

BOSNIA AND HERZEGOVINA AND THE EUROPEAN UNION – STILL FAR AWAY FROM INTEGRATION

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ABSTRACT

The aim of this paper is to get acquainted with the process of integration of Bosnia and Herzegovina into the European Union. On May 26, 1999, the Commission presented a proposal to initiate the so-called Stabilization and Association Process. This was approved at the meeting of the Council of the European Union in Luxembourg on June 21, 1999. The Stabilization and Association Process was formalized at the Zagreb Summit in 2000, at which the Union reaffirmed its desire to contribute to the consolidation of democracy and to give decisive support to the process of reconciliation and

cooperation between the countries of the Western Balkans. The term Western Balkans is political and is used to distinguish this group of countries from previous ones that have already established relations with the European Union. Methods of analysis, synthesis, induction, deduction, abstraction, description, compilation and content analysis were used in the research. The research shows that Bosnia and Herzegovina still does not sufficiently meet the criteria relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, set by the Copenhagen European Council in 1993.

Bosnia and Herzegovina must align its constitutional framework with European standards and ensure the functionality of its institutions in order to be able to take on the Union's obligations. In this regard, it is necessary to reform the institutions so that they can effectively participate in decision-making at EU level and implement and enforce the acquis.

Keywords: Stabilization and Association Process, Western Balkans, European Union, Copenhagen Criteria, Madrid Criteria, Coordination Mechanism, European Commission Opinion.

INTRODUCTION

The political ambitions of the European Union increased after the fall of the Berlin Wall, which meant the admission of a larger number of countries to the European Union, which were previously communist countries. The change in the criteria for admitting new member states to the EU came after the collapse of socialism in Eastern Europe. The changes related to

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the Copenhagen and Madrid criteria (Šijački, 2011). The admission system was formalized by the adoption of the Copenhagen criteria in 1993 and the Madrid criteria in 1995 (Todić, Grbić, & Antevski, 2014).

In addition to the criteria from Copenhagen and Madrid, the European Union paid great attention to the so-called Enlargement policies. Enlargement policy is a comprehensive Union policy and a long-term framework for the integration of aspiring countries. This policy is composed of several instruments such as the enlargement agenda, pre-accession strategy, accession negotiations, legislative alignment, financial and technical support to create the capacity to take on the obligations of EU membership. The main goal of the enlargement policy is to prepare the candidate countries for taking on the obligations arising from membership (Mišćević, 2016). The institution that has the most important role in this process is the European Commission, and the content of the accession criteria and, accordingly, the dynamics of the admission of new members largely depend on its reports and opinions. Current candidates for membership are Albania, Northern Macedonia, Montenegro, Serbia and Turkey, and potential candidates are Bosnia and Herzegovina and Kosovo (Ateljević, Forca, & Župac, 2015).

In essence, the process of negotiating membership, ie joining the EU in the long run changes the structure of the candidate country, affects the stability of its political system, contributes to democratization, encourages and modernizes the economy, as well as the state apparatus and the entire legal system. In this sense, the effects of EU accession are multiple and in principle very positive (Lopandić, 2017).

The short- and medium-term effects of EU membership for the new member states are positive. According to Lopandic, they include: greater political and regional stability of the countries that joined the EU, facilitated the process of transition to the rule of law and democratization, strengthened the country's international and geopolitical position, modernization of

administration and legal and economic system, strengthening the country's economic position, increasing standards in the country (Lopandić, 2017).

According to the Strategy of Integration of BiH into the European Union, the process of legal harmonization and acceptance of European standards implies extensive internal reforms, general consolidation of the system, stronger economic development and more intensive foreign policy in areas that affect the dynamics of BiH-EU relations. The prospect of EU membership is a strong impetus for the continuation of already initiated reforms in BiH and a driver of the process that should enable the creation of an economic, legal, organizational and social structure capable of acting in accordance with EU rules. Full EU membership is expected to affect all political and economic aspects of life. The Strategy states that the economic effects will be more noticeable, but that there will also be effects in politics, security, culture and other areas (Vijeće ministara Bosne i Hercegovine, 2010).

COPENHAGEN CRITERIA

The Copenhagen criteria were adopted in 1993 (European Council in Copenhagen, 1993) and include political, economic and legal criteria. The political criterion refers to the stability of institutions that guarantee democracy, the rule of law, respect for human rights and the protection of minorities. The economic criterion refers to the existence of a functioning market economy that will be able to cope with competitive pressure and market forces within the European Union. The legal criterion implies the adoption of the *acquis communautaire*, ie the ability of a candidate country to assume the obligations of membership, including adherence to the objectives of political, economic and monetary union (Hillion, 2004).

