



Weak Coordination in the Process of Adjustment / Harmonization of BiH Legislation with the Acquis Communautaire: the Main Cause of the Slow Process of European Integration

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Summary

It has been almost two years since signing the SAA, and the most complex task within the European integration process, the harmonization of our legal system with the EU regulations is not progressing. This setback has been caused, primarily due to weak coordination among different levels of authority owing to complexity of the internal structure of Bosnia and Herzegovina (BiH), and due to still present political tensions from the past war as well, which disables consensus among three constituent peoples of BiH on important issues related to the future of their state. The main objective of this policy study is to point out the crucial influence of **lack of coordination** to the process of harmonization, and consequently the speed of the European integration of BiH, as well as to identify and analyze main obstacles. In addition, we want to indicate possibilities for improvement of the coordination between different authority levels in BiH, and with examples of good practice from the European Union (EU) countries that have a complex state organization similar to BiH, to propose measures to overcome this problem and speed up the process of harmonization of our legislation and the EU accession.

1 Introduction

¹ European Council in Copenhagen 21 – 22 June 1993, Conclusions of the Presidency

The obligation of harmonization of legislation with the Acquis of the European Union (*acquis communautaire*) **is one of the three so-called Copenhagen Criteria for EU Membership**¹. To become an EU member a state must have completely harmonized legislation within each of the 35 chapters of the EU law, which currently includes approximately 10.000 regulations or 100.000 pages of EU Official Gazette. The overall European integration depends on the speed of the harmonization of legislation. Progress in approximation is not only measured by enlisting the all adopted harmonized regulations, but also with demonstration that they are entirely and consistently applied, which presents the basis for the assessment of readiness for transition into the status of a candidate country for full EU membership.²

² Basic Presentation of the Stabilization and Association Agreement, Sarajevo, BiH Directorate for European Integration, 2008

³ See Agreement on Stabilization and Association between EC and their Member States and BiH

By signing the Stabilization and Association Agreement (SAA), under article 70³, BiH has assumed the responsibility to harmonize its legislation, which, in the first phase, implies conformity of all basic elements of the acquis, related to the internal market, as well as other areas related to trade.

⁴ Euroimpuls, Radio Television of BiH [sp://195.222.52.149:7070/rtv/televizija/euroimpulsplus08072009.rm](http://195.222.52.149:7070/rtv/televizija/euroimpulsplus08072009.rm)

As an illustration, according to the Division for Harmonization of the Legal System of the Directorate for European Integration (DEI), it is necessary to incorporate 1159 EU regulations into our legislation in this first phase.⁴ In a later phase, BiH will focus on the remaining parts of the acquis. According to the above-mentioned Division of the DEI, within the only area of agriculture, which falls under this later phase, there have been 1088 identified EU regulations that need to be harmonized with our ones⁵. Article 8 of the SAA provides for that association to be gradually implemented and completely realized within interim period of up to six years. Considering the slow pace of fulfilling the assumed obligations in the past two years, the question, whether the signing of the Agreement itself was the result of (incorrect) assessment of the EU, has been raised to provide an incentive reform interventions rather than our actual preparedness?! The current situation in Bosnia and Herzegovina, where the process of EU integration has not strategically designed and conducted, and none of it is being responsible, speaks in favor of the above stated thesis to our great regret.

⁵ Euroimpuls, Radio Television of BiH [rtsp://195.222.52.149:7070/rtv/televizija/euroimpulsplus08072009.rm](http://195.222.52.149:7070/rtv/televizija/euroimpulsplus08072009.rm)

Based on the priorities derived from the conclusion of the SSA, as well as the European Partnership priorities, **BiH, among other things, 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 align legislation, as well as a complete overview of the planned legislative activities. This program is extremely significant because during the harmonization with the EU regulations it is essential to take into account the level of development of economy and society of BiH for the reason that contemporary EU resulted on a highly developed market that functions for half a century. Immediate transfer of all solutions from the EU system would be counterproductive because it would face us with a choice, whether or not to comply with the laws, which would lead to very negative effects on our economy. Therefore, it is necessary to set priorities that will bring positive results, enabling the economy and the whole society to accept inevitable and unavoidable measures and financial costs in the process of European integration. **This Plan has not been adopted yet and there are no signs of its adoption any time soon.** In relation to the 6-year time limit of which almost two years have passed since the signing of the SAA, nothing specific or planned has been done. In terms of deadlines, we do not meet even the ones set by ourselves, or those set by others. This is best illustrated in the example of Action Plans for Realization of European Partnership and Sta-



bilization and Association Agreement. We haven't met two-thirds of deadlines set by ourselves, and there is a great probability that we will miss those final ones set by the European Union. Just in the middle of 2009, when the EU made a decision that Bosnia and Herzegovina can not be included on the list of countries to which visa regime would be abolished, the process gained in dynamics to certain extent, but only related to that segment and not being enough again.⁶ The question that logically follows is: who is responsible for such situation and which sanction he/she should suffer? Unfortunately, it seems that no one is responsible in our case.

In the shortest time, BiH must internally harmonize legal provisions and in order to receive as much financial resources as possible from the EU pre-accession funds. If this is not taken seriously into consideration, BiH could face same destiny such as Bulgaria, which has used only 30 percent of resources from the funds that the EU provided for them.⁷

Membership criteria also require that the state must create conditions for its accession by adjusting and increasing the efficiency of its institutional structures – the so-called Madrid Criteria.⁸

In this light it is necessary to review the state structure of BiH and the division of competences within certain levels in order to establish who should do what and who should bear responsibility in case of no execution liabilities.

Furthermore, due to European integration and harmonization of national legislation with EU rules and regulation, it will be necessary to amend the Constitution of BiH as well as Entities constitutions in the field of transfer of sovereignty and supremacy of the EU law over domestic laws, as well as issues related to direct application and direct effect of the Community law. This will be a painful process since it is likely that these changes may not be separated from other constitutional reforms that represent a stumbling block in BiH.

The process of harmonization of legislation primarily requires close inter-institutional cooperation at horizontal and vertical level, which is not present in BiH.

This research aims to identify key problems related to the coordination between different levels of authority in BiH, which slows the lack of harmonization of legal regulations of BiH and therefore interferes with the European integration of BiH, and to propose measures to overcome this problem.

