



Policy Brief

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Making Bosnia and Herzegovina's transformation irreversible

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Background

In late March, the Brdo Statement issued by current EU Presidency holder Slovenia underlined that progress achieved in the Western Balkans through the Stabilisation and Association Process (SAP) needed to be built up and "made irreversible" through a determination in the region to implement all the conditions and commitments it enshrined.

Slovenia, the first of the Member States which joined the EU in 2004 to hold the Presidency (and also the first country to break away from former Yugoslavia), has shown that countries in the region can make a success of membership. Croatia has just received a tentative accession date – the most tangible indicator of the Union's commitment to enlargement and of Croatia's eligibility for, and progress towards, membership. FYR Macedonia is still awaiting the opening of formal negotiations, amid renewed concerns about its progress following the violence during the recent elections.

All the potential candidate countries in the region have now signed Stabilisation and Association Agreements (SAAs): Albania in June 2006, Montenegro in October 2007, Serbia in April 2008, and Bosnia and Herzegovina (BH) in June 2008.

Furthermore, in October 2007, Montenegro's Parliament adopted a new Constitution which, in the European Commission's words, is "broadly in line with the European standards". Serbia signed its SAA in April 2008, although the Interim Agreement will not enter into force until Belgrade is seen to be fully cooperating with the International Criminal Tribunal for the former Yugoslavia (ICTY).

BH managed to win the 'promotion' that signing an SAA implies by recently adopting two police laws which Brussels regarded as sufficient compliance with the EU conditions in this area. However, some remaining elements of the police reform agenda have

been left to be addressed through the reform of the Constitution – presently still an Annex to the Dayton Peace Agreement (DPA) of 1995 and not adopted by BH Parliament.

Before and after Dayton

Just before Slovenia gained independence from former Yugoslavia in 1991, a comprehensive census underlined the multi-ethnic nature of BH's population: 43% Muslim, 31% Serb, 17% Croat, and 8% 'other'. The spirit and culture of ethnic tolerance were also deemed part of the country's important, centuries-old societal legacy. However, from 1992, the spirit of ethnic tolerance was forced out by the mounting conflict inside former Yugoslavia, which took its toll first in Slovenia and Croatia, then lasted almost four years in BH, and continued later in Kosovo.

In late 1995, BH began the tortuous process of implementing

the DPA, which was designed primarily to end the war, but also to lay the constitutional foundations for the new state, launch post-conflict reconstruction, and enable the return of the refugees and people who had been internally displaced during the conflict. This state-building process was carried out with direct international military and police involvement (NATO, UN and then EU), support from international financial institutions, and through the Office of High Representative (OHR), in charge of implementing civilian aspects of the DPA.

During the 12 years between Dayton and the signing of the SAA, significant progress has been made, both in terms of military and civilian implementation and state-building.

Vital institutions have been created: some to comply with the DPA; others to meet NATO and/or EU requirements. The country's GDP grew by more than 8% in 2007 and, although unemployment still stands at 30%, its macroeconomic prospects are improving. Most importantly, a broad public consensus has been built that joining the EU is the most desirable option for the future.

The DPA, however, did not design an easily governable state; nor did it provide balanced and equal rights for peoples or individuals across the whole of BH. Indeed, Dayton 'froze' the conflict and created two Entities: Republika Srpska (RS), on 49% of the territory, and the Federation of Bosnia and Herzegovina (FBiH) on 51%, separated by the re-negotiated military front line.

The DPA, for instance, provides that Serb members of the BH Presidency can only be nominated by RS, and the Croat and Bosniak members only by the FBiH, which conflicts with the European Convention of Human Rights (ECHR).

According to the Helsinki Committee for Human Rights 2007 Report, while Bosniaks and Croats are being discriminated against in the RS, the Serb ethnic group's rights are mostly under threat in the FBiH. Discrimination thrives at the municipal level: there are some areas where not a single member of a minority group is employed in public administration, institutions or companies and, in one case where 6,000 families were returned to their homes, none has found employment and less than 10% have gained access to health care.

State of play

The Balkan path towards EU membership was spelt out in 2000 at the Zagreb Summit and confirmed at the June 2003 Thessaloniki Summit. At that time, Bosnia and Herzegovina had completed a Feasibility Study which aimed to assess its state of preparation for the European integration process, whose main element was the SAP.

