



# BOSNIA-HERZEGOVINA

## HOW TO BUILD A VIABLE ROAD TO EU MEMBERSHIP

### ABSTRACT

Since its beginning with the Stabilisation and Association Agreement in 2005, Bosnia-Herzegovina's EU path has been marred by the country's unwillingness to gather the necessary political consensus to adopt the reforms needed to improve its functionality, its rule of law and its democratic standard. This feature has proved itself true throughout BiH's EU journey. The limits of conditionality have been overcome by Brussels' and the member states' several decisions to lower the bar and allow Sarajevo to go further. The 2022 decision by the Commission and the Council to grant BiH the candidate status stems from almost purely geopolitical considerations, rather than from the effort of Bosnian institutions to reform. The same will most likely be true when, in March 2024, the Commission might recommend the Council for the opening of accession negotiations.



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## Introduction

In November 2023, the European Commission issued its annual Progress Report on Bosnia-Herzegovina (BiH), dashing in part the hopes that Sarajevo could keep enjoying the positive momentum triggered by the strong impulse to Ukraine, Moldova and Georgia's EU aspiration. While BiH was granted candidate status by the Council in December 2022, together with two of the three above-mentioned former Soviet republics, this time the Commission did not recommend for the Council to open negotiations, stressing that this will happen "once the necessary degree of compliance with the membership criteria is achieved".<sup>1</sup> Such a sentence encompasses much of the troubled path BiH has been experiencing on its way to becoming an EU member state, with a series of problematic issues that are making this journey even more complicated than those of the other Western Balkan countries. Given the current domestic context, the prospect of a BiH's EU membership looks difficult to reach in the short and medium term. The 2030 threshold unofficially suggested by the European Council President Charles Michel as the entry date for the Western Balkan countries seems quite unrealistic from Sarajevo's perspective. The issue is, therefore, what needs to be done in order to create a viable prospect for Bosnia's EU membership, one that takes into consideration the aspirations of its citizens before disillusion over Sarajevo's European future becomes irreversible.

### The road towards (prospective) membership

The EU acknowledged for the first time the prospect of membership for the Western Balkan countries at the EU-Western Balkans summit in Thessaloniki in June 2003, by adopting a declaration stating that "the future

of the Balkans is within the European Union".<sup>2</sup> The Declaration, a watershed moment in the history of the Union and of its enlargement, came at a time when all the Western Balkan countries had already entered the Stabilisation and Association Process (SAP), an EU initiative launched in 1999, which established the first legal and political ties between the region and the EU. At the EU summit in Santa Maria da Feira in 2000, it was confirmed that all participants in the Process were potential candidates for membership. A few months later, at the EU-Western Balkans Summit in Zagreb (the first of its kind), the countries of the region were invited to join the EU. At the Thessaloniki summit, however, an extremely important step forward was taken, signalling the readiness of the EU to guarantee the European perspective for the region, therefore giving a stronger initial impetus to the implementation of the necessary reforms.



*The troubled path of the Stabilisation and Association Agreement provides a relevant example of the limits of EU conditionality when applied to the Bosnian context, both as regards the extent of the requests and the political and technical ability to satisfy them by BiH's several layers of governance.*



BiH began its long (and yet unfinished) journey with a stalemate, namely on the approval of the Stabilisation and Association Agreement (SAA). The SAA is the first legal step into accession for the Western Balkans, which creates a contractual relationship for enhanced cooperation in various fields, to strengthen their administrative capacities and prepare the ground for the political and economic reforms aimed to equip the country for future integration. The troubled path of the Stabilisation and

Association Agreement provides a relevant example of the limits of EU conditionality when applied to the Bosnian context, both as regards the extent of the requests and the political and technical ability to satisfy them by BiH's several layers of governance.

The technical negotiations on the SAA between BiH and the EU were launched in November 2005 and successfully concluded in December 2006: however, the conditionality applied for its signature – the reform of BiH's police bodies, aiming at their unification – stalled the process, as Republika Srpska strongly opposed to relinquish its own police and to transfer law-enforcement competencies to the State level. While the SAA was initiated in December 2007, a watered-down agreement on the police reform, establishing a joint police coordination body (but not the unification initially sought after) was finally achieved in April 2008, allowing for the signature of the agreement later in June. The ratification,<sup>3</sup> however, proved to be as complicated as the signature, with several EU member states making it conditional to the implementation of further reforms by BiH, especially the constitutional reform needed to eliminate the discrimination against voters not belonging to one of the three main constituent peoples (Bosniaks, Serbs and Croats) to run for elections to the State level Presidency and House of Peoples, as dictated by the 2009 European Court of Human Rights 'Sejdić and Finci' ruling.<sup>4</sup> The inability of Bosnian political actors to find a suitable institutional solution to the issue, notwithstanding the degree of international pressure, led to a stalemate even when, in 2011, all EU member states had ratified the SAA with BiH. Only in June 2015, BiH managed to see the SAA entering into force,<sup>5</sup> following a Germany and the United Kingdom's initiative to unblock the situation by accepting only a 'Declaration' to implement the constitutional reforms. As was the case with