2 Problem Description

2.1 Identification of Coordination as One of the Main Problems of Slow EU Integration

Good vertical and horizontal coordination was a key precondition for the successful adoption of the Acquis in all EU members, especially in the states that have complex structure.

Membership in the European Union increases pressure on the governments of the member states to ensure effective coordination. Span and amplification of the European Union's competences in central areas, as well as multifaceted decision-making process in the EU, is forcing governments of the member states to double their coordinative efforts.

⁶ Bosnian-Herzegovinian independent news magazine BH Dani, No. 648, 13/11/2009, *Političari su spori, ali zato loši*, Andja Cosic, Expert Adviser in the BiH Directorate for European Integration http://www.bhdani.com/default.asp?kat=txt&broj_id=648&tekst_rb=9

⁷ Media Report of the BiH Directorate for European Integration, *Weekly Review on European Integration according to press coverage in BiH*, No. 128, 29/11- 08/12/2007

⁸ European Council in Madrid 15 – 16 December 1995, *Conclusions of the Presidency*

The efficiency of the coordination system at the EU level is measured on the basis of four Wright's efficiency criteria: a) assessment of the new EU-legislation and its impact at the national level; b) formation of the EU policy agenda and the utilization of available resources in Brussels; c) transposition of EU legislation, smoothly and quickly in national regulation; d) implementation and monitoring of application of the EU regulations in practice. These criteria will be used when considering requests for BiH membership in the EU.

Coordination problem is especially emphasized in the states, which have some form of federal governmental structure such as the situation in BiH is (the two entities and three constituent peoples). However, this problem in BiH is being additionally aggravated by nationalistic rhetoric of the political authority representatives and complex decision-making process.

The problem of poor coordination in BiH has been identified by the working documents of the EU officials and EU Commission as well.

"Overall, Bosnia and Herzegovina has made limited progress in establishing a functional and efficient state governmental structure with the aim to fulfill their commitments in terms of European integration. Lack of resources, **lack of coordination**, national tensions and internal conflicts continue are still delaying reforms. When it comes to adoption and implementation of legislation there has been discrepancy between the entities."⁹

"To ensure a structured and institutionalized state/entity coordination by establishing functional mechanisms for political, legislative and technical coordination between the State and the Entities".¹⁰

"Fragmented policy-making between the State and the Entities remains the main obstacle to the efficient work of the state authority level. The Coordination Board for Economic Development and European Integration, established to harmonize state and entity plans, does not play an effective role and rarely meets. **Coordination between different levels of authority is minimal** and largely depends on personal and party interests. The Council of Minister has held thematic sessions dedicated to European integration matters. Due to its limited powers the Council of Ministers has occasionally been left out of the negotiations on the reforms, led by the leaders of political party."¹¹

BiH officials as well indicate the necessity to improve the coordination:

Newly appointed director Nevenka Savic emphasizes in her interview for Newsletter of the BiH Directorate for European Integration, Europlus¹² that special attention should be paid to strengthen administrative capacity and mechanisms of internal coordination in BiH, in order to implement and monitor the Agreement, as well as to include all relevant public and private entities. The division of competences between the State and the Entities should not be barriers to adequate and timely implementation of the commitments. She believes that the harmonization of BiH regulations and standards with the EU regulations and standards is the main precondition for BiH progress in the scope of the European integration process.

Improvement of vertical and horizontal coordination in the process of take-over the Acquis has even greater significance in BiH due to the following reasons:

Transfer of responsibilities between the State and the Entities covered by the Acquis.

BiH needs to adjust its legislation with 10.000 regulations or approximately 100.000 pages of the acquis divided in 35 Chapters. On the other hand, BiH is a complex state. The BiH Constitu-

⁹ Enlargement Strategy and Main Challenges 2008 – 2009 (COM(2008)647), Brussels, EC Commission, 05.11.2008

¹⁰ European Partnership with BiH in 2007, (2008/211/EC), Brussels, EC Commission, 18.2.2008.

¹¹ Bosnia and Herzegovina 2009 Progress Report, SEC (2009)1338 final, Brussels, EC Commission, 14.10.2009.

¹² Europlus, No. 10, October 2009, Sarajevo



tion¹³ clearly regulates which responsibilities belong to the state level, while all others belong to the Entities. It should be mentioned that the process for transferring responsibilities from lower to the state level has been active in recent years, but significant number of competencies covered by the *acquis* still remains at the entity level. Without close cooperation and coordination between government institutions at both levels, it is not possible to have comprehensive and harmonized take-over of the *acquis* at the level of entire BiH while working on laws enactment.

Inconsistency of regulations and lack of cooperation within BiH

Although there is no agreed State Plan for Adoption of the *Acquis*, the state level, the Entities and Brcko District have started with this process and made their institutional framework.

Following institutions are in charge to coordinate this process but each for their own level of authority: 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 the Federation of Bosnia and Herzegovina for Legislation and Harmonization with European Union Regulations, which make horizontal coordination and carry out compliance monitoring.

Each of these levels independently sets its priorities and approximation methodology. Vertical coordination between these institutions is very weak.

2.2 Consequences of Coordination Deficiency

This non-coordination has far-reaching practical consequences.

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

Second, looking from the legal and technical aspects it is difficult to harmonize laws at various levels, having different methodology in *acquis* takeover. In practice, this means that you must have a coordinative approach when taking over directives from different areas, ie what shall be taken over by framework law at the state level, and what by entities law that implement the framework law, and what by by-laws. Currently there is no coordination regarding these issues in BiH, which is causing the legal chaos.

Third are basically security and economic consequences for citizens. As a practical example, we shall state the *acquis* takeover in the field of chemicals. EU legislation that defines this subject-matter¹⁴ in the Republic Srpska was retrieved to a significant extent through the Law on Chemicals¹⁵ and the Law on Biocides¹⁶. 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 provide required standards that are applicable not only within the EU but in the neighboring countries as well. All this leads to a chaos at the market of export and consumption of dangerous chemicals, and it also creates a risk to human health and the harmful effects on the environment. One of the important documents resulting 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

¹³ See BiH Constitution

¹⁴ 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

¹⁵ The RS Official Gazette, No. 25/09

¹⁶ The RS Official Gazette, No. 37/09

are imported on its territory and freely distributed at the RS market. Registration process for chemicals that are to be distributed at the market also requires substantial resources in preparing legally provided documentation, which assesses the risk and safety of the chemicals being used. Unequal status regarding the obligations of legal entities in the Entities creates frustration and indignation and seems to penalize those who work on the harmonization.

