Monitoring of the BiH European Integration Processes

Comparative report for 2011
(Western Balkans-Bosnia and Herzegovina)

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Preface

In the period between October 2008 and June 2012, FPI BiH produced eight comprehensive reports in line with the chapters of the Stabilisation and Association Agreement/Interim Agreement: 2008 Preliminary Report, 2009 First Semi-annual Report, 2009 Second Semi-annual Report, 2009 Comparative Report, 2010 Annual Report, 2010 Comparative Report, 2011 Annual Report as well as this present 2011 Comparative Report. The project conducted public opinion research in 2009, 2011 and 2012 and held 14 focus groups comprising citizens from various parts of Bosnia and Herzegovina. The public opinion research covered more than 4,500 people while approximately 100 people, selected according to statistical characteristics of the population, participated in the focus groups. The twenty experts who worked on the projects came from various backgrounds: different fields of law, economics, finances, social policy, political science, diplomacy, engineering and linguistics amongst others. Members of all the peoples living in BiH, from Sarajevo, Banja Luka, Tuzla, Mostar and Zenica, comprised the team of authors who produced reports in line with the SAA chapters. Similar representation was in the editorial board, project logistics team and team of analysts conducted public opinion research activities, while the gender ratio for the duration of the project was approximately 50/50. The professional background of our writers includes the former European Commission's technical support local experts, civil servants, members of academia, business consultants and researchers from the nongovernmental sector. Although they hold different political convictions and social views, their common interest rests in demystifying the process of European integration. The research was promoted at eight conferences

attended by more than 1,200 people, including civil servants, executive officials and parliamentarians at all levels of government, as well as journalists, professors, researchers, representatives of the international community in BiH and abroad and representatives of the nongovernmental sector in BiH. The speakers and panellists who shared their comments on the reports included the BiH Presidency Chairman, members of the BiH Presidency, the Chairman of the Parliamentary Assembly of BiH, the Chairman and other members of parliamentary committees on European integration and economic development, ministers in the Council of Ministers of BiH and entity officials. Our guests from the international community included the UN High Representative for BiH, the heads of the EU Delegation to BiH and ambassadors from countries holding the rotating EU presidency. It was our pleasure to be joined by our colleagues from think-tank organisations dealing with the process of European integration in the region, the Regional Cooperation Council – (RCC) and representatives of the European Union Institute for Strategic Studies – (EUISS). Each report had a 500 copy print run, which means that approximately 4,000 publications have been distributed across governmental and nongovernmental sectors and the media. All the publications are available online at www.vpi.ba.

Introduction

Dear reader, we are pleased to present to you the Third Comparative Report on the European integration process in Bosnia and Herzegovina, which compares BiH with other Western Balkan countries. The reporting period covers the third year after signing of the Stabilisation and Association Agreement (SAA). In the case of Bosnia and Herzegovina this corresponds to 2011, the same applying to Serbia. In the case of Montenegro the year is 2010, in the case of Albania it is 2009 and for Croatia and Macedonia this corresponds to 2004. More precisely: **BiH** – from June 2010 to June 2011; **Serbia** - from April 2010 to April 2011 (the SAA ratification ongoing); **Croatia** – from October 2003 to October 2004 (the SAA came into force on the 1st of February 2005); **Albania** – from June 2008 to June 2009 (the SAA came into force on the 1st of April 2009); **Montenegro** – from October 2009 to October 2010 (the SAA came into force on the 1st of May 2010); **Macedonia** – from April 2003 to April 2004 (the SAA came into force on the 1st of April 2004).

The period that has elapsed since the previous Comparative Report has seen significant change in the overall integration process of Western Balkan countries, particularly Croatia, Serbia and Montenegro. In June 2011 after the last of 35 chapters was closed, negotiations with Croatia were completed and the European Commission issued a positive opinion on Croatia's application for EU membership in October 2011. Croatia signed the EU Accession Treaty in December 2011 and in January 2012 66% of Croatian citizens voted in favour of joining the EU, thus enabling Croatia to ensure its membership. At the end of January 2011, Serbia submitted its answers to the EC

Questionnaire and the EC provided feedback in October 2011. Serbia was granted candidate status on 1 March 2012. Finally, EU candidate status for Montenegro was confirmed in December 2010 while the negotiation process was initiated in December 2011 with the intention to start negotiations in June 2012.

Unfortunately, a general comparison between the other Western Balkan countries and Bosnia and Herzegovina leads to the conclusion that, unlike BiH, the others have paid more attention to the establishment of co-ordination mechanisms for the implementation of the IA/SAA, as well as to the drafting of strategic documents such as national programmes for the implementation of the SAA and other strategic documents related to civil service reform or parliamentary agendas that are harmonised with the deadlines referred to in the SAA. Serbia went as far as to implement the SAA unilaterally for over a year, while Croatia achieved candidate status before the SAA came into force.

In the other Western Balkan countries the average duration of interim agreements, before the Stabilisation and Association Agreement came into force, was 28 months, while the average period from the entry into force of an interim agreement to the granting of candidate status is 36 months. With this in mind, it can be said that Bosnia and Herzegovina, three years after signing its SAA, does not significantly lag behind other regional countries; perhaps only some 8 to 12 months, although this assessment should not lead one to a false conclusion. In July 2012 it will have been four years, or 48 months, since the Interim Agreement between BiH and the EU came into force, almost twice the average duration of interim agreements. Bosnia and Herzegovina is yet to satisfy all the requirements and consequently the country has not submitted an application for EU membership, a precondition for obtaining candidate status.

According to public opinion research conducted in April 2012, a majority of citizens of Bosnia and Herzegovina continue to support the European integration process, namely 79,6 %. At the same time, focus group participants, regardless of their ethnic affiliation, believe that the EU accession process, although technical in its character, has been politicised to the greatest possible extent and they cited politicians and government representatives as the main obstacle to "Europeanisation" due to the fact that they prioritise their personal interests over the interests of the people they represent.

The following pages of this report, which mirror the chapters of the SAA, constitute our attempt to answer the question as to why Bosnia and Herzegovina is experiencing the situation described above.

Title I, II and III

General principles; Political dialogue; Regional co-operation

a) General Assessment

In June 2011 three years had passed since Bosnia and Herzegovina signed a Stabilisation and Association Agreement (SAA) with the European Union. Although it was not the only country in the region to sign an agreement, BiH had specific reasons to explain why the Agreement had still not taken effect three years from the date of its signing and even after the ratification procedure was finished. At the request of the EU, the Venice Commission, in its 2005 report on the constitutional situation in BiH, pointed out certain irregularities and discriminatory provisions contained within the BiH Constitution. These findings were later confirmed by the ruling of the European Court of Human Rights (ECHR) in Strasbourg in the case of Sejdić & Finci vs. BiH. The fact that BiH citizens who do not declare themselves as Bosniacs, Croats or Serbs cannot be represented in the House of Peoples of the Parliamentary Assembly and the Presidency of Bosnia and Herzegovina, in conjunction with a year-long delay in the formation of the Council of Ministers of Bosnia and Herzegovina, had seriously endangered the reform dynamics and thus the Progress Report for Bosnia and Herzegovina in the third year from the date of signing of the SAA was the worst in the region. The vagueness of the Constitution regarding the division of competencies between the entities and the state, and the lack of political will to settle this matter adequately, caused the existing co-ordination in EU affairs to cease functioning. The executive branch did not function properly, there were problems with co-ordination of EU affairs, and the country was in breach of the European

Convention on Human Rights as well as the general principles of the SAA and some of the fundamental principles of the EU itself.

BiH and Serbia are the only two countries in the region where the SAA has not yet taken effect, three years after it was signed. The difference is that the SAA with Bosnia was ratified by all 27 member states late in 2010, but has not yet come into force because BiH is in breach of the European Convention on Human Rights and certain contractual obligations, whereas in Serbia the SAA has not taken effect because of "insufficient co-operation" with the ICTY. Serbia and Croatia were the only two countries in the region that had problems implementing the contractual obligations contained in the chapters 'General Principles and Political Dialogue'. Croatia received a negative avis by the ICTY on account of its problems with General Gotovina, whereupon the EU Council postponed the opening of accession negotiations. Because of Serbia's lack of co-operation with the ICTY, it came to a point where there was a temporary suspension of the ratification procedure[1].

As for regional co-operation, all the countries in the region, from Croatia and Bosnia and Herzegovina, to Serbia, Montenegro, Macedonia and Albania, had some open issues with their neighbours during the third year from signing of the SAA. Croatia had border and property issues with BiH and both countries had the same issues with Serbia. Serbia refused to recognise the Macedonian demarcation line with Kosovo, whereas Macedonia had a name dispute with Greece. Serbia did not implement EU recommendations regarding the establishment of inclusive[2] regional co-operation with Kosovo. In Croatia, Montenegro and Macedonia the SAA took effect in the third year after signing, while Albania is the only country in the region where it entered into force two years after it was signed.

b- 1) General principles and political dialogue

An SAA is a standardised agreement which lays down the same set of criteria and obligations for all the countries included in the Stabilisation and Association Process (SAP): rule of law, stability of institutions, full co-operation with the ICTY, non-proliferation of weapons of mass destruction, full control of arms exports, establishment of a Stabilisation and Association Council, political dialogue with the EU at the highest level and harmonisation of foreign policies of each country with the Common Foreign and Security Policy of the EU (CFSP).

1 SAA with Serbia has not yet been ratified by Romania and Lithuania.

2 Finding a solution for telecommunications and mutual recognition of degrees and qualifications, further implementation of all concluded agreements and active co-operation with EULEX so that it may perform its functions in all parts of Kosovo.

As for human rights, Bosnia and Herzegovina has had the most problems in the region, since its Constitution has not been harmonised with the European Convention on Human Rights. Moreover, the country also lags behind the rest of the region when it comes to institutional stability, primarily because of the political crisis of government formation after general elections. The rule of law, generally speaking, was a problem faced by all the SAA signatories in the third year after signing and some have yet to overcome it. The Albanian membership application was not considered specifically because of corruption and the fact that *Rechtsstaat* was not in place. In Bosnia and Herzegovina the European Commission even took special measures such as organising the so-called Structured Dialogue on Judicial Reform in order to mitigate the effects of overlapping of judicial competencies which threatened to paralyse the system. Croatia and Montenegro received the most criticism on account of the inefficiency of their judicial systems, while the situation in Serbia was no better. What is distinctive about this aspect of a comparative approach is the fact that Serbia and Croatia had the most problems regarding co-operation with the ICTY, which the EU recognised as a great obstacle to their accession, and this led to a suspension of the opening of negotiations in the case of Croatia and of the SAA ratification process in the case of Serbia. On the other hand, all the SAP countries, except for Bosnia and Serbia, started full realisation of their SAA in the third year after it was signed and they consequently replaced temporary co-ordination mechanisms with permanent ones. Albania, Macedonia, Montenegro and Croatia immediately formed Stabilisation and Association Councils as the highest-level bodies for monitoring the implementation of the SAA. All these countries, except for Bosnia and Serbia, established other necessary structures for the monitoring of the SAA: Stabilisation and Association Committees, seven sectoral sub-committees and parliamentary SAA committees. However, it is interesting to note that Serbia, unlike Bosnia and Herzegovina, was doing everything it could to make up for delays: not only did it submit an application for membership in the middle of the SAA deadlock, it also functionally reorganised the institutions in the chain of responsibility and responded to the candidacy questionnaire in advance (more on this in the case study).

With regard to the Common Foreign and Security Policy of the EU, all the countries did their utmost to harmonise their foreign policy with the CFSP. However, the way in which this was carried out varied, especially as pertained to restrictive measure, which is the most sensitive issue therein since it has financial implications. In each of the countries this important issue was decided on at the highest level, mostly by governments, and in the case of Bosnia by the Presidency. In every country the bodies which co-ordinated the harmonisation with the CFSP were part of their respective ministries of foreign affairs, without exception. In Croatia, joining the restrictive measures, declarations and resolutions of the EU is led by the Department for Common Foreign and Security Policy of the Ministry of Foreign Affairs and European Integration, and this is mostly done by automatism. In Bosnia, co-ordination is

It is evident that the EU set a precedent by allowing Croatia to successfully conclude EU membership negotiations having signed only one such convention. Possible adverse effects may include other countries not taking seriously their obligations arising from Article 15 of the SAA.

conducted by the Department of EU Affairs of the Ministry of Foreign Affairs but unlike Croatia, Bosnia joins only resolutions and declarations by automatism, whereas restrictive measures are considered and decided on by the Presidency. In Montenegro, it is the Ministry of Foreign Affairs which has the co-ordinating role, while final decisions are passed by the Government. The Ministry of Foreign Affairs of Macedonia has the supreme responsibility in matters relating to the CFSP, as it decides autonomously which institutions to consult when joining restrictive measures, and it passes final decisions autonomously as well. When passing a decision, the Minister, who doubles as Deputy Prime Minister, consults the appropriate institutions and co-ordination is undertaken by the Directorate of EU Affairs of the Ministry of Foreign Affairs of Macedonia. In Serbia, before a decision is passed, the opinion of the sectoral services within the Ministry of Foreign Affairs (Department of EU Institutions of the EU Sector) must be obtained, regardless of whether the decision relates to restrictive measures, a resolution, statement or a position. The Minister passes the final decision in all cases except for restrictive measures which are decided on by the Government at the instigation of the Ministry of Foreign Affairs.

c-1) Case study:

Serbia stands out as a country which has managed, in spite of the deadlock in the ratification process and unresolved political issues, to make its relations with the EU more dynamic and take them from full deadlock to achieving candidacy thanks to the pro-active approach of all its institutions which unilaterally implemented most of the SAA obligations. This happened in spite of the fact that the SAA had been suspended. From the very beginning, Serbia was ready to initiate all technical reforms without waiting for the EU to unfreeze the process which had been frozen due to political disagreements. This pro-active approach was reflected in a readiness to make up for the political disagreements with the EU about certain political issues (Kosovo, ICTY) by effective solutions to technical issues, especially in the area of co-ordination. Thus Serbia changed its system of co-ordination of EU affairs twice in a short period of time. On the basis of a decision passed in September 2002, an institutional division was made where one of the Deputy Prime Ministers was directly in charge of controlling the Office of EU Integration, the institution charged with the technical aspects of co-ordination, while strategic political guidelines came

from the Ministry of Foreign Affairs of Serbia. Also established was the Council of European Integration, whose scope of activities was amended in 2007. Although the EU had made a decision not to implement the Interim Trade Agreement, the Serbian Government decided to implement it unilaterally, fulfilling all its obligations relating to gradual lowering of customs rates for almost all EU products. In spite of the fact it did not have a green light from Brussels, Serbia applied for membership in the middle of the Kosovo crisis and immediately started preparations to upgrade the existing co-ordination system. On the basis of a 2011 decision, the Co-ordinating Body for the accession process was established and charged with considering all issues relating to European integration and co-ordinating the activities of i) the Civil Service, ii) the Expert Group of the Co-ordinating Body – headed by the director of the European Integration Office and whose members include chairpersons of the working groups for negotiations, and iii) 35 expert groups for negotiations. This Coordinating Body is a key mechanism for co-ordinating different areas of the *acquis*. The composition of the expert groups and the distribution of their competencies essentially match those of the groups for negotiations. This helped Serbia prepare ahead of time for the next stage – responding to the EU questionnaire. They even went a step further and took the questionnaire sent by the EC to Croatia and answered all the questions. When they finally received 2450 questions from the EC, after the EU Council ordered the European Commission to examine the extent to which Serbia was prepared for candidacy, they only answered the questions which were not contained in the Croatian questionnaire and sent these answers to Brussels within 45 days: the EC handed over the questionnaire on 24 November 2010 and the Government of the Republic of Serbia sent the answers on 31 January 2011. Serbia's candidacy was approved in February 2012 although the SAA has not yet entered into force.

B-2) Regional Co-operation

A network of regional initiatives and co-operation processes that spans the region has stimulated relations and shed light on the importance of regional co-operation as the key principle prior to membership; however, it has not helped in resolving outstanding bilateral issues. Three years after signing their SAAs, regional countries faced a varying number of outstanding bilateral issues with their neighbours. There is hardly a border which is not disputed by one side or the other or, more often than not, by both sides. Property relations in a majority of countries remain unaddressed and there is clear evidence of cases of divergent political and ideological agendas. A range of outstanding issues between BiH and Croatia remain unresolved with just over a year to go until Croatia obtains full membership of the EU. In addition, the issues that remained unresolved three years after Croatia signed its SAA (2004) are the same issues that were not settled three years after BiH signed its own SAA (2011). Compared to the other countries in the region, it is the most complex set of

outstanding issues and Croatia will bring them into the EU. The region's longest border remains the most disputed issue, including various terrestrial and maritime points that are subject to disagreement. Other outstanding issues include the absence of solutions pertaining to property issues, protection of labour rights, border inspection posts, free access to the port of Ploče and passage through Neum. Croatia has a similar problem with Montenegro as the Prevlaka border delimitation is yet to be defined.

Croatia and Serbia are yet to resolve the property restitution issue (including movable and immovable property) as well as the issue of regulating civil rights in terms of labour rights' protection and obtaining dual citizenship.

BiH and Serbia are the only two countries in the region where the SAA has not yet taken effect, three years after it was signed. The difference is that the SAA with Bosnia was ratified by all 27 member states late in 2010, but has not yet come into force because BiH is in breach of the European Convention on Human Rights and certain contractual obligations, whereas in Serbia the SAA has not taken effect because of "insufficient co-operation" with the ICTY.

The fact that Croatia has hardly any outstanding bilateral issues with Albania and Macedonia serves to confirm the hypothesis that regional issues tend to be the most 'strained' along the bloodiest fault lines resulting from the dissolution of SFR Yugoslavia. Considering this, we can conclude that BiH and Montenegro serve as a positive example of regional cooperation as these two countries are moving towards full settlement of all outstanding issues, given that the last remaining one – the border agreement – has been completed and it should be signed by the end of the year.

Serbia also faces an array of issues yet to be settled with neighbouring countries. The situation with BiH is not unlike the disputes between BiH and Croatia, the difference being that there remains a marked ideological difference with regards to prosecution of war crimes' suspects. This is best illustrated by the Serbian prosecuting authorities' unilateral judicial processes against suspects in the Dobrovoljačka case[3], on the assumption that the other side has not done enough. This resulted in international arrest warrants being issued without obtaining consent from the other side. The cooling of relations between BiH and Serbia may, amongst other reasons,

3 *Dobrovoljačka* is the pre-war name of the street where the Territorial Defence engaged in a conflict with a Yugoslav National Army (JNA) convoy which was retreating from the Command Centre on *Bistrik*, in May 1992. BiH claims that several soldiers were killed back then, whereas Serbia claims that dozens were killed, and that victims included civilians as well.

be attributed to this. Serbia's overt concern for Republika Srpska plays a specific role in relations between the two countries. At times it appears that relations between Serbia and Republika Srpska are far more constructive than relations between Serbia and BiH, leading to the conclusion that powerful ideological pressure still shapes the position of Serbia towards BiH.

The Republic of Macedonia is a specific case in as much as various countries in the region negate either its right to the name (Greece), language (Bulgaria) or autocephaly of the Orthodox Church (Serbia). The process of acquiring full membership in NATO and the EU has been halted due to the dispute with Greece. The dispute with Bulgaria, although ideological in character, makes relations between the two countries difficult as it involves the sensitive issue of identity. The dispute with Serbia which, in addition, involves Serbia's non-recognition of the demarcation line between Macedonia and Kosovo, pertains to the issue of religious sovereignty. Evidently the nature of disputes is primarily ideological and historic rather than technical, which renders them more difficult to settle.

By signing their SAA all the regional countries assumed an obligation to sign bilateral conventions on regional cooperation with other countries in the region that had likewise signed an SAA. This is a standard agreement that provides for equal rights and obligations in establishing better regional cooperation for the purpose of better integration into the EU. Thus far, such agreement has been signed between Macedonia and Croatia and Macedonia and Montenegro. BiH and Macedonia have exchanged a draft which is currently being harmonised. Macedonia has done the same with Serbia and this sets the country apart from other regional countries. It is evident that the EU set a precedent by allowing Croatia to successfully conclude EU membership negotiations having signed only one such convention. Possible adverse effects may include other countries not taking seriously their obligations arising from Article 15 of the SAA.

c-2) Case Study: Sarajevo Declaration

The Sarajevo Declaration[4] represents a positive effort to address a common issue – providing a solution for 74,000 refugees and displaced persons and 27,000 households in BiH, Montenegro, Croatia and Serbia. We may take this as a positive example of regional ownership. All bilateral donors and relevant international

4 Joint Declaration of the Ministers for Refugees and Displaced Persons of BiH, State Union of Serbia and Montenegro, and Croatia from the meeting in Sarajevo in January 2005. The declaration reaffirmed relevant conventions on the rights of refugees and established the working body. This body convenes four times a year to discuss the process of implementation of an action plan for providing housing solutions for the refugees in each of the signatory parties' countries.

organisations providing care for refugees and displaced persons as well as human rights organisations such as UNHCR and OSCE have been invited to join this process. The declaration of competent ministers, signed in 2005, was reaffirmed by the ministers of foreign affairs, through the *Joint Communiqué in March 2010. This Communication stressed the need to organise regular expert meetings.* In November 2011, ministers of foreign affairs of the four countries adopted the Joint Ministerial Declaration. In this Joint Declaration they stated that the joint plan and Multiannual Regional Plan for Sustainable Housing for the most vulnerable categories of refugees and displaced persons was already in place. This declaration paved the way to the organisation of a Donors Conference held on 24th April 2012 in Sarajevo which was intended to ensure 501 million Euros for the Regional Housing Programme Fund, whereas the four countries who are signatory parties to the Sarajevo Declaration will directly provide 83 million Euros. The largest portion of the total amount received for providing housing solutions for refugees was in Serbia (335 million Euros). Croatia received 120 million Euros, Bosnia and Herzegovina received 101 million Euros and Montenegro received 28 million Euros. The specific feature of this process is that it was generated from within, stemming from a clearly expressed commitment of four countries to help each other in addressing a problem that none of them was able to resolve on its own. This surpasses the model of co-operation in the given area and, in fact, shows that it is possible to create similar platforms leading to a brand new paradigm: re-establishing regional connections based on shared economic and social interests, economic inter-dependence, sharing the same language group or the same goals for integration. Even if it fails to raise the envisaged amount in its entirety in one go, the Sarajevo Declaration will launch a social process that may, in addition to enabling people to return to their homes,[5] eventually further the reconciliation process between peoples. In addition, it will contribute to better integration of the region into the European Union, regardless of the level of implementation.

All the SAP countries, except for Bosnia and Serbia, started full realisation of their SAA in the third year after it was signed and they consequently replaced temporary co-ordination mechanisms with permanent ones. Albania, Macedonia, Montenegro and Croatia immediately formed Stabilisation and Association Councils as the highest-level bodies for monitoring the implementation of the SAA.

