



**BOSNIA AND HERZEGOVINA  
COUNCIL OF MINISTERS**

**EU INTEGRATION STRATEGY OF BOSNIA AND HERZEGOVINA**



**DIRECTORATE FOR EUROPEAN INTEGRATION**

## **Editorial Board**

Jasminka Ajanović, M.Sc. (DEI), Azra Alkalaj (FBiH Government), Nemanja Drašković (RS Government), Jakob Finci (BiH Civil Service Agency), Emir Hadžikadunić, M.Sc. (DEI), Ambassador Nedžad Hadžimusić (MFA BiH), Zara Halilović, M.Sc. (DEI), Amra Hodžić, M.Sc. (DEI), Dženana Hodžić, M.Sc. (DEI), Rade Jevtić, M.Sc. (DEI), Suad Musić (DEI), Adnan Pašalić (Brčko District Government), Orhan Pašalić (Office of the Chairman of the Council of Ministers BiH), Katarina Peroš, M.Sc. (DEI), Darija Ramljak, M.Sc. (DEI), Valida Repovac, M.Sc. (DEI), Maja Rimac-Bjelobrk, M.Sc. (DEI), Edin Šehić (MFA BiH), Osman Topčagić (DEI).

## **External Experts**

Snježana Brkić, M.Sc., Muhamed Budimlić, M.Sc., Tarik Čaršimamović, M.Sc., Besim Čulahović, Ph.D., Senada Ćumurović, M.Sc., Izabela Dankić, Ph.D., Emir Đikić, M.Sc., Adnan Efendić, Ekrem Gacić, M.Sc., Amir Hadžiomeragić, M.Sc., Asim Ibrahimagić, M.Sc., Seid Kapetanović, M.Sc., Aleksandar Knežević, Ph.D., Mirad Maglić, Almir Maljević, Radomir Marinković, M.Sc., Ognjen Marković, M.Sc., Petar Milašinović, M.Sc., Elmedin Muratbegović, M.Sc., Žarko Papić, Ph.D., Murat Prašo, M.Sc., Zekerijah Smajić, Taib Šarić, Ph.D., Marko Tadić, Ph.D.

## **Members of the Drafting Consultative Working Groups**

1. Strategy Preparation Group (and chapter on CFSP):  
Osman Topčagić (DEI), Ambassador Nedžad Hadžimusić (Ministry of Foreign Affairs BiH), Azra Kalajdžisalihović (MFA BiH), Jakob Finci (Civil Service Agency BiH), Orhan Pašalić (Office of the Chairman of the Council of Ministers BiH), Azra Alkalaj (European Integration Coordinator for FBiH), Goran Radivojac (European Integration Coordinator for RS), Adnan Pašalić (European Integration Coordinator for Brčko District), Jasminka Ajanović, M.Sc. (DEI), Darija Ramljak, M.Sc. (DEI), Suad Musić (DEI), Katarina Peroš, M.Sc. (DEI), Maja Rimac-Bjelobrk (DEI), Emir Hadžikadunić, M.Sc. (DEI), Valida Repovac, M.Sc. (DEI), Dženana Hodžić, M.Sc. (DEI), Zara Halilović, M.Sc. (DEI).
2. Chapter on Political Situation:  
Lidija Topić (Deputy Minister of Foreign Affairs BiH), Nevenka Savić (Parliamentary Assembly BiH), Lidija Korać (Election Commission BiH), Azra Alkalaj (European Integration Coordinator for FBiH), Srđa Vranić (European Integration Coordinator for RS), Dobrivoje Jovičić (General Secretariat of the Council of Ministers BiH), Jasminka Ajanović, M.Sc. (DEI).
3. Chapter on Economic Situation:  
Zlatko Hurtić (Office of the Chairman of the Council of Ministers BiH), Mirsad Kikanović (Ministry of Foreign Trade and Economic Relations BiH), Biljana Tabaković (Ministry of Finance and Treasury BiH), Radmila Mihić (Ministry of Finance RS), Mira Bradara (Ministry of Finance FBiH), Radmila Nogo (DEI).
4. Chapter on Internal Market and Foreign Policies:  
Alida Sofić (Ministry of Foreign Trade and Economic Relations BiH), Franjo Markota (Ministry of Justice BiH), Davorka Samardžija (MFA BiH), Slobodan Gajević (Employment Agency BiH), Hamdo Sušić (Indirect Taxation Authority BiH), Ljubo Glamočić (Ministry of Industry and Technology RS), Goran Kecman (Ministry of Trade

and Tourism RS), Josip Bašić (Ministry of Trade FBiH), Edin Zametica (Ministry of Energy, Mining, and Industry FBiH), Senad Hromić, M.Sc. (DEI), Maja Rimac-Bjelobrk, M.Sc. (DEI), Milkica Milojević (DEI), Almedina Šabanović (DEI).

5. Innovations, Economic and Social Cohesion:

Šefik Rizvanović (Ministry of Civil Affairs BiH), Izet Bajrambašić (Ministry of Communications and Transport BiH), Slavica Bošnjak (MFA BiH), Azra Hajro Lojo (Ministry of Culture and Sports FBiH), Rajko Gnjato (Ministry of Education and Culture RS), Radivoje Kerović (Ministry of Science and Technology RS), Ljubo Glamočić (Ministry of Industry and Technology RS), Edin Zametica (Ministry of Energy, Mining and Industry FBiH), Kemal Jogić (Ministry of Labour and Social Policy FBiH), Milan Latinović (Ministry of Health and Social Protection RS), Dženana Hodžić, M.Sc. (DEI), Valida Repovac, M.Sc. (DEI).

6. Sectoral Policies:

Dušanka Divčić (Ministry of Foreign Trade and Economic Relations BiH), Božo Blagojević (Ministry of Communications and Transport BiH), Ljubo Glamočić (Ministry of Industry and Technology RS), Edin Zametica (Ministry of Energy, Mining and Industry FBiH), Mervana Hadžimurtezić (Ministry of Agriculture, Water Management and Forestry FBiH), Milan Ninčić (Ministry of Agriculture, Water Management and Forestry RS), Ljubo Glamočić (Ministry of Industry and Technology RS), Esad Osmanbegović (Ministry of Transport and Communications FBiH), Darija Ramljak, M.Sc. (DEI), Radmila Nogo (DEI), Nada Bojanić (DEI), Kenan Tahmišćić (DEI).

7. Justice and Home Affairs:

Sandra Malešić (Ministry of Justice BiH), Bakir Dautbašić (Ministry of Security BiH), Džemaludin Mutapčić (Ministry of Justice FBiH), Duško Radošević (Ministry of Justice RS), Hajrudin Hodžić (Ministry of the Interior FBiH), Jovan Spajić (Ministry of the Interior RS), Suad Musić (DEI), Janja Njavro, M.Sc. (DEI), Aleksandar Košarac (DEI).

8. Economic, Fiscal and Financial Affairs and Issues:

Amer Bekrić (Ministry of Foreign Trade BiH), Šefika Hafizović (Indirect Taxation Authority BiH), Nataša Lučić (Statistics Agency BiH), Borislav Matić (State Institutions Audit Office BiH), Radmila Mihić (Ministry of Finance RS), Mira Bradara (Ministry of Finance FBiH), Kenan Tahmišćić (DEI), Maja Dimitrijević, M.Sc. (DEI), Svjetlana Đokić (DEI), Milkica Milojević (DEI)

## EU INTEGRATION STRATEGY OF BOSNIA AND HERZEGOVINA

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## Abbreviations

BAS – Bosnian-Herzegovinian Standard  
GDP – Gross Domestic Product  
CAP – Common Agricultural Policies  
CARDS - Community Assistance for Reconstruction, Development and Stabilisation  
CCP – Common Commercial Policy  
CEE – Central and Eastern Europe  
CEN - Comité Européen de Normatisation / European Committee for Standardization  
CENELEC - Comité Européen de Normatisation Electrotechnique / European Committee for Electrotechnical Standardization  
CET – Common External Tariff  
CETAS – Central European Air Traffic Services  
CFP – Common Fisheries Policy  
CFSP – Common Foreign and Security Policy  
CIPS- Citizen Information Protection System  
COE – Council of Europe  
COSAC – Conference of Community and European Affairs Committees of Parliaments of the European Union  
CRPC - Commission for Real Property Claims of Displaced Persons and Refugees  
CTF – Consultative Task Force  
DEI – Direction for European Integration  
DERK – Državna elektroenergetska regulatorna komisija / State Electrical Energy Regulatory Committee  
DG Competition – Directorate General  
DKP – Diplomatsko-konzularna predstavništva / Diplomatic and Consular Missions  
EA – European Accreditation  
EAGGF – European Agricultural Guidance and Guarantee Fund  
EAP – Evropski administrativni prostor / EAA – European Administrative Area  
EBU – European Broadcasting Union  
EC TAER – European Commission Teacher Assistance  
ECDL – European Computer Driving Licence  
ECSEE – Energy Community of South East Europe  
EEA – European Economic Area  
EEZ – Evropska ekonomska zajednica / EEC – European Economic Community  
EK – Evropska komisija / EC European Commission  
EMAS – Environmental Management and Audit Scheme  
EMU – European Monetary Union  
EN – environmental  
ERA – European Research Area  
ERM – Exchange Rate Mechanism  
ERS – Elektroprivreda Republike Srpske / Electrical Power Industry of Republika Srpska  
ESDP – European Security and Defence Policies  
ETSI - European Telecommunications Standards Institute  
EU PECA - Europe Agreement on Conformity Assessment and the Acceptance of Industrial Products  
EUFOR – European Forces  
EUPM – European Union Police Mission  
EZ – Evropska zajednica / EC – European Community

FDI – Foreign Direct Investment  
 FIPA – Foreign Investment Promotion Agency  
 FVO – Food and Veterinary Office  
 GATS – General Agreement on Trade in Services  
 GATT – General Agreements on Tariffs and Trade  
 GIS – Geographic Information Systems  
 HRC – Human Rights Chamber  
 IAF – International Accreditation Forum  
 ICC – International Criminal Court  
 ICT – Information and Communication Technologies  
 ICTY – International Criminal Tribunal for the Former Yugoslavia  
 IEC - International Electrotechnical Commission  
 IFAN – International Federation of Standards Users  
 IFOR – Implementation Forces  
 IKT – Informaciono-komunikacione tehnologije / ICT Information and Communication Technologies  
 ILAC – International Laboratory Accreditation Cooperation  
 IMF – International Monetary Fund  
 INTOSAI – International Organisation of Supreme Audit Institutions  
 IOSCO – International Organisation of Securities Commission  
 IPA - Instrument for Pre-Accession Assistance  
 IPTF – International Police Task Force  
 ISO – International Organisation for Standardization  
 ISPA - Instrument for Structural Policies for Pre-Accession  
 JRTVS – Javni radio-televizijski servis / PBS – Public Broadcasting Service  
 MCPFE - Ministerial Conference on the Protection of Forests in Europe  
 MLA – Multilateral Agreement  
 MONUC – United Nations Mission in the Democratic Republic of Congo  
 MSP - mala i srednja preduzeća / SME – Small and Medium Enterprises  
 NARICS – National Academic Recognition Information Centres  
 NATO – North Atlantic Treaty Organisation  
 NCA – National Competition Authorities  
 NEAP –National Environmental Action Plan  
 NOS - Nezavisni operater sistema / ISO – Independent System Operator  
 NPAA – National Programme for the Adoption of the *Acquis*  
 NRA – National Regulatory Authorities  
 NTCS – New Computerised Transit System  
 NVO – nevladine organizacije / NGO – non-governmental organisations  
 ODIHR – Office for Democratic Institutions and Human Rights  
 OECD – Organisation for Economic Cooperation and Development  
 OHR – Office of the High Representative  
 OIE – Office International Des Epizooties / World Organisation for Animal Health  
 OIML – Organisation Internationale de Metrologie Legale / International Organisation of Legal Metrology  
 OSA – Obavještajno-sigurnosna agencija / Intelligence and Security Agency  
 OSCE – Organisation for Security and Cooperation in Europe  
 PA – Paying Agencies  
 PAR – Public Administration Reform  
 PECA - Protocols to the Europe Agreements on Conformity Assessment and Acceptance of Industrial Products  
 PDV – Porez na dodatu vrijednost / VAT – Value Added Tax

PIC – Peace Implementation Council  
PIK – Privremena izborna komisija / TEC – Temporary Electoral Committee  
PRSP – Poverty Reduction Strategy Paper  
PSP – Proces stabilizacije i pridruživanja / SAP – Stabilisation and Association Process  
RAK – Regulatorna agencija za komunikacije / CRA – Communications Regulatory Agency  
REREP – Regional Environmental Reconstruction Programme for South East Europe  
RTD – Research Technology Development  
SAP - Stabilisation and Association Process  
SAPARD – Special Accession Programme for Agriculture and Rural Development  
SECI – Southeast European Cooperative Initiative  
SES - Single Economic Space  
SFOR – Stabilisation Forces  
SIPA – State Information and Protection Agency  
SIS – Schengen Information System  
SME – Small and Medium Enterprises  
SPS – Agreement on Sanitary and Phytosanitary Measures  
SSP – Sporazum o stabilizaciji i pridruživanju / SAA Stabilisation and Association Agreement  
TBT – Agreement on Technical Barriers to Trade  
TEN - Trans-European Networks  
TIR – Transports Internationaux Routiers / International Transporters of Goods  
TRIPS – Agreement on Trade Related Aspects of Intellectual Property Rights  
UKZP – Ured za konkurenciju i zaštitu potrošača / Office for Competition and Consumer Protection  
UNAMSIL – United Nations Mission in Sierra Leone  
UNCED – United Nations Conference on Environment and Development  
UNDP – United Nations Development Program  
UNHCR – United Nations High Commissioner for Refugees  
UNMEE – United Nations Mission in Ethiopia and Eritrea  
UNMIL – United Nations Mission in Liberia  
UNMISET – United Nations Mission of Support in East Timor  
VM – Vijeće ministara / CoM – Council of Ministers  
WB/IBRD – World Bank – International Bank for Reconstruction and Development  
WIPO – World Intellectual Property Organisation  
ZEKC – Zajednički elektroenergetski centar / Joint Electrical Power Centre  
ZOP – Zakon o preduzećima / Law on Enterprises  
ZOPB – zakon o preduzećima Brčko Distrikta BiH / Law on Enterprises in the Brčko District of BiH  
ZOPD – Zakon o privrednim društvima / Law on Business Societies  
ZZB – Zemlje Zapadnog Balkana / WBC Western Balkans Countries



## EU integration strategy of Bosnia and Herzegovina

### Foreword

EU accession is a strategic priority for Bosnia and Herzegovina. Aspirations of Bosnia and Herzegovina to acquire full membership in the EU is based on a wide political consensus. The Declaration on Special Relations with the EU was adopted in 1998, and in 1999 Decisions by the BiH Council of Ministers<sup>1</sup> and the Parliamentary Assembly,<sup>2</sup> As well as the statement made by heads of political parties.<sup>3</sup> The Parliamentary Assembly adopted Conclusions which, inter alia, present the presence of a full political consensus that EU membership is the highest possible priority for BiH.<sup>4</sup>

Following the Feasibility Study and the Programme for Implementation of 16 Priority Areas,<sup>5</sup> the current stage is that when BiH needs to develop its strategic documents and define its future path towards the EU.

At its 33<sup>rd</sup> session, held on 3 December 2003, the BiH Council of Ministers adopted a decision, tasking the BiH Directorate for European Integration to establish and coordinate the work of seven consultative working groups, in order to develop the EU Integration Strategy of BiH. The working groups were made up of civil servants – experts in different fields included in the Strategy, European integration coordinators from FBiH, RS and the Brcko District BiH, and staff from Entity ministries appointed to represent their institutions in the process of preparing the Strategy. The BiH Council of Ministers passed a Conclusion on announcing a public invitation to external experts, in order to attract as many experts from across the country as possible.

Due to the specific nature of this task (and the fact that this was the first time that public procurement procedures were used for services in development of strategic documents), prior to announcing the public competition, the BiH Directorate for European Integration defined criteria for participation of external experts. Criteria were, inter alia, related to knowledge of EU policy and law, English, and previous experience in development of strategic documents.

Public competition for offers for services in developing strategic documents for accession of BiH to the EU was published on 23 January 2004, in daily newspapers and at the Directorate's web site. The Council of Minister's competition committee confirmed that of 105 applicants, 80 met the criteria. The Directorate has data on all the experts and their respective fields of expertise, in order to use their services in future activities on developing similar strategic documents.

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<sup>1</sup> Decision on the Initiative for Accession of BiH to EU

<sup>2</sup> Resolution on European Integration and Stability Pact for South-East Europe

<sup>3</sup> Statement No. 01-50-3-180/04 dated 18.2.2004, whereby heads of parties represented at the Parliamentary Assembly of BiH '*confirm our readiness for political consensus and further democratization of Bosnia and Herzegovina within the constitutional order, with the aimed of entering the European Union and Partnership for Peace.*'

<sup>4</sup> Conclusions of both Houses of the BiH Parliamentary Assembly No. 01-020661/03, dated 23.4.2003.

<sup>5</sup> Programme of Activities for Implementation of Priorities for 2004 contained in the EC Report to the EU Council of Ministers on Feasibility of Negotiations Between BiH and EU on SAA

Heads of consultative working groups agreed on methodology and organisation of work. Within their groups, they selected external experts according to their fields of expertise and requested the Directorate to enter temporary contracts with the selected experts. Experts engaged in development of BiH Integration Strategy were those who accepted the terms offered.

External experts submitted their proposals from August to December 2004. Their contributions were presented, discussed and adopted within the consultative working groups.

Most of the contributions reflected the situation in BiH as of the end of 2004, and other contributions were updated at a later stage.

The group working on the overall presentation of the Strategy (consultative working group 1) undertook to adapt the entire text of the Strategy to the structure and content approved by the BiH Council of Ministers. Contributions by external experts were taken as the basis, later adapted by the consultative working groups and the editorial board to the actual strategic aims of the documents. All the contributions by sectors give an overview in the following areas:

- Situation in BiH
- Situation in the EU
- Necessary measures

The fact that BiH opted for developing an EU integration strategy at such an early stage reflects its intention to accelerate the integration process and assume full ownership of the process. While working on the Strategy, convergence with priorities from other strategic documents was taken into account, particularly those from the BiH Mid-Term Development Strategy (PRSP), BiH Public Administration Reform (PAR), Millennium Development Goals, and European Partnership.

EU Integration Strategy of Bosnia and Herzegovina is a comprehensive document, covering the period until the actual full EU membership. Other strategic documents, such as the European Partnership, are only short-term or mid-term accession programmes. EU Integration Strategy of BiH is also a significant step towards assuming ownership over reforms yet to come.

The EU Integration Strategy of Bosnia and Herzegovina is prepared in the year marking the tenth anniversary of the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (The Dayton Peace Agreement), which was agreed in Dayton on 21 November 1995, and signed in Paris 14 December 1995. For Bosnia and Herzegovina, the past decade has been marked by post-war reconstruction and development, strengthening of democracy and the rule of law, economic transition, and construction and strengthening of state institutions. The forthcoming period will be dedicated to intensification of relations between BiH and the EU within the European integration process, which will be contributed to by, among other things, measures presented in this Strategy.

## Introduction

EU Integration Strategy of BiH reflects the overall political aims and interests of Bosnia and Herzegovina. EU development has shown that each country must find its own way of adopting common rules, with EU institutions assessing it on the basis of its credit and merit. The principal aim of this Strategy is to ensure full understanding and common approach to commitments to be fulfilled in the European integration process.

EU Integration Strategy of BiH is the basic document that the entire EU accession process will be based on. On the basis of research of mutual links between political, economic, and other elements, the Strategy indicates basic aims and avenues of action, and it encompasses a set of general guidelines for the work of state and entity institutions, and other stakeholders involved in the integration process.

The Strategy also puts the current integration activities into a consistent framework, it sets priorities and key elements of the adjustment process, and it identifies key development challenges.

Since the Strategy is a document that sets goals to be attained until full EU membership of BiH, the document does not provide any deadlines for those goals. Plans will be devised on the basis of the Strategy, to set goals, which will provide specific definitions of policies and programmes by sector. Programmes are to be understood as documents which will set goals, activities, paths, resources, holders of activities and deadlines for goals within specific areas or sectors (e.g. programme for translation of *acquis communautaire*,<sup>6</sup> programme of adoption of *acquis communautaire* in the field of competition, programme of development of negotiation positions). On the basis of the Strategy and the plans, annual programmes of activities will be developed by institution, with specific deadlines for activities to be completed.

Considering the evolutionary character of the European integration process, the aim of necessary measures was to achieve optimal solutions that will contribute to rapprochement of Bosnia and Herzegovina to the EU.

Integration of BiH into the EU is an important process that requires fundamental societal changes. That is why implementation of the Strategy is only possible with the

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<sup>6</sup> The term ***acquis communautaire*** is of French origin and it is interpreted as the overall legal heritage of the Community. *Acquis communautaire* means the overall rights, duties and commitment to the Community (member states and the Community), accumulated since its foundation or the Community has acquired (achieved) until today in the legal and political sense. Formally, *acquis* includes primary sources (founding and revising treaties, and general legal principles of the Community), international treaties, international legal tradition, and general legal principles, and secondary sources (acts by EC/EU institutions) and an integral part of *de facto* source of EU law is also the jurisprudence of the European Court of Justice, as well as all other commitments (political, arising from negotiations, etc.) entered into by member states as part of EU activities.

involvement and full engagement of all the factors of society, of public, private and civil sectors, in the programme of integration of BiH into the EU, which is also its goal.

## **1. Basic aims of the Strategy**

### **1.1. Priority interests of BiH**

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.

BiH shares the aims, values and principles of the EU and will take the necessary steps to be able to accept the commitments that EU membership brings with it. BiH will develop a society based on a system of values and achievements of European democracies. In that, goals include, in the widest sense, preservation and strengthening of peace on the European continent, economic advancement and growth based on a free market, for the benefit of all its citizens, and strengthening and promotion of social security and wellbeing, as well as cultural cooperation.

The European integration process requires a comprehensive adjustment of policies, institutional frameworks and the legal system, in order to attain European standards in all areas. Furthermore, the process of legal harmonisation and acceptance of European standards entails considerable internal reforms, general consolidation of the system, stronger economic development and more intensive foreign policy activity in areas which impact the dynamics of relations between BiH and the EU. The perspective of EU membership is a very powerful incentive for continuing the reforms already under way in BiH, and a mobilising force for the processes which are to create the creation of economic, legal, organisational, and social structures capable of acting in compliance with EU rules. With the aim of accelerating the process of accession of BiH into European integration trends, an active role of all the segments of society is indeed necessary.

Full membership in the EU will reflect on all segments of political and economic life. Economic implications will certainly be evident, but social, political, security, cultural and all other implications cannot be neglected. Political consequences of accession to the EU are primarily linked with changes in decision-making mechanisms in numerous areas, particularly through renouncement of one part of state sovereignty in it. On the other hand, EU membership opens possibilities for BiH to participate in key decisions related to future development of the Union.

BiH is willing to accept the founding treaties and the entire *acquis communautaire*, whose implementation it will participate once it has become a full member state. With reforms already under way, BiH wishes to create and maintain a stable economic environment and implement further measures, in order to eventually enter the Economic and Monetary Union. On that path, BiH will afford due attention to the social dimension, acceding to and implementing the European Social Charter.

BiH wishes to use the advantages of cooperation in the field of culture in Europe, thus preserving its own cultural heritage. BiH supports initiatives aimed at better mutual

understanding and cultural cooperation. In that, projects in education in language, culture and cultural heritage play an important role. Particular attention is due in relation to cooperation with organisations in member states dealing with culture, education, research and development. It is necessary to create conditions for the best use of EU funds to secure full preservation of national cultural heritage.

In the area of foreign policy, BiH will uphold goals and principles applicable in the Union. In defining its foreign policy, BiH affords special attention to good relations with its neighbours in Western Balkans,<sup>7</sup> with a conviction that solid political, economic, and cultural cooperation is of great importance on the common path towards full EU membership. Relations between the EU and BiH are constructive and based on mutual understanding. Challenges of enlargement and development of the EU are very important for BiH, as they require continuous cooperation, coordination and adjustment of all segments of society in its full integration into the EU. Not diminishing the importance of all other areas, here we underscore some of the areas of particular importance for BiH and its citizens, irrespective of membership.

**Energy:** The issue of energy is very important, in view of the energy potential of BiH, as well as in the context of regional cooperation, as BiH is one of the state signatories of the Athens Memorandum.<sup>8</sup> On the basis of establishment of Energy Community for Southeast Europe, a possibility is open for BiH to integrate into the energy market of the Union, irrespective of the phase of the Stabilisation and Association Process it is in. BiH will achieve this through adoption of a particular part of the *acquis* related to energy, environmental protection, competition, and renewal of energy resources.

**Agriculture:**

BiH will take all the necessary measures to ensure placement of its agricultural produce at the EU common market. BiH wishes to be fully prepared for the acceptance of the EU Common Agricultural Policy and its instruments (CAP funds), to be used by its farmers in the future. In the forthcoming period, rural development will be one of the priorities for BiH.

**Transport:**

BiH wishes to be integrated in the European transport network, thus securing adequate infrastructure, which is also the precondition of greater flows of foreign direct investments into the country, of benefit for faster economic growth and development. BiH has already taken part in developing regional studies and preparation of priority projects, as well as in construction and modernisation of border crossings. It is necessary to further develop regional cooperation in order to resolve issues of lacking transport licences for the surrounding countries.

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<sup>7</sup> The term *Western Balkans* is part of the EU political operations jargon – reserved for *potential candidate* countries included in PSP. In addition to BiH, Western Balkans include Croatia, Serbia and Montenegro, Macedonia and Albania.

<sup>8</sup> Memorandum of Understanding on Regional Energy Market in Southeast Europe and Its Integration Into the Internal Energy Market of the European Union, the Athens Memorandum 2003, was signed on 8.12.2003 in Athens, by representatives of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania, Turkey, State Union of Serbia and Montenegro, Macedonia, UNMIK for Kosovo, EU, and Greece, Italy, and Austria, as political participants to the process, Special Coordinator of the Stability Pact as sponsor, and Hungary, Moldova and Slovenia as observers.

**Environment:**

It is very important for BiH to adopt the *acquis* in the area of environmental protection, in order to protect and preserve its water, soil and air, in compliance with the highest standards, and in order to secure a healthy environment for its citizens. This will require considerable investments and time. BiH has already acceded to the majority of international treaties on environmental protection.

**Combating organised crime**

BiH has built an institutional framework for combating organised crime. BiH has acceded to international multilateral and bilateral treaties on cooperation in combating terrorism, organised crime, and illegal drug trafficking, it is also member of INTERPOL and SECI.<sup>9</sup> BiH is a constructive partner in combating organised crime in the region and beyond.

**Liberalisation of the visa system:**

Measures that BiH institutions have taken and continue to take in the areas of asylum, migration, and combating organised crime, have led to the beginning of considerations to loosen the visa requirements for citizens of BiH, in meetings between BiH and EU representatives. BiH is taking all the necessary measures in order to have EU entry visas for its citizens abolished. Activities taken by BiH in this area will allow its citizens to enjoy equal freedom of movement to that enjoyed by EU nationals.

BiH has received considerable emergency aid by the EU, which has engendered results. BiH institutions are taking the necessary measures, but EU assistance is expected to be needed in the future as well. Humanitarian aid supplied by the EU has generally been transformed into technical assistance, aimed at further development and strengthening of capacities for EU integration. EU has the largest and the most important presence in BiH, which clearly illustrates its interest in our country.

**1.2. Benefits of BiH's accession to EU**

Benefits from EU membership are political, economic, and social. Membership means an expansion of the area of peace, stability and security, it contributes to faster economic growth, development of trade, and job creation, with the use of Union Funds, as well as better quality of life. Building a reputation at the international arena is of particular importance.

Moreover, the significance of belonging to a community of prosperous nations is also in the fact that in addition to the citizenship of its own country, BiH nationals will also have EU citizenship. This means that BiH nationals will enjoy freedom of movement, employment and residence in the territory of member states, the right of vote and participation at elections for the European Parliament, as well as at local elections in any member state they may reside at, and the right to protection by diplomatic and consular authorities of all the member states.

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<sup>9</sup> Agreement on Cooperation in Prevention and Combating Cross-Border Crime, with the Founding Charter of the Regional SECI Centre for Combating Cross-Border Crime in Southeast Europe.

BiH representatives will be present at all the key EU institutions, so BiH can have its commissioner, its representatives at the European Parliament and various EU committees, such as the Committee of Regions.

As BiH is an integral part of the European continent, its membership will contribute to a completion of a larger whole of the European family of nations. In addition to this, membership of BiH is also important for the expansion of the EU market, not in terms of size and numbers, as much as for the compact unity of the EU internal market. BiH enters into the EU territory its natural resources, of which water is particularly important. The use of BiH territory will be of considerable importance in shortening communications from Central Europe to the Adriatic Sea. Its specific structure of different cultures and religions will be a contribution to the cultural mosaic of the EU. Together with other countries in the Stabilisation and Association Process, BiH will help in the creation of preconditions for stability in the region. BiH can offer the Union the following specific elements:

### **Market**

BiH will open its market to the EU, thus enlarging the Union's market. BiH membership in the EU will not be detrimental to workers of the member states, as the entire population of BiH is approximately 0.8% of the population of the Union. As highly trained work force with well developed skills, BiH workers are an asset to employers from EU countries. Their products could be offered from BiH to the Balkan region and internationally. New jobs will be created not only in BiH, but also in member states, due to the establishment of trading links and other forms of cooperation with BiH.

### **Natural resources**

As for the natural resources available in BiH, the most important is water, whose exploitation allows BiH to export electricity. BiH also has vast areas of forests, with high quality timber. There are also considerable deposits of coal and iron ore.

### **Communications and infrastructure**

BiH is located on the shortest route between EU member states and its position links European communication lines. With full integration into the EU, BiH will be integrated into the European area, with integrated energy and infrastructure networks.

Work on the construction of freeways and parts of the highway along the 5C corridor of the Trans-European Road Network. With removal of borders, this will facilitate communication between Central European countries and the Adriatic, thus also facilitating development of trading relations among individual member states. Along this route, railroad transport across BiH can be used for transportation and deliver of all types of goods from the Adriatic to Central Europe and vice versa. The territory of BiH is also important as a fly-over route towards southern Europe and further to the Middle East and Asia. BiH is already a member of Eurocontrol, European Organisation for Safety of Air Navigation, which will play an essential role in the development of the Single European Sky.

Development of the regional energy trade network in Southeast Europe, which BiH is a part of, and its links with the European power system, will also integrate the Greek market into the internal power market of the EU.

### **Richness of cultures**

With its specific multi-ethnic and multi-religious structure, BiH will contribute to the diversity of religions and cultures making up the enlarged EU. Throughout centuries,



there have been different cultures, traditions and lifestyles in BiH, which do have common traits, but which have also preserved their peculiarities.

The EU respects different cultures and languages and strives towards developing and preserving European cultural heritage, with full consideration for the identity of each member state. Within the context of enlargement, this diversity of cultures and nations in the united Europe will be its strong voice in the international political, economic, and cultural arena.

### **Stability and security**

One of the key aims of the EU is to stabilise the continent and thus, as a secure unit, to contribute to the stability of other regions in the world. That is why it is particularly important for the EU to finally stabilise the region of Southeast Europe, where the last decade of the 20<sup>th</sup> century brought considerable turmoil. An important reason why the EU offers BiH and other countries in the region the possibility of membership is the creation of conditions for stability and security, in order to prevent future conflicts and to preserve peace across the European continent.

There will be close cooperation between BiH and other member states in issues of immigration and asylum, as well as between BiH police and police forces of other member states.

### **1.3 Principles the EU is based on**

The European Union is a supra-national association of states, a *sui generis* structure developed after World War 2, as the result of a desire of European countries to prevent further conflicts on European soil. The unification plan first meant that the coal and steel industry of Germany and France, i.e. the basic resources of the wars until that time, would be placed under common control. Thus, the Founding Treaty of the Coal and Steel community was signed in Paris in 1951, and thus marked the beginning of European integration. The founding states of the Community were: Germany, France, Italy, Belgium, Luxembourg and Holland.<sup>10</sup> Treaty of the European Economic Community (EEC) was signed in Rome in 1957. Signing of the Treaty of the European Union in Maastricht in 1992 introduced two new key elements: creation of an economic and monetary union and intensification of political unification by strengthening the institutions. With this Treaty, EEC became the European Communities, and became part of the European Union. TEU created a new structure of political and economic action, known as the Three Pillars of the EU: I Area of EU Policies, II Common Foreign and Security Policy of the Community, III Cooperation in Justice and Home Affairs.

The process of economic integration contributed to the development of political integration and the creation of common institutions. There are five principal institutions: European Council is the name of meetings of heads of states or governments of member states and is the highest political body of the EU; Council of the European Union is the council of relevant ministers of member states; European Commission is the

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<sup>10</sup> The first new members joined the Community in 1973: Denmark, Italy and Great Britain. The next enlargement followed in 1981, when Greece became a full member, followed by Spain and Portugal in 1986. German unification in 1991 expanded the territory of the Community. Austria, Finland and Sweden joined in 1995, and 2004 saw the greatest enlargement, adding 10 new member states to the EU: The Czech Republic, Slovakia, Estonia, Latvia, Lithuania, Hungary, Poland, Cyprus, Malta, and Slovenia. Countries with candidate status are: Bulgaria, Croatia, Romania, and Turkey. Switzerland, Norway and Iceland do not want to enter.

executive body of the EU and it represents interests of the Union as a whole; European Court of Justice interprets laws of the Community and ensures their uniform application in all member states. In addition to these, there are other special bodies: European Court of Auditors, European Central Bank, European Economic and Social Committee, Committee of Regions, European Investment Bank, European Ombudsman, and a number of specialised agencies and offices.

Introduction of the European Community into the EU organisational structure led to a departure from traditional international relations. Member states transfer to the EU part of their sovereign decision making rights in certain areas, by means of the founding treaties, in order to allow the Union to act in the common interest of all member states. Member states do not lose that part of the transferred sovereignty, as it, in principle, rests on the citizens, whose interests are, in addition to their own state, also represented by institutions of the Union.

In exercising its competences, the EU limits its activities to the necessary level, in compliance with fundamental principles of its work. Those are the principles of assignment of competence, the principle of subsidiarity and the principle of proportionality.<sup>11</sup>

As a result of further political integration of the European Union, text of the EU Constitution was adopted in Rome in 2004. Basic values of the Union, accepted by all its member states, imply full respect for human dignity, freedom, democracy, the rule of law, equality, gender equality<sup>12</sup> and respect for human rights. Purpose of the Union is to promote peace, values of the EU and wellbeing of its peoples, and to its citizens the Union offers an area of freedom, security and justice, with no internal borders, and a single competitive market.

Relationship between the EU and its member states is based on the principle of fair cooperation and respect of equality of all member states. Competences and cooperation between the EU and member states includes as follows:

- sole competence: customs union, competition regulations, monetary policy, preservation of marine-biology resources, common trade policy, international treaties related to common regulations;
- common competence: social policy, economic, social and territorial cohesion, agriculture, environment, consumer protection, transport, energy, security and justice, public health safety, research and technological development;
- complementary activities; health protection and improvement, industry, culture, tourism, education, youth, sports, civil protection, administrative cooperation, employment policy.

#### **1.4 Stabilisation and Association Process**

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<sup>11</sup> On principles, see 1.5 Implications of the integration process on legal order of member states.

<sup>12</sup> DIRECTIVE 2002/73/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. See also "The Program on Equal Opportunities for Women and Men (EOWM) in the European Union accession process (2002 – 2004)."

In 1997, the EU Council of Ministers established a common strategy for countries of the Western Balkans, called the “regional approach”. Within this approach, countries are asked to fulfil conditions for developing bilateral relations with the EU: democratisation, respect for human rights and freedoms, creation of the rule of law, privatisation of state-owned property, and introduction of market economy. Cooperation with the International Criminal Tribunal for former Yugoslavia is a particularly important condition.

Following the events in Kosovo in 1999, in its policy towards Western Balkans, the EU focused on greater stabilisation of countries of the region and their faster socio-economic development. That is why in 1999, the EU designed a new concept of association<sup>13</sup> for five countries of the region (Bosnia and Herzegovina, Albania, Croatia, Serbia and Montenegro, and Macedonia) through SAP.<sup>14</sup> The Process emphasizes components of stabilisation, regional cooperation and development of good relations with neighbours. SAP offers countries in the region an European perspective, with the fulfilment of political, economic and administrative criteria, and the pace of accession to the Union depends on the progress of each individual country.

There are three key elements in the Stabilisation and Association Process: Stabilisation and Association Agreement (SAA), CARDS<sup>15</sup> as an instrument of EU financial assistance to the countries of the region, and a network of preferential trading agreements. The fourth element of SAP, regional cooperation, may also be considered a condition.

The legal basis for SAA is Article 310 of the TEU, and it is a new generation of agreements on contractual relations between member states and states that wish to become full members of the EU. The evolution clause of the Agreement confirms the status of a potential EU candidate. The importance of signing the Agreement is an opportunity to establish and institutionalise contractual relations between BiH and the EU for the first time. The preferential nature of the Agreement should contribute to economic and political stabilisation of BiH and to the establishment of close and long-term links between the contracting parties.

In addition to general principles, the Stabilisation and Association Agreement should include the following areas: political dialogue, regional cooperation, freedom of movement of goods, labour, and capital, freedom of provision of services, entrepreneurship, harmonisation of legislation, cooperation in the area of justice and home affairs, cooperation policies, financial cooperation, and establishment of an institutional framework for monitoring the implementation of the Agreement. This Agreement will not require BiH to implement the *acquis communautaire* in full. The focus is rather on the respect for key democratic principles and key elements of the *acquis*, which allow for proper functioning of the EU common market. This will allow economies of the countries of the region to initiate the process of integration into the EU structures.

In compliance with requirements of the Stabilisation and Association Process, on its way towards the EU, BiH is faced with a series of steps, which entail the fulfilment of membership criteria.

- To pass a decision on the commencement of negotiations for the Stabilisation and Association Agreement,

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<sup>13</sup> Current candidates for full EU membership went through the Association Process, following which they signed the Association Agreement with the EU.

<sup>14</sup> Stabilisation and Association Process

<sup>15</sup> Community Assistance for Reconstruction, Development and Stabilisation, Regulation 2666/2000.

- To establish negotiating teams,
- Negotiations on the Stabilisation and Association Agreement (SAA),
- Initialling and signing the Stabilisation and Association Agreement,
- Entry into force of the Interim Agreement (SAA provisions related to transport and goods trade, applicable prior to ratification),
- Ratification of the Agreement at the European Parliament, the BiH Parliamentary Assembly and parliaments of EU member states,
- Entry into force of the Agreement, fulfilment of the requirements of the Agreement,
- Application for full membership,
- The European Commission prepares its opinion (*avis*) on the application on the basis of responses to questions in the Questionnaire forwarded to BiH authorities,
- EU Council of Ministers adopts the opinion and passes a decision on commencing negotiations with the candidate,
- Negotiations on 31/35<sup>16</sup> chapters of the *acquis communautaire* and preparation of the Accession Agreement,
- Fulfilment of the Copenhagen and the Madrid membership criteria,
- Signing of the Accession Agreement,
- Ratification of the Agreement by the BiH Parliamentary Assembly, national parliaments of EU member states, and the European Parliament,<sup>17</sup>
- EU membership,
- Application of transitional provisions.

At the meeting in Thessalonica on 19 and 20 June 2003, the European Council confirmed the determination of member states to support fully and effectively the European perspective of countries in the Stabilisation and Association Process. An important decision of the Thessalonica summit was the introduction of European Partnership for countries of the Western Balkans, which was announced for BiH in June.<sup>18</sup> European institutions in the Partnership cite short-term and mid-term priorities, to serve as a list of commitments that progress of BiH towards European integration will be measured against. Short-term priorities are presented in form of an Annex to the Programme for 16 priority activities, and the Program for mid-term priorities follows the methodology of a National Program for the Adoption of the *Acquis* (NPAA)<sup>19</sup>.

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<sup>16</sup> For the purpose of negotiations in the last round of enlargement in 2004, candidate states had 29 to 31 chapters of the *acquis communautaire*, whereas in the case of Croatia, in order to facilitate negotiations, in the proposed negotiations framework, the EC proposed 35 chapters, dividing large and demanding chapters. Specific chapters of the *acquis* may be expected to be set for BiH, to be adopted immediately following the negotiations.

<sup>17</sup> In some EU members states, there have recently been referenda on new member states.

<sup>18</sup> Council Regulation (EC) No. 533/2004 of 22 March 2004 or Council Decision of 14 June 2004 on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina 2004/515/ec.

<sup>19</sup> National Programme for the Adoption of the Acquis.

### **1.5. Implications of the integration process on legal order of member states**

Integration into the EU implies considerable changes in legal orders of member states and are conditioned *sui generis* by the nature of the EU as a specific form of international cooperation and integration, which has built its own legal order, different from international or legal order of individual member states. Unlike the norms of international law, which generally do not require either for international legal instruments to be applied directly in national systems, or that they take priority over national law,<sup>20</sup> effectiveness of Community Law is based to a large extent on principles of *direct effect*<sup>21</sup> and *supremacy*<sup>22</sup>. The foundation of these doctrines, derived from the case-law of the European Court of Justice, is the intention that Community Law is applied with the same force and the same impact, i.e. with the same meaning and effect, in relation to all its subjects. This implies, in addition, uniform interpretation and application of its provisions.

The establishment and development of these principles are interpreted by the transfer or division of national competences with institutions of the European Communities and the EU. In essence, through development of cooperation and integration, member states transfer part of their sovereignty to EU institutions. Division or transfer of some of the competences to EC institutions must find its legal expression, primarily in the norms of constitutional level, which allow for interaction of national and EU legal orders. The ambit of these principles is limited by principles of *subsidiarity* and *proportionality*,<sup>23</sup> which correspond, to a large extent, to the issue of state sovereignty of member states, thus making, along with provisions on human rights and Union citizenship, important elements of the EU legal order. The complexity of the EU legal order and its provisions, multi-lingualism, exclusive right of interpretation, and specific legal terminology are directly reflected on administrative and judicial structures of member states, both in terms of organisation and function, on the structure and quality of legal norms, procedures for their adoption, transparency, public participation, deadlines for implementation, etc. All these are reasons due to which constitutional frameworks of member states have been adopted to inter-state and international cooperation in the context of economic integration, and later of political integration as well.

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<sup>20</sup> In this case, generalisation was only aimed at emphasizing the specific nature of EC law. Still, obvious examples of exceptions can be found in international law, such as the 1969 Vienna Convention on Treaties, or the 1980 Vienna Convention on International Trade in Goods, etc.

<sup>21</sup> *Direct effect* of specific provisions of primary and secondary EU law (which meet certain conditions cumulatively) implies that natural and legal persons who have certain rights and duties established by community law, may invoke them and seek protection of those rights before domestic courts, which are obliged to protect them irrespective of norms contained in national law.

<sup>22</sup> *Supremacy* of provisions of EC law means that in case of discord of national legal norms with EC law, the primacy rests with EC law, irrespective of whether the national law was adopted prior to or after the EC provision has come into force, provided it is in relation to an area that falls within the legislative competence of the EC. The principle of supremacy is binding not only for national courts, but indirectly for legislative bodies as well, not to adopt legislation that may be in contravention with EC law, and to abolish any such legislation adopted earlier.

<sup>23</sup> *Subsidiarity* as a principle obliges the Community to act in areas that are not in its sole competence only if member states cannot attain the objectives of proposed action, and can, in view of the proportions and effects, be better effected by the Community. At That, any measure taken by the Community must be *proportionate* to the aim sought to be achieved, such as, for example, the issue of selection of an appropriate legal instrument, binding or not, if such is appropriate to the aim set.

## **1.6. Current situation and activities by BiH**

### **Development of relations between BiH and the EU**

- The beginning of more solid relations between BiH and the EU is linked to 1996, which is when the EU started providing assistance to BiH through PHARE and OBNOVA programmes.
- In 1997, the EU designed its “regional approach” which supported the implementation of the Dayton/Paris and Erdut Agreements, with the aim of securing basic stability in the region, at the same time establishing political and economic conditionality of development of bilateral relations with countries in the region. As of then, BiH has started to enjoy autonomous trading benefits for export of its goods to EU countries.
- In 1998, the EU adopted the Declaration on BiH. The EU/BiH Consultative Task Force (CTF) was established as a joint body to follow the progress of BiH in areas of development of administration, the regulatory framework and basic avenues of action.
- In 1999, by an EU Council Decision, along with Albania, Croatia, Macedonia, and Serbia and Montenegro, BiH was included in the Stabilisation and Association Process (SAP), which served as a political framework for developing relations between the EU and the countries in the process. For the first time SAP indicated the possibility for BiH and the other four SAP countries to integrate into the EU structures. A decision by the BiH Council of Ministers on the initiative for EU accession, and the Resolution by the BiH Parliamentary Assembly on European integration and the Stability Pact for Southeast Europe, created the political preconditions for preparations of BiH to enter European integration to commence.
- In 2000, the EU published its Road Map as a response to the request by BiH for a Feasibility Study on commencement of negotiations on the Stabilisation and Association Agreement (SAA). This document set 18 conditions which BiH was to fulfil prior to the Feasibility Study.
- At its meeting in Feira, Portugal, the European Council stated clearly that all the countries participating in SAP were potential candidates for EU membership. An opportunity was provided for BiH for a customs exemption for its industrial and most of its agricultural products to be offered in the EU market.
- In 2001, the EU Country Strategy Paper 2002-2006 was adopted for BiH. This Strategy defines priority areas for EU to provide technical assistance in, through CARDS programmes.
- In 2002, BiH “essentially fulfilled” the Road Map.
- In March 2003, the European Commission presented to BiH institutions a total of 346 questions related to political stability, democracy, human rights protection, the economic situation, situation in the area of justice and home affairs, environmental protection, etc.
- In 2003, at the Thessalonica Summit, the European Council reiterated its determination to provide full and effective support to the European perspective of the SAP countries, emphasizing that BiH, along with other SAP countries, was to become an integral part of the EU once they have fulfilled the criteria set for that purpose. At the same time, SAP was considerably upgraded and enriched by new elements taken from the enlargement process. A political dialogue between the EU and BiH was launched.

- In November 2003, on the basis of answers provided, the European Commission gave its opinion on the Feasibility Study,<sup>24</sup> taking into account, in particular, the readiness of BiH institutions to meet political, economic, and, especially, democratic conditions.
- The Feasibility Study then identified 16 priority reforms, wherein substantive progress would serve as the basis for the European Commission to recommend to the EU Council to commence negotiations on the Stabilisation and Association Agreement.
- Following the publication of the Feasibility Study, the BiH Council of Ministers adopted its 2004 Programme of Action for Implementation of Priorities set by the Feasibility Study. This Programme was supported by the BiH Parliamentary Assembly, as well as political parties. A new ambience was created in BiH, as the European integration process became a priority, and understanding of it generally spread across all segments of society, from politics to the media.
- In 2004, the European Partnership for BiH was published – a document stating short-term and mid-term priorities related to preparations of BiH for further integration into the EU, and it serves as a list of commitments against which progress is to be measured.
- BiH signed the Framework Agreement which opened access to Community Programmes as of November 2004.
- In 2004, though the ALTHEA operation, EUFOR - the EU forces took over the military peacekeeping operation in BiH, from the NATO SFOR mission.

### **Negotiations on SAA**

The mechanism used for the process of fulfilment of priorities and monitoring is that of meetings of the Consultative Task Force (CTF), which includes representatives of BiH and the EU. For the purpose of SAA negotiations, there will be a modification of CTF, to derive working groups and negotiating teams from it.

The SAA negotiations stage entails intensive reforms in the country. That is why particular attention is required in relation to preparations of negotiating teams and negotiating positions. In that, it is particularly important to intensify activities on strengthening personnel and institutional capacities in BiH on all levels. Persons to prepare negotiating positions and to enter negotiating teams will be selected from among the best and most capable experts. Negotiating teams will be responsible for consistent implementation of negotiating positions. Examples of countries which have already completed their EU negotiations indicate that it is very important for the composition of the negotiating team to remain unchanged throughout all the stages of integration, irrespective of the changes in power that may happen after elections in the country.

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<sup>24</sup> Commission Report to the Council on readiness of BiH to enter Stabilisation and Association Agreement negotiations with the EU.

## **2. Considering the EU accession criteria**

EU is open for all European countries which respect its values and work on their promotion. Article 49 of the TEU states that any European country respecting the principles of freedom, democracy, human rights and fundamental freedoms, and the rule of law, may apply for membership of the Union.

In addition to these principles, there are also specific criteria the fulfilment of which is a membership condition, as adopted at the European Council meeting in Copenhagen in 1993, as follows:

- Political criterion – stability of institutions guaranteeing democracy, the rule of law, respect for human rights and minority rights,
- Economic criterion – existence of a functional market economy, capable of sustaining the competition pressure at the EU market,
- Legal criterion – ability to assume all the commitments of membership, including implementation of goals of the political, economic and monetary union, which means the adoption of the entire *acquis communautaire*.

At the European Council meeting in Madrid in 1995, another criterion, the administrative one, was added to these as the fourth one, referring to the adjustment of relevant administration structures, i.e. strengthening them with a view of more effective adoption and application of EU legislation.

In April 1997, the EU Council adopted its Regional Approach, setting political and economic conditions for the development of bilateral relations with the five countries in the Stabilisation and Association Process. The Regional Approach defined, for the first time, conditions for trading relations and better association with the EU. These conditions included the Copenhagen criteria, with additional requests for better cross-border cooperation and respect for the Dayton Peace Agreement.

Key priorities for BiH are related to its ability to fulfil the criteria that all the candidate states must fulfil prior to full membership. Bosnia and Herzegovina develops its relations with the EU through participation in the Stabilisation and Association Process that has been used since 1999. Following the Copenhagen criteria, this process entails the fulfilment of requirements of political and economic nature, and the ability to fulfil commitments, though specific for BiH during the period of reconstruction, transition and reforms. Fulfilment of the criteria is monitored regularly and the progress achieved is presented in the European Commission's annual Report on the Stabilisation and Association Process. Specific conditions for BiH are being set in the European Partnership.

The first of those requirements is related to the political situation, specifically to the development of democracy and the rule of law, development and strengthening of state executive and legislative institutions, implementation of democratic and fair elections, reform of the armed forces and police, respect for human rights and protection of minorities, return of refugees and displaced persons, as well as return of property. Important areas in this field include regional cooperation with SAP countries and cooperation with the International Criminal Tribunal for Former Yugoslavia.



As for the economic aspect, BiH is required, in particular, to further develop reliable statistics as the basis of any economic planning, combating unemployment and poverty, development of taxation policy and decrease of public spending, and completion of privatisation of large enterprises.

The third requirement is successful implementation of the Stabilisation and Association Process itself, with particular emphasis on items from the Feasibility Study, such as: European integration, developing single economic space, consistent trade policy, customs and taxation reform, integrated energy market, public broadcasters, combat against organised crime, asylum and migration.

The next stage is the overall implementation of the Stabilisation and Association agreement, which is to ensure that the reforms being implemented are in compliance with requirements of the Process, with *acquis communautaire*, and with the overall European integration process.

Within the context of criteria for accession to the EU, BiH will continue with consistent implementation of policies of good neighbourly relations and regional cooperation, thus contributing to creation of a lasting peace, stability and security in the region. In that context, political cooperation, economic integration and cooperation in the region will be strengthened, as well as cooperation in all other areas, especially those of direct impact on the process of European integration of countries in the region.

## **2.1. Political situation**

### **2.1.1. Political criteria of integration**

At the 1993 Copenhagen meeting, the European Council set political criteria for accession to the European Union. The political criterion defined in Copenhagen is included in the Treaty of the European Union as a constitutional principle:

*“The Union shall be founded on principles of freedom, democracy, respect for human rights and fundamental freedoms, and the rule of law.”<sup>25</sup>*

Within the context of integration of BiH to the EU, heads of political parties represented in the Parliamentary Assembly of Bosnia and Herzegovina

*“confirm their readiness for political consensus and further democratisation of Bosnia and Herzegovina within its constitutional order, with the aim of entering the European Union and Partnership for Peace.”<sup>26</sup>*

BiH will confirm this determination through further democratisation and development of its institutions, the rule of law, free and democratic elections, development of civil society by providing conditions for greater political and economic freedoms, and the respect for human and minority rights.<sup>27</sup>

### **2.1.2. Democracy and the rule of law**

#### ***Description of the present situation***

The Constitution defines BiH as a democratic state comprising two Entities, the Federation of Bosnia and Herzegovina and Republika Srpska,<sup>28</sup> and the Brcko District, established by a subsequent arbitration ruling. The European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto are incorporated into the BiH Constitution and are in direct application and with primacy over any other law.<sup>29</sup>

The BiH Constitution guarantees for all citizens: equality in freedoms, rights and duties, equality before law and enjoyment of the same legal protection irrespective of race, sex, language, nationality, religion, social background, birth, education, property, political or other conviction, social position or any other personal feature. Liberty and security of person are inviolable.<sup>30</sup>

Bosnia and Herzegovina is organised on the basis of division of powers:

Legislative power – Parliamentary Assembly of Bosnia and Herzegovina, with the House of Representatives and the House of Peoples;

Executive power – Presidency of Bosnia and Herzegovina and the Council of Ministers of Bosnia and Herzegovina

Judicial power – Constitutional Court of Bosnia and Herzegovina.

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<sup>25</sup> For details, see Article 6, paragraph 1, edited text of the Amsterdam Treaty, May 1999.

<sup>26</sup> Statement No.: 01-50-3-180/04 of 18 February 2004.

<sup>27</sup> Article I, paragraph 2, Constitution of Bosnia and Herzegovina, *Sarajevo: JP NIO SLUŽBENI LIST BiH, 1996, p. 50.*

<sup>28</sup> *Ibid.*, Article I, point 3, p. 50.

<sup>29</sup> *Ibid.*, Article II, point 2, p. 51.

<sup>30</sup> *Ibid.* Article 2, points 3 and 4, p. 52.

### ***Necessary measures***

- Harmonise BiH legislation with all the international and European human rights protection instruments.
- Ensure that all political subjects and institutions in BiH implement and apply provisions of the law on conflict of interest.
- Strengthen institutional capacities on all levels, to ensure full implementation and application of law.
- Improve functioning and stability of institutions guaranteeing further democratisation of society.
- Ensure equal political, social and economic rights of constituent peoples in the entire territory of BiH.
- Continue with reforms already under way, of institutions guaranteeing the rule of law and respect for human rights and rights of minorities.
- Allow for continuous development and elevate the level of knowledge and professionalism of administration.
- Improve comprehensive regional cooperation and strengthen relations with neighbours, and contribute to stability of the region.

### **2.1.3. Legislative power**

#### ***Description of the current situation***

BiH is a parliamentary democracy.<sup>31</sup> There are also parliaments at the level of Entities, at the level of the Brcko District, and at the cantonal level in the Federation BiH.

Bosnia and Herzegovina has a multi-party system.

The Parliamentary Assembly of Bosnia and Herzegovina is a two-chamber legislature:<sup>32</sup> the House of Peoples and the House of Representatives. The House of Peoples has 15 delegates (elected on the ethnic-territorial principle) – two thirds from the Federation BiH (5 Croats and 5 Bosniaks) and one third (5 Serbs) from Republika Srpska. Elections for delegates at the House of Peoples are based on ethnic-territorial principles. The House of Representatives has 42 members – two thirds are elected from the territory of the Federation BiH, and one third from the territory of Republika Srpska. From among its members, both houses elect one representative of each constituent people as the speaker and deputy speakers. The position of the speaker is subject to rotation automatically, with no voting, each eight months starting from the date of election of the speaker. The House of Peoples may be dismissed by a decision of the Presidency or of the House itself.