Progress in the Stabilization and Association Process of the Western Balkan countries is conditional on the fulfillment of obligations divided into three groups. The first group of conditions consists of the

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criteria from Copenhagen and Madrid. The second group consists of specific and common conditions, and above all respect for peace agreements and cooperation with the International Criminal Tribunal for the former Yugoslavia. The third group of conditions refers to specific conditions for each individual country in the region (Todić et al., 2014).

Within the Stabilization and Association Process, it is necessary to meet the Copenhagen criteria, which are the conditions for membership in the European Union. Additional criteria were established in 1997 and 1999 for the countries of the Western Balkans region under the Stabilization and Association Process.

They implied full co-operation with The Hague tribunal, respect for human and minority rights, the creation of realistic opportunities for the return of refugees and internally displaced persons, and a visible contribution to regional co-operation.

CRITERION FROM MADRID

At the Madrid Summit, (Madrid European Council, 1995) the fourth criterion for EU accession was added, and it referred to the building of administrative capacities, which included building institutions and organizing public administration in a way that will efficiently and responsibly manage its own resources, EU funds and ensure successful harmonization of rights with the legal system. EU *acquis* and its implementation.

The Madrid criterion was set at the 1995 European Council. This criterion refers to the adjustment of the administrative structure in order to create conditions for gradual and harmonious integration (Šijački, 2011).

This criterion implies the strengthening of administrative capacity and the creation of an efficient state system of administration for the implementation of Community law (*acquis communautaire*) and other obligations arising from membership in the European Union.

STABILIZATION AND ASSOCIATION PROCESS

The Stabilization and Association Agreement (Commission of the European Communities, 1999) represents the contractual relationship between the European Union and the countries of the Western Balkans and the legal basis of the entire Stabilization and Association Process.

The Stabilization and Association Process is the most important framework through which the European Union maintains relations with the countries of the Western Balkans and through which it directs its overall enlargement policy in this part of Europe. It is based on special Stabilization and Association Agreements (SAAs) signed with countries in the region over a decade, the first with Macedonia, the last with Kosovo (Pejović, 2018).

The progress of the countries in the region is uneven, and the results of the reforms, which were in full swing at one time, have stalled in the meantime. In addition, the fatigue from further enlargements in the EU, which is conditioned by the weakened absorption capacities of the Union due to numerous internal and external crises it has been facing in recent years, has an impact on reform fatigue and integration fatigue in the Western Balkans.

The Stabilization and Association Process has acted as a catalyst for democratic change. All countries in the region have set out to strengthen democratic processes and institutions, respect for the rule of law and human rights. There are two key conclusions that can be drawn from the experience in the implementation of the Stabilization and Association Process, and they are: the process should be adapted to the needs and specific conditions of individual countries, and the appropriate balance should be achieved between stabilization and association.

Differences between countries in the region are widening over time under the influence of political, economic and institutional forces, with some countries moving faster than others.

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The speed with which each country moves through the phases of stabilization and association must be commensurate with its ability to take on the obligations of closer association with the Union.

The regional approach was based on the assumption that the Western Balkans region shares common problems that require common solutions, which should be the basis for achieving long-term stability in the region.

The EU's regional approach to the Western Balkans was created in order to separate these countries in some way from the countries that joined the Union in the earlier stages of enlargement, because these were countries that had been at war until recently and were in conflict. According to Milica Delević, the development of the EU's regional approach went hand in hand with conditioning progress with regional co-operation among the countries of the Western Balkans (Delević, 2010).

The European Union is one of the most influential actors in the Western Balkans region. It has applied various foreign policy instruments to the region, such as diplomatic and trade measures, financial assistance, civilian and military missions, but also enlargement policy as its strongest foreign policy tool (Kovačević, 2019).

In addition to providing technical and financial assistance, the European Union has given legitimacy to countries in the process of accession to implement change, and a strong internal consensus on EU membership in these countries has allowed decision-makers to weaken countries that have always been vetoed. .

Numerous attempts to establish new types of multilateral cooperation between the newly formed states and entities during the conflicts in the Balkans and immediately after their end did not yield significant results at the beginning (Kovačević, 2019).

This applied both to the Central European Initiative, which was established in 1989, and to the Stability and Good Neighborhood Process in Southeast Europe (better known as the Royamon process),

created in 1995, and the Southeast European Cooperative Initiative - SECI, which was launched in 1996.

The stated frameworks for regional cooperation were not understood by the states that emerged on the territory of the former Yugoslavia as original forms, but exclusively as imposed by the European Union and the United States of America in the first place.

