

# Policy Analysis

*EU Membership Candidate Status:  
Between Challenges and Weaknesses*

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For the Stabilization and Association Process of Bosnia and Herzegovina to the European Union<sup>1</sup>, the previous year, 2015, was extremely significant. It will remain recorded as the year of the return to the road of reforms, which had resulted in Bosnia and Herzegovina submitting the Application for EU Membership February 15, 2016 in Bruxelles. Taking into consideration the existing problems, in this submission of the Application sceptics of the BiH European road see an act that implies merely a declarative readiness not substantiated by essential reforms, and in this political constellation, they find that BiH is not ready to face the challenges of the road toward the EU. For moderate optimists, who find the very prospect of EU membership important in itself, as the driving force for positive democratic, political, economic and social changes in BiH, the current year will undoubtedly provide answers on the symbolism and relevance of submitting the application and the readiness of our country to fulfil the obligations that follow.

Submission of the BiH EU membership application is an opportunity for a sort of introspection, for summarizing what was done in the previous year and to give an indication of what the membership application does or does not bring us. While expecting that the BiH governments should fulfil the priorities in order for the BiH Application to be found credible, we are witnesses to the presentation or publication of the (February 09, 2016) coordination mechanism which should enable BiH to speak with “one voice” in regard to the EU. At the same time, we are also witnesses to the debate which comes down to strongly objecting to or affirming the mechanism, depending on which political corner the comment is coming from. The second priority – of concluding the Protocol to the Stabilization and Association Agreement (SAA in further text) after Croatia became a member of the EU – has not been fulfilled, and it is not likely that it will be, under the conditions set by the EU.

Through insisting on the adoption by BiH of an efficient system of coordination and adjustment to the SAA, along with implementation of priority economic and social reforms, the European Union made it quite clear what is considered to be the minimum of standards expected from BiH in this phase in order

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<sup>1</sup> Since the initiation of the EU Stabilization and Association Process in 1999, Bosnia and Herzegovina began fulfilling the conditions from the EU Road Map in 2000 in order to commence creating the Feasibility Study in 2003, which meant answering questions of the European Commission in order to begin negotiations for signing the SAA with the EU. In 2003, the BiH Parliamentary Assembly adopted a *Conclusion on the existence of full political consensus confirming that membership of BiH in EU is a top priority*. Furthermore, in 2003, the BiH Presidency set *General directions and priorities for implementation of foreign policy of Bosnia and Herzegovina* according to which the general principles and activities of Bosnia and Herzegovina include further approaching and institutionalization of relations with the European Union in accordance with the Stabilization and Accession Process. The SAA negotiations started at the end of 2005, the Agreement was initialled at the end of 2007 and signed June 16, 2008 in Luxemburg. The *Interim Agreement of Trade and Trade Related Issues* came into force July 01, 2008.

to even be able to have a more serious conversation about the following phases of integration. Long before us, our neighbours were successful in passing this test. In its relationship with the EU, Montenegro is making secure and sustainable progress. At the Intergovernmental Conference in Bruxelles, in December 2015, it opened negotiations on Chapter 14 – on Transport Policy and Chapter 15 – on Energy, and after three and a half years of negotiations it has 22 negotiation chapters open, of which two have been temporarily closed. The Republic of Serbia has opened the first two negotiation chapters.<sup>2</sup> Macedonia acquired candidate status in December 2005, however, it has not opened accession negotiations. In June 2014, the Republic of Albania received candidate status, but it has not yet fulfilled the conditions to begin accession negotiations.

The bar of expectations in BiH for achieving candidate status by mid-2017 has been set high. This can be achieved with the existence of political will, but, taking into account the necessary time and procedures, this would mean that BiH, by the end of the first half-year period of the current year, should solve many of the open issues both internally and in its relationship with the EU, among which are those it has failed to solve in the past ten years.

## **PART I – Renewed dialogue between BiH and EU**

In stressing the importance of an individual approach towards the Western Balkan states, in accordance with the agreement with the EU, BiH, initially, should have implemented the Decision of the European Court of Human Rights in the Sejdić-Finci case and established legal norms that respect fundamental human rights.<sup>3</sup> However, it turned out that in BiH there is an utterly unbalanced approach to respecting European standards in the area of human rights. Furthermore, an attempt to hand over the responsibility of implementing the reforms to BiH politicians had, as a consequence, the deepest of political, economic and social crises in BiH. This was a sign that for the BiH authorities, known for not abiding by their agreements, new priority parameters must be set.