Competences of the Parliamentary Assembly include: adoption of laws, decision on sources and amounts of funds for work of BiH institutions and international obligations of BiH, approval of budgets of BiH institutions, decisions on approvals for ratification of treaties, other issues necessary for implementation of commitments of the state, or those assigned to it by agreement of the entities.

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<sup>31</sup> Ibid., Article 4.

<sup>32</sup> Ibid., Article 4, paragraph 1.

Both houses of the Parliamentary Assembly have established functional parliamentary committees, both permanent and temporary. There are also joint committees of both houses of the Parliamentary Assembly, of which the Committee for European Integration is particularly important for the European integration process.

The BiH constitution sets the vital legislative role of entity parliaments. Entity parliaments adopt laws within their own competence which are mutually harmonised and harmonised with framework BiH law. The need to harmonise laws in both entities, which are harmonised with umbrella laws adopted at the level of BiH, is particularly important for the European integration process.

Pursuant to 2002 constitutional changes in the Parliament of the Federation BiH, the number of delegates in the House of Representatives was decreased to 98, whereas the House of Peoples has 58 delegates (17 Bosniaks, Croats, and Serbs respectively, and 7 representatives of Others); at the National Assembly of Republika Srpska, which comprises 83 delegates, a Council of Peoples has been established. The Council has 28 members, i.e. 8 members from each of the three constituent peoples and 4 representing Others.

### ***Necessary measures***

- Establish quality and effective coordination of adoption of laws, through activities and work of legislative bodies in BiH, with full consideration of interests of all the parties in BiH.
- Establish quality and effective legislative pace of the Parliamentary Assembly of BiH, to allow gradual adoption of the *acquis communautaire*.
- Adopt priorities when adopting laws bearing “E – mark”.<sup>33</sup>
- Intensify cooperation and coordination between the BiH Parliamentary Assembly and entity parliaments, especially through the establishment of an inter-parliamentary committee, between state and entity parliaments and the Brcko District Assembly.
- Develop cooperation with legislative bodies in the region, parliaments of EU member states and the European Parliament.
- Implement and apply principles of constituent status, equality and non-discrimination of all peoples in the entire territory of BiH, particularly taking into consideration principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol 12.
- Strengthen professional capacities and ensure an adequate number of boards, in compliance with the needs of the European integration process.
- Re-examine and assess capacities of both houses of the BiH Parliamentary Assembly and its administrative services in view of tasks related to European integration.
- Re-examine and assess capacities of working bodies of the BiH Parliamentary Assembly – parliamentary boards and committees.
- Continue staffing and professional development of parliamentary administration.
- Undertake any activities to ensure full understanding of potential benefits and costs of future activities in the EU integration process.

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<sup>33</sup> Laws adopted in compliance with programme instruments for harmonisation of BiH legislation with *acquis communautaire*.

## **2.1.4. Executive power**

### **2.1.4.1. Presidency**

#### ***Description of the current situation***

BiH Presidency comprises three members: one Bosniak and one Croat, directly elected from the territory of the Federation BiH, and one Serb, elected directly from the territory of Republika Srpska.<sup>34</sup>

Among themselves, members of the Presidency appoint a chairman for a period of eight months.

Elections for members of the BiH Presidency are based on ethnic-territorial principles.

The Presidency is competent for: foreign policy, appointments of ambassadors and other international representatives of BiH, withdrawal from treaties with approval of the Parliamentary Assembly, ratification of treaties by BiH, proposals for annual budgets, representation of BiH in international and European institutions and organisations, coordination, as needed, with international and non-governmental organisations in BiH, implementation of decisions of the Parliamentary Assembly.<sup>35</sup>

Each of the entities elects a president and two vice-presidents, from different constituent peoples.

President and vice-president of Republika Srpska are elected by the citizens, by direct and secret ballot, for a term of office of four years. In the Federation BiH, president and vice-president are elected by the Parliament of the Federation of Bosnia and Herzegovina.

#### ***Necessary measures***

- Implement and apply the principles of constituent status, equality and non-discrimination of all peoples in the entire territory of BiH, particularly taking into account principles of the European Convention on Human Rights and Fundamental Freedoms and Protocol 12.
- Ensure the democratic role of the Presidency and resolve the method of election of the Presidency in compliance with European standards.
- Conduct activities to improve relations and cooperation with EU member states and EU as a whole.
- Improve coordination between the entities on issues of common interest.

### **2.1.4.2. Council of Ministers, government of entities and Government of Brčko District**

#### ***Description of the current situation***

Council of Ministers is the executive body of Bosnia and Herzegovina, exercising rights and duties of the government, pursuant to the Constitution of BiH, laws and other regulations of Bosnia and Herzegovina.<sup>36</sup>

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<sup>34</sup> Article V of the BiH Constitution.

<sup>35</sup> Ibid., Article V, point 3.

<sup>36</sup> Article 2, Law on the Council of Ministers of Bosnia and Herzegovina, Official Gazette of BiH, No. 30/03.

In the period from 1996 to 2004, the structure of the Council of Ministers changed three times, both in terms of the number of ministries and in terms of organisation. The principal objective of the changes was to ensure functional operation of the Council of Ministers of BiH. The Law on the Council of Ministers from March 2003 established eight ministries: Ministry of Civil Affairs, Ministry of Foreign Affairs, Ministry of Foreign Trade and Economic Relations, Ministry of Transport and Communications, Ministry of Finance and Treasury, Ministry for Human Rights and Refugees, Ministry of Justice, Ministry of Security; Ministry of Defence was established on 1 December 2003.<sup>37</sup> In 1997, the Council of Ministers comprised three ministries, and in 2000, it comprised six.

Until 2003, the Council of Ministers was chaired by co-chairmen, who were also ministers in one of the ministries and they rotated in office every eight months.

Pursuant to the 2003 Law on the Council of Ministers, the position of the chairman of the Council of Ministers was set for a term of office of four years. In particular, the chairman of the Council of Ministers coordinates and follows activities of BiH institutions related to integration of Bosnia and Herzegovina into the EU.<sup>38</sup>

The changes in structure and competences of the Council of Ministers of Bosnia and Herzegovina in the period 1996-2004 allow for the functioning of BiH institutions in the process of integration of BiH into the EU. In addition to the above, these reforms in the role, structure and organisation of the Council of Ministers provide the precondition for successful trends in the process of creating a functional state of Bosnia and Herzegovina.

Presidency of BiH appoints the chairman of the Council of Ministers, who assumes office following approval by the House of Representatives of the Parliamentary Assembly. The chairman appoints ministers and deputy ministers, who assume office following a confirmation by the House of Representatives. No more than 2/3 of all ministers may be appointed from the territory of FBiH, and 1/3 from RS. The chairman appoints deputy ministers who are not from the same constituent people as the respective ministers.<sup>39</sup>

The Council of Ministers is competent to implement policies and decisions of Bosnia and Herzegovina in areas contained in Article III(1) (4) (5) of the Constitution of BiH.

The law also established permanent bodies of the Council of Ministers: Directorate for European Integration, General Secretariat, and the Legislative Office, as well as two coordination bodies, the Economic Board and the Home Policy Board, which help in more effective execution of duties assigned to the Council of Ministers.

Directorate for European Integration is under direct responsibility of the chairman of the Council of Ministers, and it is the central body responsible for coordination of activities of institutions and authorities of BiH in the process of accession of BiH to the EU.

There is also the Unit for Coordination of Economic Research and Implementation of Mid-Term Development Policy (EPPU - PRSP) under the office of the chairman of the Council of Ministers. The Unit is tasked with coordination of development of socio-economic studies, particularly those required to accelerate the process of integration of BiH into the EU.

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<sup>37</sup> Official Gazette of BiH, No. 43/03.

<sup>38</sup> For details, see the Law on the Council of Ministers of Bosnia and Herzegovina, Official Gazette of BiH, No. 30/03.

<sup>39</sup> Constitution of BiH, Article V, point 4, paragraph I, subparagraphs (a) and (b).

At the level of BiH, there are different autonomous agencies and directorates within relevant ministries, with a significant role in the European integration process: Indirect Taxation Authority, Competition Council, Consumer Protection Council, BiH Statistics Agency, Agency for Promotion of Foreign Investments, Institute for Measurements, Standardisation Institute, Accreditation Institute, Intellectual Property Institute, Veterinary Office, Phyto-Sanitary Protection Office, Food Safety Agency, Public Procurement Agency, Communications Regulatory Agency, Intelligence and Security Agency, Investigations and Protection Agency.

The Council of Ministers and entity governments have translated reform points and requirements of the Stabilisation and Association Process into action plans for implementation of priority reforms. Action plans serve as guidelines and priorities for work of the Council of Ministers in the European integration Process. With a view to successful preparations for negotiations, signing and implementation of the Stabilisation and Association Agreement, the Council of Ministers works continuously on improving institutional capacities and functional development of BiH to assume the commitments arising from the status of a candidate country and EU membership.

A functional relationship between the Council of Ministers and entity governments has been established through the Coordination Board for Development and European Integration, aimed at coordinating economic development and the overall development of BiH. The Board coordinates the fulfilment of priorities in areas of the European integration process, as well as implementation of the BiH Mid-Term Development Strategy (*Poverty Reduction Strategy Paper - PRSP*). The Board meets as required and works on specific priorities.

The BiH Fiscal Council has been established with the aim of strengthening fiscal sustainability of BiH, and coordination has been established among the chairman of the Council of Ministers, prime ministers of entity governments, ministries of finance of the state and the entities, and the governor of the Central Bank.

**Government of Republika Srpska** as executive body performs duties set by the Constitution of Republika Srpska and by the law and is accountable to the National Assembly for performing those duties.

The Government consists of president, vice-presidents and ministers. Members of the Government are elected by the National Assembly on the proposal by a candidate for the president of the Government, i.e. president of the Government. Vice-presidents of the Government can at the same time perform duties as ministers.

The Government and its each member are accountable for their work to the National Assembly. The National Assembly can on the proposal by at least 20 representatives submit motion of no confidence in Government and to its every member. (See the Law on Government of Republika Srpska.)

**The Government of Federation of Bosnia and Herzegovina** as executive body consists of: prime minister / president of the Government of the Federation of BiH with two deputies from different constituent peoples who are elected among ministers and deputy ministers. The prime minister / president of the Government of the Federation BiH and his/her deputies, ministers and the entire Government are accountable for their work to the Parliament of the Federation of BiH, to the president and vice-presidents of

the Federation of BiH. Ministers are accountable to the prime minister / president of the Government of the Federation of BiH, in line with the Constitution of the Federation of BiH. (See the Law on Government of Federation of Bosnia and Herzegovina.)

**The Government of Brčko District** consists of the mayor and head of Departments. Mayor is elected by the Assembly and he/she can be re-elected. Heads of Departments are elected or dismissed based on professional criteria. (See the Statute on Brčko District.)

### ***Necessary measures***

- Analyse effects of harmonisation in laws of BiH with EU policies.
- Continuously assess harmonisation in laws of BiH with the legal framework of the *acquis*.
- Set a legal framework (model) for introduction and implementation of European sectoral policies in domestic law in BiH.
- Constantly prepare and implement consolidated plans of work of the Council of Ministers, using European Partnership and the Mid-Term Development Strategy.
- Prepare and implement the Action plan of public administration reform.
- Establish contractual relations with the European Union as a first step towards full membership.
- Implement effectively all the commitments arising from future agreements with the European Communities and the European Commission.
- Develop and strengthen relations with the Council of Ministers of the European Union, the European Commission, and governments of member states of the EU, as well as with governments in the region.
- Strengthen vertical and horizontal capacities of ministries and other administration bodies in implementation of laws, work on creating effective, economic and quality structures within institutions.
- Secure adequate structure by introducing consultation mechanisms and cooperation, using existing coordination mechanisms.
- Further strengthen institutional capacities and possibilities of action of state institutions, including the Council of Ministers and the Ministry of Foreign Affairs, inter alia, by employing qualified personnel and securing adequate financial resources and premises.
- Improve good neighbourly relations and regional cooperation, particularly in exchanging experiences and information in areas such as harmonisation of legislation, the rule of law, justice and home affairs, economic adjustment, education and professional development.
- Develop concepts for mid-term strategic planning, development and coordination.
- Work continuously on establishing institutional structures required by the acceptance and implementation of the *acquis communautaire*.
- Establish a system of accountability for failure to implement the European integration process.
- Strengthen the political consensus by including civil society in the European integration process.
- Upgrade the presence of civil society and active participation of non-governmental organisations in the process of legislative and other reforms.

### **2.1.5. Elections**



### ***Description of the current situation***

Since 1995, there have been four general and local elections. The last general elections were held in October 2002, on the basis of the BiH Election Law, whereas earlier elections had been pursuant to rules of the Provisional Elections Commission, i.e. the OSCE.

Within the context of European integration, it is important that the last local elections in 2004 were organised and fully financed by domestic institutions, other than the fact that the BiH Elections Commission included three international experts. OSCE and ODIHR assessed the elections as successful, democratic and fair.

In early April 2005, three foreign members of the BiH Elections Commission retired, thus transferring the entire elections process to BiH institutions.

### ***Necessary measures***

- Implement the decision of the BiH Parliamentary Assembly on changes and amendments of the BiH elections legislation, in order to fully harmonise it with requirements and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms as part of the BiH Constitution.
- Continue to implement law(s) on the conflict of interest, as well as the Law on Financing of Political Parties.
- Provide a more complete and clear legal definition of rules, in order to maximise the use of active voter rights (passive registration).
- Implement decisions of the BiH Constitutional Court on the constituent status of peoples consistently, in norm and in fact, and on all levels.
- Strengthen the accountability of elected officials to the electorate and to all the citizens of Bosnia and Herzegovina.
- Continue the practice of free, democratic and fair elections.
- Apply consistently equal gender representation at election lists at all levels of governance in BiH.

### **2.1.6. Judiciary**

#### ***Description of the current situation***

Independent judiciary guarantees legality and the rule of law. BiH recognised this principle as the basis of modern democratic states and in February 2002 it launched a comprehensive judicial reform strategy. This reform included three key segments of an independent judiciary: the number of first-instance courts was reduced, i.e. 32 of 78 first-instance courts were abolished, which led to an immediate reduction of the number of judges by 33%. Establishment of the High Judicial and Prosecutorial Council initiated the procedure of re-appointment of judges and prosecutors, followed by legislative reform. Substantive and procedural criminal legislation has been adopted, as well as substantive and procedural civil legislation, laws on administrative procedures and disputes, laws on legal practice, laws on notaries, laws on mediation, laws on enforcement procedures.

Centres for Education of Judges and Prosecutors have been established at entity levels, under direct supervision of the High Judicial and Prosecutorial Council.

The Constitutional Court of Bosnia and Herzegovina comprises nine judges. Four judges are selected by the House of Representatives of the Federation BiH, two by the National Assembly of Republika Srpska. Three judges are selected by the president of the European Court of Human Rights, following consultations with the Presidency of BiH. Judges selected by the president of the European Court of Human Rights may not be nationals of BiH or any of its neighbouring countries.

The Constitutional Court has the sole competence to rule on any dispute arising pursuant to the BiH Constitution between the two entities or between BiH and one or both entities, and between institutions of BiH.

The Constitutional Court also has second-instance competence in issues contained in the Constitution, when they become subject of a dispute related to a judgement delivered by any court in BiH. The Constitutional Court also has competence in issues forwarded to it by any court in BiH in relation to whether a law whose validity is the condition of its ruling is compatible with the Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto, or with BiH law, or issues related to existence or scope of any general rule of international public law of importance for the court's ruling.

A case may be initiated by a member of the Presidency, chairman of the Council of Ministers, speaker or deputy speaker of either house of the Parliamentary Assembly, one quarter of delegates of either house of the Parliamentary Assembly, or one quarter of members of any house of legislature of either entity.<sup>40</sup>

The Court of Bosnia and Herzegovina and Office of the Prosecutor of Bosnia and Herzegovina<sup>41</sup> were established with the aim of securing effective exercise of competences of Bosnia and Herzegovina and the respect for human rights and the rule of law in its territory.<sup>42</sup>

The Court and the Office of the Prosecutor are functional, which is a precondition for the establishment of the rule of law in BiH.<sup>43</sup>

The Constitutional Court of the Federation of BiH comprises nine judges. Basic competence of the Constitutional Court of the Federation BiH is over disputes: between cantons, between cantons and Federation authorities, between municipalities and their cantons or Federation authorities, and between institutions of the Federation BiH or within individual institutions.<sup>44</sup>

There is also the Supreme Court of the Federation BiH, ten cantonal courts and 28 municipal courts. Commercial disputes are tried by specific departments in municipal courts with jurisdiction in the territory of the given canton, and these courts also provide services in registration of legal persons.

Constitutional Court of Republika Srpska comprises seven judges and it is competent to rule on compliance of laws, other regulations and general acts with the Constitution, to decide on compliance of regulations and general acts with law, to rule on conflicts of competence between legislative, executive and judicial authorities, to decide on conflicts

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<sup>40</sup> Constitution of BiH, Article VI, points 1, 2, 3, and 4.

<sup>41</sup> Article 1, point 1, Law on the Prosecutor of Bosnia and Herzegovina, Official Gazette of BiH, No. 24/02, 03/03.

<sup>42</sup> Article 1, point 1, Law on the Court of Bosnia and Herzegovina, Official Gazette of BiH No. 29/00.

<sup>43</sup> For details, see point 12.1 of the Declaration of the Peace Implementation Council, Madrid, 15 and 16 December, which states clearly that the Council holds that "*establishment of the rule of law, trusted by all the citizens, is a precondition for a lasting peace and a sustainable economy capable of attracting and maintaining foreign and domestic investors.*"

<sup>44</sup> Constitution of the Federation BiH, Section C, Judicial Power in the Federation, Articles 9 and 10, p.76. Sarajevo: Federation Ministry of Justice, Sarajevo.

of competence between bodies of Republika Srpska, cities and municipalities, to decide on compliance of programmes, statutes and other general acts of political organisations with the Constitution and law.<sup>45</sup>

There is the Supreme Court, district courts and 19 basic courts in Republika Srpska. Competence for commercial disputes rests with basic courts with commercial departments. These courts also register legal persons and self-employed entrepreneurs.

Petty offences courts in BiH were considered part of state administration, rather than the judiciary. However, in view of the legal nature of most cases ruled and sanctions provided, particularly in view of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, these courts perform judicial functions. Petty offences courts are currently being reorganised and should become part of the judiciary. The reorganisation envisages a reduction in the number of petty offences courts (currently 116), and a reduction of the number of judges (currently 289).

A basic court, a court of appeals and Office of the Prosecutor have been established in the Brcko District. The Court of Bosnia and Herzegovina has appellate jurisdiction over cases from the Brcko District. The Petty Offences Court in the Brcko District has been reorganised and is now part of the judiciary.

### ***Necessary measures***

- Appoint BiH nationals as judges of the Constitutional Court of BiH and the Court of BiH by 2009 (transition period).
- Appoint BiH nationals as prosecutors at the Office of the Prosecutor of BiH by the end of 2009.
- Ensure equal standards in appointments, progression, discipline, and training of judges and prosecutors across BiH.
- Prosecute persons suspected of war crimes at the Court of BiH – War Crimes Department.
- Establish Commercial Courts.
- Improve functioning of institutions guaranteeing the rule of law.
- Continue with reforms already initiated in institutions guaranteeing the rule of law and the respect for human rights and minority rights.
- Ensure full responsibility of BiH for the Court of BiH, Office of the BiH Prosecutor and the High Judicial and Prosecutorial Council in terms of financing, management and staff.
- Prepare a clear and coherent strategy in relation to prison reform.

### **2.1.7. Role of the international community**

#### ***Description of the current situation***

The international community is heavily involved in political, economic, and social environment of Bosnia and Herzegovina, with the aim of supporting the implementation of the Dayton Peace Agreement / General Framework Agreement for Peace.

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<sup>45</sup> For details, see the Constitution of Republika Srpska, Articles 115 and 116, p. 204. Sarajevo: Federation Ministry of Justice, Sarajevo.

As for the military part of the Agreement, the Implementation Forces (IFOR), led by NATO, later the Stabilisation Forces (SFOR) and now Forces of the European Union (EUFOR) have been promoting military stabilisation.

Roles of the Peace Implementation Council (PIC) and the Office of the High Representative (OHR) are particularly important for implementation of the civilian part of the Agreement.

PIC comprises 55 countries and organisations providing different forms of support and leading the peace implementation process. The London Peace Implementation Conference, held in December 1995, also led to the establishment of the Steering Board as the executive body of PIC. The Steering Board provides political guidelines for the High Representative.

Office of the High Representative (OHR) is the leading organisation in the civilian aspect of implementation of peace in BiH. The High Representative is acting on behalf of the international community, responsible for supervision of implementation of civilian aspects of the Peace Agreement in BiH. Mandate of the High Representative is specified in Annex 10, empowering the High Representative as the final authority in the country for interpretation of the Agreement and implementation of its civilian aspects. Subsequent PIC decisions further elaborated and amended the mandate of the High Representative. OHR is also tasked with coordinating activities of international civilian organisations and agencies working in the country. Since 2002, the High Representative has also been the Special Representative of the EU.

OHR's engagement in the political life of BiH has been changing and developing along with the mandate and the focus of interest, pursuant to requests of PIC. Within that context, of particular importance are powers to impose legally binding decisions in BiH. In practice, this is used in three ways: 1) adoption of laws, 2) removal from office, and 3) imposition of other binding decisions. As of today, there has been a notable decrease in the High Representative's interventions in adoption of laws.<sup>46</sup> BiH is working much more with the High Representative, rather than excepting imposed decisions. This cooperation has led to a gradual shift towards "soft" decisions, i.e. decisions that simply follow policies agreed earlier.

Key international organisations in BiH include:

Organisation for Security and Cooperation in Europe (OSCE), whose mandate was set by the General Framework Agreement for Peace. As a key instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation in Europe, OSCE plays an important role in strengthening a stable, peaceful and democratic Bosnia and Herzegovina. The areas of work and programme implementation include: education reform, public administration reform, democratisation, human rights and security cooperation.

United Nations Agencies (UN) have focused on, inter alia, the return of refugees, human rights and police reform:

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<sup>46</sup> For BiH to advance the process of European integration, it is necessary for the Bonn powers of the High Representative to be reduced gradually, towards full abolishment. In light of that, the role of the High Representative should transform from the creator and decision-maker, to that of a special representative of the EU, i.e. the coordinator between BiH and the international community in part of the foreign and security policy.

- United Nations High Commissioner for Refugees (UNHCR) is, pursuant to the Dayton Agreement, the leading agency in the implementation of Annex 7. Its task is to ensure international protection of refugees and to actively facilitate the return and reintegration of refugees and internally displaced persons.
- United Nations Development Programme (UNDP) is focused on implementation of various activities which have gradually shifted their focus from post-war recovery to issues related to building capacities for sustainable long-term socio-economic development.

Police reform, which has progressed well under the auspices of International Police Task Force led by the UN (IPTF), has continued within the EU Police Mission (EUPM). The aim of EUPM is, as part of a wider approach to strengthening the rule of law, and in compliance with general aims of Annex 11, working towards establishing viable police structures in BiH, in compliance with the best European and international practices.

International financial institutions supporting macroeconomic stabilisation and development:

- Since admission of BiH in 1996, the World Bank (WB) has been actively involved in reconstruction and recovery projects in BiH in numerous areas. The present activities of the World Bank are focused on basic structural reforms, of great importance for the establishment of market economy in BiH.
- The International Monetary Fund (IMF) is competent for supervision of respect of the currency board and the stability of BiH currency, provision of interim financial assistance and adjustment of the balance of payment in collaboration with the Central Bank.

Since the establishment of the International Criminal Tribunal for Former Yugoslavia (ICTY), BiH has had a certain level of cooperation with the Tribunal, through direct cooperation of entity authorities of FBiH and RS, as well as cooperation at state level. This is primarily expressed by means of adoption of the Law on Extradition of Indicted Persons upon request of ICTY, adopted by FBiH Parliament in 1996, and the Law on Cooperation of Republika Srpska with ICTY in The Hague, adopted in 2001.

After almost ten years since the end of the war in BiH, presence of the international community has been reduced significantly. Numerous international agencies, as well as mixed bodies and institutions established pursuant to the Peace Agreement have ended their mandate and withdrawn. Representation offices of numerous organisations active in BiH are adjusting their programmes to the progress achieved in BiH and its changing needs.

### ***Necessary measures***

- Strengthen political accountability through adoption and full implementation of laws important for the integration process.
- Establish full ownership by BiH in the reform process, by assuming functions from international community organisations, and by developing capacities of BiH institutions.
- Ensure a reduction of powers of the High Representative, with the ultimate goal of abolishment of the Office of the High Representative in BiH.

- Effect full cooperation with ICTY.
- Bear an impact on a reduced role of the international community, so that its participation would be equal to that in other countries in transition.

### **2.1.8. Human rights**

#### **Situation in BiH**

European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto are in direct application in BiH and take priority over all other laws.<sup>47</sup> BiH acceded to the Council of Europe (CoE) on 24 April 2002 and has successfully ratified a series of international human rights conventions, and has been fulfilling its post-accession commitments.<sup>48</sup> Formally, BiH citizens enjoy all the human rights and freedoms set by the European Convention for the Protection of Human Rights and Fundamental Freedoms. This indicates progress in the establishment of democracy and in securing the rule of law. Gender Equality Law guarantees equal treatment of both genders.

Principal human rights institutions in BiH are: Constitutional Court of BiH and Constitutional Courts of the entities, BiH Ministry for Human Rights and Refugees, Human Rights Commission of the Constitutional Court of BiH (which replaced the earlier Human Rights Chamber), offices of the Ombudsmen. In addition to the above, there is a plethora of international and domestic organisations in BiH working on improving the situation with human rights in the country.

#### ***Situation in the EU***

Within the framework of protection of human rights in EU member states, the key document is the Amsterdam Treaty, which elevated the protection of human rights and fundamental freedoms set by the European Convention for the Protection of Human Rights and fundamental freedoms to the level of constitutional principles. This Treaty also secured the basis for the 2000 Charter of Fundamental Rights, as well as the key Directive 2000/43/EC on the application of the principle of gender equality irrespective of their racial, ethnic or any other background. The new Constitution of the European Union provides for unification of all the Treaties, the Charter of Fundamental Rights, and criteria for entry of new EU Members. The EU also requires its member states to uphold other European and international human rights protection instruments.

### **2.1.9. Civic, political, social and economic rights**

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<sup>47</sup> For details, see Article II, point 2, Constitution of Bosnia and Herzegovina.

<sup>48</sup> European Convention on Cross-Border Cooperation and protocols thereto have been signed, ratification pending; European Social Charter signed, ratification pending; European Charter on Regional and Minority Languages has not yet been signed or ratified (a commitment that should have been ratified prior to the second year of membership, i.e. by 24.04.2004); European Convention on Cross-Border Television ratified on 5.1.2005; Conventions in the field of criminal law ratified; European Convention on Extradition, on Mutual Assistance in Criminal Matters; European Convention on Deferral of Criminal Cases; European Convention on Extradition of Convicts; European Convention on Compensation for Victims of Violence; Convention on Electronic Crime – ratification procedure initiated.

Ten years after the war, cases of human rights abuses, including disappearances, are still being investigated and prosecuted. The process of return of refugees and displaced persons and implementation of property legislation correct some of the injustices done during the war.

In 2000, the Constitutional Court of BiH ruled on an amendment of entity constitutions, with the aim of protecting the rights of constituent peoples in BiH. After that, the entities introduced constitutional mechanisms to ensure equality and protection of rights of each constituent people. All the constituent peoples should enjoy equality and representation in political, administrative, and judicial institutions.

The Dayton Agreement also set provisions on human rights protection institutions: Office of the Ombudsmen, Human Rights Chamber, and the Commission for Refugees and Displaced Persons.<sup>49</sup>

According to reports of the Ombudsmen, the most frequent human rights violations are related to equality before law, property rights and the right to work.

The term of office of the Human Rights Chamber (HRC) and the Commission for Real Property Claims (CRPC) ended in late 2003. The data-base of the Commission was taken over by the BiH Ministry for Human Rights and Refugees, and pending claims will be resolved by the Commission for Property Claims by Refugees and Displaced Persons appointed by the BiH Presidency. The Return Fund has been established and is functional. Cases pending before the Human Rights Chamber were transferred to the Human Rights Commission established within the BiH Constitutional Court. In 2004, the International Ombudsman was replaced by three BiH nationals, with financing by the BiH budget. The institution of Ombudsmen in BiH and in the entities is currently being rationalised, in order to establish a uniform structure.

**Social and economic rights** of BiH citizens are still limited by the slow economic development. Officially, 40% of the population are unemployed. Approximately 20% live below the poverty line, and 30% at the poverty line. This, in part, maintains the impossibility of the social security system to meet the needs of economically most vulnerable groups. The right of membership in independent trade unions is respected. The health sector in both entities is underdeveloped and with inadequate funding. Not all the citizens enjoy health coverage, and numerous rural areas do not have effective medical care.

BiH applies the Law on Freedom of Access to Information, which obliges the Council of Ministers and entity governments to provide information to the public. Apart from isolated incidents, independence of the media and freedom of expression are respected. Electronic media are supervised by the BiH Communications Regulatory Agency. Print media are self-regulated. Their work is monitored by the Press Council, with limited powers. Recommendations by the Council are not binding. Influence of the authorities on the media is largely limited in practice. Politically motivated abuse of the Law on Defamation against criticism-prone journalists is restricted.

Wartime and post-war problems prevented the development of civil society. After the war, this sector developed mainly on regional basis, responding to local, rather than BiH

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<sup>49</sup> For details, see Annexes 6 and 7 of the *Dayton Peace Agreement*, JP NIO Službeni list BiH, Sarajevo, pp.71- 91.

needs. Although numerous, non-governmental organisations (NGO) are usually active at the local level only, and often dependent on foreign financing. Poor capacities for mutual links and advocacy limit their effectiveness, thus also limiting their influence on the Council of Ministers or entity governments. Good cooperation among NGOs was manifested in consultations on the BiH Mid-Term Development Strategy (PRSP). In general, civil society contributes and is active in adoption or changes of laws necessary for advancement of the European integration process. Particular contribution came from the Centre for Civil Initiatives, whose direct engagement, in fact, influenced changes in the Election Law, thus allowing for direct elections for heads of municipalities and mayors. The role and influence of think-tanks (working on finding solutions) continues to be very small.

## **2.1.10. Minority rights and refugees**

### ***Situation in BiH***

There are constitutional provisions aimed at protecting “vital interests” of Bosniaks, Serbs, and Croats, whereas there are no such provisions for “others”. “Others” in BiH include Roma as the largest group, for a long time faced with difficulties of exclusion. The Law on Rights of National Minorities, as well as the establishment of the Roma Council as a consultation forum within the Office of the chairman of the Council of Ministers, will protect their rights, facilitate political participation and protect minority languages.

BiH guarantees for refugees and displaced persons the right to claim and/or to return to their property after the war. BiH has noted impressive success in property return in the region, whereas the return of refugees and displaced persons does not progress at the required pace. A positive step in this direction was in late January 2005, when BiH, Croatia, and Serbia and Montenegro signed in Sarajevo the “Declaration on Regional Approach to Issues Related to Refugees and Displaced Persons”. The Declaration allows state parties to reach an agreement on the way to resolve pending issues in the field of return of refugees and it contains political determination that the process of return should be completed by 2006.<sup>50</sup>

Establishment of sustainable economic and social conditions for returnees is the basis for rural development in BiH.

### ***Situation in the EU***

In addition to the rule of law, market economy and parliamentary democracy, the EU sets the protection of minority rights as one of the three Copenhagen criteria for accession to the EU. The Framework Convention for the Protection of Rights of National Minorities was adopted by the Council of Europe in Strasbourg on 10 November 1995, and it came into force on 1 February 1998. This document arises from the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto, as well as UN conventions and declarations. The European Charter on Regional and Minority Languages recognises the right of use of regional minority languages in public and private life. With the Amsterdam Treaty coming into force in 1999, and with entry of the anti-discrimination clause in Article 13, primary EU legislation

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<sup>50</sup> For details, see “10<sup>th</sup> Report of the Council of Europe Monitoring Mission”. SG/Inf (2005) 8prov. 15.4.2005.



was expanded to include protection of minority rights. Pursuant to Article 13 of the Treaty, the EU shall take all the measures necessary to prevent discrimination on the grounds of sex, race or national background. The 2000 EU Directive on equal treatment irrespective of racial or national background is a secondary source of Community law, which commits the EU to promote equal opportunities for members of different ethnic groups, and to combat racial discrimination. During the process of accession of new candidate states, there are mechanisms for monitoring the exercise of rights of the Roma population, in form of annual reports.

Leading EU institutions afford special attention to issues of racial, ethnic and gender-based discrimination, as well as to the protection of rights of women. Future candidate states must provide full protection against all forms of discrimination, with particular focus on racial, ethnic, religious or gender-based discrimination.

### ***Necessary measures***

- Adopt and implement law on changes and amendments of the Law on BiH Ombudsman (merger of state and entity Ombudsmen).
- Prepare a study on a state-level Law on Conscientious Objection.
- Work continuously on verification of harmonisation of laws with the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- Implement the initiative by the BiH Ombudsman to establish the National Minorities Council.
- Secure full protection of human rights and minority rights.
- Implement in full the Council of Europe post-accession criteria.
- Implement in full the international conventions already ratified.
- Implement in full the property claims by refugees and displaced persons.
- Appoint an agent to represent BiH before the European Court of Human Rights.
- Implement the idea on establishment of a Truth and Reconciliation Commission.
- Work on establishment of think-tank institutions.
- Allow exercise of economic and social rights by all the citizens of BiH in its entire territory.
- Develop dialogue with the NGO sector.

### **2.1.11. Coordination of European integration processes**

The process of integration of Bosnia and Herzegovina into the EU, from the stabilisation and association stage, to pre-accession and eventually accession, requires a high level of consensus and coordination within the political system, as well as a high level of public support for the process. A comprehensive political consensus in BiH is necessary as a guarantee of success of the process in the country and as a confirmation of its validity externally.

#### *Overview*

The European integration process entails coordinated functioning of all the participants to the process, so that the final outcome is its acceleration. The process of European integration is within a special area which is neither foreign, nor solely domestic policy. Coordination of the process must be at two levels, within the state, and presenting results of reforms in the country to EU institutions and member states.

The state should assume full responsibility for both aspects, and it should be able to respond to the demands of the process at specific levels, from negotiations and accession to membership. BiH may organise its coordination mechanisms in the same way as member states, with modifications and regulation where necessary (until accession, the intensity of contacts and formal status of the country as a measure of possibility of participation in institutional decision-making may be limited, but with a tendency of growth in intensity, scope and institutional involvement).

At the present stage, the focus may be on proper functioning of institutions in the country, particularly the need to implement reforms aimed at advancing the process. Development of institutional capacities for coordination mechanisms will thus be the priority. In the next stage, presentation of results and interests of BiH will be as important as the functioning of domestic institutions.

Reaching consensus, not only in political circles, but also within society in general – professional circles, experts, the academic community, the business community, and other representatives of civil society, must be built timely, professionally and realistically.

The state level should be in a position to act effectively in securing adequate progress in the integration process: the state is responsible for the situation in the entire territory of BiH and for the functioning of its institutions. This responsibility should be complementary with instruments available to the state to provide a guarantee of success in the integration process (e.g. strengthening the central coordination mechanism, institutional framework, modernisation).

These issues should be the priority, to secure legal, political and institutional capacity for the tasks awaiting BiH. In practice, these activities require considerable time and effort.

In the political context of EU integration, in the field of constitutional framework and political environment in BiH, it is necessary to secure strengthening and full cooperation of political factors of integration of BiH into the EU. It is necessary to secure urgently the bases of functioning of coherent coordination mechanisms.

The process of **building political consensus** and its implementation may be divided into segments with the following phases:

1. Reach a political agreement of the highest level of legislature (BiH Parliamentary Assembly and entity parliaments) in order to:
  - a) express clearly the determination of parliamentarians to follow the path of European integration and an organisation providing optimum solutions for tasks related to European integration,
  - b) establish mechanisms of coordination, agreement and harmonisation of programmes in this context, particularly in priority areas, such as legislative activity programmes);
  - c) institutionalise agreement on forms and methods of cooperation, guarantees and implementation.
2. Reach political consensus at the highest level of the executive (Council of Ministers, entity governments, and government of the Brcko District) in order to:
  - a) organise and act in coordination in fulfilling tasks related to European integration,

- b) secure cooperation of the Council of Ministers BiH, entity governments and government of the Brcko District; this is attained by mechanisms of coordination, agreement and harmonisation of programmes in this context, particularly in priority areas, such as European Partnership and mid-term priorities;
  - c) Institutionalise agreement on forms and methods of cooperation, guarantees and implementation,
  - d) formalise methods of coordination and cooperation,
  - e) establish joint mechanisms and dialogue on the functioning of the system and on taking action aimed at developing a more functional system.
3. Political agreement between the executive (Council of Ministers, entity governments, governments of the Brcko District) and the legislative (BiH Parliament, entity parliaments, Assembly of the Brcko District) on forms and methods of cooperation in the EU integration process.

Some of these political agreements have already been achieved, and coordination and cooperation mechanisms have been established and are functional. As BiH enters further into European integration process, these mechanisms should be upgraded and consolidated.

Current coordination mechanisms include:

- **Coordination at political level:** Coordination is at the level of the chairman of the Council of ministers, entity prime ministers and mayor of the Brcko District. The Coordination Board for development and European integration is tasked with coordinating economic development of BiH, fulfilment of all the priorities in the area of integration of BiH into the EU, and implementation of Mid-Term Development Strategy.
- **Decision on achieving coordination** in the process of accession of BiH to the EU, establishing the mechanisms of horizontal and vertical coordination in order to coordinate activities in European integration strategy and policy, harmonisation of laws and coordination of assistance. Coordination is at the level of secretaries of ministries, directors of administration organisations, and entity coordinators for European integration, with DEI coordination state ministries and administration bodies. **Instrument of horizontal coordination** – used for coordination at the level of the Council of Ministers, ministries and other administration bodies of BiH. **Instrument of vertical coordination** – used for coordination of the Council of Ministers, ministries and other administration bodies and institutions of BiH in relation to entity governments and government of the Brcko District, entity ministries and other administration bodies and organisations of FBiH and RS. The current instrument is a good basis for coordination throughout the state, but in view of growing demands presented to BiH by the EU and the forthcoming phase of the process, it will gradually become necessary to further develop the instrument, and European integration units thus need to be established.
- **External coordination:** Pursuant to the Decision on coordination in the process of accession of BiH to the EU, direct communication is required with the Mission in Brussels, to secure timely exchange of information, data and documents related to the process. Positive reform results must be presented to EU institutions and member states, in order to attain optimum speed of accession to European integration trends. This requires more effective presentation of

interests of BiH in Brussels, and to member states. In that context, specific tasks must be taken in cooperation of the Directorate for European Integration with the Ministry of Foreign Affairs, the Presidency and other institutions. This starting basis for the system may be used until full EU membership.

## EU institutions

Three EU institutions will be of vital interest in the process of European integration, and cooperation with these institutions must be strengthened:

- European Commission,
- EU Council of Ministers,
- European Parliament.

**European Commission** is the principal partner for BiH institutions in the process of integration until accession. The practical role of the Commission and its services is very important. This suggests that BiH institutions should establish close contacts with Commission experts on all levels.

Political decisions will be taken at the level of institutions, e.g. the Ministry of Finance will cooperate directly and resolve any problems with the relevant service. Ministry of Foreign Affairs should, in collaboration with DEI, maintain close relations with the EU Council of Ministers, the European Parliament, and the DG for enlargement and foreign relations.

As for the **European Parliament** and the **Council of Ministers**, MEPs, officials and staff need to be informed, as they are important opinion-makers.

**EU Council of Ministers** in different composition is a forum where representatives of different national interests meet on regular basis and pass decisions. As a rule, member states play a very important role and promote their interests, influencing decision-making in the early stage of working-groups.

**EU member states** participate in the work of institutions on equal footing, which will not be the case with BiH until its accession.

All member states have developed mechanisms of participation in the work of institutions, but the situation varies from member state to member state. Perhaps the best example of development of different forms of cooperation and coordination comes from new member states, which recently went through the process themselves.

Action of BiH institutions in relation to member states should be focused on embassies in BiH, permanent missions of member states in Brussels, and capitals, via BiH embassies.

This strategy offers a possibility of overview of the present situation and its improvements, particularly in relation to providing political options that may respond to new challenges. Different conclusions proposed on the basis of this Strategy would mean translation of political will into political reality.

In parallel to the activities proposed, work on long-term tasks (institutional development and reorganisation) should start as quality and advanced preparation for future tasks awaiting BiH.

## **Necessary measures:**

- Provide a draft declaration/agreement for the legislature, or a model agreement, and implement and effect provisions set by documents (agreements), such as organisation, cooperation mechanisms, coordination.
- Provide draft agreement on the legislative-executive segment.
- Implement and effect provisions set by documents (agreements), such as organisation, cooperation mechanisms, coordination.
- Secure participation of all segments of the state and the society in the European integration process.
- Improve and simplify management procedures in the European integration process (state-entity relations, entry into international agreements).
- Elaborate an IT system of coordination of EU integration processes in BiH and externally (primarily in Brussels, but also in member states).
- Improve coordination and implementation policy by adopting central-level reforms and securing their sustainability.
- This mechanism should be an addition to the existing ones – state, entity, cantonal/regional, and municipal.
- The BiH Mission in Brussels should be strengthened by diplomats and a number of experts in European integration from the Directorate, ministries and other state administration bodies.

## **2.2. Economic situation**

### **2.2.1. General assessment of the current situation**

In the period 1999-2002, BiH noted stable average annual rate of growth of the nominal per capita GDP of 10%.<sup>51</sup> Stable growth was not maintained in 2003, when the rate was 5.5%. This is assumed to have been the consequence of decrease of economic activity in the EU, a drop in agricultural production due to unfavourable weather conditions, but also a decrease of donations.<sup>52</sup> Participation of production activities in added value, expressed in basic prices for 2003 amounted to some 40%. The estimated rate of growth of real GDP for 2004 is five percent.<sup>53</sup>

Annual inflation rate has maintained a low level of less than one percent over the past three years. The retail price growth index in FBiH in 2003 was 0.1%, and in RS it was 18%. Average annual unemployment rate for the same period was approximately 40% of population of employment age.

Absolute increase of net foreign currency reserves at the end of the third quarter of 2004 was 879.8 million convertible marks, which was a growth of 36.2% in relation to the

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<sup>51</sup> Thematic bulletin *National accounts 1997-2003*. BiH Statistics Agency, December 2004.

<sup>52</sup> *The Western Balkans in transition*, EC DG for Economic and Financial Affairs; *Enlargement Papers*, N° 23 December, 2004. [http://europa.eu.int/comm/economy\\_finance](http://europa.eu.int/comm/economy_finance)

<sup>53</sup> Ibid.

situation at the beginning of the year.<sup>54</sup> Current account balance noted a growth in deficit in 2004. In the second quarter, the deficit was 977.9 million convertible marks (500 million eur.), which was a consequence of the high value of foreign trade deficit. The estimated value of current account deficit in relation to GDP for 2004 was 18%.<sup>55</sup>

At the end of 2004, the foreign debt of BiH was 2.2 billion euros.<sup>56</sup> The planned payment for 2004 is 255.8 billion convertible marks, with interest participation of 35.2%. The creditor structure is dominated by IMF and IBRD, with a total participation of 62.4% in servicing foreign debt.<sup>57</sup>

The ratio of foreign debt to GDP had a declining trend in the period 1999-2002, with a mean average value of 54%. At the end of 2003, the foreign debt amounted to 34% of GDP, and there is an estimate that it should remain the same for 2004.<sup>58</sup> The foreign debt to export ratio will drop by the end of 2004 to the level of 120%.

The total amount of foreign investment in BiH reached the amount of 1.4 billion euros. Direct foreign investment in 2004 amounted to 383 million euros.<sup>59</sup> The foreign investment to GDP ratio for the period 1999-2003 grew at an average rate of 3.3%. The estimated rate of growth for 2004 is 5.2%.<sup>60</sup>

BiH maintains macroeconomic stability, which is the necessary precondition for sustainable economic growth. However, the economic history of countries in transition shows that macroeconomic stability is not a sufficient precondition for sustainable development. That is why self-sustainable and even economic development, with parallel maintenance of macroeconomic stability, is, in fact, the road towards fulfilment of socio-economic preconditions for accession to the EU.<sup>61</sup>

Establishment of market economy is the basic economic criterion that BiH needs to fulfil in the EU integration process.<sup>62</sup> Macroeconomic development policies in *BiH Mid-Term Development Strategy - PRSP* were mainly coordinated with policies proposed by the international community. Focusing on self-sustainable and even economic development and reduction of poverty are a rationally expressed mission of creation of preconditions for entry into the Stabilisation and Association Agreement.

## 2.2.2. Presence of market economy and structural reforms

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<sup>54</sup> *Newsletter* 3; BiH Central Bank, September 2004.

<sup>55</sup> *PRSP-Report for the period August 2003 – November 2004*; Council of Ministers BiH, EPPU; December, 2004.

<sup>56</sup> *Ibid* (2).

<sup>57</sup> *Ibid* (4).

<sup>58</sup> *Ibid* (2).

<sup>59</sup> BiH Foreign Investment Promotion Agency; <http://www.fipa.gov.ba>

<sup>60</sup> *Ibid* (2).

<sup>61</sup> *BiH Mid-Term Development Strategy (PRSP)*; April 2004.

<sup>62</sup> "Respect for principles of market economy should be the basis of domestic and foreign policy in the Agreement. This entails a stable macroeconomic climate supported by reliable macroeconomic institutions, comprehensive liberalisation of prices and trade, and creation of a strong private sector on the basis of a legal and regulatory framework." *Report from the Commission to the Council on the preparedness of BiH to negotiate a Stabilisation and Association Agreement with the European Union*; COM (2003) 692 final, Brussels, 18 November 2003.

Transition of BiH economy has been picking up its pace in the past few years, mainly due to monetary stability, liberalisation of prices and financial sector reform.

Ownership structure as one of the indicators of transition has been shifting towards proportions typical for European market economies. Private sector participation in GDP in mid-2004 was 50%.<sup>63</sup> As for privatisation, BiH is in the middle of the progress scale of 27 transition countries (including 10 new EU member states). The best result has been achieved in *small privatisation*, whereas privatisation of large enterprises has been somewhat slower. Privatisation of strategic companies will be accelerated after legislative reforms and strengthening of institutions effected in 2004.

Liberalisation of prices, trade and foreign currency exchange achieved in 2004 contributed considerably to the development of market economy. Progress in this area will be completed by implementation of laws in areas of competition, freedom of movement of capital (particularly land ownership) and freedom of movement of services (abolishment of double licensing).

The financial sector entered the stage of dynamic development. The commercial banking sector in BiH comprises 27 banks registered in FBiH and 10 in RS. Banks are active in both entities through their branches, which shows an increase in confidence of the banking sector in institutions of the system and a favourable trend of expansion of activities to the entire country.

In 2003, commercial banks were almost entirely privatised, with large foreign capital participation. Consolidation of the banking sector continues. A mandatory deposit introduced in 2003 increases the confidence of the citizens and the business community in banks. Augmentation of the banking system is a general requirement of macroeconomic strategy.

Development of other financial institutions and the securities market try to follow the banking sector, but the growth rate is limited by insufficiently developed legislation. Important framework laws in this area were adopted in 2004.

Reforms in infrastructure, as an important indicator of transition, are progressing at a satisfactory rate, and the energy sector is in the lead. During 2004, necessary steps were taken towards creating an integrated energy market. Reform needs of BiH in the area of road and railway transportation, as well as telecommunications, remain at a high level.

BiH Mid-Term Development Strategy (*PRSP*) places export-oriented private sector in the focus of development. In that, priorities are

- Improvement of business climate for domestic and foreign investments and support for development of entrepreneurship,
- Acceleration of the privatisation process,
- Decrease in the level of corruption in society and implementation of judicial reforms,

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<sup>63</sup> For new EU member states, this indicator varies from 65 to 80%; *Transition report 2004 - Infrastructure*; EBRD, 2005. (Value of the indicator for BiH in 2000 was 35%).

- Preservation of stability of the financial sector and faster development of capital markets,
- Implementation of reforms of the labour market,
- Further liberalisation of foreign trade in the region,
- Support for export.<sup>64</sup>

*Programme of Implementation of European Partnership with BiH* includes plans for reforms in legislation, their implementation, and development of state-level institutions. Reforms in areas of public procurement, free competition, freedom of movement of goods, services, capital and persons, with freedom of business establishment, as well as reforms of sectoral policies, are focused on development of a competitive market economy.

Risks that the BiH economic reform is exposed to in its EU integration path are in relation to:

- High cost of reform which would not be accompanied by economic growth,
- Rate of reform of state administration,
- Decrease of foreign aid, with no foreign investments,
- Increase of internal debt, and
- Increase of poverty.

### **2.2.3. Public finance management**

According to a consolidated report on government finance, in 2002 BiH public expenditure was 50.4% of GDP, and 46% in 2003.<sup>65</sup> In 2004, it is likely to maintain the same relative level.<sup>66</sup>

Consolidated account deficit (calculation excluding donations) is decreasing from 16.5% GDP in 2000 to 3% in 2003. This favourable trend will be maintained in 2004.<sup>67</sup> This is the result of progressive budget reform, on the side of budget revenue as well as on the side of expenditure management.

Reform action in 2004 contributes to the strengthening of legal and institutional infrastructure. Consolidated government account and treasury systems have been established at the level of both state and the entities. Mid-term expenditure planning is becoming common practice. Indirect Taxation Authority is operational. Law on Value-Added Tax has come into force. Tax payments on the basis of the new Law will commence in January 2006.

There are clear plans, included by the *European Partnership with BiH* programme, to promote the public finance management system. The highest decision-making level will be legally institutionalised in form of the *National Fiscal Council*. A *Unit* is being established, to perform analytical and technical services regarding public finance management. The treasury system will be established in all the municipalities. Legislation on control and audit of the budget system is set as one of the priorities.

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<sup>64</sup> Ibid. (11)

<sup>65</sup> BiH Mid-Term Development Strategy (PRSP), April 2004.

<sup>66</sup> The Western Balkans in transition; EC; DG for Economic and Financial Affairs; Enlargement Papers, N° 23 December, 2004. [http://europa.eu.int/comm/economy\\_finance](http://europa.eu.int/comm/economy_finance)

<sup>67</sup> Transition Report 2004- Infrastructure; EBRD, 2005.



Key problems that public finance management will be faced with on the path towards EU integration include:

- Expenditure for salaries and remuneration in state administration is relatively high,
- Capital expenditure is insufficient to provide for technological development of public administration,
- The number of social aid beneficiaries is expected to grow,
- Education system reform requires investments,
- Health care rights exceed fiscal capacities.

## **2.3. Ability to accept membership responsibilities**

### **2.3.1. Ability to accept and implement *acquis communautaire***

The ability of a candidate country to accept membership responsibilities, as the third accession criterion, refers primarily to its ability to accept and implement the *acquis communautaire*, including its commitment to the goals of political, economic and monetary union. This criterion may not be separated from the so-called Madrid criteria, development of adequate administrative and judicial structures as a framework to guarantee effective acceptance and implementation of the *acquis*, and it can certainly not lead, on its own, to the fulfilment of political and economic criteria. The above illustrates mutual conditionality and coherence of all the accession criteria in general, which, though described and evaluated separately, can result in adequate changes as a guarantee of capacity for membership only if attained in parallel.<sup>68</sup> The existence of the *acquis* has been a feature of European integration since the very beginning, although the term was formally introduced with the Treaty of the European Union. However, its present meaning is far more extensive, which indicates the dynamism of its development, constant reproduction and expansion,<sup>69</sup> whereas legally, it evolved through the case-law of the European Court of Justice to the level of a constitutional principle of the Community. At the same time, its meaning as a political principle which indicates that achievements of the Community (both legal and political) are a condition that is not subject to negotiations, was clearly set at the first round of enlargement in 1973 and has not changed as such until today.

An important document in the process of acceptance of EU legislation is the White Paper, which prepares CEE countries for association,<sup>70</sup> prepared by the European Commission as support to CEE countries on their way to membership, and which may serve BiH today as a structural and methodological guideline for planning priorities in the area of harmonisation, whereas in terms of content it requires considerable updating. The document gives advantage to regulations related to the creation of preconditions for integration into the common market, which should facilitate liberalisation of the market and instigate economic development, and without the acceptance of which advantages offered by the EU common market cannot be enjoyed.

Acceptance and implementation of the *acquis* is primarily the obligation of national governments, legislative bodies, and state administration as a whole. Experiences from earlier rounds of enlargement indicate considerable difficulties in its effective application,

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<sup>68</sup> This is the context to interpret the expectation of the EU that member states should accept and implement a series of international legal instruments, treaties and conventions (UN, Council of Europe, OSCE, WTO, IMF, WIPO, etc.) which are an overall contribution to fulfilment of the Copenhagen criteria on political stability, rule of law, and market economy, although formally not an integral part of the *acquis*.

<sup>69</sup> Thus the so-called Mediterranean enlargement (Greece, Spain, Portugal) enriched the *acquis* with democratic principles and human rights concerns, and the 1995 enlargement (Austria, Finland, Sweden) provided additional acceptance of economic and monetary union, common foreign and security policy, and cooperation in justice and home affairs, whereas the most recent enlargement included the *Schengen acquis*, after the Amsterdam Treaty (1999) moved it to the first, Community pillar. Estimates from 2000 shows that in terms of volume, the *acquis* grew to some 80,000 pages of regulations. See Gunter Verheugen, Commissioner for Enlargement: *The Enlargement of the European Union*, European Foreign Affairs Review 5: 439–444, 2000. Kluwer Law International.

<sup>70</sup> Commission (1995), *White Paper: Preparation of the associated countries of Central and Eastern Europe for integration into the internal market of the Union*, COM(95) 163 final, 03.05.1995 and COM(95) 163 final/2, 10.05.1995

faced by state administrations, as well as manufacturers and other business stakeholders. Effective acceptance and implementation of the *acquis* requires qualified staff, stable administrative procedures, and secured financial resources.<sup>71</sup>

Adaptation of national legislation to *acquis* requirements, i.e. membership requirements, brings with it considerable implications on trade, investment, services, prices, labour market and employment, domestic companies, regional development, and a whole series of other segments of life of the society, due to which timely legal and institutional preparations are required, using as effectively as possible all the assistance instruments the EU provides in the process. An integral part of the preparations is a constant internal dialogue in the country, in order to identify its own strategic interests.

### ***Situation in BiH***

At this moment, BiH is not legally obliged to accept and harmonise its legislation with the EU (in view of the absence of any contractual relationship with the EU which would imply responsibility of that nature), but in view of its political determination towards integration, it has taken a series of activities to prepare and build the concept of harmonisation of BiH legislation with the *acquis*. This process imposes two aspects that may be marked as:

- organisational-functional, requiring clear identification of legislative and institutional powers in management, coordination and supervision of the process, and development of optimum mechanisms and other forms of cooperation of legislative and executive bodies on the horizontal level, and in particular on the vertical one;
- programme, which implies adoption of a relevant methodology of harmonisation and long-term planning for adoption of the *acquis*, with clear priorities, key stakeholders, pace and financial resources.