5 Refugees and displaced persons will be given the possibility to choose whether they want to return or to receive assistance for the purpose of better integration into the respective communities, provided that they reside in one of four signatory countries.

Title IV

Free Movement of Goods

a) General Assessment

The chapter in the Stabilisation and Association Agreement (SAA) pertaining to the free movement of goods defines the gradual approximation of BiH legislation with the *acquis*. By fulfilling commitments in this area, Bosnia and Herzegovina should be able to cope with the competitive pressures and market forces within the European Union (EU). In order to be able to do so, BiH requires adequate administrative capacities. Therefore, in addition to opening the domestic market, it is necessary to strengthen capacities and improve the quality of institutions, to establish a legal framework for standardisation, metrology, accreditation and certification of products, to approximate technical regulations with the *acquis* and to adopt European standards. Creating favourable conditions for the internal market and foreign trade, further strengthening of institutional, administrative and staffing capacities as well as closer co-operation between relevant ministries and institutions constitute issues of great importance for BiH. Other regional countries shared the problems faced by BiH and each of them owes its success solely to political will.

Inadequate administrative and institutional capacities have been the main obstacle on the path towards the EU for all the countries of the Western Balkans.

b) Level of fulfillment of SAA/IA obligations by Western Balkans countries

THREE YEARS AFTER SIGNING THE SAA, WESTERN BALKAN COUNTRIES REACHED DIFFERENT STAGES OF EU INTEGRATION. THIS PRIMARILY PERTAINS TO MACEDONIA AND CROATIA AS COUNTRIES THAT WERE GRANTED CANDIDATE STATUS. AS A RESULT OF THIS THEIR PRIORITIES VARIED FROM THOSE OF OTHER COUNTRIES. HOWEVER, THEY ALL SHARE ONE SPECIFIC PROBLEM, THAT OF INADEQUATE INSTITUTIONAL AND ADMINISTRATIVE CAPACITIES. HAVING ANALYSED THE FULFILLMENT OF OBLIGATIONS IN THE AREA OF FREE MOVEMENT OF GOODS IN THE WESTERN BALKAN COUNTRIES, THE GENERAL IMPRESSION IS THAT THE GOVERNMENTS THEREOF FAILED TO ATTRIBUTE A PARTICULAR IMPORTANCE TO THIS AREA. DELIBERATELY OR OTHERWISE, IN THIS WAY, THE MARKETS OF THE COUNTRIES IN QUESTION HAVE BEEN PUSHED TO IMBALANCE AND ECONOMIC DEVELOPMENT HAS SLOWED DOWN CONSIDERABLY.

The level of fulfillment of obligations by each of the Western Balkans countries, three years after signing the Stabilisation and Association Agreement and the entry into force of the Interim Agreement, is described below. The general conclusion is that there are no constitutional or other legal obstacles to adoption of laws governing the area of free movement of goods or for establishment of necessary institutions, and that fulfillment of these obligations depends on the willingness and commitment of the authorities.

As far as Albania is concerned, it can be concluded that considerable progress has been made in this area. By the end of September 2009, Albania had adopted 15029 European standards constituting 88% of those planned to be adopted, which in turn represented 90% of the overall total. The Directorate for Standardisation actively participated in the activities of the European Committee for Standardisation and the European Committee for Electrotechnical Standardisation in the capacity of affiliate member. Three years into the implementation of the Interim Agreement in Albania, six new conformity assessment bodies were accredited bringing the total number to 16. The area of metrology saw the greatest progress particularly with regard to training and human resource development. The Directorate of Metrology became a member of EURAMET's (European Association of National Metrology Institutes) Focus Group

on Facilitating National Metrology Infrastructure. Two new calibration laboratories were accredited according to the EN ISO/IEC 17025 standard. Overall, Albania continued the approximation of its legislation with European standards although there remains the issue of insufficiently developed administrative capacities that are required for implementation of the laws adopted, as well as the issue of human resources development.

Following the implementation of the Interim Agreement, the Stabilisation and Association Agreement came into force in Montenegro in May 2010, three years after it was signed. By the end of 2010, 4,150 international standards had been adopted. However, some existing laws remained in compliance with the standards previously in place. Ten conformity assessment bodies were accredited. Although Montenegro took steps to harmonise its national legislation with the principles of the free movement of goods, a majority of elements provided for in the EU *acquis* remained unaddressed. Horizontal and procedural measures and the 'old and new approach' product legislation were yet to be harmonised with EU legislation. Framework legislation on technical requirements for products and conformity assessment procedures were not in line with the *acquis*. The essential separation of standardisation, accreditation and metrology functions was introduced, however further implementation measures were absent. Administrative capacities in the relevant ministries and technical organisations remain insufficiently strengthened. The need for better coordination of measures pertaining to the free movement of goods was identified at central government level.

Three years after signing the SAA, and during implementation of the Interim Agreement, the Republic of Croatia was granted candidate status. Considering the challenges this posed, the limited progress in the area of free movement of goods may be interpreted as a consequence of the government focusing its efforts in the areas prioritised at the time. Croatia had adopted 6,969 European standards by the end of 2004. The observed period saw the development of a legal framework for establishment of separate institutions in the areas of standardisation, accreditation and metrology which were previously under the State Office for Metrology and Standardisation. With regard to the 'old approach' *acquis,* Croatia adopted a set of 17 regulations in order to transpose 47 directives. The Law on Classification of Unprocessed Wood was adopted and the government adopted an implementation programme for the adoption of the 'new approach' technical regulations. However, responsibilities for transposition and the setting of deadlines remained undefined and a lack of control mechanisms was observed. Therefore, Croatia faced the same problems as other regional countries. Implementation of the adopted laws was not satisfactory due to the absence of secondary legislation. Transposition of sectoral directives and full harmonisation with the *acquis* required additional efforts. This entailed strengthening of the existing institutional capacities.

Macedonia joined the World Trade Organization three years after the Interim Agreement came into force. Obligations of Macedonia during this period included gradual reduction of customs duties and trade liberalisation. Progress was made with regard to the strengthening of institutional capacities based on the laws which were previously adopted. The Institute of Standardisation, Institute of Accreditation and Bureau of Metrology were established; yet staffing, efficiency and adoption of secondary legislation for the aforementioned areas were not satisfactory.

In its 2011. Progress Report, the European Commission emphasises that market surveillance in BiH remains a non-regulated area. There is a lack of co-ordination throughout the country and the fragmented operation of the market surveillance system does not ensure a uniform application of the principle of proportionality across the territory of Bosnia and Herzegovina. We should not ignore the efforts that have been invested thus far; however, this example illustrates that adequate regulation of this area, to a large extent, depends on the state system of BiH and that due to this system, some requirements simply cannot be met without introducing some important changes that depend solely on political will. Although facing a number of challenges, Serbia is on the right track to succeed in regulating the market surveillance area and coming closer to EU best practice, unlike BiH.

In Serbia, a total of 12,216 European standards had been adopted by the end of 2011 and a total of 250 technical committees were established. Three years into the implementation of the Agreement, Serbia had failed to meet the deadlines for adoption of secondary legislation relating to previously adopted laws. The number of accredited conformity assessment bodies rose to 418. In line with the Market Surveillance Strategy for the period 2010 – 2014 and in order to strengthen the capacity of the State Market Inspectorate, new professional development activities were commenced and a common database for all the market surveillance actors was established. For the purpose of better coordination, the Ministry of Economic Affairs and Regional Development, the Customs Administration and the Ministry of Trade signed a Memorandum of Understanding in March 2011. Serbia has created the essential institutional and statutory preconditions for the transposition of European *acquis* in the area of free movement of goods, however the task of harmonising the 'old and the new approach' legislation remains incomplete. Framework law governing technical requirements for products and conformity assessment procedures as well as market

surveillance is yet to be fully harmonised with EU *acquis*. In addition, the European Commission pointed out the issue of strengthening administrative capacities as a precondition for further efforts in EU approximation.

Three years into the implementation of the Interim Agreement, the Institute for Standardisation of Bosnia and Herzegovina (BAS) had adopted 2,695 European standards (EN) as national standards, which is considered to be satisfactory progress. A total of 12,306 EN standards were adopted and a total of 49 technical committees were established. The European Commission assessed this as a positive step forward. The BAS performed the first annual check of its own quality management system which also received a positive assessment from the European Commission. On the other hand, the transposition of the 'new and global approach' and the 'old approach' *acquis* remains the weak link in fulfillment of the obligations assumed. It was foreseen that 19 directives would be adopted during the reporting period however, the competent ministries and institutions have not yet commenced these activities. A considerable amount of time has elapsed since the Interim Agreement came into force but yet satisfactory communication between the ministries and institutions competent for transposition and implementation of directives has not been achieved. Insufficient institutional capacities and undefined responsiblities hamper the processes of harmonisation and implementation of legislation. The Progress Report produced by the European Commission emphasises the need for public-private dialogue regarding market needs. Problems arise in the implementation of adopted measures due to the fact that the private sector still lacks the knowlegde it needs in order to implement the transposed directives i.e. in order to achieve compliance of products with the requirements of the directives so that they can pass conformity assessment. More often than not, co-ordination between competent institutions is absent and harmonisation of legislation does not correspond to market needs and priorites. During the reporting period, progress was made in certain areas, most notably in the area of consumer protection, but overall progress is less than satisfactory.

Three years after signing the SAA, Western Balkan countries reached different stages of EU integration. This primarily pertains to Macedonia and Croatia as countries that were granted candidate status. As a result of this their priorities varied from those of other countries. However, they all share one specific problem, that of inadequate institutional and administrative capacities. Having analysed the fulfillment of obligations in the area of free movement of goods in the Western Balkan countries, the general impression is that the governments thereof failed to attribute a particular importance to this area. Deliberately or otherwise, in this way, the markets of the

countries in question have been pushed to imbalance and economic development has slowed down considerably.

c) Case-study: Market Surveillance in BiH-Is It Possible to Achieve 'Best Practice'?

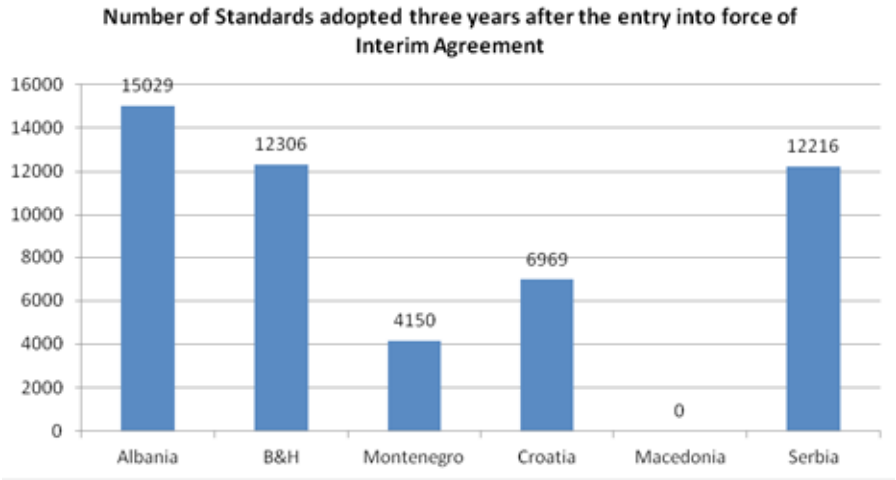
In its 2011. Progress Report, the European Commission points out that the market surveillance system in BiH remains largely based on mandatory standards and pre-market control. Framework legislation is not based on the horizontal *acquis* for harmonised products. The framework for non-harmonised products requires further improvement as does co-ordination between the relevant authorities. Therefore, the existing institutional framework in BiH needs to be changed, i.e. changes need to be made regarding the internal organisational structure, inter-organisational structure, division of responsibilities and staffing. Amongst other challenges currently facing BiH are the following:

> The institutions involved run separate information systems and thus lack access to all relevant information regarding market surveillance.
>
> There are no procedures in place to ensure annual countrywide priority-setting across all product sectors and there are no procedures for producing national market surveillance programme(s) to be implemented by the Market Surveillance Agency and inspection authorities of the entities and Brčko District of BiH.
>
> The current sampling of products and technical documents is carried out by inspectors in compliance with the various laws on inspection in the Federation of BiH, Republika Srpska and Brčko District of BiH. It is undertaken regionally with little countrywide co-ordination. Thus there is a lack of co-ordination throughout the country. The fragmented operation of the market surveillance system does not ensure a uniform application of the principle of proportionality across the territory of Bosnia and Herzegovina.

We can say that the situation in Serbia is considerably different. In the Republic of Serbia, inspection of product safety is organised at the national level predominantly within the relevant ministries that include inspection or other authorities. These are the sectors in charge of overseeing the safety of specific products in compliance with the competencies of the relevant bodies. These competencies are governed by the Law on Ministries and by special laws governing the area of technical requirements for products and actions of inspection authorities. The general rules for actions taken by these authorities are common, whereas special laws regulate actions taken by inspection authorities within specific, special surveillance segments, and thus the rules applied are different. In 2008 and 2009, the Market Inspectorate launched a project to improve work records and reporting by the networks of inspection

authorities. This project has been implemented to a considerable extent. Amongst other important initiatives that were launched was the Proposal of a Protocol on Co-operation between the Ministry of Economy and Regional Development, the Ministry of Trade and Services - Market Inspectorate and the Ministry of Finance - Department of Customs System, in the area of exchange of information and data relevant for efficient implementation of activities and market surveillance actions, planning of joint activities and development of IT infrastructure. Although facing a number of challenges, Serbia is on the right track to succeed in regulating the market surveillance area and coming closer to EU best practice, something that is not the case in BiH.

The efforts that have been invested thus far should be taken into account; however, this example illustrates that adequate regulation of this area depends to a large extent on the state system of BiH. Because of this system, some requirements simply cannot be met without introducing some important changes that depend solely on political will.



Title V

Chapter 1 Movement of Workers (Articles 47 - 49), Chapter 3 Supply of Services (Articles 57 – 59) and Chapter 5 General Provisions (Articles 63 – 69) of the Stabilisation and Association Agreement (SAA) between BiH and EU

a) General Assessment

In the context of economic crisis, the EU integration process, which requires financial resources and new institutions, was significantly hindered in all countries covered by this analysis. This chapter is of paramount importance both to BiH and the entire region, given the priorities regarding the modernisation of the economy and the necessity to facilitate development of the service sector. We are primarily referring here to financial services as well as the area of transport, which, notwithstanding different features and situations in the countries covered by this analysis, is of strategic importance to each of them, above all because of its role in attracting foreign investment. When it comes to progress, Croatia was the clear regional leader and the upcoming accession of Croatia to the EU is a factor which will exert extra influence on all countries in the region. BiH authorities have demonstrated a lack of readiness for the ramifications of Croatia's pending EU accession for the BiH economy. An example of this is the lack of understanding with regard to two border crossings designated for export of goods from BiH. The umbrella organisation of the European accreditation offices has already carried out pre-evaluation of the BiH accreditation office 'BATA' (The Institute for Accreditation of Bosnia and Herzegovina). The final evaluation is to be made by the end of 2012 and it should be easier to transport goods in 2013 when the Institute for Accreditation of BiH and the Croatian Accreditation Agency are expected to sign an agreement on mutual recognition.

All countries made average progress in adopting the necessary laws. However, the level of adoption of relevant secondary legislation that enables enforcement of the laws was unsatisfactory. The majority of the countries covered by this analysis were faced with insufficient personnel and institutional capacities necessary for faster harmonisation of their domestic legal frameworks with the requirements of *acquis*.

As far as Bosnia and Herzegovina is concerned, the document on transport policy remains to be adopted. The national authorities need to approve a transport strategy and transport action plan. Political discords and blockades handicap BiH in all the analysed areas where the entities act in an unco-ordinated manner and where a majority of other countries is making faster progress.

All analysed countries made virtually no progress when it comes to the movement of persons and co-ordination of social security systems. For example in BiH, legal frameworks are still different and non-harmonised, not only between the entities but between the cantons as well, thus hindering the movement of workers and exercising of rights and, at the same time, constituting an obstacle for employers. The employment institutes in BiH are not efficient enough to deal with the consequences of an economic downturn that has resulted in the loss of tens of thousands of jobs annually. Sarajevo Canton and Canton 10 are the only two cantons to adopt the Cantonal Laws on Mediation in Employment. All 10 employment institutes and agencies within the Federation of BiH have different organisational charts. In fact currently, no two cantonal institutes or agencies have the same organisational chart or job titles. In addition, the Employment Institute of Republika Srpska needs a more efficient structure and better organisation.

b) Implementation of obligations under the Stabilisation and Association Agreement (SAA)/Interim Agreement in Western Balkan Countries

Movement of workers: This component of *acquis* aims to bring into line the rights of workers in EU member states. In the countries of the region covered by this analysis, the labour force from the EU has to receive equal treatment to that in the host country, i.e. the country of an employer, when it comes to working conditions, social contributions, tax obligations and benefits. This chapter of *acquis* covers co-ordination of policies and measures regarding the insurance of workers and their families.

Accession to the EU will require additional harmonisation of state-level laws that will guarantee more freedom to workers from the EU whose residence and search for work in the countries of the region should not require them to obtain a work

permit. The same principle applies to the rights of family members, such as the right of EU workers' children who must be given access to education. The majority of countries covered by this analysis had failed to fully adjust the relevant legislation three years after signing their SAA. No progress was reported with regard to BiH because the legislation is fragmented between the entities and the cantons. The decentralised system of organisation of employment institutes affects the efficiency of the operations of these bodies due to a lack of co-ordination (for example: different employment strategies in the entities) and excessive costs (for example: 13 managing boards of the Institute and employment services throughout BiH), resulting in less funds being available for implementing active measures in the labour market. In addition, failure to separate health insurance from registration in the registry of unemployed persons gives an unrealistic picture of the number of unemployed persons in BiH and prevents employment services from fulfilling their fundamental role of intermediary in employment. Some initiatives were launched by the newly appointed directors of employment institutes in the entities, but the lack of political will to improve co-ordination of the activities of the employment institutes or to conduct downsizing in cantonal employment services was evident at all levels. Unlike BiH, Croatia has made progress because it adopted amendments to its Labour Act to make it more flexible. In parallel, the government commenced implementation of employment programmes that were harmonised with the National Employment Action Plan.

The labour legislation of Serbia, similar to that of Montenegro and Croatia and other regional countries, stipulated that EU citizens have to apply for a work permit. In all countries additional adjustments were required in the form of a national job mobility portal (national database of vacant job positions) in order to participate in the EUREUS network (European Employment Services Network). Albania adopted a Law on Aliens in 2008 but no progress has been reported since then with regard to its enforcement.

Albania made no progress in the area of its social security system, as was noted in the Progress Report. Unlike Albania, Serbia had already entered into agreements with 17 EU member states as well as with the countries of the region, save Albania. Montenegro signed agreements with only 4 EU member states, assuming an obligation to establish a system of electronic exchange of social insurance information.

Little progress was made in the area of *co-ordination of social security systems* between either the entities or the cantons in Bosnia and Herzegovina. Republika Srpska adopted a Pension Reform Strategy but its new Pension System Law remains to be adopted. There was no progress towards reform of the fragmented pension scheme in the Federation of BiH or in the implementation of framework legislation

to reform social protection systems. The legal framework fails to provide the most vulnerable categories with adequate assistance and discrepancies in social assistance, services and entitlements across the country add to the widespread inequity. No steps were taken to end the disparities between the social protection systems in the entities and between cantonal systems within the Federation.

Supply of services: Member states must be entitled to freedom to supply services. The *acquis* harmonises the mutual recognition of diplomas and qualifications and special rules regarding some specific occupations. The SAA introduces gradual market liberalisation, i.e. freedom to supply services. A legal framework for the recognition of professional qualifications obtained abroad should already have been in place, as well as the accompanying administrative structures and procedures. Nevertheless, some progress has been made in BiH in improving the general framework for education. The Council of Ministers adopted an initial Baseline Qualifications Framework for life-long learning but the Conference of Education Ministers, which was established to improve co-ordination amongst the 14 ministries of education, has not been convened since mid 2010.

As regards freedom to provide services, the BiH 2011 Progress Report states that no progress was achieved in preparations for transposing the Services Directive. The Services Directive regulates the right of free establishment and freedom to provide services in the internal market and defines the rules on administrative simplification of procedures for access and supply of services. The majority of obstacles in transposing the Services Directive were identified in the area of free establishment.

In the case of Croatia, the EU sent a clear signal that the barriers to the cross-border supply of services by EU companies will have to be removed. Croatian legislation did not make a distinction between EU service providers established in the EU (non-residents) and those that are permanently present in Croatia through their respective branch offices. Similar drawbacks were identified in Serbia, where domestic legislation was not harmonised with the *acquis*, in particular with regard to the Services Directive, because it did not foresee the cross-border supply of services. Although Montenegrin legislation remains non-discriminatory, little progress has been made in any of the areas relating to the supply of services according to a report produced by EU representatives. Montenegro failed to strengthen its administrative capacities and to adequately establish a central co-ordination body, despite being obliged to do so. The 2005 Law on Postal Services, amended in 2010, is partially aligned with EU requirements. However, the development strategy for postal services prepared in 2008 and updated in 2010 has not yet been fully implemented. It was assessed that Serbia would need to invest significantly more effort in this area with regard to strengthening its administrative capacities, inter-institutional co-operation and the independence of Republic Agency for Postal Services (RAPS).

Financial services: the EU *acquis* on financial services includes rules on authorisation, operation and supervision of financial institutions in the areas of banking, insurance, the capital market and investment services. Serbia needed to adopt new laws and make its Securities Commission more independent. The new Capital Accord - Basel II, rests on three pillars: defining the calculation of a capital adequacy indicator, the role of supervision, and market discipline. It was assessed that Albania made some progress in this area. The Bank of Albania (BoA) adopted provisions on licensing and activities of foreign banks and their branch offices, i.e. it increased its supervisory role in the market. In Macedonia, as in BiH and Albania, the banking sector was by far the most developed segment of the financial sector. However, Macedonians are reluctant to put their trust in it after the collapse of the insurance sector in 1997. Progress was made with regard to reform of the Macedonian pension scheme, reflected in the establishment of a supervisory agency. The banking sector has advanced, particularly in Croatia, where the number of banks has been stable for several years. Three years after Croatia signed the SAA, Croatian banking legislation was largely harmonised with the *acquis,* save for some technical incompatibilities in the area of co-operation between the market supervisory bodies.

In the majority of countries covered by this analysis, central banks were performing their activities independently, including their supervisory role in the market, although a need to provide additional training for their personnel was identified.

Transport services: EU transport legislation aims to improve the functioning of the internal market by promoting cleaner, safer and more efficient transport services in all areas of the transport sector. Areas covered by this legislation include technical and safety standards, safety and social standards, state aid control and liberalisation of the transport market in the context of the (EU) internal transport market.

