

Conclusions on Bosnia and Herzegovina

(extract from the Communication from the Commission to the Council and the European Parliament "Enlargement Strategy and Main Challenges 2009-2010", COM(2009)533 final)

Bosnia and Herzegovina has made very limited progress in addressing **political criteria**. The domestic political climate has deteriorated, and challenges to the proper functioning of the institutions and inflammatory rhetoric have continued. Reform implementation has been slow, due to a lack of consensus and political will, and to the complex institutional framework. A shared vision by the political leaders on the direction of the country and on key EU-related reforms remains essential for further progress towards the European Union. Meeting the objectives and conditions which have been set for the closure of the Office of the High Representative (OHR)¹ is essential. The European Union would not be able to consider an application for EU membership until the OHR has been closed. The reform of Bosnia and Herzegovina's constitutional framework to permit its institutions to function effectively is necessary before the Commission can recommend the granting of candidate status. To this effect, the country's political leaders have engaged in a joint EU/US-led initiative, started on 8/9 October in Sarajevo. This now needs to be converted into concrete results that will unblock Bosnia and Herzegovina's progress towards the EU through constitutional changes and a renewed domestic consensus.

Regarding **democracy and the rule of law**, there has been little progress towards creating more functional and efficient state structures and towards *constitutional* reform, which is a key priority of the European Partnership. The constitution of Bosnia and Herzegovina was amended for the first time to regulate the status of the Brčko District, which constituted a major development and step forward. However, the High Representative has recently needed to use its executive powers to ensure progress towards the end of the District's international supervision.

Bosnia and Herzegovina's system of governance continues to involve an international presence. The country has made some progress towards meeting the requirements for the closure of the OHR and the transition to a reinforced EU presence. However, the process has been hindered by insufficient political commitment. Urgent action is now needed to address the outstanding objectives, namely the apportionment of property between the state and the other levels of government, the defence property issue, and on ensuring a stable and constructive political environment in the country.

The functioning of the state-level executive and legislative bodies has been deficient. The *Parliament* of Bosnia and Herzegovina is still hampered by inadequate technical and human resources, and cooperation with the Council of Ministers and with the Parliaments of the entities has remained poor. The number of European integration-related laws adopted by the Parliament has been low. The *government* institutions, at all levels, continued to be affected by internal political tensions and fragmented and uncoordinated policy-making. The authorities have often proven unable to quickly appoint high-level officials. The work of the Directorate for European Integration has been hindered by the overall political climate and the

¹ These cover five objectives: 1) Acceptable and sustainable resolution of the issue of apportionment of property between State and other levels of government; 2) Acceptable and sustainable resolution of defence property; 3) Completion of the Brcko final awards; 4) Fiscal sustainability (promoted by an agreement on a permanent ITA coefficient methodology and establishment of a National Fiscal Council); and 5) Entrenchment of the rule of law (demonstrated by adoption of a National War Crimes Strategy, of a Law on aliens and asylum and of a National Justice Sector Reform Strategy), as well as two specific conditions: 1) signing of the SAA and 2) a stable political situation.

absence of a director for most of the reporting period. Preparatory steps towards a census in 2011 have been carried out, but a state-level census law, which is crucial to the process, has not been adopted.

Some progress has been made in the area of *public administration*, but continued efforts are needed. The public administration reform strategy, which is a key European Partnership priority, is being implemented, albeit slowly. The fund established to support the public administration reform is operational and a number of projects are being implemented. Nonetheless, coordination between the various administrations within the country needs to be further improved. Sustained efforts remain necessary to prevent political interference, to limit the role played by ethnic identity and political affiliation in appointments, and to establish a professional, impartial, accountable, transparent and efficient civil service based on merit and competence. The state-level Ombudsmen have been appointed, but they are not yet fully operational due to the reluctance of the entities to phase out the existing entity-level offices.