### **Constitutional framework**

The BiH Constitution does not contain any explicit provisions on harmonisation of the legal system and legislation with the *acquis*, other than a general provision which sets unambiguously its status in international law, meaning that BiH may enter treaties in international relations, thus with the EU as well. In addition to other rights and duties arising from such relations, the state also accepts to harmonise legislation within the competence of state institutions of BiH, but also in areas where legislative competence has been assigned to entities or local communities, and is also responsible for their fulfilment. The responsibility of the state in the latter is, however, not accompanied by adequate institutional powers of BiH<sup>72</sup> nor by coordination and cooperation mechanisms as a guarantee of effective and efficient implementation of duties accepted by lower levels of governance. This and other *de jure*<sup>73</sup> and *de facto*<sup>74</sup> restrictions in the

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<sup>71</sup> See Gunter Verheugen, Commissioner for Enlargement: *The Enlargement, of the European Union* European Foreign Affairs Review 5: p. 442. 2000. Kluwer Law International.

<sup>72</sup> The Constitution restricts considerably the powers of BiH institutions and establishes a principle of subsidiarity in favour of entity levels.

<sup>73</sup> Institutional voids at the level of BiH in administrative and judicial structures (until recently, the absence of ministries of justice and defence, absence of a supreme judicial instance), reduced rights of initiative for assessment of constitutionality of regulations.

functioning of the BiH legal system have had a negative impact in the credibility and credit-worthiness of the state, as particularly evident in the long process of fulfilling commitments contained in the Road Map.<sup>75</sup> Legislative activities in the fulfilment of conditions contained in the Feasibility Study showed greater readiness to overcome the shortcomings observed, which, seen chronologically, indicates the mutual conditionality between the integration process and the internal consolidation of the BiH legal order. The process of integration of BiH into the wider European community is also the principal generator of integration of the internal legal order in BiH.

### **Institutional competences**

Harmonisation of legislation with the *acquis* is the primary responsibility of relevant ministries and other administration bodies of BiH within their set competences. The BiH Ministry of Justice is responsible to ensure that *BiH legislation and its implementation on all levels are in compliance with commitments arising for BiH from international agreements*,<sup>76</sup> whereas *coordination of work on harmonisation of the BiH legal system with *acquis communautaire* and verification of compliance of draft laws and other regulations*,<sup>77</sup> proposals for which are set by the BiH Council of Ministers, is assigned to the Directorate for European Integration. Except for the Directorate for European Integration, the organisational structure of these bodies does not provide for any special organisational units or posts that would specify duties in the field of incorporation of EU legislation into domestic regulations. A general assessment of professional capacities of staff for these duties within ministries and other administration bodies of BiH is still quite low.

### **Harmonisation models**

Experiences acquired through the process of harmonisation of BiH legislation with the *acquis* shows that it was done at different levels and with different amount of participation and cooperation of entity and BiH institutions, the most complex being the harmonisation in areas outside those assigned explicitly to BiH, and the least effective being the harmonisation done by entities individually and with no coordination.<sup>78</sup> Also, experiences have shown that harmonisation was done almost entirely by reliance on assistance from foreign support projects and foreign experts, with a modest engagement by ministries and other administration bodies. Adoption of *acquis* in areas outside those listed as competences of BiH institutions are characterised by at least two different approaches:

- The first starts from a strict division of competencies between state and entity instructions, and in the transposition of EU legislation it treats entities almost as member

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<sup>74</sup> Limited case-law of the BiH Constitutional Court in assessment of constitutionality of laws and other regulations, i.e. harmonisation of entity constitutions, works in favour of differences in interpretation and application of provisions of the BiH Constitution.

<sup>75</sup> The cited factors gave rise to a very critical overview of the functioning of BiH by the then Enlargement Commissioner Christopher Patten: "We want to see a strong BiH functioning as a single state, and not as two or more." Interview following the publication of the Second SAA Report, Brussels, 26 March 2003

<sup>76</sup> Article 13, line 4 of the Law on Ministries and Other Administration Bodies of BiH, Official Gazette BiH No. 5/2003.

<sup>77</sup> Article 18, lines 1 and 2. *Ibid.*

<sup>78</sup> Effects of harmonisation done in this way, despite the advantages, have been diminished by the fact that harmonisation of one and the same area in the wider context of BiH requires corrections of normative or administrative provisions adopted earlier, and brings with it certain financial implications.

states with autonomous legal systems. In terms of methodology, EU legislation is directly transposed into entity regulations by the so-called *mirror* laws (which are to ensure identical provisions and uniform application in both entities) whereas *framework* laws are adopted at the level of BiH, formally providing minimal regulation in the subject matter.<sup>79</sup>

- The second approach starts from the integral legal order in BiH, with due consideration for autonomy of the entity legal systems as its integral parts. EU legislation provisions are incorporated into regulations adopted by the Parliamentary Assembly, regulating the subject matter in the substantive sense and only inasmuch as necessary to secure equal level of protection of citizens and businesses in the entire territory of BiH. As such, the law bounds entity legislatures to harmonise their own regulations.<sup>80</sup>

## Harmonisation instruments

**Methodological instruments:** An important component of harmonisation of BiH legislation is the methodological approach, or the technique of adoption of EU legislation. The selection of methodology has multiple meanings in the context of BiH. Multiplicity of legislative and executive bodies of different levels may lead to different practice, which makes the monitoring process difficult for domestic institutions, but also for the European Commission in the so-called screening process<sup>81</sup> (provided it accepts to work under different methodology). In late 2003, the BiH Council of Ministers issued a Decision<sup>82</sup> adopting two methodological instruments: comparative presentation of harmonisation and statement on harmonisation, made on the basis of experiences of CEE countries and practice of the European Commission in the screening process. The decision obliges ministries and other administration bodies to assess harmonisation with the *acquis* during the drafting process, following which and, as a rule, prior to their submission to the Council of Ministers,<sup>83</sup> harmonisation is also verified by the Directorate for European Integration. However, legislative and executive authorities of the entities and the Brcko District, as well as the BiH Parliamentary Assembly, remain outside the scope of this Decision.<sup>84</sup>

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<sup>79</sup> Legal shortcomings of this system are in direct introduction to BiH Constitution the previously unknown category of *framework law*, which, as a rule, cannot guarantee the same protection of citizens or businesses in the entire territory, equal to that enjoyed by legal or natural persons from any member state within the EU. Another innovation are the so-called *mirror* entity laws, which *a priori* assume absolute agreement of entity legislatures in the process of adoption, but also abstaining from any future changes or amendments. The first stage of drafting regulations in the field of insurance in BiH was marked by this model of harmonisation, but entity autonomy was understood so rigidly, that this led to the other extreme, the introduction of *double licensing* of insurance companies in BiH, thus disqualifying the approach by itself.

<sup>80</sup> A theoretical basis for this model is, according to some, in delegation of powers from entities to BiH institutions, whereas others believe that BiH institutions have the power to legislate in order to protect constitutionally guaranteed freedoms: movement of goods, services, persons, and capital. Adoption of laws on general product safety, food, supervision of BiH market, and technical requirements for goods, and assessment of compliance, were done under this concept, through inter-institutional working groups, with entities appointing their representatives.

<sup>81</sup> Process of verification of harmonisation of legislation of a country whose candidate status has been confirmed by the European Commission.

<sup>82</sup> Decision on procedures in the process of harmonisation of BiH legislation with *acquis communautaire*, Official Gazette BiH, No. 44/2003.

<sup>83</sup> Article 31.f of Rules of Procedure of the BiH Council of Ministers, Official Gazette BiH, No. 22/2003.

<sup>84</sup> It is thus possible for a law to be adopted on the basis of an initiative by MPs in the BiH parliamentary Assembly, and in such a case no procedural phase includes an assessment of compliance, or changes following such an assessment, and there is no subsequent obligation to conduct an assessment, and draft laws may be submitted for parliamentary procedure even without an earlier assessment of compliance.

**Programming instruments:** Experiences from earlier rounds of enlargement show that the success in accepting EU legislation depends to a large extent on timely and systematic planning. Planning in CEE countries was done with two instruments:

- State (national) plan of adoption of the *acquis*<sup>85</sup> as a multi-annual programme document, defining areas of harmonisation, the pace, and the stakeholders, used as the basis for annual priority plans;
- Analysis of effects of adoption of EU law in legislation and in the legal order of the country conducting the harmonisation, aimed at identifying economic, financial, social, or other implications of regulations thus adopted, and thus contribute to realistic programming. DEI has already initiated activities to prepare a methodology for assessment of effects of introduction of new regulations, and the actual plan of adoption of the *acquis* is to be made following the signing of SAA.

**Strategic objective:**

- Harmonised BiH legislation as a precondition for successful integration of BiH into the EU, reflecting the BiH legal tradition and preserving its normative quality;
- Legal order in BiH which secures functional administrative and judicial structures for effective implementation of Community norms, equivalent to the level guaranteed in member states.

**Necessary measures:**

- Develop an integral concept of harmonisation of regulations in BiH, based on principles of functionality, efficiency, and flexibility.
- Conduct an assessment of compliance of current regulations on all levels, and an assessment of implications of adoption and harmonisation of legislation in the financial, economic or social sense, as a basic document for multi-annual programming for the adoption of the *acquis*.
- Continuously monitor and update legislative priorities as set, monitor and report on implementation of harmonised legislation.
- Establish mechanisms and instruments of inter-institutional cooperation (horizontal and vertical), coordination and monitoring process, and constantly evaluate their effects.
- Secure uniform methodological approach to the process of harmonisation for all levels of governance involved in the process, both in terms of methodological instruments and in terms of methodology for assessment of effects of introduction of harmonised regulations.
- Strengthen the role of the European Integration Committee of the BiH Parliamentary Assembly, the BiH Ministry of Justice, the Directorate for European Integration, and the Legislative Office in the process.
- Support the establishment and ensure effective functioning of administrative structures at the level of BiH, which are a direct or indirect requirement of the *acquis*, also ensuring better mobility of civil servants of different levels and, consequently, a reconstruction of adequate structures of lower levels of governance.
- Ensure systemic planning and full professional competence of legal staff in civil service, professional development of staff through seminars, specialisation, post-graduate programmes, drafting of brochures, manuals, etc.

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<sup>85</sup> National Programme for the Adoption of the Acquis

- Establish cooperation between administration bodies and BiH universities, in order to include the academic community in this process, and in order to include European Studies courses into curricula at BiH universities.
- Secure application of IT in process management and coordination.

### 2.3.2. Internal market

#### 2.3.2.1. Importance of integration into the EU internal market

In terms of creating an internal market in BiH, the European integration process may be observed in two aspects. On one hand, entering the Stabilisation and Association Process (hereinafter: SAP), BiH has assumed an obligation to establish its own internal market referred to as *single economic space*<sup>86</sup> following the model of the EU internal market. On the other hand, entering contractual relations with the EU, i.e. signing the Stabilisation and Association Agreement (hereinafter: SAA), the BiH single economic space will integrate gradually into the EU internal market.

Internal market is the basis of the present structure of the EU, as it is one of the most important elements for reaching aims such as sustainable development, high level of employment and social protection, better living standards and quality of life, economic and social cohesion.

Freedom of movement of goods, services, capital and persons, competition policy, common customs tariff in relation to third countries, and legislation made up of a whole series of directives and regulations, are the basic principles of the internal market. Acceptance and observance of these principles instigates economic reforms and competitiveness of economy as a whole, stimulates trade and investment, and contributes to development and consolidation of macro-economic stability. On the other hand, harmonisation of legislation creates a legal framework suitable for maximum economic effect, with special attention afforded to institutional development.

Generally, 'the four freedoms' can be said to be the driving force of the entire integration process, best illustrated by the example of the EU itself.

In terms of economy, integration has had several stages – the original free trade area gradually grew into a customs union, and the provision of the 'four freedoms' started the creation of the EU internal market, climaxing in the establishment of the economic and monetary union.

Moreover, economic links mobilised integration in areas of justice and home affairs, and common foreign and security policy.

As for the situation in BiH, freedom of movement of goods, services, capital and persons is guaranteed by the BiH Constitution:

*There shall be freedom of movement in the entire BiH. BiH and its Entities shall not hinder freedom of movement of persons, goods, services, and capital across BiH, nor shall either Entity establish any controls at inter-entity boundary lines.*<sup>87</sup>

Looking at the existence of individual segments of the internal market, the single economic space of BiH can be said to have been established, but its strengthening in specific areas requires further work.

<sup>86</sup> Eng. *Single Economic Space*, following the *Single Economic Market* in the EU.

<sup>87</sup> Article 1, paragraph 4, BiH Constitution.

### **2.3.2.2. The four freedoms**

#### **A) Free flow of goods**

##### ***Situation in BiH***

This segment presents the situation in BiH with an overview of the following segments:

- Laws, technical regulations, and standards,
- Infrastructure, and
- Human resources and promotion.

##### ***Laws, technical regulations and standards***

The current legislation in standardisation, metrology, accreditation, technical regulation and general product safety has been largely harmonised with the current EU regulations, and their full implementation is pending. A set of framework laws related to free movement of goods has been adopted and came into effect: Law on Technical Requirements for Products and Assessment of Compliance, Law on Supervision over BiH Market, and Law on General Product Safety,<sup>88</sup> as well as the Law on Food.<sup>89</sup> Laws provide for the establishment of relevant institutions and agencies, and their implementation is under way.

The BiH Technical Regulations Committee<sup>90</sup> has been established, with the principal task of proposing technical regulations in BiH, aimed at accepting the *New Approach Directives*. The task of the Committee is also to initiate changes and amendments to technical regulations, to prepare Programmes for adopting technical regulations, and to give opinions and information, and consider all issues related to the area of technical regulations.

The establishment of this Committee is important in terms of transposition of current EU directives into BiH legislation. All the technical regulations in BiH are part of the SFRY heritage, and the existence of the Committee is the institutional precondition for the process of transposition of the *New Approach* directives (regulations on products) i.e. *the Global Approach* (regulations on assessment of compliance) to domestic legislation.

Furthermore, considerable percentage (approximately 60%) of harmonised EU standards have been adopted, and the current BAS standards have mainly (approximately 95%) been adopted following the 'first party' method (have not been translated).

As for the assessment of compliance of products, the process of harmonisation of regulations with current EU ones is at the very beginning, with approximately 7500 binding JUS standards still in force.

BiH is currently negotiating membership in WTO, and it is obliged to implement and observe all its agreements – TBT (Agreement on Technical Barriers in Trade), SPS (Agreement on Sanitary and Phyto-Sanitary Measures) and TRIPS (Agreement on

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<sup>88</sup> Official Gazette BiH , No. 45/04.

<sup>89</sup> Official Gazette BiH , No. 50/04.

<sup>90</sup> Pursuant to provisions of Article 6, paragraph 1 of the Law on Technical Requirements for Products and Assessment of Compliance (Official Gazette BiH No. 45/04).



Trade Aspects of Intellectual Property). By accepting the principles integral to TBT and SPS (which are an integral part of the EU foreign trade regime) products will be harmonised with EU standards, allowing export to the EU market.

#### *Infrastructure*

Generally, the establishment of a system of assessment of compliance of products and the assessment system and staff is at the very beginning.

To-date, several testing and metrology laboratories have been accredited, as have certification and control (inspection) bodies for oil and lifts. Establishment and accreditation of certification and control bodies for other products, and general accreditation of bodies for certification of quality, environmental protection and staff is yet to happen.

Preparations are under way for the establishment of a tabulation base and international consistency of measurements, as well as preparations for introduction of international inter-comparative (inter-lab) measurements.

Bilateral and multilateral agreements on recognition of documents in areas of assessment of compliance are pending, as there is no export for products whose harmonisation needs to be assessed.

As for membership in international associations and organisations in the area of standards and measurements, the current Institute for Standards, Measurements, and Intellectual Property has been a full member of ETSI, ISO and IEC since 1997.

Moreover, the Institute is an associate member of CENELEC (since 1999) and a correspondence member of CEN (since 1997). The aim of the Institute is to become full member of all these organisations as well as of the IFAN association.

As for accreditation, the Accreditation Institute is a member of European Accreditation cooperation (EA), and contacts have been established with accreditation bodies in Croatia, Slovenia, Serbia and Montenegro.

The process of harmonisation of the market supervision model with the EU one is at the very onset. Harmonisation with EU standards in this area will result, among other things, in a simplification of procedures and lengthy processes of determination of responsibility related to delivery of faulty products.

Entry into separate treaties (agreements) on recognition of documents in the area of assessment of compliance will allow considerable growth in trade (export in particular) on the basis of the existing network of free trade agreements BiH has signed with Southeast-European countries.

#### *Human resources and promotion*

At the moment, the institutional capacities of BiH for transposition of regulations in this area are only being built.

There is an evident shortage of educated staff, there is no regular education in the area, nor is there an established training scheme in the area of assessment of compliance.

The relevant authorities (bodies of the state and the entities, market supervision bodies, manufacturers, certification bodies, distributors, and other market operations) as well as other parties concerned (universities, laboratories, the media, consumers, the NGO sector and others) are only launching training to implement EU models in BiH.

#### ***Situation in the EU***

The EU internal market is a single customs area with no internal borders within, inter alia, free trade of goods, which is one of the pillars of the EC, prescribed by Articles 23-31 of the Treaty of the European Communities.

Generally, the principal instruments for securing free flow of goods within the EU are technical harmonisation of legislation and mechanisms for prevention of creation of new trade barriers (regulated area) and the principle of *mutual recognition of goods* (non-regulated area).

With harmonisation of national technical legislation, technical harmonisation is aimed at removing regulatory trade barriers and allow normal functioning of the internal market. Legislation on technical harmonisation is based on two approaches – the so-called *new approach* and *sectoral approach*.

*New approach directives* are limited to establishing basic requirements on general issues such as safety, health and environment, for large groups of products and horizontal risks. On the other hand, prior to introduction of the new approach, *sectoral approach directives* determined technical specifications for certain categories of products, often combined with horizontal regulations related to general issues common to all the categories. The principal difference of the *new approach* is reflected in the fact that *sectoral approach* does not regulate sectors by a common model, but rather the sectors follow an *ad hoc* pattern in their regulations, and they need infrastructure for support and application of specific legal frameworks for each individual sector.

The basic conditions for the free flow of goods in a regulated area (regulations with obligatory application):

- full harmonisation, i.e. transposition of legislation and regulations of the EU (treaties, regulations and directives) and their implementation,
- adoption of harmonised EU standards (EN standards),
- prevention of new trade barriers, particularly technical,
- development of infrastructure for assessment of compliance of products, systems and staff with the main segments: standardisation, (legal) metrology, examination, certification, accreditation, and quality management.

For free placement of third country goods to the common EU market, bilateral treaties (agreements) need to be signed with the EU on recognition of results, or documents, in the area of assessment of compliance.<sup>91</sup> The condition for these treaties to be signed is usually membership of the representative of the other side in relevant European and/or international organisations and associations.<sup>92</sup>

On the other hand, the principle of *mutual recognition of products* is applied in unregulated areas. This means that any goods moving legally within one member state must be free to move in any other member state of the Community, other than cases when the member state can prove that regulations of the country of origin do not provide adequate protection of a relevant public good.

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<sup>91</sup> PECA – European Protocols on Assessment of Compliance and acceptance of industrial products, and/or MRA – Mutual Recognition Agreements.

<sup>92</sup> The condition for signing an MRA is accession to the Metric Convention and ILAC etc.

Basic conditions for free flow of goods in an unregulated area (regulated by standards – non-compulsory application, but a real, though informal obstacle):

- an established functioning system of accreditation in accordance with international standards,
- an implemented system of quality in compliance with ISO 9000 series (particularly in industry) and a system of environmental protection according to the ISO 14000 standards series,
- signed multilateral agreements on mutual recognition of MLA, with previous membership in relevant international organisations and associations (e.g. membership in IAF is a condition for signing MLA).

### ***Necessary measures***

- Implement the law and build a product liability system, and the Directive on product liability, and establish a market supervision infrastructure.
- Adopt a state level harmonisation program, i.e. a program of transposition of legislation and regulations and development of infrastructure for harmonisation assessment.
- Realise the remaining part of the programme in the next three years, i.e. implement the regulations adopted within the programme.
- Establish an effective infrastructure for programme implementation, using working groups comprising representatives of all the parties concerned in BiH.
- Secure an advisory role of EU representative in programme management and in the work of the working groups.
- Implement priority segments of the programme (in particular, transpose directives of the *new approach* and the *global approach*, and directives related to food trade).
- Establish a scheme for staff training and evaluation in the area of harmonisation assessment.
- Secure an effective and uniform system in the area of standards, measurements, accreditation and technical regulations, and secure effectiveness and uniformity of such systems across BiH.
- Establish certification bodies for the quality system and staff.
- Establish bodies for harmonisation assessment (laboratories, certification and control/inspection bodies) for other groups of products.
- Secure for BiH institutions and associations in the areas of standards, measurements, accreditation and harmonisation assessment full membership in relevant international organisations and associations, particularly EA, OIML, IAF, ILAC, etc.
- Enter the MLA agreement and sign PECA protocols with the EU for priority areas (groups of products).
- Sign PECA protocols with the EU for other groups of products important for BiH economy.
- With assistance of the Quality Association in BiH, mobilise business and other parties to introduce and certify a quality system and an environmental protection system.
- Signed special treaties (agreements) on recognition of documents in areas of harmonisation assessment, aimed at increasing export on the basis of free trade agreement already signed.

## **B) Free movement of persons**

### ***Situation in BiH***

This area may be observed through the provision of freedom of employment of domestic workers (BiH nationals) – persons within BiH, and freedom of employment of foreign nationals.

In relation to this, the issue of free movement of persons – employment, social security and education – is, pursuant to the BiH Constitution, within the competence of the entities.

In general, entity legislation on labour and employment, as well as the Law on Gender Equality of Bosnia and Herzegovina, prohibits any form of discrimination and guarantees equal employment and labour rights – transfer of pensions, unemployment benefit, health and disability insurance, qualifications, and all other components, freely, across BiH.

However, the principal hindrance to free movement of domestic labour in BiH is the economic situation and the impossibility to find employment.

Moreover, recognition of professional qualifications and validity of legally issued diplomas and certificates is secured across BiH.

According to the Law on Ministries and Other Administration Bodies in BiH, the BiH Ministry of Civil Affairs is responsible for determining basic principles of coordination of activities, harmonisation of entity plans and defining international strategy in areas of health and social protection, pensions, science and education, labour and employment.<sup>93</sup>

The BiH Employment Agency has been established at state level.

Employment of foreign nationals is regulated by entity legislation, based in which foreign national residing in BiH may have access to employment depending on a work permit. A work permit is issued to foreign national provided they have a temporary or permanent residence permit, and that the Employment Bureau does not have registered unemployed who meet the requirements for the same position. Movement and stay of foreign nationals is regulated by the Law on Movement and Stay of Aliens and Asylum in BiH.<sup>94</sup> In addition to conditions for entry and stay of foreign national in the territory of BiH, this Law regulates the issue of asylum application. On the basis of the Law on Stay of Foreign Nationals, Rules on Asylum in BiH have been adopted, as well as Rules on Travel Documents for Foreign Nationals.

To simplify movement and professional activities of EU and BiH nationals, certain steps have been taken to facilitate mutual recognition of qualifications. For that purpose, and with the aim that higher education in BiH should become part of the European Higher Education Area, in 2003 BiH entered the Bologna Process and ratified the Lisbon Convention on Recognition of Academic Qualifications.

The BiH Law on Higher Education is expected to be adopted, after being drafted in compliance with international standards guaranteeing provision of quality teaching,

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<sup>93</sup> Article 15 of the Law on Ministries and other Administration Bodies in BiH (Official Gazette BiH, No. 5/03).

<sup>94</sup> Official Gazette BiH, No. 29/03.

student support, recognition of diplomas from BiH in compliance with EU standards, and student participation in the decision making process.

Cooperation between BiH and the EU in the area of health and social protection is focused on improving the overall level of health and social protection for workers in BiH, using the level already present in BiH as a point of reference. Conditions of work, and social policy and social protection are regulated by entity legislation, and the effect of implementation is limited due to economic weakness and limited resources.

As it advances through the European integration process, BiH will, inter alia, have to work continuously on improving freedom of movement of persons – both for foreign labour employed in BiH and for BiH nationals lawfully employed in the EU. This means, among other things, accumulation or transfer of social protection rights, and motivating EU member states to enter bilateral agreements with BiH related to labour market access.

### ***Situation in the EU***

The area of freedom of movement of persons covers four different segments: freedom of movement of labour, mutual recognition of professional qualifications, civic rights, and coordination of social protection systems. Freedom of movement of labour is one of the four fundamental freedoms. Ever since 1957, the EEC Treaty contained provisions securing free movement of labour within the Community. Free movement of labour is based on Article 39 of the TEU, wherein the preamble states that movement of workers within the EU must be the means that guarantees for a worker the possibility of improving his living and working conditions and his social advancement.

The basic principle is the principle of non-discrimination, meaning that each citizen of a member state enjoys the right to find employment and to be paid for his work in another member state, under the same conditions as applicable to the nationals of that state. This includes abolishment of any discrimination on the basis of nationality of workers from different member states, related to terms of employment and work.

The only exception to this principle set by the Treaty relates to certain types of professional engagement in civil service. Moreover, freedom of practice of certain professions (particularly in areas of law and health) may be subject to certain restrictions, such as professional qualifications. Depending on the given case, freedom of movement of these professions is effected by coordination or application of the principle of mutual recognition.

As for transparency and recognition of diplomas and qualifications, the NARICS<sup>95</sup> network, devised in 1984 at the initiative of the EC, covers the entire EU and EEA (European Economic Area). This solution guarantees, on the one hand, integrity of professions in the EU and protects EU citizens in a simple and transparent way, and on the other, does not lead to unnecessary administrative requirements either for the individual or for the administration itself.

The idea of free movement of persons came to life with the establishment of the common market. Since 1993, all EU national may move and reside freely within the

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<sup>95</sup> National Academic Recognition Information Centres.

EU,<sup>96</sup> as a right integral to European citizenship.<sup>97</sup> Election right refers to the right of EU citizens to elect and stand at elections in their place of residence, as well as in each member state at elections for the European Parliament, irrespective of their citizenship. Coordination of the social protection system is based on a very simple principle – those who want to exercise their right to free movement within the EU should not bear the consequences of that. That is why the right to old age or disability pension, maternity benefits and unemployment benefits are to be secured for persons who decide to move from one member state to another.

### ***Necessary measures***

- Establish an adequate legal and institutional framework aimed at improving the freedom of movement for workers, particularly in terms of BiH trying to become an attractive destination for foreign investments.
- Adopt legislation related to recognition of foreign diplomas and facilitate access to the labour market by recognising foreign education qualifications.
- Harmonise the education system with the needs of the labour market and unify criteria of operation of higher education institutions with those in the EU, aimed at raising the quality of education.
- Regulate the internal labour market in BiH and create a possibility for employees to live off their own labour, and provide better information for workers regarding their rights and possibilities of employment in EU member states.
- Design a financially sustainable and effective pension system, based on individual contributions to social security, and establish a taxation basis for the introduction of a state-level pension scheme.
- With the aim of removing barriers to employment of foreign nationals residing legally in BiH, simplify administrative procedures for obtaining work permits by establishing 'one-stop-shops' for obtaining work permits.
- Start with preparations for integration into the Schengen consular information system.
- Accelerate implementation of University Institutional Development Plan for the period 2003-2010 and regulate this area at the level of BiH.
- In the area of social protection, there is a general need to harmonise the system with EU standards, and to improve coordination within BiH in the area of enjoyment of social and health protection.
- Improve student mobility for the purpose of continuation of any form of study by recognising foreign education qualifications, periods of study, or exams passed.

## **C) Free flow of services**

### ***Situation in BiH***

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<sup>96</sup> Article 14 of the Treaty Establishing the European Community.

<sup>97</sup> Article 18 of the Treaty Establishing the European Community.

Freedom of movement of services and freedom of business establishment is, in addition to the other three factors, an important element of development and strengthening of the single economic space in BiH. In general, the key feature of the service sector in BiH is a relatively non-discriminatory regime, which may be illustrated by examples of the banking sector, transportation and courier services, mainly with foreign ownership. According to the BiH Constitution, competence over the area of services is mainly at entity level. The institutional and legal framework of this area is rather complicated, and the process of its harmonisation with EU standards is yet to happen.

In financial services, the banking sector is regulated at entity level, which, inter alia, allows foreign or domestic legal or natural persons to establish banks in the territory of BiH (with relevant authorisations for foreign parties). Regularity of bank operations is supervised by entity Banking Agencies, whose work is coordinated by the BiH Central Bank. The Central Bank acts as the *currency board*, which conditions the absence of standard central bank functions – macroeconomic and monetary policy, control and supervision of commercial banks in the country, participation in capital markets (state bonds and guarantees), influence over development policy.

In the insurance sector, a state-level legal framework has been established, and entity legislation has been harmonised accordingly, and institutions are currently being established pursuant to the law.

As for non-financial services, the process of establishment of the legal and institutional framework in compliance with European standards can generally be said to be at the very beginning, and the process of harmonisation is of different pace in different sectors – in the telecommunications sector, legal and institutional framework have been established, there has been some improvement in the area of broadcasting, and foundations for e-business are only being established.

One of the basic principles of freedom of movement of services is freedom of business establishment, also with a non-discriminatory regime in BiH – companies from the EU may establish themselves and act freely on the basis of national treatment or the *Most Favourable Nations* principle, depending on which is more favourable in a given case. Closely connected with the freedom of business establishment is the issue of business registration. The European integration process conditioned a transfer of competences in this area to state level. An example of this is the adoption of the state-level Framework Law on Registration of Business Entities, in compliance with EU standards, followed by harmonisation of entity legislation in the area. This Law accelerated registration procedures, made them uniform and simple, and a Common Register of Business Entities at the level of BiH has been established at all courts.

### ***Situation in the EU***

Basic principles regulating the freedom of movement of services are the right of business establishment and the freedom of cross-border provision of services.

Freedom of cross-border provision of services is related to the right of legal and natural persons to provide or receive services in the territory of any member state under the same conditions as the residents, with no restrictions or prohibitions arising from legislation of a given member state or its administrative practice.

The right of business establishment is related to the right of an entrepreneur to establish and run a company in any EU member state, with no restrictions.

Free movement of services in EU countries is regulated by the TEU.<sup>98</sup> This is one of the most important economic issues, as approximately 65-85% of national revenue, jobs, etc. are related to this versatile and dynamic sector. These policies are related to the freedom of provision of services and freedom of trading in services.

Services treated under this chapter are those that are normally provided for reimbursement, and they include services in industry, trade and crafts, as well as services of free professions, provided they are not covered by provisions on freedom of movement of persons or free movement of goods.

These services are classified as financial services (services in areas of banking, insurance, trading in securities and investment funds), non-financial services including transport, telecommunications and IT, broadcasting and business consulting services of different types and professions ('harmonised area').

As for the non-financial services sector, there is a large number of regulations related to freedom of movement of services in specific areas such as public administration, ownership, forests, agriculture, obligations, e-business and electronic signature, private trade, culture and film, environment, health and protection of flora and fauna, etc.

### ***Necessary measures***

- Reorganise trading in securities in compliance with best European practice, and establish relevant systemic laws and relevant institutions in this area at the level of BiH.
- Equip the Central Bank, both in legislation and in staffing, to provide other central bank functions (presentation at capital market and investment market, by issuing bonds, guarantees and other state securities, supervision of commercial banks, financial statistics).
- Establish a state-level register of companies and continue with reforms in the area of business registration in order to simplify the procedure for establishing and registering companies and foreign investments.
- Stimulate domestic and foreign currency savings and act towards expanding the area of work and capacities of the Deposit Insurance Agency.
- Make the BiH Insurance Agency operational.
- Improve control over the work of commercial banks in BiH and of bank reporting.
- Establish banking procedures compliant with EU practice, particularly the strategy of determining adequacy of bank capital (Basel II).
- Launch reform in land policy and land registers, and accelerate the procedure of entry into land registers and the exercise of ownership rights, to make them simpler and more effective.
- Continue with reforms in accounting and auditing sectors and in reporting procedures.
- Thoroughly reorganise and reform the non-financial services sector in compliance with the *acquis*. Due to versatility and numbers of types of services, a relevant study will be required, using foreign experiences (whenever possible) and relevant twinning programmes.
- Accelerate preparation and implementation of electronic business and signature.

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<sup>98</sup> Heading III, Chapter 3, Articles 49-55.



- Determine and establish a time-frame for priorities required in electronic business and use programmes of foreign aid and experiences whenever possible.
- Establish a central system of information on business background of companies and their liquidity (this may include engagement of the private sector).
- Effect the necessary adjustments of the court system to allow free flow of services.

## **D) Free flow of capital**

### ***Situation in BiH***

In general, work in this area to-date has secured establishment and maintenance of a stable exchange rate of the convertible mark, through the currency board arrangements of the Central Bank and through successful modernisation of the payment system, and guarantees for transfers of profit from foreign investments.

As for individual areas, current activities in capital market development have resulted in the establishment of an institutional, legal and material/technical basis which allows the functioning of a securities market, from the primary market, i.e. emission of securities, electronic system of registration and transfer of securities, to the secondary market, where trading in securities is mainly done through a stock exchange as an organised market.

The area of foreign investments in BiH is regulated by numerous laws at state and entity levels, which leads to certain practical difficulties. The basis of the entire legal framework in this area is the Law on Foreign Direct Investment Policy in BiH,<sup>99</sup> which is a framework law and the basis for all other lower level regulations. In general, the purpose of legislation in this area is to establish simple, transparent, predictable, and stable foreign investment policy, and to protect interests and rights of the investors.

The Law itself is non-discriminatory and it allows foreign investors to invest and re-invest their profits generate as the result of economic activity, with no restrictions, in any sector in BiH. As for restrictions, they are related to foreign shares of basic capital of companies in military industry<sup>100</sup> and information.

Privatisation is also an important aspect of the freedom of movement of capital and it is particularly important for transition countries such as BiH. Framework Law on Privatisation of Companies and Banks<sup>101</sup> provides for equal participation of domestic and foreign legal or natural persons in the process of privatisation of companies and banks, and their assets. There are certain restrictions, mainly regarding special deadlines and methods of privatisation for specific types of companies<sup>102</sup> and certain categories of goods not subject to privatisation at all.<sup>103</sup>

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<sup>99</sup> Official Gazette BiH, No. 4/98 and 17/98.

<sup>100</sup> Production and sales of weapons, munitions, military use explosives and military equipment.

<sup>101</sup> Official Gazette BiH, No. 12/99 and 14/00.

<sup>102</sup> Companies in electric power, trade and transport (other than road) water resources, exploitation of mines and forests, information, lottery and military equipment and ammunition industry.

<sup>103</sup> Natural resources, goods of general use, facilities of general cultural or historical importance used by the company in its activities, and land (other than the land where the facility is located).

The European integration process conditioned the creation of a legal and institutional framework for combating financial crime at state-level. The Law on Prevention of Money Laundering<sup>104</sup> has been adopted, and a Financial Intelligence Department has been established within SIPA, following all financial transactions conducted through commercial banks in BiH.

### ***Situation in the EU***

Freedom of movement of capital is one of the components of the EU common market. This freedom entails abolishment of all restrictions on movement of capital or discrimination based on nationality, residence or place of investment.

This also entails gradual harmonisation of hard currency and monetary policies related to capital trade within the EU as well as with third countries (capital flows with third countries may be subject to restrictions only in specific cases and for no longer than six months).

Other than free movement of capital defined above, key areas are the payment system related to transfers of funds acquired from ownership, and prevention of money laundering.

The area of free movement of capital is comprehensive and it affects economic flows as a whole, which is why regulations in this area are few.

In order to ensure respect for basic principles of capital market, there is common legislation in the EU aimed at controlling capital flows. In general, this 'harmonised' area includes the payment system, credit, and basic procedures related to administrative supervision over financial institutions.

Freedom of movement of capital is regulated by Articles 56 to 60 of the TEU, and directives interpreting Treaty rights,<sup>105</sup> regulating cross-border transfers of funds<sup>106</sup> and completion of settlement of finality in payment and securities settlement system.<sup>107</sup>

Judgements of the European Court of Justice are important in this area, as they interpret articles of the Treaty related to the establishment of restrictions over free movement of capital.

As for restrictions, there is a possibility of certain types of restrictions aimed at direct or indirect protection of interests of individual EU member states. Examples of such restrictions are deposits, taxation of interest and foreign investment revenue, withholding rights over individual shares or shares in companies in order to be bought by nationals of a certain country, limits on deposits by foreign nationals, conditions for re-investment of profits in local markets, etc.

### ***Necessary measures***

- Remove bureaucracy from procedures for acquisition of ownership rights over real estate.<sup>108</sup>

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<sup>104</sup> Official Gazette BiH No. 29/04.

<sup>105</sup> 88/361/EC.

<sup>106</sup> 97/5/EC.

<sup>107</sup> 98/26/EC on settlement finality in payment and securities settlement systems.

<sup>108</sup> Regulated by the Law on Foreign Direct Investment policy, which presents no restrictions for foreign investors to acquire ownership over real estate, including land.

- Establish national instruments for stimulating *green field* FDI and participation of foreign capital in development and privatisation programmes in processing industry.
- Create a single system of transfer of capital from BiH to foreign countries and between residents and non-residents within BiH.
- Prepare for abolishment of restrictions related to investment and acquisition of property in certain sectors.
- Start with public promotion and public information on money laundering and focus technical assistance on this area.

### 2.3.2.3. Competition

#### *Situation in BiH*

The process of transition and harmonisation with EU standards introduces into BiH society numerous new concepts, which are all preconditions for normal functioning of market economy. Competition policies, as one of such concepts, support the transition process by creating a healthy economic structure and an acceptable regulatory framework which prevents monopolisation of the market and unacceptably large profits.

Creation of a legal and institutional framework in this area is the result of recommendations in different stages of European integration. Generally, this area can be said to have achieved good results and its further development is fully in compliance with European standards and changes taking place in the EU itself.

The legal framework in the area of competition was launched in the early stage of European integration. Adoption and implementation of the Law on Competition<sup>109</sup> was one of the requests of the Road Map, and the Feasibility Study defined competition as one of the priority areas. Shortly after the Law on Competition came into force, changes happened in EU legislation, so that the current law is no longer harmonised with the *acquis*. For that reason, a new BiH Law on Competition is being drafted, fully compliant with current EU regulations.<sup>110</sup>

The need to organise an efficient institutional framework and harmonisation with EU standards, led to assignment of powers in the area of competition to the level of the state. The BiH Ministry of Foreign Trade and Economic Relations<sup>111</sup> is responsible for implementation of competition policy. In addition to the Ministry, the leading institution in BiH in the application of competition policy is the Competition Council, as well as entity competition and consumer protection offices, which will fall under the competence of the Competition Council once the Law has come into force. The Court of BiH is competent to rule on appeals against decisions of the Competition Council.

Activities in promotion of competition policy in BiH are in their early stages. As this is a new area, there is still a lack of understanding of the notion of competition and its confusion with competitiveness, both in the media and among business entities and

<sup>109</sup> Official Gazette BiH No. 30/01, 18 December 2001.

<sup>110</sup> The law has been drafted and is currently in parliamentary procedure.

<sup>111</sup> Article 9 of the Law on Ministries and other Administration Bodies in BiH (Official Gazette BiH, No 5/03, 7 March 2003).

institutions in BiH. That is why a Competition Advocacy programme was launched, trying to present legislation and market competition policy in BiH.

It should be added that the EU has provided assistance in the process of institutional development of the competition sector, within CARDS and SES I and SES II projects, assisting the establishment of legislation in this area, as well as institutions responsible for policy implementation.

An integral part of competition policy is the area of state assistance, and development of legal and institutional frameworks in this area is pending.

### ***Situation in the EU***

Competition policy is one of the principal elements of the EU internal market and is the result of an understanding that economic flows must rest on principles of market economy and free and fair competition.

Competition may be observed as the basic mechanism of market economy through which it ensures balance. By confronting supply (manufacturers and traders) and demand (intermediaries and consumers), a market price is established for a given product or service, at the same time maximising individual interests. In this way, the market is in a state of economic efficiency, and competition acts as the regulator of the entire process. That is why the purpose of competition policy may be said to be, on one hand, effective consumer protection and, on the other, stronger business competition in the internal market.

EU competition policy covers five key areas:

- prohibition of participation in restrictive agreements,
- abuse of dominant market position,
- liberalisation of competition policy,
- control over concentration,
- state assistance.

The EC Founding Treaty determines common competition rules,<sup>112</sup> and this area is further elaborated by a series of regulations, referring, inter alia, to relations with third countries.<sup>113</sup>

The European Commission has sole competence over issues of competition, and exceptions are cases regulated by Articles 81 and 82 of the Treaty, where the competence over these areas is divided between the European Commission and institutions and courts of member states.

State assistance is a separate aspect of competition policy. The aim of EU policy in this area is to prevent any form of assistance that may favour certain business entities or the production of certain goods or services and thus damage competition relations in the EU internal market. There are certain exceptions in this area, mainly related to assistance directed at regional development, in compliance with set criteria, and promotion of certain projects of particular interest for the EU.

### ***Necessary measures***

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<sup>112</sup> Articles 81– 90 of the Treaty Establishing the European Community.

<sup>113</sup> Council Regulation (EC) No, 139/2004.

- Improve the capacities of institutions responsible for creating and implementing competition policies.
- Establish cooperation between relevant institutions and regulatory bodies.
- Develop cooperation with competition bodies of other countries and with international organisations.
- Establish mechanisms for consultation EC DG Competition aimed at better implementation of competition policies in BiH.
- Introduce segments of competition into individual sectoral policies.
- Provide continuous training for staff working on competition policies, as well as for all other interest groups in this area (business entities, lawyers, judges, chambers of commerce, etc.)
- Introduce competition policy as subject at universities.

#### **2.3.2.4. Consumer protection**

##### ***Situation in BiH***

This area is closely linked with competition, and creation of an institutional and legal framework in this area has also started in the early stage of the European integration process. The adoption of the Law on Consumer Protection<sup>114</sup> was also one of the requests of the Road Map. In this area also, recommendations of the Feasibility study identified consumer protection as one of the priority areas.

At the moment, a new Law on Consumer Protection is being drafted, determining subjects of consumer protection in BiH, regulating legal protection of consumers and introducing the institution of Ombudsman for consumer protection, responsible for consumer protection and active in consumer disputes.

In general, the new Law on Consumer Protection is in full compliance with European standards in this area – it regulates relations between consumers, producers and traders in the territory of BiH, and it contains provisions on honest trading, price marking, labelling of products, guarantees, advertising of products and services, economic services of general interest, contracts made outside business premises, distance contracts, consumer loans, electronic payment instruments, tourist package-deals, time-rental of tourist facilities, unfair provisions in consumer contracts.

Furthermore, protection of life and health of consumers in the area of security of goods is achieved by the Law on General Product Safety,<sup>115</sup> which adopted the Directive on general product safety. In the area of food safety, the Law on Food has been adopted, fully compliant with requirements of the WTO Agreement on Application of Sanitary and Phyto-Sanitary Measures (hereinafter: SPS), as well as requirements of European legislation in the area of food safety.<sup>116</sup>

The leading institution for implementation of consumer protection policy is the BiH Ministry of Foreign Trade and Economic Relations, and a Consumer Protection Council

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<sup>114</sup> Official Gazette BiH No.17/02.

<sup>115</sup> Official Gazette BiH No. 45/04.

<sup>116</sup> EC Regulation No. 178/2002, representing the general European law on food, and is the basis of the Law on Food.

has been established pursuant to the Law on Consumer Protection, also participating in policy design in this area. In addition to these institutions, a significant role is assigned to consumer associations across BiH, and individual institutions such as Food Safety Agency and Market Supervision Inspectorate, currently being established, and competent for individual segments within the overall area of consumer protection.

### ***Situation in the EU***

One of the basic aims and task of the EU is protection of health and safety of consumers, and protection of their interests, information and education and effective organisation of consumers for the purpose of protecting their interests.

*The 2002-2006 Consumer Protection Strategy*<sup>117</sup> presented three key aims of consumer protection policy in the EU:

- a high level of consumer protection, which entails harmonisation of regulations not only in safety of products and services, but also in protection of economic and legal interests of consumers;
- effective application of regulations on consumer protection, achieving uniform consumer protection across the EU, with a priority to develop administrative cooperation among member states;
- participation of consumer organisations in designing EU policies.

Priority activities in product and services safety include implementation of the Directive on general product safety and relevant initiatives in the area of services.

Legislation on protection of economic interests of consumers in the EU includes: unfair trading, deceptive and comparative advertising, price marking, contracts made outside business premises, distance contracting, consumer loans, tourists package-deals, acquisition of the right of use of property over certain periods of time, unfair conditions in consumer contracts, sale of consumer goods and accompanying guarantees, court orders for consumer protection.

### ***Necessary measures:***

- Ensure full and consistent application of laws regulating consumer protection.
- Develop institutions competent for consumer protection and provide for their capacities.
- Create and implement consumer protection policy.
- Ensure consumer rights protection and develop a market surveillance system in accordance with the EU requirements to secure protection of lives and health of consumers.
- Intensify cooperation of all the relevant subjects in the area of consumer protection.
- Develop cooperation with consumer protection bodies from other countries and with international organisations.
- Establish alternative dispute resolution mechanisms for consumer dispute.
- Implement and upgrade consumer education and information.

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<sup>117</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee of the Regions – Consumer Policy Strategy 2002-2006 (COM/2002/0208 final).

- Develop and finance non-governmental organisations in the area of consumer protection and enter relevant international associations in the area.

### **2.3.2.5. Corporate governance**

#### ***Situation in BiH***

The area of corporate governance is particularly important for any transition country, including BiH. The notion of transition in the narrow economic sense means a transition from planned to market economy, and it entails the process of transformation of ownership and management of companies. This area is closely related to other segments of internal market, primarily with free movement of capital and services – examples for this are areas of privatisation and registration of companies, partly regulated by regulations of corporate governance.

An institutional and legal framework has been created and it may be concluded that, in general, good results have been achieved in this area thus far. Legislation reform in compliance with EU standards adopted modern concepts of organisation of businesses, with as few requirements as possible for their establishment and registration. Moreover, the initial phase of development of capital market has been completed – there is a market infrastructure and basic operative procedures are in place for trade in primary as well as in the secondary capital market, and conditions have been made for further development of those markets.

The area of corporate governance in BiH is entirely within the competence of the entities. Entity legislation regulating this area has been harmonised, and its common feature is an absolutely liberal system of establishment of companies for any legal or natural person, both domestic and foreign. If a founder is a foreign natural or legal person, in addition to this, an additional regime is applicable, relevant for foreign investments.

In FBiH, corporate law is regulated by the Law on Business Companies, which defines the following forms of companies: shareholding company (*d.d.*), limited liability company (*d.o.o.*), unlimited liability company (*d.n.o.*), limited partnership company (*k.d.*). However, certain forms of companies (banks, insurance companies, stock exchanges and investment fund management companies) may be in form of shareholding companies, and their organisation is regulated by separate laws. Furthermore, the Law on Business Companies does not recognise any special forms of association such as holding companies, concerns, etc., but rather only speaks of related companies with majority ownership or subsidiary, i.e. controlled companies.

In RS, this area is regulated by the Law on Companies. Pursuant to this law, companies are either business companies or public companies. Business companies are established as companies of persons or capital (company, corporation). Companies of persons are established as full or limited partnership, and companies of capital as shareholding companies (*a.d.*) or limited liability companies (*d.o.o.*). Companies may be connected by capital or contracts (connected as mother companies or dependent companies).

Brčko District applies the Law on Companies of the Brčko District BiH, which recognises special forms of organisation as well. Thus, a company with a single founder and

members is called a single proprietor company, and limited liability companies or shareholding companies established by the Government of the Brčko District for services of public interest is a public company.

As for the institutional framework, key institutions in this area are entity securities commissions and the Securities Commission of the Brčko District, as well as securities registers in the entities and in the Brčko District. Moreover, a Single Register of Companies has been established.

### ***Situation in the EU***

Business companies are organisations created and managed in compliance with legal requirements, and they entail different types of persons: shareholders, employees, creditors and third parties.

Establishment of a company means integration into economic life of a member-state and it entails the right of a business company of one member state to establish agencies, offices or branches in the territory of another member state, without any requirement of a permit.

Treaty of the European Community does not contain a separate chapter on corporate governance. This area is partly regulated by Treaty articles related to competition, industry, taxation and state assistance, and directives and regulations further regulating individual issues.

The basic approach to the creation of an ambience conducive to companies in the EU is harmonisation through directives. In general, harmonisation of regulations relevant for corporate governance is key for the creation of a common financial market of goods and services in the EU. It is aimed at removing obstacles for companies to use the freedom of establishment and at securing the same level of protection for shareholders, employees, creditors and third parties across the EU.

### ***Necessary measures***

- Work continuously on harmonising legislation in this area across BiH.
- Increase shareholder rights, in terms of increasing property liability of management towards shareholders, the rights of shareholders to initiate investigations related to company business before judicial or other administrative bodies, liability of the director for wrongful decisions that may lead to bankruptcy or liquidation, electronic access to key company information prior to any shareholders' meeting (regular or extraordinary), possibility of on-line participation to shareholder's meetings.
- Increase the level of protection of minority shareholders, in terms of protection of majority vote in decisions infringing on their rights.
- Establish greater control of conflicts of interest in management and supervisory boards of the company and strengthen the role of audit bodies. Modernise management and supervisory boards for the purpose of collective liability of the supervisory board for financial and non-financial decisions in the company.
- Upgrade and maintain a system of collection of reports and announcements by the company and make such a data base publicly available via the web.



- Amend existing and adopt new standards of corporate governance in shareholding companies, in compliance with the International Association of Securities Commission Organisations (IOSCO) and OECD's principles of corporate governance.

### **2.3.2.6. Intellectual property**

#### ***Situation in BiH***

Establishment of an integral system of protection of intellectual property in BiH is under way. Design and development of a new concept in this area includes designing an effective institutional framework and upgrading the existing legal framework.

So far, the focus of activities in the area was protection of industrial property rights, where a legal framework has been established and procedures set, so that significant results have been achieved in protection and trade of patent rights, brand names and trade marks, service names and industrial design. An electronic registration of all the rights has been established. In the area of authors' and affiliated rights, a legal framework has been adopted, and criteria have been introduced to allow enjoyment of these rights.

Criteria have also been set for representation services in protection of industrial property. At the moment, there are several legal and natural persons in BiH acting as patent representatives and representatives for industrial design and brand names, capable not only of protecting rights before the Institute, but also to act before courts, customs, sales inspection, and other relevant institutions. There are two specialised agencies for protection of authors' and affiliated rights, meeting the prescribed conditions, with licenses issued by the relevant BiH institute.

Moreover, entry into the World Trade Organisation (hereinafter WTO) and the EU mean that BiH will be obliged to adopt and implement conventions and agreements in the area of intellectual property. At the moment, BiH is state party to several international conventions, and initiative has been launched and preparations are under way for accession to the Treaty on Intellectual Property in relation to integrated circuits, the Strasbourg Treaty on International Patent Classification and The Hague Agreement on International Registration of Industrial Design (the 1999 Geneva Act). BiH is member of the European Patent Organisation (EPO), as a state of enlargement of European patents, on the basis of the Agreement on cooperation and enlargement of European patents. Signing this Agreement, BiH acquired the observer status in EPO bodies.

The area of intellectual property is regulated by the Law on Intellectual Property in BiH<sup>118</sup> and the Law on Authors' Rights and Affiliated Rights in BiH<sup>119</sup> and relevant implementing regulations. These laws and implementing regulations established administrative procedures, provided for measures, and defined the role of judicial and other competent bodies, aimed at providing more effective intellectual property protection.

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<sup>118</sup> Official Gazette BiH, No. 3/02 i 29/02.

<sup>119</sup> Official Gazette BiH, No. 7/02.

As for the institutional framework, the Law on Establishment of the Intellectual Property Institute,<sup>120</sup> a separate BiH Intellectual Property Institute was established as the legal successor of the BiH Institute for Standards, Measurements and Intellectual Property, to continue providing functions in the area of intellectual property, i.e. protection of intellectual property and authors' and affiliated rights.

As mentioned above, relevant legislation defined the role of other institutions with a certain level of competence in the protection of intellectual property. This is particularly so in relation to courts of all levels, including the Court of Bosnia and Herzegovina, competent for implementation of rights of intellectual property, determination of provisional measures, and implementation of penal provisions. Combating forgery in BiH includes involvement of sales inspections, customs authorities, and police forces, which started working on combating illegal trade in "pirated editions" of sound and image recordings, which resulted in an improved situation in the area of protection of copyright and other author's rights in BiH.

### ***Situation in the EU***

On the whole, through the protection of industrial property (patents, brand names, trade marks, industrial design and geographic names) and protection of copyright and affiliated rights, industrial property stimulates the overall intellectual potential and thus contributes to technological development and modernisation of society in general.

The concept of protection of intellectual property has developed within the context of market economy and is an integral part of the common market. The principle aim of policies in this area is to secure movement of goods and products protected by intellectual property rights, and deepening economic integration makes it an important factor in trade and international economic relations.

Effective protection of all forms of intellectual property precludes unauthorised use and allows legal security to their owners.

There is a difference between the rights of industrial property (acquired by registration with relevant institutions) and copyright and other affiliated authors' rights, generated by the very creation. It is common practice in EU countries that administrative procedures related to industrial property are performed by a government-level body. On the other hand, protection of authors' rights entail administration companies established by holders of authors' rights, which perform administrative duties for them, such as supervision of use of their work, negotiating with users, collection of royalties and their distribution among holders of rights.

Over time, multilaterally, and particularly within the World Intellectual Property Organisation (hereinafter: WIPO<sup>121</sup>) an integral framework has been created, so that the *acquis* included the existing harmonisation in this area.

After the Agreement on Trade Aspects of Intellectual Property Rights (TRIPS) was concluded within WTO, the EU and its member states ratified it, followed by an obligation to harmonise with the *acquis* in this area. TRIPS sets minimum conditions

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<sup>120</sup> Official Gazette BiH, No. 43/04.

<sup>121</sup> World Intellectual Property Organisation (WIPO).

related to all types of intellectual property rights and amends this area with principles of international law and the WTO clause of the *Favoured Nation Treatment*.

### ***Necessary measures***

- Upgrade the Intellectual Property Institute and work on improving its capacities.
- Accede to all the relevant international conventions and associations in the area of protection of intellectual property.
- Intensify cooperation between courts, sales inspections, customs and police forces, with the aim of more effective combat against forgery and piracy.
- Follow technological developments and facilitate further training of staff working on applications in the area of authors' and other affiliated rights.
- Launch an information campaign for all the parties involved and concerned on the role of intellectual property as a segment of the internal market.

## **2.3.3. Innovations**

### **2.3.3.1. Information society**

#### ***Situation in BiH***

Transformation from classic to information society is a precondition for integration into the EU. Activities towards the establishment of an information society and strategic information systems<sup>122</sup> are a form of catalyst of development in our country. The project of development of policy and strategy for an information society in BiH includes a policy of development of ICT structure, industry, e-business, e-government and e-education. This project is the result of joint efforts of the BiH Council of Ministers and the UNDP mission to BiH, with financial support by the Government of the Kingdom of Norway. A precondition for an information society is in the developed and wide ICT infrastructure, as the information media, made up of telecommunications networks and strategic information systems. The existing infrastructure, however modern technologically, is not fully utilised.<sup>123</sup> The draft Law on BiH Computerisation Agency is in the parliamentary procedure. This Agency should be responsible for the development of an information society in the country. The information society itself is regulated in different ways. At the level of BiH, those are: Law on Copyright and other Affiliated Rights,<sup>124</sup> Law on Protection of Personal Data<sup>125</sup> and the directly relate Law on Freedom of Access to Information, Law on Consumer Protection,<sup>126</sup> Criminal Code and Law on Communications. In BiH, activities are currently under way on drafting a Law on

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<sup>122</sup> Such as the BAR project (Bosnia-Herzegovina Accounting Reform), CIPS, the ASYCUDA customs system, and the recently established Central Register of Transaction Accounts of Legal Persons in BiH, etc.