The transport capacity of Croatia was found to be satisfactory in all areas. Infrastructure in Macedonia was deemed poor in EU reports; however, the country planned to invest 213 million Euros within its public investment program adopted in 2003. Albania adopted a revised Action Plan for the implementation of its Transport Strategy. It has also restructured its Institute of Transport and updated the National Transport Plan, making notable progress compared to Bosnia and Herzegovina. However, some serious disadvantages were noted in Albania and it will therefore have to invest significant effort to catch up with other countries in the region. Due to internal political discord, BiH failed to adopt some very important documents. Given that the state-level Parliament failed to adopt a transport sector development policy, the Council of Ministers was prevented from adopting a transport strategy and action plan. Transportation sector strategy is one of the key priorities for BiH. Montenegro made some progress but additional efforts had to be invested in harmonisation of legislation. Special attention will have to be given to the 'Third Railway Package'

aimed at opening the market for international rail passenger services. This package represents the logical, required sequence of reforms expected by the EU after the implementation of the first package (liberalisation of the international rail freight market) and the second package (alignment of the legal framework regarding safety management and interoperability). Montenegro will have to invest additional efforts to ensure good quality implementation of social and technical regulations in road transport and safety requirements in maritime transport.

In 2005, Macedonia had to invest continuous significant efforts to align its legislation with the *acquis*, in particular in the areas of market access, social rules and fiscal provisions in road transport. It also had to align its legislation pertaining to rail transport and transport of dangerous goods, i.e. to strengthen institutional capacities in this area.

Road transport: The rules applied in Croatia were very close to the requirements of the *acquis*. Access to the passenger and freight transport markets was regulated adequately. The use of tachographs was already mandatory and progress was made in the areas of both social and technical *acquis*. Fiscal *acquis* featured some negative aspects, notably in the area of the payment of annual vehicle registration taxes. Serbia made a step forward by adopting the Law on Road Safety and Transport in 2010. However, some non-compliance issues were still outstanding: drivers' hours, driving and rest times and transport safety conditions for tunnels. The Hazardous Material Transportation Law, which was aligned with EU requirements, entered into force in Serbia, which also established the Road Traffic Safety Agency. In 2008, the Government of Albania approved the Decision on Motorway Regulation which introduced audit of road safety systems, and in June 2009 it adopted a regulation to approximate issuance of driving licences to EU requirements. In May 2009, the government adopted legislation to establish the Albanian Road Authority which is in charge of development, management and maintenance of the national road network. Montenegro continued to apply discriminatory road charges for EU vehicles (environmental charge or so called 'eco tax'). With respect to social *acquis*, the legal framework regulating driving times and rest periods and the use of tachographs was adopted in mid 2010. Administrative capacities had to be strengthened in order to overcome difficulties caused by delays in the introduction of digital tachographs. The Law on Transport of Dangerous Goods was in force.

BiH conducted activities to improve the transport network (building of bridges on the river Sava, border crossings Gradiška and Svilaj), and to strengthen the network of roads to Montenegro and Albania (in accordance with the tripartite Agreement on the Construction of a Road Network between BiH, Montenegro and Albania). Serbia granted unrestricted road traffic transit to EU carriers and ratified the

European Agreement concerning the international carriage of dangerous goods by road (ADR), whereas relevant regulations were yet to be adopted.

Rail transport: Croatia has implemented an obligation to separate the accounts of infrastructure managers and operators (rail transport services). The first railway package was adopted and was to be implemented by 2005. In order to adopt regulations more expeditiously, it was necessary to strengthen administrative infrastructure. In Serbia, the draft laws pertaining to this area were partially aligned with EU directives, since they envisaged transformation and division of different areas and the opening-up of the rail market, in line with EU rules. The independence of the regulatory body (Railway Directorate) needed to be ensured.

In Montenegro, rail freight traffic, in particular the international service to Albania and Serbia, saw an increase after the 2009 crisis. The country also made progress in implementing reforms in this area with regard to separation of operations and infrastructure managers. However, in the area of rail passenger transport, the legal framework has not been aligned with EU requirements. Montenegro failed to implement the above mentioned third railway package. The Albanian government adopted legislation on Albanian railways establishing business units for passengers, goods, infrastructure and maintenance. However, the situation in this area was assessed as unsatisfactory by EU representatives.

Progress made in rail transport was satisfactory. Furthermore, when it comes to particular segments, BiH was a regional leader (e.g. issuance of licences to other railway operators). However, other railway regulatory boards haven't launched this activity because they were not able to issue licences to other operators neither were they aligned with the *acquis* to a sufficient extent. Basic road and railway infrastructure is poorly developed and it costs all economic sectors dearly. The reasons for delay in developing basic infrastructure were related to insufficient fulfillment of measures for the implementation of the respective SAAs, ranging from lack of funds to tender procedures and technical activities regarding the overhaul of the railways.

Croatia has made some progress owing primarily to the adoption of new legislation, whereas transposition of safety legislation has been kept on hold.

Serbia ratified a bilateral agreement with Montenegro regarding border control but conditions were still not in place to open the market completely nor were the accounts separated between infrastructure and services within infrastructure management. Macedonia needed additional adjustments to adopt the first and second railway package and interoperability directives. Montenegro had to cope with the issue of insufficient capacity of its main institution, i.e. the Railway Authority

of Montenegro. Albania had to additionally adjust its legislation and expedite the implementation thereof. There was also the pending issue of establishment of a rail transport regulatory body.

b) Implementation of obligations under the SAA in Western Balkan Countries

Air transport: Bosnia and Herzegovina has made progress in implementing the Multilateral Agreement on the European Common Aviation Area (ECAA)**.** This was concluded during the recent visit of the Delegation of the European Commission in charge of monitoring progress made by BiH. The Delegation of the European Commission consisting of experts from several fields of civil aviation confirmed that BiH had made progress in the implementation of the ECAA Agreement compared to the previous year. Progress was also evident in the field of air safety with suggestions made relating to the necessity of including penalty provisions in the Aviation Law of Bosnia and Herzegovina in order to enable adequate supervision. BiH was thus the leading country in the region with regard to the transposition of EU legislation in the field of air traffic which needs to be implemented in the future. It means that BiH made further adaptations to the air transport and civil aviation sector for the purpose of meeting the requirements of the *acquis* in specific areas, and through a series of activities ranging from business process improvements to the creation and adoption of necessary regulations and staff training.

In order to take control of BiH air space, it is necessary for the Bosnia and Herzegovina Air Navigation Services Agency (BHANSA) and management systems to begin operating at full capacity and complete the required training of personnel. It is expected that with effect from November 1st 2012 Bosnia and Herzegovina will take control of its airspace, a role hitherto undertaken by competent agencies from Serbia and Croatia at a cost of 20 million BAM per year. The system established in Bosnia and Herzegovina should be tested on May 7th.

In 2011 Bosnia and Herzegovina implemented the first phase of the Agreement on the European Common Aviation Area, and the transposition of legislation related to the Single European Sky was in its final stage. Apart from all these areas in which progress was noted, it was mentioned in the 2011 Progress Report for Bosnia and Herzegovina that the director of the body in charge of providing air navigation services had been appointed but, in order to ensure full compliance with the adopted acquis, it was necessary to amend the Aviation Law of Bosnia and Herzegovina.

Croatia also had to harmonise a significant part of its legislation with the *acquis*, for example in the areas of safety rules, allocation of slots, computer reservation

systems and fees. It was necessary to improve administrative capacity and redefine the roles and responsibilities of various organisations involved in the transportation field.

Serbia adopted the Law on Civil Air Traffic and its airspace was organised into a single functional block with Montenegro. Serbia also adopted legislation on the Single European Sky. It harmonised regulations dealing with the necessary software for establishment of safety systems for air navigation service providers. Harmonisation and additional efforts were needed in the field of inspection, together with safety control systems under the supervision of an independent body.

The Republic of Macedonia needed to introduce improvements in the field of air transport for which it was necessary to adopt numerous provisions of the *acquis* and strengthen administrative capacity. As stated in the 2010 report by the EU expert mission, Montenegro has made significant progress in the implementation of the ECAA, but, in the same area, they had to deal with the issue of the independence of the Aircraft Accident Investigation Agency and the implementation of safety management systems at airports. Similarly, the body in charge of the State Civil Aviation Safety Plan and the authority responsible for the implementation of the quality control program have yet to be established. In this field, the ECAA was also the most important activity for Albania which lagged a few steps behind the other countries in the region, but it can close this gap if it ensures effective implementation of adopted legislation on air safety.

Maritime Transport in Croatia, according to the report of representatives of the European Union, is an area that is largely consistent with the requirements of the International Maritime Organization, primarily in the fields of safety and social standards. Additional efforts were necessary but Croatia should have had no difficulty in this area although there was a need to introduce improvements in the fields of boat registration, obligations of public service, working time on Croatian ships and education and training of staff. Administrative capacity had to be strengthened so that Croatia could align its legislation with the *acquis* in the area of state port control. EU representatives also recognised the need for introducing similar improvements in the case of Montenegro.
Some progress was also made in Albania where the Parliament adopted the Law on Maritime Administration in April 2009, but implementation lagged in other areas (registration of activities in maritime transport and state port control). The state introduced measures aimed at improving the technical infrastructure of the fleet,

where boats which are between15 and 30 years old could not be certified to carry passengers or goods.

c) Example: Labour market reforms are urgently needed

Officials of the employment services in the Federation of Bosnia and Herzegovina waste 10,000 paid working hours each month in stamping booklets for persons who are not seeking employment.

The labour market in Bosnia and Herzegovina is at the bottom end of the regional, and especially the EU, scale, because of its unnecessary complexity and inefficiency and because there is no prospect of improvement until structural barriers are removed. Although the opening of 16 CISO centres (Centre for Information, Education and Training for the unemployed), modeled on the EU best practice, represents a new development in the domestic labour market in 2011 because it introduced systematic improvements and provided specific services to the users (2000 persons have been employed as a result), we should not lose sight of crucial flaws in this field. Among myriad problems, four are of special importance and overcoming these would quickly reduce the number of unemployed persons and the state would be more prepared for the demands of the EU integration process in this field. One such issue is that of labour mobility and the development of key competencies of unemployed persons.

For a start, the administration of health insurance, which is currently carried out through the employment service, is inefficient and costly. In the Federation of Bosnia and Herzegovina alone it involves more than 200,000 booklets that officials have to certify on a monthly basis while spending 10,000 working hours per month dealing with people who are not looking for a job. The recommendation is to abolish the administration of health insurance through employment services by introducing a health insurance system that is fully funded in the budget or to fund health insurance for socially vulnerable groups through social protection systems.

Secondly, there is no authority at the state level in charge of work and employment and once Bosnia and Herzegovina has been granted candidate status, one of the first chapters to be negotiated with the EU will deal with the labour market and labour mobility. Besides the Department of Labour and Employment at the Ministry of Civil Affairs, there is no labour ministry at the state level. This will be one of the obstacles in the process of negotiations between BiH and the EU and to overcome this problem it is recommended that an institution dealing with labour and employment at the state level be established and that the Labour and Employment Agency of

Bosnia and Herzegovina should play a greater role in active employment measures in accordance with available resources and its mandate.

Thirdly, it is not known how many people are really seeking employment in BiH. Creation of lists of active job-seekers would provide an insight into the real level of unemployment and significantly improve the formulation of employment policy, retraining and other active measures that could be fully adapted to the needs of the labour market.

The recommendation is to separate active and passive job seekers because the existing measures and policies are aimed at persons who are registered as unemployed, regardless of their actual status. The cantonal employment services and branches of the RS Employment Bureau need to distinguish between persons who are registered as unemployed for status-related and other reasons (free health insurance, unemployment benefits, other benefits) and those who are real and active job seekers. There are regulations related to these institutions but they are not enforced and people who are not active job seekers are not deleted from the lists. At the state level, 22.6% of employment service expenditure is related to administration, 35.8% to passive measures and 41.5% to active programs. However, although the number of registered unemployed persons in the Federation of BiH was 2.28 times greater than the number of unemployed in the RS, total expenditures in the Federation of BiH were almost seven times higher than spending in the RS, according to the 2009 report of the International Labour Organization (ILO). The recommendation is to rationalise and consolidate the cantonal employment services in the Federation of BiH.

An example of best global practice in the BiH labour market: With over 2000 people employed within the first year of their existence, Centres for Information, Education and Training for young unemployed persons (CISO) established at the employment agencies must be systemised and introduced in other locations.

The Employment Service in the Federation of BiH is burdened with unnecessary administrative costs and is inefficient because of decentralisation which prevents the definition and implementation of policies and creates a false picture of the market, thus preventing labour mobility. The solution to these problems is the centralisation of employment services, rationalisation of unnecessary administration and an increase in the number of Centres for Information, Education and Training for the unemployed (CISO centres) by means of the savings achieved.

Title V

Chapter 2
Establishment

a) General Assessment

Meeting requirements set out in the chapters of the SAA and its articles on the right of establishment represents the way in which prospective member states can improve the functionality of the domestic market and increase the level of competitiveness for domestic and foreign subjects. The SAA treats establishment as the right to take up economic activities by means of the setting up of subsidiaries and branches.[6]

Western Balkan countries[7] signed this Agreement with the EU in different periods and they started fulfilling the provisions of the Agreement from significantly different starting positions, which today results in varying degrees of efficacy in the EU accession process. In addition to this, different internal requirements of individual states in the field of fulfillment of the provisions of the SAA which arise out of their

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

7 Western Balkan countries are Albania, Bosnia and Herzegovina, Montenegro, Croatia, Macedonia and Serbia.

internal systems of government determine, to a large extent, the speed and efficacy of adoption of EU *acquis.*

b) Implementation of obligations under the SAA in Western Balkan Countries

In Albania, progress in 2011 with regard to the right of establishment has been limited to developments in the simplification of registration and licensing procedures. The process of business registration has been improved by the introduction of a one-stop-shop system in June 2011, while the National Licensing Centre has extended its services network to cities beyond Tirana. However, the procedures for granting building permits remain lengthy. The e-signature system, allowing faster online registration, became operational in March 2011. Given that the very essence of enabling the right of establishment is reflected in the implementation of the Services Directive, Albania made limited progress in this respect, due to scarce administrative capacities for harmonisation of national legislation with the regulations of the Services Directive. No progress was made either in cross border provision of services. An inefficient judicial system and delays in establishing administrative courts constitute a major hindrance to investing in Albania although the country has made some progress in the field of mutual recognition of professional qualifications. The government enacted administrative provisions for mandatory state exams for the *acquis*-regulated professions of doctor, dentist, pharmacist and nurse. The Law on Foreign Direct Investment was amended to grant special protection, under certain conditions, to foreign investors in the event of land ownership disputes.[8] Despite some difficulties, Albania foresees a notable increase in foreign direct investment (it increased by 23 percent during 2010 compared to 2009).[9]

Bosnia and Herzegovina signed their Stabilisation and Association Agreement with the EU in 2008 but up to 2012 had made very limited progress in fulfilling SAA provisions. The lack of progress is particularly evident in comparison with other Western Balkan countries. In 2011, no progress was made regarding the right of establishment, as was noted in the Bosnia and Herzegovina 2011 Progress Report by European Commission.[10] The lack of a uniform approach to registration of non-resident business entities throughout BiH has limited any progress for several consecutive years, resulting in considerable differences between the processes of business registration in Republika Srpska and the Federation of BiH. In addition, if a

8 European Commission, Albania 2011 Progress Report, October 12th 2011

9 KPMG (2011), Investment in Albania, available at http://www.kpmg.com/AL/en/IssuesAndInsights/ArticlesPublications/Brochures/Documents/2011%20Investment%20in%20Albania-web.pdf.

10 European Commission, Bosnia and Herzegovina 2011 Progress Report, October 12th 2011

business is registered in one of the entities there is still an obligation to be registered in the other entity as well. Furthermore, the entire registration process is additionally burdened by high notary fees and the slow and rigid procedures regarding the issuance of work permits (especially when it comes to management structures of newly-registered companies). With its last amendment, the Law on Foreign Direct Investment Policy of BiH releases foreign economic operators from the obligation to register their individual investments with the Ministry of Foreign Trade and Economic Relations of BiH, and this is one of the few positive breakthroughs in this area. Nevertheless, foreign investors remain obligated to register their investments with the competent registration courts, which, according to official duty, inform the Ministry of Foreign Trade and Economic Relations of BiH thereof. In order for a non-resident economic operator to start a business in BiH, 12 procedures need to be carried out, usually within a period of 60 days.[11] Although the entity laws on registration of business subjects require registration to be completed within no more then 5 days, in practice this rule is not complied with. In Bosnia and Herzegovina, different registration courts, even the judges within the same courts, sometimes reach decisions that do not adhere to the deadlines provided by the law. Given such an *ad hoc* approach to implementing the provisions of the SAA, it is no wonder that BiH has seen a decline of 15% in foreign direct investment from EU member states during 2011 compared to 2010.[12]

In order for a non-resident economic operator to start a business in BiH, 12 procedures need to be carried out, usually over a period of 60 days. Although entity laws on the registration of business subjects stipulate that the registration process should not take longer than 5 days, this rule is not adhered to in practice.

Unlike BiH, Montenegro has seen a considerable increase in foreign direct investment from the EU in recent years. In 2011, Montenegro made considerable progress in fulfilling the provisions that pertain to the right of establishment. The government adopted amendments to no less then 6 laws, thus facilitating non-residents' access to the Montenegrin market. In addition, a one-stop shop for business registration within the Central Registry of the Commercial Court (CRCE) has been operational since May 2011. When implemented, the amendments to the laws on tax, accounting and auditing, will reduce the number of necessary procedures from seven to only three. Montenegro adopted the necessary legislation for mutual recognition of professional qualifications. Under this Law, evidence of formal education of nationals of EU Member States is

11 Foreign Investors Council, *White Book* 2010/2011

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

recognised as if it had been acquired in Montenegro. However, Montenegro made little progress when it comes to transposing the Services Directive requirements into its national legislation. In this respect, Montenegro is expected to designate a central co-ordination body, which should take a harmonised approach to implementing this Directive in different sectors. In the Montenegro 2011 Progress Report, the European Commission suggests further efforts should be made to achieve better inter-institutional co-operation with regard to implementation of specific components of the SAA.[13]

If the establishment of one-stop shops resulted in an improved business climate in countries that are more successful than BiH with respect to the fulfillment of the provisions of the SAA pertaining to establishment, it would consequently be advisable for BiH to initiate activities to establish a centre which would enable it to shorten these time consuming and costly registration procedures and make them more efficient.

The Republic of Croatia made particularly good progress in the area of liberalisation of the postal services market and the process of mutual recognition of professional qualifications, which required extensive amendments to be made to several laws. With regard to transposition of the Services Directive into national legislation, Croatia has made by far the greatest progress in comparison to other countries in the region. In 2011, Croatia initiated establishment of the Single Point of Contact (SPC), which was to co-ordinate the activities of different sectors covered by the Services Directive, in line with the previously developed Action Plan. In fulfilling SAA provisions, Croatia has taken a systematic approach from the moment it signed its SAA until today. By all indications it appears that such an approach, through carefully designed programmes to strengthen administrative support in the EU integration process and practices related to company e-registration, has borne fruit. This resulted in an increase of foreign direct investment in Croatia from EUR 280.9 million in 2010 to EUR 1.05 billion in the first three quarters of 2011.[14]

When it comes to provisions pertaining to the right of establishment, Macedonia has failed to make continuous progress year on year. However, several years after signing the SAA, the process of market entry was facilitated and the procedures for closing a business improved, in addition to the strengthening the rule of law. Nevertheless, the business environment remains limited by slow legislative procedures and unsatisfactory independence of the regulatory and supervisory bodies. The government adopted a

13 European Commission, Montenegro 2011 Progress Report, October 12th 2011

14 Croatian National Bank, available at www.hnb.hr/statistika

decision determining the number of work permits to be issued to foreigners in 2011 at 3,000 per year. The past implementation of the Action Plan for harmonisation of national legislation with the Services Directive is evaluated as successful, whereas the national legislation that pertains to freedom of cross border provision of services is deemed in conflict with the EU regulations in force.[15]

Through its continuous affirmative approach towards EU membership, Serbia has managed to implement several important economic reforms in recent years, thus creating a safer environment for investors. Consequently, Serbia attracted no less then 16 billion Euros of foreign direct investment.[16] In particular, this pertains to facilitation of market entry and exit for several sectors. However, when it comes to the freedom to provide cross border services, the legislation of Serbia is non-compliant with the *acquis.* Before initiating harmonisation with the *acquis communautaire,* Serbia will have to conduct an analysis of its former legislation and establish a Single Point of Contact for all activities related to liberalisation of the services market. There is still room for improvement when it comes to the mutual recognition of professional qualifications.[17] Western Balkan countries take different systemic approaches in fulfilling their respective obligations under their SAA and apply them in their integration plans. This results in their respective economic spaces being characterised as more or less favourable for attracting important investments.

