

Conclusions on Bosnia and Herzegovina

(extract from the Communication from the Commission to the European Parliament and the Council "Enlargement Strategy and Main Challenges 2012-2013", COM(2012)600 final)

The establishment of the executive and legislative authorities was completed with the agreement on a State-level Government after sixteen months of political stalemate following the October 2010 general elections. The formation of the new Council of Ministers and the adoption of two key EU-related laws initially produced a shift of focus towards EU integration. This momentum was not maintained, however. The political consensus that had emerged was lost and progress on the EU agenda stalled. A reshuffle of State, Federation and Cantonal authorities has begun but remained blocked by political disputes and legal challenges. A shared vision among the political representatives on the overall direction and future of the country and its institutional set-up for a qualitative step forward on the country's EU path remains absent.

Following the decoupling of the European Union Special Representative's (EUSR) mandate from the Office of the High Representative, the enhanced presence of the Head of EU Delegation /EUSR in Bosnia and Herzegovina has taken the lead in a number of areas in assisting the authorities to implement the objectives of the EU agenda in key areas.

Overall, Bosnia and Herzegovina has made limited progress in addressing the **political criteria**. A High Level Dialogue on the Accession Process (HLDAP) was launched in Brussels in June with representatives of the authorities and of the political parties of Bosnia and Herzegovina to explain EU accession requirements. The participants agreed to an internal roadmap on EU integration to enable the entry into force of the SAA and to submit a credible membership application, as defined by the relevant Council Conclusions. The first timeline set in the June Roadmap for submission of an agreed proposal to comply with the European Court of Human Rights judgement in the Sejdic-Finci case, was not met. The need for an effective coordination mechanism between various levels of government for the transposition, implementation and enforcement of EU laws remains to be addressed as a matter of priority so as to enable the country to speak with one voice on EU issues and make an effective use of the EU's pre-accession assistance.

In the areas of **democracy and the rule of law**, after the general elections of October 2010, a State-level Government was established in February. The State-level and Federation authorities began to be reshuffled in June, but the outcome of this process remains uncertain due to political disputes and on-going legal challenges. Strengthening the functionality and coordination mechanisms of the institutions remains an issue to be addressed as a matter of priority. The harmonisation of the *Constitution* with the European Convention on Human Rights (ECHR) remains outstanding. A proposal, based on political consensus, amending the Constitution to ensure compliance with the European Convention on Human Rights (Sejdic-Finci case) remains to be submitted to the Parliamentary Assembly.

The *Parliamentary Assembly* has made some progress in adopting EU-related legislation, in particular by adopting the State Aid Law and the Law on Household and Population Census. The establishment of the State Aid Council, compliance with EU principles on public undertakings and a comprehensive State aid inventory remain to be addressed as a matter of priority to comply with IA/SAA obligations. Delays in establishing the State-level Government and with the on-going reshuffle of governments at all levels hampered the

effectiveness of legislative activities. Cooperation between the Entity Parliaments, the State-level Parliamentary Assembly and the State-level Council of Ministers regarding EU-related matters, needs to improve.

Little progress was made in improving the functionality and efficiency of all levels of the *government*, which continued to be affected by fragmented, uncoordinated policy-making. The 2012 State-level budget was adopted in May and this was followed by the break-up of the governing coalition. Formulation of foreign policy remained subject to different positions within the Presidency of Bosnia and Herzegovina on some issues.

Little progress has been made in the area of *public administration* reform. The action plan under the public administration reform strategy was revised, providing a framework for reform over the next five years. Coordination between the various administrations at all levels remains weak and the public administration reform process lacks the necessary political support. The issue of financial sustainability of public administration at all levels needs to be addressed. A State-level Ombudsman is in place but the reduction of funding for its activities impacted negatively on its effectiveness. Fragmentation and politicisation continued to hamper the establishment of a professional, accountable, transparent and efficient civil service based on merit and competence.

Limited progress has been achieved in the area of *judicial system* reform. A constructive attitude towards the need for a comprehensive reform emerged within the framework of the Structured Dialogue on Justice, based on domestic ownership, including in the implementation of the Justice Sector Reform Strategy and of the National War Crimes Strategy. Further measures were introduced to reduce the backlog of cases, particularly of utility bills cases, but the overall backlog, including of war crime cases, remains very high. The harmonised application of criminal laws throughout the country as well as the fragmented organisation and budgets of the judiciary remain issues to be addressed.

