

Conclusions on Bosnia and Herzegovina

(extract from the Communication from the Commission to the European Parliament and the Council "Enlargement Strategy and Main Challenges 2011-2012", COM(2011)666 final)

Bosnia and Herzegovina has made limited progress in addressing the **political criteria**.

In the areas of *democracy and the rule of law*, one year after the general elections held on 3 October 2010, the process of establishing executive and legislative authorities remains to be completed with the establishment of a State-level Government. This long delay has hampered Bosnia and Herzegovina's progress on much needed reforms.

The lack of a credible process for the harmonisation of the *Constitution* with the European Convention on Human Rights remains an issue of serious concern. The first inter-institutional Working Group which was set up to implement the European Court of Human Rights (ECtHR) decision in the Sejdić-Finci¹ case failed to reach an agreement. The establishment of a new Working Group, as recommended by the Council of Ministers, is outstanding.

The RS National Assembly (RSNA) adopted Conclusions and a decision on holding a referendum challenging the State level judiciary institutions. Following the EU facilitation, the RSNA repealed the decision on the referendum and amended the Conclusions on 1 June. Within the established framework of the Stabilisation and Association Process, Bosnia and Herzegovina has engaged with the EU in a Structured Dialogue on Justice.

The administrative capacity of the *Parliament* improved but lack of coordination between the State and Entity parliaments and political discord between the Entities has continued to hamper the work of the Parliamentary Assembly. The functioning of *government* institutions, at different levels, continued to be affected by fragmented, uncoordinated policy-making. The three Presidency members improved efforts at joint policy formulation and implementation but foreign policy coordination remained subject to disagreements on some issues. An effective coordination mechanism between the State and the Entities remains to be established on EU matters including on programming of financial assistance under the Instrument for Pre-Accession Assistance (IPA).

Limited progress has been made in the area of *public administration reform*. Implementation of the public administration reform strategy is continuing. However, coordination between the various administrations remains weak and the public administration reform process lacks the necessary political support. Sustained efforts remain necessary to prevent political interference. A State-level Ombudsman is in place but staffing and financial constraints hamper its effectiveness. The establishment of a professional, accountable, transparent and efficient civil service based on merit and competence remains an issue to be addressed.

Bosnia and Herzegovina has made limited progress in improving the *judicial system*. An EU-Bosnia and Herzegovina Structured Dialogue on Justice, aiming at ensuring an independent, effective, impartial and accountable judicial system, was launched. Implementation of the Justice Sector Reform Strategy and the War Crimes Strategy needs to be stepped up. Measures were taken to reduce the backlog of cases, particularly of utility bills cases, but the overall backlog remains high. The fragmented legal framework across all jurisdictions places

¹ The Sejdić-Finci vs. Bosnia and Herzegovina case, December 2009, regarding ethnic discrimination for representation in the institutions of the country for persons not belonging to one of the three Constituent Peoples.

significant legislative and financial burdens on the judiciary. The lack of streamlined budgetary responsibilities continues to affect the independence and effectiveness of the judiciary. The frequent political attacks on the judiciary and the backlog of cases remain causes for serious concern.

Bosnia and Herzegovina has achieved very limited progress in tackling *corruption*, which remains a serious problem and is prevalent in many areas throughout the public and private sector. Implementation of the anti-corruption strategy and action plan remains weak. The Anti-Corruption Authority is not yet 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 determined action against corruption.

Respect for *human rights and protection of minorities* is broadly ensured. Bosnia and Herzegovina has ratified the major international human rights conventions, but implementation is lagging behind.

Civil and political rights are broadly respected. Little progress has been made towards harmonising criminal sanctions across the country. Adoption of the Framework law on free legal aid, needed to comply with the ECHR, remains outstanding. *Access to justice* in civil and criminal trials needs to be ensured. There has been some improvement in *prison* conditions, particularly in psychiatric facilities, but overcrowding and *ill-treatment* of detainees remain issues to be addressed.

The State and the Entity Constitutions provide for the *freedom of expression* and media, the *freedom of assembly* and association and for the *freedom of religion*. However, better implementation of existing legislation is needed. The self-regulatory activities of the Press Council improved. Citizens' complaints to the Press Council about violations of the Press Code are on the rise. The capacity of the Press Council to enforce professional standards is hampered by lack of resources. Political pressure on the media continued, as did its ethnic bias. Cases of intimidation against journalists also continued. The implementation of the public broadcasting reform remains outstanding. The independence of the Communications Regulatory Agency continued to be undermined and Board appointments remain pending. The development of civil society requires further support and transparency in funding allocations.