Country	City	Ease of starting a business	Ease of dealing with construction permits	Ease of registering property	Ease of enforcing contracts
BiH	Sarajevo	19	9	19	19
	Banjaluka	18	3	21	15
	Mostar	20	13	22	20
Albania	Tirana	10	-	16	18
Macedonia	Skopje	1	2	15	9
Montenegro	Podgorica	6	18	20	16
Serbia	Belgrade	11	21	16	11

Source: Doing Business in South East Europe Report 2011 compares the ease of doing business among 22 cities (Ranking from 1 to 22)

15 European Commission, The Former Yugoslav Republic of Macedonia 2011 Progress Report, October 12th 2011

16 SIEPA (2011), Foreign investments in Eastern Serbia 2011, available at www.raris.org

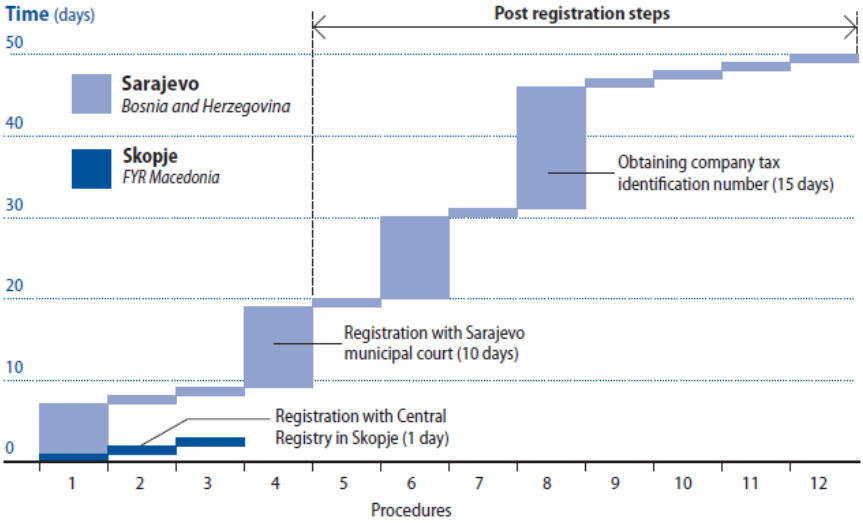
17 Commission Opinion on Serbia's application for membership of the EU, October 12th 2011

The candidate status of a country represents one of the important indicators of the soundness of its economic space, because it implies that many criteria relevant for unhindered performance of business operations have been met. As such, it may be perceived as an important incentive for inflow of new investments. In this context, a systematic approach to harmonisation of national legislation with EU directives itself proves to be a very important investment. However, it is important to stress that systematic approaches of the Western Balkan countries towards the fulfilment of SAA provisions vary considerably. Therefore, their approaches, in some cases, may be characterised as systematic (guided by clear national EU accession programmes and well-defined inter-sectoral communication regarding the implementation of relevant directives) or as *ad hoc* approaches (absence of a national plan and lack of institutional communication, with sporadic positive breakthroughs). Consequentially, among Western Balkan countries we find those that will certainly become EU members, those that have acquired candidate status and, finally, those countries whose EU integration process is burdened with a number of internal political and institutional problems.

c) Case Study: 'Locus Regit Actum' or 'The Place Governs the Act'

Skopje is among the 5 most efficient cities in the world when it comes to starting a business. Company registration procedures require only 3 days and cost about US$100. On the other hand, the same procedure in Sarajevo might take 50 days and cost a lot more. What burdens the registration process in Sarajevo is the large number of so-called post-registration procedures such as acquiring a company seal, obtaining licenses for planned activities from the relevant municipalities, informing relevant cantonal inspections about the commencement of activities, acquiring a tax identification number, registering employees and drafting a Rulebook on Work. In Skopje, there is only one post-registration procedure as opposed to eight in Sarajevo. The usual step towards creating a better business environment is to establish business registration assistance centres or, as is the case in some countries, one-stop shops. Of course, the establishment of such institutions does not in itself represent a solution for the problems created by the existing complicated procedures; however, an active approach to planning of such an instrument could speed up the necessary harmonisation of laws in BiH in the area of business registration and the creation of support measures for foreign investors. As the establishment of one-stop shops has resulted in an improved business climate in countries that are more successful than BiH with respect to the fulfilment of the provisions of the SAA pertaining to establishment, it would be advisable for BiH to start creating a business climate which would enable such a centre to be fully functional. For example, by reducing the number of registration procedures from 12 to 6 and the

number of days required to complete them from 40 to 20, BiH would rise from 125th to 118th place on the World Bank competition scale when it comes to starting a business.[18]



Source: Doing Business in South East Europe 2011 Report

18 Doing Business Simulator available at www.doingbusiness.org

Title V

Chapter 4
Current Payments and Movement of Capital

a) General assessment

The previous period has been marked by many significant changes in the overall integration process of the Western Balkan countries, particularly in Croatia, Serbia and Montenegro. In June 2011, negotiations pertaining to the last of 35 chapters of the *acquis* between Croatia and the European Union (EU) were finalised, followed by a positive opinion on Croatia's accession to the EU provided in October 2011 by the European Commission (EC). Croatia signed the EU Accession Treaty in December 2011, and in January 2012, 66% of citizens of Croatia voted in favour of joining the EU, thus enabling Croatia to ensure its membership. At the end of January 2011, Serbia submitted its answers to the EC Questionnaire and the EC provided feedback in October 2011. Serbia was granted candidate status on 1 March 2012. Finally, the EU candidate status of Montenegro was confirmed in December 2010, while the negotiation process was initiated in December 2011 with the intention of starting negotiations in June 2012.

In the area pertaining to the free movement of capital, the member states are expected to remove all obstacles to movement of capital and payments both among the EU member states and with countries that are not members of the EU. This area

of *acquis* is founded on articles 63 and 66 of the Treaty on Functioning of the EU, according to which the free movement of capital is the main precondition for the functioning of the EU internal market. EU *acquis* also include rules pertaining to cross-border payments and the execution of transfer orders related to securities. Other issues of significance in this area deal with regulating state ownership of certain business subjects, as well as with regulating ownership of real estate.

In terms of the progress achieved in the period since the signing of the Stabilisation and Association Agreement (SAA) with respect to the fulfillment of obligations under Chapter 4 pertaining to current payments and movements of capital, Croatia moved forward the furthest, almost completely harmonising its legislation with the *acquis.* During 2011, some progress was noted in Serbia and Montenegro. The progress of Macedonia in this field was halted due to delays in launching the second phase of the implementation of the SAA. In the case of Albania, the greatest progress was made in establishing the legal framework pertaining to payment operations. The overall progress achieved by BiH is, generally speaking, at the level of most other Western Balkan countries. The general assessment of the EC is that BiH achieved moderate progress in terms of capital market liberalisation but that significant efforts are required in order to ensure that the legal framework is harmonised with the *acquis* and to ensure harmonisation of regulations within the country so as to create better preconditions for the establishment of a single economic space.

b) Obligations of BiH under the designated titles and chapters of the SAA

With respect to the obligations related to the establishment of a modern payment operations system, the EC concluded that BiH "has a modern payment system for giro clearing and real-time gross settlement operations"[19]. A similar situation was observed in the case of Croatia where the new Law on Payment Operations was adopted in 2009 and entered into force at the beginning of 2011. The law has been completely harmonised with the European Directive 2007/64/EC on payment services[20]. Application of the new law has brought key changes in comparison with the previous legal solutions in the area of payment operations, which inter alia include:

- Absence of divisions either in terms of the currency in which payment operations are performed or in terms of the payment operation users.

19 The European Commission, (2011), "Bosnia and Herzegovina 2011 Progress Report"

20 Croatian Banking Association, http://www.hub.hr/Default.aspx?art=1977&sec=508

- The law regulates payment operations in a way that, for the first time, within a legal solution there is a complete list of payment services existing in the market that the lawmaker wants to regulate in a unified manner.
- Unlike the previous laws under which credit institutions had the exclusive right to perform payment services, this law has expanded the list of payment services providers.
- Completely new are obligations to inform payment services users about the conditions for service provision and payment services provided, as well as other rights and obligations related to the provision and use of payment services. One of the main objectives of the law is specifically to protect the rights of payment services users through a high level of transparency in payment services provision and a high degree of regulation of mutual rights and obligations.
- Furthermore, the law regulated more precisely the issue of the work of payment operations institutions and supervision thereof as well as regulating the establishment of new payment services providers prescribing the manner and conditions of their business operations and their supervision by the Croatian National Bank. Finally, it regulated in a more precise manner the issue of establishment, work and supervision of payment systems in comparison with the existing solutions.

In Croatia, the new Electronic Money Act was adopted in 2010 and it entered into force on 1 January 2011 (apart from several provisions that will enter into force upon Croatia's entry into the EU). This act has replaced the previous Act on Electronic Money Institutions passed in 2009 in order to achieve harmonisation with Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions[21]. This case study provides an overview of the impact that electronic money can exert on the monetary and payment system of a country, as well as of some key issues that need to be taken into account by BiH authorities upon the eventual transposition of this Directive. With regard to other issues of significance in the area of free movement of capital, in the case of Croatia there are still limitations with respect to the purchase by EU citizens of agricultural land and land protected as a national treasure, as well as the issue of state ownership of companies considered to be vital to the national interest.

In the case of Serbia, the legal framework has been further harmonised with SAA requirements during 2011. Amendments to the Law on Foreign Currency Operations enabled gradual liberalisation of movement of capital particularly with regard to long-

21 Adoption of the new directive represents an attempt to achieve multiple objectives: response to the emergence of the new, pre-paid products for electronic payment; removal of obstacles to entering the market and easier taking up and pursuit of the business of electronic money issuance; introduction of a clear definition of electronic money; introduction of a regime for initial capital combined with one for ongoing capital to ensure an appropriate level of consumer protection; and ensuring a 'level playing field' with respect to the electronic money issuance.

term capital transactions and foreign currency operations conducted by residents. Certain limitations remained active in the area of short term capital transactions. As is the case with BiH, after the fourth year of the implementation of the SAA, Serbia will have to undertake measures to ensure free movement of capital related to loans and credit with less than one year maturity. The Law on Foreign Currency Operations foresees temporary safeguard measures that can be taken by executive authorities in the case of grave disturbances to the balance of payments that jeopardise the implementation of monetary or foreign currency policy. Hereby we note that these safeguard measures remain undefined in the case of BiH because the Law on Foreign Currency Operations has not been adopted at the national level. In Serbia, as well in BiH and Croatia, there are still certain limitations regarding purchase of real estate, where such purchase by foreign citizens is possible only if reciprocity has been established with the buyer's country of origin. Foreign citizens are not allowed to purchase agricultural land. Unlike BiH and Croatia, Serbia has not retained special rights with respect to company privatisation and the EC recommends that it continues with the privatisation of companies that are not state owned in line with the relevant EU requirements.

In terms of the progress achieved in the period since the signing of the Stabilisation and Association Agreement (SAA) with respect to the fulfillment of obligations under Chapter 4 pertaining to current payments and movements of capital, Croatia moved forward the furthest, followed by Serbia, while progress has slowed in Montenegro, Macedonia and Albania. The overall progress achieved by BiH is, generally speaking, at the level of most other Western Balkan countries. The general assessment of the EC is that BiH achieved moderate progress in terms of capital market liberalisation but that significant efforts are required in order to ensure that the legal framework is harmonised with the acquis and to ensure harmonisation of regulations within the country so as to create better preconditions for the establishment of a single economic space.

On the other hand, no legislative activities related to the liberalisation of capital movements or to the payment system have been implemented in Montenegro in this period. In March 2011, the Central Bank of Montenegro adopted the Decision on Obligatory Elements of Payment Orders according to which every payment order needs to contain elements that will ensure that payments are made in line with the relevant EU regulations. The planned activities of the government pertaining to privatisation have been slowed down somewhat, while there has been

a decline in activities regarding real estate in general, although EU citizens have the same rights as citizens of Montenegro when it comes to real estate operations.

The least progress was made by Albania and Macedonia. Macedonia fulfilled all the obligations arising from the first phase of implementation of the SAA and is now awaiting the decision of the Council of the European Union regarding the continuance of implementation of these measures. There are still certain limitations in connection with cross-border payment operations, as well as with money holdings, account opening, purchase of securities and real estate by non-residents. Preparations have been made for harmonisation with the EU Directive pertaining to payment operations, although fees for cross-border payments are still much higher than those for in-country financial transactions. In the case of Albania, limitations pertaining to the purchase of real estate by non-residents and general insecurity relating to ownership of real estate negatively affect the attractiveness of investment. However, certain amendments to the Law on Foreign Investments have been made in order to protect investors in the areas of public infrastructure, tourism, energy and agriculture from adverse costs based on property-legal relations.

c) Example: The Electronic Money Act of the Republic of Croatia

During 2010, the Electronic Money Act was adopted in Croatia, while its implementation started in January 2011. This law was passed to achieve complete harmonisation with the requirements of Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions. This Law defines electronic money as "electronically, including magnetically, stored monetary value representing a claim on the issuer, which is issued upon receipt of funds for the purpose of making payment transactions in terms of the law governing payment transactions, and which is accepted by a natural or legal person other than the electronic money issuer."[22]

Institutions authorised for electronic money issuance are: 1) credit institutions having their registered office in the Republic of Croatia, 2) electronic money institutions having their registered office in the Republic of Croatia, including electronic money institutions under exemption, 3) The Croatian National Bank, when not acting in its capacity as monetary authority or other public authority, 4) The Republic of Croatia or units of local and regional self-government, when acting in their capacity as public authorities 5) credit institutions having their registered office in a Member State,

22 Article 2 Paragraph 2 of the Electronic money Act, OG no. 139/2010.

6) electronic money institutions having their registered office in a Member State, 7) branches of a third country credit institution having their registered office in the Republic of Croatia, 8) branches of a third-country electronic money institution having their registered office in the Republic of Croatia and 9) the European Central Bank, when not acting in its capacity as monetary authority or other public authority[23].

The last couple of years have shown a growing interest in electronic money in modern payment systems, not least because electronic money has the potential to replace cash in low-value transactions and make these transactions simpler and cheaper for buyers and sellers[24]. Electronic money represents a record of assets or 'valuables' available to the buyer, which are stored on an electronic device in order to be used through a computer network such as the Internet[25]. Electronic money and electronic money payment services are quite diverse[26]. In their technical appearance they can be in the form of prepaid cards, which implies issuance of a plastic card with a built-in microprocessor chip, while there is also electronic money in the form of software installed on a consumer's personal computer. Furthermore, there are several types of electronic payment service providers and money can be transferred in different ways. All this indicates the complexity of the issue and the need for its thorough regulation if the intention is for this form of money to find its place in a modern payment system.

The regulation of this field raises a number of issues that are significant not only from the point of consumer protection, but also from that of control of monetary policy because the quantity of M1 currency in circulation in payment operations can be influenced by means of electronic money. Therefore, electronic money gives rise to the following issues that need to be regulated by law in order to enable electronic money payments in a payment system[27]:

a. **Prudential supervision:** electronic money issuers must be subject to prudential supervision.
b. **Solid and transparent legal arrangements:** rights and obligations of all parties (buyers, sellers, issuers and operators) must be clearly defined and enforceable under all relevant jurisdictions.
c. **Technical security:** Electronic money schemes must maintain adequate technical, organisational and procedural safeguards to prevent any security threats, particularly the threat of counterfeits.

23 Article 4 of the Electronic money Act, OG no. 139/2010.

24

25 Ibid.

26 Ibid.

27 Ibid.

d. **Protection against criminal abuse:** Protection against money laundering must be particularly taken into account when designing and implementing electronic money payment schemes.

e. **Monetary statistics reporting:** Central banks must have access to all relevant information on electronic money transactions that may be required for the purposes of determining and safeguarding monetary policy.

f. **Imposing reserve requirements:** The possibility must exist for central banks to impose reserve requirements on all electronic money issuers.

It is obvious that a country's Central Bank must have significant authority in terms of granting permits for electronic money issuance, as well as of supervision and control over transactions that involve electronic money. After inspecting the Electronic Money Act of the Republic of Croatia it has become evident that the Croatian National Bank plays a central role in the electronic money payment system. In the case of BiH, this will represent another issue in the field of payment operations which will require serious discussion about the existing authorities and the role of the Central Bank of BiH, particularly in the sense of payment system regulation. This is something that needs to be defined in order to continue with harmonisation of local legislation with EU regulations such as Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

Title VI

Approximation of Laws, Law Enforcement and Competition Rules – Provisions on law enforcement, intellectual property protection, standardisation, consumer protection and equal opportunities

a) General assessment

Law enforcement in the field of intellectual property protection, standardisation, consumer protection and realising equal opportunities is of exceptional importance. Yet, up until recently, it had failed to attract the attention of either politicians or the media both in BiH and in the region as a whole. It was only with the initiative for global adoption of ACTA, reports on the harmfulness of certain products coming from outside the EU and occasional events marking international days dedicated to groups with different types of handicaps that awareness of the importance of law enforcement and adoption of standards in this field increased.

All Western Balkan countries, including Bosnia and Herzegovina, undertook an obligation to harmonise their laws and by-laws with international standards. Apart from the obligations under the SAA, there are also requirements of international conventions developed under the auspices of the UN. In the field of intellectual property protection there are WIPO and TRIPS standards. There are myriad regulations in relation to the WTO in the field of consumer protection, metrology and standardisation. Additionally, when it comes to equal opportunities, there are numerous conventions of the United Nations and the Council of Europe as well as EU charters.

In the process of establishment of their independence, the countries in the region have gradually undertaken obligations arising from UN membership either by means of succession or through subsequent ratification of conventions. A similar situation existed in areas related to the process of negotiations for membership of the WTO and the Council of Europe. Stabilisation and Association Agreements represent an additional mechanism ensuring that the obligations taken on are turned into reality, on site, in a standardised way. The countries in the region, all in their own way and in line with the timelines set under their SAA, have taken up the fulfillment of these obligations more or less successfully. This issue is subject to further screening by the EU during the association process right through to acquisition of EU membership. Considering the expected accession of the Republic of Croatia to the European Union on 1 July 2013, it is safe to conclude that Croatia went the furthest in terms of realisation and fulfillment of its obligations. When it comes to Bosnia and Herzegovina, the most favourable situation is seen in the area of intellectual property protection, while customer protection, standardisation and accreditation suffer from a chronic lack of political and institutional support and a lack of funds for the realisation of obligations, caused by interim financing at the BiH state level. All things considered, creation of equal opportunities is the most potentially troublesome issue, additionally complicated by the economic crisis and the fact that political elites are preoccupied with everyday political, constitutional and legal problems in the functioning of institutions at different government levels.

b) Implementation of obligations under the Stabilisation and Association Agreement/Interim Agreement in Western Balkan countries

Implementation of obligations under the Interim Agreement or the Stabilisation and Association Agreement, in the case of the countries in which it entered into force, depends to a great extent on the application of legislative acts in the form of by-laws that need to be adopted by the relevant institutions. In the case of areas covered by the provisions of this Title, these institutions are mainly specialised agencies, administrations, bureaux and institutes. These institutions' by-laws often have to be harmonised with international standards and conventions relevant for the given

areas. Generally speaking, Bosnia and Herzegovina is taking slow steps forward in the area of the internal market, but the European Commission Report states that "a development strategy for the quality infrastructure as a whole and a horizontal coordination mechanism are not in place."[28]

It is estimated [by the EC] that in the areas covered by this part of Title VI *moderate progress* has been achieved. We agree with that estimate and also with the statement that major steps need to be taken to achieve a fully functioning single economic area.[29] Considering specific areas, it should be noted that the Market Surveillance Strategy for non-food consumer products in Bosnia and Herzegovina for 2011-2015 was adopted. The Market Surveillance Agency increased its staff and co-ordinated proactive and reactive market surveillance activities. The Institute for Standardisation of Bosnia and Herzegovina (BAS) adopted 2,695 European standards (ENs) as national standards, bringing the total to 12,306. There are 49 technical committees in total. The BAS performed the first annual check of its own quality management system. In the area of intellectual property rights, laws entered into force and implementing regulations were adopted. The institute expanded its premises and increased its staff from 48 to 50, although a further 22 vacant posts remain to be filled. In the area of consumer protection, the 2011 state-level annual consumer protection programme was adopted and the Ombudsman handled 317 cases, of which 295 were resolved. Furthermore, the state-level Institute of Metrology (IMBiH) proceeded with establishing and equipping national laboratories, but needs further human resources to fulfill its tasks. Co-operation and co-ordination between the IMBiH and the metrology institutes of the entities remains weak. Neither the Law on Accreditation nor the Law on Technical Requirements for Products and Conformity Assessment is fully in line with the horizontal *acquis.* Because of this, conformity assessment is not being performed on either locally manufactured or imported products before they are released onto the market. Appropriate procedures remain to be established and there was no progress in social policies. Existing labour laws in the entities have yet to be aligned with the *acquis*. No progress was noted regarding *health and safety at work* or in the *social dialogue*. Little progress was reported in the area of *social inclusion, including non-discrimination,* while uneven progress was achieved in the area of public health policy. However**,** progress was reported in the area of mental health.

28 The European Commission, Brussels, 12 October 2011, SEC (2011)1206 – Bosnia and Herzegovina 2011 Progress Report; *appendix* to the Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012 šCOM(2011)666ć

29 *Overall*, preparations in the fields of standardisation, accreditation, conformity assessment, metrology, market surveillance and consumer protection are moderately advanced. Further efforts are needed to adopt a legislative framework harmonised with the horizontal *acquis* and to continue transposing the product-specific *acquis*. Strengthening institutional capacity and creating structures for co-ordination between the relevant institutions is essential. Prioritisation of legal alignment and related capacity-building is yet to be carried out in accordance with market needs. Pgs 28 – 30.

If we compare the European Commission's assessment of progress made by other Western Balkan countries, three years after signing the SAA, i.e. entry into force of an Interim Agreement, we can see where BiH stands in the EU integration process compared to the region. In particular we can compare with Serbia, which received candidate status on March 1st 2012, and signed its SAA two months before BiH.[30]

Country Year PS +3	Albania 2009	BiH 2011	Montenegro 2010	Croatia 2004	Macedonia 2004	Serbia 2011
General	Progress made with significant effort	Moderate progress	Progress made with significant continuous effort	Progress with further effort	Moderate progress	Moderate progress
Standardisation	Continuous effort	Certain progress	Some progress	Further efforts needed	Certain progress	Some progress[31]
Accreditation	Good progress	Some progress	Some progress	Further efforts needed	Certain progress	Progress[32]
Alignment	Certain progress	Little progress	Progress with further effort	Further efforts needed	Certain progress	Progress[33]
Market Surveillance	Certain progress	Certain progress	Progress with further effort	Intensified effort needed	Certain progress	Progress[34]
Metrology	Good progress	Certain progress	Progress with further effort	Progress	Certain progress	Progress[35]
Intellectual property	Certain progress	Good progress	Progress with further effort	Progress	Certain progress with additional effort	Moderate progress[36]
Consumer protection	Good progress	Progress	Progress with further effort	Intensified effort needed	Little progress	Good progress[37]
Employment, social policies, health care	Little or limited progress	Little or insufficient progress	Little progress	Considerable and continuous effort needed	Little or limited progress	Certain progress

30 The time period which elapses between signing the SAA and entry into force of Interim Agreement is usually one month; however, in the case of Serbia, the EU suspended the Interim Agreement for a period of 13 months.

In 2009 Albania made progress in approximating its legislation with European standards. However, it was assessed that additional efforts were needed in this area and to further strengthen its administrative capacity for the implementation and enforcement of laws.[38]

The Montenegro 2010 Progress Report stated in the conclusion that overall, in the field of the free movement of goods, Montenegro should enhance preparations and make considerable and sustained efforts to align with the *acquis* and to implement them effectively in the medium term.[39]

In early November 2005, the European Commission published the first Croatia Progress Report on fulfilment of membership criteria, covering the period from April 2004 to September 2005. The report evaluated that Croatia faced no major difficulties in meeting the political criteria for membership and that it could be regarded as a functioning market economy that would be able to cope with competitive pressure within the European Union provided that it continued implementing its reform programme. Legislation on standardisation and metrology, on technical requirements for products and conformity assessment, as well as on general product safety was adopted by late 2004[40]. On the other hand, in the areas covered by both the new approach and the old approach directives, the vast majority of sector specific legislation was yet to be transposed and the secondary legislation was only partially aligned with the *acquis*. Special attention was to be paid to the harmonisation of foodstuffs and food safety legislation, together with improving the safety of products, protection of consumers and the environment. The administrative capacity was generally established but the necessary separation between regulatory, accreditation, standardisation and product certification

31 Institute for Standardisation of Serbia – from an independent, non-profit organisation evolved into public institute.

32 Law on Accreditation adopted in line with EU framework (765/2008).

33 The Law on Technical Requirements for Products and Conformity Assessment of Products and accompanying by-laws adopted.