2.3 Coordination Deficiency Sample Analysis

We have seen that lack of coordination presents one of the main problems in the process of harmonization. What is the reason to it? What are the main causes of the non-coordination? Are those causes institutional, legal, technical, personnel or political by their nature or absence of a clear national plan for harmonization?

We will briefly analyze each of them.

¹⁷ 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 Republika 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

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.¹⁷

When it comes to vertical coordination between these institutions, there have been certain difficulties. The role of the BiH Directorate for European Integration is being perceived differently even though this should be the central coordinative body.

“The representatives of the Federation of Bosnia and Herzegovina advocate coordination which would be more centralized in the central coordinative body with the aim of taking over jurisdiction from the lower levels of authority and for this institution to think for others. On the other hand, the representatives of the Republic Srpska want this central institution to be mere collector of finished tasks in the Entities. Neither option is good because I see coordination as the active approach of the central institution regarding all issues with great participation of lower levels. According to the representatives of subordinate levels, support provided by the Directorate for European Integration is insufficient. The DEI should be the main drive force of the process and have key role in the coordination, and for the most parts this has not been the case.”¹⁸

¹⁸ Excerpt from the interview with Branislav Zugic, Adviser to the RS Ministry of Industry, Energy and Mining

It is evident that the DEI faced difficulties in its work during the previous period. 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.

“However, the Directorate has been implementing the “non-interference” policy for years. This approach has turned into a classical non-interference in its own work by the time, which has “production” of completely sterile documents as a consequence, deprived of any sort of suggestion, constructive remarks or criticism. The institution, whose role is to give impulse and ensure enough information properly to determine the direction towards the EU, has been diminished to the level of mere mail-distributor received from the European Commission, whereby it strictly refrains from commenting the same. It is unlikely that the present role of the Directorate will significantly change in the near future with such circumstances on the BiH political scene and with dysfunction of the BiH Council of Ministers.”¹⁹

¹⁹ Bosnian-Herzegovinian news magazine BH dani, No 648, 13.11.2009, “Političari su spori, ali zato loši” Andja Cosic, expert adviser at the BiH Directorate for European Integration



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, organized by the DEI.”²⁰
“The DEI did not have enough initiative in resolving key problems, namely the adoption of the National Harmonization Plan. It is evident that the DEI had a huge problem regarding the appointment of the director, but this is a job that cannot wait.”²¹

“I believe that Entities are in some way left on their own. The central problem is the non-adoption of the National Harmonization Plan and the Entities were included in its drafting. There is some support in organizing seminars and assistance in applying the procedures for the TAIEX.”²²

“The role of the DEI in the process is becoming weak, more inert and less clear”²³

In addition, the **legal framework** for coordination is relatively satisfactory. Namely, all authority levels have made decisions that provide horizontal coordination.²⁴

Decisions are bound by all proponents of normative acts to take into consideration the commitment of harmonization with the EU regulations during the entire process of drafting normative act.

A procedural obligation has also been introduced when drafting the draft laws and proposals, the proponents make Comparative Review on Conformity of Draft Law, in other words proposal of the normative act with the *acquis communautaire* (the parallel review on harmonization, article by article of domestic regulation with the article by article of relevant EU regulation). As a result they should make a certified Statement on Conformity of Draft Proposal, or proposed normative act with the *acquis communautaire* (with the primary, secondary and other Community *acquis*).

Both of the aforementioned instruments and procedures are aligned with the countries in region.

By the Decision of the Council of Ministers on the establishment of working groups, there is a possibility for vertical coordination. The aim of the adoption of this Decision by the Council of Ministers was to engage experts from institutions of Bosnia and Herzegovina, the Entities and Brcko District of BiH, as well as independent experts and non-governmental organizations in drafting the regulations, which could be harmonized from the very beginning with the provisions of the *acquis communautaire*. However, working groups were not functional until today.

“There is a solid legal framework for the harmonization and coordination in this area. Necessary decisions, directives and solutions on the appointments of mixed working groups, etc. have been made. But the main problem of these documents is that, as time went on, they were implemented less in practice. The consequence of this is that the process was losing on its credibility. Already sluggish administration has found an alibi by the logic according to which non-implemented for a while are no longer binding.”²⁵

²⁰ 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 Republika Srpska Government

²¹ Excerpt from the interview with Ilija Stojanovic, Head of the Division for European Integration of the Government of the Brcko District

²² Excerpt from the interview with Enis Pazalja, Assistant Director of the Office of the Government of FBiH for Legislation and Harmonization with EU Regulations

²³ Excerpt from survey among members of the Subcommittee for Internal Market and Competition

²⁴ Decision on Procedures in the Process of Harmonization of the BiH legislation with the *Acquis Communautaire*, “BiH Official Gazette” No. 44/03

Decision on Procedure and Method of Harmonization of the Republika Srpska Legislation with the European Union Legislation, “RS Official Gazette” No. 81/07
Decision on Procedures in the Process of Harmonization of the BiH Brcko District Regulations with the *Acquis Communautaire*, “BiH Brcko District Official Gazette”, No. 25/09

Directive on Office of the Government of Federation of Bosnia and Herzegovina for Legislation and Harmonization with European Union Regulations, “Federation of BiH Official Gazette”, No. 44/07

²⁵ Excerpt from the interview with Branislav Zujic, Adviser to the RS Ministry of Industry, Energy and Mining

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.

²⁶ Excerpt from survey among members of the Subcommittee on Internal Market and Competition

“There is no single strategic document, the National Plan for Adoption of the Acquis (NPAA), vaguely due to the lack of political will or due to the lack of experts on key positions for managing the European integration processes.”²⁶

The Council of Ministers, on its 10th special session, held on 21 July 2009, on the proposal of the Directorate for European Integration reviewed and adopted the Program of Harmonization Priorities in Legislative Activities for Implementation of the European Partnership and Interim Agreement, which envisaged the laws that should be adopted the aim to fulfill commitments from the SAA and competent institutions. However, it is absurd, that the adopted Program in the second part of the year 2009 was related to priorities from 2008 and 2009 as well. Although the report with data on adopted planned laws at all levels of Bosnia and Herzegovina has not been drafted yet, we may conclude that this Program has not been fulfilled either at the BiH level or within the Entities. In order for this program to move from a standstill and for the quality Plan for Adoption of the Acquis to be drafted first, and later implemented, far better cooperation and coordination between governmental institutional at all levels is needed. However, it should be noted that adoption itself does not lead towards speeding up the process unless there is political will.

