very visible, although to be expected, differences between the participants of different nationalities on the matter of Constitutional obstacles that slow down the European integration process. They are clearly visible in the fact that the participants of Serbian nationality see the Dayton Constitution as a "holy relic", while the Bosniaks demand for a change of the Dayton concept of the state. However, it is important to point out that, compared to the previous researches done by the FPI BH (especially in the time period prior to the 2006 elections), the interviewees of Serbian nationality demonstrated public support for division of Bosnia and Herzegovina.

The interviewees of Bosniak and Croatian nationality think that one of the obstacles is in the fact that the state is defined as a community of two entities with two completely different administrative systems. They think that the practice has shown that the 'architecture' of decision making, which was set up for that purpose, obstructs the establishment of a functional and modern state and that, in that part, certain 'modifications' need to be made.

"Concerning the fact that other countries reached a national consensus; we have such consensus only in words. Politicians answer to no-one. They do not answer to the citizens. They only answer to their parties; they are chosen and guided by their parties. If a situation should arise, where one of the parties will not achieve what it expected to achieve out of that consensus, it will automatically step on the brakes, and the whole process will be brought into question."

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Monitoring of the BiH European integration processes

PAGE **96**

COMPARATIVE REPORT FOR 2009 [WESTERN BALKANS BOSNIA AND HERZEGOVINA]

SUMMARY OF THE FOCUS GROUP FINDINGS

PAGE 97

PRISM RESEARCH for Foreign Policy Initiative BH (FPI)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS

Methodology

Poll method:	Personal interview within the household of the interviewee random choice – Random movement technique	
Method of choosing the household:		
Method of choosing the interviewees:	last birthday principle (the interiewee is the person in the household over 18 years of age who most recently celebrated his/her birthday)	
Size of the sample:	1050 interviewees	
Representative quality:	the sample is representative at the level of BiH for the population over 18 years of age	
Time frame of the poll:	20-31 December 2009	
Instrument:	Poll questionnaire designed by Prism Research	

Main findings

All interviewees find, in an equal ratio, that BiH is moving both towards improvement and deterioration as far as European integration is concerned (45% each side), having in mind the fact that the interviewees who feel that BiH is moving towards improvement are more significantly represented in Brčko District than in the FBiH and in the RS (BD 87%, compared to FBiH 45% and RS 44%).

PAGE 98

MONITORING OF THE BIH EUROPEAN INTEGRATION PROCESSES

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS

The interviewees, in principle, support the accession of BiH into the EU, that is, they give an average score of 3.3 when estimating to what extent they support the accession to the EU, by scoring with scores 1 to 4, where 1 means "strongly opposes", and 4 "strongly supports". Further analysis shows that the interviewees from FBiH and Bosniaks show greater support for the BiH accession to the EU, than the interviewees from the RS, or the interviewees of Serbian and Croatian nationality.

All interviewees place Croatia in first place as the country that is currently the most advanced in the negotiations for joining the EU. Serbia is in second place, and then come Montenegro, Macedonia; BiH is second to last, right in front of Albania – which the interviewees place last. Along with that, the interviewees from the FBiH more often find that Croatia, Albania and BiH lead when it comes to fulfilling the set conditions, while the interviewees from the RS say the same thing for Serbia, Montenegro and Macedonia.

While assessing the activities of the government at all levels of BiH focused on meeting the conditions for joining the EU, the interviewees give an average score of 2.2 (scores go from 1 to 4, where 1 means "very negative", and 4 "very positive"), which indicates that, in principle, they are not pleased with the government activities directed towards fulfilling the set conditions. The interviewees from the RS and those of Serbian nationality give more positive estimates of the mentioned activities, compared to interviewees from FBiH and those of Bosniak and Croatian nationality.

Close to half of all of the interviewees feel that no level of government is implementing the tasks necessary for BiH to join the EU in the future. Then come those who did not know or wish to answer (16%). In third place come the interviewees who state that it is the state government, while other answers are calculated in under 8%. That the entity governments are better at implementing the necessary tasks for BiH to join the EU in the future is more often stated by the interviewees from the RS than by those living in the FBiH (17% compared to 2%).

Over half of the interviewees who stated that state, entity or canton level of government is best at implementing the tasks necessary for BiH to join the EU, could not tell which institution was doing it (52%). Close to one tenth of the interviewees find that the mentioned tasks are best implemented by the Government/institutions of the RS, and an equal number stated that that it was the Council of Ministers/Government of the FBiH (11%). The opinion that the Government/institutions of the RS work best in the interest of BiH joining the EU was most often expressed by interviewees of Serbian nationality.

Over one half of all of the interviewees find that the biggest obstacle in the implementation of the obligations of BiH for joining the EU are the local politicians (56%), and this answer is most common with the interviewees from Brčko District and those of Bosniak nationality. The second most common answer is the "BiH Constitution", stated by dozens of all of the interviewees, while other answers were rarely stated.

