

Conclusions on Bosnia and Herzegovina

(extract from the Communication from the Commission to the Council and the European Parliament "Enlargement Strategy and Main Challenges 2010-2011", COM(2010)660 final)

Bosnia and Herzegovina has made limited progress in addressing the **political criteria**. Some progress related to the rule of law, notably in areas such as border management and migration policy, was made through reforms aimed at meeting visa liberalisation requirements. Important steps were also taken to promote regional reconciliation and cooperation, notably in terms of refugee return. Nevertheless, overall implementation of reforms was insufficient and the domestic political climate during the pre-electoral period was dominated by nationalistic rhetoric. The lack of a shared vision by political leaders on the direction of the country is blocking key EU-related reforms and impeding further progress towards the EU.

The general elections were assessed by the OSCE/ODIHR as being generally in line with international standards for democratic elections. However, they were held once again with ethnicity and residency-based limitations to suffrage rights due to provisions established by the Dayton/Paris Peace Agreement. Respect for democratic principles and the right to equal treatment without discrimination, as embodied in the European Convention on Human Rights (ECHR), constitutes an essential element of the Interim Agreement (IA). Delays in harmonising the Constitution with the ECHR, as required by the December 2009 European Court of Human Rights (ECtHR) judgment in the *Sejdić-Finci vs. Bosnia and Herzegovina* case, remain a fundamental issue of concern.

Regarding international obligations, making progress towards meeting the conditions which have been set for the closure of the Office of the High Representative (OHR)¹, remains essential. Bosnia and Herzegovina's system of governance continues to involve an international presence. The country has made very little progress towards meeting the requirements for the closure of the OHR. Primary among these are the apportionment of property between the state and the other levels of government, the defence property issue and fulfilling the obligations on the Brčko Final Award. Overarching all these issues is the need for a stable and constructive political environment in the country.

Regarding **democracy and the rule of law**, there has been little progress towards *constitutional* reform and towards creating functional and effective institutional structures. The Council of Ministers adopted an Action Plan for the implementation of the ECtHR ruling, but without results.

The functioning of the state-level executive and legislative bodies has continued to be negatively affected by the prevalence of ethnically oriented considerations. The administrative capacity of the *Parliament* improved but coordination with the Council of Ministers and with the Entities remained poor. The functioning of *government* institutions, at different levels, continued to be affected by fragmented, uncoordinated policy-making. Steps were taken to improve administrative capacity with the appointment of some high-level officials including at the Directorate for European Integration. However, other key positions remain vacant. 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 ; 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 Stabilisation and Association Agreement 2) a stable political situation.

state-level census law, which is required for further progress on the EU agenda and for the country's social and economic development remains to be adopted as a matter of urgency.

Little progress has been made in the area of *public administration*, where the reform strategy is being implemented, albeit slowly. Coordination between the various administrations remains weak. Sustained efforts remain necessary to prevent political interference and to limit the role played by political affiliation in appointments. Progress towards the establishment of a professional, accountable, transparent and efficient civil service based on merit and competence also needs further attention. A single State-level Ombudsman is functioning, but budgetary constraints hamper its effectiveness and need to be addressed.

Bosnia and Herzegovina has made limited progress in improving the *judicial system*. New legislation has been adopted on the criminal procedures code, but little has been achieved to reduce the backlog of cases. Implementation of the Justice Sector Reform Strategy and the War Crimes Strategy remained minimal. The complexity of the legal framework, the fragmentation of the judicial system and the absence of a single budget continue to delay progress towards an independent judiciary. Mandates of international judges and prosecutors dealing with war crimes were extended by the High Representative, following the inability of the authorities to reach an agreement. Prosecution of war crimes by the State Court has continued to be satisfactory, but needs to improve in the Entities and Cantons.

Bosnia and Herzegovina has achieved limited progress in tackling *corruption*, which remains a serious problem and is prevalent in many areas. The implementation of the anti-corruption strategy and action plan started. The agency responsible for monitoring its implementation has been established and an acting director has been appointed. Some progress has been made in meeting the recommendations formulated by the Group of States against Corruption (GRECO). 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 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 be strengthened.

Civil and political rights are broadly respected. Some progress has been made towards harmonising criminal sanctions across the country. However, adoption of the Framework law on free legal aid, needed to comply with the ECHR, is pending. *Access to justice* in civil and criminal trials needs to be ensured. *Prison* conditions improved but overcrowding and *ill-treatment* of detainees remain issues of concern.

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, existing legislation is not fully implemented. Political pressure on the media increased, as did its ethnic bias. Cases of intimidation against journalists also increased. The implementation of the public broadcasting reform has been delayed. The independence of the Communications Regulatory Agency continued to be undermined. The Entities' governments adopted cooperation agreements with *civil society*. However, further efforts are needed to enhance dialogue with civil society and to support its development.