34 By-laws in the area of general product safety and 2010-2014 Market Surveillance Strategy adopted.

35 New Law and by-laws adopted and Metrology Council established.

36 Additional efforts are required in terms of aligning with EU *acquis communautaire.* With regard to implementation of the laws, better co-ordination is needed between relevant services, as well as considerable investment in judicial training. Implementation and enforcement of the laws was indentified as a problem in the field of intellectual property rights as well. It is suggested that, among other things, division of competencies is not always clear, in particular related to inspections, and that the institutions co-operate on a case-by-case basis, instead of having co-operation in a structured and predictable manner.

37 Law on Consumer Protection and by-laws adopted. Thus, 14 important directives were transposed and the Consumer Protection Centre was launched.

38 Albania 2009 Progress Report http://eeas.europa.eu/delegations/albania/documents/eu_albania/2009_progress_report_en.pdf

39 European Commission, Montenegro 2011 Progress Report, Analysis, Matica Crnogorska. P. 379-380 http://www.maticacrnogorska.me/files/44/14%20izvjestaj%20evropske%20komisije.pdf

40 Integration of the Western Balkans in the Internal Market, European Institute Foundation, Sofia 2004, p. 23

functions was yet to be completed. In Croatia in 2004 the new Law on Copyright and Related Rights, the new Law on Patents, the new Law on Industrial Design, the new Law on Trademark and other new legislative acts provided a sound basis for development of EU- compatible policy in the area of intellectual property rights.[41] However, some by-laws (regulations on patents, trademarks, industrial designs, geographical indications and designations of origin, regulations on protection of topographies of semiconductors) still remained to be implemented. Although some measures for combating counterfeiting and piracy were undertaken, particularly regarding border control, the main challenge was proper implementation and an enforcement record according to the requirements of the legal framework.

By 2004[42] the Former Yugoslav Republic of Macedonia had achieved some progress in the field of standardisation, metrology, accreditation, certification and market surveillance. Although certain administrative bodies were established in this area by the 2002 legislation, the administrative capacity needed to be substantially strengthened and secondary legislation was also to be developed. The main problems at the time related to the low level of implementation of EU standards and requirements by Macedonian producers (especially in the area of foodstuffs), which resulted in limited access for FYROM goods to the EU market and a consequent significant trade deficit. In 2004, FYROM made some progress in the area of intellectual property rights[43], notably through the adoption of the Law on Industrial Property. However, it was stressed that efforts were needed for further development of the legal framework in other aspects of intellectual property rights, as well as for amending the secondary legislation on industrial property, raising public awareness and fighting piracy.

In 2011 Serbia made modest progress in fulfilling the requirements set out in Title VI of the SAA. However, administrative capacities in the ministries and other public institutions needed to be strengthened. Further efforts are needed to continue transposing the EU's *acquis communautaire* in to national legislation. It has been stated that, of late, consumers can rely on legal protection aligned to a considerable extent, though not fully, with European legislation. The chapter on health and consumer protection states that consumers can also count on services provided by the consumer protection organisation and that there is sufficient capacity of the state services in this area. Furthermore, implementation and enforcement of the laws was identified as a problem in the field of intellectual property rights. It is suggested that, among other things, division of competencies is not always clear, in

41 Ibid. p. 49

42 Ibid. p. 23

43 Ibid. p. 49

particular in relation to inspections, and that institutions co-operate on case-by-case basis, instead of co-operating in a structured and predictable manner.[44]

If we compare specific activities that Western Balkan states have implemented in the three years after signing their SAAs, i.e. after entry into force of Interim Agreement, we see that Bosnia and Herzegovina does not trail very far behind its neighbours in implementing its obligations. In addition, if we consult the generalised progress assessments listed in the table, we become aware of how these assessments are very similar, both in terms of substance and the terminology used in the reports of the European Commission. Three years after entry into force of an Interim Agreement, the major problems that the regional countries were faced with were as follows – lack of administrative and human capacities, having the capacity to fulfill some requirements but being prevented from doing so due to lack of funds, lack of horizontal co-ordination with other institutions and difficulties in getting their issues high up on the political agenda. At the same time, the European Commission was insisting that the countries should adopt and finalise laws and draft the accompanying bylaws that would be aligned with the EU 'soft law' in given areas. The Commission also insists on establishment of the necessary institutions, horizontal communication, sufficient financing, and palpable, statistically measurable progress in implementation of laws. Bosnia and Herzegovina is faced with the problem of excessive politicisation which renders impossible the adoption of the Budget of BiH Institutions and prevents institutions from using the funds necessary for further operations. It also hampers co-ordination between the institutions in charge of implementing activities at the state and entity level and slows down the process of amending laws and by-laws. All of the above is supported by an assessment made by the European Commission that activities in this area progressed moderately but that it is still necessary to make additional efforts to adopt a legal framework that will be aligned with horizontal *acquis*. Finally, the point is made that it is essential to strengthen institutional capacities and establish structures for co-ordination between the relevant institutions.

44 http://www.euractiv.rs/srbija-i-eu/2874-miljenje-evropske-komisije-o-srbiji-2011

c) Example: Lack of financial resources as an obstacle to implementation of laws

In line with the recommendation of the European Commission, the pivotal issue for Bosnia and Herzegovina is to strengthen institutional capacities and establish co-ordination structures between the relevant institutions. In addition, BiH should make additional efforts to adopt a legal framework that will be aligned with horizontal *acquis*. Logically, in order for laws to be implemented it is necessary to establish institutions to enforce and align them with EU standards. It is also necessary for field inspection authorities to be fully staffed with trained personnel and given sufficient funds to perform their regular activities, so as to prevent violation of the law as much as possible.

If we compare the specific activities that the Western Balkan states have implemented in the three years after signing their SAAs, i.e. after entry into force of an Interim Agreement, we see that Bosnia and Herzegovina does not trail very far behind its neighbours in implementing its obligations.

The majority of Western Balkan states faced a lack of budget resources at the time that they were supposed to be establishing new institutions. In addition, they had to cope with the pressure of public opinion demanding a downsizing of administration. This situation pertains in Bosnia and Herzegovina but unlike other countries, BiH state institutions have been surviving on a 'temporary financing regime' for more than a year. This means that the budget may only be spent to pay salaries to civil servants and employees, to cover office running costs, costs of official business trips and to service external debt. However, it also means that, in line with the law, funds are not to be spent on capital expenditure, purchase of new equipment, strategic development activities aimed at making institutions fit to do their jobs better or on recruitment of new personnel. This situation in BiH persisted throughout 2011 and into the first quarter of 2012. The question now arises as to how to strengthen institutions and co-ordination and how to harmonise and implement laws in practice without having the money to do it. There is nothing left for the institutions but to use money from international donations to purchase equipment and to make use of foreign experts on technical assistance projects instead of recruiting new personnel. In such a situation it is pointless to mention a strategic approach to public administration reform, let alone standardisation and statisically measurable progress in the functioning of institutions, and it is a pipe dream to think of creating either equal opportunities or European standards in social policy, health care and education. It is true that many of these competencies were shared with the entities and cantons, however the

situation at these levels of governments is no better, although they are not subject to a temporary financing regime.

Other Western Balkan countries had certain advantages (in addition to having regular budgets for implementation of their obligations under SAA that were not disputed for political reasons). Croatia and Macedonia received sizeable CARDS programme funds for the above purposes, three years after acquiring candidate status for EU membership (four and a half years after entry into force of interim agreements). Montenegro and Serbia received candidate status three years after signing of their SAAs and were granted access to all IPA fund components including human resources development, infrastructure, transport, agriculture and rural development. These targeted funds can considerably help countries to cope with the challenges of EU integration of which Croatia is the best example. It is still hoped that BiH will facilitate reforms, fulfill requirements and receive candidate status, thus gaining access to other IPA components. This should help the country overcome the bleak situation regarding temporary financing which poses an obstacle to BiH's road to the EU. In such a situation it seems that all the strategies and plans developed by institutions with the aim of implementing the Interim Agreement and SAA are made to no avail.

Title VI

Provisions on competition, state aid, public companies and public procurement

a) General Assessment

Alignment and implementation of laws are activities that have to be undertaken by all Western Balkan countries when meeting their obligations under the Stabilisation and Association Agreement. Ultimately, fulfillment of standards set by the EU boils down to such alignment and implementation of laws as this is the main task facing all countries aspiring to EU membership. Three stages may be identified in this process. The first stage includes adoption of necessary legislation, i.e. harmonisation of existing legislation with the EU *acquis,* the second stage includes formal establishment, training and equipping of institutions responsible for implementation of laws and in the third stage, harmonisation and implementation of laws is entrenched through adoption of the necessary by-laws. Regulations formally defined by the institutions are implemented following these three stages. Implementation of regulations in practice can be monitored by quality control and the collection of statistical data. This is what the EU does through its assessment teams, who make recommendations for improvements to the process of implementation of regulations by monitoring amendments made to EU by-laws – so called 'soft law'.

The European Commission insists on consistent implementation of EU *acquis* in the areas of competition, state aid and public procurement as the SAA and the treaties establishing the EU define the direct effect of EU regulations. Having in mind the four fundamental freedoms of the European Union and the fact that competition policy and rights were attributed the same level of importance as these freedoms in the

Lisbon Treaty, one should not be surprised about this insistence on consistency in implementation of regulations in this area. Competition policy, being one of the main EU single market levers through European Union competition law which has a direct effect on all EU member states and on those aspiring towards membership, is one of the major criteria used to evaluate the success of aspirant countries. Competition law, in combination with the law on state aid and public procurement regulations, ensures fundamental balance between the free market, state intervention and transparency in the expenditure of public funds. This has been particularly noticeable over the last few years during the economic crisis which has severely affected the EU.

All Western Balkan countries have adopted the laws governing the mentioned areas in a timely manner, establishing implementation bodies and drafting by-laws. The exception is Bosnia and Herzegovina which has made no progress, even during 2011, regarding state aid and monopolies of public companies. For some time now BiH has failed to align its existing legal framework and secondary legislation with EU *acquis* in the area of public procurement.[45]

b) Implementation of obligations under the Stabilisation and Association Agreement/Interim Agreement in Western Balkan countries

Competition, state aid and public procurement are three closely linked areas that contribute to transparency in the expenditure of public funds and in regulation of the market. The Western Balkan countries started transposing EU *acquis* and establishing institutions at different times.[46] The general assessment of the European Commission as to the extent to which states exert influence on the area of competition three years after the signing of the SAA, showed good results only for Albania and Montenegro. In Croatia, the state used to exert a great deal of influence on competitiveness, whereas in BiH and Serbia the state continues to substantially influence competitiveness. In the case of Macedonia the 2004 assessment was not available.

45 At the time this report was written (April 2012), Bosnia and Herzegovina had adopted the Law on the State Aid System and launched a process to establish a State Aid Council.

46 Albania, BiH, Croatia and Macedonia adopted competition laws and set up implementation bodies 3-4 years prior to signing of the SAA, whereas Montenegro did it the same year it signed the SAA and Serbia two years after signing of the SAA. Montenegro adopted laws on state aid the same year it signed the SAA. Albania did it one year before signing of the SAA, while Croatia, Macedonia and Serbia adopted these laws two years after signing of the SAA. BiH adopted the Law on the State Aid System nearly four years after signing the SAA. BiH established a public procurement system four years after signing the SAA, Macedonia two years prior to signing, whereas Serbia did it six years prior to signing of the SAA. Montenegro and Croatia established their public procurement systems in the same year they signed the SAA, while Albania did it one year after the signing of the SAA.

Country/ Year	Albania 2009	BiH 2011	Montenegro 2010	Croatia 2004	Macedonia 2004	Serbia 2011
Assessment of the extent to which states exert influence on competitiveness	Within limits[47]	High[48]	Moderate[49]	High[50]	-	Large[51]

BiH is stated to have made some progress in the area of competition although the Competition Law needs further alignment with EU *acquis.* However, the Competition Council's administrative capacity, with a total of 26 staff, appears insufficient to carry out the tasks assigned to it, let alone to increase its investigative capacity.

Little progress was made in the field of state aid: the Law on the State Aid System was adopted only in March 2012 and the implementing body is yet to be established. This situation resulted in failure to ensure transparency in the entirety of the state aid allocated in Bosnia and Herzegovina and further failure to develop a State Aid Inventory. Under the deadline laid out in the SAA, BiH is obliged to develop a State Aid Inventory by July 1st 2012. Therefore, the European Commission states that preparations in the area of competition remain at an early stage. BiH also needs to fulfil its obligation under the Interim Agreement regarding public companies.[52] The situation is most critical in the area of public procurement, although the legal framework and relevant bodies have been in place for 7 years. The European Commission assessed therefore that no progress had been made in this area. The Public Procurement Agency (PPA) and the Public Procurement Review Body (PRB) retained their low staffing levels and this was one of the reasons why no progress was made. The other reason is that the 2004 and 2007 public procurement *acquis* remain to be transposed. In addition, the implementation of the 2010 – 2015 Strategy for Development of the Public Procurement System has been delayed. Consequently, provisions concerning public-private partnerships and services and works

47 Albania 2009 Progress Report – European Commission. http://eeas.europa.eu/delegations/albania/documents/eu_albania/2009_progress_report_en.pdf

48 *Overall*, State influence over competitiveness remains high. European Commission- Bosnia and Herzegovina 2011 Progress Report, p. 28.

49 Guided by data in the analysis made by Matica Crnogorska. The analysis states that 86% of state property in Montenegro is privatised. Key sectors, such as banking, insurance and telecommunications were already fully privatised by 2010. A vast majority (73%) of joint-stock companies are fully privatised and in 17% of companies, private capital accounts for more then 50% of the total, whereas the remaining 10% are state-owned companies where state ownership exceeds 50%. http://www.maticacrnogorska.me/files/44/14%20izvjestaj%20evropske%20komisije.pdf

50 Croatia 2005 Progress Report for the period April 2004 – September 2005, emphasises that the area of competition policy requires considerable and continuous further efforts to be invested in implementation of EU standards.

51 "Overall, the state continues to have substantial influence on competitiveness through its legal and financial mechanisms." European Commission – Serbia 2010 Progress report

52 Bosnia and Herzegovina 2011 Progress Report, p. 34

concessions at all levels guarantee neither competitive and transparent procedures nor an independent review of the procedure in line with the *acquis.* A final reason for lack of progress is the absence of mechanisms of co-ordination and co-operation between the relevant institutions, the Agency and the Public Procurement Review Body.[53]

In its 2010 report, Montenegro received a positive assessment, given that 86% of state capital had been privatised and that in the same year that the SAA was signed three key laws were adopted: the Law on Competition, the Law on State Aid Control and the Public Procurement Law. Therefore, a period of three years from signing of the SAA was sufficient for Montenegro to implement a solid system helping to reduce the influence that the state exerts on competition, in line with EU standards. Furthermore, during the crisis in 2009 and 2010, companies were receiving support through state guarantees. Finally, mutual financing of electricity prices between different consumer categories was replaced with direct budget subsidies in order to avoid interference in the market.

The Western Balkan countries did not follow the same timeline in terms of the adoption of EU acquis and establishment of institutions in this area. A general comparison of the European Commission assessments of state influence on competitiveness, three years following the signing of the SAA, indicates that only Albania and Montenegro achieved good results. Croatia had, and BiH and Serbia still have, significant state influence on competitiveness.

In its 2004 assessment, the European Commission stressed that Croatia would need to make considerable and sustained efforts in the area of public procurement and competition policy in order to align them with EU standards. However, this did not prevent Croatia from receiving candidate status even before the SAA entered into force. In 1997, Croatia had already given priority to the setting of standards in the area of competition. In the area of public procurement this happened in 2001, whereas in 2003 it adopted state aid regulations and the new Competition Act. Thus, three years after signing of the SAA, Croatia had already acquired considerable experience in implementing legislation in line with EU standards. Nevertheless, it was assessed that Croatia needed to make further considerable effort to fully align standards in these areas. Given that the EU adopted a well-known Council Regulation (EC) No 1/2003, which reformed the system of implementation of the rules on competition and introduced their direct effect, Croatia was expected

53 Ibid. p. 34-35

to align its by-laws directly with this Regulation and the Commission's secondary legislation.[54] Croatia went on to adopt the 2004 EU Public Procurement Directive. In addition, it needed to strengthen the Public Procurement Office and the State Commission for the Supervision of Public Procurement Procedures, established in 2003, in order to properly implement a legal framework in the public procurement area.[55]

In FYROM, implementation of the 2002 Public Procurement Law was entrusted to a specialised department within the Ministry of Finance. However, recognising the need for improvements in the public procurement legislative framework, amendments to the public procurement law were drafted in 2004 in order to align it with the new standards in EU public procurement *acquis*. However, a question arose regarding the effectiveness of the implementation given that the administrative capacities of the implementing body needed improvement.[56] By 2004, the law regulating prohibited forms of prevention, restriction or distortion of competition had already been implemented for four years. During this implementation, a need was identified to strengthen regulation enabling efficient implementation of the law by the national competition body and to align the law and by-laws with Council Regulation (EC) No 1/2003. In addition, Macedonia started to implement the Law on State Aid on January 1st 2004. Therefore, competition and public procurement regulations were already being implemented in Macedonia in 2004, whereas the control of state aid was at an early stage.

In 2011 Serbia received some criticism from the European Commission regarding public procurements, given that these absorb over a billion Euros per year. The Commission assessed that public procurement regulations were partially aligned with EU *acquis*. The lack of a legal framework on concessions and public-private partnership still remains to be addressed. Furthermore, capacities of the institutions, in particular the Ministry of Finance, need to be strengthened. The Commission for Protection of Bidders' Rights needs to ensure effective enforcement of its decisions. Under the Stabilisation and Association Agreement (SAA), EU companies not established in Serbia must be granted access to contract award procedures in Serbia on terms no less favourable than those accorded to Serbian companies in the next few years. Therefore, the drafting of amendments to public procurement regulations is underway.[57] When it comes to the protection of competition, the operational independence of the Commission for Control of State Aid (CCSA) needs to be demonstrated in practice. Progress was made in the area of the fight against monopolies given that by-laws regarding competition

54 Regional Review on Competition Policy in Western Balkan Countries. European Institute Foundation, Sofia, November 2004, p. 11.

55 Integration of the Western Balkans in the Internal Market. European Institute Foundation, Sofia, November 2004, p. 46

56 Ibid, p. 46.

57 http://www.euractiv.rs/srbija-i-eu/2874-miljenje-evropske-komisije-o-srbiji-2011

were adopted in line with the law and EU *acquis*. Serbia has also submitted its first State Aid Report; however it was assessed that administrative capacities of the implementing bodies need to be further strengthened.

Albania established its public procurement system somewhat later than other Western Balkan countries, i.e. one year after signing of the SAA. However, it had adopted regulations in the area of competition three years prior to signing the SAA and in the area of state aid one year prior to having done so. The European Commission Report emphasises that good progress was made in the area of competition, particularly in terms of investigation procedures. Furthermore, a review is being carried out in order to prepare amendments to the Law on Competition. In the area of state aid, amendments to the Law on State Aid were introduced in 2009 in order to harmonise it with new EU regulations. The State Aid Department and the State Aid Commission continued their activities preparing state aid reports. A state aid map was prepared in accordance with requirements arising from the SAA. In the end, the subsidies for tourism, free zones and employment were aligned with the requirements of the state aid *acquis*, while subsidies for the steel and iron industry were entirely banned. Some progress was made in the area of public procurement, bearing in mind that the public procurement system was introduced one year after the SAA was signed. Thus, it is stated that further alignment with the public procurement *acquis* is required, as the procedures do not yet meet international standards and an independent review body has not yet been established.[58]

c) Example: How the interplay of implementation of laws and the level of subsidies reflects on state influence on competitiveness

In its Progress Report on BiH for 2011, the European Commission estimated that in 2010 direct budget subsidies to industry and agriculture remained at 1.7% of GDP, but that indirect subsidies continued to be sizable. This is, to a large degree, a consequence of Bosnia and Herzegovina failing to fulfill its obligation under the Interim Agreement, to apply, by 1 July 2011, Community principles to public undertakings and undertakings to which special and exclusive rights were granted. The fact is that Republika Srpska adopted the Law on Amendments to the Law on Public Enterprises but that the Federation of BiH draft amendments to the Law on Companies, which should have governed this subject, were not adopted in parliamentary procedure. Furthermore, failure to adopt the Law on the State Aid System at the BiH level contributed to the absence of a legal framework for allocation of state subsidies (so as not to distort

58 http://eeas.europa.eu/delegations/albania/documents/eu_albania/2009_progress_report_en.pdf

ONLY FULL IMPLEMENTATION OF REFORMS CAN GUARANTEE PROGRESS IN THE EUROPEAN INTEGRATION PROCESS. IT IS THE REFORM PROCESS THAT CHANGES THE STATE AND SOCIETY, NOT THE DATE OF EU ACCESSION. ADOPTION OF LAWS, ESTABLISHMENT OF INSTITUTIONS AND HARMONISATION OF SECONDARY LEGISLATION IS ONLY THE BEGINNING OF IMPLEMENTATION OF LAWS, WHICH ALSO REQUIRES TRAINED STAFF AND SUFFICIENT FINANCIAL RESOURCES.

market competition) in line with EU standards.

When discussing this issue, it should be borne in mind that competitiveness and competition are two different concepts. Competitiveness is the position of a country in the global market and it can be affected by numerous economic and technological factors. On the other hand, competition implies a situation in which all legal entities in a single market operate under equal legal conditions and compete with each other by means of the quality of their products or services. In order to achieve a higher level of competitiveness, the state should not distort competition and favour certain companies over others. The state can achieve this by applying the requisite rules of competition, state aid and public procurement. In addition, the state is obliged to address the issue of monopolies of public enterprises.

All Western Balkan countries were obligated to apply principles of competition to public undertakings and undertakings to which special and exclusive rights had been granted. Croatia went the furthest in this regard, by closing the chapter related to this subject in the accession negotiations. Deregulation of mobile telephony telecommunication operators was introduced in Bosnia and Herzegovina, Serbia, Albania, Macedonia and Montenegro. Breaking up of the monopoly in landline telephony, although still in its early stages, was started in BiH. Albania broke up the monopoly in the electricity transmission system although this proved to be a failure. Implementation of EU regulations in this area helped to break up the monopoly, introducing multiple providers of services and goods in certain markets resulting in higher quality services and lower prices. This demonstrates the success of this concept which makes state-owned companies compete with the private sector.

This concept largely depends on the model of privatisation applied by individual countries. The more difficult the privatisation process, the greater the resistance of a state to break up the monopoly of state owned companies. This leads to an increased percentage of GDP allocated for direct subsidies to state owned companies. This would have been acceptable if other providers did not have market interests to provide services to citizens they would not otherwise have. However, if the interest of private companies exists and if new technologies would be introduced to the

benefit of consumers, it is not justifiable to retain state monopolies. This is a general concept upon which the EU insists.

