



# Agreement Between The State and Entities - The Best Solution For Adaptation of Acquis in BH

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The process of the Acquis Communautaire takeover in BiH is not taking its satisfactory course. Horizontal and vertical non-coordination of the state and lower levels in this process is significantly evident. This leads to legal-economic and security consequences for citizens in the entire BiH. One of the main causes of non-coordination is the lack of political will and lack of clearly defined and long-term sustainable coordination mechanisms accepted by key institutions in the process of harmonization. In addition, worries the fact that harmonization hasn't been recognized as a preference in the work of government either at the state or lower levels.

**Second**, from the legal and technical aspects it is difficult to harmonize laws at various levels, having different methodology in taking over the acquis.

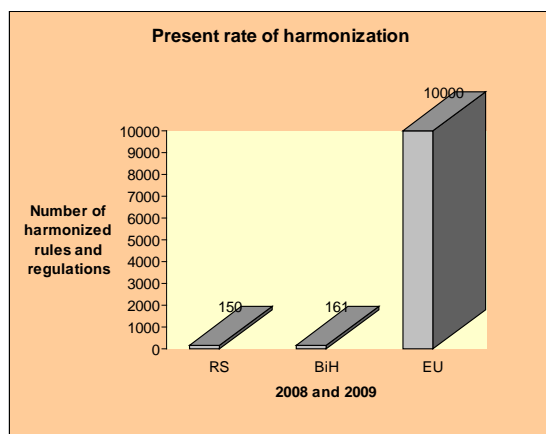
**Third** are, basically, security and economic consequences for citizens. As a practical example, we shall state the acquis takeover in the field of chemicals. The EU legislation that defines this subject-matter<sup>1</sup> in the Republic Srpska was retrieved to a significant extent through the Law on Chemicals<sup>2</sup> and the Law on Biocides<sup>3</sup>. There is no law at the BiH level that regulates this matter, and at the level of the other Entity, the FBiH, legal regulations taken over from the former SFRY are still in force and they do not fulfill required standards applicable not only within the EU but in the neighboring countries as well. All this has a chaos at the market of export and consumption of dangerous chemicals as its consequence, and it also creates a risk to human health and the adverse impact on the environment. One of the important documents originated from these Laws are the Lists of Chemicals whose import and use are prohibited and restricted for specific purposes. Since the FBiH did not regulate this subject-matter, illicit chemicals have been imported at its territory and freely distributed at the RS market. The process of registration for chemicals to be distributed at the market also requires substantial resources when preparing legally provided documentation, which assesses risk and safety of the chemicals being used.

Unequal status regarding the obligations of legal entities in the Entities creates frustration and indignation and it looks as if those who work on the harmonization are being penalized.

**Fourth**, non-coordination in the harmonization process slows down the entire BiH's EU integration process. This results in failure to apply to certain EU funds.

This non-coordination has far-reaching practical consequences.

**First**, in order for European Commission to give positive opinion it requires the harmonization of the regulations at the entire territory of BiH, not only at some parts of it.



**Chart 1 represents a number of EU regulations that harmonization needs to be done with and number of regulations in BiH and the RS that have been harmonized until now. It is just the tip of the iceberg while one third of time provided under the SAA has been spent.**

<sup>1</sup> Regulation (EC) No 1907/2006 (REACH) of the European Parliament and of the Council of 18.12.2006, Regulation (EC) No 1272/2008 (CLP), of the European Parliament and of the Council of 16.12.2008. Directive 98/8/EC of the European Parliament and of the Council of 16. 02. 1998. on biocides

<sup>2</sup> The RS Official Gazette, No. 25/09

<sup>3</sup> The RS Official Gazette, No. 37/09

Bosnia and Herzegovina	Open/Unopen IPA components	2007	2008	2009	2010	2011
	Transition Assistance and Institution Building	58.136.394	69.854.783	83.892.254	100.688.099	102.681.861
	Cross-border Cooperation	3.963.606	4.945.217	5.207.746	5.311.901	5.418.139
	Regional Development	7.400.000	12.300.000	20.800.000	29.400.000	35.000.000
	Human Resources Development	3.200.000	6.000.000	7.100.000	8.400.000	9.400.000
	Rural Development	2.100.000	6.700.000	10.200.000	12.500.000	14.000.000
	USED	62.100.000	74.800.000	89.100.000	106.000.000	108.100.000
	WASTED	12.700.000	25.000.000	38.100.000	50.300.000	58.400.000

**Table 1 represents potential BiH loss in assistance available to Macedonia which has the approximate size and population, but in contrast to BiH obtained a candidate status. Marked in red are the funds that BiH fails to apply to over the years.**

**Coordination Deficiency Sample Analysis**

This research has shown that political conflicts are the key causes of slow harmonization process, as well as lack of document that would clearly define who is responsible for directives takeover and within which set deadline. Low level of cooperation between competent institutions in charge of harmonization process and insufficient administrative capacities deteriorate the situation.