After a decade of a lack of reforms in BiH, at the Aspen Institute Conference held in Berlin November 11, 2014, the Foreign Affairs Ministers of Great Britain

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<sup>2</sup> On the Second Intergovernmental Conference that was held December 14, 2015, in Bruxelles, Chapter 32 – Financial Control and Chapter 35 – Normalization of relations with Kosovo, were officially opened.

<sup>3</sup> The court case was brought before the European Court of Human Rights based on the charges of D. Sejdić and J. Finci against BiH. As members of national minorities they were precluded from being elected into the BiH Presidency or the House of Peoples. In the verdict of December 22, 2009, the Court ordered the BiH institutions to change the discriminatory provisions in the BiH Constitution. Negotiations were held with the leaders of the governing parties during 2012 and 2013, however, they were concluded unsuccessfully because there was no readiness to compromise.

and Germany presented an initiative for reconstruction and acceleration of the European integration process in BiH.<sup>4</sup> There was a desire to unlock the process of social and economic reforms of direct relevance to BiH citizens and to achieve political consensus through redistribution of conditions, reforms and obligations, as well as awareness that communication with the EU through an efficient coordination system is *conditio sine qua non*.

The Foreign Affairs Council Meeting held December 15, 2014, officially confirmed this new approach and European prospect for BiH, and a written declaration was requested from the BiH political leaders in order for the EU Council to be able to make a decision on the SAA coming into force. It was also confirmed that, in the later stages, after significant progress had been made in implementing the reform programs, the EU will consider the BiH application for EU membership. When requesting the opinion of the European Commission on the BiH Application for EU membership, the Council will ask the Commission to pay special attention to implementation of the Decision in the Sejdić-Finci case.

In Council Conclusions on Enlargement and Stabilisation and Association Process<sup>5</sup> from December 16, 2014, the Council invited Bosnia and Herzegovina to act swiftly and decisively in accordance with the conclusions of the Council from December 15, 2014.

The BiH Presidency and the Parliamentary Assembly, as well as the leaders of all BiH political parties adopted a *Declaration on the commitment of the institutions for implementing reforms on the European road of BiH* in February 2015. In accordance with the assumed obligations, in its Conclusions from March 16, 2015, the Foreign Affairs Council approved the continuation of the procedure for the SAA with BiH to come into force, and it came into force June 15, 2015.

<sup>4</sup> The initiative was formally adopted by the Ministers of Foreign Affairs of the EU member states at the Meeting of the Foreign Affairs Council held November 17, 2014.

<sup>5</sup> In Conclusions from December 16, 2014 (parts regarding Bosnia and Herzegovina), the Council expresses serious concern that the country remains at a standstill in its EU integration process due to a lack of collective political will on the part of the political leaders to address the reforms necessary for progress on the EU path. The Council therefore welcomes the renewed EU approach as set out in its conclusions.

Moreover, taking into account the fragility of the socio-economic situation, which has been exacerbated by the severe floods which hit the country in May, the Council welcomes the initiatives of the Commission to focus on reforms and issues of direct concern to citizens. The Council welcomes the wider remit of the EU-Bosnia and Herzegovina Structured

Dialogue on Justice covering additional rule of law matters, in particular the fight against corruption, the setting up of a joint EU-Bosnia and Herzegovina Working Group to accelerate the implementation of EU funded projects and the development of a 'Compact for Growth and Jobs' together with key actors including international financial institutions.

The Council notes that the establishment of an effective coordination mechanism on EU issues would improve the country's interaction with the EU, including that with respect to IPA funding. Progress in this regard would open the way for Bosnia and Herzegovina to benefit fully from the funding available.

The Council calls on Bosnia and Herzegovina to revise its position urgently so that an adaptation of the *Interim Agreement/Stabilisation and Association Agreement* can be finalised as soon as possible based on Bosnia and Herzegovina's traditional trade with Croatia.