<sup>123</sup> Thus, mobile communications services using GSM standards are based only on voice transmission, whereas the GPRS data transfer services are being slowly introduced.

<sup>124</sup> Which partly deals with the issue of protection of digital copyright, but focuses on issues of protection of audio, video and written work, whereas the area of data files and computer programmes are less regulated.

<sup>125</sup> It includes data collected by BiH institutions, not only in electronic formats. Still it is unclear regarding protection of data produced in business and does not provide any particular protection of data in electronic communications, which should be regulated by separate regulations.

<sup>126</sup> Basic aspects of consumer protection in distance contracts and the new Law on Consumer Protection which, on the other hand, does not, by the nature of things, regulate B2B (business to business) issues, which remain rather unregulated.

Electronic Business and Electronic Signature, and a series of secondary legislation aimed at defining a legal framework for development of electronic business. It is important to note that numerous business entities have already understood the advantages of ICT in other segments of business, such as communications with suppliers and buyers, data processing, and marketing. The ICT industry, both in production and in services, was developed in the country before the war, and it went on developing after the war, to reach the status of one of the most profitable segments of economy. Within the ICT industry, the most important segments are telecommunications service providers, software manufacturers and IT equipment traders. It is interesting to note that there is almost no unemployment in ICT industry and that income levels are much higher than in the rest of the economy, making ICT particularly attractive and a possible generator of economic development. Current estimates indicate that the percentage of population using the Internet is between 2% and 5%.<sup>127</sup> Poor purchasing power of the population is the reason why relatively few households own a computer (some 5%). Another factor is the insufficiently developed and expensive ICT infrastructure, so that even those who own a computer can often use a dial-up connection and nothing else. This situation is somewhat mitigated by the appearance of private Internet access providers,<sup>128</sup> in several large cities in the country, offering cheaper, wireless or cable access, at favourable prices.

### ***Situation in the EU***

Development strategy presented at the European Council Summit in Lisbon in 2000,<sup>129</sup> stated that one of the development objectives of the EU was to build the most competitive, knowledge-based economy with a higher level of employment and social cohesion by 2010. The fulfilment of this plan entails, inter alia, development of an information society which would make life easier for the citizens and also create new possibilities for economic development, employment, as well as social inclusion of part of the population with special needs. Operative elaboration of strategic activities was in form of the e-Europe Action Plan 2002, which has already provided good progress towards the establishment of a new regulatory framework for communications networks and services in e-business, e-government, e-education and e-health, which allowed for the appearance of a new form of market, accompanied by an increase in productivity and employment. Continuity of these measures was elaborated through the e-Europe Action Plan 2005. These action plans secured avenues of action for creation of an ambience for e-business development.<sup>130</sup> The process started by adopting legislation for the required legal framework<sup>131</sup> for an internal e-business market, characterised by the promotion of *soft-law* instruments (business codes) in regulating relations between business entities and their relations with consumers, and developing mechanisms of extra-judicial dispute resolution. In view of the importance of small and medium

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<sup>127</sup> These indicators do not take into account office Internet access, which would come up to 7 - 8%.

<sup>128</sup> Internet Service Provider – ISP.

<sup>129</sup> *Presidency Conclusions, Lisbon European Council 23 and 24 March 2000*, available at the official EU site [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/ec/00100-r1.en0.htm](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.en0.htm)

<sup>130</sup> The term e-business includes e-commerce (*online* consumer buying and selling: B2C), trade platforms (*business to business* trade: B2B) as well as restructuring of the business process in order to optimize the utilisation of digital technologies, aimed at improving business.

<sup>131</sup> Directive 2000/31/EC on electronic business, Directive 1999/93/EC on framework for electronic signature, Directive 2001/29/EC on harmonisation of certain aspects of copyrights and affiliated rights in information society, Directive 97/7/EC on consumer protection in distance contracts: VAT payment was simplified with the Directive on electronic accounts, 2002/38/EC, and the Regulation on digital procurement 792/2002.

enterprises (SME) in EU economy<sup>132</sup> as well as the awareness that competitiveness and growth cannot be achieved by mere involvement of business entities in Internet-based business, attention has been focused on promoting SME involvement in e-business. A particular segment of this project dealt with raising awareness of new business opportunities opening up in the e-business segment.

### ***Necessary measures***

- Provide complete legislation regulating mechanisms for combating software piracy (Law on Copyrights, Criminal Code).
- Harmonise the above cited regulations with relevant EU legislation, i.e. adoption of new regulations and their consistent implementation.
- Establish an Information Society Development Agency and introduce ICT standards to administration bodies.
- Build e-government.
- Develop a common system of state registers – possible expansion of the CIPS project to include registers of businesses, tax registers, cadastre, etc.
- Create a state portal allowing citizens easy access to administration information and services.
- Build a state-level ICT highway – backbone, and secure even coverage of the country with infrastructure.
- Implement a reform in the telecommunications sector, aimed at liberalisation.
- Stimulate the use of ICT in business.<sup>133</sup>
- Support participation of domestic products in public procurement procedures, and develop permanent forms of cooperation with the domestic ICT industry.
- Stimulate export of ICT products and entry of domestic industry into professional associations for export promotion.
- Establish a state-level scientific research network aimed at providing Internet access for all the education institutions in the country, on non-commercial basis.
- Establish a system of certification of digital literacy among pupils and students, if possible through the adoption of ECDL (European Computer Driving Licence) programmes into the curriculum, and provide quality IT teaching staff through regular re-certification of teachers.
- Provide accessible ‘education for ICT’ for older generations and distance learning at all universities.
- Stimulate the use of open-source software by all budget users, and rely on solutions provided by the domestic ICT industry.
- Stimulate the design of domestic content on the Internet, in order to increase Internet use, and organise information campaigns aimed at promoting benefits of Internet.
- Temporarily reduce or abolish customs duties on ICT use for natural and legal persons, aimed at accelerating the development of information society.

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<sup>132</sup> European Commission data from 2001 indicates that there are more than 19 million SMEs in the EU, and that in most member states they make up for 99% of all companies. See more in: Communication 13.3.2001 Com(2001)136 Final. p. 6.

<sup>133</sup> E.g. create a system of *online* submission of annual and periodical accounts of businesses, and stimulate the use of this system by granting benefits for companies which use it (lower tax rates or longer submission deadlines).

### **2.3.3.2. Education, science and youth**

#### ***Situation in BiH***

Implementation of reforms in the field of education is an important task for BiH. Pre-school, primary, secondary and education for children with special needs are regulated at state level, and the law on higher education is pending. BiH has already taken part in different EU programmes, and its strategy in this area is in compliance with European guidelines and priorities set within the Bologna Process and the Lisbon strategy. The international community, particularly the OSCE, have been helping in developing and implementing the education strategy with the aim of reforming and modernising it. 'BiH Education Reform Strategy' was prepared with assistance by OSCE and adopted at all levels of BiH government.

#### ***Situation in the EU***

Education is one of the priorities for all EU member states' governments. Education structures differ among member states and within member states themselves. In this area, the European Union has created a cooperation policy: exchange of ideas and practice. There is no 'common education policy', Each member state is responsible for the content and organisation of its own education and training system. The EU provides multi-national education, training and youth partnerships; exchange schemes and possibilities of learning outside one's country; projects for innovation and teaching; networks of academic and professional knowledge; framework for recognition of knowledge outside one's own country, such as new technologies in education and international recognition of qualifications. Cooperation policy implementation mechanisms in education include: programmes financed by the EU for education, training, youth, and action plans and work programmes.

The Lisbon strategy is aimed at making the EU economy the most competitive in the world, an economy based on dynamic knowledge, ensuring sustainable economic development, more jobs and better social cohesion.

The Bologna Process is the most important and the most comprehensive higher education reform in Europe. The ultimate goal of the process is to establish the European Higher Education Area by 2010, providing recognition of qualifications for students and employees, allowing them to move easily within the EU. Key objectives defined in the Bologna Declaration are: a system of easily comparable diplomas, a system linked to the labour market, a credit accumulation and transfer system, easy mobility of students, teachers and researchers, cooperation in verification of quality, European dimension of higher education.

#### ***Necessary measures***

- Complete the legal framework for primary and secondary education at state level.
- Improve governance and financing systems of education institutions (increased financial-material-technical support for schools, communications and technological modernisation).
- Financial and material support for extra-curricular activities in schools, in compliance with European standards.

- Lifelong learning and adult education.
- Strengthening cooperation among universities.
- Licensing for teachers and licensing for all the education and development instructions.
- Creating a learning framework which is open, attractive and accessible to all, including the illiterate, the unqualified, and persons with special needs.
- Adoption of European reference lists and principles regarding compulsory education, teacher qualifications, mobility, recognition of out-of-school experiences, quality of education acquired, ECTS (European Credit Transfer System), designing an European framework for recognition of qualifications.
- Increased mobility on all levels of education.

### **2.3.3.3. Research and technological development**

#### ***Situation in BiH***

There is insufficient organised activity in BiH in the field of research and development, and there is no policy or programme to improve it. Positive examples such as successful transfers of knowledge and training local capacities at universities and several medical institutions, or the innovations movement, do not change the general picture.

A country that had significant research structures and technical development capacities in 1980s is now at the beginning.

In the coming years, this will become a problem for economic development of BiH even irrespective of EU integration.

#### ***Situation in the EU***

In the EU, research is considered to be the key driving force for innovations, and is aimed at increasing EU competitiveness and satisfy the aspirations of its citizens. The EU has superb capacities and rich expertise at universities, research centres, and industrial laboratories. Centres of excellence across the EU can attain results of the highest level, and cultural diversity in Europe contributes to originality and creativity of researchers and research teams. That is why the concept of European Research Area (ERA) was developed as a true internal market of science and knowledge. The purpose of ERA is to organise the overall Community assistance for better coordination of research activities, and to transform research and innovation policies at national and European levels.

The work of ERA may be summarised in the following way:

- Development of EU policies in research and technical development and contributing to international competitiveness of European industry,
- Coordination of research activities in European with activities in member states,
- Support for EU policies in other areas such as the environment, health, energy, regional development, etc.,
- Promotion of better understanding of the role of science in modern societies and simulating public debate on issues related to research at the European level.

One of the instruments of implementation of this policy is a Framework Plan covering several years, assisting in organising and providing financial support for cooperation between universities, research centres and industry – including SMEs. The present Sixth Framework Programme covers the period 2002-2006, with a total budget of 17.5 billion euro.

### ***Necessary measures***

- Establish a legal framework and define the role of the state in organising and supporting research and technological development, supporting and using innovations, similar to that in the EU.
- Establish and strengthen relevant institutional framework for science, research and technology on the level of Bosnia and Herzegovina.
- Establish a unit for analysis of technical and scientific options in BiH.
- Establish a Joint Research Centre (following the EU model) bringing together all the activities in BiH, with several research and development institutes, by priority areas.
- Create a single research area following the model of the *European Research Area* (ERA).
- Enter EU research projects such as 'FRAMEWORK 6' (17.5 billion EUR will be invested in this project over four years). Initially, the research and technological development agency should secure its participation.
- Bring together all the potentials in BiH, support the establishment of 'virtual' R&D institutes, linking all the R&D potentials, particularly those in small and medium enterprises. Internet and BiHARNet could be used as a communications base for data exchange, team work of remote researchers, meetings, Internet conferences, distance learning, etc.
- Define a minimum list of research and development projects of strategic interest for EU integration, to be financed from the state budget or by favourable loans.
- Build an effective system of dissemination of results of R&D technologies.
- Collect data on relevant R&D staff in BiH and young talents, and involve them in research projects; develop staff through different forms of training; promote distance learning; monitor and anticipate needs of the labour market and capacities of the education system.
- Provide political and technical support to young and talented experts and innovators in BiH.

### **2.3.3.4. Telecommunications**

#### ***Situation in BiH***

Provision of non-discriminatory access to telecommunications services and their high quality at accessible prices are among the basic policies of development of BiH society and protection of its citizens' interests. Global measures for implementing such policies include: liberalisation of the telecommunications market, support for development of the sector of telecommunications, and provision of measures of effective control for the purpose of protecting users' rights and removing barriers for entry of new operators.

The decision on telecommunications policy in BiH dated 28 March 2002 defined a general liberalisation of the market for all services, except for the exclusive right for



international voice communications until the end of 2005. The Law on Communications, adopted in September 2003, set the legal framework largely harmonised with basic principles of development of competitive markets in the EU. The state-level Communications Regulatory Agency (CRA) was established and this law assigned it the same competencies as regulation bodies in the EU. A whole set of regulations within the competence of CRA was adopted, regulating in detail the telecommunications sector.

Both in terms of volume and in terms of technology, relatively well developed telecommunications networks follow the world trends and keep reporting growth, and efforts are made to reach the EU average in the level of development of networks and their utilisation. Telecommunications networks cover the entire territory of BiH and most of the world. There is an evident growth of mobile communications and the Internet. There are three licensed fixed-line and three licensed mobile telecommunications operators in BiH. There are also 43 licensed Internet service providers and 65 licensed network operators. These forms of communications will grow dynamically and intensively, allowing BiH to have better communications with the world.

There are certain tasks that regard implementing already set measures such as:

- activities on implementation of existing rules (competition, rebalancing tariffs in fixed-line communications, interconnection, etc);
- introduce gradual transfer from “ex ante” regulation and principle of licensing to the principle of authorisation, as applied in developed European countries;
- conduct complete transformation of ownership in state owned in order to increase the level of interest in developing market competition.

### ***Situation in the EU***

A wide spectrum of services and applications using different types of equipment and programme packages, using telecommunications networks, are an important element of the European model of society. The basis is the interest of EU citizens to enjoy a non-discriminatory access and high quality of services at accessible prices. The aims of the telecommunications policy in the EU are development, liberalisation, and regulation of the sector, which entails elimination of difficulties in efficient functioning of telecommunications markets in equipment, services, and networks, and opening other markets to EU companies.

Liberalisation of the telecommunications market, support for development of electronic telecommunications, and definition of control of competitive markets are global measures for implementation of such aims. This principle is joined with the principle of neutrality, reflected in the convergence of IT, telecommunications, and electronic media.

The regulatory framework for electronic communications networks and services supports the principle of simplicity and clarity of provisions and it relies on the rules of organisation of competitive markets: analyses of competitiveness of the relevant market (geographically and by services), analyses of the presence of domination in the market, and control of abuse of dominant positions.

*Ex ante* measures related to operators with significant market force are adopted only in special, sector-specific cases. Regulatory obligations are adopted only if the relevant market is not competitive enough and they apply to all electronic networks and services, and do not regulate the services of content or a new services market. National regulatory

agencies (NRA) and National Competition Agencies (NCA) are responsible for control of implementation of such measures.

### ***Necessary measures***

- Effect measures to implement universal services defined in the Decision on the Telecommunications Sector in BiH.
- Build a simple regulation of the sector based on the principle of technological neutrality, geographic definition of the market for each service, and analyses of that market through the prism of the level of development of competition achieved.
- Effect full reform of state-owned companies to increase interest in technological and service development of the sector. Reform of these companies should follow the rules of corporate governance and develop a partnership between private and state ownership.
- Support the development of services of content, wide access and IT skills.
- Support the development of e-society (education, administration, medicine, trade).

### **2.3.3.5. Culture and audiovisual services**

#### **A) Culture**

##### ***Situation in BiH***

Cultural policy in BiH falls within the competence of the entities, whereas at state level culture is within the portfolio of the Ministry of Civil Affairs. Ministry of Culture and Sports of FBiH and Ministry of Education and Culture of RS conduct activities related to: scientific research in the area of protection and utilisation of cultural and historical heritage, museums, archives, libraries, publishing, theatre, music, painting, film and entertainment, organisations and civic associations in the field of art and culture, technical culture.

Activities in culture are currently one of the best export products of BiH. Professionals and their work represent BiH and its identity in the world. The best promotion of BiH in the region and across Europe are festivals, film, culture, literary and theatre events of international character.

However, the problem of further development of culture is in the lack of any cultural policy at the level of BiH. Culture is an area that provides a return greater than any investment into it, because a consistent, planned, state-level policy should lead to an improved image of BiH. This would increase cultural tourism and provide new jobs, particularly in small and medium enterprises.

##### ***Situation in the EU***

Literature, architecture, film, language, visual arts and other forms of cultural identity of a country, though specific to the country, are also an integral part of common European heritage. The aim of the EU is to preserve and support cultural diversity and to make culture accessible to all. The cultural aspect of European integration was formally recognised and stated in Maastricht in 1992.

In the European Union, culture is, among other things, an important industry – film music and publishing are important sources of revenue and jobs, as it is estimated that across the EU some seven million persons are employed in it.

The EU has support programmes for some sectors of culture, in order to motivate them to use the EU common market and digital technologies, and encourages them to cooperate more with partners outside the EU. (European Social and Regional Fund provides 500 million euros for projects with cultural elements).

At the moment, the 'Culture 2000' programme is in force in the EU, for six years and with a budget of 236 million euros. The purpose of the programme is to contribute to the establishment of an European Cultural Area; to develop artistic and literary creativity; to promote European history and culture within the EU and beyond; to preserve historical heritage sites of European significance; to stimulate intercultural dialogue and social integration.

The European Commission proposed to extend this programme through 'Culture 2007' and to allocate 408 million euros for the budget period 2007-2013, in order to attain the following: international mobility for all in the sector of culture in the EU; international circulation of works of art and cultural products; inter-cultural dialogue.

Linguistic diversity is the basis of culture and democracy in the European Union, as languages open doors to other cultures and allow for practical encounters of people of different cultures. That is why the intention is to provide long-term support for Europeans to acquire two foreign languages in addition to their mother tongue.

### ***Necessary measures***

- Harmonisation with European legislation means application of conventions and resolutions of international organisations, particularly in the area of cultural heritage, such as the Law on Protection of Cultural Heritage (Directive 97/7/EEC) and Regulation on Unlawful Export of Objects of Cultural Value (Regulation 3911/92).
- The area of culture should be regulated at state level, to determine key directions of development and promotion of cultural development of BiH.
- International festivals should be supported.
- It is necessary to support development of private companies in culture.

## **B) Audiovisual services**

### **Situation in BiH**

#### **Regulation of electronic media – basic information:**

Communications Regulatory Agency<sup>134</sup> (the Agency) was established by the Decision of the High Representative on March 2<sup>nd</sup> 2001, merging the competencies of two regulatory authorities - Independent Media Commission and Telecommunications Regulatory Agency, as the first convergent regulator in the region in charge of regulation of the entire communications sector as well for the management of radio frequency spectrum. Law on Communications from the year 2002, i.e. year 2003 (BiH Official Gazette No. 31/03) provides the complete legal framework to the Agency, improving regulatory standards the Agency must comply with in its work. Significant results have been

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<sup>134</sup> [www.rak.ba](http://www.rak.ba)

accomplished in the field of broadcasting. Since the very establishment of the IMC in the year 1998 until the present day broadcasting sector has been completely regulated. Since the original situation in which 300 broadcasters had been operating mostly without any licences, after two licensing phases conducted, 187 licensed broadcasters operate today. Private broadcasters have been issued ten years licences, while public broadcasters have been issued two years licences that can be renewed (due to the expected privatisation of public broadcasters).

It can be concluded that the most significant result of the work of the Agency is almost complete removal of the language of hatred, which is of outmost importance for BiH especially having in mind recent historic events in this region. The Agency has build a status of a strong institution enjoying confidence of both domestic public and international institutions, and what is most important it enjoys confidence of its clients – licensees. This status was built by implementing clear and transparent procedures in the work of the Agency, especially in the segment of the procedure for determining possible responsibility of broadcasters for the broadcast content as well in the segment of issuing of broadcasting licences.

In accordance with the BiH Law on Communications, and related to the regulatory work in the field of creating of bylaws, so far the Agency has created a number of various codes, rules and guidelines. Not neglecting any segment, Broadcasting Code of Practice and Advertising and Sponsorship Code could be specially emphasised. It is very important to point out at this moment that the Agency has already commenced activities on amending the Advertising and Sponsorship Code in order to harmonise it with European regulation, and this process should be completed by the month of March 2006. By that time, activities on harmonisation of the Broadcasting Code of Practice with European regulation will start and it is expected to be completed by the summer of 2006.

### **Activities in the filed of BiH Public Broadcasting System transformation**

The Agency has been intensively involved in the process of transformation of Public Broadcasting System in BiH, and has already started meeting its obligations in accordance with recently adopted laws on Public Broadcasting System and Public Broadcasting Service. (BiH Official Gazette, 78/05 and 92/05).

### **Cooperation programs:**

There is an ongoing 14 months-cooperation program with Italian regulator AGCOM (converged regulator for communications) whereby review of the internal procedures of the Agency is conducted as well as harmonisation of all bylaws with European legislation. This project is financed by European Commission within the CARDS Project of assistance to BiH, which indicates the fact that the Commission has recognised importance of preservation and development of the work of an independent regulator in BiH. The Agency has also been foreseen for the CARDS MiP 2005-06 as a user of assistance in sector «Democratic stabilisation – civil society and media», with the following goals: *«To ensure that BiH citizens have an access to the professional and impartial media in order to improve mutual understanding of constitutive peoples in BiH; To ensure relevant regulation of broadcasting sector (radio - diffusion) and telecommunications»* Results expected in MiP 2005/06 are the following: to ensure efficient strengthening of the Communications Regulatory Agency as a regulator of communications market in BiH, and to ensure independence of the RAK .

Significance of the Communications Regulatory Agency, its work and preservation of its independence are also stated in the document "European Partnerships"<sup>135</sup>, indicating that PBS had to "fully implement agreed reforms of PBS as the one of the mid-term priorities. Preserve independence of Communications Regulatory Agency".

Furthermore, Feasibility Study on initiating negotiations on Stabilisation and Association Agreement, under the point 3.7.6 *Culture, Audiovisual, telecommunications and Postal Services, Information Society* (3.7.6.1. Culture and Audiovisual Services) states: "Regarding regulatory bodies, BiH is relatively progressive since it has independent Communications Regulatory Agency (RAK) authorised for issuing licences to the broadcasters and for monitoring of compliance with rules and regulations in the field of radio-diffusion. RAK is organisationally and financially independent from the Ministry of Communications, yet BiH must ensure preservation of the independence of RAK "

#### **Other information on the Agency:**

- Along with broadcasters, the Agency also issues licences for cable distribution of RTV programmes within the sector
- Since 2000 the Agency is a member of European Platform of Regulatory Authorities - EPRA<sup>136</sup> (49 regulators from 39 countries).
- Since 1998, the Agency participates in professional trainings of journalists organised by BBC, European Council, European Commission etc, and also self-initiatively, with assistance by European Council and other leading European institutions, it has organised various seminars related to the training of journalists and media in general, with special emphasis on freedom of expression and compliance with professional standards of journalism, reporting in crisis situations, introducing journalists with legal provisions in the field of defamation, and free access to information in accordance with the laws on defamation and free access to information.
- In accordance with its limited legal authorisations, the Agency takes all necessary measures in order to develop protection of copyrights.

Regarding the work of media and journalists in general, it is necessary to point out that "out-of-institution" type of training of journalists is mostly realised through various seminars, workshops and trainings within the media. This approach lacks continuity, strategy and thoroughness. Most media are having difficulties maintaining "production" and only small number of them has developed to the level of self-sustainability through the marketing income. Except for public broadcasters, it is estimated that more than 2600 people works in BiH media.

#### ***Situation in the EU***

*Acquis* for the area of culture and audiovisual media is based on Chapter XII, paragraph 2 of Article 151 of the European Founding Treaty signed in Rome in March 1957. Evolution of European legislation added to the *acquis* Directive of the European Council titled 'Television without Borders'<sup>137</sup> establishing European and international coordination

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<sup>135</sup> Adopted on June 14 2004; <http://www.eusrbih.org/policy-docs/pdf/EU-partnership-2004.pdf>

<sup>136</sup> <http://www.epra.org/>

<sup>137</sup> 89/552/EEC, 3 October 1989.

in the field of legislation, long-term objectives of reforms and administrative procedures in member states in the field of audiovisual services.<sup>138</sup> Subsequent directives<sup>139</sup> removed legal obstacles. The primary goal of this kind of regulation is to provide free broadcasting and exchange of audiovisual services within the common market, providing at the same full protection of the widest public interest, such as cultural diversity, the right to free speech and rebuttal, protection of rights of 'consumers' of audiovisual services, and protection of minority rights. Areas which had to be harmonised include issues related to the judiciary, TV advertising and sponsorship, and protection of minors. Production and distribution of common European audiovisual programme is supported, and there is a principle of free re-runs of audiovisual content from other EU member states, or suspension of programmes from other EU member states if those programmes breach provisions of European legislation in this area.<sup>140</sup> According to the decision of heads of states or governments of the EU reach at the Lisbon Summit (March 2002), by 2010 the EU should be the most competitive and the most dynamic economy in the world, '*based on knowledge and new technologies.*' As planned, one of the key roles in attaining this objective should be played by interactive media: computers, the Internet, mobile communications services. According to the same decision, the European Commission and member states are obliged to afford due attention to how interactive media reflect on cultural, linguistic, and economic aspects within the EU.

### ***Necessary measures***

- It is necessary to harmonise all legislation from the field of audiovisual media with audiovisual *acquis* in accordance with Directive 'Television without Borders'.
- To take over all relevant conventions of the European Council related to the field of culture and audiovisual media. Also, having in mind expansion of the film industry in BiH, ratification of the European Convention on Cinema Production (ETS No: 147 – Strasbourg, 2. 10. 1992) as soon as possible is recommended.
- To enable development of functional commercial broadcasting sector since it is the only way to achieve the highest professional standards and pluralism of the programme broadcast.
- To take continuous and systematic activities in the field of education of journalists and other media professionals.
- To support media self-sustainability, which is the key presumption for independent editorial policy
- To improve court and legislative practice in audiovisual sector through the full implementation of legislation harmonised with European legislation.

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<sup>138</sup> Official Journal of the EU (OJ) L 298, dated 17 October 1989.

<sup>139</sup> Directive 89/552/EEC harmonises provisions of member states in all the areas where mutual difference were such that they were a legal obstacle to free exchange of television programmes.

<sup>140</sup> Directive 89/552/EEC came into force on 3 October 1991, which is when it was implemented in all the member states, although the deadline for application of national measures for implementing the Directive was July 1994. The European Commission filed a case against UK and Belgium with EJC, as their national legislation did not follow the Directive.

## 2.3.4. Economic and fiscal issue

### 2.3.4.1. Economic and monetary union

#### ***Situation in BiH***

The monetary policy in BiH is within the sole competence of the Central Bank, whose independence and also the prohibition of financing government deficit, are set by law. BiH is under a currency board regime, with the exchange rate fixed to the euro. Results of this monetary policy are:

- inflation rate of less than 1% per year in the past three years,
- annual report of the consolidated government account<sup>141</sup> for 2003 shows a surplus of 268.6 million convertible marks<sup>142</sup> (donations included in the account),
- projected government account deficit for 2004 excluding donations is 3.2% of the GDP,<sup>143</sup>
- total government debt includes foreign debt amounting to 33% of the GDP and internal debt amounting to 60% of the GDP<sup>144</sup> for 2004,
- nominal and effective exchange rate for US dollars and currencies of key trading partners in the region noted oscillations in 2004, mainly with a decreasing trend (except for the Croatian *kuna*, which maintains a stable median exchange rate),
- annual interest rate for long-term loans are at the level of 12-14%.

#### ***Situation in the EU***

Establishment of an economic and monetary union is a means to reach economic and social progress, high level of employment and a balanced sustainable development across the EU.<sup>145</sup>

Four key criteria were adopted, aimed at ensuring long-term convergence of national economies and stability based on the single currency.<sup>146</sup> Criteria for accessing the economic and monetary union<sup>147</sup> are, in essence, the ability to satisfy the basic criteria (*Maastricht criteria*) related to:

- stability of prices,
- annual state debt and total public debt,
- currency stability,
- annual interest rates for long-term loans.

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<sup>141</sup> Includes BiH, entities, cantons and non-budget funds; municipalities not included.

<sup>142</sup> *Bulletin 3*. Central Bank of. September 2004.

<sup>143</sup> *The Western Balkans in Transition*; EC; DG for Economic and Financial Affairs; *Enlargement Papers*, N° 23 - December, 2004. [http://europa.eu.int/comm/economy\\_finance](http://europa.eu.int/comm/economy_finance)

<sup>144</sup> Estimated by a foreign expert

<sup>145</sup> Treaty of the European Union; Consolidated version; Article 2; Official Journal of EC, C325/5, 24.12.2002.

<sup>146</sup> *The Treaty Establishing the European Community*.

<sup>147</sup> EMU members: Austria, Belgium, France, Finland, Greece, Holland, Luxembourg, Ireland, Italy, Germany, Portugal, Spain. (2004).

EU member states candidates for the economic and monetary union maintain their won macroeconomic policy, though they are expected to converge regarding real economy. A general policy towards EMU (*euro zone*) membership is:

- requirement to maintain macroeconomic stability, and
- monetary policy determination to fulfil the Maastricht criteria.

The EU Council Decision on *Stability and Growth Pact*<sup>148</sup> specifies procedures ensuring discipline in criteria for EU membership. A subsequent decision<sup>149</sup> established the ERM II regime<sup>150</sup> which defines the status of other EU member states<sup>151</sup> not in the EMU.

Monitoring procedures for criteria of convergence are applicable to this group. Monetary regimes of these countries are different, with a floating rate for the domestic currency in relation to the euro, with a fixed tolerance. Moreover, new EU member states (*round ten*) are programming a time shift, from two to five years, between EU accession and accession to the EMU.

Pre-accession countries have very different currency regimes. Versatility of monetary policies as well as non-transparent strategies of future accession to EMU are a general feature of economies in this group.

### ***Necessary measures***

Policies related to accession to EMU should take into account the following:

- EMU membership is at the end of the EU integration road for BiH,
- planning and implementation of economic policy should be harmonised with European principles,
- economic relations (foreign trade in particular) with EMU members as well as with members of ERM II, have a considerable impact on the rate of integration.

Starting from these principles, at this stage of integration, key macroeconomic challenges for decision makers in BiH may be identified as follows:

- The real sector: growth rate must be higher than in the EUM, and unemployment needs to be gradually decreased. Efforts to catch up with EU economic growth requires huge investments, possibly leading to a huge discrepancy between available domestic savings and the level of investment.
- The external sector: the key task is to limit the current account deficit to a sustainable level. (All the transition countries had a considerable external deficit at the beginning of their approximation with the EU, but it must be placed under control very soon.) Liberalisation of capital flows may increase the risk for success of transition reforms. A financial sector with successful reforms is the one that direct capital flows towards productive investments.
- The fiscal sector: on the expenditure side, there is pressure related to ending the transition, parallel to development of institutions for European integration and

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<sup>148</sup> *The Stability and Growth Pact*; Amsterdam, 17 June 1997; Official Journal C 236 of 02.08.1997.

<sup>149</sup> Amsterdam, 16 June 1997; Official Journal C 236 of 02.08.1997.

<sup>150</sup> Exchange-rate mechanism II.

<sup>151</sup> UK, Denmark, Sweden, the Czech Republic, Estonia, Cyprus, Lithuania, Latvia, Malta, Hungary, Poland, Slovenia, Slovakia.



- public infrastructure. On the revenue side, reform is required to cut the burden on the private sector. Fiscal tightening is also a key instrument for controlling the current account deficit.
- Monetary policy: the ultimate goal of introduction of the euro sets a clear orientation regarding monetary policy and exchange rate policy. Establishment and maintenance of full independence of the Central Bank and definition of the principal goal of maintaining stability of prices and prohibition of direct financing of the government deficit are the most important elements.

Fulfilment of convergence criteria are not a necessary precondition for accession to the EU. Still, the BiH monetary policy should be guided by these criteria and should present the ability for stable and long-term application of the set standards.

Economic policy implementation institutions must be effective and harmonised with EU standards. The key criterion of independence of the Central Bank has already been fulfilled.<sup>152</sup> Legislation needs to be upgraded in terms of functions of the Central Bank and there should be full cooperation of all the institutions in public finance.

#### **2.3.4.2. Taxes**

##### ***Situation in BiH***

Indirect taxation is half of the tax revenue, the other half originating from direct taxes and contributions. Intensive reform of the tax system is under way. Institutions have been established and legislation on indirect taxation at state level has been adopted. The law provides for a single VAT rate of 17%.

At the moment, there are four forms of taxation of consumption in force in BiH:

- general sales tax,
- excise as individual sales tax,
- customs, as taxation of foreign consumption,
- real estate sales tax.

The most important form of indirect taxation is general sales tax with a share in tax revenue of more than 20%. In view of the significance of indirect taxation for the functioning of a single market, considerable efforts went into harmonisation of indirect taxation rates (sales tax, excise, and customs).

Introduction of VAT into the tax system of the country is the most important segment of reform of the economic and financial system in BiH and will contribute to the following:

- securing freedom of movement of economic subjects and strengthening the single economic space in BiH,
- creation of conditions for foreign trade and customs policies,
- using taxes as instruments for establishing macroeconomic stability,
- efficient financing of BiH institutions, and
- efficient settlement of international obligations of the state.

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<sup>152</sup> Independence of the Central Bank is often seen as the *fifth criterion of convergence*.

In the category of direct taxation, income tax was selected as the most important form of taxation and as long-term policy in BiH. This ensures overcoming the shortcomings arising from modest financial capacity of other forms of direct taxation (profit tax, capital gains tax, and property tax).

Competence for introduction of profit tax rests with the entities and the Brčko District. This form of taxation has a very small share in the overall tax revenue. Revenue from profit tax in 2003 was close to 2% of total tax revenue.

The Fiscal Council of Bosnia and Herzegovina is authorized for setting and monitoring the overall fiscal policy of Bosnia and Herzegovina.

### ***Situation in the EU***

General principles of the EU in the area of taxation are defined by provisions of the Founding Treaty of the European Community.<sup>153</sup> Taxation policy is important for the preservation of basic values of European integration, since:

- taxation has key impact on the *four freedoms*,
- taxation policy of member states may jeopardise the principle of *free competition*.

The problem of taxation is traditionally linked with the issue of national (state) sovereignty. That is why decision making procedures in this area are based on the principle of unanimity.<sup>154</sup> The complex process of full harmonisation of regulations within the EU is pending.

As for indirect taxation, EU policy focuses on value added tax (VAT) and excise, as these tax items have the strongest impact on the single economic space. Free movement of capital within the Union must not be hindered by taxation policies of member states, and at the same time the principle of free movement of goods must not be used as a possibility for tax evasion. There is a general view on applicability of a minimum VAT rate of 15% on most goods and services, though exceptions are possible, only in view of taxation positions of low impact on competition between member states. EU policy is focused on those taxation rules that may limit the right of EU nationals to seek employment anywhere in the EU.

In the area of direct taxation, member states may, in compliance with the principle of subsidiary, establish policies of taxation of company profits and profits of natural persons. The EC Founding Treaty does not contain specific provisions on harmonisation of direct taxation rates. However, practice of the EU Council and the European Commission shows clearly that member states are obliged to maintain their direct taxation within the limits that guarantee the preservation of the *four freedoms*.

The strategy of enlargement to include countries of Central and Eastern Europe included general requirements in the area of taxation policy reform.<sup>155</sup> Specific reform models

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<sup>153</sup>The Treaty Establishing European Community (Consolidated version); Official Journal of the European Communities, C 325, 24.12.2002 (Article 58, Article 90, Article 91, Article 92, Article 93, Article 132).

<sup>154</sup>Ibid; Article 190, Article 293.

<sup>155</sup>White Paper; Commission of the European Communities; COM (95) 163; Brussels, 03.05.1995.: '... in the field of taxation, the rate of harmonisation should be connected with the development of different taxation

were offered for the purpose of approximation of taxation legislation. Candidate countries and potential candidates follow the same lines of taxation system, with the pace adjusted to economic policy objectives. Reforms are primarily related to the amount of taxation burden subject to provisional interventions when such interventions are beneficial for amending evident errors in the allocation of funds.

### ***Necessary measures***

Taxation system reform geared towards European integration is a long-term process planned in two stages:

- the first, until the status of a candidate country, with harmonisation of BiH legislation with a minimum set of regulations from the *acquis*,
- the second, the candidate status and accession, with set deadlines for full adoption of the *acquis* into BiH legislation.

It is thus necessary to plan, organise and launch an information campaign for the public and for legislative bodies on all levels, holding taxation powers.<sup>156</sup>

### **2.3.4.3. Statistics**

#### ***Situation in BiH***

Availability of reliable statistics is a precondition for development of a democratic society and a market economy. Statistics institutions in BiH have adopted principles of modern statistics: quality, reliability, objectivity, relevance, validity of content, confidentiality and transparency.

Statistics activities in BiH are carried out by:

- BiH Statistics Agency,
- FBiH Statistics Institute,
- RS Statistics Institute, and
- Statistics Bureau of the Brčko District (a branch of the BiH Statistics Agency).

Other institutions at the level of BiH whose duties include statistics are not yet part of the common statistics system of BiH.

Administration of the Agency and the BiH Statistics Council are operational. The mid-term plan of activities for the period 2005-2008 has been adopted. Staff of the BiH Statistics Agency will grow to 50 by the end of 2005.

The Agency has completed and submitted to Eurostat data related to foreign trade of BiH (2003-2004). The Agency has published a bulletin of national accounts and launched a project of measurement of unaccounted economy, so that by the end of 2005, national accounts data for 2003 and 2004 will have been corrected by results thus

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bases and should take into account the need to apply tax initiatives, aimed at correcting the inherited distribution irregularities.'

<sup>156</sup> Information campaign is aimed at relaxing, rationalising and accelerating the political decision-making process related to reform regulations. Key elements of the campaign should be produced in multilingually (BiH languages and English).

obtained. A demographic bulletin (2004) and a bulletin of industrial production (2003) have been published.

### ***Situation in the EU***

Principles of statistics in the European Union were set by Article 285 of the Treaty Establishing the European Community.<sup>157</sup>

National (state) statistics institutions of EU member states are competent to conduct statistics research and production of statistics indicators. An EU Council Regulation<sup>158</sup> set the responsibility of national authorities for the production of Community statistics, in compliance with the principle of subsidiarity.

Candidate countries are required to apply EU standards and international statistics standards related to classification, methods, concepts and definitions, and to gradually harmonise their statistics regulations with the *acquis*.

For a candidate country to become part of the European statistics system, they must strengthen their institutions and capacities parallel to full adoption of the *acquis* in the field of statistics.

At the level of the EU, metrology, classification and standards are coordinated through Eurostat. Eurostat also coordinates EU cooperation with Western Balkan countries in the area of statistics. For that purpose, Eurostat has built a global estimate of the statistics system for each country in the Western Balkans individually, which candidates and potential candidates use as a guide for reforms in statistics.

### ***Necessary measures***

- Harmonise the Law on Statistics with the Law on the Media and the Law on Protection of Personal Data.
- Develop and apply legislation on official statistics in BiH.
- Develop a system of official statistics in compliance with EU and international standards and recommendations, as well as domestic requirements.
- Develop a system of dissemination of statistics indicators.
- Ensure continuous cooperation with Eurostat.
- Effect international cooperation and work on fulfilling international obligations.
- Prepare and conduct population census.

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<sup>157</sup> The Treaty Establishing European Community (Consolidated version); Official Journal of the European Communities, C 325, 24.12.2002.

<sup>158</sup> Council Regulation on Community Statistics; (EC) No 322/97, 17 February 1997.

### **2.3.5. Sectoral policies**

Sectoral policies set the framework for future activities in relevant area and are the basis for their development. Implementation of sectoral policy measures is aimed towards the goal of increased economic growth. This document focuses in particular on the sectors of industry, agriculture, forestry, fishery, energy (electrical energy, coal, natural gas, oil, environmental protection, energy efficiency) and transportation.

#### **2.3.5.1. Industry**

In economy, industries are classified as primary (agriculture, forestry, fishery, mining), secondary or production industry (light and heavy industry) and tertiary or service industry.

Industrial policy is generally treated as policy including all activities, and not just traditional industries or processing. This is a government's economic program where private and public sectors coordinate their activities in order to strengthen the national economy. The government provides financial support and capital for the private sector, through direct subsidies or through development banks. Industrial policy plays a key role in improving competitiveness of the EU, where horizontal policies have a particular role – regional policy, competitiveness, trade, taxation, etc. In order to be effective, industrial policy should be applied in compliance with specific needs of each individual sector. In theory and practice, there are numerous other terms for this area, such as sectoral or structural policy.

#### ***Situation in BiH***

Declaration on Industrial Policy Strategy in BiH, Strategy of Industrial Policy in RS and Strategy of Development of Industrial Policy in FBiH are the bases for improving competitive capacities of BiH economy. Measures aimed at strengthening competitiveness of economy should be developed, first and foremost, in order to:

- create an ambience conducive for entrepreneurship, allowing fast entry into and exit from business, with minimum costs,
- provide ownership structures over companies interested in rapid and aggressive restructuring, and
- internationalisation.

There are activities aimed at building industrial policy in BiH, which should be accompanied by the development of key partial policies and strategies related to industrial policy (R&D, education, electronic government and administration, national competition council, etc.).

Mid-Term Development Strategy of BiH (PRSP) provides guidelines in industry as a sectoral priority. PRSP goals in this area are:

- to define industrial policy for the purpose of identifying strategic branches and methods of support for their development,
- to strengthen competitiveness and export potentials by accelerating privatisation, supporting scientific research, establishing a relevant framework for entrepreneurship through better company management and improved market transparency.

Mid-Term Development Strategy of BiH was prepared for the period until 2007. After that, guidelines for industrial development will be defined by the BiH National Development Plan, dominated by guidelines of the Lisbon Strategy and the second Copenhagen Criterion.

### ***Situation in the EU***

In the EU, industrial policy plays an ever growing role, as integration policies and coordination of macro-policies leaves states with micro-policies of improving competitiveness of the national economy. In modern and advanced states, this policy includes a wide spectrum of different activities and measures, in particular related to:

- the area of knowledge and professional development of existing and new labour,
- the area of research and technical development, the number of researchers, introduction of innovation into business, organisation and management processes, faster introduction of new products, transfer of knowledge into production processes, and faster introduction of communications technologies and services into economy and public administration,
- the area of productivity of labour and competitiveness of products, and companies in the domestic, European and world markets,
- the area of development of the financial sector and infrastructure,
- the area of elimination of regional and environmental problems,
- other areas directly or indirectly related to competitiveness of the economy (e.g. administration obstacles, spatial and location conditions, etc.).

In the EU, industrial policy<sup>159</sup> is made of a series of binding measures and regulations.<sup>160</sup> Additionally, there are other measures such as numerous guidelines, statements, resolutions, working documents, reports and conclusions made by working groups, meetings, conferences, etc. and a considerable number of documents and measures related to specific sectors (e.g. industrial cooperation, promotion of quality, environment and industry, individual sectors of industry, innovations, SMEs, etc.).

At the 2000 meeting of the European Council in Lisbon, the EU economic development strategy was set until 2010, with the aim of increasing employment and living standards in a knowledge-based economy. Advantages and weakness of the Union were identified. Advantages include: stable macroeconomic position, a growing single market for the benefit of consumers and the business sector, highly qualified labour and a high level of social protection. Weaknesses of the Union include: long-term structural and regional

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<sup>159</sup> [http://www.europa.eu.int/comm/enterprise/enterprise\\_policy/industry/index.htm](http://www.europa.eu.int/comm/enterprise/enterprise_policy/industry/index.htm) contains relevant sources. A good overview of support instruments in many countries may be found in '*Industrijska politika in državne pomoči v Evropski uniji in v Sloveniji*' - <http://www.sigov.si/zmar/publicis/dz.html>, and relevant development and EU accession strategies of the Republic of Macedonia and the Republic of Slovenia at web pages of their respective governments

<sup>160</sup> Council Decision (96/413/EC) on implementation of the Community Action Plan for strengthening the competitiveness of the European industry; European Parliament and Council Decision (2256/2003/EEC) on long-term programme of supervision of the e-Europe action plan; European Parliament and Council Decision (2318/2003/EC) on the adoption of a multi-annual programme (2004-2006) of inclusion of ITC into education systems in Europe (e-Learning Programme); Commission Decision 83/274/EEC established a committee for the Community policy in forestry and forestry-based industry.

unemployment (15 million unemployed, i.e. 10%), low level of employment with insufficient participation of women and elderly in the labour market, insufficiently developed services sector, particularly in information and telecommunications technologies (ICT). The Lisbon strategy is not legally binding for EU member states, but it is politically, and for new member states the Lisbon goals will become the basis of their economic development policy. The EC report on implementation of the Lisbon strategy<sup>161</sup> confirmed that numerous positive steps have been taken in this area.

The key purpose of industrial policy is, generally, to improve competitiveness of European industry internationally. Industrial policy allows capacities to adjust to changes in the market, creating at the same time an environment conducive for development of entrepreneurship and creation of new companies, particularly SMEs. It also helps shape science, research and innovations, facilitates cooperation among companies and underscores fair competition in the EU.

### **Necessary measures**

- Define priorities of industrial development.
- Draft an industrial development strategy.
- Harmonise development of industrial policy with the EU Lisbon Strategy and the second Copenhagen Criterion.
- Support public and private companies in introducing EMAS<sup>162</sup> – an environment management and audit scheme, with the main objective of upgrading the environment and upholding environment legislation.
- Define and start immediately with implementation of a provisional measure of urgent development of human resources.
- Establish the BiH Competition Council and enter the world network dealing with issues of competition.
- Establish or strengthen institutions and develop human resources to take part in drafting an effective industrial policy and implement it with periodic changes and amendments (relevant ministries, Privatisation Agency, Competition Council, Development Agency, FIPA, SME Agency, chambers of commerce, business associations, regional development agencies, business assistance centres – including the Euro Info Centre).<sup>163</sup>
- Improve the education system for entrepreneurs and support further development of a private system of tertiary and secondary education; build training programmes to include a system of continuous training.
- Establish structural funds and venture funds to support industrial development.
- Harmonise industrial policy development with the development of affiliated policies (free flow of goods, RTD, SMEs and education and training) and establish relevant institutions at the level of BiH (for areas of agriculture, health, science and technology and education).

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<sup>161</sup> European Commission: 'Report from the Commission to the Spring European Council' delivered in Lisbon, COM (2004) 29. 21. mart 2004.

[http://europa.eu.int/comm/lisbon\\_strategy/pdf/COM2004\\_029\\_en.pdf](http://europa.eu.int/comm/lisbon_strategy/pdf/COM2004_029_en.pdf).

<sup>162</sup> EMAS – Environmental Management and Audit Scheme, introduced by the EU Council on 29. 06.1993 and open for participation of the industry since April 1995.

<sup>163</sup> An example is the Ministry of Economy of the Republic of Slovenia which includes three sectors designed for this purpose: The Completion and Enterprise Development Sector, the Industrial Projects Sector, and the Internal Market Sector (removal of technical barriers to trade, etc.).

### 2.3.5.2. Agriculture

#### *Situation in BiH*

Agriculture is one of the key activities in rural areas and a principal form of activity of rural population, thus an important factor of reduction of poverty, maintenance of environmental balance and protection of the environment. In the process of European integration, agriculture acquires additional significance, due to the adjustment of national legislation to European standards, and the opening of different EU financial instruments to BiH. Some 45% of the total EU budget goes for the Common Agricultural Policy, as well as almost 50% of the total EU legislation.

Agro-economic conditions in BiH are relatively favourable for agricultural production. At the same time, agricultural production is faced with war damages and the process of transition from planned to market economy. BiH agricultural production is also burdened by poor coordination of institutions in BiH, poor incentives and lack of coordination in agricultural subsidies, fragmentation of estates, high rate of non-utilisation of agricultural land, etc. Introduction of European standards in this area will be a challenge for BiH institutions and an opportunity for agricultural production to be improved by using EU funds, SAPARD, during the accession process, and later, following accession, the Common Agricultural Policy (CAP) funds.

Bosnia and Herzegovina has some 2,600,000 ha of agricultural land, of which 1,608,000 ha is arable land, i.e. 63%, whereas pastures make up for the remaining 37%. Of the total arable land, vegetable fields take up 1,070,000 ha or 68%, fruit orchards take up 96,000 ha or 3,8%, vineyards 5,300 ha or 0.2% and pastures take up 432,000 ha or 28%. Some 25% of the total agricultural land is suitable for intensive agricultural production. In BiH, there is 0.41 ha of arable land per capita, or 0.73 ha of total agricultural land per capita.

There are three types of ownership over agricultural land in BiH: private ownership 90%, state ownership 6% and collective ownership 4%. This ratio may facilitate market economy. The most important indicator of land policy is the structure of farms, characterised by small and fragmented estates, leading to low levels of productivity and limiting the possibilities for farmers to convert easily to a modern system of land management. Average family farms in BiH are 2 – 5 ha divided into 5 to 7 plots, which is the consequence of the land reform in the pre-war socialist system, when a single owner could not hold more than 10 ha.

Of the total surface under culture, 40% is corn with an average yield of 3.5 t/ha, 22% wheat and other grain with an average yield of 2,9 t/ha.<sup>164</sup> Fruit production is mainly plums 51%, apples 23% and pears 10%.<sup>165</sup> Cattle stock in BiH is 50% lower than before the war, which means a significantly lower level of meat and dairy production. Poultry production, just like fish, keeps growing and is the closest to reaching pre-war levels.

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<sup>164</sup> Other cultures include potato, onion, beans and early vegetables, and industrial plants include soy, sunflower, oil turnip and tobacco.

<sup>165</sup> There has recently been an increase in production of berries (strawberries, blackberries, blackcurrants and soft berries).



Greater utilisation of agricultural land or increased agricultural production in BiH prior to EU accession would allow greater utilisation of CAP funds after the accession (higher quotas). Thus the preparation and application of policies and programmes of agricultural development in BiH gains even greater importance in the European integration process.

Participation of primary agricultural production in GDP has a decreasing trend and amounted to 12.41% in 2002. Before the war, BiH was able to satisfy 60% of its needs in food products, whereas the current domestic production participation in food production amounts to a mere 11%. As BiH has lost numerous foreign markets in this sector, agricultural produce takes a considerable share of the foreign trade deficit. Support for farms, rural population and processing is generally underdeveloped. The current agricultural budget is low and it amounts to 3-4% of total public revenue. This ratio is not in compliance with the share of agriculture in the GDP, and with the level of employment in agriculture amounting to 18-20%. Annual public aid and subsidies for agriculture are very low and amount to approximately 17 EUR/ha. Of total support and subsidies, only 21% is allocated to rural development. A functional review of the agricultural sector, prepared by experts within Public Administration Reform Project, with financial and advisory assistance of the European Commission, found a lack of coordination of all levels of governance in this area. Subsidies are not provided by either entity, or cantonal governments and municipalities. At the same time, a considerable number of products are subsidised, and the lack of coordination means that the already meagre funds allocated for agricultural production are used ineffectively.

### ***Agricultural policy in BiH***

At the moment, coordination of agriculture at state level is done by the Ministry of Foreign Trade and Economic Relations, which includes: agriculture and rural development offices, Veterinary Office, Animal Labelling Agency, Phyto-Sanitary Office, and Food Safety Agency. A series of laws and regulations in this area have been adopted: Law on Veterinary Services, Law on Protection of New Types of Plants, Law on Seeds and Seed Material for Agricultural Plants, Law on Phyto-Pharmaceuticals, Law on Mineral Fertilisers, Law on Phyto-Sanitary Protection, Law on General Food Safety, Law on Market Supervision, Law on Bottled Potable Water, Law on Supervision of Quality of Products at Import and Export, etc. With these laws, BiH built new basic legislation following the principles of EU legislation.

There is no defined agricultural policy in BiH. Although there have been several attempts to define agricultural strategy at sub-sectoral levels or to determine sectoral development priorities, this was never done in a comprehensive way. A hindrance to quality agricultural planning is the lack of basic information on this sector. The Mid-Term Development Strategy (PRSP) proposes, as an urgent activity, articulation of a long-term agricultural policy as the basis for determination of priorities in development, methods and resources. In the agriculture sector, the Mid-Term Development Strategy of BiH (PRSP) is compatible with mid-term priorities in the European integration process.

### ***Situation in the EU***

In the EU, the area of agriculture is regulated by the Common Agricultural Policy (CAP), developed and amended over time. The key objectives of CAP are increased productivity, solid living standards for farmers, a stable market, regular food supply, acceptable process of agricultural produce. These objectives are based on three

principles: common market for agricultural produce with common prices and free movement of agricultural produce within the EU, preference for EU member states, participation in costs.

Subsidies are based on minimal guaranteed prices for producers, which are a form of safety for farmers, and a guarantee of a certain amount of agricultural produce. Common agricultural policy is 45% of all EU expenditure. To finance CAP, the EU Council established EAGGF - European Agricultural Guidance and Guarantee Fund. Placement of EAGGF funds is done through national bodies - the Paying Agencies (PA) which control the requests.

CAP instruments allow for management of farm production and of agricultural markets, as well as coordination of development and adjustment of farm structures. CAP takes into account the social structure of agriculture, structural and natural differences among different agricultural regions. CAP covers only some agricultural products subject to organisation of the EU market through mutual agreements.<sup>166</sup>

Basic CAP guidelines are assistance to farmers through measures of rural development, to adjust their business and management methods to the changing agricultural practices and the needs of the society. In the past few years, according to Agenda 2000 CAP, agreed at the Berlin EU Summit, environmental protection, rural economy and rural cultural heritage, food quality and cattle health continue to grow in prominence.<sup>167</sup>

The June 2003 CAP reforms include strengthening of rural development policies. In almost 50 years of development, CAP has had several watershed years: 1957 - establishment of a common agricultural reform, 1992 - the McSherry reforms, 1999 - Agenda 2000, and the last one in 2003. The McSherry reforms lowered the guaranteed prices (e.g. grain 29%, beef 15%...), introduced direct payment of agro-protective measures to secure environmental protection. Agenda 2000 led to further lowering of prices (grain 15%, beef 20%...) compensated by direct payment and the establishment of the CAP second pillar (rural development).

The 2003 CAP reform led to the establishment of CMO (Common Market Organization), and market support was provided through intervention purchase.

This policy reduces subsidies for large companies. Special programs will be financed for maintaining price levels threatened by import and hyper-production of specific products. Assistance will be provided for farmers growing protein products such as beans and high-quality durum wheat, as well as renewable energy materials. The following aims will receive investments: reduction of production costs, improvement of product quality, environmental protection and development, better animal hygiene and health, increased versatility in agricultural activities, stimulation for human resources such as training for farmers, especially young ones, etc.

CAP is the most dynamic segment of the *acquis* and it keeps changing. Its aim is not to augment the quantity of food production, but rather its quality. Food quality includes its taste. Retail product packaging must contain precise data on origin and composition.

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<sup>166</sup> Those include: grain, rice, potato, oil seeds, milk and dairy products, wine, honey, beef and veal, pork, lamb, goat, poultry, eggs, sugar, fruit and vegetables, cotton, beans, string beans, sweet beans, olive oil, linen seed and fibre, silk bug, hemp, tobacco, hop, seed, flowers, live plants and cattle feed.

<sup>167</sup> Previously, according to the Rome Agreement, the principle aim was to produce adequate quantities of food.

Implementation of food safety regulations is supervised by the Food and Veterinary Office (FVO) based in Dublin, securing the highest standards of food quality and safety.