²⁷ 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 Republika Srpska Government

One of the major **technical problems** during the legislation harmonization, and coordination of the same process is the lack of official translations of the *acquis communautaire*. “Although the DEI is responsible for organization, realization and coordination of the preparation process for the translation of the laws in BiH, it has not been done much so far in this segment.”²⁷

²⁸ Excerpt from the interview with Enisa Pazalja, Assistant Director of the Office of the Government of FBiH for Legislation and Harmonization with EU Regulations

“Central problem is the translation of the *acquis*. We do not know what to say to people in the ministries how to resolve the translation problem: whether to hire an interpreter, whether translations which they acquire from unofficial sources are acceptable, whether civil servants’ knowledge of English language is specialized enough to translate the same ones.”²⁸

Human Resources of Bosnia and Herzegovina when meeting the EU integration commitments is inadequate and ill trained at all authority levels. Civil servants in public administration bodies are characterized by insufficient knowledge of the process of EU integration itself and commitments originated from it, inadequate knowledge of foreign languages, the EU legislation, and procedures when adjusting the legislation, management of IPA funds, etc.

“I think that we do not have, at any level of authority, a critical mass of qualified personnel to take over the EU laws and regulations. Population that is a holder in the state sector is consisted of servants with 10, 15, 20, 25 years of service, hence pre-war servants with exception of up to 10% at the state level, 5% at the entity, and less than 2% at the cantonal level. This is the population that was not used English language in their work, nor spoke German or French language. The generation that was quite technically unqualified, but also the generation, which did not acquire knowledge between 1992 and 1997, nor learnt about the EU structure, EU Commission’s profile, and especially about methods and techniques how to take over the EU directives. These personnel were involved in activities related to the association, but there



were no institutional capacity building or employment of younger staff that would be logistic and synergy support at first, and latter on even the holders of the process. In general, such structure of civil servants, who are currently holders of responsibility, is not ready to take over this process to its full capacity.”²⁹

“I think that the current personnel that works on these tasks, is obsolete and may not cope well with this process. Most of them have steady work, without initiative, mechanically and they do not take their jobs seriously. There are no individuals on key positions, who wish to devote themselves to the job. It is a must to employ younger people, train them for these tasks and urge them to trainings.”³⁰

“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. Also, in the process of drafting legislation, the harmonization is 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 acquiescence from this commitment “to be met”.”³¹

Even though both the State and the Entities, with their new legal solutions, tried to contribute to the stability of the professional personnel and depolitization of the same, main figures in the executive authority at all levels are still appointed in accordance with party eligibility while making sure that national structure is satisfied. In general, the required condition that this personnel needs to meet is the degree of formal education, mainly without sufficient professional experience in the requested field, or leadership and organizational skills.

“The most effective solution to these problems has been an adequate public administration reform, but I think it failed. In addition, from the situation of advocating professional civil servants who should be the holders of the entire process, we have come across the politicization of civil servants. I personally believe that it would be more effective to admit that the position of Assistant Minister is a political one, which would allow lower levels, primarily heads of divisions, expert advisers and heads of internal organizational units to take over the process.”³²

BiH does not have a database of personnel and without personnel planning and development, it is unlikely that this entire process is finished on time and with quality. There is a lack in culture of teamwork, life-long learning concept, and individual responsibility concept in BiH. In addition, since the beginning of civil war up to now, BiH has faced external (resettlement to abroad) and internal (employment with international organizations) brain drain. The formal education system still hasn’t been modified to meet needs for personnel production who have the necessary knowledge on European integration. We did not take enough advantages of the possibilities offered to us by international organizations and institutions related to training and specialization, and our own capabilities to enable the same were very modest. The delay due to global economic crisis reflected in the reduction of available financial resources for trainings. Thus, it often happens that there is an absurd situation of trainings and opportunities for improvement that are entirely financed by the organizers, but due to the lack of money for per diem, civil servants do not acquire approval to participate at the same, even though they are

²⁹ Excerpt from the interview with Branislav Zugic, Adviser to the RS Ministry of Industry, Energy and Mining

³⁰ Excerpt from the interview with Enisa Pazalja, Assistant Director of the Office of the Government of FBiH for Legislation and Harmonization with EU Regulations

³¹ Excerpt from survey among members of the Subcommittee for Internal Market and Competition

³² Excerpt from the interview with Branislav Zugic, Adviser to the RS Ministry of Industry, Energy and Mining

the ones who insist on attending. It should be noted that the personnel who was appointed to the bodies for the implementation of the SAA are not financially rewarded, and their colleagues on the same positions receive the same wages as those appointed to those bodies with the exception that they have much more workload. Such approach dissimulates the nominated personnel to devote their knowledge, effort and time to these activities.

This also leads to the factor, which is probably crucial when it comes to successful coordination and speeding-up the process of approximation, and that is a **political will**.

The results of the survey among the members of the Subcommittee on Internal Market and Competition have denoted the political will as the greatest problem that disables better coordination and faster paces of the acquis take-over.

“Political structures are only nominally declared in favor of European integrations while this is being denied in practice. The overall public administration reform has not been completed due to antagonisms of the war. Every issue is viewed through three different interests. On one side, Bosniacs advocate absolute centralization, Serbs distinct decentralization, and Croats covet consolidation of the central government authority and cantonal primarily, in order to achieve their national interest.”³³

³³ Excerpt from the interview with Branislav Zugic, Adviser to the RS Ministry of Industry, Energy and Mining

³⁴ Bosnian-Herzegovinian news magazine BH dani, No 647, 06.11.2009., “Pravac-slijepi kolosijek” Andja Cosic, expert adviser at the BiH Directorate for European Integration, http://www.bhdani.com/default.asp?kat=txt&broj_id=647&tekst_rb=14

In the general assessment of the situation in Bosnia and Herzegovina, it is concluded that “although the implementation of the Interim Agreement was satisfactory as a whole, the progress of the country in achieving key reforms remained limited. Domestic political climate has deteriorated and obstacles for quality functioning of the institutions, as well as inflammatory rhetoric remained.”³⁴ It has been urged to speed-up the key reforms!!! These conflicts have resulted in slowing down the process of European integration and a reduced range of adopting crucial laws.