Bosnia and Herzegovina has made limited progress in tackling *corruption*, which remains a serious problem and is prevalent in many areas throughout the public and private sector. A legal framework is in place but the political will to tackle the issue and to improve institutional capacity remains weak. The implementation of the strategy and action plan needs to be stepped up. The rulebook for the Anti-Corruption Agency was adopted but it is not fully operational. The judicial follow-up of corruption cases remained slow and only a limited number of high-level cases led to prosecution. Insufficient implementation of legislation and problems of coordination between Entities remain issues of concern. Bosnia and Herzegovina needs stronger political commitment and more determined action against corruption. There was little progress in the *fight against organised crime*. Bosnia and Herzegovina remains a source country for arms and ammunition for criminal groups in the EU. Organised crime activities are further linked to the transit of drugs on international trafficking routes.

Respect for *human rights and protection of minorities* is broadly ensured. Bosnia and Herzegovina has ratified all major international human rights conventions but implementation remains uneven.

Civil and political rights are broadly respected. Some progress has been made in improving prison conditions. The new psychiatric facility in Sokolac is not operational yet. A comprehensive reform of the prison system remains outstanding. Adoption of the Framework law on free legal aid is still pending. Some progress has been made as regards access to justice but the legal and institutional framework in the country remains fragmented. The State and the Entity Constitutions provide for freedom of expression, freedom of assembly and freedom of thought, conscience and religion. The Press Council has continued to work closely with judicial institutions and journalist associations to improve the quality of reporting and

awareness-raising among citizens of their legal rights. Cases of intimidation and threats against journalists and editors continued. Political pressure on media and the polarisation of media along political and ethnic lines remain of concern. Attempts to undermine the independence of the Communication Regulatory Agency (CRA) and of the public service broadcasters have increased. The appointments of the Director-General and the Board Members of the CRA are still pending. Regarding civil society, mechanisms for cooperation at all levels and transparency in funding allocations remain to be improved. An international Meeting for Peace involving the main inter-religious leaders took place in Sarajevo in September.

Economic and social rights are broadly respected. Some progress has been made to combat violence against women and in the area of early childhood development. The implementation of women's and children's rights remains uneven. Little progress was achieved to make schools more inclusive. *De facto* ethnic-based separation and discrimination in some public schools remain a cause of concern. Ethnically based and divided education systems remain an obstacle to sustainable returns. A State-level anti-discrimination law is in place but little progress has been made to ensure its effective implementation. Discrimination against lesbian, gay, bisexual and transgender persons remains widespread. The system of social benefits remains based on status instead of needs, which has an adverse impact on the situation of vulnerable groups, including persons with disabilities. Social dialogue and the exercise of labour rights continued to be hampered by the lack of recognition of State-level social partners and a fragmented legislative framework.

Respect for and protection of minorities¹ and cultural rights are broadly ensured. The National Minority Councils' influence over policy making remained limited, partly due to the lack of political and financial support. Some progress was made in implementing the Roma action plan on housing. Efforts need to be stepped up to ensure effective implementation of the action plans on health, employment and education and to improve resources and sustainability with regard to the implementation of all four action plans. A number of Roma children are not registered at birth and therefore cannot enrol in school and have no health insurance. The Roma minority continues to face very difficult living conditions and discrimination. As regards refugees and internally displaced persons, some progress was made in the area of housing for the implementation of the revised strategy on Annex 7 to the Dayton/Paris Peace Agreement (DPA). Discrimination with regard to access to employment, healthcare and pension rights continues to hamper the sustainability of return and of local integration. Transparent procedures for allocating funds to support return based on need are not fully in place yet.

Regarding *regional issues and international obligations*, implementation of the DPA has continued. Cooperation with the International Criminal Tribunal for the former Yugoslavia is generally satisfactory in most areas.

Cooperation between the courts and prosecutors from Bosnia and Herzegovina, Croatia and Serbia continued. Implementation of bilateral agreements on the mutual recognition and enforcement of court rulings in criminal matters is on-going. The prosecution of war crimes cases continued to be hampered by legal obstacles to extradition in the Criminal Procedural Code. The finalisation of the Protocol on sharing information and evidence in war crimes cases between the Prosecutor's Office of Bosnia and Herzegovina and the War Crimes Prosecutor's Office of Serbia remains outstanding.

¹ According to the Law on the protection of rights of persons belonging to national minorities, there are 17 national minorities in Bosnia and Herzegovina. The three constituent peoples – Bosniaks, Croats and Serbs – do not constitute national minorities.

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.

Significant progress has been made as regards the Sarajevo Declaration Process. Bosnia and Herzegovina, Croatia, Montenegro and Serbia continued to cooperate on finding sustainable solutions for the refugees who were displaced as a result of the armed conflicts in the 1990s. The four countries signed a ministerial declaration and agreed on a Regional Housing Programme assisting some 27,000 households or 74,000 individuals. At an international donors' conference held in Sarajevo in April some €265 million was pledged in support of the programme. Good cooperation needs to continue on all outstanding issues in the process.

