

Perspective of EU policy towards Bosnia and Herzegovina
-Policy note-

Haris Abaspahic and Reuf Bajrovic

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By 2006, Bosnia was considered one of the most successful examples of post-war reconstruction and reconciliation, as well as an example of successful international intervention. After a decade of intense international efforts towards stabilisation, reconstruction and democratisation of the country, it seems that BiH is moving from the post-conflict phase to the EU accession phase.

The reforms and the overall progress at that time had been dominantly led by the Office of the High Representative (OHR), backed up by extensive use of sanctions for politicians endangering the Dayton Peace Agreement and imposing legislation. Also, the reform processes have been conditioned by the EU pre-accession requirements.

Over time it became clear that the Dayton Constitution has created obstacles for the further EU accession progress; it contains major discriminatory elements and it is unsuitable for the social and economic development of the country. After the failure of the constitutional change initiative in April 2006, the strategy of the international community has significantly changed in the direction of transferring responsibilities to BiH authorities and handing over to them the ownership of the political processes. The OHR instantly became a passive observer of the political processes in the country.

The general elections held in October 2006 showed that the nationalist rhetoric and the politics of fear were rewarded. Since then, the political crisis has only deepened. Over the last four years, nationalist rhetoric directed towards deepening the ethnic divisions and the questioning of the Dayton constitutional framework, have undermined the stability of the country and reversed long-standing efforts of the international community.

The conditionality of the EU pre-accession policy towards BiH was consistent until 2008 when the Stabilisation and Association Agreement was signed without the fulfilment of the necessary conditions. The EU decided to loosen conditions previously set on the police reform and such a decision sent the message to BiH that if they are persistent enough, the EU will sooner or later give up its requirements and reward them with the 'carrot from Brussels'.

On the other hand, regarding the visa liberalisation issue the EU strictly stuck to its conditions. If this decision were made outside of the regional context, it would have

been an effective use of conditionality policy. In mid-2009 Brussels approved visa liberalisation for Serbia, Montenegro and Macedonia, even allowing in some cases to meet the remaining obligations in short-time. When BiH reached a comparable level of fulfilment of those conditions, it did not get the green light..

The wide-spread phenomenon of dual citizenship (mainly Croatian and Serbian), gave ethnic connotations to the issue of visa liberalisation. The decision to postpone the visa liberalisation for BiH further deepened the crisis. Voices claiming the Bosniaks are discriminated by the EU have created the perception that the government could not do anything on this issue.

Recent EU policy towards Bosnia and Herzegovina has been largely focused on fulfilling the necessary conditions for the closure of the OHR, the transfer of responsibility to the EUSR and constitutional changes. However, the joint EU-US effort at making relatively minor changes to the BiH constitution and fulfilling the remaining conditions for the closure of the OHR, the so-called Butmir process failed at the end of 2009. This *ad hoc* initiative demonstrated a lack of strategy of the international community and a tendency towards instant solutions. The constitutional re-arrangements and the closure of the OHR were used as precondition for faster visa liberalisation, instant EU candidate status and NATO Membership Action Plan. This conversion of technical into political criteria further endangered the credibility of EU technical requirements.

The communication of the EU and U.S. representatives during the negotiations was reduced to meetings with political party leaders. Representatives of the State and Entity institutions were excluded from this process. In addition, local experts and the non-governmental sector did not have the opportunity to participate.

The weakening of the influence of the international community, which was not undone by the Butmir process, allowed RS Prime-Minister Milorad Dodik to start fulfilling his threat of a possible referendum in RS. After the failure of the Butmir initiative, the RS National Assembly decided to adopt a new law on referendums. The psychological effect of this law on the population in BiH cannot be underestimated and it represents a threat to the stability of the country. Further threats by the RS Prime Minister Milorad Dodik that, one day, RS will hold a referendum on independence, gave this legislation additional political weight. Having in mind the impact of Dodik's threats, the fairly mild response of the international community is difficult to understand.

