

## Bosnia at the Door of EU

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*The article describes the compliance of the existing BiH constitution with the EU legal framework. The conclusion is that the present structure will not ensure a satisfactory application of EU legislation in Bosnia and Herzegovina, and a fundamental revision will be needed.*

One of the criteria for accession to EU for an applicant country is the ability to take on the obligations of membership (one of the so-called Copenhagen criteria).

The signatory of an accession treaty will always be the state, which means that the state has to have sufficient competence to be able to ensure not only correct implementation of the treaty, but also that the day-to-day administration at all levels is in conformity with the *acquis communautaire*. And in case for instance another public authority than the state has made a mistake in interpretation of the *acquis communautaire*, and caused a loss for an individual, it is the state's responsibility that the individual will be compensated. This does not mean that the state has to pay, but only that there is a procedure en force, which ensures proper compensation. In a judgment of the European Court of Justice is stated *"it is for each Member state to ensure that individuals obtain reparation for damage causes to them by non-compliance with Community law, whichever public authorities is responsible for the breach and whichever public authority is in principle under the law of the member state responsible for the reparation. A member state cannot, therefore plead the distribution of powers and responsibilities between bodies which exist in its national legal order to free itself from liability on that basis."*

In the white paper is equally stated that the legislative approximation presupposes the existence within the Central and East European associated countries of a similar regulatory systems to those now existing in the member states.

The underlying reason for the position of the European Union is very logic. One of the unique and basic features of EU is that it is supra-national, meaning that EU can issue legal acts with direct effect for individuals, and in case of a conflict between EU legislation and national law, the EU law prevails. The purpose of this mechanism is **to ensure uniform application of EU legislation in all parts of EU**. In the other hand this regime prevents local authorities to have competing competence, which can undermine the entire EU legal system. Or to put it differently, if BiH choose to be member of EU, it is not possible to transfer competence to EU and at the same time keep the same competence at entity or cantonal level.

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<sup>2</sup> The article reflects only the author's points of view

It is difficult to see any room for negotiation on this issue. There are strong local government structures in Belgium (language communities) and in Germany and Austria (Länder), and an attempt to find a working solution for BiH can raise a general discussion nobody wants.

It is obvious that the question to which extend the present distribution of powers and responsibilities in BiH is compatible with EU integration has to be analysed in depth in order to identify the areas where the present structure needs to be changed, and a plan for change has to be adopted if BiH wants to prepare for EU membership.

### **Participation of Local Authorities in Implementation of the Acquis Communautaire**

The compliance of national legislative and regulatory systems can in practise be achieved in many ways and does not exclude participation of local authorities such as entities, cantons and municipalities as long as they are supervised and controlled by state institutions.

Instead of setting up state agencies the legislative and regulatory power can be delegated to local authorities under the condition that:

- The rules issued by local authorities have to comply with the acquis communautaire and there is a procedure to check compliance.
- State authorities in case of no compliance can revoke decisions made by local authorities.
- Somebody is financially responsible for compensating individuals for mistakes made by local authorities in their interpretation of the acquis communautaire

In case this model is to be applied, the right procedure should properly be to transfer the competence to the state by virtue of article III.5(b)<sup>3</sup> in BiH constitutions and subsequently delegate the competence to the entities. There will then be no doubt that the competence of the state is at a higher level, that the competence of the entities is derived from the competence of the state, and that the competence of the entities can be revoked or modified without their consent.

### **Other Aspects**

For areas not covered by EU rules or where EU rules leave some leeway for how EU legislation is to be implemented, nothing prevents BiH to keep the competence at local level without any possibility for administrative appeal or any other interference from state level authorities. The distribution of powers and responsibilities should be based on the political reality in BiH, the advantage to have decisions made close to the individual (EU principle of subsidiarity), the cost implication of having two (or more) parallel administrations. In the evaluating the cost aspect should also be included the costs for the individuals and in particular for the business society. If for instance there are different consumer protection rules in the two entities, the producers may

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<sup>3</sup> "Within six months of entry into force of this Constitution, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters, including utilisation of energy resources and cooperative economic projects".

be forced to label their products differently in order to marketing them in both entities and an obstacle to inter-entity trade has thus been created.

If BiH for political reasons decides to maintain a structure, which from an outsider is perceived as unnecessary complicated, resource consuming, and non-transparent, it may also have a negative effect on foreign investors and on the willingness of the international donor community to support BiH in the future. The question EU may ask is why shall the EU taxpayer support BiH, if the political authorities of BiH show low interest in making their own effort to develop the economy.

### **Localisation of State Institutions**

The fact that some kind of state institutions will be needed in many areas does not imply that these institutions necessarily have to be located in Sarajevo. For many supervisory institutions it makes more sense to have a small central office (not necessarily in Sarajevo), and several units all over the countries staffed with various kinds of inspectors. This model can be applied for instance for veterinary and phytosanitary control.

### **Concluding Remarks**

BiH is a sovereign country and nobody can impose any rule on BiH how to organise its own affairs. But as BiH has adopted a policy, which shall ultimately lead to EU membership; and in this case the political structure of BiH has to be amended in order to comply with EU requirements.

It is strongly recommended that BiH:

- Address the question of distribution of competence between state and entities in the light of future EU membership
- Adopt a plan for transfer of competence from entity level to state level by virtue of article III.5(b) in the BiH Constitution in order to be prepared to take on the obligations of EU membership.
- Consider the system of control in case competence are to be delegated from state level to entity level