With most of the interviewees, the postponing of the visa liberalization regime did not directly influence their travel plans (66%, and this was more often mentioned by the interviewees from BD than those living in RS), while less than one third stated that it did (30%).

The interviewees mainly find that both local governments and EU are equally responsible for BiH not receiving the visa free regime with the EU (47%). Then come those who find that the local governments are most responsible for that (36%), while a small number of the interviewees state that the EU is responsible for that, or that they find no one responsible for the existing situation (7% each). The interviewees from the FBiH and the

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS

PAGE 99

RS more often blame the local governments, and the majority of them are of Bosniak nationality; compared to those from the BD who more often than the rest do not blame any of those listed above, while the interviewees of Serbian nationality find that the European Union is the most responsible.

While evaluating to what extent they believe that fulfilling the EU standards will lead towards improving the economic situation in BiH, the interviewees gave an average score of 2.1 (scores go from 1 to 4, where 1 means "I don't believe at all" and 4 "I fully believe") and which, in principle, means that they are not optimistic where this question is concerned. Along with that, the interviewees of Croatian nationality have higher expectations that fulfilling the EU standards will lead towards improvement of the economic situation in BiH, compared to interviewees of Serbian and Bosniak nationality.

When it concerns the evaluation interviewees made as to what extent they believe that our businessmen were capable of competing with foreign companies once we enter the EU, the average score they gave was 2.8 (where 1 means "not capable at all" and 4 "completely capable"), where a lower average score was given by the interviewees from the RS and those who declare themselves as Serbs, compared with other interviewees from the FBiH and the interviewees of Croatian and Bosniak nationality.

Those who stated that our businessmen were not capable of competing with foreign companies once we enter the EU, most often find that the problem is in the state structures (67%), while less than a quarter of them finds that the problem is in the businessmen (24%).

The interviewees gave an average score of 2.6 when asked to what extent they find that the public servants are trained and familiar with the demands set before BiH in the process of joining the EU (scores go from 1 to 4, where 1 means "they are completely untrained and unfamiliar", and 4 "they are adequately trained and familiar"). Croats, significantly more often then the Serbs find that the public servants are trained and familiar with the demands.

The majority of all of the interviewees finds that the public servants have the will and the desire to work in the interest of the citizens and the state in order for BiH to become a member of the EU as soon as possible (44%), although we should mention that over a third of them thinks the opposite (40%). Furthermore, the interviewees from the Brčko District, to the largest extent, find that the civil servants have the will and the desire to work in the interest of the citizens and the state, while, where the nationality of the interviewees is concerned, the data indicates that the Serbs more often share this opinion then the Bosniaks do.

The interviewees gave an average score of 2.7 where it concerns their opinion on the work of the NGOs (the scores went from 1 to 4, where 1 means "very negative" and 4 "very positive"). The interviewed citizens of Brčko District and those of Bosniak nationality give a significantly more positive estimate to the work of NGOs, compared to the interviewed citizens of FBiH and the RS, and those who declare themselves as Serbs and Croats.

The largest number of the interviewees finds that the NGOs in BiH are, to an extent, active in familiarizing the citizens with the EU integration process (39%), then come those who find that the NGOs are somewhat active (31%), and then those who find them to be completely inactive (15%). A small portion of the interviewees finds that the NGOs are very active when it comes to familiarizing the citizens with the EU integration process (7%).

PAGE 100 | COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS

Television is the main source of information for most of the interviewees where EU integration process is concerned (74%), while other sources are listed in less than 8% of the cases. TV is significantly more often mentioned by the interviewees from the RS than by those from the FBiH and those who are of Croatian and Bosniak nationality.

The majority of all of the interviewees, when they consider all advantages and disadvantages, as well as the necessary time, find that the future of BiH is in the EU (64%), which is the answer most commonly found in Brčko Dictrict. After them comes one fifth of the interviewees who find that there is no other alternative (21%), while over one tenth find that the future of BiH is not in the EU (12%).

Also, the majority of all of the interviewees supports BiH entering the EU, even if it requires for some of the competencies to be transferred from the entity to the state level (these were mostly the interviewees of Bosniak nationality). Almost all of the interviewees from Brčko District support this notion, while the 45,3% interviewees from the RS support BiH entering the EU under the listed conditions.

Over one half of all of the interviewees (56%) think that the EU member countries want to see BiH as an EU member country in the future, while less then one third think the opposite (30%). A positive answer to this question is most often given by the citizens of Brčko District (almost all of them).

Over one half of the interviewees support BiH membership in NATO (56%), while this support is least present among the interviewees who live in the RS. Furthermore, support for NATO membership is mainly given by the interviewees of Bosniak nationality.