Environmentally safe food production is also supported. Assistance for farmers will no longer depend on the quantity of produce. This policy decreases the quantity, but farmers are stimulated to practice sustainable production which protects the environment and maintains versatility. There is growing interest in organic production, which receives special financial stimulation.<sup>168</sup>

### ***Pre-accession stage and assistance***

Risks of exposure of BiH agricultural produce to competition from other EU member states may be mitigated by incentive funds, to be allocated to key agricultural produce. They can also be mitigated by EU funds available to BiH once it becomes a candidate country. SAPARD prepares candidates for membership in order to become able to use CAP funds. This programme is used for investments in agriculture, improved production of agricultural and fishery produce, better placement of agricultural produce, quality control structures, association of producers, updating of land registers, professional training, rural infrastructure development, staff training and technical assistance in the area, etc. It is necessary to prepare timely plans for development of the agricultural sector, to strengthen its capacities for more effective utilisation of EU funds in the pre-accession stage. Negative experiences of Central and Eastern European countries show that poorly built capacities of the state and lack of planning mean that even approved SAPARD funds may remain largely non-utilised. According to the proposed EU budget for the period 2007–2013, SAPARD will be part of the Pre-Accession Assistance Programmes - IPA.

### ***Necessary measures***

Agricultural policy should be based on strengthening the competitiveness of the sector, not forgetting the advantages and challenges accompanying European integration. Institutional capacity in this area should also be strengthened, allowing for greater utilisation of SAPARD funds once BiH gains access to them, and later the CAP funds, including effective implementation of laws already adopted or to be adopted in the European integration process.

Establishment and strengthening of capacities in agriculture at the level of the state, in compliance with recommendations of the sectoral functional review, will allow the EU to allocate funds to BiH more easily. BiH will also enjoy better placement of its agricultural produce on the European market, development of quality control structures, update of land registers, increased investment in the sector, etc. Priorities in agricultural production should be set on new bases, and subsidies and investments should focus on those areas where BiH has comparative advantages and which would be the most competitive ones in the long term. An information system, which could be built relatively quickly and cheaply, would improve short-term transparency and effectiveness of the agricultural market. This would resolve the problem of shortage of information about this sector and allow for better planning in agriculture.

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<sup>168</sup> As organic yield is lower than conventional, farmers receive up to 900 euros per hectare to compensate the loss.

General aims of agricultural development in BiH are: rural development, transformation of the existing, mainly natural agricultural production into a market one, introduction and effective implementation of European legislation in the area of agriculture. Priorities in agricultural development in BiH are: greater production of health food, greater production and distribution of potable water, increased cattle numbers, particularly sheep and cows, utilisation of large pasture areas, particularly in mountainous regions, increased production and placement of honey, increase of labour-intensive products, such as tobacco, fruit, berries, increased production and application of quality seeds and seed material, particularly potato and fruit and grape shoots, increased quality of cattle feed aimed at increasing production effectiveness.

**The above leads to the following:**

- Domestic legislation should be harmonised with EU legislation in the area of agriculture and all the necessary laws and standards in agriculture and food, particularly in veterinary and phyto-sanitary protection, should be adopted.
- Policies and programmes of agricultural development in BiH should be prepared, and the BiH agricultural development strategy should be drafted.
- Adopt the necessary regulations on protection of land which is being destroyed and degraded, which is currently an economic and an environmental problem in BiH.
- Define ownership and lease rules related to land.
- Regulate loans for agriculture, subsidies of products and agricultural markets including purchase and prices. Build institutional capacities in the area of agriculture at the level of BiH to facilitate successful EU negotiations.
- Build BiH institutional capacities in agriculture, to plan and use effectively the EU funds available to candidate countries, and later for EU member states.
- Establish a quality control system for all priority products, taking into account horizontal Community legislation for food,<sup>169</sup> vertical Community legislation<sup>170</sup> and food standards (marketing regulations, common market regulations), UN recommendations.<sup>171</sup>
- Bring protection of domestic production closer to EU product protection.
- Establish a Paying Agency at the level of BiH, once CAP funds become available.
- Allow easier and more stimulation survey and trade in agricultural land.
- Implement land reform making agricultural estates sustainable.
- Consolidate estates and collectives, upgrade property for free market completion, stimulate enlargement and amassment of estates.
- Introduce regional stimulation of production in areas with less favourable economic conditions.
- Establish a BiH Agricultural Advisory Service.

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<sup>169</sup> Official food control – Directive 89/397/EEC, additional measures related to food control - Directive 93/99/EEC, Labelling of food products – Directive 2000/13/EC, Hygiene of food products HACCP – Directive 93/43/EEC, Additives, extraction dilutants and materials in contact with food products.

<sup>170</sup> Milk and dairy products – Directive 92/46/EEC, egg products – Directive 89/437/EEC, meet products – Directive 92/5/EEC, animals and products of aquacultures - Directive 91/67/EEC.

<sup>171</sup> Codex Alimentarius - The Codex Alimentarius Committee was established by FAO(Food and Agricultural Organisation of the UN) and WHO (World Health Organisation of the UN) in 1963, in order to develop standards, guidelines and relevant documents related to food.

- Upgrade land for larger production through quality work, application of mineral and organic fertilisers, and better plant protection from disease and parasites.
- Upgrade university education in the area of agriculture.

### **2.3.5.3. Forestry**

#### ***Situation in BiH***

Forestry and wood industry are important segments of economy and suffered direct war damages estimated at 2 billion euros. Physical capacities of the wood industry were at 38% in 2000, and paper and cellulose industry capacities were at mere 10% from their 1991 levels. The trend of timber exports continues.

Forested surface in BiH is some 2.7 million ha (53.4% of the territory). Average annual growth in all the forests is approximately 10.5 million m<sup>3</sup> of average timber mass. Mechanical and chemical processing capacities are beyond the needs of the domestic market and are partly export oriented. There are numerous furniture factories and considerable quantities are exported. There is also chemical processing of wood in BiH, so that there is an industry of cellulose, paper, cardboard and related products.

Shortcomings in the forestry sector relate to the following key issues:

- Long-term strategy in the forestry sector has not been built, and neither has an integral forestry policy at state or entity levels;
- Forestry organisation system at state or entity levels is inadequate, leading to an inefficient financing system;
- Legislation in forestry is not harmonised between the entities, nor with EU provisions;
- Due to a lack of transparency, there is a lot of illegal cutting;
- Privatisation was not conducted adequately, leading to high cost of operations with low efficiency;
- There is no forest protection or re-growth;
- There is biotic and abiotic threat;
- Forested areas are decreasing and there is a threat of loss of bio-diversity in forest eco-systems;
- Within the forestry sector, there are disorganised private forest estates;
- International market demand for timber products is not know well enough;
- Insufficient accessibility of forest, partly due to land mines in some areas.

#### ***Situation in the EU***

Although it is not a document that may serve as a formal forestry strategy in the EU the Council Resolution (15.12.1998) accepted the EU Forestry Strategy. Key reasons for this initiative were in the recognition of the need to harmonise national forestry policies in member states and forestry activities at the level of the EU, the growing importance of forestry in international policies discussions, and initiatives aimed at sustainable development.

Forestry Strategy allows for a common framework of activities in EU member states, with full consideration of the legal framework and international processes accepted by the EU

and its member States (UNCED 1992, MCPFE etc.).<sup>172</sup> Although accession negotiations do not presuppose the existence of an EU forestry strategy, issues such as management, protection and sustainable management of forest resources are emphasized in existing EU documents and policies: CAP, rural development, trade, research, industry, development cooperation and energy policy. The EU Forestry Strategy emphasizes the importance of diverse functions of forests and sustainable management of forest resources.

The Ministerial Conference on the Protection of Forests in Europe (MCPFE) is aimed at building a common and coordinated approach to protection and sustainable utilisation of forest resources in Europe. Earlier Ministerial Conferences (Strasbourg 1990, Helsinki 1993, Lisbon 1998, Vienna 2003) adopted a number of resolutions. The European Community signed all the MCPFE resolutions and integrated them into the EU Forestry Strategy. This process includes 40 European countries and all 25 EU member states. Resolutions adopted at the four earlier Ministerial Conferences are the basis of the European forestry policy, aimed at establishing sustainable balance between economic, environmental and sociological functions of forests.

### ***Necessary measures***

- Adopt state legislation based on scientific research. Its development should integrate requirements arising from forestry-related EU provisions.
- Adopt long-term development plans for forestry, defining strategies and policies of forest management in BiH, in compliance with MCPFE initiatives.
- Develop relevant state-level capacities dealing with forests, i.e. managing natural resources.
- Establish effective and rational organisation of forestry with clearly defined and differentiated functions of ownership, management, disposal and monitoring.
- Permanent implementation of national inventories of forests, with application of modern scientific developments (GIS)<sup>173</sup> should secure the necessary preservation basis and design a data base necessary for planning forest management.
- Upgrade the forest management system and establish instructionally sustainable organisation of forestry at all levels.
- Strengthen monitoring and inspection functions.
- Implement effectively the processes of privatisation, restitution and de-nationalisation. Importance of private forests, stimulation of entrepreneurship and introduction of healthy private capital into non-strategic forestry activities (cutting, extraction, transport, nursery production) would reduce considerably the cost of business, improve efficiency and increase the forestry share of GDP.
- Secure an effective, transparent and sustainable model of financing in forestry, to revitalise the damaged forest eco-systems and improve re-forestation, growth and protection of forests.
- Improve competitiveness of companies in forestry by implementing certification programmes for forest management.
- Promote multi-functional utilisation of forests including hunting, special forest products, and tourism.

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<sup>172</sup> *United Nations Conference on Environment and Development and Ministerial Conference on the Protection of Forests in Europe.*

<sup>173</sup> Geographic Information Systems.

- Define models of financing of simple and biological reproduction.
- Develop and implement long-term plans for mine clearance, re-forestation, growth, protection and reconstruction of low-yield forests.
- Separate and protect forest eco-systems with particular bio-diversity values.
- Educate and specialised forestry experts, and develop public awareness of the importance of forests.

#### **2.3.5.4. Fishery**

##### ***Situation in BiH***

The area of fishery is not as important in BiH as it is in the EU, as BiH has no open seas. Fish production in BiH has a development potential due to natural resources (lakes and mountain rivers) and possibilities of exports.

There are 20 fish farms in BiH, growing five types of fish: rainbow trout, brown trout, lake trout, carp and grayling. There are fish farms in Bihać, Klokot, Sanski Most, Ribnik, Bugojno, Buna, Blagaj, Salakovac, Mostar, Drežnica, Jablanica, Prozor, Konjic, Ljubuški, Hadžići, Crna Rijeka, Krupa na Vrbasu and Trebinje. There are three cyprinid fish farms in Banja Luka, Prijedor and Prnjavor, and two sea farms in Neum.

As there is a large number of fish and fish product importers, the number of fish farms indicates the existence of considerable export potentials for fish and fish products. Still, in BiH fishery lacks modern facilities for reproduction and their own production of fish feed.

In the recent period, the BiH Veterinary Office was established, as well as state and entity level association of fish breeders and processors, and the BiH Farmers' Association – the fishery section. Implementing regulations have been adopted, harmonised with relevant EU legislation. All the fish farms in BiH have been registered. Since 05.11.2003, the Veterinary Office has started issuing certificates, and since then 300 fish export certificates have been issued, mainly for trout.

At the request of the BiH Veterinary Office, entities have appointed veterinary inspectors responsible for veterinary supervision over each individual fish farm. The BiH Veterinary Office signed a cooperation agreement with the Danish Institute of Food and Veterinary Research (the reference EU lab for fish disease) and with the Fish Disease Centre of the School of Veterinary Medicine of the University of Sarajevo. Samples are taken and sent to the OIE reference laboratory<sup>174</sup> for tests for VHS, IHN, IPN, SVC<sup>175</sup> at trout and carp farms. There is a state plan for monitoring residue.

Economically, it can be said that there is no constant premium on production that fish breeders may enjoy or count on. There is no customs rate for fish import. There is an evident lack of loans, especially development loans, and any stimulation is merely symbolic.

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<sup>174</sup> OIE - Office International Des Epizooties – World Animal Health Organisation.

<sup>175</sup> VHS - viral haemorrhagic septicaemia, IHN - infectious haematopoietic necrosis, IPN - infectious pancreatic necrosis, SVC - spring viraemia of carp.

### ***Situation in the EU***

Common Fishery Policy<sup>176</sup> includes organisation of the common market, structural policies, arrangements with third countries, management and preservation of fish resources, as well as scientific research aimed at assisting these activities. The policy was established in order to ensure rational utilisation of fish resources, to provide assistance to persons employed in the fishery sector, and to protect the internal market and ensure competitiveness on world markets.

Fishery and aqua-culture make up for approximately 1% of the EU GDP, with an annual production of some 8 million tonnes of fish and a fleet of some 100,000 vessels. Common EU policy in the field of fishery has the same legal basis as its general agricultural branch.

### ***Necessary measures***

- Adopt the necessary state level legislation, securing the fulfilment of EU standards, including laws on freshwater and sea fishery, laws on protection of water resources, laws on incentives, and secure full application of legislation.
- Introduce health monitoring of fish and shell disease in compliance with OIE standards, and common legislation and monitoring at the level of the state, in order to prevent, stop and eliminate contagious and parasitical fish diseases.
- Provide specialised expert staff for production and specialised laboratories to conduct health supervision.
- Ensure that domestic labs develop preconditions to conduct the necessary tests in compliance with international standards, so that their results may be recognised.
- Establish gene banks for domestic species.
- Introduce incentives for production and export, incentives for employment and expansion of production capacities, incentives for breeding domestic species, and their protection.
- Protect domestic potentials from disease or purchase certified fish eggs.
- Prevent uncontrolled trade in contaminated fish eggs or fry.
- Introduce benefits for import of fish feed, and apply new technologies in breeding and the use of prophylaxis from fry to consumption.
- Modernisation of production is necessary, providing new equipment allowing for twice as large production per unit of surface in comparison with previous capacities.
- Personnel needs further training.

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<sup>176</sup> Legal bases of Common Fishery Policy (CFP) is based on Articles 32 to 38 of Chapter II of the Treaty Establishing the European Community. The first common fishery policy dates back to 1970, when rules were adopted on access to fishing zones. In 1992 new policies were introduced in fishery and aqua-culture, and in protection and management of resources. New rules on protection and sustainable utilisation of fish resources came into force on 1 January 2003.



### **2.3.5.5. Energy**

#### ***Situation in BiH***

#### **Electrical Energy**

BiH provides for its electrical energy needs in full through the production of electricity in its own electrical plants (10,8 TWh in 2002), using the available hydro-potentials and domestic coal. The state of domestic consumption enables the export of a portion of the produced electricity which in 2002 amounted to 1.1 TWh. About 60% of the total electrical energy is produced by thermoelectric plants and the remaining 40% by hydroelectric plants. The available hydro-potentials are estimated at a possibly annual production of cca 22,000 GWh, while coal reserves are over 4 billion tonnes. The current level of production of electrical energy is sufficient to satisfy domestic needs in the short-term period.

The division of the entire system into production, transmission and distribution of electrical energy according to European standards is underway.

The Law on the Establishment of an Independent System Operator for the Transmission System in BiH and the Law on the Establishment of the Electrical Energy Transmission Company in BiH<sup>177</sup> form the legal framework on the state level which regulates the transmission segment. These Laws enable the establishment of a non-profit and independent system operator for managing the electrical energy transmission system in BiH (NOS) and the company for electrical energy transmission (Elektroprenos BiH). Until NOS takes over, its duties are covered by the Joint Electrical Energy Centre (ZEKC) functioning on the BiH level and entrusted with the coordination and management of the electrical energy system.

Regulatory work is also performed by the State Electrical Energy Regulatory Commission (DERK) situated in Tuzla and entity Electrical Energy Regulatory Commissions situated in Mostar (for FBiH) and Trebinje (for RS).

Activities on the development of an Energy Strategy in BiH have begun, which concluded the Project Task of the Strategy adopted by the Council of Ministers of BiH.

The appropriate laws have been passed as well as reform plans and preparations for privatisation have been completed. The above documents provide for an organisation and functioning of the electrical energy sector in accordance with the appropriate documents making up the basis of the Athena Memorandum and Charter.

BiH's strategic orientation is active participation in the Energy Community of Southeast Europe (ECSEE<sup>178</sup> Agreement), whose establishment is underway. Along with the other

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<sup>177</sup> BiH Official Gazette, 35/04.

<sup>178</sup> Energy Community of South East Europe

countries of Southeast Europe, BiH is a participant of the Athena Process and has signed the Memorandums on Understanding (one referring to the electrical energy sector and the other to natural gas) with the aim of establishing a regional electrical energy and natural gas market that will gradually be integrated into the EU energy market. The Memorandums have resulted in the creation of a Draft ECSEE Agreement modelled on the Agreement for the establishment of the European Community providing the energy community with the status of a legal entity and its own institutions. The Agreement will come into effect after the ratification processes in the countries signatories have been finalised.

## **Coal**

BiH mines produce about 9 million tonnes of brown and lignite coal which amounts to less than 60% of pre-war production. Most of the coal (over 70%) is used to produce electrical energy in thermoelectric plants (TE). We can claim with certainty that the available coal reserves in BiH are sufficient to provide for future needs in terms of the production of electrical energy.

In FBiH, coal mines are legally and economically separate from electrical companies, while in RS they are an integral part of ERS.

The problems of the coal sector are very similar to the problems of this sector in the countries of the region. Namely, the operative costs are significantly higher than the competitive coal costs on the international market. High operative costs are a consequence of a surplus of employees, outdated production equipment and a lack of resources for maintenance and new investments.

An improvement in the state of the coal mines could have a positive effect on the competitiveness of this energy resource in comparison to other energy resources in the region that will be stimulated through the long-term EU strategy for providing energy resources for member countries. The messages about the necessity of restructuring the coal sector are clear, and the commencement of these activities is expected in the near future.

Due to the connection between coal mining and electrical energy, the restructuring of this sector could have significant influence on BiH fulfilling preconditions for the Athena Memorandum and Charter. Also, it can have a significant effect on the position of the electrical energy sector in BiH in the future electrical energy open market and in the development of new transmission capacities and electrical energy production capacities in the region.

## **Natural Gas**

BiH imports natural gas from Russia and the post-war consumption of natural gas is up to 200 million m<sup>3</sup>.

An agreement on the proposed World Bank Study and Draft Statement on the Reform of the Natural Gas Sector and their ratification still need to be carried out. BiH is yet to fulfil the conditions defined by the Draft ECSEE Agreement and pertaining to the natural gas sector.

The price of natural gas in BiH on the distributive level is the highest in Southeast Europe.

There are four companies in BiH dealing with various aspects of the natural gas sector which implies the need to resolve the status of this sector and pass the appropriate laws and regulations.

## **Oil**

According to the data from the Foreign Trade Chamber of Commerce of BiH, from 1997 to 2001, the average consumption of oil derivatives in BiH was some 1.2 million tonnes a year.

The current domestic production capacities are not sufficient to provide for the needs of the BiH market. Therefore, BiH is currently mostly dependent on the import of oil derivatives which in turn makes its market very sensitive to any shifts in the supply of this strategic energy resource. The oil market in BiH has been completely liberalised and oil is mainly imported from refineries in Croatia, Hungary and Serbia and Montenegro.<sup>179</sup> As far as the retail network is concerned, in the post-war period a large number of new petrol pumps with modern equipment has been built and there are about 770 of them at the moment.

With the aim of regulating the market of liquid oil fuels, protecting domestic production, protecting the environment and consumers, in September 2002 the Council of Minister of BiH passed the Decision on the Quality of Liquid Oil Fuels that defines the quality of fuel eligible for placement on the domestic market. The Law on Sales Tax and the Law on Excise Taxes in BiH, which have been in effect since 1 January 2005, regulate the tax system and have created the precondition for domestic producers of oil and its derivatives to be competitive on the entire territory of BiH.

Domestic production capacities have been organised within two companies: the Oil Refinery in Bosanski Brod and the Oil Refinery in Modriča. BiH has significant storage capacities at its disposal, however, due to damages sustained during the war, investment in their revitalisation is necessary for their proper functioning.<sup>180</sup>

## **Environmental Protection**

There are entity laws<sup>181</sup> on the environment and its protection as well as appropriate entity bodies in charge of controlling and ensuring the implementation of the existing laws. Apart from these laws, the inter-entity National Environmental Action Plan (NEAP) for BiH has also been adopted.

A sufficiently sound legal and institutional setting for an adequate approach to the problem of environmental protection is lacking. There is also a problem of the lack of an

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<sup>179</sup> The imports of mineral fuel to BiH from 2000 to 2004 were in the amount of 1.108.495,217 tonnes. The greatest portion of import of oil derivative was from Croatia 63.09%, Hungary 17.42% and Serbia and Montenegro 10.86%. Import of oil derivatives to BiH from these three countries amounts to 91.37%. Currently, the greatest export of mineral fuels is to Serbia and Montenegro in the amount of 96.89%.

<sup>180</sup> Research of oil and oil derivatives in BiH was intensified in the period from 1973 to 1981 when the Sector for Research of Oil and Natural Gas was formed within the Energoinvest - Bosanski Brod Oil Refinery Company. In the above period, extensive geological oil research was performed within two main projects: the North Bosnia Project and the Dinarides Project

<sup>181</sup> Framework Law on Environmental Protection, Law on Air Protection, Law on Natural Water Protection, Law on Waste Management, Law on the Protection of Nature and the Law on the Environmental Protection Fund.

inter-sector approach to this area. The absence of an Energy Strategy of BiH and the appropriate institutional setting and mechanisms for the realisation of plans makes it impossible for BiH to implement the requirements of the Athena Memorandum and Charter pertaining to environmental protection.

According to the Kyoto Protocol<sup>182</sup>, countries from Annex I (developed industrial countries in transition) are obliged to reduce gas emission in the period from 2008 to 2010. The protocol is a subject of ratification, signing, adoption, approval, accession and association for all members of the United Nations Framework Convention on Climate Change, of which BiH is a member. After the withdrawal of the USA, the EU is the primary representative of the Kyoto Protocol. All EU countries and Rumania and Bulgaria have ratified the Kyoto Protocol. The portion of renewable energy sources of future EU members must be 5% of the total energy consumption.

The ratification and implementation of the Kyoto Protocol is necessary in BiH since it will result in significant advantages and economic profits as well as benefiting the environment through the reduction of air pollution. This will ensure a better living environment and sustainable development.

### **Energy Efficiency – Saving Energy**

The level of energy efficiency, that is, energy intensity in BiH is among the lowest in Europe and corresponds to the values pertaining for the whole Southeast Europe region. This means that significant improvements are necessary and possible in this area. An institutional and legal framework for this area has been provided.

### ***EU Policy Measures***

The main goals of EU's energy policy include an increase in competitiveness, ensuring energy supply and environmental protection. The main elements of *acquis* in terms of energetics include the provisions of the Agreement and secondary legislation, especially that referring to competition and state subsidies on the internal energy market. The development of a trans-European energy network is an important element of the energetics policy.

The EU is faced with the fact of increased dependence of the energetics sector on imported energy resources. It is estimated that if the current trend of increasing consumption and reliance on existing resources continues, in 2030 the EU will be importing 70% of its energy resources in comparison to today's 50%. This means that the EU will spend significantly more for import in comparison to how much it spends today, which will certainly effect the overall economic position and competitiveness of the EU in the world. Considering the fact that the largest suppliers of oil and natural gas are Russia, the Near East and North Africa, it is clear that the future of energetics in the EU is greatly dependent on the geopolitical situation in the world.

The concept of ensuring energy supply and reduction of dependence on external sources for energy is implemented through controlling increases in energy consumption and supply.

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<sup>182</sup> The Protocol is from 1997 and official came into force on 16 February 2005.

Controlling increases in energy consumption involves:

- Saving energy through:
  - Establishing an open energy resources market;
  - Adequate payment for irrationally spent energy through appropriate taxes;
  - Passing of appropriate legislation in housing construction and industry that would stimulate new design and construction methodologies based on saving energy and using alternative energy sources;
  - Stimulation of the development of new technological solutions for the production of energy by efficiently using traditional and alternative fuels;
  - Stimulation of new technological solutions in the automotive industry.
- Reduction of the emission of toxic gases through:
  - Improving the railway sector with the aim of an increase in its use (as a substitute for road transport);
  - Reorganisation of the road transport sector that would optimise its current overload;
  - Rationalisation of the use of private vehicles in city centres through appropriate measures involving public transport and taxation of irrational use and environment pollution;
  - Economising energy in housing construction and everyday consumption through appropriate regulations in design and construction and the use of renewable energy sources.

Controlling increases in energy supply involves:

- Ensuring additional sources within the EU:
  - Encouraging the development and use of new and renewable energy sources (such as hydrogen and co-generation);
  - Consideration of using nuclear energy on the basis of future development of new solutions that would enable adequate safety and involving the closing plants which are old and inadequate in terms of safety;
  - Providing reserves of imported energy sources should enable easier overcoming of possible crises in fossil fuels supply.
- Ensuring external supply of energy resources,
- A stronger influence on the conditions of supplying energy resources from outside the Union. The EU is determined to use political and economic measures to ensure appropriate influence in areas/countries where energy sources are located. In that respect, activities have commenced with all potential partners with the purpose of establishing better new relations in the interest of those involved (the Near East, Russia, North Africa, the Caspian Basin);
- Strengthening the transport network Along with ensuring supply of energy resources in areas of greatest fossil fuel reserves, transport roads for safe transport of energy resources to EU countries should also be ensured. In that respect, projects for transport roads for natural gas and oil from the Caspian Basin and the Southern Mediterranean are being developed as well as other roads that would be an alternative to transport by ships.

The realisation of the above policy in terms of liberalising the electrical energy and natural gas market, protecting the environment and establishing and unique market is being carried out through EU directives.<sup>183</sup>

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<sup>183</sup> Directive 2003/54/EC (repealing Directive 96/92/EC) concerning common rules for the internal market in electricity and unbundling of operators, Directive 2003/55/EC (repealing Directive 98/30/EC) concerning common rules for the internal market in natural gas, Regulation (EC) No. 1228/2003 on access to the natural

In order to achieve the goals set out in the *Green Paper* and continue the abovementioned programmes, in 2002, the EU passed Decision 1230/2003/EC adopting a three-year programme (2003-2006) "Intelligent Energy – Europe" which stimulates development in energy efficiency, new technologies for energy production (including transport) and defines measures for monitoring the effect and results of the programme against the set goals as well as the development of appropriate laws and regulations.

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Having in mind the fluctuations and relation in the world oil and oil derivatives market, EU countries have accorded special attention to creating a policy and strategy for managing the oil sector as a strategic part of the energetics complex.

Guaranteed supply is an issue being given an exceptional amount of attention in EU countries through the diversification of supply sources and through mandatory reserves of strategic types of liquid fuel. In that respect, activities are underway aimed at the construction of an oil pipeline and product pipeline that would connect the Western European market with countries that export crude oil from the Near East, North and East Africa and the Caspian region. Rumania, Serbia, Croatia and Italy have agreed on joint participation in the pipeline construction through which they would ensure guaranteed and better supply of these and other Western European countries with crude oil from Russia and the Caspian region.

Mandatory reserves of strategic types of liquid fuel are defined by Directive 68/414/EEC and Directive 98/93/EC of the EU, respectively. These Directives state that all EU member states must have 90-day reserves of strategic types of liquid fuel. This is one of the preconditions for all candidates for full membership in the EU.

### ***Necessary Measures***

- Developing an energetics strategy in BiH and proposing measures for its realisation, implementation monitoring and appropriate laws and regulations.
- Developing an action plan for the natural gas sector reform in accordance with the requirements of the ECSEE Agreement and the directives cited therein.
- Devising a development strategy for the oil economy taking into account the interests and potentials of the domestic market.
- Adopting directives pertaining to energy and their implementation.
- Establishing an appropriate body on the level of BiH that would manage the development of an energetics strategy for BiH.
- Establishing, strengthening or reorganising an appropriate institution on the level of BiH that would be in charge of preparing and implementing reforms in the natural gas sector and would have the required mechanisms and staff.
- Establishing, strengthening or reorganising an appropriate institution on the level of BiH that would be in charge of preparing and implementing reforms in the electrical energy sector and would have the required mechanisms and staff.

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gas and electricity network for purposes of cross-border transmission; Directives 1999/32/EC; 85/337/EEC; 2001/80/EC on environmental protection.

<sup>184</sup> Sub-programmes of the complete programme are SAVE (energy efficiency) ALTEENER (new and renewable resources) STEER (diversification of fuel in the transport sector) and COOPENER as a continuation of the SYNERGY programme aimed at developing countries and promoting EU practices in using renewable sources and methods for improving energy efficiency along with the flexible mechanisms of the Kyoto Protocol.

- It is necessary to invest in refineries because of BiH's potential for refining crude oil for other countries.
- Investment in the revitalisation of capacities for storage of oil derivatives and the construction of new ones.
- Accession to the trans-European energy network (TEN – Trans-European Networks).
- Gradual integration into the EU energy market through the electrical energy market in Southeast Europe.
- Speeding up the process of electrical energy sector reform in accordance with the requirements of the ECSEE Agreement, laws adopted in BiH and directives cited therein.
- Capacity building for statistics, information and implementation of policies in the natural gas, electrical energy, coal and oil sectors as required from every EU member state (Dir. 90/377, Dir. 94/22, Reg. 736/96 i 2386/96).
- Urgent restructuring of the coal sector with the aim of making it efficient through a reduction of operative costs and affording a competitive position of BiH's electrical energy in the region.

### **2.3.5.6 Transportation**

#### ***Situation in BiH***

All types of transport infrastructure and all types of means of transport have been reconstructed to make up for the state that resulted as a consequence of the war and inadequate maintenance. Legal regulations have been prepared and international agreements have been signed. We participated in the development of regionally significant studies and the preparation of priority projects, as well as the construction and modernisation of border crossings. Activities have been undertaken to strengthen institutions in charge of transport and transport infrastructure. A public corporation for roads in BiH has been established and it is entrusted with the coordination of activities aimed at the maintenance and construction of road infrastructure on the level of BiH.

Activities are being undertaken to incorporate BiH into the pan-European transport network and their first step was the verification of Corridor 5C that would connect BiH with Croatia, Hungary and other Central European countries in the north-south direction. Financing projects have been prepared with the assistance of international financial institutions, particularly pertaining to Corridor 5C and other roads whose construction is planned and which are to serve higher level traffic (highways, motorways, etc.). The first kilometres of the Corridor 5C motorway have been constructed. A renewal of transport capacities, especially in road transport has been carried out. Cooperation has been established with international organisations and other states, especially with neighbouring states.

#### **Roads**

There is about 22,500 km of categorised roads in BiH, of which 3850 km is categorised as main roads, some 3900 km as regional and cantonal roads and about 14,000 km as local roads. 90% of the main roads are asphalt, but their state should be further improved.

Road transport in BiH is mainly privatised which as resulted in an increase in the choice and quality of services. In the past few years, transporters dealing in international transport have managed to renew their motor pool which enables them to access European roads. It can be expected that the competitive ability of road transporters from BiH will increase when BiH joins the TIR<sup>185</sup> carnet system. A particular problem is the lack of transport licenses, which has negative effects on the total exchange of goods and signing of contracts. Another significant problem is the complex and expensive process of securing visas for professional drivers. BiH hopes to achieve liberal relations with all countries when it comes to international road transport of goods and passengers.

## **Railways**

In BiH there is 1031 km of railway lines with normal tracks, with 1435 mm, load 22.5 t and 8.5 t/m of which 777 km or 75% are powered by electrical energy. There are also double tracks from Zenica to Doboje of 88 km in length. There are also industrial tracks leading to every important production plant which makes direct access for picking up and delivering goods possible. The state of the railway infrastructure requires improvement in some areas, because in the past 10 to 12 years not enough has been invested in reconstruction and modernisation.

Due to the state of the railway infrastructure, transport is carried out at lower speeds. Railway capacities can be better put to use, because their more extensive use for the transport of goods would lessen the pressure on road transport. Activities are underway to acquire new capacities, especially for the transport of passengers.

In domestic and international transport, railway operators from BiH can be reliable partners for the pickup, transport, transfer, storage and delivery of all types of goods.

## **Fairways and Ports**

The river Sava, 311 km of which pass through BiH territory, is of particular significance for BiH. The fairway of the Sava river has not been used for commercial purposes in the past 10 years. Also, two port on this river are seldom used, especially the port in Šamac, that did not receive any investments. The Brčko port has been reconstructed to perform basic functions and there is significant potential for an increase in traffic with the investment of certain funds to modernise this port. The rehabilitation of the Sava river fairway is also connected to mine clearing.

Before the war, the Sava river belonged to the IV fairway category (number of navigable days per year). Activities are underway to prepare joint regional projects that would enable more extensive use of the Sava river and its ports, because they have relatively good navigable, railway and road connections to both the country and abroad. The Sava Commission has been formed with participating countries: Bosnia and Herzegovina, Croatia, Slovenia, Serbia and Montenegro.

Marine transport of goods from BiH is carried out through the Ploče Harbour (Croatia) whose capacity is about 5 million tonnes per year.

## **Airports and Air Transport**

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<sup>185</sup> Transports Internationaux Routiers.



There are four international airports in BiH: Sarajevo, Banja Luka, Mostar and Tuzla. War damages to the airport have mainly been removed and the equipment has been renewed, however significant investment is necessary for the reconstruction and construction of new facilities and the purchase of new equipment.

There is a number of registered domestic air transport companies in BiH. Flights to certain international destinations are mainly preferred by foreign airlines that have branch offices in BiH. Thanks to these air connections with the world, BiH has regular passenger and charter flights, as well as cargo flights.

A significant problem for BiH is that its air space control is performed by regional air traffic controls in Zagreb and Belgrade. This problem could be solved with the construction of a CEATS<sup>186</sup> centre and a BiH Regional Air Traffic Control.

### ***Situation in the EU***

The goal of the EU is to establish a unique transport market where road, railway, river, marine and air transport firms function under free market conditions and can offer an unlimited number of services in the entire territory of the EU. The transport policy is made up of policies and initiatives in three fundamental areas:

- improving quality by developing integrated and competitive transport systems based on advanced technologies that can also contribute to the achievement of objectives in environmental protection and security,
- improving the functioning of a unique market so as to promote provisions of efficiency, choice of transport service and protection of social standards,
- improving transport connections with third countries and encouraging the access of EU operators to other transport markets.

According to the European Commission document "Transport and Energy Infrastructure in Southeast Europe" activities and priorities in the domain of transport infrastructure will be directed at the achievement of the following strategic objectives:

- an efficient legal, organisational and institutional framework,
- development of multimodal transport through the connection of all types of transport infrastructure as well as connection with Pan-European corridors outside the region,
- rehabilitation of the existing infrastructure,
- elimination of narrow border crossings,
- competitiveness and cooperation between transport models,
- environmental protection through mandatory development of studies about the effect of infrastructure facilities on the environment,
- investment programmes which must be based on economic parameters.

### ***Necessary Measures***

- Adoption of laws and bylaws in accordance with European standards wherever possible and finding ways of strengthening transport and transport infrastructure institutions.

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<sup>186</sup> Central European Air Traffic Services.

- Adequate preparation for the use of EU pre-accession funds for transport, i.e. for the use of ISPA (necessary state bodies and structures that would ensure unhindered and efficient implementation of projects, necessary efficient time planning, development of strategic documents).
- Strengthening activities in all types of transport and transport infrastructure so as to improve traffic safety.
- Increasing tolls for roads contained in the retail price of fuel (through a redistribution or increase in retail prices), and ensuring more funds for the maintenance and development of railway infrastructure.
- Intensifying activities towards international financial and other institutions and organisations for the purpose of greater assistance in the realisation of priority projects.
- Taking steps in the reconstruction of railways and their successful competitiveness with other transport means.
- Improving navigation security control and marine environment protection.
- Initiating activities to clean up the Sava riverbed and reconstruct and develop its ports through regional cooperation.
- Developing necessary studies and investment and technical documentation so as to create the necessary preconditions for negotiations on modes of financing priority infrastructure projects for the modernisation and construction of BiH's road network and especially for projects pertaining to Corridor 5C.
- Performing preparations for joining the EU road transport market.
- Developing an integrated and balanced multimodal transport system as to integrate all transport models into a common European transport network.
- Enabling simpler procedures at border crossings and creating preconditions necessary to facilitate the issuing of visas, especially for business purposes.

### **2.3.5.7. Small and Medium Enterprises**

#### ***Situation in BiH***

The adoption of the Development Strategy for Small and Medium Enterprises (SMEs) of BiH is underway. This Strategy will propose a unique definition for small and medium enterprises on the state level.

On other levels of government (the entities, Brčko District, cantons and municipalities) disparate definitions of small and medium enterprises are being applied. The international community, as well as organisations implementing programmes in the realm of the development of SMEs apply their own criteria that define small and medium enterprises mainly as economic subjects with a maximum of twenty employees.

BiH is currently undergoing intensive economic legislation reforms. One of the priority goals of these reforms is the creation of a favourable business environment. From the point of view of the needs of small and medium enterprises, the reforms tempo is limited by problems of a complex administration, varying regulations at different levels of government and relatively poor coordination.

The Law on Enterprises, the Law on Economic Societies and the accompanying laws on registration make up a good legal framework for the establishment, functioning and closure of enterprises. When it comes to small and medium enterprises, we should bear

in mind the legal regulations on the cantonal and municipal levels pertaining to craft workshops. Thanks to recent innovations, this set of regulations is in accordance with modern requirements.

The Framework Law on Enterprise Registration has been adopted and the process of harmonising legal regulations on registration on the entity and Brčko District level is underway. These laws will completely solve the problem of quick business registration, which will be reduced to five days.

The banking sector in BiH is an example of successful reform for all countries in transition. However, the sector of small and medium enterprises is yet to see some benefit from the progress made in the field of banking. The portion of funds granted to private enterprises makes up less than 50 % of the total amount of granted loans, and interest rates are high without any indication that they will be decreased. Micro-loan organisations are still a very important financing mechanism for the small and medium enterprises sector.

In contrast to most transition economies, BiH possess experience in small-scale private business. Democratic reform in education faces the challenge of making use of private initiative experience. A significant improvement in *entrepreneurial education* has been achieved thanks to projects initiated and supported by the international community.

BiH has accepted the *European Charter on Small Enterprises*<sup>187</sup> which enables it to participate in intensive information exchange about policies and development results in the small and medium enterprises sector in most European countries.<sup>188</sup>

### ***Situation in the EU***

There are about 23 million micro, small and medium enterprises (SMEs)<sup>189</sup> in the EU, which makes up 99% of all registered business subjects.

SMEs employ about 75 million people and represent the basis of the EU economic growth and global competitiveness strategy. The European Commission is entrusted with making the strategy<sup>190</sup> of economic growth and creation of jobs operative as well as preparing proposals of regulations and implementing measures of assistance for micro, small and medium enterprises.

The European Commission's methodology in working with small and medium enterprises is based on the principle of subsidiaries. Member states have a key role in the implementation of the adopted policy. The Commission does not communicate with businesses directly, but relies on set working models. The first model the Commission employs for the implementation of policies consists of information centres<sup>191</sup> and support centres for small business<sup>192</sup> established and financed by the EU. The second model

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<sup>187</sup> At the EU Summit in Thessalonica in June 2003

<sup>188</sup> The Charter was signed by: 25 EU member states, EFTA member states, Western Balkans countries and Moldova, Bulgaria, Rumania and Turkey.

<sup>189</sup> The definition of micro, small and medium enterprises is given in the Commission Recommendation 2003/361/EC, OJ L 124, 20.5.2003.

<sup>190</sup> Lisbon Economic Reform Agenda.

<sup>191</sup> Euro Info Centres.

<sup>192</sup> Innovation Relay Centres.

entails working in cooperation with governments, whereby the Commission supports policies in the hands of member states.

Regardless of the working model, the Commission relies on the information it receives directly from entrepreneurs, i.e. from small and medium businesses. Results of surveys are regularly published in *Eurobarometer* and represent the basis for formulating policies and deciding on measures. In that way *best practice* examples are arrived at and they serve as inspiration for the preparation of future projects.

The *European Charter on Small Enterprises*<sup>193</sup> is an institutional mechanism of information exchange among countries signatories of the Charter. EU member states, candidates and potential candidates join the *European Charter* and exchange information on initiatives, development of small and medium enterprises, legislation reform and policy realisation.

The Charter appeals to the European Commission and member states to support small enterprises in ten key areas:

- entrepreneurial education and training,
- cheaper and faster starting of businesses,
- better laws and regulations,
- access to skills,
- improvement of on-line access,
- greater benefit from the Unique Market,
- taxing and financial issues,
- strengthening technological capacities of small enterprises,
- making use of successful *e-business* models and developing top of the line support for small business,
- developing efficient representation of small business on the level of the EU and on the state level.

Once a year, the European Commission delivers a questionnaire to the appropriate states and systematises their responses in a consolidated report that represents the state of small business in the EU and other countries signatories of the Charter.

### ***Necessary Measures***

- Adopt regulations that enable statistical surveillance of the SMEs sector on the state level.
- Adopt and implement regulations pertaining to collateral, leasing, bankruptcy and mandatory payment.
- Adopt a Development Strategy for small and medium enterprises and a unique definition of small and medium enterprises on the level of BiH.
- Develop an action plan for the realisation of SMEs Development policies in accordance with the priorities of the Poverty Reduction Strategy Paper of BiH (PRSP) and the priorities from the European Charter on Small Enterprises.
- Establish and make operative a Council for Development and Entrepreneurship.
- Institute dialogue between the government, entrepreneurs and unions.

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<sup>193</sup> European Charter for Small Enterprises, approved at the EU Council in Feira, 19-20 June 2000.

## **2.3.6. Economic and social cohesion**

### **2.3.6.1 . Employment and Social Cohesion**

#### ***Situation in BiH***

Unemployment and social security are BiH's greatest economic and social problems. Social policy is a constitutional duty of the entities, but the Federation shares its jurisdiction with cantonal authorities. Cantonal authorities are charged with the realisation of set policies and the implementation of measures of minimal social security. The Brčko District ratifies and realises social policy measures, including minimal social security.

The Labour Ministry (in the entities) determines regulations pertaining to labour, employment and social security for the unemployed as well as regulations pertaining to the institutions involved in this field. The regulations define the duties of entity employment institutes to pay cash sums as aid and health and retirement insurance for the unemployed. Monetary aid for unemployment insurance is given to persons who fulfil the necessary conditions as defined by law. The law regulates the obligation of entity employment institutes pertaining to monitoring the labour market and facilitating employment.

In FBiH, the Employment Institute is organised into ten public employment institutions in the cantons and employment bureaus in all municipalities. In RS, the Employment Institute is a centralised institution with six regional offices and bureaus in all municipalities. The Employment Institute is also a public institution in the Brčko District. Employment institutes are financed from income tax revenue.

An Agency for Labour and Employment of BiH has been established as part of the institutional reform.<sup>194</sup>

Terms of reference for the Agency are determined by Article 8 of the Law:

- International representation and cooperation with international organisations, implementation of international obligations pertaining to labour and employment,
- coordination of activities with entity authorities and entity employment institutes pertaining to employment in project of interest for BiH,
- gathering data on supply and demand of labour on the international market and delivering this data to entity institutes,
- initiation of making and signing international agreements pertaining to labour, employment and social security and monitoring their implementation,

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<sup>194</sup> Law on the Agency for Labour and Employment of Bosnia and Herzegovina BiH Official Gazette, No. 21/2003.

- monitoring the implementation of conventions of the international labour organisation and international standards pertaining to labour and employment.

The financing of the Agency for Labour and Employment of BiH is determined in the budget for BiH institutions.

### ***Situation in the EU***

The integration objectives of the EU social policy are improving living and working conditions, stimulating employment, providing equal opportunities and minimal social security. The social policy is an integral part of realising freedom of movement for workers. Its principles are defined by the Treaty Establishing the European Community and the Protocol on Social Policy.<sup>195</sup> Its methodology is based on programmes ratified by the Community, coordination and cooperation of member states and the adoption of legislative measures for the improvement of harmonisation of national regulations pertaining to social policy.

The first social action programme of the Community was passed in 1974 by the EEC Council in the form of a resolution. The social action programme for the first three-year period included the following priorities:

- achieving full and productive employment in the Community,
- improving living and working conditions, and
- a greater degree of participation of social partners in making economic and social decisions.

During the 1980s, the dominant discussions were about social possibilities within the internal market, economic and social cohesion in the Community, the removal of differences in economic development in certain regions and the necessity of gradual harmonisation of the European labour market.

The main documents were the Unique European Charter<sup>196</sup> (1986) and the Charter of Fundamental Social Rights of Workers<sup>197</sup> from 1989.

In accordance with this Charter, the Community passed numerous guidelines, resolutions and programmes pertaining to employment. Their aims included:

- activities of the Community to counter unemployment,
- encouragement of employing the young,
- encouragement of employing women,
- development of local programmes for creating new jobs,
- preventing long-term unemployment,
- encouraging integration or re-integration of women into active living.

<sup>195</sup> EC Treaty: Preamble, Articles: 2, 3i, 3j, 48-51, 117-125, 130b, 130d; Protocol on social policy.

<sup>196</sup> Two new articles of the EEC Treaty were approved. The first regulated qualified majority decision making in matters of working environment and health as well as safety at work. The second defined the basic principles of social dialogue on the level of the Community. Apart from this, a new chapter on economic and social cohesion was added. The Community tried to prevent regional differences that could arise due to a common market.

<sup>197</sup> The programme lists 47 measures encompassing 12 areas of social rights stated in the Charter.

A new extensive reform was performed through the adoption of the Treaty on the EU (Maastricht, 1993). The realm of common social policy was regulated by the Protocol on Social Policy included as an annex to the Treaty on the European Community.

The European Council (Amsterdam, 1997) passed the "resolution on Growth and Employment". The Resolution stresses the need for modernising the system of social security and harmonising economic policies.

The harmonisation of development strategies and employment policies, adopted by the Amsterdam Agreement, obliges member states to prepare three documents in the field of employment:

- an annual overview of the labour market,
- a long-term employment strategy, and
- an annual action programme for employment in accordance with the EU Council guidelines.

In accordance with the provisions of the new chapter on employment in the Amsterdam Agreement, at an extraordinary session of the European Council on employment in Luxemburg in 1997, the presidents and governments of member states adopted a set of guidelines that member states were obliged to include in their national action programmes. The guidelines were structured into four pillars:

- increasing employment,
- encouraging entrepreneurship and entrepreneurial ways of thinking,
- encouraging individual and corporate flexibility, and
- equal employment opportunities.

In Lisbon in 2000, the European Council defined EU's strategic objectives according to which it was to construct the most competitive economy in the world, a knowledge based economy. Sustainable economic growth should be supported by quality employment and greater social cohesion. Member states were required to implement complementary objectives:

- full employment,
- quality and productivity, and
- social cohesion and integrity.

The "social dimension" concept in the context of a unique market concerns the effort to add a humane and social dimension to the internal market and the EU as a whole and to assuage the fears of *social dumping* felt by unions.

The social dimension of European integration is essentially *social dialogue*. The first institutional models from the 1970s (the *Standing Committee on Employment* and the *Tripartite Conference*) were an effort to bring together social partners on the level of the Community and to achieve a consensus among them regarding the Community's policies.

Agreements on harmonised actions were not possible because there was no will to compromise. It is believed that at that time neither the Community nor the umbrella organisations had the necessary competence in this field. The concept of *social dialogue* was introduced into the legislation as part of the Single European Act (Article 118b), and later determined by Article 3 of the *Protocol on Social Policy*.

The employment and social security policy of the EU is realised with mandatory prior consulting of the European Economic and Social Committee. The Committee is a permanent body and a non-political advisory organisation with great influence on decision making and the implementation of social policy measures.

The Committee communicates directly with the EU Commission, Council and Parliament. The financial mechanism that support the realisation of social policy is the economic and social fund.

### ***Necessary Measures***

- Develop operative plans for the improvement of corporate management.
- Establish an Economic and Social Council on the level of BiH.
- Institute tripartite consulting between the government, unions and employers on the level of BiH.

### **2.3.6.2. Regional Policy and Cohesion**

#### ***Situation in the EU***

One third of the EU budget in the 2000-2006 period is intended for assistance to underdeveloped regions and certain social groups. Of the total amount the following has been allocated to:

- Structural funds<sup>198</sup>, 195 billion Euros
- Cohesion funds, 18 billion Euros

Structural funds are divided according to the following priorities:

- underdeveloped regions (encompassing 22% of the population of the EU, allocated 70% of the funds),
- economic and social conversion of regions experiencing developmental difficulties (18% of the population of the EU, allocated 11.5% of the funds),
- training and re-qualification and creating jobs in the above regions (12.3% of the funds),
- four EU *Initiatives* for finding solutions to specific problems (5.35% of the funds):
  1. cross-border, trans-national and inter-regional cooperation (*Interreg III*)
  2. sustainable development of underdeveloped cities and urban areas (*Urban II*)
  3. rural development through local initiative (*Leader*)
  4. counteracting inequality and discrimination in employment (*Equal*).

The structural funds are used to finance multi-annual programmes that are part of the strategy developed through *partnerships* (of regions, member states and the European Commission) and in accordance with the Commission's guidelines. These programmes are implemented in the entire EU. Development initiatives must fulfil the needs defined in the region or member state, and the main responsibility for their implementation lies with state of regional authorities.

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<sup>198</sup> European Regional Development Fund (ERDF); European Social Fund (ESF), Financial Instruments for Fishery (IFGGS) and for support to agriculture with a guarantee fund (EAGGF).



The cohesion funds are used to directly finance specific projects intended for the environment and transport infrastructure in Spain, Greece, Ireland and Portugal. Similar projects in new member states of Central and Eastern Europe are financed by Structural Policy Instruments.<sup>199</sup>

### ***Necessary Measures***

- Develop regional economic development projects acceptable to the EU within the programme for the realisation of priorities from the *European Partnership with BiH*.

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<sup>199</sup> ISPA and SAPARD.

### 2.3.7. Environment

Environmental policy is based on the principles of sustainable development, i.e. the integration of environmental policy into sector policies. According to its traditional definition, sustainable development is "development that fulfils the needs of the present generation without jeopardising the possibility for future generations to fulfil their needs." The proper use of natural resources and proper economic development will ensure a healthy life for present and future generations.

Apart from improving the state of the environment, the policy of sustainable development will help BiH advance on its road to full EU membership. The environmental segment is both financially and legislatively very demanding for future EU member states, because it requires the adoption of a large number of new legal regulations. The development of an environmental policy in BiH is supported through the CARDS programme, and its aim is strengthening central government institutions in charge of the environment and the development of relevant policies so as to improve sustainable environmental management in the whole of BiH. The preconditions for securing European Commission funds will depend upon development activities in this area. The plan is for the future EU IPA<sup>200</sup> assistance programme for candidate countries and potential candidate countries to be aimed at progressive harmonisation with the *acquis communautaire*, social and economic development and sustainable development.

#### ***Situation in BiH***

Environmental laws regulate the use of natural resources in the economy and spatial planning. In the past years, the creation of a system of environmental management has been underway. This system is based on the principles applied in the EU and programmes of international aid in BiH, including CARDS, are very significant in its realisation. Thus, within the project "Preparation of Environmental Laws and Policies in BiH (BH 99-03)" a set of (entity) environmental law was prepared as follows: (1) Framework Law on Environmental Protection, (2) Law on Air Protection, (3) Law on Water Protection, (4) Law on Waste Management, (5) Law on the Protection of Nature, and (6) Law on the Environmental Protection Fund. These Laws are based on key EU environmental directives. Apart from these laws, the inter-entity National Environmental Action Plan (NEAP) for BiH has also been adopted. A significant contribution to capacity building for environmental management was provided by the REReP<sup>201</sup> project.

Up to now the sector legislation in BiH covered air, water and waste, while noise, chemicals and ionising radiation were not covered. As far as horizontal legislation is concerned, the development of bylaws regulating environmental licenses is underway.

The institute for standards in BiH has passed over 200 BAS/ISO<sup>202</sup> standards, most of which are also EN<sup>203</sup> standards.

BiH has joined most international environmental agreements (conventions) and it is yet to join international conventions pertaining to water such as the Helsinki Convention.

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<sup>200</sup> Instrument for Pre-Accession Assistance

<sup>201</sup> Regional Environmental Reconstruction Programme for South East Europe (Regional Environmental Centre for Central and Eastern Europe).

<sup>202</sup> Bosnian-Herzegovinian Standard / International Organization for Standardization.

<sup>203</sup> Environmental.

Joining protocols would lead to a better development programmes for the energy resources sector, for instance.

Two national parks (about 20,000 acres), two natural reservations of which one is a bird habitat represent a great value in the sense of untouched natural environments. Their preservation would secure the preservation of BiH's rich biodiversity.

### ***Situation in the EU***

*Acquis communautaire* contains approximately 200 legal acts that cover a very wide range of environmental issues, including water and air pollution, waste and chemicals management, biotechnology, radiation protection and the protection of nature.

More precisely, the principles of environmental protection in the EU are: "the polluter pays", prevention, safety measures, integration, interventions at the source, while the main environmental principles are as follows:

- Applying the principles of sustainable development (the Fifth and Sixth EU Action Programme) that provide general development guidelines – harmonising needs of socio-economic development and nature preservation and the consumption of resources ration between the present and future generations;
- Freedom of movement and safety of industrial products (safety entails both environmental and health safety) new approach guidelines;
- Encouraging resource efficiency (sale of services with the help of products, and not the sale of products, especially when it comes to energetics) in product or service lifecycles – eco-efficiency;
- A joint approach to international environmental agreements, whereby obligations are distributed among EU member states in proportion to their economic power;
- Organization of an environmentally responsible market;
- Guiding technological development with the aim of achieving environmental limitations (especially in the field of energetics).

Established EU practices provision measures against price dumping that can be applied if it is proven that the producer has achieved lower production costs by neglecting to reduce pollution.

### ***Necessary Measures***

- Establish appropriate capacities on the state level (especially to realise international environmental agreements) and pass the necessary laws on the state level.
- Join the Kyoto Protocol as this would enable foreign investment in increasing energy efficiency, that is, the use of renewable energy. Joining the Annex and Conventions on Climate Change should be postponed, since it is not favourable for the current low energetics development.
- Strengthen environmental capacities in entity ministries, especially inspection services.

- Perform a general implementation of environmental standards and criteria based on the "self imposed quasi membership"<sup>204</sup>, which would be the optimal basis for the development of institutional relations, and not only in the environmental sector.
- Perform the necessary legal and economic analyses so as to join conventions and protocols BiH has not joined yet and regulate their implementation between the state and the entities/cantons.
- Work on forming an ecologically responsible market in BiH (making economic stakeholders aware of the need for ecologically sound behaviour, introducing state programmes and ecological and economic incentives).
- Bear in mind, when realising these steps, that these activities cannot be performed exclusively within the environmental sector, but must be integrated with all other sectors.

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<sup>204</sup> *self imposed quasi membership* – when the state decides to abide by standards and criteria even if it is not obliged to do so.

### **2.3.8. Justice and home affairs**

Cooperation in the justice and home affairs sector has been established within the framework of the third EU pillar and entails the concept of establishing a joint area of freedom, security and justice (Maastricht Treaty, 1993) whereby along with developing measures to control border crossings, asylum, immigration, preventing and counteracting organised crime, a high level of security is afforded to citizens.

In accordance with the legal framework in Bosnia and Herzegovina, the justice and home affairs sector is under the jurisdiction of the Ministry of Security and the Ministry of Justice on the state level and on entity levels. The legal framework of the judicial system and internal affairs is made up of the following laws: the Law on Movement and Residence of Foreigners and Asylum Seekers; the Law on the State Border Service; the Law on Criminal Proceedings; the Criminal Law of BiH; the Law on Witness Protection; the Law on Customs Policy; the Law on Indirect Taxation; the Law on Preventing Money Laundering; the Law on Police Officers in BiH; the Law on the State Investigations and Protection Agency; the Law on State Border Surveillance and Control; the Law on Bankruptcy; the Law on Ministries and the Law on Internal Affairs (of FBiH and of RS) and the Law on the Brčko District Police.