We come across a factor, which is probably the key when it comes to successful coordination and speeding-up the process of approximation.

**Political will!**

Political conflicts clearly have a negative impact on the work of the mixed working groups which where established with the aim to meet commitments set by the SAA. This is, perhaps best illustrated in the example of the Subcommittee on Internal Market and Competition, which should be the most energetic one since this area has a priority in the European integration of BiH. Members of this Subcommittee, according to a survey conducted among them, stated that majority of members had never received a call for the meeting of this Subcommittee neither they knew if it had ever been convened.

Everybody agrees that the solution for better coordination and faster harmonization must primarily involve the political support of key subjects. Based on the priorities derived from the conclusion of the SAA, as well as the European Partnership priorities, **BiH, among other things,**

*“The Subcommittee had one meeting in April 2009 with rather chaotic agenda and clearly differentiated sides: the European Commission, the BiH governmental bodies, the entity ministries. It made an impression as if it was 3-sides meeting. The Minutes were submitted after 8 months, in English, contrary to the Rules of Procedures and humiliating for the BiH counterpart!!! Working Group for Internal Market and Competition did not work after that meeting, we do not contact or cooperate, and de facto there is no work until preparation for another meeting in April 2010. Working groups do not have their role until the Subcommittee meeting and are dysfunctional in this form.”*

Excerpt from survey among members of the Subcommittee for Internal Market and Competition

**has committed to draft its National Plan for the Adoption of the Acquis (NPAA).**

The purpose of this Plan is designed to provide insight into the current level of the compliance legislation, mechanisms and activities being planned in further conformity of legislation, as well as a complete overview of the planned legislative activities. Non-existence of the **National Plan for Adoption of the Acquis** is largely impeded by the coordination process because it is not clearly defined which directives are to be taken over, which institutions are competent for their take-over and what the deadlines are. In 2005 BiH Council of Ministers formed mixed working groups for drafting this plan, but things have not move from a standstill.

*“Every issue is viewed through the prism of national conflicts and conflicts at the level of opposite standpoints on centralization and decentralization.”*

Excerpt from the interview with Branislav Zugic, Adviser to the RS Ministry of Industry, Energy and Mining



The existing **institutional framework** is completely sufficient to ensure successful coordination. At the state, entity and Brcko District levels there are numerous institutions in charge of horizontal coordination and monitoring of the *acquis* take-over process.<sup>4</sup>

When it comes to vertical coordination between these institutions, there have been certain difficulties.

Unfortunately, due to opposing political rhetoric, the position of the director in the Directorate for European Integration has been vacant for almost a year. According to the current regulations, the function of coordination is within the scope of exclusive responsibility of the Directorate.

*“The DEI should be the main drive force of the process and should have key role in the coordination, and this has not been the case for most parts.”*

Excerpt from the interview with Branislav Zugic, Adviser to the RS Ministry of Industry, Energy and Mining

Lower government levels refer critics towards the DEI for not providing sufficient information or technical support.

*“We are not content with the accomplished level of cooperation with the BiH Directorate for European Integration. The cooperation should be improved, especially in the area of early informing on trainings with the assistance of international organizations, which are being organized by the DEI.”*

Excerpt from the interview with Radmila Dragisic, Head of the Division for the Harmonization of the RS Regulations with the EU Regulations within the Ministry for Economic Relations and Regional Cooperation of the Government of the Republic Srpska.

*“I believe that Entities are in some way left on their own. The central problem is the non-adoption of the National Plan for Adoption of the Acquis and the Entities were included in its drafting. There is some support in organizing seminars and assistance in applying the procedures for the TAIEX.”*

Excerpt from the interview with Enisa Pazalja, Assistant Director of the Office of the Government of FBiH for Legislation and Harmonization with EU Regulations

Second problem related to the work of the institutions is the fact that the harmonization has not been identified as a priority within **the work of administration**. Harmonization is carried on in accordance with individual action programs of the BiH governments and not as systematical, predetermined and organized process.

### **Agreement between the State and Entities with the Provided Sanctions for Failing Liabilities**

Model that could speed up the harmonization process and lead to long-term sustainable solution is an agreement between the state and lower levels of authorities on taking over the *Acquis*. The agreement could have a wider dimension of takeover and could encompass all issues related to EU integration. A similar agreement exists in Germany. However, the federal state has concluded a convention that defines mechanisms for coordination and the role of all levels of authorities in European issues.

Takeover would be carried out on the basis of the agreement and signed by the state entities. This agreement would clearly define mechanisms for coordination and mutual obligations in the process of adjustment of the state level and lower levels of authorities. It should also define the following sanctions for those who don't meet the deadlines and coordinated methodology. The agreement would follow the adoption of the National Plan for Adoption of the *Acquis* (this could alternatively be an annex to the agreement) as the obligation under the Article 70.SAA.