Bosnia and Herzegovina 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 developed further but border and property issues remain to be fully resolved. A number of meetings have taken place to address the implications for bilateral relations of Croatia's EU accession in July 2013. In this context, discussions have continued with regard to the outstanding issues on border management, with limited progress. The agreement on free transit through the port of Ploče, in Croatia, and the Neum corridor, in Bosnia and Herzegovina, as well as the local border traffic agreement should be aligned with the EU *acquis*. In view of Croatia's accession, border, trade and transit-related issues remain to be addressed as a matter of urgency.

The **economy** of Bosnia and Herzegovina grew by 1.3% in 2011, supported by reviving domestic demand and – to a lesser extent – still growing external demand. The recovery process was reversed in early 2012 as a consequence of the worsened economic environment. Unemployment remained at very high levels. Some fiscal consolidation took place as a result of increased revenues and some expenditure cuts. However, the quality of public finances remained low and the fiscal sustainability was severely hampered by the protracted adoption of the State-level budget and of a medium-term fiscal strategy. The weakened consensus on economic and fiscal policy essentials had a negative impact on reforms at the country level. A new two-year IMF Stand-By Arrangement has been agreed to support the country's efforts to counter the effects of the worsening external environment and tackle external and domestic vulnerabilities.

As regards the **economic criteria**, Bosnia and Herzegovina has made little further progress towards a functioning market economy. Considerable further reform efforts need to 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, while inflation moderated. The currency board arrangement continued to enjoy a high degree of credibility. Credit growth continued – although marginally decelerating –, thus allowing for domestic demand recovery. Trade activities have increased further and the level of trade integration with the EU and countries in the region remained high. Some limited improvements in the business environment can be reported, in particular regarding accelerated business registration.

However, the delays in the adoption of the 2011 and 2012 State-level budgets and the Global Frameworks for Fiscal Policies 2012-2014 and 2013-2015 severely hampered the sustainability and credibility of fiscal policy in Bosnia and Herzegovina. The quality of public finances remained low with high shares of current expenditures to GDP. The repercussions of the worsened external environment are increasingly affecting public finances since 2012, with both the government borrowing and the debt rapidly increasing. This borrowing is to a certain

extent crowding out private investors. External imbalances, in particular the foreign trade gap and the current account deficit, have been rising. Privatisation, restructuring of public enterprises and the liberalisation of network industries did not advance. The productive capacity and the competitiveness of the economy remained weak as domestic sources of growth were not adequately exploited. Labour market conditions remained poor and structural rigidities such as the high rates of social contributions and poorly targeted social transfers continued to hamper job creation. Unemployment continued to be very high and the participation rate is very low. The business environment is affected by administrative inefficiencies and the weak rule of law. The informal sector remains an important challenge.

Bosnia and Herzegovina made limited progress in aligning its legislation and policies with **European standards**. Some progress was noted in the areas of free movement of goods, competition, intellectual property, research and a number of justice, freedom and security-related matters. Particular efforts remain necessary on free movement of persons and services, capital, customs and taxation, public procurement, employment and social policies, education, culture, industry and SMEs, agriculture and fisheries, food safety, veterinary and phytosanitary sectors, environment and climate change, transport, energy, information society and media, financial control and statistics. On the whole, the implementation of the Interim Agreement (IA) remained uneven. The country remains in breach of the IA due to non-compliance with the ECHR and the insufficient implementation of the obligations on State aid. The State Aid Law was adopted but the establishment of the State Aid Council, compliance with EU principles on public undertakings and the inventory of aid schemes remain outstanding. The implementation of the Law on Population Census needs to be stepped up.

Bosnia and Herzegovina made some progress in *internal market* areas. Regarding *free movement of goods*, some progress was made in standardisation, accreditation, market surveillance and consumer protection. Substantial efforts remain necessary to align the legal framework to EU legislation, improve administrative capacity and achieve a single economic space. A public-private dialogue on the industrial market remains to be established.

In the area of *movement of persons, services and right of establishment* little progress was made. Both Entities are implementing new charts of accounts for financial institutions which are harmonised between them and the inter-entity banking supervision remained satisfactory. Further simplification of company registration and alignment of the legislative framework for postal services will be essential.

There was no progress in the area of *free movement of capital*. Further alignment with the *acquis* as well as country-wide harmonisation of legislation is needed. Little progress can be reported on *customs* and *taxation*. Shortcomings remain as regards alignment of legislation and overall administrative and operational capacity. Further efforts are required to provide better services to taxpayers, to ensure trade facilitation and to ensure effective implementation and enforcement of legislation, including on intellectual property.

Bosnia and Herzegovina made some progress with the adoption of the State-level State Aid Law and enforcement of *competition* rules. There was no progress in the area of *public procurement*, particularly regarding full alignment of the Public Procurement legislation. Progress continued in the area of *intellectual property rights*.

