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Commission Opinion on Bosnia and Herzegovina's application for
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PARLIAMENT AND THE COUNCIL**

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{SWD(2019) 222 final}

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union

A. INTRODUCTION

a) Application for membership

Bosnia and Herzegovina presented its application for membership of the European Union on 15 February 2016. Subsequently, on 20 September 2016, the Council of the European Union invited the Commission to submit its opinion on this application. This is in line with the procedure laid down in Article 49 of the Treaty on European Union, which states that *'Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account'*.

Article 2 of the Treaty on European Union states that *'the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'*.

This is the legal framework within which the Commission submits this Opinion.

The European Council in Feira in June 2000 acknowledged that Western Balkan countries participating in the Stabilisation and Association Process are 'potential candidates' for EU membership. The European perspective of these countries was confirmed by the European Council in Thessaloniki in June 2003 which endorsed the 'Thessaloniki Agenda for the Western Balkans'. This agenda remains the cornerstone of EU policy towards the region.

The European Council in December 2006 renewed the EU's commitment *'that the future of the Western Balkans lies in the European Union'* and reiterated that *'each country's progress towards the European Union depends on its individual efforts to comply with the Copenhagen criteria and the conditionality of the Stabilisation and Association Process. A country's satisfactory track record in implementing its obligations under a Stabilisation and Association Agreement (SAA), including trade-related provisions, is an essential element for the EU to consider any membership application'*.

In the February 2018 Western Balkans strategy¹, the Commission stated that *‘with sustained effort and engagement, Bosnia and Herzegovina could become a candidate for accession’*. At the EU-Western Balkans summit, which took place in Sofia in May 2018, EU leaders reaffirmed their unequivocal support for the European perspective of the Western Balkans, and the Western Balkan partners recommitted to this perspective as their firm strategic choice. The EU leaders agreed on the Sofia Declaration and the Sofia Priority Agenda², outlining new measures for enhanced cooperation with the region in key areas such as security, rule of law and migration.

In this Opinion, the Commission assesses Bosnia and Herzegovina’s application on the basis of the country’s capacity to meet the criteria set by the European Council in Copenhagen in 1993, as well as in Madrid in 1995, notably regarding the country’s administrative capacity and the conditions of the Stabilisation and Association Process. The Opinion also takes into account Bosnia and Herzegovina’s track record in implementing its obligations under the Stabilisation and Association Agreement (SAA) which entered into force on 1 June 2015.

In June 1993, in Copenhagen the European Council concluded that:

‘Accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions required.’

Membership requires:

- that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;*
- the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union;*
- the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union’.*

In December 1995, in Madrid, the European Council referred to the need *‘to create the conditions for the gradual, harmonious integration of [the applicant] countries, particularly through the development of the market economy, the adjustment of their administrative structures and the creation of a stable economic and monetary environment’*.

In December 2006, the European Council agreed that *‘the enlargement strategy based on consolidation, conditionality and communication, combined with the EU’s capacity to integrate new members, forms the basis for a renewed consensus on enlargement’*.

For the Western Balkans, the Council defined on 31 May 1999 the specific conditions under the Stabilisation and Association Process (SAP). These include cooperation with the International Criminal Tribunal for the former Yugoslavia and regional cooperation. These conditions are integrated as a fundamental element into the SAA.

This Opinion has been prepared following a methodology similar to that used in previous Commission Opinions. As part of a questionnaire and its follow-up questions, Bosnia and Herzegovina received a total of 3 897 questions covering all EU policies. It took the country 14 months to answer the initial 3 242 questions and 8 months to reply to the 655 follow-up

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52018DC0065>

² https://www.consilium.europa.eu/media/34776/sofia-declaration_en.pdf

questions. Despite the establishment of a coordination mechanism on EU matters, the authorities could not agree to submit answers to 22 questions: one on the political criteria, four on regional policy, and 17 on education policies.

The Commission organised a large number of expert missions to Bosnia and Herzegovina with a special focus on the areas covered by the political criteria. The Commission also took into account the contributions received from consultations held with stakeholders such as civil society organisations, international organisations and EU Member States. This approach allowed the Commission to assess the administrative capacity of Bosnia and Herzegovina institutions and the way legislation is implemented. It also helped to better identify remaining challenges and priorities for future action. In this Opinion and its accompanying analytical report, the Commission has analysed the current situation and has provided guidance to address issues in the short term as well as in the longer term.

The detailed analysis on which this Opinion is based is contained in the *Analytical Report accompanying the Opinion on Bosnia and Herzegovina's application for membership of the European Union*. The analytical report provides initial estimates of the impact of the future accession of Bosnia and Herzegovina in some key policy areas. The Commission will provide more detailed impact assessments for these policy areas at later stages of the pre-accession process. In addition, an EU accession treaty for Bosnia and Herzegovina would involve technical adaptation of the EU institutions in light of the Treaty on European Union.

b) Relations between the EU and Bosnia and Herzegovina

Relations between the EU and Bosnia and Herzegovina have developed with increased engagement and momentum since the signature of the General Framework Agreement for Peace at Dayton/Paris in 1995.