When asked about what BiH membership in NATO means for the interviewees, most of them said "security" (24%), then "imposing political will by the West", "prevention of possible conflicts" and "stabilization of the region as a precondition for integration into EU" (13% each), while other answers were stated in less than 10% of cases. Further analyses through entities and nationalities of the interviewees showed that for the interviewees who live in the FBiH, and the interviewees of Bosniak nationality, BiH NATO membership primarily signifies safety, in contrast to those who live in the other entity, or for interviewees of Serbian nationality. "Imposing political will by the West" was the answer least often mentioned by interviewees from the FBiH, as well as by those of Bosniak nationality. In BD, the interviewees most often state the stabilization of the region as a precondition for BIH integration in the EU.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS

Socio-demographic characteristics of the sample

	Sample	No	%
ENTITY	FBIH	612	58,3
	RS	416	39,6
	District Brčko	22	2,1
MAJORITY AREA	Bosniak majority	476	45,4
	Croat majority	135	12,9
	Serb majority	416	39,6
	District Brčko	22	2,1
TIP NASELJA	City	450	42,9
	Village	600	57,1
GENDER	Male	514	49,0
	Female	536	51,0
AGE	18 - 35	382	36,4
	36 - 60	455	43,4
	61+	213	20,2

	Sample	No	%
EDUCATION	No primary education	81	7,7
	Primary education only	200	19,1
	Highschool education	578	55,0
	Higher education (post- secondary education)	122	11,6
	University education	63	6,0
	Masters degree/PhD	3	0,3
	Refused to answer	3	0,3
NATIOANLITY	Bosniaks	497	47,3
	Serbs	376	35,8
	Croats	135	12,8
	Other	6	0,7
	Refused to answer	36	3,4
EMPLOYMENT STATUS	Employed	384	36,6
	Unemployed	653	62,2
	Refused to answer	13	1,2

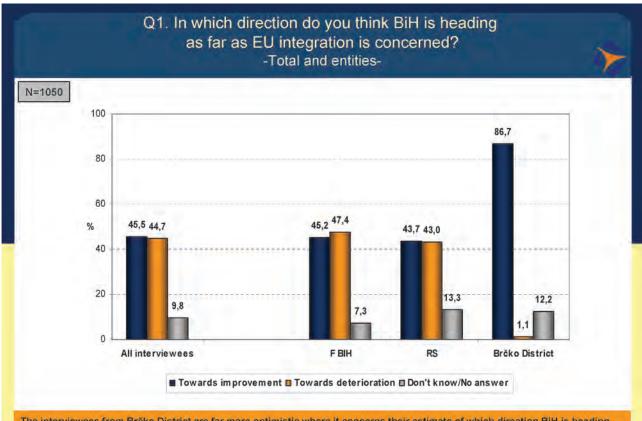
105

Monitoring of the BiH European integration processes

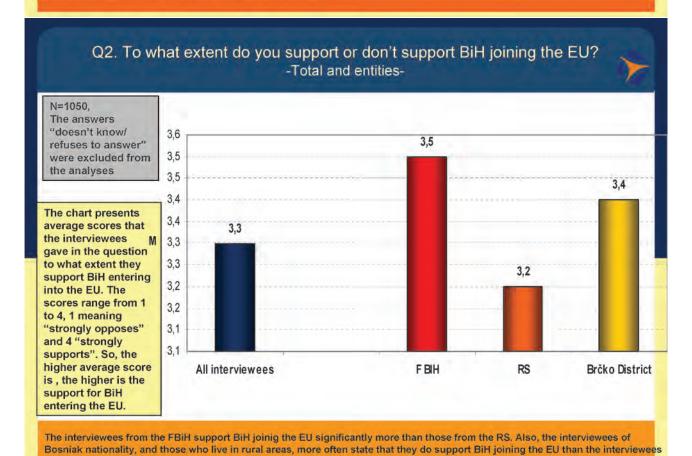
COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS

of other nationalities and those who live in cities.

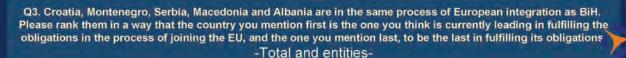


The interviewees from Brčko District are far more optimistic where it concerns their estimate of which direction BiH is heading where European integration is concerned – to a large extent they estimate that BiH is heading towards improvement, compared with the interviewees from the FBiH and RS. Next to that, data analysis indicates that men, compared with women, are more prone to give an estimate that BiH is heading towards improvement.



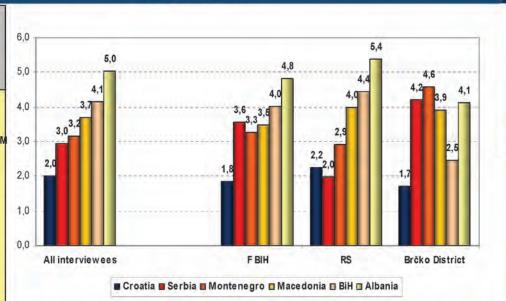
COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS



N=1050, The answers "doesn't know/ refuses to answer" were excluded from the analyses

The chart represents the average ranking that interviewees gave to the mentioned states. According to their answers, the lowest ranking is the state that is currently leading in the EU accession process, and the highest ranking is the state they believe to be furthest behind.