There has been little progress in the area of *economic and social rights*. They are protected by the existing legal framework, but fragmentation remains and implementation continued to be

poor. A comprehensive state-level anti-discrimination law is in place but its scope remains limited. The protection of *women* against all forms of violence needs to improve, as does the social protection of *children*. The predominantly rights based system of social benefits has adverse affects on the conditions of *vulnerable groups*, including the mentally disabled. Social dialogue and the exercise of labour rights are hampered by the lack of recognition of State-level social partners and a fragmented legislative framework.

There has been some progress regarding the *respect for and protection of minorities and cultural rights*². In terms of inter-ethnic relations, the number of divided schools ('2 schools under 1 roof') has decreased and a common nine-year curriculum has been introduced in most schools. However, separation of children within schools along ethnic lines remains an issue. Despite an increase in financial resources for the implementation of the *Roma* strategy, this minority continues to face very difficult living conditions and discrimination. The lack of birth registration continues to hinder their access to basic social and economic rights. Further steps are needed in order to improve the implementation of the Law on national minorities.

Some progress has been achieved concerning *refugees and internally displaced persons*. The country-wide strategy aimed at supporting the return process and ensuring proper implementation of Annex VII of the Dayton/Paris Peace Agreement (DPA) has been adopted. However, little progress has been achieved in ensuring local integration and sustainability of return.

As regards *regional issues and international obligations*, implementation of the DPA has continued. Cooperation with the International Criminal Tribunal for the former Yugoslavia has remained satisfactory. However, during the pre-election period, Republika Srpska frequently challenged the territorial integrity of the country. Furthermore, statements by Republika Srpska's political leadership denying the gravity of war-time massacres involving the civilian population have continued.

Cooperation between the courts and prosecutors from Bosnia and Herzegovina, Croatia and Serbia improved. Bilateral agreements were signed on the mutual recognition and enforcement of court rulings in criminal matters. Further efforts are needed to strengthen the capacity to deal with war crimes cases, particularly at cantonal and district courts, and to ensure adequate financial resources. Regional cooperation and adequate witness protection will be key in this regard.

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.

Fresh impetus was given to the Sarajevo declaration process following the Ministerial meeting held in Belgrade in March 2010. This brought together Bosnia and Herzegovina, Croatia, Montenegro and Serbia who agreed to cooperate in order to clarify refugee statistics. The countries also committed themselves to work towards finding solutions for a number of outstanding issues by the end of the year.

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 developed further due to some

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.

important regional initiatives to promote reconciliation. However, some border-related issues with neighbouring countries remain open. Difficulties for Kosovo passport holders in obtaining visas to attend regional meetings in Bosnia and Herzegovina persist.

The **economy** of Bosnia and Herzegovina made a moderate recovery in 2010 being in recession in 2009. The recovery is mainly driven by external demand. Unemployment remained at very high levels. The fiscal situation worsened significantly in 2009 as public finances came under severe stress due to both declining revenues and high spending commitments. The commitment to structural reforms and sound public finances remained uneven across the country. Some fiscal and structural reform measures have been enacted recently under the pressure of budgetary imbalances and the IMF programme. Nevertheless, budgets are still not self-sustaining and the quality of public finances remains weak.

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.

Implementation of the Stand-By Arrangement with the International Monetary Fund has been broadly satisfactory. Financial and monetary stability was preserved. The currency board arrangement continued to enjoy a high degree of credibility. Confidence in local banks has returned and households redirected their savings to the banking sector throughout 2010. Industrial production slightly increased in the first half of 2010. Mainly influenced by international price developments, inflation returned to positive yet low rates in early 2010. Due to soaring exports, external imbalances have decreased. Some limited improvements in the business environment can be reported, in particular regarding business registration.

However, the fiscal situation in Bosnia and Herzegovina remained difficult, especially in the Federation. Commitment to the agreed fiscal adjustment and structural reform measures, as well as their implementation, was uneven across the country. The quality of public finances remained low with high shares of current expenditures to GDP. Privatisation, restructuring of public enterprises and the liberalisation of network industries did not advance. Upgrading of infrastructure has proceeded, though at slow pace. 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 and low labour mobility continue to hamper job creation and labour market participation. The high and poorly targeted social transfers reduce the propensity to work, further highlighting the need for reform of the social benefits system. Unemployment continued to be very high and the informal sector remains an important challenge. The business environment is affected by administrative inefficiencies and the weak rule of law.

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 free movement of capital, intellectual property, education and research, transport, financial control, and a number of justice, freedom and security-related matters. Particular efforts remain necessary as regards free movement of goods, persons and services, customs and taxation, competition and state aid, public procurement, employment and social policies, agriculture and fisheries, environment, energy and information society and media.