Bosnia and Herzegovina is participating in the Stabilisation and Association Process and its citizens benefit from visa-free travel to Schengen countries since 2010. The Stabilisation and Association Agreement is in force since 2015. In 2016, the country applied for EU membership.

The **Stabilisation and Association Agreement** between Bosnia and Herzegovina and the EU was signed on 16 June 2008 in Luxembourg along with an **Interim Agreement**, which as of 1 July 2008 regulates trade and trade-related matters.

In December 2014, the Council agreed on a renewed approach to Bosnia and Herzegovina, and invited the High Representative of the Union for Foreign Affairs and Security Policy/Vice President and the Commissioner for Neighborhood Policy and Enlargement Negotiations to engage with the political leaders to secure their irrevocable commitment to undertake reforms towards EU accession. Following the agreement upon a written commitment by the Presidency of Bosnia and Herzegovina, its signature by the leaders of the 14 parliamentary parties and its endorsement by the Parliamentary Assembly, the Council agreed to the entry into force of the SAA, which started on 1 June 2015. With the entry into force of the SAA, Bosnia and Herzegovina opened a new chapter in its relations with the EU and confirmed its commitment to pursue EU accession. The SAA provides a framework of mutual commitments on a wide range of political, trade and economic issues as well as the legal basis for formalised policy dialogue.

The EU provides guidance to the country on reform priorities on the EU membership path. Policy dialogue between the European Commission and Bosnia and Herzegovina has been

taking place since 2009 under the Interim Agreement, and since 2015 under the SAA³. Policy dialogue on the rule of law has taken place since 2011 in the context of the ‘structured dialogue on justice’, and since 2016 in the framework of the SAA subcommittee on justice, freedom and security. A special group on public administration reform has also been meeting since 2017.

Bosnia and Herzegovina has developed appropriate administrative capacities to ensure the implementation of the SAA provisions, in particular concerning the smooth operation of the Stabilisation and Association Council, Committee and sectoral sub-committees. The protocol adapting the SAA to take into account the accession of Croatia to the EU entered into force on 1 October 2017, after being provisionally applied since 1 February 2017.

However, to meet its legal obligations under the Agreement, Bosnia and Herzegovina needs to ensure the functioning of the Stabilisation and Association Parliamentary Committee and develop a national programme for the adoption of the EU *acquis*.

The parliamentary dimension of the SAA is not properly functioning. The Stabilisation and Association Parliamentary Committee was established in November 2015 as part of the SAA bodies, but it failed to adopt its rules of procedure due to the insistence of some delegates from Bosnia and Herzegovina on the inclusion of ethnic voting provisions not in line with European standards. In spite of this, the European Parliament regularly discusses and adopts resolutions on the situation and developments in view of Bosnia and Herzegovina’s EU path.

Bosnia and Herzegovina participates in an economic dialogue with the Commission and the EU Member States. Every year the country submits to the Commission a medium-term **Economic Reform Programme** (ERP) setting out plans to strengthen macro-fiscal stability and tackle structural obstacles to growth. On the basis of the ERP, Bosnia and Herzegovina meets every year with the Commission, EU Member States and all other enlargement countries at the Economic and Financial Dialogue. This dialogue on economic governance is meant to prepare the country for its future participation in EU economic policy coordination, including the European Semester process.

Between 2015 and 2018 Bosnia and Herzegovina embarked on an ambitious ‘reform agenda’ to bring back economic growth and jobs opportunities. While significant challenges remain, the reforms undertaken contributed to the improvement of the economic indicators and the macroeconomic situation, including balanced public finances and steady economic growth. A new set of socio-economic reform measures needs to be agreed and implemented by the governments at all levels in the country, in full alignment with the ERP and the jointly agreed policy guidance.

Following a decision of the Council, citizens of Bosnia and Herzegovina enjoy **visa-free travel** to the Schengen area as of November 2010. This decision was based on substantial progress in the areas of justice, freedom and security and fulfilment of the 174 specific conditions set out in the roadmap for visa liberalisation, such as the introduction of biometric passports. The Commission monitors and reports regularly on its implementation. The

³ Policy dialogue between the European Commission and Bosnia and Herzegovina takes place within the framework of sectoral sub-committees on: trade, industry, customs and taxation; agriculture and fisheries; internal market and competition; economic and financial issues and statistics; innovation, information society and social policy; transport, environment, energy and regional development; justice, freedom and security.

Commission adopted its second report under the visa suspension mechanism in December 2018⁴. Overall, Bosnia and Herzegovina continues to fulfil all visa liberalisation benchmarks.

Bosnia and Herzegovina ratified the Energy Community Treaty in September 2006, the European Common Aviation Area Agreement in July 2007 and the Transport Community Treaty in April 2018.