the police reform, using 'Sejdić and Finci' as a condition to finally have the SAA in motion proved the EU and the international community wrong; so when the cost of leaving BiH out of the EU trail got too high, a backtracking became unavoidable.

Another initiative followed the German and British push to have the SAA adopted and implemented, the so-called Reform Agenda 2015-2018, also adopted by BiH authorities in late 2014. The aim of this new strategic approach was to apply political and economic conditionality, through the involvement of the World Bank and the International Monetary Fund, to advance a set of reforms aimed to establish a stable macroeconomic environment and boost economic growth encompassing areas such as labor market, state-owned enterprises, public administration reform and rule of law, in order to hit the foundations of the patronage system that plagued Bosnia's economic and social development for decades. The completion of the Reform Agenda was meant as yet another condition for Bosnia-Herzegovina to be able to submit its application for EU membership. However, as it was the case in the past, after less than two years the EU lowered its conditions from full implementation of the Reform Agenda to 'meaningful progress', a synonym for soft conditionality in EU terminology.

Such difficulties in building a domestic consensus on adopting the necessary reforms to advance on its European path did not prevent BiH to submit its application for EU membership in February 2016, following a quarrel on the approval of the Coordination Mechanism, a venue for approving EU-related issues putting together State and entities' governments. In December, the Commission handed over the accession Questionnaire to Bosnian authorities, hoping for a quick reply. The Questionnaire served as the main basis for the Commission

to prepare an Opinion on whether BiH had the necessary capacities to meet the Copenhagen criteria and all other institutional, economic and financial obligations deriving from EU membership, and therefore could be granted the status of candidate for accession. The Questionnaire for BiH consisted of more than 3,200 questions, divided into the 33 chapters of the EU acquis. Replying to all of them proved to be a daunting task for Bosnian several layers of governance. Instead of the expected six to seven months, the whole process of putting the answers together and have the political green light from the Coordination Mechanism (i.e., overcoming Republika Srpska's vetoes) took 14 months, way longer than for any other Western Balkan country wishing to apply for membership. In February 2018 the Bosnian government finally handed over the replies to the Questionnaire, only to receive later in June an additional set of more than 600 follow-up questions, most of them referred to political criteria, social policy and employment, but also to the issues of justice, freedom and security. The Bosnian government needed nine months to provide the additional replies, going beyond the provisional agreed deadlines, and leaving around 20 questions still unanswered. This was deemed satisfactory by the European Commission, which brought the process forward by publishing in May of the same year its Opinion on Bosnia-Herzegovina's EU membership application and a more detailed Analytical Report, a document that currently represents both the baseline and the roadmap for Sarajevo's European aspirations.

### **The 2019 Opinion and the 14 Key Priorities**

The Opinion highlighted the heavy doubts the Commission had about BiH's preparedness to become an EU member state. Instead of recommending to the Council the granting of

the candidate status, as hoped for by Bosnian political elites wishing to electorally cash in any eventual success, the Commission made such step conditional to the implementation of 14 Key Priorities, encompassing matters related to democracy and the functionality of institutions, rule of law, fundamental rights and the reform of the public administration.<sup>6</sup> Some of these steps were framed in vague wording, allowing for a potential political interpretation of their achievement – this is the case of Key Priority 5, asking for the adoption of "concrete steps to promote an environment conducive to reconciliation in order to overcome the legacies of the war", Key Priority 4c calling for "guaranteeing the independence of the judiciary", or Key Priority 4d on the "reform of the Constitutional Court, including addressing the issue of foreign judges". Others are more prescriptive in content, as well as demanding, given the Bosnian context, like Key Priority 1 asking that "elections are conducted in line with European standards by implementing OSCE/ODIHR and relevant Venice Commission recommendations", Key Priority 4b on the introduction of a "substitution clause to allow the State to exercise competencies of other levels of government", Key Priority 4e on the "establishment of a judicial body entrusted the consistent interpretation of the law throughout BiH" and Key Priority 7, calling among other things for the adoption of legislation on conflict of interest and public procurement. The necessity for Bosnia to implement the 14 Key Priorities is linked to a core issue underlined by the 2019 Commission's Opinion: "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". The Commission



*In 2022, geopolitics replaced conditionality, as the Council endorsed the Commission recommendation to grant the candidate status to Bosnia-Herzegovina.*



stressed that "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".