With the aim of adopting European Union principles in the judicial system and in internal affairs, Bosnia and Herzegovina is undertaking the necessary measures and reforms in the domain of strengthening the rule of law, counteracting organised crime, corruption and illegal immigration.

#### **2.3.8.1. Justice<sup>205</sup>**

##### ***Situation in BiH***

Since 2002, a comprehensive reform of the justice system has been underway in Bosnia and Herzegovina. High Judicial and Prosecutorial Councils of BiH were established as part of this reform, the network of courts and prosecutorial offices has been reorganised and the number of judges and prosecutors has been decreased. Furthermore, the Court and Prosecutorial Office of BiH have become operative and their financing has been secured. Within the Court of BiH, a special Council for War Crimes was established along with a Department for War Crimes within the Prosecutorial Office of BiH.

The Ministry of Justice of BiH is gradually taking on its role of adapting and developing the internal justice system in accordance with those of Europe and ensuring international and inter-entity legal assistance and cooperation. A Judicial Police was established within the Ministry of Justice.

Through its fulfilling of post-accession commitments to the Council of Europe, BiH is taking on a significant number of conventions<sup>206</sup>, including the adoption of United

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<sup>205</sup> The description of the justice system is given in detail under the heading "The Political Situation".

<sup>206</sup> BiH has ratified most Council of Europe Conventions pertaining to legal assistance in criminal matters. They are: the European Convention on Mutual Legal Assistance in Criminal Matters; the European Convention on Extradition with Protocol; the European Convention on Case Transfer in Punitive Matters; the European Convention on Reparations for Victims of Violent Criminal Acts; the European Convention on the Transfer of Convicted Persons. The European Convention on Cybernetic Crime is being ratified. According to the notification of succession, BiH has taken over all bilateral and multilateral agreements made, inherited or participated in while part of the SFR Yugoslavia. BiH has signed the Agreement on Legal Assistance in

Nations Conventions.<sup>207</sup>

A legal framework for international legal aid<sup>208</sup> is in preparation. This legal framework will cover both the extradition and transfer of convicted persons and facilitate proceedings pertaining to recognition, enforcement and decisions, extradition and transfer as well as the compatibility of regulations enabling such cooperation, prevention of conflict of jurisdiction et al.

### ***Situation in the EU***

Making the justice and home affairs regulations of member states compatible is carried out by a method of harmonisation (conventions, framework decisions, joint actions), but also increasingly through the promotion of the principle of *mutual recognition* of judicial verdicts and other judicial decisions in both civil and trade disputes and criminal disputes (the European arrest warrant, freezing of assets, execution of seizure orders, decisions on financial penalties et al.).<sup>209</sup>

An important precondition for a more intense movement of persons and development of business within a unique market is an efficient and equivalent judicial protection of EU citizens and corporations in its entire territory.

The establishment of such legal protection entails making regulations compatible and cooperation between judicial bodies in member states, especially when it comes to status disputes and disputes resulting from doing business in more than one member state. The cooperation is aimed at establishing the minimal standards of legal aid, the simplification and expedition of consumer and other related disputes in extraterritorial cases by facilitating provisional measures, collecting evidence et al. In this case, the *acquis* entails the principle of mutual recognition of verdicts, mutual implementation of verdicts in disputes over the right of contact with children, the implementation of verdicts in marital disputes, marital relations and parents' obligations towards children, bankruptcy regulations and judicial and extrajudicial documents et al.

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Civil and Criminal Matters and the Agreement on Mutual Execution of Judicial Verdicts in Criminal Matters with the Republic of Croatia. Similar agreements with the Republic of Slovenia, Serbia and Montenegro and the Republic of Macedonia have been signed and are being ratified.

<sup>207</sup> BiH plans to join other Council of Europe and United Nations conventions pertaining to legal assistance in criminal matters.

<sup>208</sup> Provisions pertaining to international legal assistance are contained in the following Laws on Litigation Procedure: the Law on Litigation Procedure before the Court of BiH (BiH Official Gazette, No. 36/04); the Law on Litigation Procedures of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, No. 53/03); the Law on Litigation Procedures of Republika Srpska (Official Gazette of Republika Srpska, No. 50/03); the Law on Litigation Procedures of the Brčko District. BiH has taken over the Law on Resolving Conflicts of Legislations with other counties in certain relations (Official Gazette of SFR Yugoslavia, No. 43/82 and 72/82). The Law contains provisions pertaining to: conflict of legislation, conflict of jurisdiction, recognition of foreign court verdicts and recognition of foreign court arbitration awards. The provisions of these Laws are of subsidiary character and are applied only if not otherwise determined by international agreement. In the case of no international agreement, appeals are delivered through diplomatic channels. The Ministry of Justice of BiH delivers case appeals to the competent court,

<sup>209</sup> More significant legal acts in the segment of cooperation in civil and business disputes are the Convention on the Law Applicable to Contractual Obligations (Rome Convention, 1980) and the Interpretation Protocol of the Convention on the European Court (1988), the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (1990, consolidated text), the Council Regulation on Insolvency (<sup>1346/2000/EC</sup>), the Council Regulation on jurisdiction and enforcement of judgements in matrimonial matters and matters of parental responsibility for children of both spouses (<sup>1347/2000/EC</sup>), et al.

Judicial cooperation in criminal matters is aimed at facilitating and expediting cooperation between competent ministries and judicial bodies in member states in matters concerning the process of recognition and implementation of decisions (verdicts), facilitation of extradition among member states, assurance of compatibility of regulations facilitating cooperation, preventing conflicts of jurisdiction among member states and the progressive adoption of minimal regulations pertaining to key elements of crimes and elements of sanctions for acts of organised crime, terrorism and trafficking in illegal substances.<sup>210</sup>

### ***Necessary Measures***

- Further development of an independent, sound and functional justice system and ensuring international legal aid and cooperation.
- Implementation of adopted conventions.
- The priority of cooperation is finding and bringing to trial indicted war criminals and cooperation with the ICTY, including the transfer of certain cases to special war crimes departments at the Court and Prosecutorial Office of BiH.
- In courts and prosecutorial offices, it is necessary to continue reforms pertaining to financial consolidation, case proceedings, information technologies, court management, techniques for proceedings and strengthening the Disciplinary Prosecutor's Office in the High Judicial and Prosecutorial Council.
- It is necessary to strengthen the unit for international and inter-entity legal assistance and cooperation within the Ministry of Justice of BiH.
- Provide appropriate support to training centres for judges and prosecutors and implement educational reforms of institutions offering higher education in law.
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- Realise cooperation between judicial institutions for accession to the European Judicial Network

### **2.3.8.2. Home Affairs**

#### ***Situation in BiH***

The organisational structure of the Ministry of Security of BiH includes the State Border Service, the State Agency for Investigations and Protection and the Interpol Office.

Visa policies are part of the competencies of the Ministry of Foreign Affairs and to a lesser degree the Ministry of Security of BiH.<sup>211</sup> For the purpose of bridging the lack on state level institution, in 2003, a function of Coordinator for the Prevention of Human Trafficking and Illegal Migration was established. The Office of the Coordinator has fully implemented the Action Plan for Countering Human Trafficking 2000 – 2004 and has developed a new Action Plan for 2005 as well as an Operative Plan for 2005.

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<sup>210</sup> Significant legal acts of the EU in the domain of judicial cooperation in criminal matters are the Convention on facilitating extradition procedures among EU member states (1996), the Convention on exclusion from traffic (1998), the Convention on mutual legal assistance of member states in criminal matters (2000), the Framework Decision of the Council on common investigation teams (2002), the Framework Decision of the Council on the European Warrant for Arrest and extradition procedures among member states (2002) et al.

<sup>211</sup> BiH has signed agreements on re-admission with the following countries: the Republic of Croatia, Serbia and Montenegro, Switzerland, the Republic of Italy, the Kingdom of Denmark. Agreements with the Kingdom of Norway and the Kingdom of Sweden have been initialled, and activities for agreements with another eleven countries are underway.

As a consequence of establishing the State Border Service and exacerbating the visa regime and requirements for entry to Bosnia and Herzegovina, there has been a considerable decrease in the number of illegal immigrants (in 2000 the monthly influx was 1117 persons, and in 2004 only 21 persons).

Entity intelligence services were linked to the BiH Intelligence Service in 2004 and the Indirect Taxation Authority of BiH has been established.

### ***Situation in the EU***

The main aim of police and judicial cooperation in criminal matters is ensuring a high level of protection for EU citizens by undertaking joint actions and through the cooperation of the police forces and judicial bodies of member states. Cooperation in this segment is based on the provision of Chapter VI of the Agreement on the EU and includes cooperation in combating organised crime, corruption and fraud, judicial cooperation in criminal matters, customs cooperation and extradition. Cooperation is carried out through joint activities of police, customs and other competent bodies either directly or via EUROPOL<sup>212</sup>, through the cooperation between judicial and court bodies either directly via EUROJUST<sup>213</sup>, and through making national regulations compatible not only in the segment of defining the nature of criminal acts, but also according to prior experience and provisions pertaining to criminal acts<sup>214</sup>.

Police cooperation is defined as the operative cooperation between competent bodies of member states, including the policy, customs services and other bodies in charge of implementing the law when it comes to the prevention, detection and investigation of criminal acts and the gathering, archiving, processing, analysis and exchange of relevant data, including that possessed by bodies implementing laws on suspect financial transactions, especially through EUROPOL. Cooperation also entails joint training initiatives, exchange of liaison officers, exchange of personnel, the use of forensic equipment and the common evaluation of certain investigative techniques in detecting severe forms of organised crime.

### ***Necessary Measures***

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<sup>212</sup> EUROPOL - European Police Office established through the Convention from <sup>1995</sup> (EU Council Convention based on Art. K. <sup>3</sup> of the Agreement on the EU about the establishment of the European Police Office - the Europol Convention, <sup>OJ<sup>o</sup> C 316/1a</sup>). Police cooperation through the European Police Office (EUROPOL) enables and facilitates preparations and support to various forms of joint action, it encourages special investigative activities of member states, it provides the possibility of demanding the member state implement and coordinate investigations in specific areas or develop a special expertise which can be made available to other member states in countering organised crime and it provides for the establishment of research, documentation and statistic networks on extraterritorial crime.

<sup>213</sup> EUROJUST was established by an EU Council Decision (7 December 2001) as a body for promoting judicial cooperation and coordination between competent bodies in member states in the domain of investigating and processing criminal activities taking place on the territory of more than one member state. EUROJUST is an equivalent of EUROPOL in the domain of cooperation between judicial bodies. Its goals are promoting and improving coordination and cooperation between investigative and prosecutorial bodies in member states, and especially facilitating the implementation of international legal assistance including extradition, support to investigative and prosecutorial activities in member states aimed at better efficiency, better cooperation of EUROPOL with the European Judicial Network (EJN) et al.

<sup>214</sup> A more recent example of harmonisation in defining criminal acts can be seen in the Council Framework Decision on minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (<sup>2004/757/JHA</sup>).



- Establish and strengthen the capacities of a unique police structure with a unique legislative role, financing and complete de-politicisation, as well as a unique organisation.
- Establish and implement a system of exchange of confidential data and strengthen institutional and judicial capacities.
- Strengthen administrative skills in border control and document security.
- Strengthen cooperation in the justice and internal affairs system in the Southeast European region by establishing mutual legal assistance with regional partners and the EU.

### **2.3.8.2.1. Border Control, Asylum, Migration and Visa Issues**

#### **A) Border Control**

##### ***Situation in BiH***

The control, surveillance and protection of borders and airport in BiH is regulated by the Law on the State Border Service and the Law on Surveillance and Control of State Border Crossings.<sup>215</sup> Based on the above laws, at the end of 2002, control over all border crossings in BiH and all four airports was established. The institutions in charge of control and surveillance of borders and airports in BiH are the Ministry of Justice, the State Border Service, the State Agency for Investigations and Protection and the Ministry of Foreign Affairs. Furthermore, countering extraterritorial crime is also regulated by a series of bilateral and multilateral agreements.

##### ***Situation in the EU***

The border control policy was formulated through the Schengen *acquis*<sup>216</sup> that makes up most of the legislation in this field. It is based on the principle of removing borders between member states as a precondition for realising the freedom of movement and right of establishment in the entire territory of the EU. The precondition for lifting internal borders was the ability of member states to apply so-called compensatory measures pertaining to uniform and efficient control of outside borders, visa policies, strengthened police cooperation through joint exercises, border control and pursuits, mutual assistance in criminal matters and crime prevention, training for participation in the Schengen Information System (SIS) and improved cooperation in countering trafficking in illegal substances as well as harmonisation of national regulations on firearm permits. Cooperation in this area was particularly intensified in the past few years and has

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<sup>215</sup> Law on the State Border Service of BiH and the Law on Control and Surveillance of the State Border (BiH Official Gazette, No: 19/01).

<sup>216</sup> *Schengen acquis* – France, Germany, Belgium, Holland and Luxemburg signed an agreement in Schengen, Luxemburg in 1985 on the gradual lifting of control/checks at their common borders. In 1990, these five states signed the Schengen Convention and agreed on how to implement the Schengen agreement in practice. The Convention includes provisions on police cooperation, cooperation in judicial matters, data protection, drug prevention, a common visa policy and a unique level of external border control. In 1999 the EU Council re-defined the Schengen *acquis* which is now part of EU legislation. In practice, the application of the Schengen *acquis* means that regular passport control at border crossings within the "Schengen area" is no longer performed.

resulted in the formation of the European Agency for operative control of EU's external borders in November 2004.

In view of the shifts of the external borders of the EU, border control is particularly important in the context of expansion. New and future member states are expected to build adequate institutional capacities capable of effective external border control, both in the sense of crime prevention and dealing with asylum seekers and immigrants.

### ***Necessary Measures***

- Strengthen the system for full implementation of border and airport control and surveillance in BiH in accordance with EU standards.
- Strengthen the State Border Service with special emphasis on developing border infrastructure for the improvement of working conditions of civil servants and DGS (State Border Service) officers as well as the movement of travellers.
- Pass bylaws aimed at implementing the Law on the State Border Service, the Law on Surveillance and Control of State Border Crossings and the Law on Police Officers.
- Implement the Strategy of Integrated Border Management in BiH and the Action Plan for implementing this strategy so as to coordinate activities and decrease problems pertaining to the entry of persons and goods at border crossings, which is one of the European Commission requirements.
- Establish mechanisms of cooperation between BiH institutions and institutions of other countries in charge of border control as well as between intelligence services with the aim of collecting relevant data for ensuring maximum cooperation and coordination in border control and surveillance.
- Establish and ensure the functioning of an IT systems network connecting State Border Service units, the Ministry for Human Rights and Refugees and the Indirect Taxation Authority.
- Modernise border crossings in accordance with EU standards and fully implement the staffing of the State Border Service.

## **B) Asylum**

### ***Situation in BiH***

Matters of asylum in BiH are regulated by laws and bylaws, the most important of which is the Law on the Movement and Residence of Foreigners and Asylum that regulates issues such as the conditions for asylum and the process of acquiring asylum. The above Law also defines the bodies in charge of implementing the procedures, rights and obligations of refugees, annulment of asylum status as well as managing the problem of mass influx and cooperation with the UNHCR. However, it is necessary to ensure the necessary facilities and financial resources for these centres. The Ministry of Security of BiH has fully taken on affairs of asylum from the UNHCR, including the building for the accommodation of asylum seekers. Bosnia and Herzegovina has signed and is implementing the International Convention on the Status of Refugees (1951), the Protocol on the Status of Refugees (1967) and other multilateral conventions from the Annex and Constitution of BiH.

### ***Situation in the EU***

EU asylum policies focus on the construction of a common European asylum system around the Dublin Convention on the criteria and mechanisms for determining the state responsible for examining applications for asylum lodged by citizens of third countries.<sup>217</sup> One of its aspects also deals with the issue of refugees and displaced persons, whereby member states are performing a harmonisation of the definition of these persons, their legal status and conditions and criteria for temporary residence in the EU.

The Agreement on the EU explicitly requires adherence to international legal instruments in this area.<sup>218</sup>

### ***Necessary Measures***

- Improve the legal bases for the implementation of obligations pertaining to the movement and residence of foreigners and asylum as well as harmonisation with international conventions.
- Strengthen the state system of asylum and migration in BiH in accordance with EU standards.
- Improve institutional capacities for dealing with matters of asylum.

## **C) Migration**

### ***Situation in BiH***

Migrations are primarily linked with the movement and residence of foreigners in BiH and the legal framework pertaining to matters of migration is contained in the Law on the Movement and Residence of Foreigners and Asylum, the Law on Ministries and Other Authorities<sup>219</sup>, the Decision on the Formation of a Task Force for combating human trafficking and organised illegal migration<sup>220</sup>, and Decisions determining countries whose citizens are exempt from the visa regime upon entry, exit or transit through the territory of Bosnia and Herzegovina.<sup>221</sup> Apart from that, Bosnia and Herzegovina has signed the UN Convention against Transnational Organised Crime<sup>222</sup>, the Protocol against Smuggling Migrants by Land, Sea and Air which complements the UN Convention against Transnational Organised Crime<sup>223</sup>, the Protocol to Prevent, Suppress and Punish

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<sup>217</sup> Convention on the criteria and mechanisms for determining the state responsible for examining applications for asylum lodged by citizens of third countries, Dublin 15 June 1990, came into force on 1 September 1997 (OJ C 254 from 19 August 1997, p. 1)

<sup>218</sup> Convention on the status of refugees, Geneva 1961 and Protocol 1967

<sup>219</sup> Law on Ministries and Other Administrative Bodies BiH Official Gazette, No. 5/03.

<sup>220</sup> Decision on the formation of the crisis group for combating human trafficking and organised illegal migration "Official Gazette of BiH" No. 3/04.

<sup>221</sup> Decision on identifying countries whose citizens are exempt from the visa regime upon entry, exit or transit through the territory of Bosnia and Herzegovina, BiH Official Gazette No. 31/01 and the Decision of amendments and changes of the Decision on identifying countries whose citizens are exempt from the visa regime upon entry, exit or transit through the territory of Bosnia and Herzegovina, BiH Official Gazette No. 33/01.

<sup>222</sup> UN Convention against Transnational Organised Crime, BiH Official Gazette No. 3/02.

<sup>223</sup> Protocol against the smuggling of migrants by land, water and air complementing the UN Convention against Transnational Organised Crime, BiH Official Gazette No. 3/02.

Trafficking in Persons, particularly women and children which compliments the UN Convention against Transnational Organised Crime<sup>224</sup>, as well as the Agreement on Cooperation in Preventing and Counteracting Extraterritorial Crime and the Charter on the Regional Centre of the Southeast European Cooperative Initiative – the SECI Centre<sup>225</sup> and a number of bilateral agreements against extraterritorial crime.

Through its Decision on the procedures and methods of coordination of activities against human trafficking and illegal migration in Bosnia and Herzegovina and through the establishment of the State Coordinator for Bosnia and Herzegovina<sup>226</sup>, The Council of Ministers of BiH has determined the institutions in charge of countering human trafficking and illegal migration. This decision determines that the State Coordinator is in charge of the coordination of activities of ministries responsible for countering human trafficking and illegal migration as well as contacts with other ministries on the state and entity level and, if necessary, on the local level. This decision explicitly mentions the following institutions: the Ministry of Security, the Ministry for Human Rights and Refugees, the Ministry of Justice, the Ministry of Foreign Affairs and the Prosecutorial Office of BiH. In order to improve the work of representatives of all state organs directly involved in countering human trafficking and illegal migration, the Council of Ministers of BiH has formed a Task Force for combating human trafficking and organised illegal migration. The Task Force includes representatives of the Prosecutorial Office of BiH, the Federal Prosecutorial Office of FBiH, the Republican Prosecutor's Office of RS, the Public Prosecutor's Office of the Brčko District of BiH, the State Border Service of BiH, the State Investigations and Protection Agency (SIPA), the Ministry of Internal Affairs of FBiH, the Ministry of Internal Affairs of RS, the Brčko District of BiH Police, Interpol, the Financial Police of FBiH, the Tax Authority of FBiH and the Tax Authority of RS. The Task Force is lead by the State Public Prosecutor. The Task Force is expected to cooperate with the State Coordinator, the non-governmental sector and international organisations working to counter human trafficking and illegal migration. All competencies of the Task Force will be taken over by the State Investigations and Protection Agency once it is fully operational.

### ***Situation in the EU***

The EU policy pertaining to migration is based on the principles of formulating a comprehensive approach to migrations (political, economic, developmental and human rights aspect) as well as a common European asylum system and a uniform status of persons who have been granted asylum in one of the member states. Furthermore, appropriate treatment towards citizens of third countries is stressed as well as a more active policy of integration of citizens from third countries with legal residence in the EU. The EU migration policy stresses the importance of cooperation with the countries of origin and transit (readmission, programmes of financial and technical assistance to third countries in the field of migrations and asylum), a joint monitoring and control of migration aimed at an efficient suppression of immigration and smuggling of persons

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<sup>224</sup> Protocol to prevent, suppress and punish trafficking in persons, especially women and children complementing the UN Convention against Transnational Organised Crime, BiH Official Gazette No. 3/02.

<sup>225</sup> Agreement on cooperation to prevent and combat extraterritorial crime with the Charter on the establishment and operations of the Southeast European Cooperative Initiative Centre, Official Gazette of BiH, No. 19/00.

<sup>226</sup> Decision on procedures and coordination of activities to suppress human trafficking and illegal migration in Bosnia and Herzegovina and the establishment of the State Coordinator for Bosnia and Herzegovina, BiH Official Gazette No. 24/03.

(establishment of EURODAC, the common database of asylum seekers in the EU, establishment of an immigration liaison officers network).

### ***Necessary Measures***

- Develop procedures for a system of illegal migration prevention.
- Sign and implement bilateral and regional agreements based on countering illegal migration.
- Continue working on signing an agreement on readmission with EU member states and other signatories of the Schengen Agreement.
- Build a Centre for Illegal Immigrants.
- Intensify activities on BiH's participation in realising regional agreements.

## **D) Visas**

### ***Situation in BiH***

Entry and transit visas for BiH are issued by Diplomatic and Consular Offices based on prior personally lodged requests. In exceptional cases, visas can be issued directly at border crossings by organisation units of the Ministry of Security of BiH in charge of state border crossings, but only on the basis of a recommendation of the BiH Ministry of Foreign Affairs. Due to the introduction of electronic visa issuing and the reduction of the number of border crossings where visas can be issued, there has been a decrease in the number of visas issued at BiH border crossings. The State Border Service, the Ministry of Security and the Ministry of Foreign Affairs of BiH, as institutions in charge of implementing the visa regime, are electronically linked to a central database.

The entire procedure of visa issuing is centralised and carried out in accordance with CIPS security standards.

Liberalisation of the visa regime with EU member states is one of the strategic priorities of Bosnia and Herzegovina. Persons possessing a BiH passport do not require a visa to travel to 18 countries, while citizens of 40 countries do not require a visa to travel to BiH. According to European Council Regulation<sup>227</sup> No. 539/2001 from 15 March 2001, BiH citizens require visas to travel to all EU member states.

The Law on the Movement and Residence of Foreigners and Asylum does not differentiate between regular, diplomatic and business visas, but does differentiate between entry and transit visas.

### ***Situation in the EU***

Significant efforts have been invested into developing a common policy for entry and transit of citizens from third countries in the territory of the EU. A common visa policy is particularly important as it entails determining the countries whose citizens require visas

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<sup>227</sup> Council Regulation (EC) No 539/2001 from 15. March 2001 lists third countries whose citizens do not need a visa at external borders and are exempt from this requirement. Official journal of the European Communities No. L 81.

for entry into the EU and preventing illegal entry. In view of the need to create equal conditions for entry and residence in the EU and to ensure legal security for all persons entering the EU, a method of unification<sup>228</sup> ensures that the same regulations and conditions for entry and residence are applied regardless of which country issues the visa. The Visa Information System (VIS) was established by the EU Council Decision (June 2004).

### ***Necessary Measures***

- Harmonise legal bases for visas in accordance with EU requirements.
- Modernise BiH visa information systems and develop plans for integration into the EU information system.
- Link institutions in charge of countering illegal immigration and implementing the visa policy so as to ensure consolidation of data on migration.
- Improve institutional capacities of the State Border Service in accordance with EU standards.
- Initiate bilateral negotiations with EU member states on the liberalisation and lifting of their visa regime for BiH.

### **2.3.8.2.2. Prevention and Countering Crime, Illegal Trade, Drug Trafficking and Money Laundering**

#### ***Situation in BiH***

Criminal legislation in BiH pertaining to provisions on organised crime is in accordance with the standards and provisions of international documents ratified by BiH. The most important documents that directly affect countering organised crime are the United Nations Convention against Transnational Organised Crime<sup>229</sup> and Recommendation (2001)11 of the Committee of Ministers to member states concerning guiding principles in the fight against organised crime<sup>230</sup>. In terms of the harmonisation of regulations with those of the EU, recognising the guidelines and standards set out in the Action Plan for Countering Organised Crime and the Pre-Accession Pact on Organised Crime between EU member states and candidates from Central and Eastern Europe and Cyprus is of great importance for BiH.

The State Investigations and Protection Agency (SIPA) is the institution charged with investigations and the detection of acts of organised crime, terrorism, war crimes, money laundering, etc.

A special role in combating organised crime is played by the State Border Service in BiH, the Intelligence and Security Agency and the Interpol Office.

A legal basis for countering the production, trade, smuggling and abuse of illegal substances has been established in BiH. Legislators are obliged to punish those incriminated for production, sale, possession, transport and mediation in the sale of illegal substances.

Furthermore, there is an operative basis that defines issues such as slavery and the transport of enslaved persons, and the National Action Plan to Combat Human

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<sup>228</sup> EU Council Regulations.

<sup>229</sup> United Nations Convention against Transnational Organized Crime, signed 12 December 2000., ratified 24 April 2002.

<sup>230</sup> Recommendation Rec(2001)11 of the Committee of Ministers to member states concerning guiding principles on the fight against organized crime, 19.09.2001.

Trafficking is operative.

BiH legislation on countering corruption is in accordance with international standards. In terms of international initiatives, BiH is involved in the GRECO Agreement and anti-corruption activities of the Stability Pact. The State Investigations and Protection Agency is the institution in charge of investigations and assistance in countering corruption.

The State Investigations and Protection Agency is obliged to implement all necessary measures and activities aimed at detecting and preventing money laundering and the financing of terrorist activities. The Agency also coordinates the work of other institutions involved in countering money laundering such as the Central Bank of BiH and the Indirect Taxation Authority. Activities pertaining to the promotion of cooperation between competent bodies in BiH are led by the Financial Intelligence Department (FOO/FID) under the direct supervision of the State Investigations and Protection Agency.

### ***Situation in the EU***

Cooperation between police, customs and judicial bodies of member states pertains to all forms of criminal activities. In view of their frequency and organisation, that is, the links between criminal networks in European and global terms, cooperation and joint measures for their prevention and suppression are very intensive in the EU, but also within the scope of international organisations such as the UN, OECD and the Council of Europe. They are focused on the following segments: trade in illegal substances, human trafficking, forgery of bank notes, corruption, smuggling, terrorism, organised crime and money laundering.

Therefore, apart from EU regulations, the signing and implementation of international legal instruments of international organisations is also part of the so-called accession *acquis*<sup>231</sup>.

### ***Necessary Measures***

- Improve the legal bases for police cooperation with neighbouring countries and relevant international institutions and police cooperation on matters of border crossing and exchange of information.
- Implement police reforms in BiH in accordance with EU principles.
- Strengthen police capacities for counteracting international terrorism and organised crime as well as trade in illegal substances and their precursors.
- Establish a functioning police structure in Bosnia and Herzegovina in line with already set and internationally verified functioning structure of courts and prosecutor's offices, with full respect for European and international practice.

### **Organised Crime**

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<sup>231</sup> Such as the UN Convention against Transnational Organised Crime (Palermo 2000) and its protocols that the EC joined last year, the Convention of the Council of Europe on Cyber Crime (2001), the Convention of the Council of Europe on money laundering, the search, seizure and confiscation of goods from criminal activities (1990), the OECT Convention against the bribery of foreign officials in international commercial transactions (1997), the UN Convention against unauthorised illicit drug and psychotropic substance trafficking (1988), et al.

- Adopt a legal framework and establish institutional bases in matters of transfer and protection of data exchanged between institutions involved in countering organised crime.
- Adopt and implement a state strategy to combat corruption.
- Develop cooperation mechanisms for various executive bodies so as to improve their efficiency in fighting crime.
- Implement specialised training programmes for witness protection (development of specialised witness protection instruments).

### **Illegal Substances**

- Establish an administrative system for the prevention of the abuse of illegal substances in all areas and target groups.
- Establish competent agencies for the prevention of abuse of illegal substances.
- Develop legal bases for the prevention of abuse of illegal substances and psychotropic substances in accordance with international standards.
- Determine the guiding principles of primary prevention measures by developing a top quality comprehensive strategy and educational programmes for various social groups in BiH.
- Develop action plans both on the level of BiH and in cooperation with neighbouring countries in countering the production and trade in illegal substances.
- Organise laboratories in BiH to perform expert forensic investigations of illegal substances present in the territory of BiH.
- Improve control of legal trade in narcotics, improve prevention and suppression of smuggling of illegal substances in accordance with the state prevention programme.

### **Trafficking in Persons**

- Adopt a Law on Suppressing Trafficking in Persons.
- Prepare a regulatory framework that will help suppress human trafficking.
- Harmonise state legislation and ratify international contracts (agreements and conventions) regarding crime and offences.
- Additionally reinforce cooperation between institutions on all administrative levels and in the non-governmental sector.
- Establish a system of protection for victims of human trafficking through cooperation at the regional level.
- Develop action plans both on the level of BiH and in cooperation with neighbouring countries in countering human trafficking.
- Introduce new operative actions on the level of BiH pertaining to trafficking in "white slavery" whose coordination should be taken over by the Ministry of Security (i.e.SIPA).
- Form aid programmes for victims of human trafficking, training programmes for competent bodies, exchange of data and raising awareness.

### **Smuggling**

- Develop the established legal framework of indirect taxation and its implementation in practice, which will be achieved when the Indirect Taxation Authority is fully operational on the state level.



- Improve the system of cooperation between institutions countering similar groups of criminal acts.
- Develop the capacities of officers for the purpose of strengthening their professional capabilities to recognise and prevent various forms of smuggling.
- Improve control instruments and techniques.

### **Terrorism**

- Strengthen the legal basis by signing relevant conventions and through harmonisation with relevant BiH legislation.
- Establish a functional administrative system for countering "modern security exports" through constant education and professional development of civil servants working on implementing the law in accordance with EU criteria.

### **Money Laundering**

- Establish a framework for cooperation aimed at suppressing the use of financial systems for transactions with money acquired through criminal activities.
- Strengthen cooperation between competent institutions and establish the appropriate standards for suppressing money laundering in accordance with standards adopted by international institutions in this field.
- The participation of BiH in the Council of Europe Committee for the Prevention of Money Laundering (MONEYVAL).

## 2.3.9. Foreign Policy

### 2.3.9.1. Trade and International Relations

#### *Situation in BiH*

In terms of foreign trade, the situation in BiH should be viewed from the aspect of the current Stabilisation and Association Process (SAP) requirements contained in the Feasibility Study recommendations and the future requirements that will come into force upon the signing of the Stabilisation and Association Agreement (SAA) and negotiations on joining the European Union (EU).

The current requirements as well as the emphasis on certain segments or instruments of trade policy are closely related to the scope of trade between BiH and other countries, its structure and geographic distribution and the strategic aspirations of BiH to become a member of the EU and the World Trade Organisation (WTO).

#### *Analysis of the Current Situation*

In terms of foreign trade, for the period between 1999 and 2002, the mean value of import to export ratio was 25.4%<sup>232</sup> (after an increase of almost 10% in 2000 in comparison to the year before, it has been decreasing constantly).

In 2003<sup>233</sup>, the total foreign trade turnover in BiH amounted to 10.8 billion KM, of which 22.5% was export of goods and 77.5% was import of goods. In 2003, the import to export ratio was 29%.

In 2004<sup>234</sup>, the total foreign trade turnover in BiH amounted to 12.4 billion KM, of which 24,2% was export of goods and 75,8% was import of goods. In 2004, the import to export ratio was 31.9%. A slight increase of 2.9% in import to export ratio can be seen in comparison to the previous year.

Viewed by sectors, in the past two years<sup>235</sup>, 90.4% of the total export value of goods pertains to processing industries.

Within the processing industry, the greatest share<sup>236</sup> was realised by metal production (20.5% of the total export value and the export of metals is increasing). After metals, a significant portion pertains to wood processing and wood products apart from furniture (14.8% of the total export value, but there is a decreasing trend in this area).

Apart from these two categories, significant portions of export were represented by the production of motor vehicles, trailers and semi-trailers (7.56% of the total export value), the production of furniture (6.89% of the total export value), the food and drink industry (6.4% of the total export value), machines and equipment (5.46% of the total export value), production of metal products, apart from machines and equipment (5.37% of the total export value).

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<sup>232</sup> *Bulletin 3* Central Bank of BiH, September 2004, p. 152

<sup>233</sup> Thematic Bulletin *Foreign Trade Turnover in BiH* Agency for Statistics 2005. p. 61

<sup>234</sup> *Ibid.* p.64.

<sup>235</sup> Thematic Bulletin *Foreign Trade Turnover in BiH* Agency for Statistics 2005. p. 61

<sup>236</sup> The mean values of portions of total export value of certain industries for the past two years are given.

The greatest turnout in import (91.46%<sup>237</sup> of the total import value) in the past two years was achieved by the processing industry, whereby the greatest portion of this amount pertains to the production of food and drinks which accounts for 14.47% of the total import value<sup>238</sup>.

Furthermore, a significant portion of the total import value pertains to the production of chemicals and chemical products (9.43% of the total import value), machines and equipment (8.36% of the total import value), the production of coke, oil derivatives and nuclear fuel (8.29% of the total import value) and the production of motor vehicles, trailers and semi-trailers (7.84% of the total import value).

According to regional categories, the export was oriented mostly to the EU (25)<sup>239</sup> and those exports account for 53.85% of the total export value in the past two years. On the other hand, import from EU countries (25) make up 55.89% of total the total import value. The ration of import to export in the past two years pertaining to trade with the EU is 29.47%.

Looking at individual EU countries, most exporting was done to Italy (15.3% of the total export value in the past two years). In the same period, most importing was done from Germany (13.69% of the total import value) and Italy (9.82% of the total import value).

In terms of the category of countries with which BiH has signed free trade agreements, the greatest scope of trade has been realised with Croatia and Serbia and Montenegro, except that the import to export ration in the past two years has been 31.77% in the case of Croatia and 51.39% in the case of Serbia and Montenegro.

### *Aims*

In view of the importance of trade in the complete European integration process and priorities in BiH, as well as later requirements of the SAA and negotiations on membership, we can say that trade is one of the most significant areas when it comes to fulfilling the second Copenhagen criterion.

In general, BiH trade in goods and services policy is based on the principles of free and non-discriminating trade.

In respect to the legal and institutional framework regulating matters of foreign trade, the Law on Foreign Trade Policy<sup>240</sup> regulates the free trade in goods and services in international trade and prescribes conditions for foreign economic transactions.

Foreign trade policy is determined by institutions of BiH<sup>241</sup> in cooperation with competent entity institutions, and foreign trade transactions in BiH can be performed by all subjects registered for such transactions.

BiH has a very liberal foreign trade policy which is already predominantly in line with WTO principles because its provisions ensure *National Treatment* and *Most Favoured Nation Treatment*.

There are, of course, segments that will have to be made compatible with WTO principles before BiH can join the WTO.

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<sup>237</sup> Thematic Bulletin *Foreign Trade Turnover in BiH* Agency for Statistics 2005. p. 64

<sup>238</sup> The mean values of portions of total import value of certain industries for the past two years are given.

<sup>239</sup> Thematic Bulletin *Foreign Trade Turnover in BiH* Agency for Statistics 2005. p. 62 - 63

<sup>240</sup> BiH Official Gazette, No. 7/98 and 35/04

<sup>241</sup> In accordance with Article 3, Paragraph 1 of the BiH Constitution

The process of BiH's accession to the WTO is complementary to the process of European integration in terms of trade. Based on the experience of other countries we can conclude that membership in the WTO is the informal precondition for signing the SAA, because the WTO's main principles are part of the EU foreign trade regime.

BiH's activities to join the WTO are underway and two rounds of negotiations have been held so far. An Action Plan for BiH's accession to the WTO has been developed and is used to monitor the realisation of planned activities and the planning of further activities in terms of harmonising legislation. The Action Plan will be updated continuously in accordance with the progress made in the process of accession to the WTO and future membership requirements. Otherwise, the Action Plan includes amendments to existing regulations as well as the passing of new regulations, the formation of new institutions, the establishment of information points and accession to international agreements and conventions.

The second important process in terms of trade management is the existence of a network of bilateral agreements on free trade signed by the countries of the region - Croatia, Serbia and Montenegro, Macedonia, Albania, Rumania, Bulgaria and Moldova from within the Stability Pact, and also Turkey. All agreements have been ratified and put into force and they are being implemented. Generally speaking all these agreements are based on the fundamental principles of the WTO.<sup>242</sup>

The creation of a network of free trade agreements opened up export markets for Bosnia and Herzegovina which is a good opportunity for equalising the balance of payments and reducing the trade deficit. However, the issues concerning the agreements are very complex and there are numerous difficulties in their practical application.

Individual requirements such as the validity of origin certificates, the control of free zones, the construction of infrastructure for quality, the establishment of procedures to determine the correspondence and international traceability of measurements and mutual interaction of all elements is a precondition for export to countries signatories of the agreement on the use of trade preferences ratified by the EU. This would ultimately help decrease the trade deficit and increase the import to export ration as well as changing the current unfavourable import-export structure, especially in terms of countries with which BiH has the highest scope of foreign trade based on the agreement. On the other hand, a comprehensive trade policy based on a sound economic analysis, capable of foreseeing the positive and negative effects of the agreement on the economy, is a precondition of a more efficient protection of domestic producers in a fully liberalised market. In the long term, the right policy and efficient mechanisms of protection built into agreements should result in an increased competitiveness of domestic producers both on the domestic and on export markets.

The need to implement signed agreements aimed at further liberalisation of trade in the region, along with adhering to WTO regulations, was also stressed in the *Thessaloniki West Balkans Programme*<sup>243</sup>. This places the issues of adhering to and implementing signed agreements into a wider context of European integration.

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<sup>242</sup> All signed agreements include an Article obliging countries signatories to respect the WTO Agreement on Technical Barriers to Trade (TBT) and the Agreement on the Application of Sanitary and Phyto-sanitary Measures (SPS).

<sup>243</sup> *Draft EU-Western Balkans Thessaloniki Summit Declaration*; The Council of The European Union. 2003, p. 18.

### *Current Policy*

The current requirements pertaining to trade within the process of European integration are creating a comprehensive legal framework and institutional infrastructure that will be expanded and adapted to suit SAP and EU membership requirements in the later stages of this process.

At this stage of the European integration process, the need to develop and formulate a comprehensive trade policy based on economic analysis and valid statistical data is particularly emphasised. The Poverty Reduction Strategy Paper of BiH (PRSP) includes a document entitled *Strategic Directions for Foreign Trade and Promotion of Export* which is currently being expanded<sup>244</sup> and which identifies and analyses the strategic strengths and weaknesses of BiH in foreign trade as well as the possible directions and instruments of development. The issue of economic analysis and the involvement of all interest parties in decision making processes is very important from the point of view of integration processes as a whole and especially in light of the already mentioned implementation of signed agreements on free trade and the WTO membership preamble.

The construction of an infrastructure for quality and validity of certificates of origin is the precondition for export and access to EU trade preferences and is therefore of primary importance from the perspective of BiH's current position in respect to European integration.

BiH is only beginning to build up a system of technical infrastructure for evaluating concordance (examination and calibration laboratories, certification and inspection bodies) and international traceability of measurement. The current state makes export based on trade agreements and approved preferential treatment more expensive and complicated (and in some cases practically impossible) as well as making foreign investment in the production sector and international technical cooperation more difficult. The fulfilling of requirements as part of the European integration process resulted in the adoption of a set of framework laws in accordance with EU standards. These laws regulate the free movement of goods which has created a comprehensive system of regulations on products on the state level. The existing set of laws and the formation of institutions provided for by these laws will create the preconditions for taking on technical regulations on product safety and surveillance of products in the market in accordance with the EU model.

Within this set of issues, standardisation and accreditation systems in BiH are already functioning according to the WTO-TBT and EU model and any difficulties in these areas are mainly financial in nature.

Furthermore, defining the appropriate system for nutritional products and consumer protection through the system of "from the field to the table" is also closely linked to the issues of infrastructure for quality and certificates of origin. Working on gradual harmonisation with European standards in the domain of veterinary science, fishery, phyto-sanitary control and food safety, a new set of laws and legal regulations based on WTO-SPS principles has been adopted. These laws will enable export of nutritional

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<sup>244</sup> Domazet, Anto. *Okvir za kreiranje strategije promocije izvoza Bosne i Hercegovine. (Framework for the Creation of a Strategy for Promoting Exports from Bosnia and Herzegovina)* February, 2005

products and ensure the protection of human life and health and the protection of domestic animals and the environment.

At this stage of the process, special attention is given to the already mentioned validity of certificates of origin and the work of free zones. Export is dominated by the processing industry and this is one of the reasons why valid certificates of origin and quality control of free zones are so necessary. The possibility of production in free zones facilitates the activities of producers whose products have export potential and can ultimately function as investment accelerator and one of the factors for the creation of a positive business environment.

With the adoption of new laws and legal regulations a comprehensive legal framework was created to divide jurisdiction among individual institutions, which enables the necessary control over the issuing of certificates of origin and the work of free zones.

Another important factor that can decrease the trade deficit and change the export structure is foreign investments (FDI). Problems of direct foreign investment are closely tied to the free movement of capital, services and people.

In this segment, legislation from a number of areas is pertinent. Namely, these are areas such as the registration of enterprises, financial transactions, employment relations, information points and all other areas whose organisation has a direct or indirect effect on investors' decisions to invest their capital in a given country.

According to valid legal regulations, jurisdiction over these issues is mainly on the cantonal level. The current stage of the European integration process has directed matters towards a complete transfer of competencies to the state level or the passing of regulations on entity levels in accordance with the legislation on the state level.

The Foreign Investment Promotion (FIPA)<sup>245</sup> in BiH<sup>246</sup> deals with the promotion of direct foreign investments and export and its existence and functioning is one of the requirements for European integration.

### *Priorities*

By signing the SAA, BiH will start negotiation relations with the EU and will be obliged to adapt its legislation of EC *acquis* in all aspects treated by the SAA, including trade as the most important aspect.

The importance of adapting trade legislation can be demonstrated by the fact that the SAA is a trade agreement and its signing will put into force the Interim Agreement pertaining to trade and related matters: competition and state subsidies, standards, measuring and evaluating concordance, right of establishment, intellectual, industrial and trade property, veterinary science, fishery and phyto-sanitary control, food safety and consumer protection, public tender, customs and taxes, road transport.

Apart from that, the signing of the SAA, the preferential regime approved by the EU for goods from BiH<sup>247</sup> will be replaced by asymmetric trade measures which makes it another factor in favour of the significance of adapting legislation in the above areas.

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<sup>245</sup> Foreign Investment Promotion Agency.

<sup>246</sup> Foreign Investment Promotion Agency.

<sup>247</sup> Preferential regime approved by the EU is one of the Stabilisation and Association Process elements and in practice it means that a country can export to the EU without quality or quantity limitations (with the exception of fish, wine and veal) provided that the products are in accordance with EU standards.

## ***Situation in the EU***

The Common Commercial Policy (CCP)<sup>248</sup> is under the explicit jurisdiction of the European Commission and it is aimed at creating a customs union among the member states with the following characteristics:

- the absence of trade barriers,
- common customs tariffs on import from third countries,
- representation of common economic interests in international organisations (such as the WTO),
- liberalisation of international trade,
- establishment of closer economic relations with certain countries or groups of countries,
- promotion of the development of Third World countries with the help of economic cooperation

Expansion and consolidation of the unique market are the main factors of efficiency of the common trade policy which has ultimately resulted in the Community's position as the central figure and leading participant in trade negotiations – bilateral with third countries and multilateral within the WTO.

Most trade relations are based on multilateral agreements negotiated within the WTO which include trade agreements on goods (GATT), services (GATS) and intellectual property (TRIPS).

The common trade policy includes a wide spectrum of instruments:

1) *The Common Customs Tariff (CET)* refers to the application of unique customs tariffs for import of products from third countries regardless of their destination within the EU. This has enabled member states to protect themselves through standardising procedures for products from third countries and creating preferences, since import from member states is tax free and as a rule receives more favourable treatment than import from third countries.

2) *Protective instruments: anti-dumping, anti-subsidy policy, directives on trade barriers and protective measures*

The anti-dumping policy is aimed at suppressing the export of goods at prices lower than the ones applied for similar products in the domestic market, while the anti-subsidy policy was created so as to prevent the import of products whose prices are kept low by superficial means of public subsidies in their countries of origin.

The implementation of these two policies results in a re-introduction of provisional import customs.

Also, import can be limited by protective measures that are applied when it can be proven that import has increased quickly and at a ratio that jeopardises domestic producers. Apart from this, these measures must be non-discriminating, that is, they must apply to the total import of a given product regardless of its origin.

3) *Instruments for access to third country markets*

These mechanisms enable the identification of trade barriers to export into third countries and ensure their continuous monitoring until an acceptable solution can be implemented.

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<sup>248</sup> Common Commercial Policy.

#### *4) Preferential agreements and multilateral negotiations*

This segment pertains to the creation of "special relations" with some countries or groups of countries aimed at removing barriers in international trade. In practice, this means that preferential trade agreements are signed providing partner countries with special treatment. Approved preferential treatments are excepted from the *Most Favoured Nation Clause* as approved by the WTO.

#### *Priorities and Policy*

The trade policy of countries candidates must be based on the principles of the Community's trade policy.

The chapter entitled "Foreign Relations" of the EC *acquis* consist of sub-acts directly pertaining to member states which a state must begin implementing as soon as it joins the EU. The aim is to ensure complete and efficient implementation of legislation in all areas that pertain, among other things, to trade matters.

By joining the EU, a country acquires the right and obligation of participating in defining common foreign relations, including those pertaining to trade. At the same time, by opening its borders towards other member states, and by applying the principle of a joint customs and trade policy towards third countries, the new state is integrated into the internal market.

#### ***Necessary Measures***

- Determine priorities and adapt trade legislation to the EC *acquis*, without losing sight of the quality of domestic legal regulations and priority areas of the future SAA.
- Formulate a comprehensive trade policy based on economic analysis and valid statistical data.
- Improve socio-institutional factors of competitiveness (research and technological development, innovation, education, monetary stability, social consensus et al.) and improve the competitiveness of the entrepreneurial sector.
- Ensure appropriate institutional solutions (by improving the functioning of existing institutions or by establishing new ones) necessary as support to export from BiH.
- Ensure transparency, and direct links between state institutions and the economic sector in BiH.
- Better control of import in terms of further elimination of illegal extraterritorial activities, control of quality and standards of import consumption, control of protective instruments et al.
- Carry out preparations for starting the implementation of a unique methodology in *analysing the effect of introducing legal regulations*<sup>249</sup> that will provide an estimate of the effect of the introduced regulation on the situation it regulates. This is very important from the perspective of SAA negotiations because of possible requirements for derogation in cases where such a necessity is realistic and warranted.

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<sup>249</sup> Eng. *regulatory impact assessment*.



### **2.3.9.2 Customs**

#### ***Situation in BiH***

The main customs regulation is the Law on Customs Policy of BiH which has been in effect since 2004. Other regulations adopted by the BiH Parliamentary Assembly, the Council of Ministers of BiH and the Steering Board for their implementation in accordance with EU regulations also govern this area.

The Law regulates the basic elements of the system for customs protection of the BiH economy, the rights and obligations of all subjects in customs processes; it regulates customs area, the customs line, the customs border belt, customs surveillance, the application of customs on goods and other institute that regulate the system for customs protection. Customs regulations are unique in the customs area of BiH. The Indirect Taxation Authority is in charge of implementing the Law.

The reform of the customs system of Bosnia and Herzegovina is underway. The integration of the customs administration now working as part of the Indirect Taxation Authority has been completed. The territory of BiH is divided into four customs areas with regional centres: Sarajevo, Banja Luka, Mostar and Tuzla. The network of customs branch offices has been reduced and rationalised. The development of an information system that would satisfy trading needs is in its final stage. The training of customs staff to be able to fulfil EU standards is underway.

The customs tariff agreed upon and set for the whole territory of BiH is being applied since 1 January 2005.<sup>250</sup> The customs classification is mainly in accordance with the classification used in the EU. The amounts of customs tariffs are adapted to BiH's current needs. During the process of negotiation and association, tariffs will gradually be adapted to the tariff used in the Customs Union.

#### ***Situation in the EU***

The establishment of the Customs Union was included in the Agreement on the Establishment of the European Economic Community (1957) as one of the main goals of integration. The first phase was completed in 1968 when all customs between member states were lifted and a unique Community tariff was applied to trade with all third countries.<sup>251</sup> By the end of the 1980s, customs policy had been reformed and the foundations of the Community's customs legislation had been set.

At the same time, efforts were invested to unify administrative procedures and adopt a single classification system for customs declaration, which enabled removing formalities and making customs procedures at internal border crossings much simpler. Activities to construct an internal market were finalised in 1993. Since then, the movement of goods within the EU has been administrated only through fiscal and statistical procedures which do not require any customs surveillance or customs formalities. With the

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<sup>250</sup> Council of Ministers of BiH, Decision on Approving and Determining Customs Tariffs in BiH. BiH Official Gazette, No. 58/2004

<sup>251</sup> Common Customs Tariffs, CCT.

introduction of the NTCS<sup>252</sup> system in 2003, a great majority of transit operations within the customs union<sup>253</sup> is processed by computer.

Customs officials of member states work in accordance with EC *acquis* and gather customs revenue upon the first entry of goods from third countries to the customs territory of the European Community. The revenues is paid towards the EU budget.

The principles of the free movement of goods and the bases of the Customs Union have been defined by the Agreement on the Establishment of the European Community.<sup>254</sup> The EU Council, on cooperation with the European Commission, is in charge of undertaking the necessary measures for administrative cooperation in matters of customs between member states.<sup>255</sup> The executive organ of the EU customs policy is the European Commission which also prepares regulation proposals within its competent Directorate.<sup>256</sup>

Customs relations between the EU (its member states) and other countries are regulated by provisions that make up a single text - the Community Customs Code.<sup>257</sup> The Code was put into effect in 1994.

Its contents are organised into three areas:

- basic customs legislation (the EU customs territory, the customs tariff and value and the origin of goods),
- provisions pertaining to the customs system (free zones, provisional import, customs control),
- provisions pertaining to customs obligations and the appeal process in customs cases.

Countries in the pre-accession phase are cooperating closely with the Union when it comes to customs policy and the development of a customs system. The starting point for the reform of customs legislation for these countries is the Community Customs Code. Through various programmes of technical assistance both the customs administration is prepared and the customs system constructed. Countries candidates are also involved in programmes for the development of the Union customs system. Programmes focus on monitoring customs practice, removing operative differences on the national level and strengthening capacities for applying information technologies.<sup>258</sup>

### ***Necessary Measures***

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<sup>252</sup> New Computerised Transit System.

<sup>253</sup> Encompassing Island, Lichtenstein, Norway, Switzerland, and a number of candidate countries.

<sup>254</sup> The Treaty establishing The European Community (Consolidated version), Title I-Free Movement of Goods and Chapter I - Customs Union, Articles 23-31.

<sup>255</sup> Ibid, Title X; Customs Cooperation, Article 135.

<sup>256</sup> DG XXI - Directorate General for Taxation and Customs Union.

<sup>257</sup> Council Regulation (EEC) No 2913/92, establishing the Community Customs Code, *OJ L 302, 19/10/1992*. Commission Regulation (EEC) No 2454/93, laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code; *OJ L 253, 11/10/1993*.

<sup>258</sup> Consolidation Programmes: *Customs 2000, Customs 2002*.

- Implementing the Convention on Transit Procedures and simplifying procedures of goods exchange. Developing an effective customs service that would adopt administrative procedure standards applied in the EU.
- Developing an action plan of adopting and implementing a set of customs laws compatible with the Community Customs Code.<sup>259</sup>
- Adopt and introduce the Combined Customs Classification System. Plan and develop a reliably grant system with concurrent cooperation with the bank and finances sector in the field of import-export guarantees. Maintain cooperation with institutions in charge of introducing a system for the protection of personal data.
- Realise priorities from the *European Partnership with BiH* programme pertaining to the reform of customs policy.<sup>260</sup>
- Finalise the reform of customs administration and the reconstruction of the customs system. Complete and make fully operative the information system for the processing of customs data.

### 2.3.9.3. Common Foreign and Security Policy (CFSP)

The principle of the Common Foreign and Security Policy<sup>261</sup> (CFSP) was established as the second pillar of the EU by the Agreement on the EU<sup>262</sup> signed in Maastricht in 1992. Since the Maastricht Treaty came into force on 1 October 1993, the EU has been expressing its standpoint on the international scene pertaining to armed conflicts, human rights and other matters related to the fundamental principles and common values that make up the basis of the EU and are protected by it. A significant expansion of the CFSP was achieved by the Amsterdam Agreement that came into force in 1999 and that provided the EU with new institutional and operative instruments of the CFSP.

The following CFSP fundamental objectives are stated by the Amsterdam Agreement:

- maintenance of common values, common interests for the independence and integrity of the Union in accordance with the principles of the United Nations Charter;
- strengthening of the security of the Union and member states by all means possible;
- preservation of peace and strengthening of international security in accordance with the principles of the United Nations Charter, the Helsinki Final Act and the goals of the Paris Charter, including those on external borders;
- improvement of international cooperation;
- development and strengthening of democracy and the rule of law, and the respect of human rights and fundamental freedoms.

These goals can be achieved in two ways:

- "cooperation between member states in implementing their policies" in determining common standpoints; and

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<sup>259</sup> Approving the Community Customs Code in full, as well as complementary customs legislation is an obligation of new members upon accession.

Report of the European Commission on BiH's readiness to start negotiations with the EU. Chapter on *Mid-Term Priorities*.

<sup>261</sup> *Common Foreign and Security Policy (CFSP)*.

<sup>262</sup> 12 articles in the chapter "Provisions pertaining to Common Foreign and Security Policy".

- "by gradual implementation of common measures in matters of common interest for member states".

In the development of CFSP in the past years, a special place belongs to the area of European Security and Defence Policy (ESDP).<sup>263</sup> At the European Council session in Köln in 1999, tasks in crisis management situations were included into the centre of strengthening the ESDP. These tasks include: humanitarian and rescue tasks, preservation of peace tasks and tasks of combat units in crisis management situations. The performance of these tasks still does not require the establishment of EU armed forces. The taking on of tasks and organisation of military units is still based on sovereign decision of member states.