An example of the foregoing is the privatisation process in Montenegro which has been assessed as advanced, as the level of state ownership has been reduced to approximately 14% of total assets. However, the state remained the largest share holder in large mutually connected industries: local electrical power suppliers, railways, ports, shipyards, Montenegro Airlines and airports. Still, support to companies which fell into difficulties in 2009 and 2010 was provided mainly indirectly in the form of state guarantees (4.7% of GDP on foreign sources of financing and an additional 1.8% of GDP to domestic sources of financing).

For Serbia, it was indicated that there is a need to make progress towards the liberalisation of privileged sectors, such as energy and telecommunications. There is also the problem of implementation of laws, particularly in areas such as independent public oversight and quality assurance. Progress in this area also requires improvements to the corporate culture and further development of systems of corporate governance. The European Commission further says that state subsidies were very high over previous years, amounting to 2.2% of GDP. It was therefore assessed that the monopolistic structures controlled by the state, through legal and financial mechanisms, remained in place, whereby the state exerts its influence on competitiveness and thus distorts competition.

It is interesting to note that the level of direct budget subsidies in Albania in 2008 and 2009 remained at 0.2% of GDP, which reflects the estimate of the European Commission that the influence of the state on competitiveness remains limited. A conclusion can be drawn that the activities of Montenegro respond to moderate influence of the state on competitiveness. When it comes to Serbia and Bosnia and Herzegovina, due to the level of GDP allocated for subsidies and their objectives, state influence on competitiveness is high and thus distorts the principles of competition. A similar situation was in evidence in Croatia back in 2004. However, in the last seven years, from a situation like the one that BiH finds itself in today to the signing of Accession Treaty in 2011, Croatia has managed to apply competition rules to public enterprises.

The message is that only full implementation of reforms can guarantee progress in the European integration process and that it is the reform process that changes the state and society, not the date of EU accession. Adoption of laws, establishment of institutions and harmonisation of secondary legislation is only the beginning of implementation of laws, which also requires trained staff and sufficient financial resources.

Title VII

Justice, Freedom and Security (Articles 78 – 85 of the Stabilisation and Association Agreement between BiH and EU)

a) General Assessment

Under Title VII of the SAA, the Western Balkan countries assumed the obligation to assume European solutions in the area of reinforcement of institutions and rule of law, migration, asylum, border management and the fight against crime and terrorism. Taking into account that in the reporting period[59] the countries in the region were in a different situation with regard to the entry into force of the SAA "in its entirety" and specifically Title VII, other instruments, such as the European Partnership, visa liberalisation and international treaties with other subjects of international law, were relevant for the fulfilment of obligations in this area.

A weakness common to the countries in the region in the third year of implementation of contractual relations with the EU is the disparity between the comprehensiveness of the strategic and legislative framework on the one hand and its [lack of] practical implementation on the other. Reasons for that can be found in a lack of adequate co-ordination between competent institutions combined with unsatisfactory technical

59 The third year following the signing of the SAA in the countries in the region refers to the following period: ***BiH*** – June 2010 to June 2011 (conditions for the entry into force of the SAA are the adoption of laws on population census and state aid and implementation of the judgement of the European Court for Human Rights in the case "Sejdić/Finci vs BiH"); ***Serbia*** – April 2010 to April 2011 (SAA was in the process of ratification); ***Croatia*** – October 2003 to October 2004 (the SAA entered into force on 01 February 2005); ***Albania*** – June 2008 – June 2009 (the SAA entered into force on 01 April 2009); ***Montenegro*** – October 2009 to October 2010 (the SAA entered into force on 01 May 2010); ***Macedonia*** – April 2003 to April 2004 (the SAA entered into force on 01 April 2004).

capacities and human and budgetary resources. However, a basic problem remained the lack of political will to actually deliver on these obligations.

b) Implementation of obligations under the Stabilisation and Association Agreement/Interim Agreement in Western Balkan countries

With regard to ***visa policy***, the majority of countries made a degree of progress.[60] Since December 2010, BiH and Albania have been on the "White Schengen List" and a special monitoring mechanism was introduced for all countries in the region to measure how they were abiding by the conditions of the visa free regime. However, progress does not mean the absence of problems. In *Montenegro*, evidence suggests that there is insufficient capacity in the Ministry of Foreign Affairs and diplomatic and consular missions for the issuance of visas and that there is a lack of an adequate electronic database. *Serbia* did not entirely align its list of countries subject to a visa obligation with the requirements of the European Union[61], nor did it establish a comprehensive information system that includes all competent institutions. *Croatia* introduced a visa free regime for four countries on the European Union negative visa list – Bosnia and Herzegovina, Macedonia, Ecuador and Turkey and temporarily for nationals of Serbia and in certain cases Russia too.

In the area of ***border management***, the countries in the region continued fulfilling their obligations.[62] However, a series of weaknesses were identified. In addition to inadequate implementation of the Law on Border Control and the Integrated Border Management Strategy, *Albania* suffered from a lack of analytical capacities for risk

60 Albania made progress in the area of document security; TIMS (*Total Information Management System*) was introduced and the new Law on Aliens and secondary legislation were adopted. BiH, to a large degree, harmonised its visa lists with European Union lists, while the countries for which visa liberalisation had been approved earlier continued to fulfil their obligations.

61 Council Regulation 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when entering and staying in the Schengen countries.

62 ***BiH***, to a large extent, harmonised its legislation in the area of border management with the requirements of the *acquis*, and adopted legislation implementing the Law on Border Control, as well as a new strategy and action plan in this area. In addition, activities were undertaken to link the Risk Analysis Centre and all competent institutions into a unique database. ***Montenegro*** completed the legislative framework in line with the regulations of the European Union and strengthened the co-ordination of implementation of the Integrated Border Management Strategy. In ***Albania***, the TIMS system was extended from 18 to 26 border crossing points, the Ministerial Council for Integrated Border Management and its Secretariat were established and the border crossing point Murriqan – Sukobine with Montenegro came into operation. ***Serbia*** started the installation of the TETRA radio signal system with a view to its full use by the end of 2012. In addition to improvement to legislation, ***Croatia*** introduced operational and organisational enhancements, such as establishing the Border Police as a separate administrative unit which created the pre-conditions for its specialisation-oriented development. ***Macedonia*** adopted its National Strategy on Integrated Border Management in 2003. Joint border patrols continued to be carried out and some steps were taken towards the establishment of co-operation with FRONTEX as the specialised EU agency tasked with co-ordinating operational activities of Members States in the field of border security.

management, lack of access to the MEMEX system[63] and a direct link with INTERPOL with regard to lost or stolen travel documents. The Border Police did not have sufficient technical and human resources. The establishment of the centre for management of maritime operations was delayed, as was the division of competencies between the Border Police and Coast Guard for control of the 'blue border'. In *BiH*, out of a total of 55 border crossing points, only 29 were covered by video surveillance. A need was identified to increase the capacity of the Indirect Taxation Authority of BiH in terms of human resources devoted to border management related functions. In *Serbia*, a need was expressed for enhancement of the Integrated Border Management Strategy and improvement of infrastructure at border crossing points and their IT links with the Ministry of Interior. The need for development of human resources was also identified in Macedonia and Croatia[64], as well as the need to establish an IT system which would link all institutions competent for control of land and sea borders.

In the area of ***asylum and migration***, BiH was successfully implementing the 2008 Law on Movement and Stay of Aliens and Asylum and accompanying action plan. The asylum module of the Migration Information System (MIS) is successfully being used and the Ministry for Human Rights and Refugees was also connected to the MIS. Capacities of the Service for Foreigners' Affairs were enhanced. The Service for Monitoring of Migration Flows was established within the Ministry of Security and the Detention Centre for Illegal Immigrants became operational. However, it was necessary to revise the strategic document and the action plan in this area and speed up work on a permanent asylum centre at Trnovo. *Serbia's* asylum legislation is essentially in line with the requirements of EU *acquis*. For technical and financial reasons the Asylum Office was not established and a database for checking personal data and the fingerprints of asylum-seekers was not in place. *Albania* adopted the relevant laws in line with the requirements of the *acquis*,[65] but their implementation remained weak due to the failure to adopt implementing measures, particularly regarding access for asylum seekers to health care, family reunion, social protection and education. Some shortcomings were identified regarding access of all competent institutions to the TIMS system, which hindered planning and risk management in this area. *Montenegro* established a basic legislative framework; however, construction of a centre for asylum-seekers was postponed for mid 2011 for financial reasons. There was a need for further alignment of legislation with the *acquis* in the area of family reunion, movement of foreign workers, students and researchers. *Croatia*

63 The information system used, inter alia, for integrated border management, data collection and risk management.

64 In the reporting period, out of a total of 8500 planned positions in the Border Police of the Republic of Croatia, only 3900 positions were filled.

65 Albania adopted the Law on Amendments to the Law on Asylum and the Law on Aliens.

In the main in this reporting period, in the area of 'Justice, Freedom and Security', the Western Balkan countries were characterised by insufficiently developed institutional capacities, poor co-ordination among competent institutions and, in particular, the absence of political will to fulfill assumed obligations in their entirety.

adopted a new Law on Asylum as well as secondary legislation[66], but there was still an urgent need to strengthen the capacity of, and co-ordination between, competent institutions by establishing an advanced IT system for collection of personal data and the fingerprints of asylum seekers as well as a need for a permanent centre for their reception and accommodation. A database for checking previous asylum applications, one of the requirements for participation in EURODAC, was not established.[67] *Macedonia* adopted the Law on Asylum and Temporary Protection[68] along with secondary legislation. In December 2002, the Action Plan on Asylum and Migration was adopted and a separate commission serving as a second instance appellate body for asylum seekers was established although both of these bodies suffered from a lack of human resources and infrastructural and IT capacities.

In *BiH,* In the area of the ***fight against corruption and organised crime***, including ***drug trafficking, trafficking in human beings, money laundering and financing of terrorism***, there was a notable disparity between different levels of government with regard to confiscation of illegally acquired assets. The Parliamentary Assembly of BiH, due to opposition from representatives of Republika Srpska, has not yet adopted the Law on Amendments to the Law on Prevention of Money Laundering and Financing of Terrorist Activities, in accordance with the recommendations of the MONEYVAL[69]. The SIPA Financial Intelligence Unit was established as a separate organisation unit.[70] The general database on perpetrators of drug related offences was used by state level police agencies as well as in the FBiH, whereas the Republika Srpska institutions used their own, entity level, database. The Rulebook on Safekeeping and Destruction of

66 This secondary legislation governs the issues of record keeping, accommodation and financial support for asylum seekers, refugees and aliens under temporary protection.

67 A European Union database of personal data and fingerprints of asylum seekers and illegal immigrants established by the Council Regulation 2725/2000 of 11 December 2000.

68 Prior to that, this subject matter had been regulated by the Law on Aliens adopted in 1992.

69 Committee of Experts on the Evaluation of Anti – Money Laundering Measures and the Financing of Terrorism established in 1997 within the Council of Europe.

70 According to the findings of the European Commission, in the reporting period, the SIPA Financial Intelligence Unit operated mainly in isolation, applying inadequate reporting methods for suspicious financial transactions, while its capacities were undeveloped with staffing levels at approximately 66%.

Seized Narcotic Drugs, although agreed between the competent institutions, was not adopted because of a lack of financial resources for its implementation. BiH submitted a Road Map for an operational agreement with EUROPOL for assessment but the communication link with this institution has not been adopted yet. Implementation of the Organised Crime Strategy 2009-2012 was unsatisfactory due to a lack of adequate financial resources. Provisions on human trafficking in entity Criminal Codes were not harmonised with the state level Criminal Code or with ratified international instruments, while implementation of the National Action Plan on Combating THB was financed mainly by donors. In terms of juvenile delinquency, different legislative solutions were in force in Republika Srpska and in the Federation of BiH.[71] In the area of conflict of interest, the Central Election Commission of BiH had competence at the state-level and in the FBiH, while Republika Srpska has its own Commission. In *Albania*, the Law on Money Laundering and Financing of Terrorism entered into force and accompanying secondary legislative acts were adopted. However, the Strategy for Prevention of Money Laundering and respective Action Plan were not drafted. The capacity of the General Directorate for the Prevention of Money Laundering was improved and a new unit dealing with cybercrime was established. Albania remained a transit country for drug trafficking, while implementation of the strategy and action plan in this area was sub-standard due to insufficient capacities and financial resources. The main weakness was poor co-ordination among law enforcement agencies, including the prosecutor's offices and customs authorities. The Law on the Court Police was not implemented due to a failure to adopt secondary legislation, while neither the action plan to implement the Strategy against Organised Crime, Trafficking in Human Beings and Terrorism nor the Counter-Terrorism Strategy were adopted. In *Serbia*, the National Strategy to Fight Organised Crime and the Action Plan to implement it were adopted. The Criminal Code and Criminal Procedure Code were amended and the powers of the Special Prosecutor for Organised Crime were extended. The Directorate for Managing Seized and Confiscated Assets became operational, but it lacked adequate storage space. The Law on the Prevention of and Fight against Money-Laundering and Terrorist Financing was adopted. The Law on Drugs was harmonised with the EU Drug Strategy. Some relevant international instruments pertaining to trafficking in human beings were ratified and a national focal point to the EMCDDA was appointed. The Anti-Corruption Agency became operational in 2010 but its role is primarily of a preventative nature. *Montenegro* was still perceived as a country both of origin and transit for organised crime. Poor co-ordination among competent agencies and lack of equipment and capacities were obstacles to the implementation of the legal framework, which also needed to be

71 In Republika Srpska, the amended Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings entered into force in January 2011, while the FBiH has not yet adopted the Law on Juvenile Delinquency.

further improved.[72] The National Office for Drugs was established and the strategy and action plan on combating corruption were adopted. The Directorate for Anti-Corruption Initiatives had a consultative role focusing on soft measures, such as education and raising awareness. In terms of conflict of interest, the new law did not include elected representatives as members of supervisory and managing boards. In *Croatia*, amendments to the Criminal Code and amendments to the Law on USKOK[73], which extended its powers, were adopted. However, a national strategy in line with the EU Drugs Strategy was not adopted. The accession procedure for membership of the EMCDDA was initiated and a focal point in the Office for Combating Narcotic Drugs Abuse was appointed. In *Macedonia*, amendments to the Law on Criminal Procedure and the Law on Prevention of Money Laundering were adopted and the Office for Money Laundering Prevention was established.

THE ABSENCE OF POLITICAL WILL TO UNDERTAKE EFFECTIVE MEASURES IN THE FIGHT AGAINST CORRUPTION REQUIRES GREATER AND EXPLICIT PRESSURE FROM THE EUROPEAN UNION TO THE EFFECT THAT THIS PROBLEM MUST BE RESOLVED IN THE COUNTRIES IN THE REGION AS A PRECONDITION FOR THEIR PROGRESS TOWARDS MEMBERSHIP IN THIS EUROPEAN ORGANISATION.

In *BiH*, in the area of ***personal data protection***, the Law on Protection of Personal Data was further harmonised with the *acquis* but does not apply to the Intelligence Security Agency. In *Albania*, the Office of the Commissioner for Data Protection was established but it lacked adequate capacities. In *Montenegro*, the Agency for the Protection of Personal Data was given greater independence and in *Serbia*, the capacities of the Office of the Commissioner for Free Access to Information of Public Importance and Personal Data Protection were increased. Croatia continued implementing the Law on Protection of Personal Data, which was harmonised with the requirements of the acquis. In Macedonia, the Law on Protection of Personal Data was in the process of being adopted and, afterwards, on the basis of this Law, the Office for Protection of Personal Data was established as an independent state body.

In the area of the ***judicial reform***, all countries in the region shared some common features. The reform process, regardless of the activities undertaken, was still in

72 The new Criminal Procedure Code, which entered into force on 01 August 2010, was applied only with regard to some segments of organised crime and war crimes, while its general use was postponed by one year.

73 Office for the Prevention of Corruption and Organised Crime.

its early stages[74] and a strong political influence on the work of the judicial system was identified. Judicial institutions did not have sufficient capacities or efficient co-ordination in their operational work. In addition, all countries in the region had a large backlog of unresolved cases, mainly relating to unpaid utility bills. Assessed comparatively, the influence of political factors on the judiciary was the most intensive in BiH, as it is the only country where the constitutional legitimacy of the institutions performing the highest judicial and prosecutorial functions was challenged and where there is the application of different legislative solutions and practice in the very sensitive area of war crimes trials. In addition, no other country has four relatively separate judicial systems financed from different sources. Answers to these problems, including the establishment of a supreme judicial institution[75], should be found through the so called 'Structured Dialogue on Justice' with the European Union. However, the role of the European Commission is to give guidelines and recommendations and it is for the competent institutions and political subjects in BiH to implement them.

With regard to the ***police***, the main characteristics of the countries covered by this analysis are insufficient capacities of law enforcement agencies and poor operational co-operation between them. Again, BiH is most specific due to the different perceptions of political actors regarding development of co-operation and co-ordination. Police agencies in BiH apply different legislative regulations and use different databases. However, some positive steps have been taken: the Directorate for Co-ordination of Police Bodies was reinforced; amendments to the BiH Law on Police Officers[76] were adopted; the Department for Protection of Dignitaries and Buildings, which was previously under SIPA, was taken over by the Directorate for Co-ordination of Police Bodies; capacities of the Agency for Forensic Examination and the Agency for Education and Advanced Training of Personnel were enhanced; the Agency for Police Support set up a joint human resources database for SIPA, the Border Police and the Directorate for Co-ordination of Police Bodies. In *Serbia* and

74 The IT capacities of prosecutors' offices and courts in ***BiH*** were improved, while activities on linking them into a database continued. The High Judicial and Prosecutorial Council of BiH adopted several decisions addressing the backlog of cases while digital access to cases was increased in a majority of courts. In ***Montenegro***, the backlog of unresolved cases was reduced to a degree. ***Serbia*** implemented a substantial organisational reform of the judiciary, adopted new legislation on private bailiffs, public notaries and civil and criminal procedure, re-appointed judges and established Disciplinary Commissions for prosecutors and judges. ***Macedonia*** launched reform of the judiciary based on the Judiciary Reform Strategy which foresaw thorough legislative and organisational changes and the introduction of an IT system in Macedonian courts.

75 Relevant political actors in BiH have different positions with regard to this issue. On one side are those who support the concept of establishment of an institution which would perform the function of the BiH Supreme Court. Others support the idea of establishment of an institution which would act as an appellate body with regard to certain areas. Lastly, there are those who think that the judicial system in BiH should be strictly based on the Dayton constitutional provisions, which directly puts in question the further existence of the Court of BiH, Office of the Prosecutor of BiH and BiH High Judicial and Prosecutorial Council.

76 Amendments to this law at entity level in Republika Srpska were also adopted. Although they introduced some improvements within the entity, some of the new solutions just increased the discrepancy in relation to the existing solutions at other levels of government.

Montenegro, reform and institutional strengthening of police apparatus continued, but there was a lack of strong co-operation between prosecutor's offices, police agencies and customs authorities. The situation was similar in *Croatia* which lacked IT infrastructure that would have linked the General Police Directorate with regional and local police directorates. In *Macedonia*, fulfilment of the requirements of the Ohrid Agreement[77] in the area of police reform proceeded slowly despite this being one of the requirements for opening of accession negotiations.[78] A positive development at the regional level was signing of the Agreement on Establishment of a Regional Office for Strengthening of Co-operation in the Fight against Organised Crime in Belgrade in October 2010, by Serbia, Croatia, Montenegro, BiH and Macedonia.

c) Example: "Fight against Corruption"

The Western Balkan countries are perceived as countries with widespread corruption in almost all segments of public life. In this regard, incomplete legislative frameworks are only one of the implied problems, while fundamental causes are seen in the absence of political will to efficiently address this deviant phenomenon. In *Montenegro*, the new law pertaining to conflict of interest did not include elected representatives as members of supervisory and managing boards. In *Serbia*, the central strategic document did not cover corruption in education and healthcare. In *BiH*, there is a strong fragmentation with regard to the implementation of the Law on Conflict of Interest. The competence of the Central Electoral Commission of BiH covers the state-level and the FBiH while in Republika Srpska, the central role is played by a commission established for this purpose. The Agency for the Prevention of Corruption and Co-ordination of the Fight against Corruption does not have adequate human resources, technical and financial capacities and some of its basic regulations [79] were not adopted in this reporting period. In *Croatia*, the law on financing of political parties was not adopted and the adoption of a new strategy against corruption was delayed. Although in *Albania* the fight against corruption was one of the key European Partnership priorities, the results achieved, both in terms of legislation and operational activities, were unsatisfactory. In Macedonia,

77 The Ohrid Agreement was signed on 13 August 2001 ending the conflict between Macedonian security forces and Albanian paramilitary forces.

78 Concrete steps in this regard were taken after the 2006. elections and establishment of a new ruling coalition led by the VMRODPNE and Democratic Albanian Party.

79 This primarily refers to the Rulebook on Internal Organisation and Systematisation of Positions of the Agency. In December 2011, having been discussed at the competent committee in the BiH Parliamentary Assembly, the Rulebook which foresaw employment of 24 employees in 2012 and a total of 57 employees over the forthcoming years, was submitted to the BiH Council of Minister for adoption. For the sake of comparison, in ***Serbia***, adoption of the Rulebook on Internal Organisation of the Anti-Corruption Agency established in 2009 took less than a month, so it was possible, based on the Rulebook, to plan the budget for the needs of this institution in 2010 in a timely manner.

the establishment of the State Anti-Corruption Commission as an independent administrative organisation was delayed for financial reasons.

The lack of political will and thereby the weakness of the police and judicial apparatus were reflected in the fact that no high-level corruption cases were processed. Arrests reported in BiH and Serbia in the reporting period referred to civil servants at lower-level positions, i.e. people who were not high up in the management and decision-making hierarchy. Educational campaigns about the damaging effects of corruption were primarily organised by the non-governmental sector, while such activities conducted by governmental institutions were the exception rather than the rule.[80]

Having in mind the lack of readiness and political will to effectively fight corruption, one of the possible solutions would be for the European Union to insist on a resolution to this problem by setting a 'condition' that further European integration of the countries in the region is possible only if precise and clearly defined activities in this area are undertaken, as has been the case with other important issues.

80 For example, Croatia and Montenegro.

Title VIII

Co-operation Policies

a) General Assessment

This Title governs the issues of gradual approximation of legislation in the Western Balkan countries to the *acquis communautaire* of the EU and adoption of the institutional framework of the EU in the fields of industry, small and medium enterprises, agriculture and fisheries, environment, transport policy, energy policy, information society, media and statistics. Essentially, the issue hereunder is harmonisation of the entire legislation with the *acquis,* which is usually a two-stage process. In the first stage, it is necessary to amend or adopt a large number of laws. In the next stage, the effective transition towards European standards requires formulation of new policies along with their implementation in practice and monitoring/control of the implementation of the legislative framework. The role of public administration is of key importance in both stages: the success of the process of comprehensive reforms depends on the capacities (institutional and human) of public administration and its effectiveness and efficiency, as well as on the level of mutual co-ordination in fulfilling the obligations assumed.