Bosnia and Herzegovina has made limited progress in improving the *judicial system*. New legislation has been adopted and some action has been taken to reduce the backlog of cases. Progress has been made in equipping courts with adequate information technology. However, implementation of the National Strategy for Development of the Justice Sector and the War Crimes Strategy has been poor and needs to be accelerated. The complexity of the legal framework, the fragmentation of the judicial system and the absence of a single budget continue to be major obstacles to reform in this area. Political interference remains frequent. The absence of a Supreme Court with countrywide jurisdiction is a serious handicap. Problems persist with the prosecution of organised crime. Bosnia and Herzegovina's political authorities have failed to address the request of the judicial authorities for the extension of the mandates of international judges and prosecutors. Prosecution of war crimes by the state court has continued to be satisfactory overall, but it needs to improve in the entities and cantons. The independence, accountability and efficiency of the judicial system need to be further enhanced. The authorities of Republika Srpska have increasingly questioned the legality, jurisdiction and competences of the state-level police and judicial agencies to operate in their territory. This is a serious cause for concern.

Bosnia and Herzegovina has achieved little progress in the *fight against corruption*, which remains prevalent in many areas and a serious problem. A new strategy and action plan for the period 2009-2014 has been adopted, but the implementation of the 2006-2009 strategic framework was poor. Little progress has been made in meeting the recommendations formulated by the Group of States against Corruption (GRECO). Prosecution remains deficient, with a very limited number of convictions. Bosnia and Herzegovina needs strengthened commitment and determined action against corruption.

There has been limited progress regarding *human rights and protection of minorities*. Bosnia and Herzegovina has ratified the major international human rights conventions, but sustained efforts are necessary to ensure better implementation. Enforcement of domestic rulings, including those of the Constitutional Court of Bosnia and Herzegovina, needs to improve. Incompatibilities between Bosnia and Herzegovina's constitutional framework and the European Convention for Human Rights need to be addressed urgently, prior to the 2010 elections and the entry into force of the Stabilisation and Association Agreement (SAA).

Civil and political rights are broadly respected. Some progress has been made in relation to unifying practice of criminal sanctions between the state and the entities. A state level law on legal aid in criminal proceedings has been adopted. However, *access to justice* in civil and criminal trials needs to be improved, and equality before the law needs to be ensured. *Ill-treatment* of detainees continues to be a matter of concern. The planned construction of a state-level *prison* is experiencing serious delays.

The state and the entity constitutions provide for the *freedom of expression* and media, the *freedom of assembly* and association and the *freedom of religion*. However, better implementation of the existing legislation is required. Alleged cases of harassment of journalists have increased. Ethnic orientation of media is increasing. The implementation of the public broadcasting reform, which is a key European Partnership priority, is being delayed by insufficient harmonisation and slow implementation of the legal framework, in particular in the Federation. The executive needs to make further efforts to enhance dialogue with the *civil society* sector and to support its development. The authorities need to ensure that allocation of funding to non-governmental organisations is conducted in an objective and transparent manner.

There has been limited progress in the area of *economic and social rights*. Bosnia and Herzegovina's legal framework includes provisions to protect economic and social rights, but implementation remains poor overall. A comprehensive state-level antidiscrimination law has been adopted but its scope is rather limited. Sustained efforts are still needed regarding the protection of *women* against all forms of violence. As regards *children*, problems in the fields of health, social protection, education and domestic violence remain. Inadequacies in social welfare systems adversely affect the conditions of *vulnerable groups*, including the mentally ill. The ratification of the revised European Social Charter was a positive development, but implementation needs to improve. The complex system of government and the fragmentation of legislation continue to hamper social dialogue across the country.

There has been some limited progress in the area of *cultural rights and minority rights*. The network of National Minorities Councils has been completed through the establishment of the Federation's Council, even though it is not yet fully operational. The strategy and action plans to support the Roma minority are slowly being implemented. Nonetheless, further steps need to be taken to improve the implementation of the Law on national minorities, and the state-level Constitution needs to be changed to allow access of minorities to all political functions. Separation of children within schools along ethnic lines remains an issue. Despite an increase of financial resources for the implementation of the *Roma* strategy, this minority continues to face very difficult living conditions and discrimination. The lack of civil registration continues to hinder their access to basic social and economic rights.