Despite the increased political instability and the fact that the OHR is a part of the constitutional structure of BiH, some voices still advocate a quick closure of the OHR and the transition to the EUSR whose mandate is yet to be defined. Also, what is little mentioned in these discussions on the closure of the OHR is that it would also constitute an end of the NATO and EUFOR peacekeeping mandates in BiH. Given the increase in nationalist rhetoric in a pre-election period - set as a precedent in 2006 - it is difficult to foresee the psychological impact of the official end of the NATO and EUFOR presence.

Furthermore, creating political instability and general insecurity is certainly the strategy of the ruling coalition, and the referendum issue serves this purpose well. Raising tensions before the election will divert attention from the social and economic problems and unfulfilled promises to ethnic homogenisation and fear.

RECOMMENDATIONS

The Dayton instruments – OHR and EUFOR - should be retained until BiH modifies the existing constitutional framework. Pressure to close the OHR without fulfilling the necessary conditions and creating a functioning constitutional framework - including the introduction of the functions of the Supreme Court - should end.

The EU needs to strengthen its credibility among all citizens of BiH, especially in terms of maintaining a secure environment, by clearly stating that the EUFOR presence depends on the level of the constitutional reform and political stability.

The International Community must send a clear signal to everyone that threats of a referendum to challenge the Dayton constitution, the presence of the OHR and the Bonn powers, shall provoke a decisive action by PIC / OHR.

Since BiH fulfilled the same level of visa liberalisation requirements as Serbia did when it got visa liberalisation, it is necessary to provide BiH citizens with the same opportunity of visa-free travel, no later than 1 July 2010.

When it comes to constitutional changes, it is necessary to put emphasis on a clear set of results that the process should produce instead of trying to achieve any kind of a political agreement. The International Community should make a clear distinction between the so-called technical and political criteria for EU accession. It is necessary to firmly support the strengthening of democratic processes and institutions in BiH, and to give priority to the official institutions of the country instead of the ruling leaders. The process that leads to changes is essential as well as clear objectives that it should meet. The process and the goals should be clearly defined in the medium-term EU strategy towards Bosnia. Also, it is necessary to include other segments of society into the process.

The EU needs to assist maintaining the conditions for conducting democratic elections. The efforts should concentrate on abolishing the atmosphere of fear which intimidates citizens with nationalist rhetoric instead of focussing the campaign on the real socio-economic problems and the requirements of EU integration that must be met. It is necessary to avoid dealing with geopolitical / territorial issues and focus on the democratisation processes. The upcoming elections represent a chance for the EU to make a positive effect and restore credibility in the eyes of the citizens of Bosnia and Herzegovina.

It is necessary to put emphasis on the respect for human rights in general and to insist on the urgency to change the constitution and the election law of BiH in accordance with the rulings of the Human Rights Court in Strasbourg regarding the rights of minority communities in the country up to May 3rd, 2010 so that the elections in October 2010 could be conducted in accordance with basic principles of human rights. The existing problems should not be allowed to be “diminished” through cosmetic changes of the law and through postponing the real changes for some of the next elections.

The EU needs to make clear that freedom and independence of media are basic democratic achievements and insist on the protection of media freedom, but also on ethics and zero tolerance towards hate speech, which is spread by some media owned by political leaders.

It is necessary to have a clear communication strategy towards the citizens of BiH. Citizens should receive an unambiguous message also regarding the requirements for EU accession and what is expected from BiH in the process of convergence with the EU, so that different interpretations can be avoided in the future. It is important to explain how each segment of BiH society will benefit from European integration - as the benefits may be lost otherwise- and how much we are losing even now by not using currently available options such as the IPA funds, EBRD loans, community programmes, etc. The real facts and resources should be accessible for citizens in order to use elections as a referendum on the results of the government in the past four years. It is up to BiH citizens to decide then how these tools will be used, but before this, they need to be provided with a platform that will help them analyse the things done in the previous period. With such an approach, the International Community in BiH would gain multipliers/levers for the democratisation of society and the creation of a constructive atmosphere ahead of the elections.