

## **Dzenana Hodzic: Challenges for Bosnia and Herzegovina in the EU integration process**

*“For Bosnia and Herzegovina, integration into the EU means assuming an adequate place in the European family of democratic countries. BiH has always been part of the political, cultural and economic space of Europe, and its citizens are determined in its intention to be an integral part of modern European political, economic and security structures.”*<sup>1</sup> The citizens of Bosnia and Herzegovina (BiH) also see EU accession as a solution for economic, social and security problems.<sup>2</sup>

Once the relevant political decisions are in place,<sup>3</sup> the process of the European integration of a country should develop smoothly. However, looking back at the previous stages of the Stabilization and Association Process (SAP), BiH needed on average 2.5 years to make each step.

**1. The Road Map** for BiH was established in March 2000, and after 11 meetings of the Consultative Task Force (CTF), in September 2002, the Commission’s president, Christopher Patten, announced that the Road Map requirements were “substantially completed”. One of the requirements which is still not completed is the reform of the Public Broadcasting System (PBS), one of the key European partnership priorities.

**2. “Feasibility study”** (Report to the Council on feasibility of concluding Association SAA between Bosnia and Herzegovina and the EU) from November 2003, expressed that “during 2004, Bosnia and Herzegovina should be able to fulfil priority requirements, if constant efforts are made in that direction”. The study identified 16 priority areas in which “substantial progress” had to be made. In practice, this required the adoption of 46 legal acts and establishment of 27 institutions in BiH (22 on the state-level, and 5 on the entity-level). After 19 months and six CTF meetings, the priorities regarding the PBS and the police reform were still not fully completed.

**3. SAA negotiations**<sup>4</sup> were officially opened on 25 November 2005, and “technically” finalised, as scheduled, in December 2006, but initialling and signing of the SAA was postponed until the political conditions were met. The SAA was initialled on 4

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<sup>1</sup> EU Integration Strategy of Bosnia and Herzegovina, Directorate for European Integration, Sarajevo, 2006 [www.dei.gov.ba](http://www.dei.gov.ba)

<sup>2</sup> Latest polls indicate that about 70% of BiH citizens are in favour of joining the EU.

<sup>3</sup> Apart from the Decision of the Council of Ministers of BiH to initiate accession of BiH into the EU (Official Gazette of BiH, No. 3/1999, 20.3.1999) and the Resolution of the Parliamentary Assembly of BiH on European Integration and Stability Pact for Southeast Europe (Official Gazette of BiH, No. 12/1999, 8.8.1999), as the first and the most important acts of BiH authorities, the priority of the European agenda has been reiterated on several occasions, including the most recent Resolution of the Parliamentary Assembly on acceleration of the European integration process (Official Gazette of BiH, No. 25/2008, 25.3.2008).

<sup>4</sup> See: Communication from the Commission to the Council on the progress achieved by Bosnia and Herzegovina in implementing the priorities identified in the “Feasibility study on the preparedness of Bosnia and Herzegovina to negotiate a Stabilization and Association Agreement with the European Union (COM (2003) 692 final)”, Brussels, 21.10.2005, COM (2005) 529 final.

December 2007 in Sarajevo, and the signing ceremony is expected to take place on 16 June 2008 in Luxembourg.

The next steps should be taken much faster in order to achieve the ultimate goal of full EU membership soon, and avoid further disappointments of BiH citizens. The SAA implies serious obligations and commitments for BiH authorities, which are facing a new challenge of proving their capacity and ability to pursue reforms. Only when BiH shows a good implementation record, it will be entitled to submit a formal application for EU membership. From that moment on, the tasks are going to be even more complex and demanding. This is a reason why the Parliamentary Assembly of BiH adopted a resolution on the acceleration of the accession of BiH into the EU. This resolution emphasises in its preamble the “...need for the accelerated European integration process to be understood seriously as the most comprehensive development project that should include all the forces of BiH society”. Its provisions impose obligations on all bodies and institutions, which have to be completed in order to fulfil the Copenhagen criteria and prepare BiH for full integration into the EU. This resolution indicates the awareness for possible difficulties, and implications of the EU integration for the BiH economy that needs to be prepared to cope with strong market forces in the internal market and try to protect vulnerable social categories.

BiH is facing similar problems as any other country in transition.<sup>5</sup> These problems include the fact that political decisions oftentimes include “impressive statements”, without a clear understanding of what concrete steps are to be taken. Members of the parliaments declaratively support the idea of European integration, but when they face concrete requirements of the process, they start to oppose the adoption of certain legal acts, or try to amend them in a way that affects proper transposition of the *acquis*. Moreover, the implementation of adopted laws should be given the highest priority.

Such problems seem logical, especially at the initial stage of the EU integration process, but if we compare the status of BiH with its neighbours, it is “*at the very end of the queue moving towards distant EU membership: behind Croatia, Turkey, Macedonia, but also behind Albania, Montenegro and Serbia*”.<sup>6</sup> This is a reason for serious concern especially if we remember that BiH has entered the EU integration process together with Croatia and Macedonia, which have signed the SAA in 2001, and are candidates for EU membership since 2004.<sup>7</sup>

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<sup>5</sup> See: Ficsor, Mihaly «Preparing Accession: Specific Problems of the Approximation of Legislation in the Framework of the Europe Agreements and Following the White Paper» Academy of European Law Trier, 2002.