Economic and social rights are guaranteed by the existing legal framework, but implementation remained weak due to fragmented levels of competence. A comprehensive State-level anti-discrimination law is in place but its scope remains limited and implementation weak. The protection of *women* against violence needs to improve, as does the social protection of *children*. In terms of inter-ethnic relations, despite the establishment of a coordination body in the Federation, the number of divided schools ('two schools under one roof') and mono-ethnic schools remains a cause for concern. The system of social benefits is based on rights instead of needs, which has an adverse impact on the situation of *vulnerable groups*, including the mentally disabled. 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 minorities² and cultural rights are broadly ensured. Progress was made in implementing the Roma action plans on housing and employment. Efforts need to be stepped up to ensure effective implementation of the action plans on health and education and to improve resources and sustainability with regard to the action plans. The Roma minority continues to face very difficult living conditions and discrimination. The lack of birth registration and of access to free legal aid for civil registration continues to hinder their access to basic social and economic rights. Further steps are needed in order to improve implementation of the Law on national minorities and to guarantee minority rights.

Some progress has been achieved concerning *refugees and internally displaced persons*. The revised strategy supporting the return process and ensuring proper implementation of Annex 7 to the Dayton/Paris Peace Agreement (DPA) is in place. Some steps have been taken to implement the strategy, notably as regards funding to deal with vulnerable groups living in collective centres. However, procedures for allocating return assistance are not fully in place yet. Lack of employment opportunities and of access to social protection continues to hamper the sustainability of return and of local integration.

As regards *regional issues and international obligations*, implementation of the DPA has continued but political representatives in Republika Srpska frequently challenged the territorial integrity of the country. Cooperation with the International Criminal Tribunal for the former Yugoslavia has remained satisfactory.

The EUSR mandate was transferred from the Office of the High Representative to a single EU Representative acting under a double-hatted mandate as EUSR and Head of the EU Delegation.

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 ongoing. However, efforts at prosecuting war crime cases continued to be hampered by legal obstacles to extradition in the Criminal Procedural Code.

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 was made with regard to the *Sarajevo Declaration Process*. Following the meetings in June and September 2011, Bosnia and Herzegovina, Croatia, Montenegro and Serbia agreed on a number of issues, including on the text of a joint declaration to be signed at a ministerial conference in Belgrade.

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. In September, Bosnia and Herzegovina adopted a decision to recognise the customs stamps of Kosovo. However, some border-related issues with neighbouring countries remain open.

The **economy** of Bosnia and Herzegovina gained some speed in 2011 after a modest growth in 2010. The recovery is nevertheless still subdued and mainly driven by external demand.

² 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.

Unemployment remained at very high levels. The fiscal situation eased somewhat as a result of fiscal adjustment measures implemented under the programme of the International Monetary Fund and increased revenues. However, medium-term fiscal sustainability was severely hampered by the failure to adopt the Global Framework for Fiscal Policies 2011-2013. The commitment to structural reforms and sound public finances remained weak and uneven across the country, and the quality of public finances remained low.

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 to enable the country to cope over the long term with competitive pressure and market forces within the Union.

The recovery is mainly driven by external demand, but domestic demand also picked up, supported by resuming credit activities. Industrial production is growing. Trade activities significantly increased and the level of trade integration with the EU remained high. Financial and monetary stability was preserved. The currency board arrangement continued to enjoy a high degree of credibility. Some improvements in the business environment can be reported with regard to business registration and the streamlining of administrative procedures in general.

However, the failure to adopt the Global Framework for Fiscal Policies 2011-2013 severely hampered the sustainability and credibility of fiscal policy in Bosnia and Herzegovina and left fiscal authorities without an agreement on the general fiscal line. The political stalemate in the country resulted in a significant delay of the 2011 State-level budget adoption and postponement of further programme discussions with the International Monetary Fund on the implementation of the Stand-By Arrangement. The quality of public finances remained low with high shares of current expenditures to GDP. External imbalances, in particular the current account deficit, have been rising and inflation picked up. The business environment continued to be affected by administrative inefficiencies and the weak rule of law. Planned 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. Structural rigidities such as the high rates of social contributions, poorly targeted social transfers and low labour mobility continue to hamper job creation. Unemployment continued to be very high and 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 intellectual property, State aid, research, culture, transport and a number of justice, freedom and security-related matters. Particular efforts remain necessary on free movement of goods, persons and services, customs and taxation, competition, public procurement, employment and social policies, education, industry and SMEs, agriculture and fisheries, food safety, veterinary and phytosanitary sectors, environment and climate change, energy, information society and media and statistics.