There was little progress on *employment and social policies*. Legislative approximation remains to be intensified and strategic documents to be adopted and implemented. The Social Inclusion Strategy at State-level remains to be adopted. Framework laws and strategies are in place in the field of *education* but implementation is pending. Some progress was made on

culture. Progress in the field of *research* and preparations for the Innovation Union continued. Negotiations to join the *World Trade Organisation* further advanced.

Bosnia and Herzegovina made little progress towards meeting European standards on a number of *sectoral policies*. Regarding *industry and small and medium sized enterprises* (SMEs), a country development strategy including industrial policy elements and the new SME strategy remain to be adopted. There was little progress in the areas of *agriculture* and rural development, food safety, veterinary and phytosanitary policy, and *fisheries*. A clear division of competences, closer coordination between the State and Entities in aligning with the *acquis* in these fields and the upgrading of establishments remain essential. The lack of progress has a negative impact on trade in agricultural products, in particular with the EU.

Bosnia and Herzegovina's preparations in the field of the *environment* remained at an early stage. A harmonised legal framework for environmental protection and adequate institutional capacities remain to be established. The administrative capacity is weak and the horizontal and vertical communication between the different authorities requires strengthening. Regarding *climate change*, the adoption of a national climate strategy, the alignment with the *acquis* and awareness-raising remain issues to be addressed.

Bosnia and Herzegovina made little progress in the *transport* sector, but there were some positive developments regarding the trans-European transport networks and air transport. The Law on Transport of Dangerous Goods remains to be fully aligned with the EU *acquis*. The upgrading of transport infrastructure remains an issue to be addressed. Preparations in the field of *energy* remain at an early stage. As party to the Energy Community Treaty, Bosnia and Herzegovina needs to implement the relevant EU energy legislation. To guarantee the security of electricity supply, a country-wide functioning national transmission company needs to be in place and a comprehensive energy strategy adopted.

There was little progress on *information society and media*. Harmonisation of the legal framework for public broadcasting remains incomplete. The continuing challenges to the independence of the Communications Regulatory Authority and of the public service broadcasters, political pressure on the media and the slow pace of implementation of the public broadcasting reform remain causes for serious concern.

Little progress can be reported in the area of *financial control*. Legislation remains to be adopted and implemented and the coordination board of the Central Harmonisation Units needs to reassume its role. Internal audit capacities as well as the independence of the external audit institutions need to be strengthened. Some progress was made in the area of *statistics*. Sectoral statistics such as national accounts, business and agricultural statistics need to be improved. Cooperation between the country's statistical institutions at State and Entity-level and other relevant State-level agencies needs to be intensified, also in view of the implementation of the Law on Population and Household Census.

Some progress has been achieved in the different areas related to *justice, freedom and security*. In the area of *visa policy*, priorities continued to be addressed. The visa facilitation agreement between the EU and Bosnia and Herzegovina and the readmission agreement have continued to be implemented smoothly. Visa-free travel to the Schengen area entered into force in December 2010 for citizens of Bosnia and Herzegovina holding biometric passports. In the framework of the Post-Visa Liberalisation Monitoring Mechanism, Bosnia and Herzegovina adopted targeted measures to improve the management of the migratory outflow. The implementation of some reforms adopted as a part of the visa liberalisation roadmap remains outstanding. In particular, the establishment of a functioning system for electronic data exchange amongst law enforcement agencies and prosecutor's offices throughout Bosnia

and Herzegovina and the establishment of a fully functional anti-corruption agency, with adequate staff and financial resources, need to be addressed as a matter of urgency.

The country's preparations in the fields of *border management, asylum and migration* have advanced. The asylum and international protection system, the monitoring of migration flows and inter-agency cooperation continued to improve. Infrastructure at some border crossing points requires further upgrades. The issue of unauthorised Border Crossing Points with both Montenegro and Serbia remains to be addressed. Some progress has been made in the fight against *money laundering*. The implementation of the strategy and action plan for the prevention of money laundering remains limited. There has been little progress in the fight against *drugs*. The absence of effective judicial follow up hampers the fight against drug trafficking, which remains a serious problem.

Efforts by Bosnia and Herzegovina to increase capacity and effectiveness of the *police* continued. The fragmentation of Bosnia and Herzegovina's police forces continues to undermine efficiency, cooperation and information exchange. The *fight against organised crime* remains insufficient due to the lack of effective coordination between law enforcement agencies. Organised crime remains a serious concern that affects the rule of law and the business environment. Efforts to fight *trafficking in human beings* need to be intensified and identification of victims improved. Bosnia and Herzegovina made some progress in fighting terrorism. The Joint Task Force to fight terrorism was re-established but the implementation of the strategy for preventing and combating terrorism remains weak.

Preparations for the *protection of personal data* have continued, but law enforcement and the independence of the supervisory agency need to be strengthened. Well-functioning personal data protection is crucial in order for Bosnia and Herzegovina to conclude agreements with Europol and Eurojust.