The SAA and its Interim Agreement, applied since 2008, have allowed progressive **trade** liberalisation and mutual duty-free access for most goods. Since 2000 Bosnia and Herzegovina has also been benefiting from the ‘autonomous trade measures’. Bosnia and Herzegovina joined the Central European Free Trade Agreement (CEFTA) in 2007. The negotiations for its accession to the World Trade Organisation are in the final stage. The EU is the main trading partner of Bosnia and Herzegovina, followed by CEFTA countries. Trade integration with the EU is high. In 2017, 61% of the country imports worth EUR 5.6 billion originated from the EU (12% from CEFTA). Of the country exports, 71% went to the EU (15% to CEFTA). The country’s trade deficit with the EU amounted to EUR 1.7 billion in 2017.

The EU deploys considerable resources in Bosnia and Herzegovina under the **common foreign and security policy** and the **common security and defence policy**. From 2002 to 2011 the Council appointed the international High Representative as EU Special Representative in Bosnia and Herzegovina (EUSR). Since 2011 the enhanced presence ensured by the combined Office of the EU Special Representative in Bosnia and Herzegovina and EU Delegation to Bosnia and Herzegovina is instrumental in communicating EU priorities to the citizens of the country and in implementing the objectives of the EU agenda in key areas. Since December 2004 the EU has deployed the European Union Force in Bosnia and Herzegovina (EUFOR) Althea military operation in the country, provided with an executive mandate to ensure a safe and secure environment in the country. A framework agreement on the participation of Bosnia and Herzegovina in EU crisis management operations has been in place since September 2015.

The EU provides significant **financial assistance** to Bosnia and Herzegovina, which over the years allowed the country to recover from wartime destruction and to re-establish itself as a catching-up economy. From 1996 to 2000 Bosnia and Herzegovina benefited from EU financial assistance under the Phare and OBNOVA programmes. From 2000 to 2007 the CARDS regulation foresaw financial support tailored to SAP priorities⁵. Since 2007 Bosnia and Herzegovina benefits from EU assistance mainly under the Instrument for pre-accession assistance (IPA). Over the 2007-2018 period, Bosnia and Herzegovina received EUR 1.5 billion from the EU, of which an estimated EUR 433 million from regional programmes. Since 2000 the European Investment Bank awarded EUR 2.4 billion in loans to support projects in Bosnia and Herzegovina. The EU Delegation to Bosnia and Herzegovina is responsible for implementing EU financial assistance via direct management as well as for ensuring the coordination of assistance with EU Member States. Implementation of the IPA I and IPA II programmes is ongoing. The indicative strategy paper for Bosnia and Herzegovina 2014-2017 was revised in 2018 to include several additional sectors and extend it until 2020⁶.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1558535963503&uri=CELEX:52018DC0856>

⁵ The Phare, OBNOVA and CARDS programmes were financial instruments to support transition towards democracy and market economy in Central-Eastern Europe and in the Western Balkans.

⁶ <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180817-revised-indicative-strategy-paper-2014-2020-for-bosnia-and-herzegovina.pdf>

Sector strategies are in place for environment, energy, transport and rural development, enabling IPA support in those sectors. The adoption of country-wide strategies such as on public financial management and on employment remains a key requirement for Bosnia and Herzegovina to benefit fully from IPA funding in 2018-2020.

Bosnia and Herzegovina has progressively extended its participation in **EU programmes**, which has been partly co-financed via IPA funds. Bosnia and Herzegovina currently takes part in COSME, Creative Europe, Customs 2020, Europe for Citizens, Erasmus+, Fiscalis 2020, Horizon 2020, and the Third Programme for the Union's action in the field of health. Bosnia and Herzegovina also takes part in the **INTERREG** programme.

B. CRITERIA FOR MEMBERSHIP

1. POLITICAL CRITERIA

This assessment is based on the Copenhagen criteria relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, as well as on the conditions of the Stabilisation and Association Process.

The war that ravaged Bosnia and Herzegovina from 1992 to 1995 left a trail of material and human devastation, from which the country had to recover. The country has since reconstructed its institutions and economic infrastructure, and prepared itself to undertake the path of EU accession. Bosnia and Herzegovina is committed to its objective of membership of the European Union, as reiterated in multiple decisions of the Presidency, and has increasingly focused its legislative efforts on adopting reforms in view of EU accession.

As established by its **Constitution**, which is an integral part (Annex IV) of the 1995 Dayton/Paris General Framework Agreement for Peace (GFAP), Bosnia and Herzegovina is a parliamentary democracy in which the executive powers are exercised by the Presidency and the Council of Ministers, and the legislative powers by the Parliamentary Assembly. The Constitution guarantees the fundamental principles of a democratic state, including the rule of law, free elections and the protection of human rights.

The Constitution sets out the internal structure of the country as a state consisting of two entities, the Federation of Bosnia and Herzegovina (itself composed of 10 cantons) and *Republika Srpska*, as well as the Brčko District. The Preamble to the Constitution lists 'Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina' as determining the Constitution. The country faces a number of structural issues stemming from its complex institutional set-up coupled with ethnicity-related procedures that adversely affect its functionality.