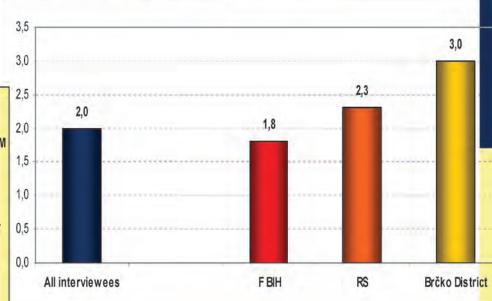


Differences between interviewees from different socio-demographic characteristics are visible in the sense that interviewees from the FBiH give lower ranking to Croatia (mainly Bosniaks), Albania (mainly Croats) and Bosnia and Herzegovina, compared to the interviewees from the RS (that is, they find that these states are ahead in fulfilling their obligations in the process of approximation to the EU when compared to other states). On the other hand, the interviewees from the RS, unlike those from the FBiH, give lower ranking to Montenegro (most often Serbs), and Serbia (also, most often Serbs) and Macedonia – they estimate that compared with the other listed states, these three states are ahead in the process of approximation to the EU.

Q4. How would you rate the activities of the Government at all levels in BiH directed towards fulfilling the conditions for joining the EU? -Total and entities-

N=1050, The answers "doesn't know/ refuses to answer" were excluded from the analyses

The chart represents the average scores through which the interviewees expressed their opinion on how they rate the activities of the BiH government directed towards fulfilling the conditions for joining the EU. The scores go from 1 to 4, where 1 means "very negative", and 4 "very positive". Therefore, the higher the average score is, the more positive is the rating of the mentioned activities of the BiH government.



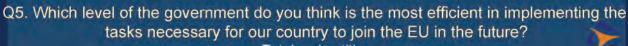
The interviewees who live in the RS and those of Serbian nationality give a more positive rating to the activities of the government at all levels in BIH that are directed towards fulfilling the conditions for joining the EU, compared to those from the FBiH and for the interviewees of Bosniak and Croatian nationality. In addition to that, a more positive rating is given by older interviewees (61+) than those in the age group 18 to 35.

104

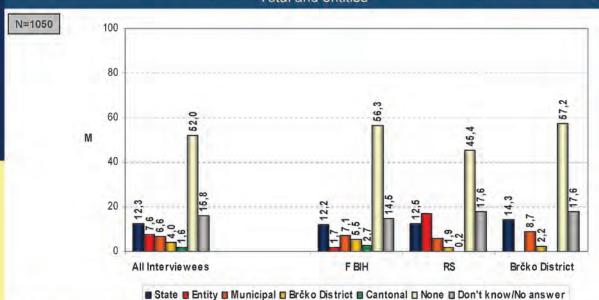
Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS

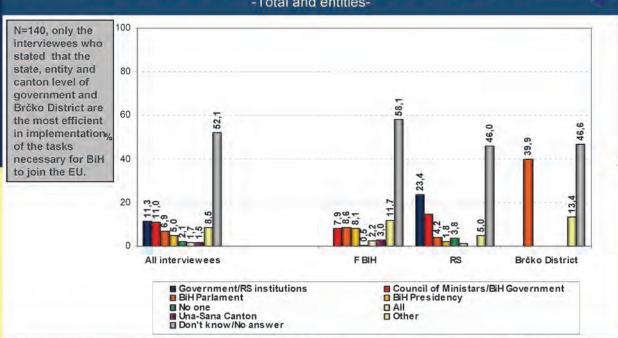


-Total and entities-



That the state level of government is the most efficient in implementing the tasks necessary for BiH to join the EU in the future is most commonly the opinion of male interviewees, those who live in rural areas and those with a university education, compared with female interviewees, those who live in the cities and those with a lower level of education. The answer that the entity governments are those that are the most efficient in the implementation of the mentioned tasks is most commonly the opinion of the interviewees from the RS than of those from the FBiH. This opinion is shared by the older interviewees, the unemployed and those without a formal education, unlike the younger, employed and the interviewees with education.