After that, there came the adoption of the Reform Agenda for Bosnia and Herzegovina for 2015-2018<sup>6</sup> and the Action Plan for its implementation,<sup>7</sup> which serve as guides for implementation of economic measures in BiH, which, according to the conclusions of the EU Foreign Affairs Council,<sup>8</sup> represents a condition for submitting a credible membership application.

The addition of a legal framework to the political commitment and the economic agenda came with the SAA coming into force, because this Agreement for Bosnia and Herzegovina is a legal platform for gradual accession to the EU within the status of an associated member and potential membership candidate. The goal of the SAA is the establishment of political dialogue, harmonization of legislation, improvement of economic relations, development of a free trade zone, securing regional cooperation and development of cooperation in a number of other areas. The scope of the reforms based on the SAA has been expanded from primarily trade issues from the *Interim Agreement with the SAA* to EU regulations as a whole. At the same time, the obligations that stem from the political dialogue between BiH and the EU and regional cooperation (not in the *Interim Agreement*) have become an integral part of a contractual relationship between BiH and the EU.<sup>9</sup>

Regular political dialogues between BiH and the EU on bilateral and international issues of common interest, including regional aspects and taking into consideration the EU Common Foreign and Security Policy, are becoming a contractual relationship, and the fulfilment of the BiH obligations is monitored and evaluated within the scope of the European Commission's (Progress) reports for BiH.

The establishment of joint bodies of BiH and the EU in accordance with the provisions of the SAA: the Council,<sup>10</sup> the Committee<sup>11</sup> and the Parliamentary Committee for Stabilization and Association<sup>12</sup> significantly contributed to the intensification of political and expert working dialogue with the EU by the end of 2015. Regular political dialogue between BiH and the EU at the highest ministerial level which takes place within the Council should regularly check, once a year as

6 In July 2015

7 In October 2015

8 ...from December 15, 2014, March 03, 2015 and October 12, 2015

9 Before the SAA came into force, the Interim Agreement on Trade and Trade-related Issues between the European Community and Bosnia and Herzegovina was in force, and based on it Bosnia and Herzegovina had, in the five-year-long transition period completely liberalized its market for products originating from the European Union. Monitoring of the implementation of the *Interim Agreement* was done through joint bodies of the EU and BiH, the Interim Committee and Subcommittee, as well as through constant communication between the secretariats of these bodies on fulfilling the conclusions and recommendations made at the meetings of these bodies with the goal of adequate and timely implementation of the *Interim Agreement*.

10 First meeting of the Stabilization and the Association Council held December 11, 2015 in Bruxelles

11 First meeting of the Stabilization and Association Committee held December 17, 2015 in Bruxelles

12 First meeting was held November 5 and 6, 2015, in Sarajevo

a rule, the way in which BiH is implementing the SAA and the way in which it is adopting and implementing legislative, administrative, institutional and economic reforms.<sup>13</sup> During the first meeting of the Council, a clear political support was declared for BiH<sup>14</sup> in order to maintain a positive momentum of reforms. The first meeting of the Committee marked a beginning of the implementation of the SAA on a technical level. The point of the meeting was to make an assessment of the progress achieved and to establish the remaining challenges for BiH in the pre-accession process, particularly in the context of the European Commission Progress Report on BiH for 2015. The Committee has adopted a decision on forming seven stabilization and association subcommittees, as well as special groups for public administration reform that are currently being formed.

On November 11, 2015, the European Commission published the Enlargement Package 2015, which consists of the *EU Enlargement Strategy* and reports for Western Balkan countries and Turkey. In the 2015 BiH Progress Report, for the first time in a number of years, the Commission made an assessment that BiH has returned to the road of reforms and has begun to resolve the remaining priorities on the road towards EU accession.

The specificity of the 2015 Enlargement Strategy is in the fact that for the first time it is defined as a mid-term strategy for the EU enlargement policy which encompasses the period of this Commission's mandate (end of 2019). The European Commission has noted that the countries enveloped by the enlargement process have achieved significant progress in many areas during the past year, but that the challenges they face are such that none of them will be ready to join the EU during the current Commission's mandate. This confirms the approach that every state, including BiH, will be evaluated individually based of their merits. The Strategy confirms the approach to fundamental issues, and those are priorities such as the rule of law, fundamental rights, strengthening democratic institutions, including public administration reform as well as economic development and competitiveness.