Under guidance from Brussels, and thanks to daily communications with the Commission's Delegation in Sarajevo, the pace and depth of reforms were strengthened, driven by the prospect of EU accession: 46 new laws have been adopted and 27 new institutions created so far, in line with European standards and requirements.

On the DPA's tenth anniversary, Enlargement Commissioner Olli Rehn launched the official SAA negotiations in Sarajevo. The technical talks were successfully completed in 2006, but political

issues blocked progress on the four remaining conditions until this year: police reform in accordance with the EU's principles, full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), reform of public broadcasting and reform of public administration at large.

Why the SAA matters – for both sides

The signing of the SAA gives BH a contractual relationship with the EU – a crucial building-block towards making its transformation "irreversible" – bringing to an end the long-standing uncertainty over whether BH will ever make it into the EU. Doors have been opened and a seat reserved for BH at the European table.

But the continuation of this process is not automatic: it requires additional efforts to build up the necessary capacities. At the political level, consensus on the reforms

necessary for integration has to be found; at the administrative level, the capacity to implement such reforms needs to be developed.

Unlike Dayton (where responsibility for military and civilian implementation was given to the international community, and the protection of monuments, oversight of public corporations and even the constitutional court were all internationally supervised or controlled), the SAA is designed to help the country strengthen its own capacities and transform itself irreversibly, in order to integrate with existing EU Member States.

On the EU side, the June 2004 European Council stated that BH represents a key challenge for the Union and that the SAP will constitute the framework for charting a European course for the Western Balkan countries until the moment they actually join. In the case of BH, this can only take place on the basis of full implementation

of the Dayton/Paris accords. Interestingly, it was also agreed that the Dayton and SAP agendas should be pursued with a view to synergies, but also taking into account their unique characteristics and implementation timelines.

The Union's three-stage approach was articulated as follows: the short-term objective was to make progress in implementing Dayton and to open SAA negotiations; the medium-term goal was to sign the SAA; and the long-term aim was a stable, viable, peaceful and multi-ethnic BH, cooperating peacefully with its neighbours and *irreversibly* on track towards EU membership.

Last but not least, this process also contributes to building security in the Union's neighbourhood – one of the three strategic objectives identified in the 2003 European Security Strategy.

The overarching challenge for BH now is to emancipate itself from both its international protectors and its recent past, and to incorporate European best practices in its multi-ethnic society in order to reinvigorate its severely-hit tradition of ethnic tolerance.

'Irreversible' transformation towards the EU is the best safeguard against the resurgence of conflict, when the multi-ethnic character of BH society became a

threatening problem instead of a tested solution. The current situation is well reflected in a recent United Nations Development Programme survey evaluating 'social trust' in BH: only around 7% of the population said they "trusted" other ethnic groups. Some structural issues, in other words, remain unresolved.

The contractual relationship with the EU provides a necessary framework for another necessary step in the stabilisation of BH – the new Constitution. Structured negotiations to this end began in 2005, but failed to secure a majority in Parliament (by two votes) in 2006.

Now, the unfinished agenda of police reform is wrapped up in the constitutional reform package, and the implementation of the SAA will highlight further areas where constitutional changes are necessary.

Going NUTS

At the practical level, the SAP continues to foster the establishment of new bodies and practices. The SAA stipulates, for instance, that BH will have to provide information about its Gross National Product in accordance with a system known as the Nomenclature of Territorial Units for Statistics (NUTS), a framework

for producing regional data for the EU at three levels (state, regional and municipal). As well as the number of inhabitants, criteria were added relating to economic, social, historic, geographic, cultural and ecological factors.

The NUTS levels, however, do not entirely match BH's existing administrative structures. While aiming to end hostilities, the DPA created Entities which do not meet all the required criteria for appropriate and consistent statistical reporting, thus touching upon a very sensitive issue in the country: namely the organisation of public governance at the middle administrative layer – below the state and above the municipalities.

Another issue is the speed of adaptation and reform. In 2007, progress was limited to some 20% of the original objectives, with only 27 pieces of legislation (out of the 135 foreseen at the state level) adopted.

Moving too slowly not only risks reducing overall political momentum, but also lower foreign direct investment, higher unemployment, a continued struggle to cope with unreformed social, health and pension sectors, and long-term poverty – much worse than the EU average and way below neighbouring Croatia.

Prospects

To counter this, the main 'players' and real 'owners' of the process need to make informed choices.