If we observe the results achieved by the Western Balkan countries during the third year after the signing their SAAs, it is possible to draw the general conclusion that, in this reporting period, the gap widened between the countries that steadily advanced toward the adoption of the European standards in the area of the Co-operation Policies at both legislative and institutional level (Croatia, Montenegro, Serbia) and those that are lagging behind in fulfilling their obligations (Albania,

Macedonia, Bosnia and Herzegovina). This is confirmed by the fact that, based on generally successful progress, Croatia and Montenegro were granted EU candidate status, and if it were not for the political problems in relations with Kosovo, Serbia would also have been granted candidate status in the third year after signing of the SAA. When it comes to other countries, Macedonia and Albania progressed at a slower rate, while BiH completely stagnated.

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b) Implementation of obligations under the Stabilisation and Association Agreement/ Interim Agreement in Western Balkan countries

During the third year after the signing of the SAA, **Croatia** intensified activities on adoption of legislation and the majority of planned laws and implementing legislation were adopted in the parliamentary procedure on schedule. Conversely, the establishment of necessary administrative structures did not maintain the same pace and intensity thus jeopardising the effective implementation of the new legislation. Despite the efforts invested to create an institutional environment and investment in human potential, the administrative environment for implementation of the legislation in the areas covered by Co-operation Policies changed only slowly. During this year (the 3rd after SAA signature), no significant progress was made in the reform process in the field of implementation and enforcement of new standards. This applies particularly to the areas in which developmental processes had earlier been under political influence, such as energy[81] and media[82].

81 In the area of energy, Croatia faced certain difficulties pertaining to the establishment of the Council for the Regulation of Energy Activities, whose membership should not merely reflect the balance of political power, and in ensuring the independence of this body in relation to the responsible ministry.

82 A particular challenge in this field was the establishment of the Council for Electronic Media which should also be an independent body but at this stage it was difficult to ensure its political independence and plurality of opinion in practice.

The National Plan for Integration of **Montenegro** into the EU 2009-2012 established a detailed plan of activities and deadlines for their implementation to enable the country to be ready to meet obligations arising from membership in the EU. This document was further elaborated in the Framework Action Plan for Fulfillment of Obligations under the SAA for 2010, which lists 23 obligations, including those pertaining to Co-operation Policies. Analysing the level of fulfillment of the assumed obligations, it can be concluded that, in the third year after the signing of the SAA, Montenegro continued intensive legislative activities. During 2010, over 48 laws and 150 pieces of implementing secondary legislation were adopted in different fields in the area of the Co-operation Policies. Considerable progress was made in aligning legislation in the fields of information society and media[83], energy[84], intellectual property, food safety, veterinary and phyto-sanitary policy[85]. Refocusing on the timely drafting of secondary legislation was supposed to ensure faster and more efficient transition from the phase of policy formulation to that of policy implementation. However, during this year, this phase faced various difficulties with regard to the capacities of competent institutions to implement amended legislation. Implementation of the legislation in almost all fields of Co-operation Policies was assessed as unsatisfactory. For that reason, additional efforts were invested in 2010 to further strengthen the administrative and institutional capacities in competent ministries/sectors (e.g. Ministry of Agriculture, Forestry and Water Management; Ministry of Traffic), through different European aid and support programmes, in order to be able to assume and carry out activities related to inspection and control measures.

In the third year after signing their SAA, legislative activity in **Serbia** was further intensified. If the success of reform efforts is measured by the number of adopted legislative acts in specific fields, it can be concluded that Serbia achieved significant success in the area of Co-operation Policies in this reporting period: over 40 new legislative acts, which are entirely or partially harmonised with the EU standards, were adopted. On one hand this success is due to simplified procedural rules (especially for so-called 'European' laws) and, on the other, to the lack of political obstructions. Particular emphasis in the reporting period was placed on fulfillment of obligations in those areas in which the progress in previous phases had been slower. Accordingly, adequate legislative frameworks and accompanying strategic documents were adopted in the following fields: information society and media (Law on Electronic Communications and accompanying Strategy for the Development of Electronic

83 A significant step forward was made and a higher level of alignment with the European standards was achieved by adopting the laws on electronic trade, electronic signature, central register of population, confidentiality of data, electronic media and electronic communications.

84 In 2010 in this area, the Law on Energy and Law on Energy Efficiency, as well as 15 pieces of secondary legislation were adopted.

85 In addition to the framework legislation, competent ministries prepared and adopted 36 pieces of secondary legislation in these fields.

Communications 2010-2020), transport policy (Law on Road Transport, Law on Transport of Dangerous Substances by Road, Rail and Inland Waterways, Law on Railways, Law on Air Transport), energy policy (Law on Energy) and environmental protection. Difficulties identified in this period pertain to the very long delays in the adoption of accompanying horizontal legislation, i.e. secondary legislation, which enables implementation of amended legislation in practice. Specifically, following the adoption of new legislation in line with European standards a problem of its implementation emerged, because state bodies, competent ministries and agencies stalled the adoption of secondary legislation without which adopted laws cannot be implemented. Hence, in 2011, of a total of 190 planned legislative acts, only 24 of them were adopted on time, 22 documents were adopted following the expiration of the deadline, while the adoption of 50 documents was still awaited. The average delay was 256 days.

Progress in **Macedonia** in fulfilling obligations in the area of Co-operation Policies in the third year after signing the SAA was somewhat unsatisfactory. Namely, despite the positive fact that the SAA entered into force in the first half of the year, there were no significant reform efforts in the fields falling under Co-operation Policies. Contributory factors to this stagnation were the difficult economic situation (limited budgetary resources) and fragile political context, but also the fact that this year was spent developing the National European Integration Strategy adopted as late as September 2004. In this period, Macedonia was unsuccessful in fulfilling its obligations in almost all policy areas regardless of whether it was the issue of harmonisation of legislation, addressing structural reforms or creating capacities for their implementation.

Observing the reform process in **Albania** during the reporting period, it is possible to determine that in certain areas Albania made progress on approximation of its legislation and policies with the *acquis communautaire*. The harmonisation of legislation, i.e. the initial phase of reforms pertaining to the adoption of a legislative framework, was successful in the fields of industry, small and medium enterprises, transport and energy policies and statistics. In other fields, particularly in the fields of agriculture and rural development, information society and media and environmental protection, progress was limited. Difficulties in the adoption of legislation were amplified by the problems encountered in creating opportunities for the implementation of new legislative frameworks through the adoption of adequate secondary legislation, i.e. accompanying implementing legislation. In this reporting period, the reform process in Albania was still in its early stages. Simultaneously, improvement of the legislative framework in certain fields was not followed by structural changes in the system in accordance with European criteria. It was not possible to start the implementation phase due to difficulties in the sphere

of structural adjustment and institutional changes that would guarantee adequate application of European standards in practice.

Bosnia and Herzegovina is the only Western Balkan country that did not submit an application for membership in the European Union in the third year after signing the Stabilisation and Association Agreement. As was the case in Macedonia, the political atmosphere and long delays in formation of the legislature and executive following general elections (the elections were held in 2010, while the legislature and executive were only established in 2012) contributed to this situation. Political disagreements on how to proceed with regard to fulfilling obligations resulted in a complete suspension of the European integration process in the previous reporting period (2010). The same trend continued in 2011 with detrimental consequences, namely stagnation. This manifested itself in various ways: i) failure to implement the measures and activities foreseen for the fulfillment of obligations was evident in terms of harmonisation of legislation (not a single new law in the area of the Co-operation Policies was adopted), ii) formulation and implementation of policies (relevant strategic documents and secondary legislation were not prepared and secondary legislation providing for implementation of adopted legislation was not adopted) and iii) the [lack of] establishment and development of institutional capacities of public administration to implement, apply and monitor legislation. This process moved forward slightly from a standstill in December 2011 when political agreement was reached on two laws required for submission of an application for membership in the EU, one of these being the Law on Population Census. However, this law, just like the Law on State Aid, still awaits implementation, which will clearly not be without political obstructions.

c) Example: The 2011 population census in Western Balkan countries

In 2011 a census of population and households was to be taken in every country in the EU and Western Balkans. Despite the fact that adoption of a legal framework and implementation of activities for preparation and implementation of the population census in all of the Western Balkan countries represented an important step in aligning with European criteria in the field of statistics, and the fact that without adequate statistical indicators it is not possible to plan structural adjustments and the use of pre-accession EU funds, the issue of the population census in the majority of countries with significant ethnic minorities went beyond the statistical framework and turned into a hot political issue and led to conflict with minority ethnic communities.

Political disagreements on how to proceed with regard to fulfilling obligations in 2011 had detrimental consequences, namely stagnation. Not a single new law in the area of the Co-operation Policies was adopted, relevant strategic documents and secondary legislation were not prepared and secondary legislation providing for implementation of adopted legislation was not adopted. The same applied in terms of the establishment and development of institutional capacities of public administration to implement, apply and monitor legislation. This process moved forward slightly from a standstill in December 2011 when political agreement was reached on the Law on Population Census, although this has yet to be implemented.

In Montenegro, Croatia and Kosovo a census of the population was taken in April. Serbia and Macedonia postponed their census for autumn 2011, while BiH only achieved agreement on the census at the beginning of 2012 and it is still to be conducted. Only in Croatia was the census carried out free from political interference where citizens were to answer 45 questions, including those relating computer literacy and marital, partnership or same sex partnership status by 28th April 2011. The census did not include citizens who have residence in Croatia but have been living abroad for over a year. The fact that in the countries with strong ethnical divisions the census is not only a statistical issue became obvious when it came to defining the policy for its implementation.

In Serbia, (political and religious) representatives of Bosniaks in Sandžak and Albanians in southern Serbia[86] promptly announced a boycott of the census of the population, claiming that the census forms had been prepared solely in the Serbian language and Cyrillic alphabet and that minorities were underrepresented among census collectors. Due to (ethno) political sensitivity, respondents were not obliged to specify their nationality, religion, mother tongue or any disability. In spite of the announced obstructions, the census was taken between 01 and 15 October 2011 in an atmosphere of inter-ethnic mistrust, dispute and arguments. At the same time as trying to convince the Albanian population within the borders of Serbia not to boycott the census, Serbian politicians nevertheless adopted the same tactics in relation to Kosovo, inviting Serbs there to stage a boycott of the census which was organised by the Kosovo Statistical Institute under the supervision of the UN Office for Project Services.

86 This does not refer to Albanians in Kosovo but Albanians who live in the far south of the Republic of Serbia and at the administrative border with "Kosovo".

In Montenegro, the census was taken in the first half of April 2011, under the supervision of the Monitoring Board (in which one member was a representative of the European Commission). Montenegro authorities and representatives of the EU tried to present the census as merely a statistical issue. However, the political dimension of the issue gradually came to prominence. Although, according to the census methodology, citizens were not obliged to specify their nationality or religion, there was a months-long intensive campaign in the public and media suggesting to citizens how they should declare themselves, either as Serbs or Montenegrins.

The situation in Macedonia was even more dramatic. The census in this country began on 01 October 2011, but the Macedonian Government aborted it by adopting the Law Repealing the Law on Census of Population and Households on 19 October. As in the examples above, a point of disagreement existed on a political plane. Macedonian and Albanian members of the State Election Commission were not able to reach agreement as to whether the census should include those citizens who lived abroad for a period exceeding one year. Albanian members of the Commission requested that the census include those citizens who lived outside the country for more than 12 months, while Macedonians were of the opinion that the census should include only those citizens who had been out of the country for a period of less than a year. Unable to achieve an agreement, the Commission members resigned with the explanation that there were no conditions for the census to be taken because the Commission members could not agree on its methodology. It is important to note that this was the second commission that resigned. The previous members of the Commission resigned on the day before the beginning of the census for the same reasons. Politically, the census is of utmost importance for both communities – Macedonian and Albanian – considering that the 2001 Ohrid Agreement stipulates that the participation of minorities in political life would be based on the census results.

Politicisation of the population census in Bosnia and Herzegovina took a similar course. Disagreement over the criteria and manner of implementation of the population census became the main obstacle to fulfilling the requirements for submission of an application for membership in the EU. In addition to the dispute over whether the census should include questions on nationality, religion and language and whether to count BiH citizens in diaspora, on an (ethno) political level there were intense disagreements on the issue of the effects of the census on the manner of organisation and structure of government at different levels, in particular, at the level of entities. Having been in parliamentary procedure and subject to negotiations outside parliament for over a year, the Law on Census of Population was finally adopted by the House of Peoples of the Parliamentary Assembly of BiH (the House of Representatives adopted the Law earlier), stipulating that the census would be taken in the first half of April 2013. However, the Law was adopted without

disputed Article 48, which stipulated that ethnic representation in the institutions of government at all levels would be in accordance with the 1991 census results. Considering that in the period following the war we have been using unreliable and approximate indicators in all spheres of life, the population census is of utmost importance because it will provide clear indicators that will serve as a basis for policy development.

These examples clearly illustrate that in multi-ethnic societies still suffering from post-war ethnic psychosis and essentially characterised by inter-ethnical fear and mistrust, it is simple to politicise every issue on the 'European' agenda, manipulate its substance and use it to prevent adoption of European standards and criteria, especially when there is a lack of political will to pursue actual reforms and build a state based on European principles.

Title IX

Financial co-operation

a) General assessment

The Multi-annual Indicative Financial Framework (MIFF) for IPA was designed to provide information on the indicative distribution of the total IPA funds proposed by the EC in line with Article 5 of the IPA Regulation (EC) 1085/2006. The MIFF acts as a link between the political framework within the enlargement package and the budgeting process. Multi-annual Indicative Plan Documents (MIPD) are drafted for each beneficiary country and for multiple beneficiary programmes through which the pre-accession aid is delivered. As in previous years, the MIFF for 2012 and 2013 was determined taking into account the present status of beneficiary countries, without prejudging any opinions of the EC related to the enlargement package or the date of acquisition of candidate status. Still, the MIFF for 2012-2013 took into account Montenegro's change of status to that of a candidate country, and the fact that Croatia is expected to become an EU member on 1 July 2013. Below is an overview of the distribution of funds for West Balkan countries.

b) BiH obligations under designated Titles and Chapters of the SAA/IA

The starting point for allocation of IPA funds in 2007 was a commitment by the EC to ensure that no beneficiary country would receive less funding than it had received in 2006, and furthermore that BiH and Albania would receive no less than the annual

average of the funding each of them had received from 2004 to 2006. The amount of funding from 2008 onwards was calculated on the basis of per-capita allocations which have been quoted in the past as a proxy for needs and impact. Against this measure, the per-capita levels for each of the potential candidates of the Western Balkans increased during the course of the current financial framework to above the 2004-2006 per capita average of €23.

For Croatia and Macedonia, as candidate countries, a level of over €30 per capita is allocated, whereby their candidate status is taken into consideration. This level is maintained across the period for Croatia, though the allocation for Croatia under IPA will be reduced to half the amounts originally foreseen, except for rural development where the full 2013 allocation will be maintained at the level originally envisaged. The Commission will present a proposal for a revision of the financial framework for 2013 now that the Accession Treaty with Croatia has been signed. For Macedonia, the funding in per capita terms continues to increase in order to support institution building efforts, irrespective of the size of the country. For Montenegro, the per-capita levels of funding are higher than for the potential candidate countries in a similar situation and for the same reasons as for Macedonia.

In determining the allocation between components[87], due account has been taken of the progress in the establishment of decentralised management systems in the implementation of the funds from components III, IV and V, but also component II funding as it relates to cross-border cooperation with Member States.

As for other allocations, one of the items, 'support expenditures', covers costs directly linked to the implementation of IPA. The multi-beneficiary programmes under component I are used further to support national programmes and to strengthen multilateral relations in the Western Balkans. This funding supports the areas identified as crucial for the European integration process and stability in the region as well as regional co-operation. Multi-beneficiary programmes support, inter alia, the Regional School for Public Administration, the Central European Free Trade Agreement (CEFTA), the Regional Cooperation Council (RCC), the fight against organised crime and ERASMUS scholarships. Other regional co-operation programmes are also financed under these items.

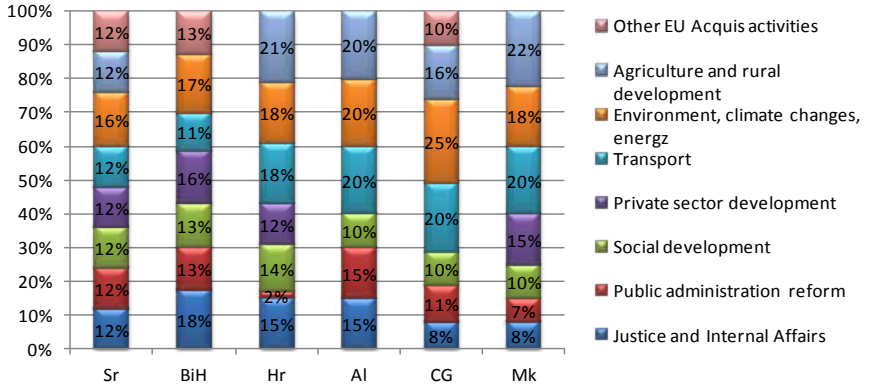
The above manner of allocation of IPA funds is relevant in the context of BiH, as it makes all the more apparent the losses that the country sustains when, because of political disagreements about the way in which IPA funds should be spent, the

87 IPA comprises 5 components: I – Transition Assistance and Institution Building; II – Cross-border Co-operation; III – Regional development; IV – Human Resources Development and V – Rural Development. The last three components are available to Member States only.

funds originally programmed for the two components for which BiH is qualified are relocated to other components, whereby BiH becomes an indirect beneficiary, or one in a series of beneficiaries. This was the case when 2011 IPA programming for BiH was decided on and it is possible that it will happen again in 2012 unless an agreement on the division of IPA funds is reached on time.

For all the Western Balkan countries, the IPA funding for 2012 and 2013 is at more or less the same level as 2011.

Allocation of mid-term IPA funding for Western Balkans countries by sectors:



However, the process of IPA programming and determining the specific projects to be financed with IPA funds were completely politicised in Bosnia and Herzegovina in the previous year. The consequence of this is the almost complete marginalisation of the central co-ordinating role of the Directorate of European Integration. In the long run, this could have grave consequences for the development of a decentralised EU funds management system, which is one of the crucial requirements to be met to continue using EU funds. It may also have consequences for the development of the overall negotiations system. The challenges BiH will face unless the institutional matter of managing EU funds is settled can be seen from the competencies of the Central Finance and Contracting Agency of the Republic of Croatia.

c) Central Finance and Contracting Agency

The structure established for the Decentralised Implementation System (DIS) in Croatia comprises civil service bodies and officials appointed by the Government of Croatia with certain duties and responsibilities. The Decentralised System entails the transfer of responsibility for tender procedures and contracting to the beneficiary country. In this case, the Delegation has ex-ante control, i.e. it approves the activities conducted in tenders and retains total responsibility for the implementation of the budget, pursuant to Article 53 of the Financial Regulation and certain provisions of the Treaty on the EU[88].

For all the Western Balkan countries, IPA funding for 2012 and 2013 is at more or less the same level as 2011, although per-capita allocations for Croatia and especially Macedonia were increased, the latter to support institution building in this candidate country. In BiH, the institutional management of EU funds will become a central issue as the process of establishing a decentralised EU funds management system continues.

The Central Finance and Contracting Agency (CFCA) was established by the Decree on the Establishment of the Central Finance and Contracting Agency (Official Gazette no. 90/07 and Official Gazette no. 114/07).

The responsibilities of the CFCA are stipulated by the Decree, which regulates that all rights and obligations are transferred from the Department for Financing EU Assistance Programmes and Projects - Central Finance and Contracting Unit within the Ministry of Finance, to the Agency. As an Implementing Agency, the CFCA is responsible for the overall budgeting, tendering, contracting, payments, accounting and financial reporting of all procurement in the context of decentralised EU funded programmes in Croatia.

The CFCA is the main promoter of EU rules and procedures on procurement and acts as a link between the Delegation of the European Union in Croatia and other national authorities. The CFCA delegates technical procedures to responsible ministries, namely national authorities. Project managers and Project Implementing Units in all public administration are responsible to the CFCA. The Agency's Director is responsible for the financial and administrative management of projects in accordance with EC procurement rules, regulations and procedures.

88 www.safu.hr

The CFCA, led by the Programme Authorising Officer (PAO), is in charge of payments, accounting, maintaining contracting records and financial reporting in the procurement of goods, services and work in the decentralised EU aid programme implementation system. The Agency ensures the application of EU rules, directives and procedures in the procurement of goods, services and work, and is in charge of the reporting and IT systems. Furthermore, it is in charge of implementing tender procedures, evaluating and selecting bids, contracting (once the best offer has been selected), implementing projects, reporting, accounting and all payments.

The CFCA's scope of duties and authority is very wide, but its role is important if the intention is to ensure that EU funds are spent in accordance with all the relevant EU regulations. In Bosnia and Herzegovina, the establishment of such an agency would only be possible at the state level and its competencies would include the supervision of entity-level programme implementation units. Furthermore, the reporting relations with entity finance ministries would have to be clearly defined, as would the supreme authority of domestic institutions to audit EU-funded projects.

If the IPA programming-related problems which have arisen thus far are any indicator, especially if the seemingly ambivalent attitude of the EC towards key institutional solutions necessary for the EU integration process is taken into account, the establishment of such an agency at the state level will not come to pass without difficulties and compromises which may imperil the entire system of use of EU funds in accordance with relevant requirements.

Title X

Institutional, general and final provisions

a) General assessment

The institutional, general and final provisions under Title X are almost identical for all the Western Balkan countries regardless of when they signed their SAA. The same is true of the provisions of Interim Agreements. These provisions define the parties to agreements and the institutional communication between the EU and the institutions of aspiring countries, and establish models for solving possible disputes in the interpretation and implementation of these agreements. Furthermore, they define the obligations related to non-discrimination of citizens and companies from different Member States, and provide data protection mechanisms. Finally, the provisions define the deadlines for the agreements to take effect.

The agreements of all Western Balkans countries with the EU stipulate that the parties shall ratify, accept or approve the agreement in accordance with their procedures, and that the instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe. Parties include aspiring countries as well as Member States and EU institutions. Interim Agreements take effect on the first day of the first month after the last instrument of ratification or approval has been deposited. Stabilisation and Association Agreements take effect on the first day of the second month after the last instrument of ratification or approval has been deposited. This means not only the instruments of ratification of all Member States, but also of the European Parliament and the Council of Europe before that.