³⁵ Members of the Interim Subcommittee on Internal Market and Competition are appointed from among following BiH institutions: Ministry of Foreign Trade and Economic Relations, Ministry of Justice, Council of Competition, Institute for Intellectual Property, Institute for Measurements, Institute for Accreditation, Institute for Standardization, Public Procurement Agency, Food Safety Agency, Association of Consumers Protection Organizations, the FBiH Ministry of Finances, the RS Ministry of Finances, the FBiH Ministry of Trade, the RS Ministry of Trade and Tourism, the FBiH Ministry of Energy, Mining and Industry, the RS Ministry of Economy, Energy and Development, the FBiH Ministry of Health, the RS Ministry of Health and social Welfare, the FBiH Ministry of Education and Science, the FBiH Ministry of Development, Entrepreneurship and Crafts, the RS Ministry of Science and Technology, Department for Economic Development of the Brcko District Government, Department for Technical and Administrative Affairs of the Brcko District Government

The European Commission BiH 2009 Progress Report says:

“Key political leaders in both Entities frequently challenge the constitutional elements established by the Dayton/Paris peace agreement, thus EU-related reforms have seen limited progress. There is no sufficient degree of consensus on major reform priorities, and there have been attempts to change the previously agreed reforms. It required a shared vision on the direction of the country for the state institutions to function properly, in order to create more functional and efficient state structures and to speak with one voice on international and European Union issues.”

Political conflicts clearly have a negative impact on the work of the mixed working groups which were 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. Members³⁵ 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 ever convened.

“Although I was appointed as a member of this Subcommittee I have not received any call yet, whether it is a call for the meeting, some questionnaire or anything else. Frankly, I am disappointed.”³⁶

³⁶ Excerpt from survey among members of the Subcommittee for Internal Market and Competition



“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.”³⁷

The political situation is extremely unfavorable but there is also a fact that not all reform commitments are politically disputable, and if we reorganize and change approach, we can make progress even in these circumstances. Proof that politics is not the only stagnation factor is the fact that in the last three months’ period after the announcement, that we will not get a free-visa regime, we have adopted more reform laws than in a year ago.³⁸

Everybody agrees that the solution for better coordination and faster harmonization should primarily involve the political support of key subjects.

2.4 Good Practice Cases: Resolving Problems in Federal States: Germany and Belgium

Bosnia and Herzegovina is not the only state with a federal governmental structure that has problems in setting up efficient and functional cooperation and coordination among different levels of authority. In continuation, we provide case studies of Germany and Belgium, the federal states as EU members in the light of analyzing the solutions, implemented in the process of adjusting their national legislations with the EU legislation and EU integration.

Examples of Germany and Belgium are being stated due to the fact that, both of them are federal states with high level of decentralization and they had to face undersized capacities and inefficiency of their coordination systems. In continuation we shall present the use of two mechanisms for the improvement of vertical coordination, and which may, with certain modification, be implemented in BiH. Those mechanisms are: an agreement between various authority levels and penalties for levels of government as a result for not adopting the Acquis.

2.4.1. Germany: Agreement between Federal State and Länder

Germany is a federal republic consisting of 16 constituent states. Each of them has its own constitution, government, parliament, judiciary and administration, and majority even constitutional court. Thus it is very similar to BiH whose entities have complete state infrastructure.

German constitution provides for the federal states (the Länder), under a constitutional obligation, to implement the EU legislation if competence for these issues is vested to them by the Constitution.

In Germany, problems related to EU issues have been resolved by concluding the following three documents: Agreement between the Federal State and the Länder about cooperation in European Union affairs³⁹, Agreement between the German Bundestag and the Federal Government⁴⁰ and Agreement between the Federal Government and the Governments of the Länder.⁴¹

³⁷ Excerpt from survey among members of the Subcommittee for Internal Market and Competition

³⁸ The Bosnian-Herzegovinian news magazine BH dani, No 648, 13.11.2009, “Političari su spori, ali zato loši” Andja Cosic, expert adviser at the BiH Directorate for European Integration
http://www.bhdani.com/default.asp?kat=txt&broj_id=648&tekst_rb=9

³⁹ Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union (EuZBLG), BGBl 1993 I S. 313.

⁴⁰ Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union (EuZBLG), BGBl 1993 I S. 313.

⁴¹ Vereinbarung vom 29. Oktober 1993 zwischen der Bundesregierung und den Regierungen der Länder über die Zusammenarbeit in Angelegenheiten der EU in Ausführung von Paragraph 9 des Gesetzes über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der EU, Bundesanzeiger No. 226 of 1993, p. 10425; supplemented by the Vereinbarung of 8 June 1998 in order to deal in future with framework decisions of Art. 43(2) (b) TEU as adopted in Amsterdam.

Agreement between the Federal State and the Länder about cooperation in European Union affairs starts with Preamble in which the Federal State and governments of the Länder emphasize their commitment to achieve a united Europe and its development on the basis of the treaties that it was founded on. Based on close cooperation and mutual trust, the Federal State and member states, in order to implement the provisions of this Agreement, agreed on the following:

I Briefing upper house of the German Parliament – Bundesrat

which is consisted of the representatives of the federal states (the Länder) by the federal government in the most efficient manner in the earliest possible time regarding the enlisted documents relating to the European Union in taxonomy, and which could be of great interest to the Länder.

II Preparatory consultations

with the Länder representatives by the relevant federal ministry on establishing the national position in negotiations on national legislation that fall under their competence of adopting and/or enacting by the federal states.

III Opinion of the upper house of the German parliament – Bundesrat

the federal government has a commitment to inform the Bundesrat about European Council's agenda when deciding on all the projects which could be of great interest to the Länder in order for the Bundesrat to state its position on the same.