State-level competences are enumerated in the Constitution, which attributes all other powers to the entities. State-level competences also include powers that have been gradually attributed to or assumed by the State on the basis of transfer agreements, implied powers and annexes to the peace agreements, as provided for by the Constitution and confirmed by the Constitutional Court. Frequent disputes on the distribution of competences between the State and the entities affect their effective exercise and therefore the alignment of legislation with the *acquis* and its implementation in a large number of chapters. To prevent such systematic disputes and ensure effective implementation of the *acquis*, Bosnia and Herzegovina needs to ensure legal certainty on the distribution of competences among the levels of government. There is no procedure providing for the state level to prevent and remedy breaches of EU law

by other levels of government for which Bosnia and Herzegovina would be held liable as a whole.

The Constitution contains ethnic and residence-based provisions which are not in line with the European Convention on Human Rights. These concern the appointment, composition and decision-making procedures of the head of state and the executive and legislative bodies, as certain electoral rights are reserved for citizens who affiliate to the ‘constituent peoples’ – Bosniaks, Croats and Serbs. Significant incremental reforms are therefore needed to ensure that all citizens can effectively exercise their political rights, in compliance with the *Sejdić-Finci* case law of the European Court of Human Rights (ECtHR).

The composition and decision-making of several administrative bodies are based on ethnic criteria, which risks affecting the implementation of the EU *acquis*. Ethnic-based veto rights also could affect the work of the Parliament and of the entity legislative assemblies.

The Constitutional Court is the interpreter of the Constitution and final authority on conflicts of competence between different levels of government. It includes three international judges out of nine. Several of its decisions remain not enforced. The professionalism and independence of Constitutional Court judges needs to be strengthened, starting with improving their eligibility criteria and appointment procedures. The issue of international judges in the Constitutional Court needs to be addressed. The Constitutional Court needs to be able to take a proactive and independent role to address conflicts of competence. Its legitimacy must be recognised by all authorities, to ensure sustained compliance with its decisions.

Annex X to the Dayton Peace Agreement established the Office of the international High Representative (OHR) as the final authority on the interpretation of the civilian aspects of the implementation of the peace agreement. The OHR has since been granted extensive powers to decree legislation and remove public officials – known as ‘Bonn powers’ – which was last used in 2011. Such extensive international supervision is in principle incompatible with the sovereignty of Bosnia and Herzegovina and therefore with EU membership. A process towards closing the OHR has been underway since 2008. Its outcome depends on a number of conditions.

The **Parliament** and the other legislative assemblies adopt legislation and exercise democratic control and oversight of the executive. The right to stand for election to the House of Peoples is restricted on the basis of ethnicity and residence, which is in breach of European standards. ‘Vital national interest’ vetoes and entity voting also affect the effective functioning of parliaments, risking to delay the adoption of legislation. The Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe’s European Commission for Democracy through Law (Venice Commission) have provided recommendations to improve the electoral framework and ensure that elections are conducted in line with European standards, including on the transparency of political party financing. As for local elections, due to the lack of legal framework the citizens of Mostar have not been able to elect a municipal council since 2008.

Legislative assemblies at state and entity level display a tendency to use urgent procedures to pass legislation related to *acquis*, adversely affecting the quality of the legislative alignment. Comprehensive impact assessments of proposed legislation are often not ensured and legislative oversight of the executives, including monitoring the implementation of legislation needs to be stepped up. The cooperation among legislative assemblies as well as their

capacities to assess the legislation against the EU *acquis* are weak and should also be significantly enhanced, if necessary by pooling resources countrywide.

Bosnia and Herzegovina has a complex system of **executive power**, which is broadly functioning. The complexity of its institutions leads to significant issues related to coordination and harmonisation of the country's policy stances, notably with respect to the alignment with and implementation of legislation stemming from the EU *acquis*. With 14 executives across the country exercising competences relevant for implementing the EU *acquis*, either considerable efforts and significant strengthening of the country's capacities at all levels or some pooling of resources and capacities are needed for Bosnia and Herzegovina to cope with the obligations of EU membership. This is notably the case at cantonal level where capacities to deliver on EU membership obligations are insufficient. The governments have taken some steps to ensure coordination on EU integration matters, including by establishing a coordination mechanism on EU matters, which is yet to become fully operational. The governments' capacities for policy planning and coordination across all levels of government are still insufficient.

Strong efforts need to be made to ensure the alignment of the legislation with the principles of **public administration reform** (PAR) as well as its effective implementation. The authorities at all levels need to ensure political support to the coordination structure for public administration reform, and to allocate adequate financial resources to promote public administration reform. To ensure a professional civil service, the legislation should be brought in line with merit principles on recruitment, promotion and dismissal; its practical implementation should be free from political interference. The regulatory framework and methodology on central and sectoral policy development, monitoring and budgeting at all levels are not harmonised; this is required to ensure an effective country-wide approach to policy making. The legislation and procedures are not harmonised and the e-signature systems throughout the country are not yet inter-operable; this is required for an effective service delivery.