On the whole, the implementation of the Interim Agreement (IA) has been uneven. The country is in breach of the IA due to non-compliance with the ECHR regarding the right of

equal treatment without discrimination³ and the failure to establish a state aid authority. Further strengthening of administrative capacity is required in order to achieve a satisfactory track record of SAA implementation.

Bosnia and Herzegovina has made some progress in areas of the *internal market*. As regards *free movement of goods*, preparations are moderately advanced. Some progress has been made in the area of consumer protection. Continued efforts remain necessary in order to approximate the legal framework to EU legislation and to develop the necessary administrative capacity.

In the area of *movement of persons, services and right of establishment* limited progress has been made, including towards the creation of a single economic space. Further simplification of court procedures and company registration remain to be achieved.

There has been some progress in the area of *free movement of capital*. Further legal alignment with the *acquis* is essential to ensure the proper functioning of capital markets in Bosnia and Herzegovina. Little progress can be reported in the areas of *customs* and *taxation*.

Bosnia and Herzegovina made some progress vis-à-vis the enforcement of *competition* rules. However, no progress has been made in the field of state aid due to the failure to establish a state aid authority. There has been limited progress in the area of *public procurement*. Some progress was made in adopting *intellectual property rights* laws.

There was little progress in the area of *social and employment policies* and public health policy. Country-wide strategic documents are under preparation, but legislation and policies remain fragmented. Good progress was made in the field of research. Framework laws and strategies are in place in the field of *education and culture* but implementation is pending. Negotiations to join the *World Trade Organisation* have continued, but the process has not been completed.

Bosnia and Herzegovina has made some limited progress in meeting European standards on a number of *sectoral policies*. Preparations in the area of *industry and small and medium enterprises* (SMEs) remain at an early stage. A comprehensive industrial strategy remains to be developed and the State-level SME development strategy to be implemented. There has been little progress in the area of *agriculture and rural development*, food safety, veterinary, phytosanitary policy and fisheries. Implementing legislation was adopted, however there has been no progress on setting up the state-level Ministry of Agriculture. Insufficient implementation of the State-level veterinary, food safety and phytosanitary legislation is preventing Bosnia and Herzegovina from meeting EU standards.

Bosnia and Herzegovina's preparations in the field of *environment* and climate change remain at an early stage. A harmonised legal framework for environmental protection and a State Environmental Agency need to be established. Bosnia and Herzegovina has made uneven progress in the *transport sector*. There have been some developments regarding the trans-European transport networks, rail and inland waterways sectors, but progress has been limited in the road sector. The upgrading of transport infrastructure remains an outstanding issue. Preparations in the field of *energy* are not very advanced. As a 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 fully functioning national transmission company needs to be ensured and a comprehensive energy strategy adopted.

³ Article 14 in conjunction with Article 3 of Protocol 1 of the ECHR, which provide for a prohibition on discrimination with regard to the right to free elections; and Article 1 of protocol 12 of the ECHR, which establishes a right to equal treatment without discrimination.

Progress in the areas of *information society and media* has been limited. Harmonisation of the legal framework for public broadcasting remains outstanding. The continuing challenges to the independence of the Communications Regulatory Authority and the slow pace of implementation of the public broadcasting reform remain serious issues of concern.

Some progress can be reported in the area of *financial control*. Internal audit is being introduced, but the Financial Management and Control systems need further development. The independence of external audit remains to be ensured. Some progress has been made in the area of *statistics* with regard to classifications and registers. However, the State-level law on the population and household census was not adopted. Statistics on national accounts, on business and on agriculture need to be improved. Co-operation between the country's statistical institutions at state and entity level remains insufficient.

In the area of *justice, freedom and security*, progress has been made, albeit unevenly, in the different areas. In the framework of the visa liberalisation dialogue, steps have been taken to fulfil all the benchmarks set in the roadmap. In the area of visa policy, priorities continued to be addressed. Biometric passports are being issued. The visa facilitation agreement between the EU and Bosnia and Herzegovina and the readmission agreement have continued to be implemented smoothly.

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 have improved. However, the infrastructure at some border crossing points requires strengthening. Limited progress has been made on preventing *money laundering*. Further efforts are needed, particularly as regards the enforcement of legal provisions. There has been some progress in the fight against *drugs*. However, a lack 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 *police* are advancing, albeit unevenly. 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 a coherent institutional framework. Organised crime remains an issue of serious concern that affects the rule of law and the business environment. Some progress has been made in the fight against *trafficking in human beings* with respect to identification of victims. More efforts are needed regarding support to victims and witness protection. Bosnia and Herzegovina has started to tackle the issue of *fighting terrorism* by adopting a comprehensive strategy.

As regards *personal data protection*, preparations for the protection of personal data have continued, but further efforts are necessary regarding law enforcement. Well functioning personal data protection is crucial in order for Bosnia and Herzegovina to conclude agreements with Europol and Eurojust.