IV Inclusion of Länder representatives in negotiations within European Union bodies

the federal government has a commitment to inform Bundesrat about the time, place and agenda of the meeting with the representatives of the EU institutions. The Bundesrat has the right to apply for attendance in these activities such as formal hearings, consultations and expert discussions. The Bundesrat shall inform the federal government about the Länder representative who will be sent at those meetings. The new version of the Article 23 of the German constitution allows the federal state to act in the EU Council of Ministers as German representatives when their exclusive competence in specific area is in question. This direct participation of the Länder in German foreign representation in European affairs was enabled through the amendment under the Article 146 of the Maastricht Treaty, while allowing ministers of federal states to act as representatives of the Federal Republic of Germany in the EU Council of Ministers. Therefore, the representatives of federal states are members of the German delegation and take the word in discussions only when it comes to relevant topics from their interest.

V Procedure before European courts

the federal government has a commitment to provide an insight for the Bundesrat of all available information and documents related to the cases brought before the European Court of Justice, and federal states (the Länder) are obliged to give their detailed position on the subject of dispute.

VI Cooperation between the permanent representative and the Länder representations in Brussels

Even though according to the Article 32 of the German constitution foreign affairs fall under exclusive competence of the federal level, the Länder have gradually increased their capacity for their voice to be heard in the process of creating European legislation. During the negotiations on the Roma Treaty, the Länder and the federal government have agreed to establish the



institution of a Länder observer, stationed in Berlin and Brussels in order to ensure first-hand information for their states. In response to the expansion of the European legislation by entering into force SEA (The Single European Act), the Länder have opened the office for information or liaison offices in Brussels between 1985 and 1987. The federal government is required to provide all necessary support for the work of the Länder representations in Brussels via its chief representative and embassy.

The federal government and the Länder governments are obliged to ensure all institutional and organizational capacities so that the Federal Republic of Germany may efficiently act and negotiate at the EU level in a flexible manner.

From all the above mentioned we may see that the constituent units of the federal state may strive for their voices to be heard when it comes to the EU affair, and that they have certain level of independence in appearing before the EU institutions only to act in a common interest of the state. It should be noted that Europe has accepted such system through the given German example. Also, we see a positive example of concluding an agreement between levels of authority of the federal state which negotiates the regulation of relations, future actions and decision-making procedures related to the EU. Such agreements in the BiH case would show willingness for compromise solutions and clearly set rules of conduct of the entity and state authority levels in BiH regarding the EU affairs.

2.4.2. Belgium: Financial Penalties for not Implementing EU Commitments

'The impact of the EU rules depends on efforts and capacities of member states to ensure that those are timely and fully incorporated and effectively implemented.' (Graver)⁴²

This statement of the European Commission on its White Paper on Governance⁴³ deals with the problem of the implementation of legislation in EU member states. The deficit in *implementation* represents a real problem for achieving the efficiency of the European legislation. Belgium, as a federal state is one of the countries that faces serious deficit in implementation.

In the course of a long process of constitutional reforms (25 years) federal structure has been agreed in Belgium. Within the scope of these reforms significant number of competences has been transferred to Belgian constituent units, their governments and parliaments.

For example, federal states were given the right to conclude international agreements. These new institutions might act independently from the federal state institutions. As an example, the law of one federal state may not be altered by the federal law. This unique system causes serious consequences at the European level.

Six constituent, sub-state units have been established: Flemish, French and German Communities and Flanders and Wallonia Regions and Brussels-Capital Region. Each of these units has its directly elected parliament, government and ministries. The competences of the regions are related to territorial issues and problems concerning regional economic development, employment, industrial restructuring, environmental protection, spatial planning, building licensing, development of traffic infrastructure, traffic, agriculture and export promotion. The competences of the communities are personal issues: culture, language, education, health care, social welfare and family affairs.

⁴² Graver H.P., 'National Implementation of EU Law and the Shaping of European Administrative Policy' ARENA Working Papers W/P 02/17 www.arena.uio.no/publications/wp02_17.htm

⁴³ Com 2001 428 final p.25

All the above stated indicates that Belgian state structure is far more complex than the one present in BiH, and that the constitutional reform process in Belgium, which acceded to the EU as a centralized state, was ongoing in a long period of time while being the EU member. The negotiation process between constituent peoples in Belgium was not obstructed in the process of finding solutions adequate to their needs. Compromise solutions regardless to their nature were sustained all the time in order to preserve the state, and interests of any party were not favored in order to achieve equality and equal rights and thereby seeking to prevent other, non-democratic methods for solving the existing problems. It is bad that peoples in BiH do not think the same way and those international community representatives in BiH do not implement the same policy of non-interference and support compromise.

In order to prevent that this broad autonomy arise into conflicts, a great number of protection mechanisms have been set up:

1. The Senate serves as arbitral body between the federal governmental bodies and constitutional units represented by senators communities;
2. The Senate provides advices in case of conflicts of interests between federal institutions;
3. Agreements on Cooperation (= Agreement on Policies) may be concluded between the federal government, the communities and the regions;
4. Arbitrary Court supervises compliance with the division of competences, and has the right to annul all laws and decisions in case of exceeding the entrusted competences.

⁴⁴ See Commission of the European Communities v Kingdom of Belgium 19 March 1998 *European Court reports 1998 Page I-05063* Case C-323/96 and Commission of the European Communities v Kingdom of Belgium 5 May 1998 *European Court reports 1998 Page I-04291* Case C-343/97

Due to the non-existence of hierarchy between federal governmental level and levels of government of the constituent units, the federal government is not in position to urge constitutional units to implement European directives. In other words, in several cases European Commission vs. Belgium, there is⁴⁴ a dilemma on one hand regarding the compliance with the subsidiary principle and autonomy of the federal state, and on the other hand regarding efficiency and full implementation of the European legislation in the federal state.

⁴⁵ Hooghe, L (1995), 'Belgian Federalism and the European Community', in Jones and Keating (eds.), *The European Union and the Regions*, pp.135-165.

According to the report of the Commission on Implementation Result, Belgium was among the last (countries) by the performances at the beginning of 1992, with percentage of transposition of 73.6% in relation to the EU average of 77.2%.⁴⁵

⁴⁶ Andersen, C., 'European Union Policy-making and National Institutions – The Case of Belgium' in Svein S.Andersen and Kjell A.Eliassen (eds.), *The European Union: How Democratic Is It?* (London: Sage, 1996), pp.83-100.

In order to face these difficulties in implementation, the Belgians carried out major reforms. During the last decade, Belgium has undergone a profound process of state federalization with great consequences concerning the method in which the state uses its rights and fulfills commitments in the European Union context⁴⁶. The most important reforms, that have had consequences on the implementation of the EU legislation, have been enforced within the scope of one even broader reform: the constitutional amendments from 1993 .