Important reforms have taken place over time in the area of the **judiciary**, notably with the establishment of the Court of Bosnia and Herzegovina and of a single self-regulatory body of the judiciary, the High Judicial and Prosecutorial Council (HJPC). The judiciary is organised into four systems, each of them having its own jurisdiction and internal institutional structures. The constitutional and legislative framework is incomplete and does not sufficiently guarantee the independence, autonomy, accountability and efficiency of the judiciary. In order to strengthen the guarantees of judicial independence and prosecutorial autonomy, including from all forms of politicisation and pressures, the HJPC and the state-level court system should be provided with an explicit constitutional status.

The Law on the HJPC should be revised to better regulate the appointment, appraisal and disciplinary procedures of members of the judiciary, and provide appropriate legal remedies against final decisions of the HJPC. A Law on the Courts of Bosnia and Herzegovina should be adopted to prevent conflicts of jurisdiction and ensure the required legal certainty in criminal matters.

Bosnia and Herzegovina has no state-level supreme court. The consistency of case-law across the legal orders in the country is promoted by voluntary harmonisation panels among the highest judicial instances. Ultimately, Bosnia and Herzegovina needs to establish a judicial body to ensure the consistent interpretation of the law and the harmonisation of case-law, while fully ensuring the principle of independence of all judges.

The **fight against corruption and organised crime** is hampered by a lack of harmonisation of legislation across the country and by weak institutional cooperation and coordination. Corruption is widespread and all levels of government show signs of political capture directly affecting the daily life of citizens, notably in health, education, employment and public procurement matters. The policy, institutional and legal framework to prevent corruption is fragmented and has significant gaps. Law-enforcement agencies are fragmented and vulnerable to undue political interference. Prosecutors are not sufficiently proactive. Financial investigations and asset seizures are largely ineffective. Fight against money laundering needs to be stepped up. Final convictions in high-level corruption cases are very rare and sanctions are not deterrent enough. Prevention of violent extremism and counterterrorism policies and measures need to be strengthened. The coordination of migration-related measures among competent institutions across all levels of government is poor. Persons looking for international protection cannot effectively access asylum procedures.

Bosnia and Herzegovina needs in particular to adopt and implement legislation on conflict of interests and whistle-blowers' protection, ensure the effective functioning and coordination of anti-corruption bodies, align the legislation and strengthen capacities on public procurement, ensure effective cooperation among law enforcement bodies and with prosecutor's offices, demonstrate progress towards establishing a track record of proactive investigations, confirmed indictments, prosecutions and final convictions against organised crime and corruption, including at high-level, and de-politicise and restructure public enterprises and ensure transparency of privatisation processes.

The legislation and institutions on **fundamental rights** are largely in place; they should be fully implemented and substantially improved, including by harmonising legislation within the country and aligning it with European standards, strengthening administrative capacity and providing adequate resources for the effective enforcement of fundamental rights. There are no countrywide strategies on human rights and on antidiscrimination. The equality of all citizens is not ensured. The laws on non-discrimination and on gender equality are in place but not sufficiently enforced, including on gender-based violence. The Constitution of the *Republika Srpska* entity includes a provision on death penalty, in breach of European standards, and the country has not designated a national preventive mechanism against torture and ill-treatment. Violence, threats and political pressure against journalists are a cause for concern; the protection of journalists and the investigative and judicial follow-up to threats and attacks against them are inadequate. Public broadcasters are subject to political influence; their financial sustainability is precarious. An enabling environment for civil society is not yet fully in place, including on freedom of assembly and association. The authorities have to develop regular cooperation and consultations with civil society organisations. The protection and inclusion of vulnerable groups is not yet adequate, in particular for persons with disabilities, children, LGBTI people,⁷ members of the Roma community, detainees, migrants and asylum seekers. Inclusive and quality education for all is also necessary to overcome the practice of 'two schools under one roof' and to implement the related court rulings.

The political environment is not yet conducive to **reconciliation** and to overcoming the legacies of the past. Established facts about the wartime events are frequently contested by high-level political leaders, who cast doubts on the independence and impartiality of international tribunals. All actors in Bosnia and Herzegovina need to demonstrate full

⁷ Lesbian, gay, bisexual, transsexual, intersex people

cooperation with the international tribunals by acknowledging and respecting their decisions. Revisionism and genocide denial contradict the most fundamental European values.

War crime processing is still subject to a backlog of cases, and a revised national war crime strategy needs to be adopted. Bosnia and Herzegovina needs to substantially improve the system of redress for civilian victims of war. Around 8 000 persons are still missing, and the country needs to assume full responsibility to ascertain their fate. Bosnia and Herzegovina must provide durable accommodation solutions and integration measures for the around 100 000 refugees and internally displaced persons from the conflict in the 1990s, to complete the process of return and allow the closure of Annex VII of the Dayton Peace Agreement. Bosnia and Herzegovina takes part in the Regional Housing Programme with the aim to provide durable housing solutions to around 74 000 refugees and displaced persons.