The *players* – made up of two significant groups, namely the political elite and the wider public administration – need to have adequate capacities. Their performance will not only be crucial for the success of the SAA, but also

to improve the country's position on Transparency International's Index (which measures corruption, and the perception thereof, around the world), where BH is in 84th place – the worst-ranked country in the region, as it is in the Fund for Peace's Failed States Index for 2007.

Existing EU Member States need to be convinced that an applicant will

behave like a 'good citizen' of the Union before it can join. This means a potential new member has to operate in a certain way – one that looks familiar and acceptable to existing Member States – in its policy-making and administration.

However, the SAP did not *per se* provide for the necessary political culture, and state-building is not

identical with Member-State building, which demands additional and targeted efforts. The Commission has established procedures to harmonise national legislation with the *acquis*, but an EU-compatible style of operation is more than the *acquis* – it is also about day-to-day behaviour in taking decisions, accepting responsibility for them and applying them consistently.

The real *owners* of the EU accession process and BH's 'irreversible' transformation are the citizens. They are tasked with making informed choices when participating in the fledgling democratic process.

The next municipal elections will take place later this year, with the next general election two years away, and, to date, electoral campaigns in BH have tended to remind observers that the conflict was not ended but only 'frozen' by Dayton. In other words, much also remains to be done at the societal level, although recent EU decisions concerning visa facilitation, scholarships for young people from the region and support for civil society are important steps in the right direction, and will certainly contribute to overcoming both the recent past and the modest present.

Regional interplay

Kosovo's Declaration of Independence has taught political leaders in BH who still aspire to follow its path a lesson.

Kosovo has not yet been recognised by all 27 EU Member States and until that happens, signing an SAA with Kosovo will be impossible. Republika Srpska should take this into account when it considers its future in the region and the wider European context, as the official language in both Washington and European capitals clearly rejects

'entity' independence while opening brighter prospects – i.e. EU and also NATO membership – for BH as a whole.

On the other hand, Croatia's forthcoming EU accession – possibly as early as 2010 – may have a positive domino-effect on BH's transformation, not least because of the 1,100 kilometre-long border the two countries share.

First, Zagreb will not 'leave' the Western Balkan region overnight but will rather bring EU standards closer to it. It will also find itself – like Ljubljana today – in a position to orchestrate communication and mutual understanding between the enlarged EU and its neighbouring future members. Finally, regional cooperation will remain part of EU conditionality, and the higher the level of intra-regional exchange and dialogue, the more likely it is that domestic reforms in neighbouring countries will also be of a higher quality.

The examples of Kosovo and Croatia also indicate, albeit in different ways, that BH should 'use' both the SAA and its new Constitution to comply with international human rights law (including the ECHR), and to re-emancipate itself and set a positive example as a non-discriminatory and inclusive multi-ethnic state and society for the whole region, as *ethnic* borders do not coincide exactly with existing *state* borders anywhere in the Western Balkans. That would represent a return to BH's historical role and a specific contribution to regional stability and reconciliation.

Sarajevo across two centuries

In the most optimistic scenario, BH could have 'won' EU membership, in the political and symbolic context of the 100th anniversary of the start of World War I in Sarajevo in 1914.

That was also the tentative timeline for the whole region to join the EU proposed by the International Commission on the Balkans in 2005. In other words, had BH performed much better, EU membership (or at least a formal decision to that effect) might have been possible in 2014.

Having eventually signed the SAA only in 2008, BH's next step is to prove its ability to implement the agreement and submit its application for EU membership. Once it has done so, and the relevant evaluations have been made, the Council will ask the Commission for an 'opinion'. The Commission needs a minimum of one year to carry out the detailed assessment required to deliver this. Once a positive opinion has been issued, 'candidate' status can be formally granted and then accession negotiations may start – which in turn could take at least four years, to judge by the Croatian experience. Finally, once accession negotiations are completed, the process of ratification in existing EU Member States may take up to two more years.

In an ambitious scenario, therefore, Sarajevo could celebrate the 100th anniversary of the end (rather than the beginning) of WW1 – in 2018 – as the capital of a new EU Member State. However, in the 'reverse' scenario, in which the current pattern of behaviour by local elites persists or even worsens, BH could end up having to wait until the 100th anniversary of the Sarajevo Winter Olympics to become an EU Member State – in 2084.

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