Concerning *refugees and internally displaced persons*, the security situation remained stable, but little additional progress has been achieved in improving the socioeconomic integration of those who have returned. A country-wide strategy aimed at supporting the return process and ensuring proper implementation of Annex VII of the Dayton/Paris Peace Agreement needs still to be adopted.

As regards ***regional issues and international obligations***, implementation of the Dayton/Paris Peace Agreement has continued. Cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) has remained satisfactory. However, statements by Republika Srpska's political leadership challenging the veracity of war-time massacres involving civilian population are particularly worrying.

Bosnia and Herzegovina, together with its neighbours, should address the regional impunity gap, including by taking steps towards extradition agreements covering war crimes cases.

As regards the International Criminal Court, the bilateral immunity agreement with the United States does not comply with the EU Common Positions and guiding principles. The country needs to align with the EU position.

Bosnia and Herzegovina has continued to participate actively in regional cooperation initiatives, including the South East European Cooperation Process (SEECP), the Regional Cooperation Council (RCC) and the Central European Free Trade Agreement (CEFTA).

Bosnia and Herzegovina's relations with its neighbours have remained stable, but there has been little action to promote reconciliation and to resolve outstanding matters, which is a key

priority of the European Partnership. In particular, trade and border-related issues with neighbouring countries remain open.

The **economy** of Bosnia and Herzegovina slowed down significantly in the fourth quarter of 2008 when the global crisis began to impact on the real economy. This trend continued in 2009, pushing the country into a recession. Unemployment remained at very high levels. The quality of public finances further deteriorated, characterised mainly by a dramatic increase in current expenditure. The country called for an IMF programme and a three-year stand-by arrangement was negotiated. Despite some progress in state-wide coordination of economic policy, the commitment to structural reforms remained uneven across the country.

As regards the **economic criteria**, Bosnia and Herzegovina has made little further progress towards a functioning market economy. Further considerable reform efforts must be pursued with determination to enable the country to cope over the long term with competitive pressure and market forces within the Union.

Financial and monetary stability was preserved, as the central bank reacted appropriately to repercussions from the international financial crisis. The currency board arrangement continued to enjoy a very high degree of credibility. In line with international price developments, inflation rates have come down significantly. External imbalances have decreased, mainly driven by a rapidly adjusting trade balance. While the expansion of financial intermediation has slowed down, the banking sector has so far weathered well the impact of the global crisis. Some limited improvements in the business environment can be recorded, especially in the areas of construction permits, transfer of property, business registration, and market exit.

However, the quality and sustainability of public finances have further deteriorated. Current expenditures, especially on wages and social benefits, increased dramatically in 2008, and the share of general government in GDP remained high. Restructuring of public enterprises, the liberalisation of network industries and the privatisation have not proceeded further. The weak productive capacity and structural rigidities – high social contribution rates, distorted wage-setting mechanisms, high and poorly targeted social transfers and low labour mobility – continue to hamper job creation and the functioning of the labour market. Unemployment continues to be very high and the informal sector remains an important challenge. The business environment is still affected by administrative inefficiencies. Lower FDI and public investment slowed down the upgrading of infrastructures

Bosnia and Herzegovina has made limited progress in aligning its legislation and policies with **European standards**. Some progress has been made in areas such as transport, customs, taxation, education and culture, and a number of justice, freedom and security-related matters. Particular efforts remain necessary as regards movement of goods, persons and services, social and employment policies, state aids, energy and environment.