Bosnia and Herzegovina broadly complies with the **Stabilisation and Association Process**, notably by being active on regional cooperation initiatives and generally striving to maintain good neighbourly relations. Bilateral relations with other enlargement countries are good overall. At the same time, Bosnia and Herzegovina does not recognise Kosovo* and maintains a strict visa regime, issuing only individual short-term visas to citizens of Kosovo who have an invitation from a foreign diplomatic mission or international organisation accredited in Bosnia and Herzegovina, or for humanitarian reasons. An amendment to normalise the visa procedure for all citizens of Kosovo is pending. In addition, the country maintains a bilateral immunity agreement with the United States of America, granting exemption to US citizens from the jurisdiction of the International Criminal Court. In doing so, Bosnia and Herzegovina does not comply with the EU common positions on the integrity of the Rome Statute and with the related EU guiding principle on bilateral immunity agreements. The country needs to align with the EU position.

2. ECONOMIC CRITERIA

This assessment is made on the basis of the Copenhagen criteria related to the existence of a **functioning market economy**, as well as the capacity to cope with **competitive pressure** and market forces within the Union. Bosnia and Herzegovina is still at an early stage of establishing a functioning market economy and of becoming competitive within the common market.

Economic governance is impeded by a high degree of politicisation and a lack of cooperation among key stakeholders. This leads to frequent political stalemates and lengthy delays in the decision-making process. In this regard, the high-level coordination role of the Fiscal Council should be strengthened. Furthermore, economic governance is prioritising maintaining the status quo, which further slows down the formulation and implementation of overdue structural reforms. As a result, the role of the state is still disproportionate, absorbing substantial resources to fund generous public sector employment, inefficient public enterprises and an inefficient social security system. The frequent political stalemates and the resulting low predictability for investors have a negative bearing on the business environment. This is further hampered by a poor rule of law, substantial red tape, corruption and lengthy and complex administrative procedures, partly a result of the high degree of fragmentation of the country's internal market. As a result of poor business environment and of weaknesses in

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

the country's education system, structural unemployment is worryingly high, in particular among young people and vulnerable groups. Furthermore, the informal economy remains significant, creating unfair competition and leading to a higher tax burden than otherwise necessary.

The quality of education is inadequate. Spending on research and development is low. The quality of the country's physical capital suffers from chronic underinvestment and inefficient implementation. The infrastructure for transport and energy is insufficiently developed. The speed of structural adjustment is slow, partly reflecting the difficulties and complexities of establishing and maintaining new enterprises in a highly fragmented and politicised economy, in spite of some recent diversification in the country's regional trade structure.

The 'reform agenda' of socio-economic measures, public administration and rule of law reforms that Bosnia and Herzegovina implemented as of 2015 allowed among other things to create a more flexible labour market and to better align financial sector regulations to international standards. Due to stronger economic growth and tax collection efficiency, the country's public finances are largely balanced, which would offer a great opportunity to invest in the country's long neglected infrastructure, or to start lowering the high labour taxation in support of new jobs. Since 2015 the economy has been growing by 3%, which with a supportive economic policy could reach 4% over the next few years. Nevertheless, the country's economic growth remains below potential and the impact of macroeconomic improvements have yet to be felt by the majority of the population. The emigration of youth and working-age population is among the most pressing challenges.

The policy guidance jointly agreed within the Economic Reform Programme process aims to strengthen macro-fiscal stability and tackle structural obstacles to growth. However, largely as a result of insufficient cooperation among key ministries and bodies at various levels within the country, the quality of the programme developed by Bosnia and Herzegovina is low and there is very limited implementation of the jointly adopted policy guidance, which is a central part of the process. Following the expiration of the 2015-2018 'reform agenda', a new set of socio-economic reforms needs to be agreed and implemented by the governments at all levels in the country, in full alignment with the policy guidance set out in the joint conclusions of the economic and financial dialogue based on Bosnia and Herzegovina's Economic Reform Programme.

3. ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP

The ability of Bosnia and Herzegovina to assume the obligations of membership has been evaluated on the basis of the following indicators:

- the obligations set out in the Stabilisation and Association Agreement;
- the level of progress with adoption, implementation and enforcement of the EU *acquis*.

Overall, Bosnia and Herzegovina has built an initial track record of its obligations under the Stabilisation and Association Agreement. At the same time, the country has not fulfilled a number of obligations under the Agreement and needs to address them as a matter of priority. This includes the proper functioning of the Stabilisation and Association Parliamentary Committee.