On the whole, the implementation of the Interim Agreement (IA) remained uneven. The country is in breach of the IA due to non-compliance with the European Convention on Human Rights and with the rules on State aid. The State-level State aid law, required for compliance with the Stabilisation and Association Agreement, was adopted by the Council of Ministers in August but adoption by the Parliament is pending. The State-level census law, necessary for the country's social and economic development, remains to be adopted as a matter of priority.

Bosnia and Herzegovina made some progress in *internal market* areas. Regarding *free movement of goods*, some progress was made in market surveillance and consumer protection. Substantial efforts remain necessary to approximate the legal framework to EU legislation, improve administrative capacity and achieve a single economic space.

In the area of *movement of persons, services and right of establishment* limited progress was made. Both Entities adopted implementing legislation on financial services and the coordination of banking supervision improved. 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. Good, but uneven progress can be reported in the areas of *customs* and *taxation*. Further alignment of legislation and capacity building to ensure effective implementation and enforcement of intellectual property rights remain essential.

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

There was little progress in the area of *social and employment policies* and public health policy. Country-wide strategy papers exist or are being prepared, but policies and legislation remain fragmented. Framework laws and strategies are in place in the field of *education* but implementation is pending. Some progress was made on *culture*. Progress continued in the field of *research* and preparations for the Innovation Union started. 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 remains to be adopted and the SME strategy implemented. There was some progress in the areas of food safety, veterinary and phytosanitary policy and fisheries. Progress in *agriculture and rural development* remained limited. Closer coordination between the State and Entities in aligning with the *acquis* in these fields remains essential. The lack of progress had a negative impact on trade in agricultural products.

Bosnia and Herzegovina's preparations in the field of the *environment* remained at an early stage. A harmonised legal framework for environmental protection and a State Environmental Agency remain to be established. The administrative capacity is weak and the horizontal and vertical communication between the different authorities requires strengthening. Regarding *climate change*, further efforts are needed towards the adoption of a State-level strategy for climate change, alignment with the *acquis* and awareness-raising.

Bosnia and Herzegovina made progress in the *transport* sector. There were some positive developments regarding the trans-European transport networks, road and air transport, rail and inland waterways sectors. The Law on Transport of Dangerous Goods remains to be adopted. The upgrading of transport infrastructure remains an issue to be addressed. Preparations in the field of *energy* are not very advanced. As party to the Energy Community Treaty, Bosnia and Herzegovina needs to implement the relevant EU energy legislation. Some progress was achieved regarding the supply of electricity to Brčko District and the launch of a comprehensive review of the electricity legislation at all levels of Government. 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.

Progress in *information society and media* was limited. Harmonisation of the legal framework for public broadcasting remains outstanding. The continuing challenges to the independence of the Communications Regulatory Authority, political pressure and the slow pace of implementation of the public broadcasting reform remained causes for serious concern.

Some progress can be reported in the area of *financial control*. Central Harmonisation Units exist at State and Entity level and the introduction of internal audit started. The financial management and control systems need further development. The independence of the State-level audit office remained an issue of concern. Some progress was made in the area of *statistics* with regard to classifications and registers. Sector Statistics such as national accounts or business and agriculture statistics need to be improved. Cooperation between the country's statistical institutions at State and Entity level and other relevant State-level agencies remained insufficient.

In the area of *justice, freedom and security*, some progress has been made in the different areas. 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.

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. However, the infrastructure at some border crossing points requires strengthening. Little 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 impedes the fight against drug trafficking, which remains a serious problem.

Bosnia and Herzegovina's preparations in the area of the *police* are advancing. The fragmentation of Bosnia and Herzegovina's police forces continues to undermine efficiency, results, 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 deficiencies in identification of victims of trafficking addressed. Bosnia and Herzegovina made some progress in fighting terrorism. The Joint Task Force to fight terrorism was re-established. However, the implementation of the strategy for preventing and combating terrorism needs to be enhanced.

Preparations for the *protection of personal data* have continued, but further efforts are necessary on law enforcement and to ensure the independence of the supervisory agency. Well-functioning personal data protection is crucial in order for Bosnia and Herzegovina to conclude agreements with Europol and Eurojust.