During the past, the EU Court of Justice found Belgium to be responsible for breaching the European legislation by the Belgian communities and regions. This verdict referred to the non-implementation of the EU measures as well, and to failure acts in order to execute the same. Thus, the European Court of Justice had sentenced Belgium as a federal state in great number of cases since one or more of its constituent units did not take necessary measures in issues within the scope of its exclusive competences. For that reason, we may conclude that in case of poor harmonization of legislation by one or both entities, BiH will be sentenced and sanctioned by the European Court regardless the issues within the scope of entity competence.



In order to find solution for this problem the constitutional reform from 1993 introduced a mechanism of potential financial penalties for irresponsible constituent units by the Belgian federal government level.

As a result of these crucial reforms, Belgian implementation result improved. According to the Commission Reports (as previously mentioned) at the beginning of the 1992 Belgium was at the very bottom of the list with the transposition percentage of 73.6% compared to the EU average of 77.2%. At the beginning of February 1993, Belgium moved to the better half of the countries, with an average of 85.5% compared to EU average of 80%.⁴⁷

⁴⁷ Hooghe, L (1995), 'Belgian Federalism and the European Community', in Jones and Keating (eds.), *The European Union and the Regions*, pp.135-165.

Finally, Belgium managed to find institutional responses to create leadership in the form of co-operative federalism, as well as to improve its results in the implementation of EU legislation. We believe that BiH may take many positive features from Belgium: willingness to compromise, equality of the constituent peoples, the democratic process of constitutional reforms and decisiveness to meet the EU commitments.

3 Available Policy Options

3.1 Option 0: Leave the Existing Situation

If nothing is done, the harmonization process will be slow and completely anarchic. Current pace of harmonization is certainly insufficient for meeting the deadlines of the SAA. Each level of authority will conduct the harmonization with their own pace and methodology without substantial compliance. BiH will receive a negative rating for this process because EU assesses harmonization for the entire BiH and not only for its parts. Even if one level of BiH has conformity up to 100% and the other has a low level of conformity, the assessment will eventually be negative. There are certain economic and security consequences as well. If one level of BiH introduces certain BiH standards, it intensifies the severity of business conditions. The consequence is that some companies will conduct preregistration and re-log in the parts of BiH that haven't introduced more stringent EU standards, and the entire market of BiH will be on their disposal. This discriminates the companies from those parts of BiH that exercised adjustment. This may also have particular consequences for safety standards concerning the health of people and environmental preservation as we have already showed in the example of taking over directives in the field of chemicals.

3.2 Option 1: One State Authority Level that Will Determine the Responsibility of Takeover

This model predicts the formation of one state authority level (offices can be set up alternatively in the already existing body) which would determine, on the basis of the Program takeover, the level of authority responsible for taking over the directives in accordance with the Constitution. It would give the evaluation of compliance with all laws. This body would also take care of the deadlines and conduct the monitoring process. Relevant state and entity ministries depending on the jurisdiction would perform the conformity itself. The advantage of this model lies in the fact that debates, about who is responsible for taking over the directives, would be avoid, because it was the responsibility of one central body. Therefore, the process of monitoring

and coordination would be conducted from one place, leading to increased efficiency in work. The first objection to this model is the question whether the formation of this model in some way enters the competence of judicial authorities as the only authoritative to give the evaluation in case of conflict of competence between different levels of authority.

Furthermore, there is a question which institution would have the authority to do its job, and which mechanisms would be on disposal to implement its decisions. Perhaps the most important objection is that the institution would hardly be impartial and not being able to resist political pressures.

„ Decisions taken by such institution would mainly depend on whether its head is a Bosniac, a Croat or a Serb and which political party they come from. This is completely evident from the examples we have in the work of many institutions at the state level. “⁴⁸

⁴⁸ Excerpt from the interview with Ilija Stojanović, Head of Division for European Integration of the Brcko District

„This institution could be independent with the support of international organizations and with well paid employees. Without the back-up of international organizations this model would not be sustainable in the long term period. “⁴⁹

⁴⁹ Excerpt from the interview with Enisa Pazalja, Assistan Director of the Office of the Government of FBiH for Legislation and Harmonization with EU Regulations

It is also obvious that the proponents of decentralization would be reserved towards such solution. „This solution is an option which impels the Bosniac side and is extremely centralized. The solution itself could be imposed for it certainly wouldn't be accepted neither by the Republic Srpska nor by some cantonal structures. “⁵⁰

⁵⁰ Excerpt from the interview with Branislav Zugic, Adviser to the Ministry of Industry, Energy and Mining of the Republic Srpska

There is the possibility to impose this model by the international community through the OHR. This is not a sustainable long-term solution because there is no long-term mechanism for its implementation and maintenance and the result would have been even higher, leading to radicalization of the situation. The last decision of the OHR, which has imposed a decision to extend the mandate of foreign judges and prosecutors, and the reaction was the conclusion of the National Assembly of the Republic Srpska, suggests calling the referendum on this issue in the Republic Srpska. On the other hand, there is no effective coordination based on imposed solutions as one of the conditions for EU integration of BIH and closure of the OHR. There is a question of who will insist on this model after the OHR closing.

3.3 Option 2: Framework Laws at the BIH level

One possible solution is a model in which the adjustment would be exercised by adopting the framework laws at the BIH state level, which would be taking the main guidelines of directives. Lower levels of authorities would enact their laws (in accordance with their competencies) according to the framework laws and would take over parts of the directives that haven't been taken over by legislations. This would provide uniformity in taking over and its pace would significantly speed up. Framework laws would be enacted at one place and lower levels of authorities would be animated to pass their own implementing legislations so as the law could be realized in practice. This model has several deficiencies.

At first, according to the Constitution, most of the area covered by the Acquis falls within the competence of entities and not under the responsibility of BIH. By adoption of the framework laws, there would be a possibility of getting in the jurisdiction belonging to the entities.