The most important achievement of regional initiatives in the Western Balkans is a sustainable and continuous political dialogue between the countries of the region. The institutionalization of the dialogue with the European Union required better communication between individual candidate countries in the region and potential candidate countries lagging behind in the integration process.

COORDINATION MECHANISM IN THE PROCESS OF BIH'S ACCESSION TO THE EUROPEAN UNION

According to some authors, the coordination mechanism is not a technical but a constitutional issue. According to Blagojević, this mechanism regulates the legal relations between the central state and its political-territorial units in the procedure of fulfilling the obligations set before each of them by the regulations of the European Union (Blagojević, 2015).

Coordination of the European integration process (horizontal and vertical) is a set of activities carried out with the aim of achieving harmonization in the work of institutions at all levels of government in BiH related to the implementation of obligations from the European integration process. The coordination system enables a harmonized position to be reached on behalf of BiH in communication with the institutions of the European Union, while respecting the existing internal legal and political structure. Horizontal coordination that takes place within the same level of government is not as problematic as vertical coordination that encompasses different levels of government. For that reason, the College for European Integration,

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ministerial conferences, the Commission for European Integration and working groups for European integration were formed for the process of vertical coordination. The way decisions are made in these bodies is by consensus (Decision on the system of coordination of the European integration process in BiH [DSCEU], Article 2 and Article 3, 2018)

The College for European Integration is the highest political body in the system of coordination of the European integration process in BiH, which ensures harmonization of positions on key, strategic and political issues in the field of European integration and, ultimately, removes possible delays in fulfilling obligations from the integration process. The members of the Collegium are the Chairman and Deputy Chairmen of the Council of Ministers of BiH, the Prime Minister of FBiH and two of its members, the Prime Minister of Republika Srpska and two of its members, the Mayor of Brčko District of BiH and the Prime Ministers of cantons (DSCEU, Article 4, 2018).

Ministerial conferences are bodies in the coordination system whose activities ensure equal access of competent institutions from all levels of government in certain sectoral areas. They consist of line ministers from the BiH Council of Ministers, entity governments, cantonal governments and representatives of the Brčko District BiH Government. In case the Ministerial Conference cannot take a position on a certain issue, the Chairman of the Conference forwards the given issue to the Board for European Integration to agree on its solution (DSCEU, Article 5, 2018).

The Commission for European Integration is the body in charge of coordination with the aim of ensuring the highest possible degree of comprehensiveness in the work of competent institutions at all levels of government in Bosnia and Herzegovina in the field of European integration. It monitors the fulfillment of obligations from the European integration process, cooperates with members of the Permanent Delegation of Bosnia and Herzegovina

within the Stabilization and Association Committee, coordinates the work of working groups for European integration, discusses all open issues and sets guidelines and cooperates with ministerial conferences. The permanent members of the Commission are the Director of the Directorate for European Integration, one representative each from the entity governments, cantonal governments, the Government of the Brčko District of BiH, a person appointed on behalf of the Directorate for European Integration, in his capacity as Secretary of the Commission. Additional members of the Commission are the chairmen of the working groups for European integration, one appointed person on behalf of the institutions from the level of BiH, entities, cantons and Brčko District of BiH in charge of giving opinions, ie assessment of compliance with the *acquis communautaire*, one member of the IPA Coordination Board from the level of BiH, entities, cantons and Brčko District of BiH, representatives of other institutions from all levels of government in BiH, in accordance with issues considered by the Commission and representatives of the non-governmental sector and academic community, in accordance with issues considered by the Commission. Additional members participate in the work of the Commission at the invitation of the Chairman, and on the basis of previously secured consent of all its permanent members (DSCEU, Article 6 and Article 7, 2018).

The European Integration Working Groups are operational bodies in the coordination system operating in accordance with the guidelines defined by the Commission, established in accordance with the *acquis communautaire*, and in accordance with the thematic chapters and articles of the Stabilization and Association Agreement. The working groups are composed of representatives of competent institutions from all levels of government in Bosnia and Herzegovina, in accordance with their constitutional competencies for the areas for which the working groups are established (DSCEU, Article 9, 2018).

OPINION OF THE EUROPEAN COMMISSION

Bosnia and Herzegovina applied for membership in the European Union on February 15, 2016. The European Commission adopted the Opinion on Bosnia and Herzegovina's application for EU membership on May 29, 2019, stating that Bosnia and Herzegovina has sent answers to a total of 3,897 questions on all policies relevant to the EU integration process (Evropska komisija, 2019).