On the whole, the implementation of the Interim Agreement (IA) has been satisfactory. Nonetheless, preparations for meeting requirements under the IA and the Stabilisation and Association Agreement (SAA) – a key priority of the European partnership, need to be accelerated. Bosnia and Herzegovina's administrative capacity has to be further strengthened in order to achieve a strong track record of SAA implementation. The country also needs to make further efforts to achieve a fully functional single economic space within its territory, as required by the European Partnership.

Bosnia and Herzegovina has made some progress in addressing European Partnership priorities in areas of the **internal market**. As regards *free movement of goods*, limited progress has been made in the fields of standardisation, accreditation, metrology and market surveillance. Continued efforts remain necessary in order to approximate the legal framework to EU legislation in this area and to develop the necessary administrative capacity.

Limited progress has been made as regards *services, the right of establishment and company law*. Entity legislation on leasing has been harmonised, but a single state-level supervisory agency for banking remains to be established. Legislative initiatives by the entities in this area remain insufficiently coordinated.

There have been some developments in the area of *free movement of capital*. Legislation on foreign currency operations has been adopted in Republika Srpska. Some progress has been made in the field of *customs*, even though legislative alignment and administrative capacity need to improve. Customs strategies – especially for human resources management, training and information technology – still need to be defined. In the area of *taxation*, a new excise law has been adopted to improve fiscal sustainability.

As regards *competition*, Bosnia and Herzegovina made moderate progress in the field of antitrust. No tangible progress has been made in the field of state aid. The adoption of adequate state aid legislation and the establishment of an operationally independent state aid authority remain pending. Further efforts are necessary to ensure proper implementation of *public procurement* procedures across the country. Limited progress has been made regarding the enforcement of *intellectual property rights*, even though additional international conventions have been ratified. The legislative framework in this area needs to be completed and enforcement capacity further strengthened.

Little progress was made on *social and employment policies* and public health policy. Social and employment legislation and policies, as well as public health legislation, remain very fragmented. Lack of cooperation between the various levels of government continues to be a serious handicap to the development of the necessary co-ordinated approaches.

Some progress has been made on European standards in the field of *education and culture*. In particular, Bosnia and Herzegovina ratified the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The Conference of Ministers of Education has contributed to ensure basic coordination between the fourteen competent ministries in the country. However, harmonisation of legislation at entity and canton-level has not been completed and implementation across the country has been uneven. The administrative capacity of various education agencies needs to be reinforced. As regards *research*, Bosnia and Herzegovina became associated to the Seventh EC Framework Programme for Research and Development but with respect to improve the research capacity at national level substantial efforts are still necessary.

Negotiations to join the *WTO* have continued, but the process has not yet been completed.

Bosnia and Herzegovina has made some limited progress in addressing European standards on a number of *sectoral policies*.

There has been little progress in the area of *industry*. A comprehensive industrial policy remains to be developed. As regards *small and medium enterprises (SME)* a countrywide strategic framework has been adopted. It needs now to be implemented.

Some progress has been made in the area of *agriculture and fisheries*. A strategic framework for the harmonisation of agriculture and rural development has been adopted. However, implementation of the state-level Law on agriculture, food and rural development has been slow. There has been no progress on setting up the state-level Ministry of Agriculture, competences in agriculture remain at entity level. There has been limited progress in the fields of food safety, veterinary and phytosanitary policies. Problems remain due to inadequate human and financial resources and weak coordination between state and entity services.

Bosnia and Herzegovina's preparations in the field of *environment* remain at an early stage. No significant progress has been made during the reporting period. A state-level environmental law to create the framework for a countrywide, harmonised environmental protection remains to be adopted, and no state-level environment agency has been established.

Bosnia and Herzegovina has made some progress in the *transport sector*. There have been some developments regarding the trans-European transport networks and transit traffic, but progress has been rather limited in the road, rail and inland waterways sectors. Bosnia and Herzegovina has become a full member of the Joint Aviation Authorities (JAA). Continued efforts are necessary to consistently apply the European Common Aviation Area (ECAA) Agreement. Further action is needed to complete the reorganisation of the institutional set-up and to ensure adequate conditions for market opening in all transport modes.