The model has several advantages.

By signing the agreement, political willingness of governments would be manifested in order to speed up the process of harmonization.

The mechanisms for coordination and the role of all levels of authorities would be clearly defined.

What is perhaps more important, all levels of authorities would agree to sanctions for breaching the obligations in the process of harmonization. The functionality of institutions would be improved and destructive act sanctioned. This seems to be one of the most important EU requirements for the continuation of EU integration in Bosnia and Herzegovina.

*“Unfortunately, the decisions on the establishment of division within the ministries and republican institutions were not implemented and mostly with one civil servant working on these tasks. It's been dealing with ad hoc, if necessary and there is no continuity. While drafting working plans the commitments regarding the harmonization of the legal regulations, obligations of the SAA and priorities from the European Partnership are not taken into consideration. In the process of drafting legislation, the harmonization is also perceived only as an obligation of making statements about conformity and comparative review of the stipulated documents. Generally, “harmonization” is done after the drafting of regulations and then there is a search for any *acquis* from this commitment “to be met”.*

Excerpt from the survey among members of the Subcommittee for Internal Market and Competition

<sup>4</sup> BiH Directorate for European Integration, Division for the Harmonization of the RS Regulations with the EU Regulations within the Ministry for Economic Relations and Regional Cooperation of the Republic Srpska Government, Division for European Integration of the Government of the Brcko District, and the Office of the Government of Federation of Bosnia and Herzegovina for Legislation and Harmonization with European Union Regulations



**Nebojsa Kuruzovic** was born in Banja Luka in 1980. He graduated on the Faculty of Law in Banja Luka and he is now attending post graduate studies in the field of political management on the University for Business Engineering and Management of Banja Luka. He works at the Ministry of Economic Relations and Regional Cooperation of the Republic of Srpska. He is engaged as senior associate for harmonization of national legislation with EU regulations. Also, he has more than ten years experience in the NGO sector and more than 150 working days as a consultant and trainer in the field of capacity building of NGOs.



**Sladjana Jagodic Cerketa** was born on 11/21/1982 in Banja Luka. Economist by profession, she is working in the Ministry for Economic Relations and Regional Cooperation of the Republic of Srpska. She is engaged as business analyst to assess the economic impact of regulations. She worked for the USAID SPIRA on the Regulatory Guillotine in the Republic of Srpska. During the previous two years, she received training from the International Finance Corporation, a member of the World Bank, on regulatory reform, regulatory impact assessment, and application of quantitative methods for assessing the costs and benefits of introducing new regulations, and amending and abolishing old regulations. She is a postgraduate student at the Faculty of Economics, University of Banja Luka, Department of Financial Management.

The advantage of this model is in providing security for the function of all levels of authorities in accordance with their constitutional competencies. This fact could be crucial for the model to be accepted by advocates of decentralization i.e. the ones who protect the competence of lower levels of authorities. On the other hand, advocates of centralization could see the benefit from such model because it reduces the risk for the central authority (without their own guilt) to bear the sanctions due to irresponsibility of lower authority levels. There are such examples present in the EU. The EU Court of Justice proclaimed Federal State of Belgium to be responsible for violation of European legislation by the Belgium communities and regions. This verdict referred also to non-implementation of EU measures as well as the non-implementation of acts for fulfillment of certain directives. We may conclude from all this that, in case of poor harmonization of legislation BiH will be sentenced and sanctioned by the EU Court of Justice regardless of the issues that fall under the jurisdiction of entities.

The model has also a long-term dimension because it will be the basis for institutional work in subsequent stages of negotiations when Bosnia and Herzegovina gets the membership in the EU as well. As a member of EU, BiH will have an opportunity to participate in the process of establishing the EU legislation in which all levels of authorities must be included, even lower-level representatives will be able to participate in the work of certain EU institutions.

It is evident, perhaps even most important, that this model comes to be the most acceptable compromise for all parties in BiH. This leads to the fact that the model was best evaluated during the survey with the representatives of BiH institutions, entities and Brcko District, that coordinate the process of harmonization. Moreover, the model was rated as the best one within the survey with the members of the Subcommittee on Internal Market and Competition.



A "Policy Development Fellowship Program" has been launched by the Open Society Fund BiH in early 2004 with the aim to improve BiH policy research and dialogue and to contribute to the development of a sound policy-making culture based on informative and empirically grounded policy options. The program provides an opportunity for selected fellows to collaborate with the Open Society Fund in conducting policy research and writing a policy study with the support of mentors and trainers during the whole process. Sixty three fellowships have been granted in three cycles since the starting of the Program. All policy studies are available at [www.soros.org.ba](http://www.soros.org.ba)