While Bosnian political elites managed to take the list of challenging Key Priorities as a victory for the ethnic constituencies they represented, very few concrete steps were taken to transform deeds into action, namely transforming into actual legislation the calls by the Commission to substantially improve BiH's institutional, judicial and civic settings. Notwithstanding a relatively swift formation of a new government at the State level following the October 2022 elections, the pace of implementation remained extremely slow, even though political leaders from all ethnic constituencies stressed their commitment to Bosnia's EU path.

### **Candidate status and geopolitical momentum**

In 2022, geopolitics replaced conditionality, as the Council endorsed the Commission recommendation to grant the candidate status to Bosnia-Herzegovina. Such leap did not come from any impressive acceleration by local stakeholders on the completion of the 2019 Key Priorities' list, but from the deep change in the European geopolitics stemming from the Russian invasion of Ukraine. The bold decision by the Commission to stress the

belonging of Ukraine, Moldova and Georgia<sup>7</sup> to the European family by recommending to the Council the granting of candidate status for EU membership, following these countries' applications in early 2022, made leaving Bosnia out in the cold politically untenable. Therefore, notwithstanding the lack of any meaningful progress on the Key Priorities, the Commission and the Council included Sarajevo alongside Kyiv, Chişinău and Tbilisi in the list with the other candidate countries (Serbia, Montenegro, North Macedonia, Albania and Turkey). A political decision which, however, did not take into consideration the ongoing stalemate in Bosnia's reform efforts: notwithstanding the "Political agreement on principles for ensuring a functional Bosnia and Herzegovina that advances on the European path" signed by the country's institutional and political leaders in June 2022 and the first meeting of the High-Level Political Forum in May 2023, the picture remained bleak, as stressed in the 2023 Commission's Report on Bosnia-Herzegovina. The document stresses the lack of any meaningful progress on the Key Priorities, with only two out of 14 deemed as completed and no sign of overall political consensus, especially when it comes to Republika Srpska, where the situation was made worse by President Milorad Dodik's attacks against the constitutional order and civil liberties. The 2023 Report acknowledges the absence of any step forward, while recommending the "opening of EU accession negotiations with Bosnia-Herzegovina once the necessary degree of compliance with the membership criteria is achieved", stressing the need "to apply further efforts to fulfil the Key Priorities set out in the Opinion", and adding that the Commission "will monitor the progress and compliance in all areas related to the opening of negotiations and report to the Council at the latest in March 2024". This formulation helps the Commission avoid rewarding the Bosnian

authorities for their insufficient commitment to the reform process while simultaneously trying not to hinder the geopolitical 'momentum for enlargement'.

## **Conclusion**

The progress made by Bosnia-Herzegovina in the last year – the granting of candidate status and the conditions put forward for the opening of accession negotiations – are the result of the new geopolitical circumstances in Europe, rather than a sincere effort to reform the institutional setting of the country and remove political discriminations. Given the current political climate, it seems overambitious that Bosnian authorities could substantially improve the country's reform track for the time – March 2024 – the Commission will have to report to the Council on the viability of opening accession negotiations. The Commission has somehow thrown the ball in the Council's court when it comes to decide how to proceed with Bosnia-Herzegovina's European path, leaving it therefore to purely political (and geopolitical) considerations. While some member states support the idea of opening the negotiations even without the completion of the Key Priorities (for example, Slovenia, Austria and Croatia), others are worried about yet another lowering of the threshold by rewarding Sarajevo notwithstanding the deterioration of the rule of law and the political situation, whereas the granting of candidate status in 2022 should have produced the opposite. As the situation stands now, it looks unlikely that Bosnia-Herzegovina could become an EU member state in the short-to-medium term. The cumbersome institutional structure given to the country by the Dayton Peace Agreement in 1995 does not represent, per se, an obstacle to coagulate a true political will behind reforms, while the opposite is true: the lack of political will by the country's ethnic-based parties is reinforced by

the several layers of government and potential vetoes. The question of how to build such political will in BiH, and how to go beyond the usual lip service local politicians play in Brussels, is therefore crucial. Even though the main cause of any stalemate on BiH's EU path is usually Republika Srpska President Dodik, almost all other ethnic political leaders would see their systems of patronage wiped out by the reforms the EU is asking to implement, and civic alternatives remain too timid and electorally weak to push for any EU-related progress. In order to change such negative dynamics and to break this decades-long political vicious circle, a bolder and more vocal approach is needed by the EU and those member states pushing for BiH's European path. Direct appeals to BiH citizens, naming and shaming those who are holding the country's potentialities, a focus on the opportunities Bosnian voters are losing by the day by supporting the same ethno-political actors who have been in power more or less since the end of the war: these outreach strategies might help in turning the tide of Bosnian zero-sum game politics and allow the country to advance on its journey towards EU membership.