Q6. Which institution at the mentioned level of government do you find to be the most efficient while working in the interest of BiH joining the EU? -Total and entities-

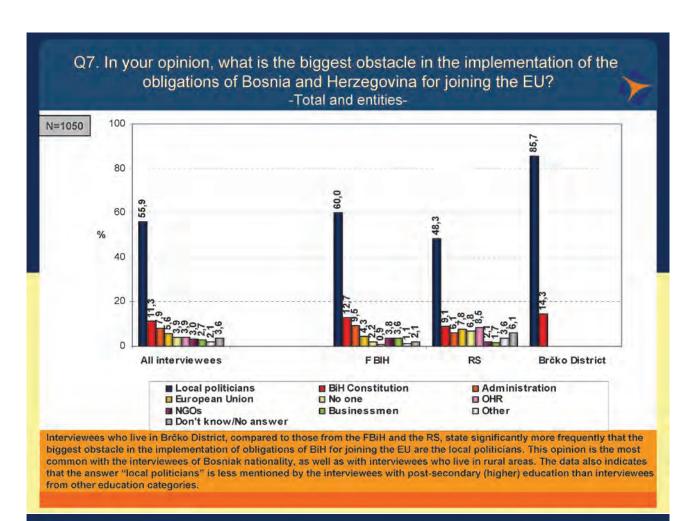


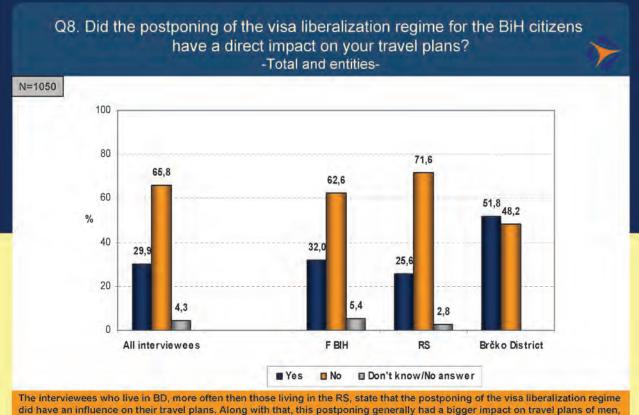
Statistically significant differences between the interviewees of different socio-demographic categories are visible between those living in city areas, who more often than those living in rural areas, find that the government/institutions of the RS are the most efficient in working in the interest of BiH joining the EU. This opinion is most often stated by the interviewees of Serbian nationality.

Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS





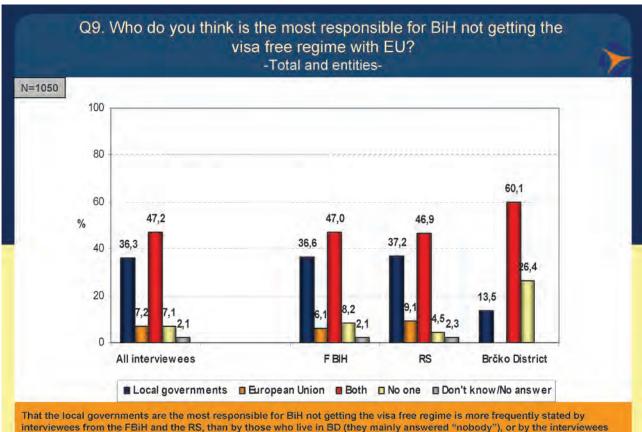
young people, employed interviewees and those of Bosniak nationality, than on women, older people, the unemployed and on interviewees of Serbian and Croatian nationality. There is also a visible tendency in more educated interviewees to state that the

mentioned postponing of the visa liberalization regime had an impact on their travel plans.

Monitoring of the BiH European integration processes

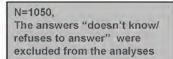
COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS

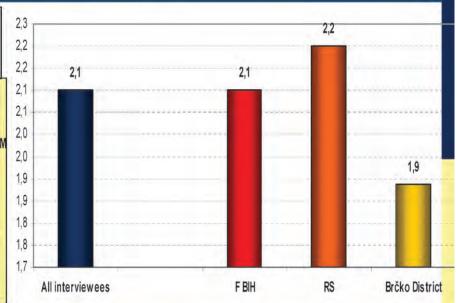


That the local governments are the most responsible for BiH not getting the visa free regime is more frequently stated by interviewees from the FBiH and the RS, than by those who live in BD (they mainly answered "nobody"), or by the interviewees who live in rural areas, younger interviewees, and those of Bosniak nationality. The majority of Serbs feel that the EU is the most responsible for BiH not getting the visa free regime with the EU.

Q10. To what extent do you believe that fulfilling of the EU standards will lead towards improving the economical situation in BiH ? -Total and entities-



The chart gives a representation of an average score that the interviewees gave to illustrate to what extent they believe that fulfilling of the EU standards will lead towards improving the economic situation in BiH. The scores range from 1 to 4, where 1 means "I don't believe at all" and 4 "I fully believe". The higher the average score is, the greater the belief is among the interviewees that fulfilling the EU standards will lead towards improving the economic situation in BiH.