The conclusions of the European Commission state that Bosnia and Herzegovina still does not sufficiently meet the criteria relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, set by the Copenhagen European Council in 1993. Therefore, Bosnia and Herzegovina needs to make significant efforts to sufficiently meet the criteria by strengthening institutions to guarantee democracy, the rule of law, human rights and respect for and protection of minorities. The report also states that Bosnia and Herzegovina must harmonize its constitutional framework with European standards and ensure the functionality of its institutions in order to be able to take on the obligations of the Union. In this regard, it is necessary to reform the institutions so that they can participate effectively in decision-making at EU level and fully implement and enforce the *acquis* (Evropska komisija, 2019).

The European Commission believes that negotiations for Bosnia and Herzegovina's accession to the European Union should be opened when the country achieves the required degree of compliance with the membership criteria, especially the Copenhagen political criteria, which require the stability of institutions guaranteeing democracy and the rule of law (Evropska komisija, 2019). The criteria are divided into several areas and include the following:

Democracy

1. Ensure that elections are conducted in accordance with European standards by implementing the relevant

recommendations of the OSCE / ODIHR and the Venice Commission, ensuring transparency in the financing of political parties and holding local elections in Mostar,

2. Ensure visible results when it comes to the functioning of the coordination mechanism on EU-related issues at all levels, including the preparation and adoption of a national program for the adoption of the *acquis*,
3. Ensure the proper functioning of the Parliamentary Stabilization and Association Committee,
4. Thoroughly improve the institutional framework, including at the constitutional level, in order to:
 - a) ensure legal certainty in terms of the division of competences between levels of government;
 - b) introduce a substitution clause in order to allow the state, after accession, to temporarily exercise the competencies of other levels of government in order to prevent and eliminate violations of EU law;
 - c) guarantee the independence of the judiciary, including its independent institution (HJPC);
 - d) reform the Constitutional Court, including resolving the issue of international judges, and ensure the enforcement of its decisions;
 - e) guarantee legal certainty, including through the establishment of a judicial body entrusted with ensuring a consistent interpretation of the law throughout Bosnia and Herzegovina;
 - f) ensure equality and non-discrimination of citizens, in particular the treatment of the judgment of the European Court of Human Rights in the Sejdić and Finci case;
 - g) ensure that all administrative bodies in charge of the implementation of the *acquis* are based exclusively on professionalism and that the right of veto in the decision-making process is removed, in accordance with the *acquis*.

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5. Take concrete steps to improve an environment conducive to reconciliation in order to overcome the legacy of war.

Rule of law

6. Improve the functioning of the judiciary through the adoption of new laws on the High Judicial and Prosecutorial Council and the courts of BiH in accordance with European standards.
7. Strengthen the prevention and fight against corruption and organized crime, including against money laundering and terrorism, primarily through:
 - a) adoption and implementation of regulations on conflict of interest and protection of whistleblowers;
 - b) ensuring the effective functioning and coordination of anti-corruption bodies;
 - c) harmonization of legislation and strengthening of public procurement capacities;
 - d) ensuring effective cooperation between law enforcement agencies and with prosecutors' offices;
 - e) Demonstrating progress in achieving the results of proactive investigations, confirmed indictments, prosecutions and final convictions in organized crime and corruption cases, including high-level ones;
 - f) depoliticization and restructuring of public enterprises and ensuring transparency of the privatization process.
8. Ensure effective coordination of border management and migration management capacities at all levels and ensure the functioning of the asylum system.

Fundamental rights

9. Strengthen the protection of the rights of all citizens, in particular by ensuring the implementation of the law on non-discrimination and gender equality.
10. Ensure the right to life and the prohibition of torture, in particular (a) by abolishing the reference to the death penalty in the Constitution of

the Republika Srpska and (b) by appointing a national mechanism for the prevention of torture and inhuman treatment.

11. Provide a supportive environment for civil society, in particular respecting European standards on freedom of association and freedom of assembly.
12. Guarantee freedom of expression and the media and the protection of journalists, in particular by (a) ensuring the proper prosecution of threats and use of violence against journalists and media workers, and (b) ensuring the financial sustainability of the public service broadcasting system.
13. Improve the protection and inclusion of vulnerable groups, in particular persons with disabilities, children, LGBTI persons, members of the Roma community, detainees, migrants and asylum seekers, as well as displaced persons and refugees, with a view to closing Annex VII of the Dayton Peace Agreement.

Public administration reform

14. Complete the necessary steps in public administration reform with a view to improving the overall functioning of public administration by ensuring a professional and depoliticised civil service and a coordinated approach to policy-making throughout the country (Mišljenje Komisije, 2019).