„I think that this model due to constitutional jurisdiction can't be achieved in some areas. Some discrepancies will probably be allowed in some areas that overlap, but the fundamental solution should be consistent with constitutional responsibilities.“⁵¹

⁵¹ Excerpt from the interview with Enisa Pazalja, Assistant Director of the Office of the Government of FBiH for Legislation and Harmonization with EU Regulations

This model has very small chances to get the support of all levels of authorities, which comes to be a key deficiency. The adoption of framework laws would lead to realistic possibilities of transfer of competencies from the entities to the central level, which is something that the Republic Srpska categorically opposes to. Such attitude has been presented numerous times in all its institutions. It should be born in mind that the entities have constitutional mechanisms to block the processes that oppose to the national interests of one of the three constituent peoples.

The Parliamentary Assembly proved to be dysfunctional and ineffective in 2009 for it hadn't adopted a large number of laws that were crucial for the continuation of EU integration.

„The model of adoption of framework laws may be acceptable provided that the framework law itself clearly defines what each level is authorized for and who is responsible for the implementation. My work experience, dealing with the framework legislation such as the Law on Foreign Trade Policy, the Law on Foreign Investments, the Law on Customs Policy, etc. says that there was always a problem during the adoption in the atmosphere of advocates of high centralization on one side and significant decentralization on the other side. Those who advocate centralization wanted all to be put in law and proponents of decentralization claimed it to be an empty shell. Neither of them was led to takeover the directive and harmonization of areas. In the focus, there was a conflict over jurisdiction instead.“⁵²

⁵² Excerpt from the interview with Branislav Zujic, Adviser in the Ministry of Industry, Energy and Mining of the Republic Srpska

3.4 Option 3: Agreement between the State and Entities with the Provided Sanctions for Failing Liabilities

A 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 (see case study of Germany).

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 penalties for those who do not meet the deadlines and coordinated methodology. The agreement would follow the adoption of the Program of Compliance (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. This research showed the lack of political will as one of the main causes of the slow and insufficiently coordinated process of the Acquis takeover. 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 penalties 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.

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. The EU Court of Justice also sentenced Federal State of Belgium in many cases due to the fact, that one or more its constituent units had not taken the measures about the issues within their exclusive competence (see case study of Belgium). 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. This fact could force the advocates of centralization to support the agreement between the state and entities, in which the liability of all levels and sanctions for the irresponsible ones would be clearly determined.

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. Within these stages, there will be a request for the coordination and functionality of the institutions of all levels with the aim of fulfillment the obligations. 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, which 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. In addition to the model that includes the agreement between the state and the entities the respondents were offered four more models, including the above-mentioned options 0, 1 and 2. There are three possible dilemmas about this model.

First, it is questionable how concrete this agreement could be i.e. how far it could go with details. Logically, the Council of Ministers and the Government of Entities and Brcko District i.e. by their Prime Minister should sign the agreement. Taking into account the political rank of people authorized to sign the agreement, hardly would be possible to enter into details. On the other hand, principle positions could lead to certain problems in implementation because each side would be able to interpret the provisions in accordance with their interests.



“The assumption for the success of any model of coordination comes to be the existence of political will of the main subjects which this model contains. I want to emphasize that having a significant degree of particularity is of the great importance for the agreement if we long for its success in practice. We have already had such types of agreements between the state and entities, e.g. with electrical transport regulations, where the result of all activities at the state level was the agreement with the entities. There is a good side of it that everyone stuck to the agreement in the following period. The bad side results in the fact, that we encounter some problems in practice, for the agreement was not sufficiently developed in terms of its issues.”⁵³

⁵³ Excerpt from the interview with Branislav Zugic, advisor in the Ministry of Industry, Energy and Mining in the Republic Srpska

Second, there is a question of how necessary is to sign the agreement when there is already the Decision of the Council of Ministers, according to which working groups are being formed, including the representatives of all levels who will work on the development of the Harmonization Plan and define the model of coordination as well. It also stands that such Decision exists but it is inapplicable. Most of the working groups haven't been convened yet and almost two years passed. If a working group operates for some time without results then we may doubt that it has no substantial political support. If they do not convene for over a year, our suspicions are confirmed.

Third dilemma is regarding the issue of which sanctions could be arranged and who would be authorized for their fulfillment. There are a number of possible penalties. Probably, financial sanctions would be most effective. As for the competences regarding fulfillment, BiH has judicial authority, which shows whether the state is legal or not. In any case, these details should be left over to contracting parties and the choice of solution itself will show their true willingness in doing the hard work. However, there are already some examples in Europe where sanctions have been agreed for the level of authority that does not fulfill its obligations in the field of the Acquis take over. With the aim of speeding up the process of harmonization, Belgium has anticipated sanctions for authority levels that do not meet the deadlines (see case study of Belgium).

4 Conclusions and Recommendations

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 pretty much 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 government work either at the state or lower levels.

With the aim of balanced and rapid harmonization of domestic legislation with the Acquis we recommend the following:

- Raise awareness of government institutions and political parties on the harmonization of domestic legislations with the Acquis as a preference in the process of EU integration;
- Urgently adopt the National Plan for the Adoption that will clearly define preferences in the source and pace of the Acquis takeover;
- Have an urgent access in providing the translation of the *acquis communautaire*;

- Clearly define a unique methodology and mechanisms for taking over vertical and horizontal coordination in this process;
- Consider the possibility of signing the Agreement among the Council of Ministers, the Government of Entities and the Government of Brcko District, which would clearly define the mechanisms of coordination in the process of taking over the Acquis and determine the pace of harmonization and the degree of responsibility of all authority levels. The National Compliance Plan could be an integral part of this agreement. It is recommendable for this agreement to be more concrete in order to avoid problems in its implementation. It should also be taken into consideration that its constituent part could mean a penalty for those levels of authority that do not comply with their commitments and established deadlines.
- Within discussions about constitutional changes in BiH there should be raised the question of eventual constitutional changes with the aim of immediate application of the Acquis in the future;
- Undertake employment and completion of the institutions of state administration with employees who will exclusively operate in the work dealing with harmonization of domestic legislation with *acquis communautaire*;
- Organize continuous trainings for civil servants in the field of harmonization of domestic legislation with the Acquis;
- Establish an effective system of stimulating and rewarding of the personnel who work on fulfilling the obligations from the SAA;
- Further work on depolitization of the public administration, particularly in terms of managing the working positions that are associated with fulfilling the obligations from SAA;
- Include teaching subjects from the EU integration. in the science curricula of higher education institutions of BiH



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