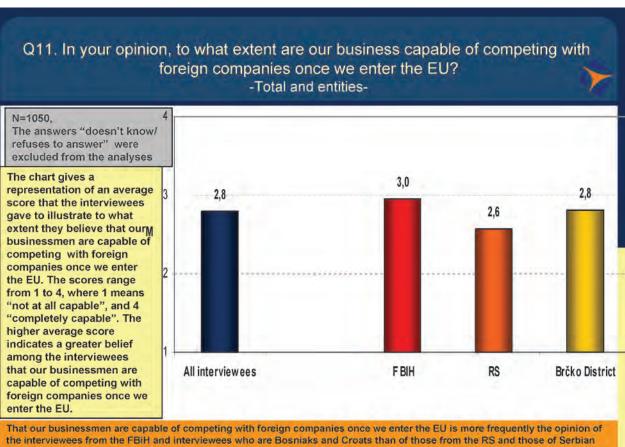


Data analysis shows that the interviewees who live in urban areas, as well as interviewees who declare themselves as Croats, believe to a significantly higher extent, that fulfilling the EU standards will lead towards improving the economic situation in BiH, when compared to interviewees from rural areas and those who declare themselves as Bosniaks and Serbs.

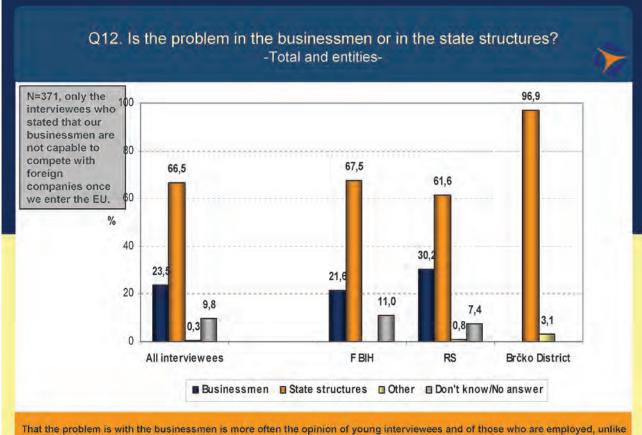
106

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS



nationality. Furthermore, the data indicates that the interviewees with lower levels of education are generally more prone to give a positive opinion on this issue than those with a higher level of education.



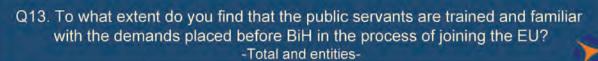
That the problem is with the businessmen is more often the opinion of young interviewees and of those who are employed, unlike the older interviewees (61+) and those unemployed who more often find that the problem is in the state structures.

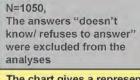
108

Monitoring of the BiH European integration processes

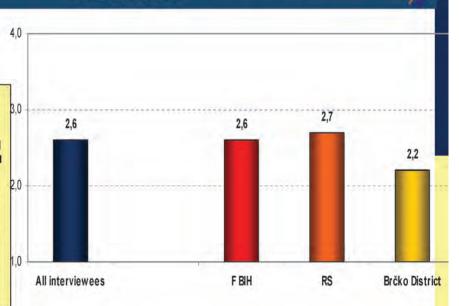
COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS



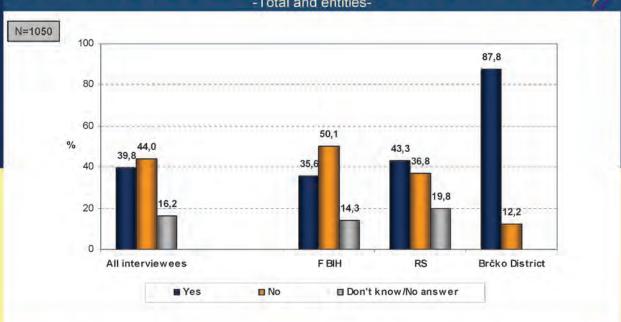


The chart gives a representation of an average score that the interviewees gave to illustrate to what extent they find that the public servants are trained and M familiar with the demands placed before BiH in the process of joining the EU. The scores range from 1 to 4, where 1 means "they are completely untrained and unfamiliar" and 4 "they are adequately trained and familiar". A higher average score shows that the interviewees find to a greater extent that the public servants are trained and familiar with the mentioned demands.



Out of the interviewees, the Croats, more frequently than the Serbs, state that the civil servants are trained and familiar with the mentioned demands, as do those who are in the age group of over 61 years of age, unlike the younger interviewees (those in the age group 18 to 35).