Bosnia and Herzegovina does not have a national programme for the adoption of the EU *acquis*. The programme is a legal obligation under the SAA and is essential for planning and streamlining the EU legal approximation process throughout the country. Administrative

capacity is weak and lacks effective coordination structures to manage the country's 14 governments. As a consequence, Bosnia and Herzegovina faces significant challenges in implementing and enforcing legislation stemming from its EU integration objectives. Considerable and sustained efforts are needed for the country to be able to assume the obligations of EU membership.

Some administrative bodies entrusted with implementing the EU *acquis*, such as the Competition Council and the State Aid Council, function on the basis of ethnic decision-making procedures, in which at least one representative from each constituent people needs to support a decision for it to be valid. This is neither compatible with the SAA nor with the obligations resulting from EU membership.

Particular attention and significant efforts is needed in the areas where Bosnia and Herzegovina is at an **early stage** of preparations:

- Free movement of goods
- Right of establishment and freedom to provide services
- Information society and media
- Agriculture and rural development
- Fisheries
- Transport policy
- Energy
- Economic and monetary policy
- Statistics
- Social policy and employment
- Enterprise and industrial policy
- Regional policy and coordination of structural instruments
- Education and culture
- Consumer and health protection
- Financial control

Significant efforts are also needed in the areas where Bosnia and Herzegovina has **some level of preparation**:

- Freedom of movement for workers
- Public procurement
- Company law
- Competition policy
- Financial services
- Food safety, veterinary and phytosanitary policy
- Taxation
- Trans-European networks
- Judiciary and fundamental rights
- Justice, freedom and security
- Science and research
- Environment and climate change
- Customs Union
- External relations
- Foreign, security and defence policy
- Financial and budgetary provisions

Bosnia and Herzegovina should continue efforts in the areas where the country is **moderately prepared**:

- Free movement of capital
- Intellectual property law

Bosnia and Herzegovina does not have any policy areas where the country has a **good level of preparation** or is **well advanced** regarding its capacity to undertake the obligations stemming from EU membership.

Overall, considerable adjustments of the legal and institutional framework and of administrative and implementation capacity are needed across all policy areas to align the legislation with the EU *acquis* and to implement it effectively.

C. CONCLUSION AND RECOMMENDATION

Bosnia and Herzegovina does not yet sufficiently fulfil the criteria related 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. In this respect, the country needs to dedicate considerable efforts to sufficiently fulfil such criteria by strengthening its institutions in order to guarantee democracy, the rule of law, human rights and respect for and protection of minorities. Bosnia and Herzegovina needs to bring in line its constitutional framework with European standards and ensure the functionality of its institutions to be able to take over EU obligations. While a decentralised state structure is compatible with EU membership, Bosnia and Herzegovina will need to reform its institutions to be able to effectively participate in EU decision-making and to fully implement and enforce the *acquis*.

Bosnia and Herzegovina needs to improve its electoral framework and the functioning of the judiciary. It should also strengthen the prevention and fight against corruption and organised crime, including money-laundering and terrorism, as well as ensure effective functioning of border management, migration and asylum systems. It needs to step up the protection of fundamental rights of all citizens, including by ensuring an enabling environment for civil society and reconciliation and the protection and inclusion of vulnerable groups. It also needs to complete essential steps in public administration reform.

As regards the economic criteria, Bosnia and Herzegovina has achieved a certain degree of macroeconomic stability. However, to move towards becoming a functioning market economy, which is a criteria set by the 1993 Copenhagen European Council, Bosnia and Herzegovina needs to pay special attention to speeding up its decision-making procedures and improving the business environment as well as the efficiency and transparency of the public sector, in particular of public enterprises. The country should address the impediments to the proper functioning of market mechanisms, such as a weak rule of law, substantial red tape, corruption, lengthy and overly complex administrative procedures and a high fragmentation of the country's internal market. In order to enable it to cope over the medium term with competitive pressure and market forces within the Union, Bosnia and Herzegovina needs to pay special attention to the low quality of education and its insufficient orientation towards labour market needs, the quality of the physical capital, such as the insufficient development of transport and energy infrastructure and the slow adjustment of the country's economic structure.

Bosnia and Herzegovina's track record in implementing its obligations under the Stabilisation and Association Agreement needs to be improved, notably regarding the establishment of the parliamentary dimension of the Agreement and by adopting a national plan for the adoption of the EU *acquis*.

Bosnia and Herzegovina is overall at an early stage regarding its level of preparedness to take on the obligations of EU membership and needs to significantly step up the process to align with the EU *acquis* and implement and enforce related legislation. Particular attention should be paid to the areas of free movement of goods, right of establishment and freedom to provide services, information society and media, agriculture and rural development, fisheries, transport policy, energy, economic and monetary policy, statistics, social policy and employment, enterprise and industrial policy, regional policy and coordination of structural instruments, education and culture, consumer and health protection, and financial control.