A series of EU institutions and bodies is involved in the elaboration and implementation of the CFSP. The European Council establishes priorities and defines the principles and general guidelines for EU policies. The role of encouragement and direction belongs to the Council of Ministers that adopts *joint actions* (which entail coordinated action on the part of member states that mobilise all resources - human, knowledge, financial, material - to achieve concrete results) and *common standpoints* (member countries are required to adhere to and defend positions adopted unanimously at Council of Ministers meetings). Voting by qualified majority was introduced into the decision making process for actions and standpoints accepted by the Council only with the concurrent principle of constructive abstention by which a member country may in certain cases decide not to participate in a joint action without preventing other member states from participating. The role of the High Representative for CFSP was also introduced. There is a series of other bodies on the level of high officials/representatives of member states as well as special bodies within the Council aimed at improving the implementation of CFSP.

In accordance with CFSP principles, the EU has set up mechanisms for constant political dialogue with a series of third countries. Apart from that, political representation of the EU, especially in crisis and conflict areas, is maintained through special envoys.

### ***Situation in BiH***

BiH foreign policy is aimed at the preservation and promotion of lasting peace, security and stability of democratic and overall development of the state. In international relations, BiH activities are based on the principles contained in the UN Charter, the Helsinki Final Act and other documents of the Organisation for Security and Cooperation in Europe as well as on universally accepted principles of international law. In that respect, BiH foreign policy is based on openness and equality, mutual respect of sovereignty and territorial integrity, the principles of peaceful cooperation that takes into account mutual interests.

The foremost strategic priorities of BiH are systematic improvement and instituting of cooperation with the most significant European and transatlantic integrations – EU and the North Atlantic Treaty Organisation (NATO).<sup>264</sup> Versatile development of bilateral

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<sup>263</sup> *European Security and Defence Policy (ESDP)*.

<sup>264</sup> Cooperation with the North Atlantic Treaty Organisation (NATO) is mainly focused on the upcoming inclusion of BiH in the *Partnership for Peace* programme which is the first step towards BiH's full membership in this military and political alliance.

cooperation with neighbouring states and an active role in the UN, the OSCE and other international organisations are also top priorities in BiH's foreign policy.

BiH's strategic orientation towards gradual integration into the EU entails its readiness to accept the provisions structures and mechanisms in the domain of Common Foreign and Security Policy, including the Policy's military aspect.

As a potential candidate, BiH realises relations with the EU within the Stabilisation and Association Process (SAP) involving the countries of the Western Balkans<sup>265</sup>.

With the joint adoption of the *Declaration* at the top level Meeting between the EU and Western Balkans countries (WBC), on 21 June 2003 in Thessalonica, all of the countries also adopted the contents of the "Thessalonica Agenda for the Western Balkans: Moving towards European Integration"<sup>266</sup>. In this way, an important step forward in the integration process was made since, among other things, cooperation in CFSP was also improved. The Thessalonica Agenda introduced a series of new instruments and forms of cooperation between the EU and WBC based on expansion process instruments and experiences. According to the Agenda, cooperation in Common Foreign and Security Policy entails inviting the above countries to join statements, common standpoints and other decisions made as part of the CFSP. Also, they may be invited to coordination and briefing meetings organised for accession countries and candidate countries in European capitals and headquarters of international organisations, as well as to meetings of the Political and Security Board which deal with security and crisis management subjects from the region. In this context, the bilateral political dialogue EU-BiH established on the ministerial level and taking place on the margins of the UN General Assembly is of special importance.

Countries candidates for membership in the EU are invited to join certain statements and common standpoints about a certain problem. For now, BiH has been a "user" of the Common Foreign and Security Policy mechanism of the EU:

- The first EU mission in the ESDP domain was the Police Mission to BiH (EUPM) which succeeded the UN International Police Forces (IPTF) on 1 January 2003 and took on the task of police force reforms in BiH and the implementation of European standards in this area;
- On 2 December 2004, EU Armed Forces (EUFOR) succeeded the NATO led Stabilisation Forces (SFOR) and took on the task of maintaining peace in BiH;
- The current High Representative for the implementation of the Peace Agreement in BiH has also been the EU Special Representative since May 2002.

### *BiH Activities*

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<sup>265</sup> See footnote 7.

<sup>266</sup> *Thessaloniki Agenda for the Western Balkans: Moving towards European integration.*

BiH is a member of the United Nations, the OSCE and the Council of Europe and a member or observer in many other international organisations and agreements, as well as being an active participant in regional and sub-regional initiatives.

BiH has started participating in international peace efforts and has deployed military observers to certain UN missions in Congo (MONUC), Sierra Leone (UNAMSIL), Ethiopia (UNMEE), Liberia (UNMIL), East Timor (UNMISSET).

In the past few years, BiH has developed a systemic practice of joining common standpoints within the Common Foreign and Security Policy and statements of the Union concerning, among other things, the fight against terrorism, the International Crimes Court ICC, the situation in Iraq, the resolution of the Palestinian issue, etc. In the meantime, in accordance with the Thessalonica Agenda for the Western Balkans, the EU regularly requires BiH to correspond to certain EU demarches, statements and joint positions of the Common Foreign and Security Policy. On 12 October 2004, the Council of Ministers of BiH passed a decision according to which BiH is to automatically join certain common and unanimous EU standpoints on the CFSP and obliging BiH's competent bodies to fully implement these positions.

BiH supported the establishment of the International Criminal Court and ratified the Rome Statute from 2001.

BiH has adopted the EU Code of Conduct pertaining to the export of weapons and has integrated it into domestic legislation.

BiH has signed most international agreements against the spreading of weapons of mass destruction.

When it comes to disarmament, BiH and the EU have similar views, especially in terms of reducing and suppressing illegal trade in small calibre firearms as well as promoting the Action Programme on illegal trade in small calibre firearms on the regional level and within the OSCE.

BiH has standpoints identical to those of the EU in the domain of: prohibiting the development, production, storage and use of chemical weapons; general prohibition of nuclear testing; prevention of arms racing in space; transparency in all military expenditures and control of weapons of mass destruction.

BiH's standpoints are congruent with those of the EU in matters of promotion and protection of human rights, equality of the sexes and the position of women in society. According to the content and overview of the voting on adopted UN resolutions pertaining to human rights, the views of BiH and the EU are mainly congruent.

### ***Necessary Measures***

- Join all relevant international conventions (pertaining to terrorism, against the circulation of weapons et al.)
- Intensify international cooperation and implement relevant international conventions on terrorism. Intensify cooperation and exchange of information with other countries.

- Strengthen administrative capacities – undertake the necessary legal and administrative measures and perform the necessary harmonisation.
- Form the necessary mechanisms within the Ministry of Foreign Affairs that will be efficient in working with EU structures in charge of the Common Foreign and Security Policy.
- Adapt administrative capacities to EU standards in terms of implementing sanctions and restrictive measures.
- Strengthen agencies competent for the implementation of laws in internal control necessary for a full implementation of international regimes pertaining to suppressing weapons and relevant EU standards, including those about the control of trade in small calibre weapons and double purpose items.
- In accordance with the course and requirements of the EU integration process, develop capabilities to fulfil requirements of the Common Foreign and Security Policy.
- Actively support the Common Foreign and Security Policy in the spirit of loyalty and mutual solidarity.
- Create preconditions and readiness for support, participation and contribution to civilian and military operations for crisis management within the European Security and Defence Policy (ESDP) and provide the necessary funding.
- Within democratic institutions, take on responsibilities and competencies for providing internal stability, lasting peace and security and thus contribute to concluding the EUFOR mission.
- Take on the responsibility of effectively implementing reforms and ensuring democratic control of police forces and the security and intelligence sector and thus contribute to concluding the EUFOR mission.

## **2.3.10. Financial Issues**

### **2.3.10.1. Budget Reforms**

#### ***Situation in BiH***

Budgets are planned, adopted and implemented on all levels of government: state, entities, Brčko District, cantons, cities and municipalities. A principle of a consolidated government account for the state, entities and Brčko District level has been introduced.

The reform of budget legislation and practice from the *16 Priorities Programme* has made great progress in 2004. New laws regulate: managing financial resources, a unique account, consolidation, debt and debt servicing, definition of budget procedures, estimates, planning, financial assets, internal monitoring, accounting methodology and financial reporting.

The following laws have come into effect: the Law on the Treasury of Institutions of BiH, laws on entity budgets, the Law on the Investment of Public Funds, the Law on the Financing of Institutions of BiH, the Law on Payments to a Unique Account and the Allocation of Funds. This reform laws have removed the weaknesses from the above mentioned *Feasibility Study* pertaining to planning, the adoption and implementation of the budget and financial plans for extra-budgetary funds.

The law also regulates the obligation of making *Mid-term Expenditure Frameworks* (SOR) that will enable quality expenditure management. SORs are the basis for planning budgetary and extra-budgetary funds, for strengthening budgetary discipline, greater responsibility and a better system of reporting on budget implementation.

A coordination mechanism has been set up between the state, the entities and the cantons in terms of technical management of the treasury systems, which is the precondition of establishing control over total public expenditure. The treasury system functions on higher levels of government. The introduction of the treasury system in municipalities is underway.

#### ***Situation in the EU***

The EU insists on abiding by the following budgetary principles: comprehensiveness, balance, specification of expenditures, annual plans (calendar year) and transparency.<sup>267</sup> The Agreement stipulates that member states will avoid excessive budget deficit. The Commission will monitor the budget situation and public debt of member states with the goal of identifying major discrepancies.<sup>268</sup>

The whole of Section 5, Heading 2 of the *Treaty Establishing the European Community* is dedicated to the issue of budget and budget control, as well as the obligations of EU institutions and competent institutions in member states.

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<sup>267</sup> The Treaty establishing European Community (Consolidated version), Articles 268-280. Official Journal of the European Communities, C 325, 24.12.2002.

<sup>268</sup> Ibid, Article 104.



The budget of European Communities is regulated by an EU Council Regulation.<sup>269</sup>

From the point of view of European integration processes, that is, after a country joins the EU, budgetary policy becomes budgetary discipline. Members of the Economic Monetary Union are in a lower tolerance zone regulated by Maastricht criteria.<sup>270</sup> Other members of the EU that are part of the ERM II<sup>271</sup> regime have somewhat greater freedom in creating monetary policy, but cooperation with the Commission on all budgetary policy matters is mandatory.

Budgetary policy, public debt and the ability to service the external debt are key priorities that the EU insists upon in the pre-accession phase. The ability of a country to pay its own expenditure, to regularly service its external debt and to lower the level of its total public debt is an indicator of fulfilling Copenhagen criteria. That is why budgetary policy of pre-accession countries is constantly being monitored by the European Commission.

### ***Necessary Measures***

The strategic objective of reforms is modernisation of legislation and implementation of budgets. The reform is determined by the principle of self-sustainability of public finances on all administrative levels. The programmed degree of modernisation is *satisfying the criteria for membership in the EU*. Reform results will be achieving international standards and codes as adopted in the practice of the EU, the World Bank and the International Monetary Fund.

The precondition for achieving this objective is a favourable rate of reforms in areas closely related to the budget as part of a single economic policy:

- real sector policy,
- taxes and tax policy,
- monetary policy,
- financial control.

Areas functionally related to the budget as transition elements:

- public administration reform,
- defence and police reform,
- statistics on the state level,
- public supply (public procurement),
- privatisation and anti-corruption programme.

#### a) Legislation Measures

Provisions of constitutions and statutes, as well as legal regulations on the budget and its implementation at all levels of government should clearly define the responsibilities of all participants. Good legislations ensures a productive relationship between legislative and executive government as well as transparency in all phases of the budget and public participation.

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<sup>269</sup> Council Regulation (EC, Euratom), No 1605/2002, OJ L 248, 16.09.2002.

<sup>270</sup> Chapter 2.3.4.1. Economic Monetary Union

<sup>271</sup> Exchange Rate Mechanism II.

## b) Budgetary Practice

A system of consolidated government accounts on all levels, in the whole of BiH, is imperative in budgetary practice. The goal of the reform is for mid-term planning of public expenditure to become a standard method of work. The treasury system should be introduced in practice on all levels of government with budgetary competence.

## c) Budgetary Procedure Measures

Budget policy should be based on defining mid-term budget positions in line with the Document of the budget framework for a multiannual period.

Reforms will establish a state in which sequences of budgetary procedure will be precisely defined and generally comprehensible. The schedule of activities, based on the annual budget principle, must enable quality planning, transparency and public debate, efficient budget implementation, and timely and unbiased financial control.

### **2.3.10.2. Financial Control**

#### ***Situation in BiH***

The basic legislation pertaining to financial control of budget users entails: the Law on the Treasury, the Law on the Implementation of the Budget of BiH, the annual budget of BiH, including international obligations, annual entity and Brčko District budgets, the Law on the Budget of FBiH, the Law on the Budgetary System of RS and the Law on the Financial Review of BiH Institutions. INTOSAI<sup>272</sup> auditing standards have been adopted as well as the INTOSAI public sector auditing code and the Auditing Coordination Board Rules of Procedure.

The right of the Ministry of Finances and the Treasury to monitor budget implementation, insight into relevant documents and the right to refuse any and all expenditure requests which are not in line with the approved budget are regulated by law. The Ministry of Finances and Treasury monitoring of activities, financial procedures and its recommendations to budget users are also regulated by law. The reform and development of internal rules pertaining to procedures adapted to the treasury method are underway.

In terms of external review and the treasury system, the following institutions have been established: The Office for Financial Review of BiH Institutions, the Office for Budgetary Reviews of FBiH and the Central Service for Public Sector Review of RS.

#### ***Situation in the EU***

External review of institutions in the EU is based on the standards of the International Organisation of Supreme Auditing Institutions responsible for auditing the public sector on the national (state) level (INTOSAI). Within the Court of Auditors<sup>273</sup>, the EU has

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<sup>272</sup> International Organisation of Supreme Audit Institutions.

<sup>273</sup> The Court of Auditors.

established a set of EU implementing guidelines for the INTOSAI auditing standards.<sup>274</sup>  
The guides are organised into five groups of INTOSAI Standards:

- tree guides pertaining to preparation,
- six guides pertaining to collection of evidence,
- two guides significant for completing the audit,
- one guide pertaining to institutional achievement, and
- three guides pertaining to other issues.

The use of these guidelines ensures unified and standardised external audits of individual organisational units - General Directorates of the European Commission. Within the European Commission, there is an Internal Audit Service<sup>275</sup>, that helps the committee and its organisational entities to perform auditing of internal controls. The task of this Service is to achieve efficient and unbiased management of available resources.<sup>276</sup>

### ***Necessary Measures***

- Continue legislation reform pertaining to financial control and auditing in accordance with the priorities from the *European Partnership with BiH*.
- Initiate the necessary amendments to criminal, administrative and process legislation.
- Prepare and adopt written internal rules and procedures adapted to the treasury mode of operation pertaining to conduct within institutions.
- Determine common guidelines that will represent a standard for state institutions and auditing organisations; based on these, prepare and public standard guides for control and auditing.

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<sup>274</sup> European implementing guidelines for the INTOSAI auditing standards.

<sup>275</sup> The Internal Audit Service.

<sup>276</sup> It is estimated that of the total funds the Commission is responsible for, 90% is managed by other institutions.

### **3. Strengthening Administration Capacities**

Apart from the Copenhagen criteria, countries candidates for the EU must fulfil the administrative or so-called Madrid criterion established at the European Council meeting in Madrid in 1995. This criterion requires the existence of appropriate administrative structures that will enable the public administration of a country to be adapted to the rules and practices of the EU, that is, to be strengthened so that the country may effectively adopt and implement EU legislation.

Public administration is not regulated by a single chapter of the *acquis communautaire*, because every member state has a sovereign right to adapt its public administration and internal organisation to what it believes to be in its best interests. EU member states have mutually adopted public administration principles which make up the European Administrative Space (EAS) conditions. EAS contains a package of unique standards for public administration operations which countries applying for membership in the EU must take into account when developing their public administrations. In member states, these standards are built into administrative laws pertaining to administrative procedures, administrative disputes, freedom of information and state administration.

The main principles of the EAS are: reliability and predictability, openness and transparency, responsibility, efficiency and effectiveness. In order for BiH to belong to the unique European Administrative Space, the Law on Civil Service of BiH has been fully adapted to European standards and supports these principles which have been locally defined as: legitimacy, transparency and public exposure, responsibility, efficiency and efficacy, and professional impartiality.

#### ***Professionalizing Public Administration***

BiH will devote itself to public administration capacity building to facilitate the demanding process of EU integration. Strong institutions must ensure a top quality and successful transition process and the establishment of democracy and the rule of law in BiH.

The Feasibility Study for BiH identified the need for BiH to ensure a functional state, because only functional states can successfully negotiate on the EU Stabilisation and Association Agreement.<sup>277</sup> In order for SAA negotiations to be successful, the Feasibility Study stresses the need for BiH to urgently and decidedly implement further administration reforms.

Public administration reform in BiH is based on professionalizing the civil service and developing human potential through constant training of civil servants to respond to new needs. Special attention is given to new knowledge and skills, such as foreign languages, computer programmes, specific knowledge on European planning and project management policies. Apart from this, encouraging civil servants to enrol in graduate and specialist studies in the country and abroad is of great importance.

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<sup>277</sup> Feasibility Study – Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union. Commission of European Communities, COM(2003)692. Brussels, 18. 11. 2003. p. 14

As part of capacity building for strategic planning, coordination and implementation of policies, great attention will be given to strengthening the Unit for Economic Planning, the Direction for European Integration and the General Secretariat of the Council of Ministers that will ensure the implementation of conclusions passed by the Council of Ministers.

The "Systemic Review of Public Administration in BiH"<sup>278</sup> identified six areas of public administration that have undergone a functional review, and these are: management of human potential, public finances, regulation drafting, administrative procedure, information technologies and institutional communication. These are the factors whose proper use will contribute to overall administration efficiency. The above document envisions taking certain steps to organise public administration in BiH in a better and more efficient way so that it may be more transparent, functional and in accordance with EU best practice and so that it may provide better quality services suited to the needs of citizens.

### ***Institutional Capacity Building***

The strengthening and institutional capacity building on the BiH level is of special importance in terms of the challenges inherent in European integration. In its requirements for future members, including BiH, the EU does not only require the adoption of appropriate laws, but their implementation through appropriate administrative structures which entails the formation of new institutions or the restructuring of existing ones. In its regular reports, the European Commission evaluates the institutions of candidate countries in the context of accession negotiations through a clear overview of the main administrative structures necessary for the implementation of various chapters of the *acquis communautaire*, the main functions that each of these structures must fulfil and the main characteristics these structures must have in order to fulfil their functions.

BiH should have all the necessary administrative structures that could be adequate partners to respective EU institutions. The informational instruction of the European Commission "Main Administrative Structures Necessary for Adopting the *Acquis*" states 29 areas<sup>279</sup> where appropriate institutions are necessary. In the past few years, new institutions have been established in BiH, that is, new ministries, new bodies within certain ministries as well as specialised independent institutions.<sup>280</sup> Their establishment was necessary to prepare BiH for the implementation of EU legislation. Even before implementing the entire *acquis communautaire*, it is necessary to form or strengthen the appropriate state institutions on the BiH level so as to ensure success in negotiations on the Stabilisation and Association Agreement.

Since administrative institutions are at the service of citizens, public administration reform in BiH is aimed at serving the function of protecting citizens' rights, all the while taking into account gender equality. There is a Law on Gender Equality in BiH and it is already being implemented. Also, the Ministry for Human Rights and Refugees of BiH includes the Agency for Gender Equality (in addition to appropriate entity agencies).

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<sup>278</sup> Systemic Review of Public Administration in BiH - Final Report, Volume 5. Public Reform Coordination Office, President of the Council of Ministers of BiH Office, 2005

<sup>279</sup> See footnote 16.

<sup>280</sup> In the chapter on the political situation, there is a detailed list of institutions necessary to implement the *acquis communautaire* as well as the institutions already established on the BiH level.

Public administration reform in BiH entails introducing e-administration, that is, using information technologies in public administration. In this way, the public sector will become more open and transparent and citizens will be able to participate in its creation and capacity building. Apart from that, administration will become more user oriented and be able to provide personalised services. This new mode of operating will reduce expenses in both the economy and the administration.

In order to ensure transparency of public finances, the Law on Financing the Institutions of BiH has been adopted and it precisely defines the procedures and processes of annual budget planning, mandatory internal control and auditing as well as the investment of public funds.

Apart from the planned organisational, institutional and procedural reforms and the continuous training of civil servants to perform highly professional duties specific to EU integration requirements, conditions for a quicker adaptation to European standards in public administration will also be improved. The administrative capability of BiH to fulfil these high standards also requires complete political consensus for fulfilling EU accession requirements.

## 4. EU Assistance and Financial Instruments

### *Situation in BiH*

From the perspective of European integration, European Union aid is used for the realisation of certain measures necessary to harmonise laws, implement them in practice and to modernise various sectors (environmental protection, transport infrastructure, agriculture).

The CARDS programme<sup>281</sup> is the current EU instrument for technical and financial assistance to BiH and it is intended for support of the Stabilisation and Association Process. CARDS defines assistance sectors and interventions planned in BiH for the period from 2000 to 2006<sup>282</sup> with a further development of goals and priorities contained in two multi-annual indicative programme.

In the period from 2002 to 2004<sup>283</sup> a total of 199.9 million Euros has been allocated. For the period from 2005 to 2006<sup>284</sup> 102 million Euros will be allocated. Assistance to BiH through the CARDS programme is decreasing significantly<sup>285</sup>.

Assistance from CARDS ensures total financial resources for the realisation of individual projects, so that there are no co-financing requirements for the state. Preparations for the use of these assistance programme (pre-accession and/or accession assistance instruments) entails developing the mechanisms necessary for co-financing such as multi-annual budget planning<sup>286</sup>.

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<sup>281</sup> Community Assistance for Reconstruction, Development and Stabilisation (CARDS), an instrument of EU technical and financial assistance for the realisation of goals and mechanisms from the Stabilisation and Association Process for Western Balkans countries, Council Regulation (EC) 2666/2000, OJ L 306/1 07/12/2000.

<sup>282</sup> The CARDS National Strategy Paper 2002 – 2006 represents a strategic framework of assistance for BiH. Apart from this, there is also the CARDS Regional Strategy Paper 2002 – 2006, a strategic framework for the entire Western Balkans region.

<sup>283</sup> Multi-annual Indicative Programme 2004-2006, based on the National Strategy Paper 2002-2006. Funds have been allocated for the following sectors: democratic stabilisation (50), administrative capacity building (44), economic and social development (29.9), environmental protection (18) and the judicial and internal affairs sector (58).

<sup>284</sup> Multi-annual Indicative Programme 2004-2006, based on the National Strategy Paper 2002-2006. Funds have been planned for the following sectors: democratic stabilisation (5-6.2), institutional building and good management (48.7-59.5), economic and social development (34-41.6), opening the Community Programme (3.5) and other reserves in the amount of 1 million Euros.

<sup>285</sup> Apart from the financial amount, the type of assistance and its purpose are also very important. In view of the total EU countries assistance, we can conclude that it has a higher per capita rate for BiH than for Bulgaria, except that in Bulgaria the assistance goes directly towards developmental priorities, institutional capacity building and mobilisation of domestic resources, while in BiH a large portion is spent on international institutions complementing the work of domestic institutions. For 2004, the OHR has a budget of 21.1 million Euros, the OSCE Mission for democracy and human rights costs 17.6 Euros and the EU Police 38 million Euros. It is not only the mobilisation of new large financial resources that is important, but also the mobilisation of new strategies that will change the character of assistance. ESI, The Helsinki Moment, 1 February 2005.

<sup>286</sup> Planning should provide a strong link between priorities related to the process of European integration with BiH's budgetary plans, as well as with possible foreign aid and more effective use of EU assistance and funds from national and other resources for a more rapid realisation of the country's goals. At the same time, this means respecting one of the main EU principles pertaining to the use of pre-accession and accession assistance and that is the principle of additionality.

Bosnia and Herzegovina is eligible for some Community Programmes<sup>287</sup>. Community Programmes are developed to suit the needs of EU member states and the country must fulfil co-financing requirements to participate in approved programmes. Some of the programmes set more complex requirements in terms of an institutional and legal framework necessary for their implementation. The Direction for European Integration (DEI) has prepared a proposed plan for admittance to Community Programmes. From May 2004, BiH has been using a special assistance instrument called TAIEX<sup>288</sup> that ensures technical assistance in transposing EU legislation to the BiH legal system.

Through the CARDS programme, BiH can use the assistance intended for institutional development and state capacity building necessary to fulfil the Stabilisation and Association Process requirements. One of the segments of this assistance pertains to developing capacities for the use and management of EU programmes. Funds can be provided either through technical assistance programmes (service providers from the private sector) or through the Twinning project (service providers from the public sector, that is, certain institutions of member states).

One of the obligations of BiH in the process of accession to the EU is responsibility in governing EU assistance programmes intended for the country. Up to now, this responsibility resided fully with the European Commission in Brussels or the Delegation of the European Commission in Sarajevo. In the future, responsibility for the realisation of individual phases of programme/project cycles will be transferred from the Commission or the Delegation to BiH institutions. This process will establish a decentralised system of EU (DIS) programme management<sup>289</sup>, ultimately aimed at full or expanded decentralisation (EDIS)<sup>290</sup>. This process relies on the principle of partnership between the Commission and BiH.

The realisation of the DIS process and subsequently the EDIS process in BiH entails two key parallel processes:

- Preparation and strengthening of DEI administrative capacities (DEI being the EU assistance coordinator in the phase of programming and monitoring) as one aspect of the process, and
- Taking on the responsibilities of financial management by the Ministry of Finances and the Treasury of BiH, as the second aspect of the process, along with taking on the responsibilities of project realisation and monitoring by state ministries of BiH as the key users of EU assistance.

BiH has commenced activities to introduce new responsibilities for BiH institutions. The first step in this process, that is, in transferring responsibilities from the Delegation of the European Commission to BiH institutions, is involving state ministries in the process of devising concept projects (programming)<sup>291</sup>. A new structure has been introduced within

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<sup>287</sup> At the Summit held in Thessalonica in July 2003, the EU confirmed European perspectives for Western Balkans countries and decided to strengthen the Stabilisation and Association Process by introducing new initiatives and support programmes. The new programmes will include the so-called Community Programmes.

<sup>288</sup> TAIEX, Technical Assistance in Information Exchange Office introduced for Western Balkans countries at the Summit held in Thessalonica in July 2003.

<sup>289</sup> Within DIS, the European Commission performs *ex-ante* control.

<sup>290</sup> Within EDIS, the European Commission performs *ex-post* control.

<sup>291</sup> In December 2004, DEI and the Delegation of the EC approved the main principles, defined the key stakeholders and their responsibilities and agreed upon a framework plan of activities for the realisation of



key institutions-stakeholders for project programming and implementation, i.e. a structure of higher level civil servants in charge of these activities. Also, the development of a strategy for the introduction of a decentralised EU assistance project management<sup>292</sup> is underway.

### ***Situation in the EU***

The European Union creates special financial instruments for pre-accession countries. These instruments are realised within programmes directly intended for individual countries (national programmes) and/or as part of regional programmes. All EU programmes are based on strategic programme documents. European partnership belongs to this category because it is the only instrument defining the priorities of BiH's preparations for membership in the EU, while at the same time being the basis for programming financial resources within EU assistance. In accordance with the intensity of BiH's progress in the process of European integration, European Union Assistance and the financial assistance of international financing institutions will be programmed according to the principles, priorities, objectives and conditions necessary to fulfil EU membership criteria. EU assistance for BiH will gradually change character from assistance intended for post-war reconstruction and stabilisation to assistance intended for the process of EU accession, that is, assistance guided by accession requirements. This will have an effect on the sectors for which it is intended and on the modes of its realisation.

In accordance with current EU policy and further expansion perspectives, the EU intends to review the current framework of external assistance for the purpose of harmonising its instruments and establishing a unique financial instrument called the Instrument for Pre-Accession assistance (IPA)<sup>293</sup>. The European Commission has developed a proposal of this instrument which is currently being reviewed. The main characteristics of the proposal are as follows:

- Assistance should be guided by accession process requirements (European partnerships, Accession partnerships, negotiations on *acquis* chapters, regular reports of the European Commission).
- The accession process of countries using the assistance usually has a mid-term goal, so the assistance will also entail mid-term and not long-term development perspectives for the country.
- One of the main characteristics of pre-accession assistance is its function of bridging, i.e. preparing the (potential) candidate country for the post-membership period.

The introduction of IPA is planned as part of EU's new financial perspective for the period from 2007 to 2013. IPA should replace the following current instruments: the CARDS programme, PHARE<sup>294</sup>, SAPARD<sup>295</sup> i ISPA<sup>296</sup>. The intention is for future

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the process of CARDS resources programming for 2006. The aim of the process is increase of total responsibility of BiH authorities and promotion of ownership of the CARDS programme.

<sup>292</sup> At the beginning of 2005, DEI formed a working group for the preparation and development of the DIS strategy whose draft was approved by the EC Delegation in June 2005. Its adoption by the Council of Ministers of BiH is expected.

<sup>293</sup> Proposal for a Council Regulation Establishing an Instrument for Pre-Accession Assistance (IPA), COM (2004) 627 final, Brussels, 29.09.2004.

<sup>294</sup> Poland Hungary: Assistance for the Reconstruction of Economy (PHARE); one of the three pre-accession financing instruments for support to candidate countries from Central and Eastern Europe in their preparations for accession. Initially created for Poland and Hungary in 1989. BiH received assistance from

candidate countries and former candidate countries (newly admitted members) as well as countries eligible for assistance in the future, to receive the same level of assistance per capita as the 10 previous candidates from Central and Eastern Europe.

The current IPA proposal focuses on two main priorities:

- Assistance to countries for the fulfilment of EU membership criteria pertaining to policy, economics and *acquis*, as well as assistance in building administrative and judicial capacities.
- Assistance to countries preparing to use European Structural Funds, the Cohesion Fund and Rural Development Funds after joining the EU aimed at facilitating economic development.

The above priorities encompass 5 assistance categories: assistance in transition and institutional building, improvement of extraterritorial and regional cooperation, regional development, human resource development and rural development.

According to the current IPA proposal, all future assistance users will be divided into two groups: potential candidate countries and membership candidate countries. Bosnia and Herzegovina belongs to the group of potential candidate countries and as such will continue to receive the same type of assistance as allocated before through the CARDS Regulation with defined activity areas (institutional building, democratisation, economic and social development, regional and extraterritorial cooperation) as well as assistance for selective adaptation to the *acquis*, especially where it is of mutual interest for the EU and BiH.

Apart from this type of assistance, candidate countries will also receive assistance for adopting and fully implementing the *acquis* and assistance intended for preparing them to use Structural and Cohesive Funds and Rural Development Funds<sup>297</sup>. The preparation of countries for using these Funds entails adopting rules and principles for their management and will consist of three components: regional development, rural development and human resources development. Discussions are underway about the system of Structural Funds and Rural Development Funds for the period after 2007.

One of the main objectives of the EU is cohesion, i.e. "*reducing differences between regional levels of development*"<sup>298</sup>. EU assistance to its member states is shaped in accordance with this objective. Potential EU member states use various EU funds to

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the PHARE programme until 2000, after which the implementation of the CARDS programme for Western Balkans countries began.

<sup>295</sup> Special Accession Programme for Agriculture and Rural Development (SAPARD), established in 1999 as one of the three pre-accession instruments of support for countries candidates for accession to the EU. The goal of the programme is support in structural adaptation in the agricultural sector and support in the development of rural areas and the implementation of the *acquis* pertaining to the EC Common Agricultural Policy. Council Regulation No. 1268/1999.

<sup>296</sup> Instrument for Structural Policies for Pre-accession (ISPA); one of the three pre-accession instruments established in 1999. The goal of the project is to strengthen economic and social cohesion by focusing on measures to develop transport and environmental infrastructure. Council Regulation No. 1267/1999.

<sup>297</sup> Since this is a proposal for a new financial instrument, it may still be modified in some respects. It is obvious that there is a clear distinction between potential candidate countries and member countries pertaining to the type of assistance they can use through this instrument. Thus, potential candidate countries will not be able to use rural development, cohesion policy and human resources assistance. The European Stability Initiative proposes that all five assistance components be available to candidate countries and potential candidate countries. ESI, The Helsinki Moment, European Member-State Building in the Balkans, 1 February 2005.

<sup>298</sup> The Maastricht Treaty on European Union, Art. 158.

prepare themselves for using financial instruments of EU structural policy (the Cohesion Fund<sup>299</sup> and Structural Funds<sup>300</sup>). The conditions for use of EU financial instruments are as follows:

- Adopted multi-annual strategies (Cohesion Fund Strategy and National Development Plan) that have a dual role - both as national strategies and as documents or multi-annual frameworks for programming EU assistance. At the stage of using pre-accession assistance, it is also necessary to develop state, multi-annual strategies for certain assistance funds<sup>301</sup>.
- Secured mandatory co-financing on the part of the country using the assistance<sup>302</sup>.
- Established multi-annual budget planning.
- Developed systems with appropriate institutional capacities in the country capable of managing individual funds and absorbing their assistance<sup>303</sup>.

These requirements are based on a set number of operative principles<sup>304</sup> that guide EU interventions with the aim of ensuring their positive effect:

- Development planning, long-term development programmes for countries/regions using the assistance.
- Provision of additional resources, the additionality principle.
- The partnership principle. Realisation of interests of the country using the assistance is ensured within the programme by developing a partnership between the European Commission and the national and regional governments as they work together to implement, monitor and evaluate operative programmes.

## **Necessary Measures**

For a more efficient use of financial instruments that the EU creates for pre-accession countries aimed at facilitating their membership, BiH needs to undertake the following measures:

- Provide links between EU assistance financial resources, the state budget and other sources (e.g. international financial institutions, the private sector, other

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<sup>299</sup> The Cohesion Fund, and instrument for the development of the European Community provides assistance to member states for infrastructure, transport and the environment of common interest for the promotion of economic and social cohesion and solidarity between member states. Council Regulation (EC) No 1164/94.

<sup>300</sup> Structural Funds, an instrument of the Community for reducing differences in levels of regional development and promoting economic and social cohesion in the EU. There are three objectives: Objective 1: promotion of development and structural adaptation of poorer regions. Objective 2: contribution to economic and social cohesion of regions with structural difficulties. Objective 3: promotion of human resources development outside of regions from Objective 1. Council Regulation (EC) No 1260/99.

<sup>301</sup> Eligibility for the ISPA programme meant countries that wanted to participate had to prepare and agree upon strategies with the European Commission including two sector components: the environmental and the transport sector component. For use of the SAPART programme it was necessary to develop a strategy of rural planning. Both strategies were based on Accession Partnerships and individual National Programmes for the Adoption of the *Acquis*.

<sup>302</sup> EU assistance cannot replace national resources, but only supplement them.

<sup>303</sup> This has a direct effect on the quality and amount of assistance a country is eligible to receive. When using pre-accession funds, the greatest responsibility for their management resides with the country user, i.e. a decentralised implementation system (DIS) has been established. When using funds intended for member states, it is necessary to establish a complete or extended decentralised system (EDIS).

<sup>304</sup> ESI: The Road to Thessalonica: Cohesion and the Western Balkans.

donors) to facilitate the realisation of priorities in the European integration process.

- Establish and develop capacities in BiH for managing EU assistance programmes within DIS and later EDIS<sup>305</sup>. (It would be good to introduce DIS by 2007, before the implementation of the new EU financial instrument – IPA).
- Establish and make operative the National Fund (NF) for the transfer of financial resources between the European Commission and BiH, and register EU funds within the state budget.
- Establish and make operative the Central Financing and Contracting Unit – CFCU. CFCU is one of the units for the implementation of programmes with a unique function to conduct public tender and contracting procedures, i.e. to ensure that the received EU funds/assistance are being spent according to the rules of public procurement for EU external assistance<sup>306</sup> and that contracts are signed with the selected bidders for services or equipment.
- Establish specific implementation units within special programmes and build up their capacities.
- Establish and develop specific capacities in accordance with the requirements for the use of individual assistance funds, including the creation of their programme frameworks (special state and multi-annual strategies).
- Develop capacities and methodologies for the preparation and implementation of regional programmes.
- Realise measures from the European Partnership programme.

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<sup>305</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities; Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial regulation applicable to the general budget of the European Communities, Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordination aid to the applicant countries in the framework of the pre-accession strategy and amending regulation (EEC) No 3906/89.

<sup>306</sup> Currently in force: PRAG - Practical Guide to contract procedures financed from the general Budget of the European Communities in the context of external actions, May 2003.

## **5. Knowledge on the EU**

### **5.1. Public information program on BiH European integration process<sup>307</sup>**

The communications strategy defines the basic principles and goals of public communication, the tasks and functions of institutions participating in this process. Its implementation will ensure widespread public support for BiH's participation in the stabilisation and association process and support for accession and full membership in the EU.

The success of the process of BiH's integration in the EU is closely dependent on, among other things, the level of familiarity and understanding of the European Union, its structure, institutions, policies, the essence of the Stabilisation and Association Process and also the position of BiH institutions and their decision regarding accession to the EU. We are at the stage when the promotion of European integration has become important in the process of BiH's integration into the EU. The Communications Strategy objectives are:

- Raise the level of knowledge and understanding about the process of European integration;
- Acquire public support and create a positive attitude towards European integration;
- Point out the advantages and benefits citizens will receive from BiH's membership in the European Union;
- Establish a framework for cooperation between administrative and public bodies;
- Encourage active participation of the public in debates on adopting European standards and the future membership in the EU.

The main goals will be realised through the following activities:

- Regularly informing the public of standpoints of BiH institutions regarding European integration;
- Improve relations with the media and ensure their widespread participation in informative activities;
- Develop cooperation with non-governmental organisations that deal with European integrations;
- Develop cooperation with the business sector, trade union associations, chambers of commerce and educational institutions for the purpose of promoting European integrations to specific target groups.
- Establish and develop public relations services / public information offices at BiH institutions that participate directly or indirectly in European integration.
- Develop cooperation and improve coordination between the public information offices in state institutions.

The expected results of the implementation of Communication Strategy aims are:

- Increased understanding of the process of European integration,

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<sup>307</sup> A summary of the Communications Strategy on European integration of BiH is presented in the Public information program on BiH European integration process.

- Intensified participation of the media in informative activities, especially regarding their critical, analytical and research approach,
- Established administrative capacities for the purpose of transmitting information to the public and developed institutional cooperation,
- Ensured timely and objective information to target groups,
- Developed adequate cooperation with partners, especially the non-governmental sector that promotes, advocates and affirms rapid progress in the integration process.

The Direction for European Integration of BiH (DEI) as a permanent body of the Council of Ministers of BiH has been entrusted with the mandate of coordination and organisation of comprehensive informative activities pertaining to European integration. Widespread institutional support will be developed in order to successfully implement tasks derived from the Communications Strategy,. Within its mandate, DEI will establish cooperation through coordination units with appropriate public relations services of BiH institutions.

DEO will also establish cooperation with other organisations in BiH, representatives of civil society, the media, international organisations, the academic community and professional associations. The Communications Strategy will be realised through annual action plans and will be evaluated once a year.

## **5.2. Promotion of BiH Abroad**

Apart from promoting the process of European integration for citizens of Bosnia and Herzegovina, it is important to represent and develop a good image of the country abroad, primarily with European Union institutions and in all its member states. The promotion of Bosnia and Herzegovina in the European Union has been neglected up to now. That is why a strategic approach to the promotion of BiH at the EU headquarters and in other important centres of members states is necessary and can be achieved through diplomatic and consular missions, events, the media, lobbyists, non-governmental organisations, artists and citizens of BiH living abroad.

The main goals of the promotion of Bosnia and Herzegovina in the EU are:

- Presentation of results achieved on the road to European integration,
- Alteration of the current image of BiH,
- Information on the culture, economic potential, rich historical heritage of BiH.

A special task would be presenting the results achieved in improving the situation in BiH through the process of European integration. This is important because all member states approve the process of going from one phase of European integration to the next through EU decision making mechanisms.

Information would be presented to decision makers in the EU, all its institutions and especially the European Parliament, the European Commission, the EU Council of Ministers, representatives of member states, their governments, associations with large and influential membership, EU lobbyists and influential media.

The competent institutions in charge of realising these goals would primarily be the Ministry of Foreign Affairs of BiH, the Direction for European Integration of BiH, the Foreign Trade Chamber of Commerce of BiH, the Foreign Investment Promotion

Agency, as well as NGOs. It is also possible to employ certain specialised agencies.<sup>308</sup> Non-governmental organisations in the EU play an important role, just as the missions of certain regions, and are automatically representative of a very important target group. Finally, networking should also be a way to present positive news about BiH (e.g. College of Europe alumni networks<sup>309</sup>).

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<sup>308</sup> Use of resources of the Czech Centre in Brussels, the Scottish House in Brussels, the Bavarse Office in Brussels, Euro Info Centres throughout the EU, etc.

<sup>309</sup> 80% of the employees in European institutions and other organisations are alumni of the College of Europe.

## 6. Translation of EC Legislation

Translation of the legal regulations of European Communities (EC) is an integral part of the pre-accession strategy of every candidate country for membership in the European Union (EU) and it is the candidate country's responsibility to procure translations. A comprehensive approach to the translation of EC legislation will be developed in the form of a strategic document in Bosnia and Herzegovina.

The availability of translations in the official languages of Bosnia and Herzegovina is a precondition for timely adaptation of national legislation to EC legislation and a clear understanding of the obligations that must be performed within the integration process. The translations make up an integral part of the Agreement on Accession to the EU, and they are published in a special issues of the EC Official Journal. Upon accession to the Union, they are archived in the European Commission translations database, which means that they have to be in accordance with the standards for the translation of legal regulations as determined in the EU.

The project of translating EC legal regulations is unique in its far-reaching effect on the whole of society. Knowledge of regulations is crucial for their implementation. At the same time, the main democratic principle of availability and public access to laws as well as the unique application of the law for all can be ensured only if the regulations are available in the citizens' mother tongue.

The translation of EC legislation proved to be the greatest translation endeavour in the history of most new member states. It is estimated that the legal regulations published in the EC Official Journal amount to about 105,000 pages<sup>310</sup> (which is about 150.000 standard pages and which in turn requires 30.000 translation days). Still, the challenge is not only in the enormous number of pages to be translated, but also in the complexity of the entire process which entails several phases: preparation for translation, determination of terminology, translation, linguistic review, expert and legal review and proofreading. The translation of EC legislation requires the engagement of professionals of various profiles and a high level of expert knowledge and skills. The education of experts must be given special attention, which implies the modernisation of school and university programmes.

Units entrusted with the translation of *acquis*<sup>311</sup> were formed in most new member states, which joined the EU on 1 May 2004, at the beginning of 1997, that is, 7 years before their accession to the EU. The translation of the *acquis* in Bosnia and Herzegovina is within the competence of the Direction for European Integration.

There is no unique recipe for success in translating the *acquis*. Every country establishes its own model, depending on numerous factors: the existence of legal and technical terminology, the availability of quality translators and associates at the various reviewing stages, the existence of appropriate specialised institutions for support to the entire process, administrative and linguistic practice and tradition, financial resources and many other factors. Having in mind that two of the official languages of Bosnia and

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<sup>310</sup> With an average annual growth of 3000 to 5000 pages.

<sup>311</sup> Although the whole of EC legislation is translated, in this context it is customary to speak about the translation of the *acquis*.



Herzegovina are official languages in Croatia and Serbia and Montenegro, the realisation of regional cooperation in the realm of translation is of strategic importance, as recognised and recommended by the European Commission.

According to the experience of new EU member states, there are three models for translation: the centralised, decentralised and combined model. Priorities for translation are determined on the basis of the Stabilisation and Association Agreement and the National Plan for the adoption of the *acquis*.

The first step in the process of translation of EC legislation is building up a terminology base for primary legislation whose data would be available to all public administration bodies in BiH involved in the process of BiH's accession to the European Union. In this way, the availability of adequate terminology would be ensured, consistence in their use would be facilitated and the costs of translation would be significantly reduced. The precondition of this important segment of preparatory activities is, among other things, a well thought-out language policy. We should bear in mind that the standard for two of the official languages in BiH is determined outside of BiH, while the third is normatively incomplete and shaped outside of any institution<sup>312</sup>. All of this can cause difficulties that other candidate countries for EU membership did not have to face.

Before beginning the translation of EC legislation, it is necessary do determine the following on the level of Bosnia and Herzegovina:

- the target language/target languages in the translation process,
- the model of translation,
- the competencies and mission of the DEI Translation Services,
- and inter-institutional cooperation plan in the translation process,
- a model for the development of terminology in all official languages of BiH,
- the dynamics of translation,
- a financial plan,
- a plan for information technology support to the entire process.

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<sup>312</sup> "Standard New-štokavski and the Bosnian-Herzegovinian Language Situation", Papers XVII, Institute for Languages in Sarajevo, Sarajevo 2005, p. 6

## 7. Establishment of an Information System as Support to the European Integration Process

In accordance with the strategic orientation towards introducing information technologies in society, the Council of Ministers of BiH has adopted a policy and strategy for the development of an information society in BiH, as well as an Action Plan. One of the specific tasks of this project is the creation of *e-administration*<sup>313</sup> for the purpose of increasing the efficiency of all levels of government through the introduction of information technologies in their work. The information system for the European integration process is only one segment of *e-administration* and the planned comprehensive introduction of information technologies.

In general, as BiH advances through the process of European integration, a need to establish a comprehensive and efficient information system for the purpose of facilitating the informational management of the process has become evident.

A Decision on the Realisation of Coordination in the Process of BiH's Accession to the EU<sup>314</sup> was adopted with the aim of realising comprehensive and quality coordination of all activities in the European integration process. Among other things, this Decision provides for the establishment of an interactive database, i.e. an information system.

The main aim of establishing this system is improving the process of coordination through the exchange, monitoring and archiving of data and documents related to the European integration process.

Generally speaking, the information system is conceived so as to make everyday tasks of European integration coordination automatic. From a technical aspect, the system would facilitate the making of documents and on-line access depending on authorisation degree. Special attention would be given to data security and the functioning of the system when it is accessed by large numbers of users. Apart from that, the system has an inter-operability characteristic, that is, it has the possibility of "on-line integration" with other relevant systems if the process should call for this.

The system is comprised of three components:

- component 1 – information system for managing information inputs of the European integration process
- component 2 – address book of institutions involved in the European integration process;
- component 3 – database of assistance projects financed by the EU (at this stage, projects from the framework of CARDS and bilateral EU projects, and later pre-accession funds).

### *Component 1*

The information Management System<sup>315</sup> for European integration is conceived through the analysis of the existing system created to satisfy the needs of the current phase in the process, i.e. fulfilling the Feasibility Study recommendations. In order to ensure timely notification of all parties involved in the process, every institution, or coordinator for European integrations at the institution, would have access to an interactive

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<sup>313</sup> Eng. *e-governance*.

<sup>314</sup> BiH Official Gazette, No: 44/03.

<sup>315</sup> Information Management System (IMS).

database. The access would be limited in accordance with the competencies of the institution in the given area.

In the designing of this interactive system, special attention would be given to the possibility of its expansion depending on the phase of the process BiH is in. It is planned for the system to have capacities that will be able to adequately respond to the requirements of planning and monitoring the implementation of short-term and mid-term European Partnership priorities, and later the National Programme for the adoption of *acquis*.

### *Component 2*

Based on a survey of the capacities of BiH institutions aimed at identifying contact points and the evaluation of capacities of state and entity ministries involved in the European integration process, an address book of institution involved in European integration has been assembled. The address book will be used, among other things, for planning activities related to employee training, that will ultimately result in an increased institutional capacity to face the challenges of integration and adequately respond to the demands of this process.

### *Component 3*

The third component of the system pertains to setting up a database for assistance projects financed by the EU. The aim is to create a system register of assistance projects in the process of European integration. At the moment, this component includes projects realised as part of CARDS and the plan is for it to include bilateral EU assistance programmes. Apart from that, the system also provides for the possibility of expansion and linking with other assistance registers in other institutions, which is particularly important in view of the planned decentralisation of the assistance coordination system and the alter use of EU pre-accession funds.

## 8. Implementation of the Strategy

The implementation of the Strategy requires reforms that will include all segments of life, often with severe consequences which must be equally allocated. The declarative political consensus has proven to be inadequate even in countries with a less complex political structure. It is, therefore, necessary to improve the mechanisms of political coordination<sup>316</sup> and political responsibility of all those in charge of performing obligations pertaining to the European integration process.

In order for the process of Bosnia and Herzegovina's integration into the European Union to be led and completed as fast as possible and with best results, special attention should be given to preparing the institutions and administrative bodies of Bosnia and Herzegovina to perform their tasks as efficiently as possible. The European perspective and the rate of its realisation depend on who seriously this process and the role of BiH government bodies in it is understood. The specific nature of the process of European integration is reflected in the fact that this policy cannot be classified as either foreign or strictly internal policy and it is, therefore, necessary for all institutions of Bosnia and Herzegovina to act in a coordinated way both on the internal and the external plane.

Having in mind the comprehensiveness of the European integration process, legislative and executive government bodies on all levels are in charge of implementing the Strategy in accordance with their legal competencies.

The Parliamentary Assembly of BiH has an important role in the implementation of the Strategy, especially in regard to the necessary reforms of BiH legislation. Constant parliamentary surveillance of executive government activities is of equal importance. The involvement of the Parliamentary Assembly of BiH in the implementation of the Strategy is also supposed to facilitate fulfilling the Parliament's tasks pertaining to the process which will precede BiH's membership in the EU.

The constitutional role of the Presidency of BiH pertaining to foreign policy also enables its active participation in promoting BiH's interests in European Union countries, as part of the implementation and monitoring of the process of accession to the EU.

The key factor for a successful implementation of the Strategy is establishing an efficient inter-institutional cooperation that will involve not only administrative bodies but also civil society and the academic community. The participation of trade unions and the business community in the implementation of the Strategy is expected and encouraged, because the implementation of its measures will have a direct effect on them. This means that when devising their annual plans, all institutions in Bosnia and Herzegovina must bear in mind Bosnia and Herzegovina's ultimate goal – integration in the European Union. This does not only entail *per se* membership, but the fulfilment of membership criteria and reforms that lead to this ultimate goal.

Maximum efforts must be invested in constant education and training, using all available methods (EU technical assistance and programmes, bilateral assistance from member states, learning foreign languages, learning special skills in drafting legislation, training in communication with the public, learning negotiating skills). Through the consistent implementation of all regulations, strategic documents, positions of administrative

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<sup>316</sup> See: chapter on Coordination of European Integration Processes.

bodies, as well as the Agreement (when the time comes), Bosnia and Herzegovina can prove its ability to fulfil the obligations necessary for full membership in the EU and catch up to more advanced countries in the region.

For the purpose of the successful implementation of the Strategy, it is necessary to improve the vertical and horizontal coordination of the European Integrations process. Since advancing in the process entails everyday operative cooperation between the Direction and all competent state ministries and institutions, as well as with entity coordinators, it is necessary to establish units for European integration that will coordinate activities within institutions and towards the entities. Instruments for the harmonisation of the legal system should become part of everyday institutional practice. Coordination also entails concordance with other strategies.

The implementation of the Strategy will require planning and the allocation of necessary financial resources. Concrete activities, deadlines and task stakeholders will be determined by annual action plans, which will, in the later stages of integration, be determined by state programmes for the adoption of the *acquis* which will also reflect the priorities for Bosnia and Herzegovina as set by European Partnerships and the strengths and weaknesses noticed during talks with representatives of European institutions. The Strategy will represent the central element of the executive and legislative government programme of activities on all levels in Bosnia and Herzegovina and will, at the same time, serve as a basis for programming the needs for foreign assistance.

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Law on Courts in FBiH

Law on the Financing of Political Parties

## Annex

### OVERVIEW OF NECESSARY MEASURES

This addendum is a review of all the measures, laid out in the Strategy document, that are necessary for the best possible preparation of Bosnia and Herzegovina for the successful implementation of the processes of European integration. The review of necessary measures follows the order of the chapters in the said document.

#### 2.1. Political circumstances

##### 2.1.2. Democracy and the Rule of Law

- To harmonise the legislation of Bosnia and Herzegovina with all international and European instruments for the protection of human rights.
- To ensure that all political subjects and institutions of Bosnia and Herzegovina carry out and implement the regulations stipulated in the Law of Conflict of Interest.
- To reinforce institutional capacity at all administrative levels for the purposes of the full adoption and implementation of the law.
- To improve the operation and stability of institutions that guarantee the further democratisation of society.
- To guarantee equal political, social and economic rights of the constitutive peoples of Bosnia and Herzegovina residing on all of its territory.
- To continue the already instituted reforms in institutions that guarantee a rule of law and an observance of human and minority rights.
- To enable a continuous advanced education with the aim of increasing the levels of knowledge and expertise of administration personnel.
- To improve all-round regional cooperation, strengthen relations with neighbouring countries, and contribute to the stability of the region.

##### 2.1.3. Legislative Authority

- To establish a thorough and efficient coordination in the adoption of laws, by addressing the activities and the work of Bosnia and Herzegovina's legislative offices, at the same time taking into consideration the interests of those involved in these processes in Bosnia and Herzegovina.
- To establish high-quality and efficient legislative dynamic within the Parliamentary Assembly of Bosnia and Herzegovina, which would enable a gradual adoption of the *acquis communautaire*.
- To set the priorities in the adoption of laws marked "E".
- To intensify the cooperation and coordination between the Bosnia and Herzegovina Parliamentary Assembly and entity parliaments, especially by means of a purposely established inter-parliamentary commission that would interconnect the State Parliament, entity Parliaments and the Brčko Assembly.
- To develop cooperation with legislative bodies in the region, with the Parliaments of EU member states, and with the European Parliament.
- To adopt and implement the principle of constituent status, legal equality and non-discrimination of the different peoples on all of the territory of Bosnia and Herzegovina, with special consideration given to Protocol 12 and to the principles of

the European Convention for the Protection of Human Rights and Fundamental Freedoms Liberties.

- To strengthen expert personnel and ensure an appropriate number of committees in compliance with the needs of European integration processes.
- To re-examine and evaluate the capacities of both Houses of the Parliamentary Assembly of Bosnia and Herzegovina, as well as of the Administrative Service for the Execution of Tasks towards European integration.
- To re-examine and evaluate the capacities of operative bodies within the Parliamentary Assembly of Bosnia and Herzegovina i.e. parliamentary boards and commissions.
- To continue the personnel and advanced training of members of the parliamentary administration.
- To take thorough action toward a full understanding of the potential benefits, as well as the costs of future activities in the process of integration into the European Union.

#### **2.1.4.1. Presidency**

- To adopt and implement the principle of constituent status, legal equality and non-discrimination of the peoples throughout all of Bosnia and Herzegovina, with special consideration given to Protocol 12 and to the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- To ensure the Presidency's democratic role and to resolve the question of the method by which members of the Presidency are elected, in compliance with European standards.
- To organise activities towards improving relations and the cooperation with EU member states, as well as with the European Union as a whole.
- To improve coordination between the entities on issues of common interest.

#### **2.1.4.2. Council of Ministers, government of entities and Government of Brčko District**

- To analyse the effects of harmonising the legal system in Bosnia and Herzegovina with the policies of the European Union.
- To undertake a steady analysis of the harmonisation of the legislations in Bosnia and Herzegovina with the *acquis* legal framework.
- To determine the legal framework (or model) for the introduction and implementation of European sectoral policies within the country's domestic legal system.
- To continuously prepare and execute a consolidated operative plan for the Council of Ministers, through the European Partnership and the Poverty Reduction Strategy.
- Prepare and implement the Action plan of public administration reform.
- To establish contractual relationships with the European Union, as the country's first step to full membership.
- To efficiently implement all responsibilities stipulated in future agreements with European communities and with the European Commission.
- To develop and strengthen relations with the EU Council of Ministers, the European Commission, the governments of EU member states, and with other regional governments.
- To strengthen the vertical and horizontal capacities of ministries and other administrative law-executing bodies
- Create a structure for institutions that is efficient, economic and of high-quality.