<sup>6</sup> «The worst in class: How the international protectorate hurts the European future of Bosnia and Herzegovina», ESI-European Stability Initiative, Berlin-Brussels-Istanbul, 8 November 2007, [www.esiweb.org](http://www.esiweb.org)

<sup>7</sup> The SAA with Macedonia was signed on 26 March 2001, and the SAA with Croatia was signed on 9 July 2001. Croatia started the accession negotiations with the EU on 3 October 2005.

## Political challenges

BiH is a complex country. There is no similar example of a country consisting of a republic, a federation and a district.<sup>8</sup> Such a structure has obviously been an obstacle to a faster integration process with the EU. Literature, knowledge, skills and numerous advises from other countries which experienced the same process can hardly or only partly be applied. The Bosnia and Herzegovina 2007 Progress Report<sup>9</sup> also states that BiH's complex institutional arrangements, frequent attacks on the Dayton/Paris peace agreement and nationalistic rhetoric have undermined the country's reform agenda.

SAP requirements have caused significant institutional reforms and enhanced to a certain extent the powers of state institutions in BiH, so far without formal changes of the Constitution.<sup>10</sup> The delays in completing reforms have always been caused by long discussions on competencies deriving from constitutions, without understanding the real meaning of EU requirements, and the fact that eventual transfer of powers to the EU institutions is inevitable. Every country acceding the EU had to adjust provisions of its constitution in order to allow full integration. The candidate countries are facing a virtually non-negotiable acceptance of the *acquis communautaire*, with very little or no bargaining at all.<sup>11</sup>

The Venice Commission on several occasions recommended changes of the Constitution of BiH in order to make it more functional and able to fulfil future obligations.<sup>12</sup> The latest European Partnership<sup>13</sup> puts constitutional changes in BiH on the list of key priorities:

*“Take measures to achieve more functional and sustainable institutional structures and better respect for human rights and fundamental freedoms, including by agreeing and adopting changes to the constitution of Bosnia and Herzegovina, as necessary.”*

BiH's political leadership should now agree on necessary changes. However, there is no consent on whether changes to the Constitution are necessary at all. This also means that any reform, otherwise beneficial for the citizens, can be refused under the pretext of

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<sup>8</sup> The Republic of Srpska has rather centralised structures and administrative organisation; the Federation of BiH consists of ten cantons, and is rather decentralised; the Brcko District of BiH is a part of the country where BiH legislation is directly applicable. Therefore, BiH has 14 constitutions, parliaments, governments and numerous administrations on all levels.

<sup>9</sup> "Bosnia and Herzegovina 2007 Progress Report" (Commission staff working document) {COM(2007) 663} Brussels, 6.11.2007

<sup>10</sup> Certain initiatives to start constitutional changes are already in place, it can be seen in the Venice Commission Reports, the European Parliament Resolution from April 2005, and the statements of some of the political leaders (mostly from the Federation of BiH)

<sup>11</sup> See Grabbe, Heather and Hughes, Kirsty, "Eastward Enlargement of the European Union", The Royal Institute of International Affairs, London 1998

<sup>12</sup> "Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative", Venice Commission, 11 March 2005. [www.coe.int](http://www.coe.int).

<sup>13</sup> Proposal for a Council Decision on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina and repealing Decision 2006/55/EC, COM(2007) 657, Brussels, 6.11.2007.

“protection of inalienable and intransferable” competences. This is in contradiction with “impressive statements” on a European future.

The Dayton agreement is a complex and maximally balanced international agreement, which can not be changed.<sup>14</sup> Analyses of the Constitution<sup>15</sup> show that the overall organization and the functioning of the main state institutions are based exclusively on the ethnic element. In its part regulating the main institutions and procedures, the Constitution exclusively deals with the existence and work of the three “constituent peoples” or ethnic-religious groups – Bosniacs, Croats and Serbs. Other peoples and citizens are left out of the scope of its regulation.

The principle of ethnicity<sup>16</sup> is the most important principle, directly affecting all walks of lives in BiH society. It takes into account the equal rights of the “constituent nations” of BiH. Ethnic proportionality in the government is actually based on the “affirmative action” principle that gives minorities fair chances to be represented in the public administration. However, on the lower levels this principle is not sufficiently applied, so “minority groups” have difficulties when applying for a job or trying to resolve their existential problems. On the political, decision-making level, this principle reflects in form of the “vital interest veto” and has been used on many occasions. In practice, any seemingly technical task may become a political issue, and undergo endless political discussions and finally be submitted to the Constitutional Court. This leads to inefficiency and reforms are delayed.

### **Coordination**

Coordination implies the sharing of information and knowledge with all stakeholders, informing them about EU requirements and preparing strategies on how to deal with the problems. Obviously, the structure and political environment of a country directly affect the results of such coordination.