Bosnia and Herzegovina's accession would have a limited overall impact on European Union policies and would not affect the Union's capacity to maintain and deepen its own development. At the same time, identified functionality issues within Bosnia and Herzegovina, notably related to the internal decision-making process as well as uncertainty and overlaps between the country's various levels of government over a number of competences could negatively affect the decision-making process at EU level, particularly for matters requiring unanimity amongst EU Member States. Bosnia and Herzegovina should therefore engage in a process to address functionality issues in order to comply with EU membership requirements and take on its related obligations.

The Commission considers that negotiations for accession to the European Union should be opened with Bosnia and Herzegovina once the country has achieved the necessary degree of compliance with the membership criteria and in particular the Copenhagen political criteria requiring the stability of institutions guaranteeing notably democracy and the rule of law. Bosnia and Herzegovina will need to fundamentally improve its legislative and institutional framework to ensure it meets the following key priorities:

Democracy / Functionality

1. Ensure that elections are conducted in line with European standards by implementing OSCE/ODIHR and relevant Venice Commission recommendations, ensuring transparency of political party financing, and holding municipal elections in Mostar.
2. Ensure a track record in the functioning at all levels of the coordination mechanism on EU matters including by developing and adopting a national programme for the adoption of the EU *acquis*.
3. Ensure the proper functioning of the Stabilisation and Association Parliamentary Committee.
4. Fundamentally improve the institutional framework, including at constitutional level, in order to:
 - a) Ensure legal certainty on the distribution of competences across levels of government;
 - b) Introduce a substitution clause to allow the State upon accession to temporarily exercise competences of other levels of government to prevent and remedy breaches of EU law;
 - c) Guarantee the independence of the judiciary, including its self-governance institution (HJPC);

- d) Reform the Constitutional Court, including addressing the issue of international judges, and ensure enforcement of its decisions;
 - e) Guarantee legal certainty, including by establishing a judicial body entrusted with ensuring the consistent interpretation of the law throughout Bosnia and Herzegovina;
 - f) Ensure equality and non-discrimination of citizens, notably by addressing the *Sejdić-Finci* ECtHR case law;
 - g) Ensure that all administrative bodies entrusted with implementing the *acquis* are based only upon professionalism and eliminate veto rights in their decision-making, in compliance with the *acquis*.
5. Take concrete steps to promote an environment conducive to reconciliation in order to overcome the legacies of the war.

Rule of Law

- 6. Improve the functioning of the judiciary by adopting new legislation on the High Judicial and Prosecutorial Council and of the Courts of Bosnia and Herzegovina in line with European standards.
- 7. Strengthen the prevention and fight against corruption and organised crime, including money laundering and terrorism, notably by:
 - a) adopting and implementing legislation on conflict of interest and whistle-blowers' protection;
 - b) ensuring the effective functioning and coordination of anti-corruption bodies;
 - c) align the legislation and strengthen capacities on public procurement;
 - d) ensuring effective cooperation among law enforcement bodies and with prosecutors' offices;
 - e) demonstrating progress towards establishing a track record of proactive investigations, confirmed indictments, prosecutions and final convictions against organised crime and corruption, including at high-level;
 - f) de-politicising and restructuring public enterprises and ensuring transparency of privatisation processes.
- 8. Ensuring effective coordination, at all levels, of border management and migration management capacity, as well as ensuring the functioning of the asylum system.

Fundamental Rights

- 9. Strengthen the protection of the rights of all citizens, notably by ensuring the implementation of the legislation on non-discrimination and on gender equality.
- 10. Ensure the right to life and prohibition of torture, notably by (a) abolishing the reference to death penalty in the Constitution of the *Republika Srpska* entity and (b) designate a national preventive mechanism against torture and ill-treatment.
- 11. Ensure an enabling environment for civil society, notably by upholding European standards on freedom of association and freedom of assembly.
- 12. Guarantee freedom of expression and of the media and the protection of journalists, notably by (a) ensuring the appropriate judicial follow-up to cases of threats and

violence against journalists and media workers, and (b) ensuring the financial sustainability of the public 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 in line with the objective of closure of Annex VII of the Dayton Peace Agreement.

Public Administration Reform

14. Complete essential steps in public administration reform towards improving the overall functioning of the public administration by ensuring a professional and de-politicised civil service and a coordinated countrywide approach to policy making.

The Commission encourages Bosnia and Herzegovina, at all levels of government, to agree and implement socio-economic reform measures, in line with the ERP policy guidance.

The Commission also encourages Bosnia and Herzegovina to continue engaging in regional cooperation and strengthening bilateral relations with neighbouring countries, including by concluding border agreements and striving towards lasting reconciliation in the Western Balkans.

The Commission recommends to the Council to discuss this Opinion and the follow-up to the key priorities above after the formation of governments in Bosnia and Herzegovina.

The Commission will monitor Bosnia and Herzegovina's progress within the institutional framework of the Stabilisation and Association Agreement and will continue financially supporting the country under the Instrument for Pre-accession Assistance.

The Commission will present a report on Bosnia and Herzegovina as part of the 2020 Enlargement package that will review the implementation of the key priorities above in view of the country's next steps on its EU path.