Next to assigning grades to each area, the European Commission has also listed specific priorities that must be implemented in order to get better grades for subsequent reports. Seventy (70) priorities have been set for Bosnia and Herzegovina. The BiH Directorate for European Integration, in collaboration with the competent institutions at all levels of government, developed an *Action*

<sup>13</sup> Article 8 of the SAA

<sup>14</sup> Remarks by High Representative/Vice-President Federica Mogherini following the EU-Bosnia and Herzegovina Stabilisation and Association Council meeting <http://europa.ba/?p=38991>



*Plan* (AP) for the implementation of the priorities stated in the 2015 Progress Report for BiH, and the deadline for implementing those priorities is August 2016. Reporting on the implementation of the priorities from the AP will take place within the frame of the appendix of the BiH institutions for the 2016 Progress Report for BiH.<sup>15</sup> The priorities from the AP will become an integral part of the *Work Plan* of the Council of Ministers for 2016 in order to secure their implementation.

In the Enlargement Strategy, the European Commission particularly stresses regional cooperation as the key to stability and strengthening regional economic development and infrastructural cohesion. Regional cooperation of the Western Balkan states has been recognized as one of the BiH foreign policy goals. Bosnia and Herzegovina will continue to actively participate in the regional activities of the Berlin process and the Western Balkan Six Initiative, and particularly in the **Connectivity Agenda for the Western Balkans 16** and in the next Summit in Paris.

## II. PART – Achieving Candidate Status

According to Article 49 of the Treaty on the European Union, any European state founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights and the rights of minorities may apply to become a member of the Union. At the meeting of the European Council held in Copenhagen in June 1993, three criteria were set (the Copenhagen Criteria) that all future candidate countries must satisfy, and those are: political: stability of institutions guaranteeing democracy, the rule of law...; economic: a functioning market economy... and legislative: adopting the body of the EU law (fr. *acquis communautaire*). The conclusion reached at the Meeting of the European Council held in Madrid in December 1995, was that the implementation of all of the mentioned reforms must be accompanied by a corresponding administrative capacity within the state. Therefore, a fourth (the Madrid Criteria) criterion was set in place – administrative: creating an efficient system of state administration.

A new phase of assessing the ability of Bosnia and Herzegovina to become an EU member (to achieve candidate status) was initiated February 15, 2016, by BiH submitting the Application for Membership to the Minister of Foreign Affairs of the Kingdom of the Netherlands, the representative of the state which, in this cycle, is presiding over the Council of the EU.

<sup>15</sup> The Action Plan was adopted in the BiH Council of Ministers February 09, 2016.

<sup>16</sup> The Second Western Balkans Summit within the framework of the Berlin Process was held in Vienna, August 26-27, 2015.



How much time will pass, from the submission of the Application until it is placed on the EU Council agenda, depends on the quality of the reform processes in BiH and the situation in the EU, because the member states will first debate on whether and when the BiH application will be placed on the EU Council's session agenda. At the same time, the Netherlands is sending our application to be considered by the European Council and the European Parliament. If the BiH application does get on the EU Council's agenda, which depends on the results of a comprehensive debate and monitoring, the EU Council will invite the European Commission to initiate the drafting of its opinion on the membership application (fr. Avis) - its opinion on the preparedness of BiH to fulfil the aforementioned conditions. In accordance with the usual procedure for drafting the Avis, the European Commission will deliver a questionnaire for BiH with questions regarding different areas of state functioning, institutions and economy. The time period between submitting the membership application and receiving the questionnaire can vary: five months (Croatia), eight months (Montenegro and Albania) and one year (Serbia). If the BiH application does not get on the EU Council agenda this will mean that it was refused through a concluding action or that it has ended up in the drawer – until further notice.

States in the region had, in their own time, defined the task of providing answers to the questionnaire as priority number one. Having in mind its complicated state structure, BiH can expect a questionnaire with close to 5000 questions. Answers to the questionnaire are to be delivered in English language within the timeline set by the European Commission. The practice so far indicates a deadline of two to six months. After receiving the answers, the European Commission reserves the right to send additional questions.