No progress has been made in the field of *energy*. As a party to the Energy Community Treaty, Bosnia and Herzegovina needs to implement the relevant EU energy legislation, but it is significantly lagging behind in a number of energy-related areas. Reforms in the gas sector are particularly delayed. The development of the electricity sector continues to be hampered by various factors. The operation of the national transmission company (TRANSCO) has been seriously undermined by political interference and poor management. No comprehensive energy strategy has been developed. Very limited energy reserves are available in case of an emergency.

Progress in the areas of *information society and media* has been scarce. The harmonisation of the legal framework for public broadcasting in Bosnia and Herzegovina has not been fully achieved and the reform of the public broadcasting system has been delayed. The independence of the Communications Regulatory Authority (CRA) remains seriously weakened by the absence of a properly appointed director general and Council. Challenges to the CRA's independence remain.

Limited progress has been made in the area of *financial control*. Policy papers at the state-level and by the entities have been prepared, but they remain to be adopted. Stronger efforts are necessary to improve public internal financial control and the follow-up of audit reports.

Some technical progress has been made in the area of *statistics*. However, co-operation between the country's statistical institutions at state and entity level remains insufficient. Production of statistics and their quality need to improve, with particular attention on national accounts and statistics in key sectors, including trade, business and agriculture. A population census in 2011 remains crucial.

In the area of *justice, freedom and security*, additional progress has been made. In the framework of the visa liberalisation dialogue, steps have been taken to fulfil all the benchmarks set in the visa liberalisation roadmap and key reforms have been introduced in the area of justice, freedom and security. In the area of visa policy, progress continued. Bylaws were adopted to specify procedures for the issuance of visas provided in the Schengen acquis. The testing phase for the issuing of new biometric passports has started. A new, dedicated agency has been established to ensure the secure and effective management of the system of personal identification documents. However, further efforts are required for alignment with European standards. Implementation of the readmission agreement with the EC has continued to take place smoothly.

Some concrete action has also been taken in the fields of *border management, asylum and migration*. A national strategy on asylum and migration has been adopted and the migration profile of Bosnia and Herzegovina has been established. A new integrated border management (IBM) strategy is under implementation and initiatives have been taken regarding cooperation with neighbouring countries. Nonetheless, more clarity is necessary as regards the division of responsibilities at the border crossing points and the posts' management.

Some additional progress has been made on preventing *money laundering*. A new law on anti-money laundering has been adopted and cooperation at international level has continued. A national strategy and action plan for the fight against and prevention of money laundering have been adopted. Domestic legislation remains to be harmonised, both internally and with

international conventions. Legislation on the confiscation of assets is not in line with international standards and not harmonised within the country.

Some positive steps have been taken in the fight against *drugs*. The national strategy on illicit drugs has been adopted and the corresponding action plan has been adopted. The Commission on Narcotic Drugs has started to operate. Nonetheless, drug trafficking remains a serious problem that requires sustained efforts.

Little progress has been made with regard to the operation of the *police* and the implementation of the police reform, which is a key European Partnership. The implementation of the legislation adopted in 2008 has been slow and not all the state level agencies provided for in these laws are operational. The fragmentation of Bosnia and Herzegovina's police forces continues to undermine efficiency and results.

With the support of the EU Police Mission (EUPM), Bosnia and Herzegovina has taken some initiatives regarding the *fight against organised crime*, which nonetheless remains a matter of serious concern, affecting the rule of law and the business environment. A new strategic and legal framework to combat organised crime has been adopted, but effective prosecution of criminal organisations has to improve. Bosnia and Herzegovina is implementing the 2008-2012 national action plan against *trafficking in human beings*. However, better results are necessary in terms of prosecution and sentences. In this regard, the adoption and implementation of an adequate witness protection law is essential. As regards *data protection*, the state agency for data protection has become operational, but it is not properly staffed yet and its operation needs to improve.