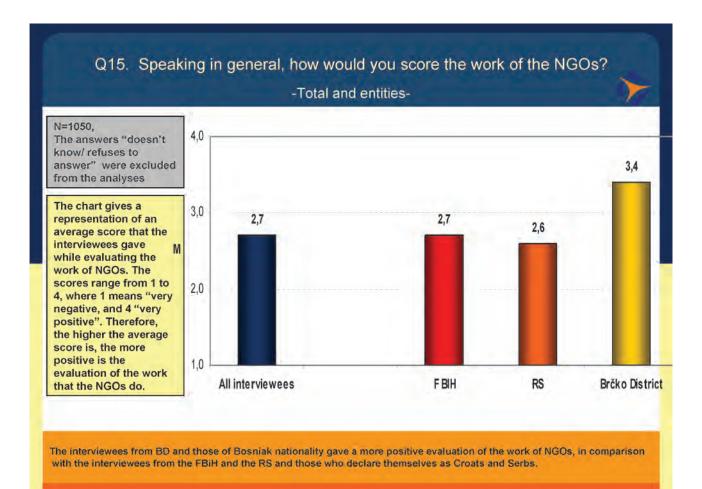
Q14. Do you think that civil servants have the will and desire to work in the interest of citizens and the state for BiH to become a member of the EU as soon as possible. -Total and entities-

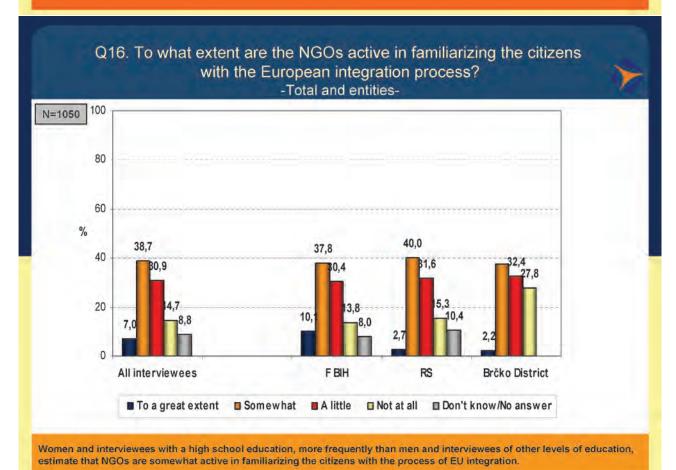


A great majority of the interviewees who live in BD think that the civil servants have the will and the desire to work in the interest of the citizens and the state so that BiH can become a member of the EU. Also, interviewees from urban areas are more prone to agree with this opinion than those who live in rural areas, while analysis based on nationality shows that Serbs, more frequently than Bosniaks, share this opinion.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS



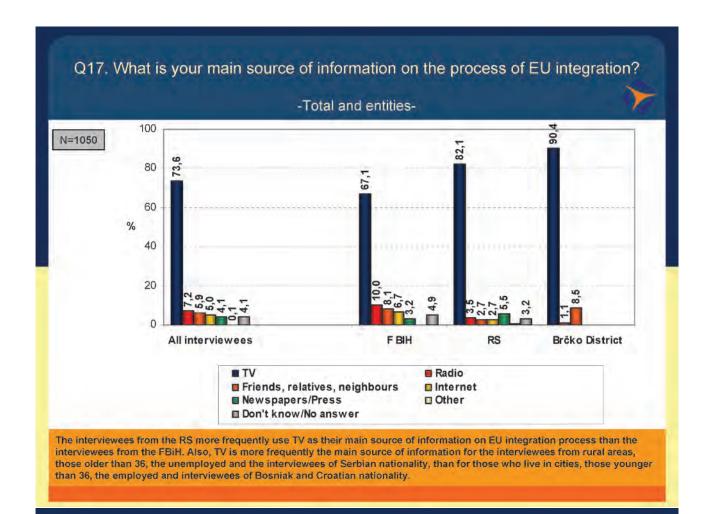


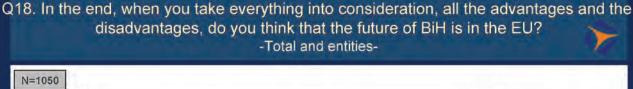
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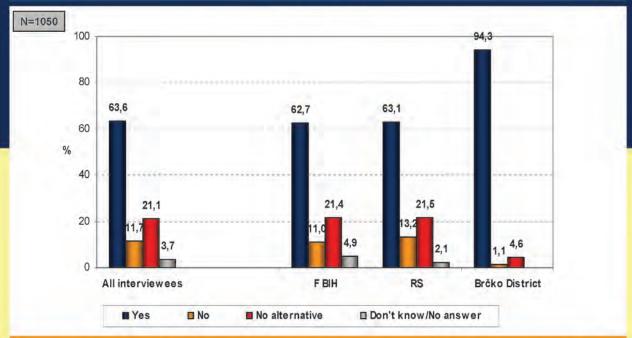
Monitoring of the BiH European integration processes