Bosnia and Herzegovina generally fulfills its obligations under this chapter, however, effective fulfillment of obligations in this area is a hostage to political relations in the country and drawn out debates on the competencies of entity and state levels of governance, which affect the co-ordination of the fulfillment of obligations under the SAA that should be based on existing mechanisms within the Interim Committee which oversees the implementation of the Interim Agreement. The Interim Committee should become the Stabilisation and Association Council with its auxiliary bodies in the executive and legislative branch when the SAA comes into force. Unlike BiH, other Western Balkan countries paid more attention to the establishment of co-ordination mechanisms for the implementation of the IA/SAA, as well as the drafting of strategic documents such as national programmes for the implementation of the SAA and those relating to civil service reform or parliamentary agendas, in accordance with the deadlines referred to in the SAA. Serbia had gone as far as to implement the SAA unilaterally for over a year, while Croatia achieved candidacy status before the SAA came into force.

b) Fulfilment of obligations of Western Balkan countries under SAA/IA

If we take the average duration of interim agreements (from signing to the moment the SAA comes into force) in other Western Balkan countries as a comparison parameter, the conclusion is reached that Bosnia and Herzegovina is not presently lagging very far behind. The average duration of interim agreements is 28 months, while the period from the entry into force of an interim agreement to obtaining candidate status is 36 months.

Country	Albania	BiH	Montenegro	Croatia	Macedonia	Serbia
Months from IA to SAA	28	36[89]	28	37	34	13[90]
Months from IA to candidacy	-	-	35	30	54	25

89 During the drafting of this Report (April-May 2012), the SAA between the EU and BiH was still not confirmed by the European Parliament, therefore it did not come into force. Thus the figure of 36 months applies to the period of three years from the day IA came into force, while 41 months is the actual period that transpired from the entry into force of the Interim Agreement to the end of reporting year 2011.

90 It should be noted that Serbia started unilaterally to apply the Interim Agreement 13 month earlier, while it was still suspended by the EU. Thus the period of application of the Interim Agreement for Serbia is 26 months.

Still, this assessment should not lead one to a false conclusion. In July 2012 it will have been four years, or 48 months, since the Interim Agreement between BiH and the EU came into force, which is almost twice the average duration of interim agreements. The present stagnation in the implementation of required reforms, after the adoption of two laws which had been prepared two years ago, does not portend an acceleration of the EU integration process in BiH. What is more, BiH still lacks effective co-ordination of institutions working on the process, three years after the Interim Agreement was signed and came into force. The existing co-ordination mechanism centred round the (interim) European Integration Committee and European Integration Commission is not effective, although it could be serviceable given political will to revive it. The same is true of the Co-ordination Committee for Economic Development and European Integration of the Council of Ministers of BiH, whose members, in addition to the Chairman of the Council of Ministers, Finance Minister and the Minister of Foreign Trade, were entity Prime Ministers and Finance Ministers and the Mayor of Brčko District. It was an institutional-political body of sorts. The withering of the existing forms of co-ordination over the last few years and their displacement from the institutions has resulted in the issue of co-ordination being increasingly elevated to the level of a requirement for further steps on the path of EU integration (i.e. the confirmation of the ratification in the European Parliament and application for EU membership). The European Commission does not currently have a particular solution that it favours and it prefers to leave it to BiH institutions to reach an agreement on the best possible model of SAA implementation. This is something BiH has committed to and the entities are constitutionally obligated to support the state institutions in fulfilling the country's international obligations.

For several months now, three different proposals for co-ordination have been in development, one of which should be adopted by the Council of Ministers. One proposal is advocated by a consulting company from Slovenia which is implementing a project of technical support to the Directorate for European Integration financed by the EU. A different proposal, leaning towards a decentralised approach to co-ordination, is advocated by the Ministry of Economic Relations and Co-ordination of the Republika Srpska, as a co-ordinating ministry of sorts in the European integration process. The third proposal, based on the existing mechanisms which need to be revived and which stem from the institutional mechanisms foreseen by the Stabilisation and Association Agreement, is championed by a part of the Council of Ministers.

Stabilisation and Association Agreements foresee the establishment of three basic mechanisms of institutional dialogue between the aspiring countries and the EU. These are the Stabilisation and Association Council, Stabilisation and Association Committee and the Parliamentary Stabilisation and Association Committee.

The Stabilisation and Association Council comprises members of the EU Council and the European Commission on one side, and the members of the Council of Ministers on the other. This means that it is manned, on both sides, by the people with the most political and executive responsibility. It is authorised to pass decisions in cases defined in the SAA in order to help reach its goals. The decisions are binding for the parties, who are obliged to take measures necessary for the implementation of these decisions. It may also issue appropriate decisions based on mutual agreement between the parties. It is important to stress that the Stabilisation and Association Council is formed only after the SAA comes into force.

The Stabilisation and Association Committee is made up of representatives of the EU Council and the European Commission on one side with representatives of the Council of Ministers of BiH on the other. It should be stressed that the members of the Committee are representatives of institutions not elected officials from the executive branch. This lends it a technical-executive aspect. The Committee assists the Stabilisation and Association Council in carrying out its duties and establishing its sectoral sub-committees.

The average duration of interim agreements is 28 months, while the average period from the entry into force of an interim agreement to the acquisition of candidate status is 36 months. Thus it may seem that Bosnia and Herzegovina is not presently lagging very far behind the other countries in the region. Still, this assessment may be misleading in view of the fact that in July 2012 it will have been four years, or 48 months, since the Interim Agreement between BiH and the EU came into force.

BiH is obligated to ensure that the Committee establishes said sub-committees for adequate implementation of the SAA no later than one year from the day that the SAA comes into force. In light of the fact that the Interim Agreement is still in force in BiH, these issues are handled by the Interim Committee and its sub-committees, formed in October 2008 in accordance with the deadline set out in the Interim Agreement[91]. Once the SAA comes into force, BiH will need to have a degree of political co-ordination within the country and with foreign institutions, in order to solve political problems and give political guidelines to structures operating at a technical level. The existing technical level

91 The Council of Ministers of BiH has passed an appropriate decision establishing structures which will be in charge of implementing the Interim Agreement. These are the Decision on the Establishment of the European Integration Committee within the Interim Committee ("Official Gazette BiH" no. 92/08) and the Decision on the Establishment of European Integration Working Groups ("Official Gazette BiH" no 47/09 and 65/10). Sub-committees serve as fora for further elucidation of the acquis and examine the progress BiH has made in transposing the acquis in accordance with its obligations under the Interim Agreement.

of co-ordination should be upgraded so as to render it capable of dealing with the upcoming stages of the European integration process. There is currently a deviation in the system, in the sense that technical matters are discussed in the meetings of the six political party leaders, whilst political instructions, mostly those from the RS, are implemented in the meetings of sub-committees. The political leadership and the institutions of BiH will have to establish order in this area very soon.

The Parliamentary Stabilisation and Association Committee is a forum in which members of the Parliamentary Assembly of BiH and the European Parliament will meet to exchange points of view. The Committee is not yet in place as it is to be established only after the SAA comes into force. There are, however, two bodies which to an extent function as a substitute mechanism for the purpose of establishing better co-ordination between different parliaments in BiH and to exchange points of view with representatives of the European Parliament. Late in 2011, a parliamentary friendship group was formed by members of the European Parliament and the Parliamentary Assembly of Bosnia and Herzegovina. The purpose of this body is to foster good relations between the two institutions, help Bosnian MPs familiarise themselves with EU standards and help European MPs obtain information on the situation in BiH first-hand from their Bosnian counterparts. The parliamentary European Integration Forum was also established and is made up of chairmen, deputy chairmen and secretaries of the Joint Commission for European Integration of the Parliamentary Assembly of BiH, European Integration Commission of the Parliament of the Federation of Bosnia and Herzegovina and the European Integration Committee of the People's Assembly of the Republika Srpska. The purpose is to exchange information and achieve convergence of viewpoints between the state and entity parliaments in matters relating to European integration.

The Government of Montenegro adopted its National Integration Programme while the Assembly of Montenegro appointed the members of the National European Integration Council (NEIC) as early as July 2008. The first National Programme for the Integration of Montenegro into the EU was adopted in 2008 and covered the period to the end of 2012. In 2010 alone they adopted over 200 legal regulations which had to undergo an alignment check. During this assessment, secondary legislation of the EU is consulted in addition to basic regulations. Every such regulation is signed by the proposing institution, as well as the Minister of Foreign Affairs and European Integration of Montenegro, while the Directorate of Harmonisation within the Ministry of Foreign Affairs is in charge of providing expert assistance to other institutions.

As for the Republic of Macedonia and its national EU affairs co-ordination structure, the chief body is the Committee for the EU, headed by the Macedonian Prime Minister, and its members include all the ministers and deputy prime ministers and

Bosnia and Herzegovina must initiate, as soon as possible, and simultaneously if necessary, the drafting of a national integration programme and the resuscitation of the existing co-ordination mechanism, based on the mechanisms defined under Title X of the SAA. If this does not happen we can expect the continuation of stagnation in the implementation of reforms, politicisation of the technical aspects of the European integration process and bottlenecks in extra-institutional co-ordination mechanisms.

the Governor of the Central Bank, as mandated by the relevant provisions of the SAA. The Prime Minister's deputy in charge of EU integration leads the chief working body made up of all the state secretaries as representatives of the executive branch. During preparation of answers for the EU Questionnaire, teams were formed which were later turned into working groups for the implementation of the National Acquis Transposition Programme (NATP). Two years too late, one might say, as the national programme should come first. The teams are made up of experts from the responsible institutions and representatives of academia and NGOs while the European Integration Secretariat is in charge of co-ordinating implementation. On the basis of the (2006) National Acquis Transposition Programme, it is the role of Government to make and revise a plan for the adoption of 300-400 laws. Every year, a so-called Legislation Matrix is adopted, which contains fewer and fewer laws that need to be passed.

In Croatia, finding political will to fulfill obligations from the SAA proved extremely important. It resulted in administrative reforms such as the merger of the Ministry of Foreign Affairs and the Ministry of European Integration, and the establishment of a strong Parliamentary Committee for EU integration, which was always chaired by a representative of the opposition. This example was followed by several countries in the region. It should be stressed that the role of the Parliament is crucial in achieving democratic consensus on European integration in a country. This was confirmed in Croatia by the Parliamentary Decree of 2002, when all the parties represented in the Parliament supported the accession of the Republic of Croatia into the EU. In January 2005, Croatia adopted its third National Programme for the Integration of the Republic of Croatia into the EU, in order to meet its obligations arising from the opening of negotiations for 33 Chapters of the *acquis.*

In Serbia, vertical co-ordination of EU affairs is structured so that one of the Deputy Prime Ministers is in charge of European integration, with the Office of European Integration subordinated to him or her as a support body. The experience of the countries in the region has shown that the separation of the technical part of

the work from the political part yields the best results. What is more, in the case of Serbia, political support to the fulfillment of technical requirements resulted in unilateral implementation of the Interim Agreement, which enabled the country to get back on track after the suspension of the SAA was lifted. As a consequence, it took only 25 months to obtain candidate status from the entry into force of the Interim Agreement. Serbia also chose to form an extended body representing the general consensus of Serbian society on the necessity for EU integration – the European Integration Council. The Council is based on requirements from the SAA but it was also extended to include all members of the Government, the chairperson of the European Integration Office, the President of the Committee for European Integration, representatives of the Executive Council of Vojvodina, the Advisor of the President of the Republic and representatives of religious and non-governmental organisations, economic operators and Fellows of the Academy of Arts and Sciences. The body is chaired by the Prime Minister or the Deputy Prime Minister in charge of European integration.

The National Integration Programme which sets out the dynamics of reforms and legislative activities is a contractual obligation of Bosnia and Herzegovina which started on the day of signing of the SAA. BiH is the only country in the region that does not have such a programme. It is important because it is supposed to join all reform activities and clearly define the bearers of key reforms – ministries, institutions and other bodies at the state and entity level. On several occasions, both the Parliamentary Assembly and the Council of Ministers issued conclusion reports demanding that such a programme be drafted.[92] Considering the experience of the countries in the region, the conclusion has to be reached that Bosnia and Herzegovina must initiate, simultaneously if necessary, the drafting of a national integration programme and the resuscitation of the existing co-ordination mechanism, based on the mechanisms defined under Title X of the SAA. If we do not do so, we can expect the continuation of stagnation in the implementation of reforms, politicisation of the technical aspects of the European integration process and bottlenecks in extra-institutional co-ordination mechanisms.

92 European Partnership from November 2007. ("Strengthen administrative capacities in preparation for fulfilling obligations under the Stabilisation and Association Agreement (SAA) and the Interim Agreement" (key priorities); "Ensure structured and institutionalised co-ordination between the state and the entities by establishing functional mechanisms of co-ordination between the state and the entities at the political, legislative and technical level" (political criteria)).

c) Example: Structured dialogue on the judiciary

The structure of the institutional mechanisms contained in the Stabilisation and Association Agreement make it possible for the EU to set reform priorities and exert pressure on BiH to ensure that reforms are implemented efficiently. However, something happened in 2011 that no one had expected. Namely, institutions of the Republika Srpska imposed their political will on the EU and the state-level institutions of BiH, through the mechanism of the SAA, demanding consultations on the subject of the judiciary, which later developed into the Structured Dialogue on the Judiciary. Thus, the Sub-committee for the Judiciary and Interior ("Structured dialogue")[93] is already in place, although it was supposed to become operative only after the SAA came into force. The basis for this is Article 48 Paragraph (2) and (3) of the Interim Agreement (Article 125 of the SAA)[94], and Article 49 Paragraph (1) and (2) (Article 126 of the SAA).[95]

At the same time, the initiation of the Structured Dialogue on Judicial Reform and the two meetings – held on 6 and 7 June in Banja Luka, and 10 and 11 November 2011 in Sarajevo – is presented as an example of co-operation between BiH and the EU. The questions discussed during the meetings included the implementation of the Justice System Reform Strategy and War Crimes Strategy, judicial and regional co-operation, basic freedoms and security and the functioning of judicial institutions. Institutions of the state and both entities received guidelines as to how to meet European standards in these areas. This mechanism has confirmed the existence of diametrically opposed political viewpoints and objectives regarding some of the key issues in this area. Specific results of the Structured Dialogue in this area are still not apparent; however, the Judicial Commission has been formed following a Decision of the High Judicial and Prosecutorial Council passed at a session held on 13 July 2011. The Commission is tasked with preparing a joint judicial platform covering all the issues for consideration in the Structured Dialogue for the High Judicial

93 Sub-committee for Innovations, Technological Development and Social Policy also started to work at the request of the EU since an opportunity had arisen. BiH institutions agreed to this because of the importance of this area for the development of the country.

94 2. The parties agree to start consultations via appropriate channels immediately upon the request of any party so as to start discussing any issue relating to the interpretation or implementation of this Agreement and other relevant aspects of relations between the parties. 3. Each party shall forward to the Interim Committee any dispute relating to the interpretation and application of this Agreement. In such an event Article 49 shall be applied.

95 1. In the event of a dispute between the Parties regarding the interpretation or implementation of this Agreement, any party shall submit to the other party and to the Interim Committee a formal request to solve the issue under dispute. 2. The parties shall endeavour to solve every dispute through bona fide consultations within the Interim Committee and other bodies.

and Prosecutorial Council.[96] Members of the Judicial Commission point out that Structured Dialogue is "a very good opportunity to achieve a mutual understanding and consensus between representatives of the executive, legislative and judicial branches, regarding some fundamental issues relating to the advancement of the process of judicial reform and finding the best way to develop an independent and responsible judiciary".[97]

Still, the question remains: to what extent is the Structured Dialogue an imposed political issue and a platform for flexing political muscle, or is it just a facade intended to show that the process of judicial reform and harmonisation with European standards has been opened. Whichever it is, this process has shown the public in Bosnia and the European Commission just what the opening of negotiations on the Chapters of the *acquis* might look like. With this in mind, it is small wonder that the European Commission insists on the establishment and definition of co-ordination between state- and entity-level institutions in matters relating to further fulfillment of obligations from the Interim Agreement or the SAA.

96 he Committee is made up of: Chairperson of the Council, President of the Court of Bosnia and Herzegovina, Director of Public Prosecutions of BiH, President of the Supreme Court Federation of BiH, President of the Supreme Court of the Republika Srpska, President of the Appellate Court of Brčko District, President of the Cantonal Court in Sarajevo, President of the County Court in Banja Luka, President of the Municipal Court in Sarajevo, President of the Magistrates Court in Banja Luka, Director of Public Prosecutions of the Republika Srpska, Director of Public Prosecutions of the FBiH, Director of Public Prosecutions of Brčko District, Director of Public Prosecutions of Canton Sarajevo, Director of Public Prosecutions of the County Prosecutor's Office in Banja Luka.

97 http://pravosudje.ba/vstv/faces/vijesti.jsp?id=31486

Conclusion

The strategic approaches of individual countries towards fulfilling SAA provisions vary considerably. These can be described as systematic (guided by clear national EU accession programmes and well-defined inter-sectoral communication regarding the implementation of relevant directives) or as ad hoc (absence of a national plan and lack of institutional communication with sporadic positive breakthroughs). Ergo, among Western Balkan countries we find those that will undoubtedly become EU members, those that have acquired candidate status and, finally, those countries whose EU integration process is burdened with a number of internal political and institutional problems.

Three years after the signing of the SAA, all countries except BiH and Serbia started to fully implement the agreement and thus replaced interim co-ordination mechanisms with permanent ones. Albania, Macedonia, Montenegro and Croatia established their respective Stabilisation and Association Councils immediately. These councils are the pre-eminent bodies for monitoring the SAA.

Three years after signing the SAA, Western Balkan countries were at different stages of EU integration and therefore their priorities varied. However, all these countries suffer from a specific problem which pertains to institutional and administrative capacities. Having analysed the fulfillment of obligations in the area of free movement of goods in the Western Balkan countries, the general impression is that the governments thereof failed to attribute sufficient importance to this area.

Deliberately or not, in this way, the internal markets of the countries in question have been pushed to imbalance and economic development has slowed considerably.

We thus have a situation where, in order for a non-resident economic operator to start a business in BiH, 12 procedures need to be carried out, usually over a period of 60 days. If the establishment of one-stop shops resulted in an improved business environment in the countries that surpass BiH in fulfilling the provisions of the SAA pertaining to establishment, it would consequently seem advisable for BiH to initiate activities for creating such a centre. This may well reduce and make more efficient the lengthy and expensive procedures of business registration.

When it comes to fulfilling obligations in the area of current payments and movement of capital, the best progress was made by Croatia, followed by Serbia, while progress has slowed down in Montenegro, Macedonia and Albania. The overall progress made by BiH is, generally speaking, on a par with most Western Balkan countries; however, significant efforts are still required to ensure that the legal framework is harmonised with the *acquis* and that regulations within the country are harmonised in order to create better preconditions for the establishment of a single economic space.

To date, the main challenge to implementation of laws has come from institutional opposition and absence of political will, but now, in addition, a lack of funds caused by the economic crisis has begun to render this process even more difficult. BiH is in the best situation with regard to intellectual property protection, whereas consumer protection, standardisation and accreditation are plagued by a chronic lack of political and institutional support and the funds necessary to implement obligations, caused by the state - level temporary financing regime. All things considered, the creation of equal opportunities is facing the most difficult obstacles which have been additionally complicated by the economic crisis and the fact that political elites are absorbed with everyday political, constitutional and legal problems in the functioning of institutions at different levels of government.

The Western Balkan countries did not simultaneously start transposing EU *acquis* and establishing institutions in the area of competition, state aid and public procurement. The European Commission's general assessment of the extent to which the state exerts influence on competition three years after the signing of the SAA indicates that only Albania and Montenegro have good results. When it comes to Croatia, the state used to exert a high influence on competitiveness whereas in BiH and Serbia the state continues to influence competitiveness substantially.

In this reporting period in the area of "Justice, Freedom and Security", the Western Balkan countries were characterised by insufficiently developed institutional capacities, poor co-ordination among competent institutions and, in particular,

the absence of political will to fulfill the assumed obligations in their entirety. The absence of political will to undertake effective measures in the fight against corruption requires greater and explicit insistence by the European Union that this problem must be resolved in the countries in the region as a precondition for their progress towards membership in this European organisation.

If we observe the results achieved by the Western Balkan countries during the third year after the signing of the SAA we can conclude that, in this reporting period, the gap between the countries that steadily advanced towards the adoption of European standards in the area of the Co-operation Policies at both legislative and institutional level (Croatia, Montenegro, Serbia) and the countries that lag behind in fulfilling their obligations (Albania, Macedonia, Bosnia and Herzegovina) has widened. This is confirmed by the fact that based on generally successful progress, Croatia and Montenegro were granted the status of EU candidate during the period which was analysed in this report, i.e. three years after the signing of the SAA. When it comes to other countries, Macedonia and Albania progressed at a slower rate while BiH completely stagnated.

Given such an ad hoc approach to implementing the provisions of the SAA it is no wonder that BiH saw a decline of at least15% in foreign direct investment from EU member states in 2011 compared to 2010, according to data from the Directorate for Economic Planning of BiH: "*Economic Trends, January – June 2011*". Unlike BiH, Montenegro saw a considerable increase in foreign direct investment from the EU in 2011.

Currently, BiH has access to only the first two of five IPA components: I - Transition Assistance and Institution Building and II – Cross-Border Cooperation. These two components are focused on i) establishing technical capacities of the institutions and ii) key issues of regional cooperation and they are therefore less visible to citizens. Upon receiving candidate status BiH would gain access to other components: III – Regional Development; IV – Human Resources Development and V – Rural Development. These components are focused on more specific issues which are visible to citizens. In determining the allocation between components, due account has been taken of the progress in the establishment of the decentralised management systems in the implementation of funds from components III, IV and V, but also component II funding as it relates to cross-border cooperation with EU Member States. In the case of BiH, once the process of establishing a decentralised system of management of EU finds starts to progress, the institutional matter of managing EU funds will become a key issue.

Bosnia and Herzegovina has not yet established the Decentralised Implementation System (DIS) for managing EU funds. All funds are centrally managed by the Delegation

of the European Commission which alone speaks volumes of the country's [lack of] credibility. It is necessary to establish DIS: this will not happen without problems and certain compromises that may jeopardise the sustainability of an entire system of EU financing which is performed in line with the relevant requirements.

It comes as no surprise that the European Commission takes such an approach bearing in mind that no functional system of co-ordination of the EU integration process is yet in place between the State of BiH and its entities. In addition, the National Integration Programme, which will set priorities and demonstrate that we know what we want and how we want to achieve it, is not yet in place. Bosnia and Herzegovina must initiate, as soon as possible or even simultaneously if necessary, the drafting of a National Integration Programme and the resuscitation of the existing co-ordination mechanism, based on the mechanisms defined under Title X of the SAA. If this does not happen we can expect the continuation of stagnation in the implementation of reforms, politicisation of the technical aspects of the European integration process and bottlenecks in extra-institutional co-ordination mechanisms.

Examples from the region demonstrate that only actual implementation of reforms ensures progress on the path to EU integration. This suggests that it is the reform process itself rather than the date of accession to the EU that changes the state and society. Adoption of laws, establishment of institutions and harmonisation of by-laws and regulations is only the first step in implementing the laws. This process requires trained personnel and sufficient funds, which then leads to the creation of the culture of the 'Rule of Law' – one of the fundamental Copenhagen criteria.