## **Annex: The 14 Key Priorities from the 2019 Opinion of the European Commission**

### **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.

## Endnotes

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- 2 [https://ec.europa.eu/commission/presscorner/detail/en/PRES\\_03\\_163](https://ec.europa.eu/commission/presscorner/detail/en/PRES_03_163).
- 3 To enter into effect, the SAA needed to be ratified by all EU Member States and by BiH.
- 4 <https://hudoc.echr.coe.int/eng?i=001-96495>.
- 5 An Interim Agreement, containing mostly the trade-related clauses of the SAA, had already entered into force following the SAA signature in 2008.
- 6 See the annex for the complete list of the 14 Key Priorities
- 7 In late 2022, Georgia was given a conditional green light for the candidate status, which was obtained only in 2023.

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## EMBRACING THE WESTERN BALKAN COUNTRIES' EU ACCESSION AT PRESENT

### A VITAL QUESTION MARK FOR THE EU

**ABSTRACT**

This paper highlights the challenges and geopolitical shifts impacting the European Union (EU) enlargement process for the Western Balkan (WB) region. Concerns over democratic institutions and reluctance of some EU member countries have significantly slowed down the enlargement process. To overcome obstacles, the EU has been pushing in the region both the reforms needed but also the idea of reaching regional integration as a way to enhance welfare, growth, and stability. However, these strategies have not yet yielded the desired results.

The outbreak of Covid-19, geopolitical tensions, and an increasingly confrontational global environment might well complicate the EU to reassess its regional engagement and provide a credible enlargement path for the WB. Yet, reforms are not only needed in the WB, but also in the EU to make its decision-making process more efficient. Notwithstanding current obstacles, the shifting global order and the influence of external actors in the region make the WB's inclusion within the EU of vital importance for the European security and stability at large.

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## MONTENEGRO'S POLITICAL TRANSITION

### FROM DJUKANOVIĆ TO WHERE?

**ABSTRACT**

Since 2020, Montenegro has been marred by strong political turbulence, whose main driver has been the gradual loss of power by long-time former President Milo Đukanović and his party, the Democratic Party of Societies (DPS), which have been in power since the country introduced multipartism in 1991. Đukanović's hold on power guaranteed Montenegro's hold on Western values and Euro-Atlantic institutions, building on a strong Montenegrin national identity and decoupling from Serbia. At the same time, Montenegro became a classic case of 'stabilocracy', with a strong degree of state capture, corruption and political control of media and judiciary. Years of political tensions, due mostly to the attempts by DPS to marginalise the Serb minority in the country and to the strongly felt grievances against the perceived authoritarian rule by Đukanović, resulted in the ousting of DPS from power following the parliamentary elections in 2020, when a loose coalition of pro-Serbs and civic forces – whose only common denominator was the removal of the ruling party from power – managed to form a short-lived government. Notwithstanding the ensuing instability, and the persistence of the divide between pro-Serbs forces and the advocates of a strong Montenegrin identity, the presidential elections in March-April 2023 saw the final demise of Đukanović with the election of Jakov Milatović as president. His recently born Europe Now! Movement managed to combine pro-Serbs feelings with calls for economic development, with a populist twist. Parliamentary elections in June of the same year resulted in Europe Now! gaining the most votes, although not enough to form a government alone, with DPS managing to keep a fair share of support. As Montenegro embarks on the difficult process of forming a coalition government, its commitment to Euro-Atlantic values might be put to the test.

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### A LOOK AT THE PROPOSALS FOR STAGED ACCESSION

**ABSTRACT**

This policy brief analyses the most relevant proposals – developed both within the European institutions and by independent research centres – on the staged accession methodology for the EU enlargement process toward the Western Balkans.

It also includes a summary of the discussion held at the network meeting of Friends of the Western Balkans in June 2023, putting together the different positions emerged, the uncertainties declared, and the new proposals developed during the discussion. Finally, the policy brief highlights the strengths and weaknesses of the proposal, indicating which aspects can be improved.

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