Coordination on the political level, established as “the Coordination Board for Development and European Integration”, is unsatisfactory, as the Commission Progress Report<sup>17</sup> states “*fragmented policy-making between the State and the Entities is still an issue. The Coordination Board for Economic Development and European Integration, which is designed to harmonise State and Entity agendas has only met infrequently since the new governments were formed. Coordination between the authorities is therefore minimal and depends largely on personal and party interests.*” Improved coordination on the political level is the main precondition for successful work of more technical bodies,

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<sup>14</sup> Ibrahimagić, Omer (lecturer at the School of Political Sciences, University of Sarajevo, judge of the Constitutional Court of Federation of BiH) “Država Bosna i Hercegovina prema evropskim demokratskim standardima” (“The State of Bosnia and Herzegovina according to European Democratic Standards”), Sarajevo 2003, [www.soros.org.ba](http://www.soros.org.ba).

<sup>15</sup> Sadiković, Čazim (lecturer at the School of Law, University of Sarajevo) “Za državu novog stoljeća” (“A country of a new century”), Sarajevo 2003, [www.soros.org.ba](http://www.soros.org.ba)

<sup>16</sup> See: Bieber, Florian, «Institutionalising Ethnicity in the Western Balkans», European Centre for Minority Issues (ECMI), February 2004, [www.ecmi.de](http://www.ecmi.de)

<sup>17</sup> “Bosnia and Herzegovina 2007 Progress Report” (Commission staff working document) {COM(2007) 663} Brussels, 6.11.2007

which should be allowed to focus on technical work and expertise, and on reform strategies.

Coordination on the operational (expert) level was established by a decision of the Council of Ministers of BiH (CoM BiH) in December 2003. This coordination body consists of the director for European Integration, secretaries of the ministries within the CoM BiH, heads of independent institutions and coordinators from the Republic of Srpska, Federation of BiH and Brcko District. They are in charge with the coordination of activities within their respective institutions/governments (e.g. law harmonisation, aid coordination, strategic planning, education etc.).

As the scope of work increased, it became obvious that it would be necessary to establish European Integration Units (EIU)<sup>18</sup> that support the EU integration process. Only few ministries have established such units spontaneously.<sup>19</sup> Civil servants who are in charge of EU integration activities are going to be crucial for the well-functioning of joint bodies which are to be established under the SAA (first the Interim Committee and sub-committees under the Interim Agreement).

Law harmonisation is another example where better coordination is necessary, given the future obligations for BiH in this field. This is the task for experts who have the knowledge and skills to draft laws which are in accordance with the *acquis communautaire*, and who know one of the official languages of the EU. Once the laws are drafted, they have to be submitted to the Directorate for European Integration (DEI), along with the Statement and Table of Concordance. Only with consent from the Directorate, the draft can be forwarded to the Council of Ministers and the Parliament for adoption. The two biggest challenges in this field for BiH are: translation of the relevant *acquis* (since the “target language” is not agreed yet) and the fact that the legislation adopted on the entity-level does not undergo the above-mentioned procedure.

## **Conclusion**

Despite initial scepticism regarding the capacity and expertise of BiH institutions to negotiate the SAA, the negotiations were (technically) completed as initially planned. After the Interim Agreement entered into force and the SAA has been ratified, BiH will be expected to ensure the effective implementation of that agreement within both entities. The Venice Commission stated in its opinion: “*At present, the State level is not able to effectively ensure compliance with the commitments of the country with respect to the Council of Europe and the international community in general. With respect to the EU it is unthinkable that BiH can make real progress with the present constitutional arrangements. The EU will not countenance the kind of delay, indecision and uncertainty that a multiplicity of governments entails.*”<sup>20</sup>

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<sup>18</sup> All countries of the region have already established the EIU. BiH CoM has considered the Directorate for European Integration’s initiative to adopt a decision on the establishment of the EIU in all relevant ministries (main ministries??) several times since 2005, but the Decision has not yet been adopted.

<sup>19</sup> Namely the Ministries of Foreign Affairs, Foreign Trade and Economic Relations, Civil Affairs, Transport and Communication, Finance and Treasury and Justice.

<sup>20</sup> Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, Venice Commission, 11 March 2005. [www.coe.int](http://www.coe.int).

Under such circumstances, we may say that BiH has accomplished great results, balancing between political, constitutional issues, lack of understanding within and outside the country. Maybe the steps have been too slow, but they have been made. Once the SAA is signed, the commitments should be taken more seriously, and there will be no time to look back. The awareness for positive and negative effects of the European integration process will certainly increase, and hopefully, citizens will demand from their leadership to be more efficient.

It is clear that only the perspective of EU membership and (the resulting?) pressure to pursue reforms may lead to political and economic stability of the Western Balkans region. BiH is facing its greatest challenge: the existing constitutional structure does not allow for a faster EU integration process and all its leaders do not recognize that.

Public administration plays the most important role in managing reforms and representing its country towards the EU. That is why civil servants should be allowed to educate themselves, to focus on developing their professional skills so that they are more motivated to stay in the public administration. Above all, civil servants should be relieved from having to cope or being involved in political problems and discussions.