Based on the delivered data and data gathered from other sources (EU member states and international organizations), the European Commission makes an opinion which assesses the general state and abilities of a country to fulfil the membership conditions, and a recommendation regarding the opening of negotiations for EU membership. The opinion of the European Commission (Avis) represents a foundation for the creation of a decision of the European Council on whether a state can achieve candidate status.

The process of translating the answers to the questions from the *European Commission's Questionnaire* has represented one of the greatest translation endeavours in the majority of states. Along with the translated answers, it is necessary to deliver a vast number of laws and bylaws in English language.

The BiH administrative capacities for accomplishing this goal are satisfactory in general, with technical help expected from the European Union, as well from the neighbouring countries based on bilateral cooperation, within the framework of the European Partnership and with the goal of providing BiH with the knowledge and experience acquired in the European integration process within those countries.

The overall procedure, from the time the EU Council invites the European Commission to make the Avis, until it receives the Avis from the European Commission on the ability of the applicant state, in most cases lasts about a year, but it can last longer. The European Commission delivers its opinion and recommendations to the European Council which then makes the final decision on approving the candidate status. If the opinion on the application is positive, the European Council then assembles an intergovernmental conference between the EU and the applicant state, which then receives applicant status. From that moment on, the Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) has jurisdiction over bilateral relations between the EU and the candidate state, which, until that time, was under the jurisdiction of the European External Action Service. In the EU enlargement history, there has been only one recorded case of an explicit negative opinion of the European Commission on membership application which was in 1989 in the case of Turkey.

For BiH, the candidate status would mean a clear membership perspective and would provide a strong incentive for reforms and democratic political forces. By meeting the political criteria, BiH would additionally consolidate democratic reforms on the road towards building a functional state and would strengthen the mechanisms of the rule of law, and through legislation harmonization it would upgrade its own standards in the area of economy and business. With candidate status, BiH would have the possibility of drawing and using the EU pre-accession funds that are to secure faster development and support to the reforms in the key areas.

However, having in mind the Madrid and Copenhagen criteria, it is necessary to make a short problem analysis through the prism of priority reforms, the realization of which has so far been lacking in BiH, for it can help us to gain a realistic perspective on the possibilities or lack thereof that are available to our country through the act of the submission of the application.

In order to transfuse the European standards into the legislative system of a country that is (primarily) submitting a membership application, the standard working communication with Bruxelles takes place through a *coordination*

*mechanism*. Let's assume that the European Commission has delivered the aforementioned Questionnaire to BiH. In order for BiH to provide quality answers to the questions, there must be strong political commitment and an efficient European affairs coordination system in place, in order for BiH to be able to speak with "one voice". Even at the later stage, the stage of membership negotiations, the candidate state should report, almost daily, on the manner and the deadlines of the implementation of EU standards, regulations and policies, and this requires coordination in a great number of institutions, both horizontally and vertically. In the case of Bosnia and Herzegovina, it is a question of the ability of the state, entities and cantons to become harmonized with the EU Acquis. For BiH, an efficient coordination mechanism opens up the possibility of using the financial means from the EU pre-accession funds more successfully, and to adjust its legislation to that of the EU in a uniform and timely manner. Adoption of the *coordination system*<sup>17</sup> of the European integration process has indicated that this agreement in BiH is still loaded with political prejudice on the endangering and redistribution of constitutional competences or lack thereof, on the lack of a consensual culture, filled with non-transparent work and "doomed to failure" even before this system ever comes into practice. Under these circumstances, it would be quite logical that the EU member states do not accept the BiH application as credible.

Furthermore, BiH still needs to address the issue of adjusting the SAA regarding Croatia's entering the EU. By concluding a Protocol (between BiH and the EU) to the SAA, the enlargement of the Union to a new member state (Croatia) is being taken into consideration, and its joining the SAA (between BiH and the EU) and the Interim Agreement (between the European Commission and BiH) is being regulated. The main purpose of this Protocol is adapting the regulations of the SAA and the Interim Agreement that concern the trade of agricultural, food and fishery products in order to regulate trade relations between BiH and the expanded EU, considering the fact that BiH had previously had a signed trade agreement with Croatia within CEFTA.<sup>18</sup> The negotiations between BiH and the EU on the signing of the Protocol to the SAA, with regard to adaptation of the tariff concessions after Croatia entered the EU, pertaining to the principle of traditional trade, have confirmed that even within BiH, there is no consensus on this issue, that BiH is not presenting itself as a credible partner and that this EU request is unacceptable for BiH. The BiH side refuses to accept that all products which

<sup>17</sup> Decision on coordination system of the European integration process in Bosnia and Herzegovina published in the *Official Gazette of BiH* no. 8 from February 9<sup>th</sup> 2016.