- To provide the adequate executive structure, by introducing consultation and coordination mechanisms through existing coordination instruments.
- To further reinforce the institutional capacity and operational potential of state institutions, including the Council of Ministers and the Ministry of Foreign Affairs, primarily by means of the employment of qualified personnel, among other measures, and the provision of necessary financial and geographic resources.
- To improve good neighbourly relations and regional cooperation, especially with respect to the exchange of experiences and information in the fields of legislative harmonisation, the rule of law, jurisdiction and internal affairs, economic adjustment, education and professional development.
- To generate facilities for strategic midterm planning, development and coordination.
- To work continuously on the establishment of institutional structures, which requires the adoption and implementation of the *acquis communautaire*.
- To establish a system of liability for failing to execute the European integration process.
- To reinforce political consensus by incorporating the civil society into the process of European integration.
- To increase the presence of civil society and the active participation of non-governmental organisations in the processes of legislative and other reform.

#### **2.1.5. Elections**

- To implement Parliamentary Assembly decisions about the formulation of amendments to the elections legislation of Bosnia- Herzegovina, with the aim to fully adjusting the Constitution of Bosnia and Herzegovina to the demands and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- To continue to implement the Conflict of Interest Law(s) and the Law on Financing Political Parties.
- To provide a legally clearer and more thorough definition of electoral regulations, with the aim of a maximal provision of active voting rights (passive registration).
- To consistently, normatively and factually implement the decisions brought by the Constitutional Court of Bosnia and Herzegovina regarding the constituent status of the peoples of Bosnia and Herzegovina at all levels.
- To strengthen the sense of responsibility of the elected representatives towards their electoral body and towards all citizens of Bosnia and Herzegovina.
- To continue the practice of holding free, democratic and fair elections.
- To consistently implement the equal representation of both sexes on electoral lists at all levels of government in Bosnia and Herzegovina.

#### **2.1.6. Judiciary**

- To appoint citizens of Bosnia and Herzegovina as judges of the Constitutional Court of the Court of Bosnia and Herzegovina, by the year 2009 (the transition period).
- To appoint citizens of Bosnia and Herzegovina as prosecutors with the Prosecutor's Office of Bosnia and Herzegovina by the end of the 2009.
- To ensure equal standards for appointing, promoting, disciplining and training of all judges and prosecutors throughout Bosnia and Herzegovina
- To try war crime suspects before the Court of Bosnia and Herzegovina, at the War Crimes Department.

- To establish Commercial Courts of Law.
- To improve the functionality of institutions responsible for guaranteeing a rule of law in the country.
- To continue with the already initiated reforms in institutions that guarantee a rule of law and an observance of human and minority rights.
- To ensure that the state of Bosnia and Herzegovina be given full authority over the Court of Bosnia and Herzegovina, The Prosecutor's Office of Bosnia and Herzegovina and the High Judicial and Prosecution Council regarding financing, management and personnel issues.
- To create a clear and coherent strategy with respect to prison reform.

#### **2.1.7. Role of the international community**

- To strengthen political responsibility through the adoption and full implementation of all regulations and measures significant for the integration process.
- To give Bosnia and Herzegovina full control over the process of reform by means of a takeover of functions held by the international community before the reform begins, and by means of a development of the capacities of the institutions of Bosnia and Herzegovina.
- To ensure a reduction of the authorizations of the High Representative, with the ultimate aim of abolishing the Office of the High Representative in Bosnia and Herzegovina.
- To ensure full cooperation with the ICTY.
- To exert influences towards the reduction of the role of the international community, with the aim of making its participation in the affairs of Bosnia and Herzegovina identical to its participation in the affairs of other transitioning states.

#### **2.1.10. Minority and Refugee Rights**

- To adopt and implement The Law on Amendment to the State Ombudsman Law of Bosnia and Herzegovina (the merger of state and entity ombudsman offices).
- To prepare a proposal for the Law on Conscientious Objection at the level of the state.
- To undertake continuous tests to examine the harmonisation of legislation of Bosnia and Herzegovina with the Convention on the Protection of Human Rights and Fundamental Freedoms.
- To implement the initiative of the Ombudsman of Bosnia and Herzegovina to establish a Council of National Minorities.
- To ensure full respect of human and minority rights.
- To fully implement all the Council of Europe post-admission criteria.
- To fully implement all the ratified international conventions.
- To fully implement the property claims of refugees and displaced persons.
- To appoint a representative of Bosnia and Herzegovina before the Court of Human Rights.
- To implement the idea of establishing a Truth and Reconciliation Commission.
- To take action towards the establishment of *think-tank* institutions.
- To enable all citizens of Bosnia and Herzegovina throughout the country full legal use of their economic social rights.
- To develop a dialogue with the NGO sector.

### **2.1.11. Coordination of European Integration Processes**

- To provide a draft declaration/agreement regarding the legislative authority, or a sample of such an agreement, and implement and execute the provisions stipulated in the agreement (or other such document), with regard to, for example, organisation, cooperation mechanisms, coordination etc.
- To provide a draft agreement on the legislative-executive segment.
- To adopt and implement the provisions of the above document (agreement) with respect to, for example, organisation, cooperation mechanisms, coordination etc.
- To enable the participation of all segments of the state and society in the process of European integration.
- To improve and simplify the administrative procedures within the European integration process (with regard to the relationship between the state and the entities, or the conclusion of international agreements).
- To fully develop an IT-based system of coordinating European Union integration processes, both within the country and outside it (primarily in Brussels, but also in EU member states)
- To improve coordination and implementation processes, by means of adopting basic reforms at the central level and ensuring the sustainability of the said reforms.
- To add this mechanism to the already existing state, entity, cantonal/regional and municipal mechanisms.
- To strengthen the Mission of Bosnia and Herzegovina in Brussels by way of diplomats and an increased number of experts in the fields of European integrations, currently employed in the main office, ministries and in other state government institutions.

### **2.3. Ability to accept membership responsibilities**

- To develop an integral concept of coordinating legislation of Bosnia and Herzegovina, based on the principles of functionality, efficiency and flexibility.
- To carry out an evaluation of the conformity of existing regulations at all levels, as well as an evaluation of the implications of financially, economically and socially adopting and harmonising legislation which would serve as the base document for a long-term *acquis* adoption program.
- To undertake continuous monitoring and updating of established legislative priorities, as well as the monitoring and reporting on the implementation of harmonised regulations.
- To establish the mechanisms and instruments for inter-institutional cooperation (both horizontal and vertical), for the coordination and monitoring of processes and a permanent evaluation of their effects.
- To ensure a unified methodological approach in the process of coordinating all the governmental levels involved, both from the point of view of methodological instruments and with regard to the methodology used to evaluate the resulting influences of introducing harmonized regulations.
- To strengthen the role of the Commission for European Integrations in the Parliamentary assembly of Bosnia and Herzegovina, as well as the BiH Ministry of Justice, the Directorate for European Integration and the Legislative Office.
- Support the establishment and ensure efficient functioning of all administrative structures in Bosnia and Herzegovina arisen as a direct or indirect requirement of the *acquis*, as well as ensure a higher level of admissibility of state servants

- working at different governmental levels; consequently, to ensure a reconstruction of appropriate structures at lower governmental levels.
- To ensure a systematic planning and employment of professionally educated legal personnel in the civil service, as well as provide such personnel with advanced professional training by way of seminars, specialisations, graduate study, as well as through purposely prepared brochures, manuals etc.
  - To establish steady cooperation between governmental structures and universities in Bosnia and Herzegovina, with the aim of including the academic community in the integration process, as well including a group of European courses in faculty curricula in Bosnia and Herzegovina.
  - To ensure an application of information technologies in the management and coordinating of the said process.

### **2.3.2.2. The four freedoms**

#### **A) Free movement of goods**

- To implement the regulations and create a system of liability for products, as well compose a Directive on product liability and establish supervision infrastructure on the market.
- To finalise a harmonization programme at the level of the state, that signifies the transposition of laws and regulations and the establishment of infrastructure for the evaluation of coordination.
- To implement the remaining part of the above Programme i.e. to implement the regulations specified in it, in the next three years at the most.
- To establish an efficient infrastructure for the completion of the Programme in the form of Working Groups that include representatives of all interested parties in Bosnia and Herzegovina.
- To ensure that selected EU representatives have an advisory role in the management of the Programme and the functioning of the Working Groups.
- To realise the segments of the programme that have been assigned a higher priority (in particular, to transpose directives of the New, Global approach, as well as directives regarding the trade of food products)
- To set a pattern of the education and grading of personnel in the field of harmonisation assessment.
- To enforce system efficiency and uniformity in the field of standardisation, metrology, accreditation and technical regulations, and ensure efficiency and uniformity of those systems in Bosnia and Herzegovina.
- To establish certification bodies for certification of quality and personnel systems.
- To establish authorities for the evaluation of harmonisation (laboratories, certificatory and control/inspection authorities) for other product groups.
- To provide the institutions and associations dealing with standardisation, metrology, accreditation and harmonisation evaluation, with full membership in relevant international organisations and associations, especially the EA, the OIML, the IAF, the ILAC and others.
- To accede to the MLA treaty and to sign PECA protocols for priority areas (groups of products) with the European Union.
- To sign PECA protocols for other groups of products significant for the economy of Bosnia and Herzegovina.



- To join forces with the Association for Quality in Bosnia and Herzegovina in the encouraging of economic and other agents to introduce and certify quality systems and systems for environmental protection.
- To execute special contracts (agreements) for the ratification of harmonisation evaluation certificates, with the aim of increasing exports on the basis of accepted free trade agreements.

## **B) Free movement of persons**

- To establish an adequate legal and institutional framework, with the aim of improving the freedom of movement of the work force, especially with respect to the country's intentions of becoming an attractive destination for foreign investments.
- To adopt legal regulations which address recognition of foreign degrees, and ensure that recognition of foreign academic qualifications facilitates access to the labour market.
- To reconcile the educational system with the demands of the labour market, as well as unify the operating criteria in the country's institutions of higher education (universities) with the criteria of higher education institutions in the EU, with the ultimate aim of improving the quality of education.
- To regulate the internal labour market in Bosnia and Herzegovina and offer the worker the ability to fend for himself from his work, as well as improve the workers' awareness of their rights and employment opportunities in EU member states.
- To set up a financially sustainable and efficient retirement system, founded on individual financial contributions to the social security system, and establish a legal foundation for introducing retirement schemes at the state level.
- To simplify the administrative procedures for obtaining work permits, by means of the "one stop shop" principle for obtaining work permits, and with the aim of removing the barriers to employing non-national workers with legal residence in Bosnia and Herzegovina.
- To initiate the steps towards an integration with the Schengen consular information system.
- To accelerate the implementation of the University Institutional Development Plan, planned between 2003 and 2010, and regulate the university sector at the level of the entire country.
- A necessary step is also the harmonisation of the social security system with EU standards, as well as an improvement of the coordination between methods of obtaining social security within Bosnia and Herzegovina as such.
- Furthermore, to enhance students' mobility, which goes towards helping them continue with all forms of study, by means of validating foreign academic qualifications, periods of study and successfully taken examinations.

## **C) Free movement of services**

- To reorganise the securities market in compliance with best European practices, and establish adequate system legislations and adequate institutions within this sphere, at the level of the entire state.

- To qualify the Central Bank, at both legislative and personnel levels, to perform the other usual functions of a central bank (such as participation in the money and investment markets through the issuing of bonds, guarantees and other state securities, as well as the supervision of commercial banks and the regulation of financial statistics).
- To set up a business register at the level of the state, and continue the reforms in the registration of businesses, with the aim of simplifying the procedure for establishing and registering companies and foreign investments.
- To stimulate domestic and foreign currency savings and work towards the expansion of the scope of activity and capacity of the Deposit Insurance Agency.
- To instigate the full functioning of the Bosnia and Herzegovina Insurance Agency.
- To enhance performance control mechanisms in commercial banks in the entire country, as well as the mechanisms of bank reports.
- To establish banking procedures in accordance with EU practices, especially the strategy for the evaluation of bank capital adequacy (Basel II)
- To initiate reforms in the area of land policy and land registers, and accelerate the procedure of inclusion of property in a land register, as well as the procedure for accomplishing property rights, with the aim of making them simpler and more efficient.
- To continue with reforms in the accounting and financial audit departments, as well as in the sphere of financial reporting.
- To carry out a thorough reorganisation and reform of the non-financial services department in compliance with the rules of the *acquis*. Due to the great expansion and diversity of these services, it will be necessary to carry out a suitable study, using foreign experiences (wherever possible) and relevant twinning programmes.
- To accelerate the realisation and the application of electronic business and contract operations.
- To determine and define the necessary priorities for electronic business operations, and use programmes of foreign aid and experience wherever possible.
- To establish a central data system for obtaining information on a company's business transactions and its credit worthiness (the system could also include the private business sector).
- To carry out the necessary adjustments to the judicial system to fully accommodate a free flow of services.

#### **D) Free movement of capital**

- To eliminate the bureaucratisation of procedures used to accomplish real-estate proprietary rights.
- To introduce instruments at the national level which would stimulate interest from the *green field* FDI, and create incentives for the participation of foreign capital in development and privatisation programmes in the extractive industry.
- To set up a uniform system of the transfer of capital, both from Bosnia and Herzegovina abroad, and between the residents and non-residents of Bosnia and Herzegovina within the country as such.
- To prepare for the lifting of limitations regarding investment and property acquisition in certain sectors.

- To initiate the public promotion and public information on the issues of money laundering, as well as provide technical aid for this field.

#### **2.3.2.3. Competition**

- To improve the operating capacities of institutions authorised to set up and implement competition policies.
- To establish a cooperation between relevant institutions and regulatory bodies.
- To develop a cooperation with institutions that handle competition issues in other countries, as well as with international institutions.
- To establish a mechanism of consultation (with the EC General Directorate for Competition – DG Competition), with the aim of a higher quality of implementing Bosnia and Herzegovina's competition policies.
- To introduce competition areas into certain sectoral policies.
- To ensure a constant training of personnel employed in the sphere of competition policies, as well as of all other interest groups in this sphere (economic entities, attorneys, judges, chambers of commerce etc.)
- To introduce competition policy as a course in university curricula.

#### **2.3.2.4. Consumer protection**

- To ensure a complete and consistent implementation of laws regulating consumer protection.
- To establish institutions authorised to ensure consumer protection, and predict their capacity.
- To set up and implement a consumer protection policy.
- Ensure consumer rights protection and develop a market surveillance system in accordance with the EU requirements to secure protection of lives and health of consumers.
- To intensify the cooperation between all relevant entities in the area of consumer protection.
- To develop a coordination with consumer protection institutions in other countries, and with international organizations.
- To institute mechanisms that provide alternative solutions to consumer problems.
- To implement and enhance the methods of educating and informing consumers.
- To develop and finance nongovernmental organisations that focus on consumer protection, as well as join the relevant international associations.

#### **2.3.2.5. Corporate governance**

- To work continuously on the harmonisation of regulations that apply to this sector throughout Bosnia and Herzegovina.
- To increase the rights of shareholders, with respect to the management's greater responsibility towards their shareholders in terms of property issues. Furthermore, to increase the rights of shareholders to organise special investigations before judicial and other institutions, as to the business operations of the company, as well as increase the general manager's liability for wrong business moves that could potentially result in bankruptcy or liquidation. Also, to improve the possibility of electronic access to the basic information about the company before every general meeting (whether ordinary or extraordinary), as

well as the possibility of participating in the proceedings of the general meeting electronically i.e. online.

- To increase the level of protection of minority shareholders, with regard to a protection from being outvoted on decisions that would diminish some of their rights.
- To enforce an increased control over conflict of interest in administration and supervisory committees of companies, and strengthen the role of auditing institutions. Furthermore, to modernize the administration and supervisory committee by establishing a collective responsibility of the supervisory committee for the company's financial and non-financial decisions.
- To complete and maintain a system of collecting reports and public notices issued by the press, putting them in a database that will be rendered accessible to the public via a webpage.
- To improve existing and institute new standards of corporate management in a company of shareholders, one that would comply with the standards of the International Organisation of Securities Commissions (IOSCO) and with OECD principles of corporate management.

#### **2.3.2.6. Intellectual property**

- To establish a fully functional Intellectual Property Institute, and work towards the improvement of its capacities.
- To accede to all relevant international conventions and associations in the sphere of the protection of intellectual property.
- To intensify the cooperation between courts of law, market inspection forces, customs and police forces, with the aim of leading a more efficient campaign against forgery and piracy.
- To remain updated about technical advances, and following that, to carry out professional advanced training of the personnel that handles the applications in the field of the protection of copyright and of other rights.
- To launch a campaign to inform all involved and interested parties about the significance of intellectual property as a segment of the domestic market.

#### **2.3.3. Innovations**

##### **2.3.3.1. The Information Society**

- To provide comprehensive legislation which would control the mechanisms for counteracting software piracy (as are the Law on Copyright and the Criminal Code)
- To harmonise the aforementioned regulations with the relevant EU legislations, which would also entail the establishment of new regulations and their consistent implementation.
- To set up an Agency for the Development of the Information Society, and introduce standards for the use of information and communications technology (ICT) in administrative agencies.
- To establish an e-administration.
- To establish a uniform system of state registers- a possible move is the expansion of the CIPS project to affect registers of business entities, tax and land registers etc.

- To establish a state portal that would grant the citizens of Bosnia and Herzegovina easy access to the information about, and services offered, by the administrative agencies.
- To construct a state-based ICT line- the backbone, and ensure equal infrastructural coverage of all of Bosnia and Herzegovina.
- For the purposes of liberalisation, to carry out the reform of the telecommunications sector.
- To encourage the use of information and communications technology in business operations in Bosnia and Herzegovina.
- To encourage the participation of local companies in public procurement processes, and develop forms of permanent cooperation with the domestic ICT industry.
- To stimulate the export of ICT products and encourage the inclusion of the domestic industry in professional associations that promote export.
- To set up a state-run scientific research network that will provide non-commercial access to the Internet for all educational facilities in the country.
- To establish a system of grading the computer literacy of primary school, secondary school and university students, which will best be achieved by introducing the European Computer Driving Licence (ECDL) Programme in academic curricula, and ensuring that IT Studies in schools are taught by highly knowledgeable teachers, whose expertise will be supervised by means of continuous re-certification.
- To provide an accessible version of ICT training for older students, as well distance learning at all universities.
- To encourage the use of open-source (free of charge) software by all government-subsidized users, and rely on the solutions offered by the local ICT industry.
- To encourage the placing of domestic content on the Internet, with the aim of increasing Internet use, and initiate organized information campaigns aimed at promoting the conveniences that the Internet offers.
- Temporarily reduce or abolish customs duties on ICT use for natural and legal persons, aimed at accelerating the development of information society.

### **2.3.3.2. Education, training and youth issues**

- To set the legal framework for primary and secondary education at the level of the state.
- To improve the system of governing and financing academic institutions (by increasing the amount of financial, material and technical support given to schools, as well as initiating modernisation in the fields of technology and communications).
- To provide financial and material support for extracurricular activities in schools, in compliance with European standards.
- To conduct lifelong learning and education programs for adults.
- To enforce cooperation between universities.
- To carry out the licensing of teachers and of all tutorial and educational institutions.

- To establish a framework for learning that will be open, attractive and accessible to all citizens, including illiterate, unqualified students and students with special needs.
- To adopt the European reference lists and principles regarding the definition of compulsory education, teacher qualifications, mobility, to acknowledge extracurricular experience and the quality of vocational education, as well as introduce the ECT (Credit Transfer System) and create a European framework within which academic qualifications will be recognised.
- To increase mobility at all levels of education.

### **2.3.3.3. Research and technological development**

- To set up a legal framework and define the role of the state in the organising and encouraging of research and technological development, as well as in the stimulation and use of innovative developments in similar ways as they are used in the EU.
- Establish and strengthen relevant institutional framework for science, research and technology on the level of Bosnia and Herzegovina.
- To establish to a Unit for the Analysis of Scientific and Technical Proposals of Bosnia and Herzegovina.
- To establish a Joint Research Centre (modelled after the EU example), which would consolidate all the relevant activities in Bosnia and Herzegovina, one that would include a number of research and development institutes that would focus on areas of high priority.
- To create a Unified Research Area, modelled after the *European Research Area-ERA*.
- To join research projects organised by the EU, such as the “FRAMEWORK 6” project (which will receive a total investment of EUR 17.5 billion over a four-year period). The Research and Technical Development Agency will have to ensure its own participation in the first operating phase.
- To unite all research potential in Bosnia and Herzegovina and support the establishment of “virtual” research and development institutes, where all research and development potential would be integrated, especially the potentials of different small- and mid-sized corporations. The INTERNET and BIHARNET networks would serve as communicative bases for data exchange, teamwork between geographically distant researchers, meetings, INTERNET conferences, distance learning etc.
- To compile a minimum list of research and development projects that are strategically significant for EU integration, which would then be financed by funds from the state budget, or with the help of affordable loans.
- To construct a system for the efficient distribution of research findings and technical developments.
- To gather information on relevant scientific research personnel in Bosnia and Herzegovina and on aspiring talents, and involve them in research projects; to provide advanced education through diverse forms of training; to encourage distance learning; to monitor and predict the needs of the labour market and the possibilities offered by the education system.
- To offer political and financial support to young and talented experts and innovators throughout Bosnia and Herzegovina.

#### **2.3.3.4. Telecommunications**

- To apply measures for implementing the universal services prescribed by the Decision on the Telecommunications Sector Policies of Bosnia and Herzegovina.
- To set up simple sector regulations on the basis of the principle of technical neutrality, as well as by means of defining the geographic market for each service and analysing the markets through a framework based on the developmental level achieved by competitive networks.
- To execute a full reform of state-owned companies, with the aims of increasing interest for the development of the sector's technology and services. The process of the said reform will require an adherence to the regulations of corporate management, and will also lead to the establishment of partnership relations between private and state ownership.
- To stimulate the growth of services offered by the sector as such, as well as the benefits of its wide approach and IT expertise.
- To assist the development of the e-society (with respect to education, administration, medicine, trade).

#### **2.3.3.5. A) Cultural issues**

- As one of the necessary steps towards legal compatibility with European legislations, the state would need to implement the conventions and resolutions already conceded by international organisations, especially in the domain of cultural heritage, as are the Cultural Heritage Protection Act (Directive 97/7/EEC) and the Regulation on the Illegal Removal of Cultural Artefacts from (Regulative 3911/92).
- To regulate the domain of culture at the level of the state, with the aim of setting the main guidelines for the development and promotion of cultural growth in Bosnia and Herzegovina.
- To encourage festivals of international scope.
- It is essential to stimulate the development of private enterprises in the domain of cultural activity.

#### **2.3.3.5. B) Audiovisual services**

- It is necessary to harmonise all legislation from the field of audiovisual media with audiovisual *acquis* in accordance with Directive 'Television without Borders'.
- To take over all relevant conventions of the European Council related to the field of culture and audiovisual media. Also, having in mind expansion of the film industry in BiH, ratification of the European Convention on Cinema Production (ETS No: 147 – Strasbourg, 2. 10. 1992) as soon as possible is recommended.
- To enable development of functional commercial broadcasting sector since it is the only way to achieve the highest professional standards and pluralism of the programme broadcast.
- To take continuous and systematic activities in the field of education of journalists and other media professionals.
- To support media self-sustainability, which is the key presumption for independent editorial policy
- To improve court and legislative practice in audiovisual sector through the full implementation of legislation harmonised with European legislation.

#### **2.3.4.1. Economic and Monetary Union**

The policies that will enable the country to join the European Monetary Union should presuppose the following:

- Membership of the European Monetary Union is the last step in the integration of Bosnia and Herzegovina into the EU.
- The planning and implementation of economic policies should comply with European principles.
- Economic ties (especially those regarding foreign trade) with members of the European Monetary Union, as well as with EMU members within the ERM II regime, will greatly influence the speed of the integration process.

Taking the above as basic principles, this integration stage defines the main macroeconomic challenges for decision-makers in Bosnia and Herzegovina.

- The real sector: the growth rate must be greater than that of the EMU, and the unemployment rate should be gradually decreased. Intentions to catch up with the economic growth of the EU would require great investments, which could imply a significant gap between available domestic savings and the level of investment.
- The foreign sector: the country's main task is to limit check account deficits to a sustainable level. All transitioning states experience a considerable foreign deficit in the early phase of approaching the EU, and such deficits need to be controlled as soon as can be. A liberalisation of capital movements can increase the risk of success of the transition reform. A successfully reformed financial sector is one that directs capital movements towards productive investments.
- The fiscal sector: in the area of expenditure, there is pressure to end the transition process and simultaneously establish institutions in charge of European integrations and public infrastructure. In the area of income, a reform should be carried out to reduce the burden on the private sector. At the same time, budgetary limits are the key instrument for controlling check account deficits.
- Monetary policies: the final aim of this reform- the introduction of the Euro- sets clear orienting guidelines for monetary and exchange rate policies. The most important tasks in this process are instituting and maintaining the full independence of the Central Bank and setting as the main objective the maintenance of price stability and the prohibition of the direct financing of governmental deficits.

The fulfilment of the convergence criteria is not a direct precondition for entering the European Union. However, the monetary policies of Bosnia and Herzegovina should be guided on the basis of these criteria, and should show that the country is able to achieve a stable and long-term implementation of previously assigned standards.

The institutions that concentrate on the implementation of economic policies should work efficiently and should comply with EU standards. The key criterion for the independence of the Central Bank has already been answered. The necessary step now is to supplement the legislation regarding the functions of the Central Bank, as well as establish a full cooperation between all institutions existing in the field of public financing.



#### **2.3.4.2. Taxes**

The reform of the fiscal system in the direction of European integrations is a long-term process which will be carried out in two phases:

- The first step, before being promoted to candidacy, is the harmonisation of the legislations of Bosnia and Herzegovina with the minimal set of regulations stipulated in the *acquis* of the European Community.
- The second step is the promotion into candidacy and the subsequent full association to the Union, which implies defined deadlines for the full inclusion of the European Community *acquis* into the legislative system of Bosnia and Herzegovina.

It is thus necessary to plan, organise and launch an information campaign for the public and for legislative bodies on all levels, holding taxation powers.<sup>317</sup>

#### **2.3.4.3. Statistics**

- To reconcile the Law on Statistics with the Law on the Media and ant the Law on Protection of Personal Data.
- To develop and implement a legislation that regulates the official statistics of Bosnia and Herzegovina.
- To develop an official statistics system that complies with the European Union and with international standards and recommendations, as well as with domestic demands.
- To develop a system of disseminating statistic indicators.
- To ensure a continuous cooperation with Eurostat.
- To achieve international cooperation, and work at meeting international commitments.
- Prepare and conduct population census.

#### **2.3.5. Sector policies**

- To define the priorities of industrial development.
- To develop a strategy of industrial development.
- To coordinate the development of industrial policies with the Lisbon strategy of the European Union and with the second Copenhagen criterion.
- To stimulate public and private corporations to introduce EMAS – the scheme of environmental inspection and management, the main goal of which is the enhancement of the environment and the adherence to legal regulations regarding environmental issues.
- To define and begin an immediate implementation of a temporary measure that addresses the urgent development of human resources.

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<sup>317</sup> Information campaign is aimed at relaxing, rationalising and accelerating the political decision-making process related to reform regulations. Key elements of the campaign should be produced in multilingually (BiH languages and English).

- To establish a Competition Council of Bosnia and Herzegovina and actively participate in a world network which addresses issues of competitiveness.
- To establish or strengthen institutions, and develop the human resources that participate in the creation of effective industrial policies and in their application in periodic amendments (the ministries that provide the appropriate funding, the Privatisation Agency, the Competition Council, The Development Agency, the FIPA, the Agency for SME's, chambers of commerce, business associations, regional development agencies, business aid centres (including the Euro Info Centre)).
- To enhance the system of educating entrepreneurs, and provide support to the development of private tertiary and secondary education systems, as well as to develop a training program, which would imply a system for the development of permanent training.
- To establish structural funds and *venture* funds to support the development of the industry.
- To adjust the development of industrial policies with the development of other related policies (such as the free flow of goods, research and technological development –RTD, small and medium enterprises–SME, education and training) and establish adequate institutions at the level of Bosnia and Herzegovina (in the fields of agriculture, science and technology, and education).

#### **2.3.5.2. Agriculture**

- To harmonise domestic and EU legislation regarding agriculture, and institute all the necessary laws and standards on agriculture and food products, especially in the field of veterinary medicine and crop protection.
- To prepare policies and programs catering to agricultural development in Bosnia and Herzegovina, and set up an agricultural development strategy.
- To introduce necessary regulations about the protection of land undergoing degradation or destruction, which presents both an economic and an ecological problem for Bosnia and Herzegovina.
- To define regulations concerning proprietary interrelations and the lease of land.
- To regulate the crediting of agriculture, the subsidies offered for particular products, as well as the marketing of agriculture products, including the regulation of purchase and price issues. Furthermore, to prepare institutional agricultural capacities at the level of the entire state for the successful negotiations with the European Union.
- To prepare the institutional agricultural capacities existing at the level of Bosnia and Herzegovina for planning and efficient use of EU aid funds that cater to candidate states, as well as to later EU member states.
- To establish a system of quality control for all high-priority products, keeping in mind at the same time both the horizontal and the vertical legislations specified by the Food Union, as well as food standards (such as advertising regulations and internal market regulations) and UN recommendations.
- To bring the protection of local products closer to EU product protection.
- To establish a Payment Agency (PA) at the level of Bosnia and Herzegovina, which will be operative during the period of the use of CAP funds.
- To make possible a simpler and more stimulating way of surveying and trading with agricultural land.
- To implement a land reform aimed at rendering agricultural estates sustainable.

- To merge agricultural estates and cooperatives, render agricultural estates capable of competing in the free market, and encourage the growth and enhancement (consolidation) of agricultural estates.
- To introduce regional production stimulation programs into areas with less satisfactory agriculturally ecological and economic conditions.
- To establish the Bosnia and Herzegovina professional advisory service for the sphere of agriculture.
- To render the land capable of higher production outputs by means of better cultivation, the use of mineral and organic fertilizers, and more advanced crop protection from diseases and pests.
- To improve agricultural education at the university level.

### **2.3.5.3. Forestry**

- To adopt a state-based legislation founded on scientific and professional postulates. The composition of the said legislation should also include provisions arising from European Union regulations on forestry.
- To enforce a long-term development program for the forestry sector, which would define the strategies and policies of forest resources management, that would necessarily comply with the initiatives of the MCPFE.
- To institute adequate bodies at the level of the state which would address forestry issues i.e. the management of forest resources.
- To carry out an efficient and rational reorganisation of forestry, with the help of clearly defined and differentiated responsibilities regarding ownership, administration, management and monitoring.
- To permanently implement procedures of taking national forestry inventories, along with the application of contemporary scientific exploits (GIS), in providing the necessary base for decision making and creating a database essential for the planning of forest resources management.
- To improve the systems of forest resources administration and management, and establish institutionally sustainable organisations in the field of forestry at all governmental levels.
- To enforce the functions of monitoring and inspection institutions.
- To carry out an efficient implementation of privatisation, restitution and denationalisation processes. Also important are the nurturing of a more significant role of the privately owned forested land, the stimulation of the spirit of entrepreneurship and inclusion of good privately-held capital into non-strategic activities in the field of forestry (such as felling, removal, transport, the provision of nursery plants), which would significantly decrease business costs, improve business economy and increase the share of forestry in the gross domestic product.
- To offer an efficient, transparent and sustainable model of financing activities in forestry, which would enable the revitalisation of damaged forest ecosystems and improve forestation, forest nursing and protection.
- To improve the competitiveness of companies working in the area of forestry through the implementation of certificate programmes for forest resource management.
- To encourage a multifunctional approach to the use of forest resources, including resources such as hunting, special forest products and forest tourism.
- To define financing models for simple and expanded biological reproduction.

- To create and put into practice long-term programs of de-mining, forestation, forest nursing, protection and reconstruction of low-productive forests.
- To isolate and protect forest ecosystems of strong bio diversity.
- To organise a specialised and continuous education of experts in forestry, as well as increase the awareness of the public about the significance of forests.

#### **2.3.5.4. Fishery**

- To adopt adequate legislations at the level of the state that will ensure that EU standards are fully adhered to, and include among them the following legislations: laws regulating fresh water and sea fishery, laws for the protection of hydro resources, and incentive laws. Furthermore, to ensure the implementation of the entire legislation group.
- To introduce a medical monitoring of fish and shell diseases, that complies with the OIE standards, as well as introduce a singular legislation and monitoring at the state level, both aimed at preventing, counteracting and eradicating contagious and parasitic fish diseases.
- To ensure that specialized expert personnel are employed in production facilities, as well as in specialized laboratories for monitoring fish health.
- To ensure that local laboratories achieve the necessary prerequisites to carry out medical examinations in compliance with international standards, which would allow for their results to be internationally recognised.
- To form gene pools for autochthonous species.
- To introduce production and export incentives, incentives for employment and the expansion of facilities, as well as incentives for the rearing of autochthonous species of fish and their protection.
- To protect the manufacturing pool from illness or to purchase roe with certificates of quality.
- To prevent an uncontrolled circulation (trade) of infected mothers, roe or young fish.
- To introduce import franchises on fish food, and apply new technological advances in fish breeding and in the use of prophylactic measures on fish between the phases of roe and fish ready for consumption
- To carry out an indispensable modernisation of the production process by introducing equipment which can be used to double the earlier production outputs per area unit.
- To provide the work force with training towards a higher qualification.

#### **2.3.5.5. Energy**

- To develop a strategy for the energy sector in Bosnia and Herzegovina, and propose measures for the realisation of the strategy, as well as measures for the supervision of its implementation, and adequate legislations and regulations.
- To develop a plan of action for the reform of the gas sector in compliance with the ECSEE treaties and the guidelines that they follow.
- To create a development strategy for the oil industry, bearing in mind the interests and potentials of the domestic market.
- To adopt guidelines from the energy industry and apply them.
- To create an adequate authority at the level of the country, which would conduct the drafting of an energy strategy for Bosnia and Herzegovina.

- To establish, strengthen or reorganise an appropriate institution at the level of the entire country, which would be responsible for the preparation and implementation of gas sector reforms, and to provide the adequate mechanisms and personnel for this purpose.
- To establish and enforce a suitable institution at the level of the entire state, which will be authorised for the preparation and implementation of reforms in the electrical power sector, and to provide the adequate mechanisms and personnel for this purpose;
- An essential move is to make investments into oil refineries, in light of Bosnia and Herzegovina's existing potential to refine oil for other countries.
- To invest in the revitalisation of existing facilities for the storage of oil derivatives and the construction of new facilities;
- To become part of the Trans-European energy network-TEN (Trans-European Networks);
- To become gradually integrated into EU energy market via the Electric Power Market of Southeast Europe;
- To accelerate the reform process in the electric power sector, while complying with the requirements of the ECSEE treaty, as well as with already adopted legislations and directives mentioned in the above documents;
- To establish facilities for statistical analysis, informing processes and policy implementation within the gas, electricity, coal and oil sectors, which is a requirement for all EU member states (Dir. 90/377, Dir. 94/22, Reg. 736/96 and 2386/96);
- To urgently initiate the restructuring of the coal sector, with the objective of rendering it capable of efficient functioning by means of the reduction of operating costs, and to enable the electric power sector of Bosnia and Herzegovina to hold a competitive position among similar sectors in the region.

#### **2.3.5.6. Transport**

- To institute laws and secondary legislations which should comply with European standards wherever possible, and therewith find solutions for the strengthening of institutions in the field of transport and transport infrastructure.
- To adequately prepare the state for the use of the EU pre-association funds allotted to the transport sector, that is, for the use of the ISPA (which demands the essential establishment of state institutions and structures that ensure an undisturbed and efficient realisation of the project, as well as efficient time management and the creation of strategic documents);
- To increase all activity aimed at improving traffic safety in all forms of transport and transport infrastructure.
- To increase the road levies that are charged as part of retail prices of fuel (by means of either a reallocation of acquired funds or an increase in retail prices), and ensure the provision of larger funding for maintaining and developing railway infrastructure.
- To increase the appeals made to international financial institutions, as well as other institutions and organisations, so as to ensure a higher level of their assistance in high-priority projects.
- To take steps towards the restructuring of railways, with the aim of making them successfully competitive with other means of transportation.

- To improve the control of navigation safety and the protection of marine environments.
- Initiating activities to clean up the Sava riverbed and reconstruct and develop its ports through regional cooperation.
- To develop the necessary studies, as well as investments and technical documents, with the aim of setting up the necessary conditions for negotiating the manner of financing of high-priority infrastructural projects that will modernise and further reconstruct Bosnia and Herzegovina's road network, (special emphasis should be given to projects that address the Corridor 5C.)
- To prepare to join the EU Road Transport Market.
- To develop an integrated and balanced multi-mode transport system, with the aim of integrating all modes of transport into a common European transport network.
- To provide for simpler border crossing procedures, and create conditions for an easier obtainment of visas, especially visas required due to business commitments.

#### **2.3.5.7. Small and medium enterprises**

- To adopt regulations that would enable us to statistically encompass the entire sector of small- and mid-sized companies at the level of the state.
- To adopt and implement regulations regarding collateral, leasing, bankruptcy and forced collection.
- To adopt a Development strategy for small and medium enterprises, that would serve as a universal definition for the said enterprises on the level of BiH.
- To lay out a plan of action for the implementation of SME (small and medium enterprises) development policies, which would comply with the priorities of both the Midterm Development Strategy (the PRSP (Poverty Reduction Strategy Papers)) and the European Charter on Small Enterprises.
- To establish and render functional the Development and Entrepreneurship Council.
- Institute dialogue between the government, entrepreneurs and unions.

#### **2.3.6. Economic and social cohesion**

##### **2.3.6.1. Employment and social cohesion**

- To develop plans of action for the improvement of corporate management.
- To establish an Economic and Social Council at the level of Bosnia and Herzegovina as such.
- To institutionalise tripartite consultation between the government, trade unions and employers at the level of the entire country.

##### **2.3.6.2. Regional politics and cohesion**

- To set up projects relating to regional economic development within the program that implements the priorities stipulated in the *European partnership with Bosnia and Herzegovina*, providing the projects are acceptable from point of view of the European Union.

### **2.3.7. The Environment**

- To institute suitable capacities at the level of the state (especially those aimed at the implementation of international environmental agreements) and pass the necessary legislations, also at the level of the state.
- To accede to the Kyoto Protocol, which would result in the possibility of foreign investment in the increase of energy efficiency, or rather in the use of renewable energy. We should also postpone the accession to the Annex and Conventions on Climate Change, as they currently do not comply with the low developmental level of the energy sector.
- To increase the capacities given to environmental issues in entity ministries, especially increasing the scope of the inspection services.
- To carry out a general implementation of environmental standards and criteria by means of the „self imposed quasi membership” strategy, thereby creating an optimal foundation for the development of institutional relations, not only in the environmental sector.
- To carry out all the necessary prior legal and economic analyses that will enable the accession to the conventions and protocols that Bosnia and Herzegovina is still not a part of, and regulate their implementation between the state and the entities and cantons.
- To take steps toward the creation of a ecologically responsible market in Bosnia and Herzegovina (by means of making those who participate in the running of the country’s economy aware of the need to operate ecologically, as well as by introducing state programs and ecological and economic incentives).
- To bear in mind, in the realisation of the above steps, that the said activities cannot be made effective when performed exclusively within the environmental sector, but only in cooperation with all other sectors.

### **2.3.8. Justice and Home Affairs**

#### **2.3.8.1. Justice**

- To continue developing an independent, reliable and functional legal system, and provide it with secure international legal assistance and cooperation.
- To implement previously adopted conventions
- As a priority of cooperation, to locate and bring before justice all persons indicted for war crimes, and to establish a cooperation with the ICTY, which would include the transfer of certain cases to special war crimes departments with the Court and Prosecutor’s Office of Bosnia and Herzegovina.
- To continue with the necessary reforms in courts and prosecutor’s offices regarding financial consolidation, the handling of particular cases, the development of IT coverage, judicial administration, the techniques for the handling of particular cases and the reinforcement of the Disciplinary Prosecutor’s Office within the High Judicial and Prosecution Council.
- To improve the unit for international and inter-entity legal assistance and cooperation within the BiH Ministry of Justice.
- To offer adequate assistance to centres for the training of judges and prosecutors, and implement the reform of university education in the field of law.
- To achieve a cooperation between judicial institutions with the aim of acceding to

the European Judicial Network.

### **2.3.8.2. Home affairs**

- To establish and reinforce the status of the united police force structure, its unified legislative role and joint financing, its absolutely non-political nature, and uniform organisation.
- To establish and implement a system of the exchange of confidential data and a system of supporting institutional and legal bodies.
- To strengthen administrative capacities in the areas of border control and the security of personal documents.
- To enforce cooperation in the jurisdiction and internal affairs sectors in southeast Europe by means of the establishment of a system of mutual legal aid with the country's legal partners and with the EU.

#### **2.3.8.2.1. Border control, asylum, migration and visas**

##### **A) Border control**

- To strengthen the system that regulates the full control and supervision over borders and airports in Bosnia and Herzegovina, in compliance with EU standards.
- To reinforce the State Border Service, with special emphasis on developing border infrastructure, with the aim of improving the working conditions of state officers and officers of the State Border Service, as well as the conditions for the flow of passengers.
- To adopt by-laws that would enable the implementation of the State Border Service Act, the Law on the Supervision and Control of State Border Crossing and the Law on Police Officials.
- To implement the Strategy of Integrated Border Management in Bosnia and Herzegovina, as well as the Plan of Action for the Implementation of the IUG Strategy, with the aim of coordinating activity and decreasing the problems occurring with the entering of persons and goods at the border, both of which are conditions stipulated by the European Commission.
- To establish cooperation mechanisms between the institutions in Bosnia and Herzegovina and institutions in other countries responsible for border control, as well as between intelligence services, with the purpose of gathering relevant information for ensuring maximum cooperation and a coordinated approach to the control and supervision of borders.
- To establish and ensure a fully functional interconnection of IT systems operative in units of the State Border Service, the Ministry of Human Rights and Refugee Issues, and the Indirect Taxation Administration.
- To modernize border crossings in compliance with EU standards, and fill all the remaining requirements for personnel in the State Border Service.

##### **B) Asylum**

- To improve the legal basis for the implementation of obligations regarding asylum and the movement and residence of foreign citizens, and increase its harmonisation with international conventions.



- To strengthen the state system of regulating asylum and migration in Bosnia and Herzegovina, in compliance with EU standards.
- To improve institutional capacities that address asylum issues.

### **C) Migration**

- To develop procedures for a system of prevention of illegal migration.
- To execute and implement bilateral and regional agreements regarding the struggle against illegal migration.
- To continue to conclude readmission agreements with EU member states, as well as with other Schengen state signatories.
- To build a centre for illegal immigrants.
- To intensify activities towards the participation of Bosnia and Herzegovina in the implementation of regional agreements.

### **D) Visas**

- To adjust the legal foundation for the issuing of visas so that it complies with EU requirements.
- To modernize the visa information system in Bosnia and Herzegovina and develop plans for its integration with the EU information system.
- To include institutions authorised to lead the campaign against illegal immigration in the implementation of policies, so as to ensure the full consolidation of information regarding the movement of persons.
- To enhance the institutional facilities and capacities of the State Border Service in compliance with EU standards.
- Initiate bilateral negotiations with EU member states on the liberalisation and lifting of their visa regime for BiH.

#### **2.3.8.2.2. Prevention and combat against crime, illegal trade, drug trafficking and money laundering**

- To improve the legal foundations for the cooperation of the police force with the police forces of neighbouring countries and with relevant international institutions, as well as for police force cooperation on issues regarding border(s) crossing and data exchange.
- To implement the police reform in Bosnia and Herzegovina in accordance with EU principles.
- To strengthen the capacities of the police force enlisted in the campaign against international terrorism, organised crime and the illegal trade of narcotics and precursors.
- Establish a functioning police structure in Bosnia and Herzegovina in line with already set and internationally verified functioning structure of courts and prosecutor's offices, with full respect for European and international practice.

### **Organised crime**

- To adopt a legislative framework and establish an institutional basis with respect to the transfer and protection of data shared by the institutions included in the campaign against organised crime.
- To pass and implement a state strategy in the struggle against corruption.
- To develop mechanisms of cooperation between different executive bodies (authorities, with the aim of improving efficiency in the struggle against crime.
- To conduct specialised training programmes in the field of witness protection (such as the development of specialised instruments for witness protection of).

### **Drugs**

- To establish an administrative system for prevention of drug abuse of drugs in all areas and target groups.
- To establish appropriate agencies responsible for prevention of drug abuse.
- To develop legal foundations for the prevention of drug abuse and abuse of psychotropic substances, that comply with international standards.
- To determine the main principles of primary prevention activities through the development of a universal and effective strategy, as well as programs for the education of different social groups within Bosnia and Herzegovina.
- To develop plans of action for the counteracting of the production and trade of illegal substances, both at the level of Bosnia and Herzegovina and in cooperation with neighbouring states.
- To set up laboratories in Bosnia and Herzegovina, which will have the task of professionally examining the drugs in circulation on the territory of Bosnia and Herzegovina.
- To improve control over the legal flow of narcotics, as well as improve the prevention and struggle against the smuggling of illicit drugs, all in compliance with the state prevention programme.

### **Trafficking in persons**

- To adopt a legislation on combating trafficking in persons.
- To prepare a regulatory framework which will assist the struggle against trafficking in persons.
- To harmonise state legislation and ratify international treaties (such as agreements and conventions) relating to crimes and infractions.
- To undertake additional strengthening of the cooperation between institutions at all levels of administration and in the nongovernmental sector.
- To establish a protection system for victims of trafficking in persons through a cooperation at the regional level.
- To set up a plan of action, both at the level of Bosnia and Herzegovina and in cooperation with neighbouring states, for combating trafficking in persons.
- To implement new activities regarding the trade of “white slavery” at the level of the entire state, the coordination of which should be handled by the Security Ministry (the SIPA).
- To develop aid programmes for victims of trafficking in persons, as well as training programmes for the appropriate authorities, and programmes for data exchange and the increase of public awareness.

### **Illicit trade (smuggling)**

- To implement a previously established legal framework for indirect taxation, apply it practically by means of a fully functional Office for Indirect Taxation that operates at the level of the state.
- To improve mechanisms of cooperation between institutions that combat similar groups of criminal actions.
- To train relevant personnel, with the aim of enhancing their professional ability to recognise and prevent various forms of smuggling.
- To improve control instruments and techniques.

### **Terrorism**

- To strengthen legal foundations by means of executing relevant conventions and harmonising all activities with the relevant legislation of Bosnia and Herzegovina.
- To establish a functional administrative system for counteracting “the modern security challenge” through the continuous education and professional development of civil servants in the field of implementing appropriate legislations in compliance with European Union criteria.

### **Money Laundering**

- To establish a cooperation framework with the aim of counteracting the use of financial systems in the carrying out of transactions with funds obtained from criminal activity.
- To improve coordination between authorized institutions and set adequate standards for the prevention of money laundering, that would comply with the standards already adopted by international institutions working in this field.
- To include Bosnia and Herzegovina on the list of participants in the Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL).

## **2.3.9. Foreign policy**

### **2.3.9.1. Trade and international relations**

- To determine priorities within, and approach the harmonisation of state legislation with the *acquis* of the European Community regarding trade, taking into account at the same time the quality of domestic legal regulations and priority areas within the future Stabilisation and Association Agreement.
- To lay down a comprehensive commercial policy, one founded on economic analyses and valid statistical data.
- To improve the socio-institutional factors of competition (research and technical development, innovations, education, monetary stability, social consensus, among others), as well as improve competitiveness within the business sector.
- To provide appropriate institutional solutions essential for the support of Bosnia and Herzegovina exports by means of improving the work of existing institutions and the establishing of new institutions.
- To ensure the transparency of state institutions, as well as ensure more direct ties between these institutions and the Bosnia and Herzegovina business sector.
- To achieve better control of imported goods with the aim of a further prevention of illegal activity at the state border, as well as better control of the quality and standard of imports and the control of protective instruments etc.

- To prepare to begin the implementation of a unified methodology of *the effects of the introduction of regulations*, one that will provide an evaluation of the influence of an implemented regulation on the state of affairs in the area it regulates. This is very significant for the negotiation of the SSP, with respect to potential demands for derogations in the cases where such derogations are realistically and argumentatively required.

#### **2.3.9.2. Customs**

- To implement the Transit Procedures Convention and simplify the procedures of visible trade. Furthermore, to develop an efficient customs service that will function according to the standard administrative procedures already implemented in the EU.
- To construct a plan of action for adopting and implementing a set of customs legislations that are compatible with the European Community Customs Code.
- To accept and put into practice the Combined Customs Nomenclature, as well as plan and develop a reliable system of guarantee, while cooperating at the same time with the banking-financial sector in the sphere of import-export guarantees. To maintain a cooperation with institutions responsible for the establishment of a personal data protection system.
- To implement the priorities in the *European Partnership with Bosnia and Herzegovina* Program which refer to the reform of customs policies.
- To complete the customs administration reform and the reconstruction of the customs system. Furthermore, to complete and render fully functional the information system used in customs data processing.

#### **2.3.9.3. The Common Foreign and Security Policy (CFSP)**

- To accede to all relevant international conventions (those referring to, for example, terrorism, preventing further armament etc.)
- To increase international cooperation and implement relevant international conventions on terrorism, as well as intensify the cooperation and the exchange of information with other states.
- To reinforce administrative capacity- to take the necessary legal and administrative measures and carry out the necessary adjustments.
- To set up the necessary mechanisms within the Ministry of Foreign Affairs, which would be able to cooperate efficiently with EU structures responsible for the Common Foreign and Security Policy.
- To adjust administrative principles regarding the implementation of sanctions and restrictive measures to EU standards.
- To strengthen the legal implementation agencies responsible for internal control, which is necessary for the full application of international regimes on the prevention of the spread of arms, as well as for the application of relevant EU standards, including standards that refer to the control of trade with small-calibre and light weaponry, as well as with goods with two uses.
- To develop the ability to comply with the requirements resulting from the Common Foreign and Security Policy, complying with the progress and demands of the EU integration process.
- To actively support the Common Foreign and Security Policy in the spirit of loyalty and mutual solidarity.

- To set up hypotheses and ensure a willingness to support, participate and contribute to civil and military operations that constitute crisis management within the European Security and Defence Policy (ESDP), which would also require the provision of necessary funds.
- Within democratic institutions, to assume the obligation and authorisation to provide internal stability, a lasting peace and security, thereby contributing to the termination of the EUFOR mission in Bosnia and Herzegovina.
- To assume personal responsibility, conduct reforms efficiently and ensure a democratic supervision of the operation of both the police force sector and the security and intelligence sectors, thereby contributing to the termination of the EUPM mission in Bosnia and Herzegovina.

### **2.3.10. Financial Issues**

#### **2.3.10.1. Budget Reform**

The strategic objective of this reform is the modernisation of budget legislations and practices. The direction of the reform will be determined by the principle of the sustainability of public financing at all administrative levels. The intended level of modernisation is *the satisfying of criteria for membership of the European Union*. The result of the reform will be the attainment of international standards and codices already demonstrated in the practices of the European Union, the World Bank, and the International Monetary Fund.

The assumption is that this objective will be achieved with a favourable rhythm of reform in the fields that are closely related to issues of the budget and that with it create a uniform economic policy, which includes real sector policies, taxes and fiscal policies, monetary policies as well as financial control. Reforms to be implemented in areas that are functionally related to the budget, and with it represent elements of transition, are: the public administration reform, the armed and police forces reform, as well as the introduction of statistic analyses at the level of the state, public supply (public procurement), privatisation and an anticorruption program.

- Legislative measures: The responsibilities of all parties involved should be clearly defined by means of regulations specified by constitutions and by-laws, and by other legal provisions for the budget and the execution of the budget at all levels of government. A satisfactory legislation ensures a productive relationship between the legislative and executive powers, as well as a transparency in all phases of budget execution, and public participation.
- Budget practices: The imperative of the budgetary practice reform is a consolidated system of government accounts at all governmental levels and in all of Bosnia and Herzegovina. The objective of this reform is to make midterm planning of public expenditures the standard manner of operation. A treasury-based operating system should be put into practice at all of the budget-competent levels of government.
- Measures regarding budgetary procedure: The reform will establish a system in which the different sequences of budgetary procedures are precisely defined and clearly comprehensible. A timetable of activities, on the basis of the one-year budget principle, will necessarily have to enable the setting of satisfactory plans, as well as a budget transparency and public discussion, an effective execution of the budget, and a timely and impartial financial control.

### **2.3.10.2. Financial Control**

- In accordance with priorities stated in the European Partnership with Bosnia and Herzegovina, it is necessary to continue legislation reforms in the area of financial control and audit.
- To initiate all essential changes to criminal, administrative and procedural legislation.
- To compose and adopt written, internal rules and procedures of conduct, adapted to the operative methods of the treasury, to be used in the country's institutions.
- To determine common directives, which would be considered as the standard for state institutions and financial auditing organisations. The directives would also serve as the basis on which to prepare and publish standard manuals for control and audit.

### **4. EU Assistance and Financial Instruments**

For a more efficient use of financial instruments that the EU creates for pre-accession countries aimed at facilitating their membership, BiH needs to undertake the following measures:

- Provide links between EU assistance financial resources, the state budget and other sources (e.g. international financial institutions, the private sector, other donors) to facilitate the realisation of priorities in the European integration process.
- Establish and develop capacities in BiH for managing EU assistance programmes within DIS and later EDIS. (It would be good to introduce DIS by 2007, before the implementation of the new EU financial instrument – IPA).
- Establish and make operative the National Fund (NF) for the transfer of financial resources between the European Commission and BiH, and register EU funds within the state budget.
- Establish and make operative the Central Financing and Contracting Unit – CFCU. CFCU is one of the units for the implementation of programmes with a unique function to conduct public tender and contracting procedures, i.e. to ensure that the received EU funds/assistance are being spent according to the rules of public procurement for EU external assistance and that contracts are signed with the selected bidders for services or equipment.
- Establish specific implementation units within special programmes and build up their capacities.
- Establish and develop specific capacities in accordance with the requirements for the use of individual assistance funds, including the creation of their programme frameworks (special state and multi-annual strategies).
- Develop capacities and methodologies for the preparation and implementation of regional programmes.
- Realise measures from the European Partnership programme.

### **5. Knowledge on the EU**

### **5.1. Public information program on BiH European integration process**

The main goals will be realised through the following activities:

- Regularly informing the public of standpoints of BiH institutions regarding European integration;
- Improve relations with the media and ensure their widespread participation in informative activities;
- Develop cooperation with non-governmental organisations that deal with European integrations;
- Develop cooperation with the business sector, trade union associations, chambers of commerce and educational institutions for the purpose of promoting European integrations to specific target groups.
- Establish and develop public relations services / public information offices at BiH institutions that participate directly or indirectly in European integration.
- Develop cooperation and improve coordination between the public information offices in state intuitions.

### **5.2. Promotion of BiH Abroad**

The main goals of the promotion of Bosnia and Herzegovina in the EU are:

- Presentation of results achieved on the road to European integration,
- Alteration of the current image of BiH,
- Information on the culture, economic potential, rich historical heritage of BiH.

### **6. Translation of EC Legislation**

Before beginning the translation of EC legislation, it is necessary do determine the following on the level of Bosnia and Herzegovina:

- the target language/target languages in the translation process,
- the model of translation,
- the competencies and mission of the DEI Translation Services,
- and inter-institutional cooperation plan in the translation process,
- a model for the development of terminology in all official languages of BiH,
- the dynamics of translation,
- a financial plan,
- a plan for information technology support to the entire process.