The analysis of the criteria two years after their adoption by Transparency International BiH states that no particular progress has been made and that there are still irregularities and abuses within the political criteria, such as manipulation of voter lists for voting from abroad, abuse and theft of voters' identities, pressure on voters, which remain unsanctioned due to legal deficiencies (Transparency International BiH, 2021).

No action has been taken to amend the constitution to ensure equality and non-discrimination of citizens. Public administration in BiH is still not

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depoliticized and professional, is not based on the principles of meritoriousness and is subject to political interventions.

Statistics on the work of prosecutor's offices and courts show that there has been a decrease in the number of investigations, confirmed indictments and final verdicts against organized crime and corruption, and cases of high-profile corruption are not processed at all.

Public enterprises remain under the control of political parties, and still need governance reform and restructuring.

Entity laws on public enterprises have not changed in the past 10 years, and have not been improved in terms of ensuring the independence of the administration, depoliticization, transparency of employment and operations.

From the mentioned analysis made by the organization Transparency, it is evident that even after two years from the issuance of the Commission's Opinion, only one of the 14 priorities has been fully realized, so it can be considered that the process of BiH integration into the EU is currently stopped (Transparency International BiH, 2021).

CONCLUSIONS

After the signing of the Dayton Peace Agreement in 1995, reconstruction programs were launched in Bosnia and Herzegovina through financial assistance programs (PHARE, CARDS, later IPA), which contributed to the reconstruction of infrastructure but did not restore broken economic ties or attract more foreign investment.

Through a special strategy, the Stabilization and Association Process and with European support programs, Bosnia and Herzegovina is encouraged to stabilize the political, social, economic and market aspects, and only after that to create the conditions for gradual accession to the Union.

Bosnia and Herzegovina became a member of the Council of Europe in 2002 and then undertook to harmonize electoral legislation that discriminated against persons belonging to national minorities.

The most famous example is the case of Sejdić-Finci, which refers to a court case before the European Court of Human Rights in Strasbourg, on the lawsuit of members of national minorities (Roma and Jews) Dervo Sejdić and Jakob Finci for preventing elections to government bodies). In addition to this case, Bosnia and Herzegovina is hampered on its way to the EU by many other unfulfilled conditions.

Threats to Bosnia and Herzegovina's stability include: organized crime, economic instability, corruption, and state failures. Corruption poses the greatest threat to the region, not only for security but also for democratic processes, transition and economic progress. Bosnia and Herzegovina's overall progress is impossible if the fight against corruption and cross-border crime is neglected at both the national and regional levels.

In June 2015, the Stabilization and Association Agreement between BiH and the European Union, signed seven years earlier, entered into force. In February 2016, BiH applied for membership in the Union. The European Commission adopted the Opinion on Bosnia and Herzegovina's application for EU membership on May 29, 2019, stating that Bosnia and Herzegovina has sent answers on all policies relevant to the EU integration process.

The conclusions of the European Commission state that Bosnia and Herzegovina still does not sufficiently meet the criteria relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, set by the Copenhagen European Council in 1993. Therefore, Bosnia and Herzegovina needs to make significant efforts to sufficiently meet the criteria by strengthening institutions to guarantee democracy, the rule of law, human rights and respect for and protection of minorities.

The report also states that Bosnia and Herzegovina must harmonize its constitutional framework with European standards and ensure the functionality of its institutions in order to be able to take on the obligations of the Union. In this regard, it is

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necessary to reform the institutions so that they can participate effectively in decision-making at EU level and fully implement and enforce the *acquis*.

The European Commission believes that negotiations for Bosnia and Herzegovina's accession to the European Union should be opened when the country achieves the required degree of compliance with the membership criteria, especially the Copenhagen political criteria, which require the stability of institutions guaranteeing democracy and the rule of law.

The regional approach to the Western Balkans region and to Bosnia and Herzegovina itself was based on the assumption that the Western Balkans region shares common problems that require common solutions, which should be the basis for achieving long-term stability in the region.

Bosnia and Herzegovina was greatly helped on this path by regional initiatives related to the disappearance of the SFRY, ie the end of the war in 1995. in Bosnia and Herzegovina and the need to redefine the new system of relations in the region, including mutual cooperation. The goal of the regional initiatives was the development of regional cooperation as a basis for economic development, political and security stabilization.

Regional integration in the Western Balkans represents a European approach to post-conflict bridging the political and economic gap. Thanks to these initiatives, the European approach has provided an appropriate framework for resolving bilateral conflicts and tensions, ensuring progress in the process of building peace, democracy and increased security, and it is expected that they will enable the integration of the region into European structures and the rest of the world.

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