<sup>18</sup> *Central European Free Trade Agreement*

Croatia had exported to BiH before it entered the EU are now to be with the zero-tariff quota as for all EU member states. The arguments of BiH are that this is not (just) a technical adaptation of the SAA, but rather a fundamental change, considering the fact that this involves a group of agricultural products that are of strategic significance for the BiH economy and which are protected through the provisions of the SAA. Furthermore, the traditional trade principle in this specific case is not in the spirit of the SAA, which in its essence, should contribute to the improvement of the economy and in particular to agricultural production in BiH in the association process, and not to its collapse. A likely consequence of the aforementioned will be a drawn out negotiations process which, unless BiH accepts the EU conditions, could directly endanger the acquiring of candidate status if it has not already done so.

The completion of the data processing of the 2013 Census in BiH should be done urgently. Quality answers on the European Commission's *Questionnaire* can only be delivered based on reliable statistical data in accordance with the Eurostat methodology, and only this data can enable the processes of planning and policy and strategy creation, based on the facts from the census. This data is of extreme importance for creation of strategic documents (on the state level) in specific areas, upon which financing of projects of strategic significance for BiH depends. Although long since promised, the work of processing and publishing the data is still incomplete.

The Structured Dialogue on Justice was established in order to reach a compromise on justice reform at the state level. The possibility of holding a referendum in the RS on this issue remains a destabilizing factor. The European Commission's 2015 Progress Report on BiH notes that despite positive movements, the decision of the RS National Assembly on holding a referendum on justice is not in accordance with the written obligations of BiH government representatives undertaken in February 2015.

At the time of the submission of the membership application, Bosnia and Herzegovina is in violation of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms for having failed to fulfil the obligations pertaining to the court decisions on the *Sejdić-Finci* and *Zorić vs. BiH* case. Although the BiH Council of Ministers has adopted the Action Plan<sup>19</sup> for the implementation of the aforementioned court decisions, the preparation of

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<sup>19</sup> At the 22nd session of the BiH Council of Ministers on September 8<sup>th</sup> 2015.

the draft amendment to the BiH Constitution and the harmonization of the BiH Election Law is still in its initial phase. As long as ethnic, religious or any other sort of belonging represents a foundation for political rights, that is, for discrimination in any form, BiH is implementing a policy which is in opposition to the fundamental European standards and values.

Civic democracy, insisting on individual human rights and freedoms and the rule of law are the true and most significant achievements of the EU civilization which BiH citizens are expected to have after the integration process, but from that aspect, numerous challenges are evident on the European road.

A real political will which would demonstrate commitment towards the EU and its values is lacking. The significance of a vision of a sustainable association process is based on reality, and it is created and implemented as a process where essential reforms, and not unrealistic expectations, are achieved. BiH governments can use the chance for BiH to become a candidate only under the condition that they stop simulating reforms and make fundamental and authentic progress.

Bosnia and Herzegovina is, yet again, faced with its constitutional-political heritage and with fundamental failures that have led to the fact that, instead of a clear vision of the European integration process, there exist fragmented political realities whose common denominator is hyper-politicization and ethnic colouring of legal, social and economic reforms on the road towards the EU.

Essential progress is not in the forefront due to the particular approaches of political actors that in this process see a great opportunity to force and establish their own political priorities: primarily to prevent the Croatian people being outvoted (with the application of the decision of the European Court of Human Rights), to institutionally strengthen the role of cantons (through the coordination mechanism), to block the transfer of competences to the state level (lack of strategies in strategic areas at the state level) and to secure the continuance of the Office of the High Representative for BiH. In this way, European integration has become a hostage of the particular interests and goals of political actors.

Bosnia and Herzegovina needs to turn the declared political priority and the wide public support for the European integration process into a genuine agreement on fulfilling the criteria and conditions set by the European Union, which will then secure rapid and genuine progress.