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS



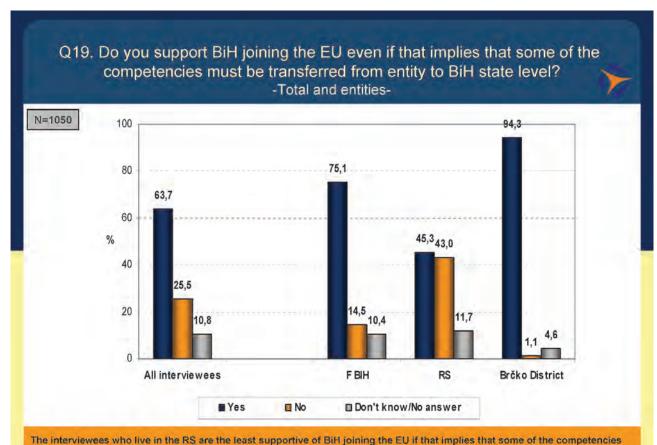




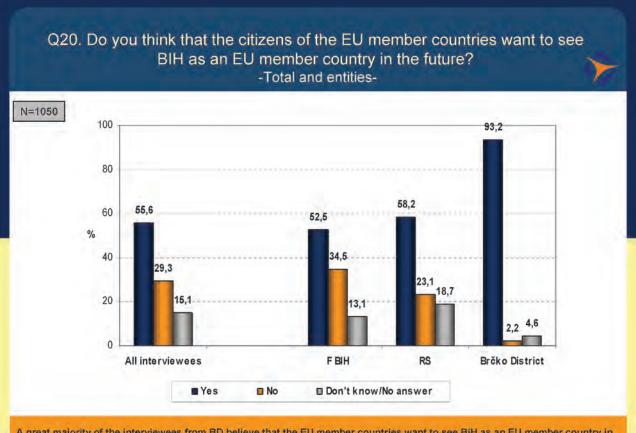
The majority of the interviewees from BD, as well as interviewees that are unemployed, feel that the future of BiH is in the EU.

COMPARATIVE REPORT FOR 2009 (WESTERN BALKANS BOSNIA AND HERZEGOVINA)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS



must be transferred from entity to BiH state level. Furthermore, interviewees of Bosniak nationality most frequently state a supporting opinion compared to interviewees of other nationalities.

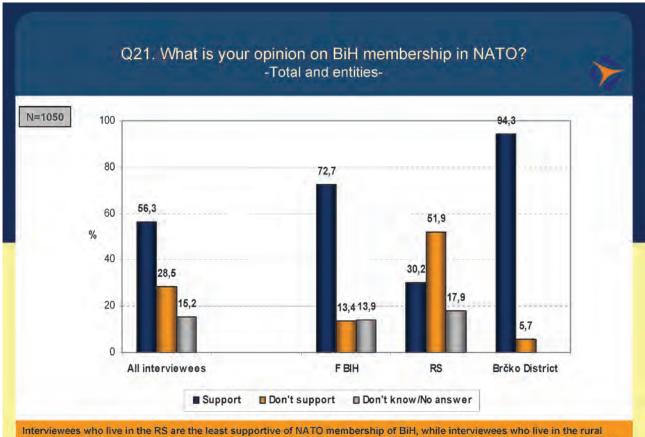


A great majority of the interviewees from BD believe that the EU member countries want to see BiH as an EU member country in the future, and this opinion is more often shared by the interviewees who live in rural areas, than by those who live in the cities.

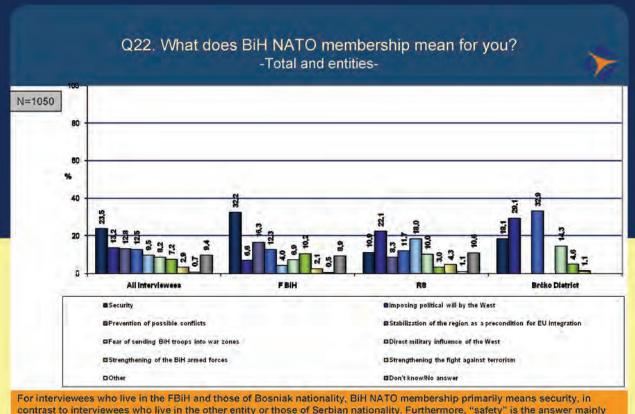
115

COMPARATIVE REPORT FOR 2009 (Western Balkans Bosnia and Herzegovina)

NARATIVE SUMMARY OF THE PUBLIC OPINION POLL RESULTS



Interviewees who live in the RS are the least supportive of NATO membership of BiH, while interviewees who live in the rural areas, younger interviewees and those of Bosniak nationality, more often than interviewees who live in cities, older interviewees and those of other nationalities, support BIH NATO membership.



For interviewees who live in the FBiH and those of Bosniak nationality, BiH NATO membership primarily means security, in contrast to interviewees who live in the other entity or those of Serbian nationality. Furthermore, "safety" is the answer mainly given by interviewees from rural areas, in comparison to those who live in the city. "Imposing political will by the West" is the answer least mentioned by interviewees who live in the FBiH, as well as by those of Bosniak nationality. In DB, the interviewees mainly state that, for them, NATO membership mainly represents the stabilization of the region as a precondition for BIH integration into the EU.