

Razprave *Discussions*

Regional Economic Integration of Bosnia and Herzegovina – Obstacles for (Re)integration

1. Introduction

Integration in the context of Bosnia and Herzegovina means integration in to the European Union, and at the same time integration in the Adria Region Market, which is actually recomposed ex-Yugoslavia market. As we can see - history is repeating, but for some countries that process goes slow, as it is case for Bosnia and Herzegovina. This article is to show what the obstacles for the above-mentioned integrations are. To that aim we should first answer the questions to what extent is the Adria Region Market already integrated and what and where is the place of Bosnia and Herzegovina in that Market. The case of Bosnia and Herzegovina will show a negative picture, which means that Bosnia and Herzegovina is very low ranked on the list of the future candidates for the European Union. That negative picture is not the result of the bad legal or economical solutions, but (bad) political decisions. No preconditions for the membership for the European Union are fulfilled. As it will be shown, negative approach of the position of Bosnia and Herzegovina is based on the exact numbers and indicators – this is why we talk about *obstacles* to (re)integration. Unfortunately there are more diversity than uniformity in case of Bosnia and Herzegovina and that is not what European Union's motto *United in Diversity* supposed to mean. Even more, it seems that that gap will go wider.

2. Current position - from the European Union point of view

Integration of Bosnia and Herzegovina is the leading interest for the citizens and the state not only of Bosnia and Herzegovina, but also for the states and people of the European Union, as well as European Union itself. At the same time, while going through integration process Bosnia and Herzegovina goes through more processes like building the peace stability and democratic consolidation, which make the situation even more complicated. Integration into the European Union is the question of geopolitical and strategic nature.

That goes for Bosnia and Herzegovina more than for the other countries, except maybe Greece, because it means legal, political and economic stability not only for Bosnia and Herzegovina but for the Region and European Union as well. That “special” position of Bosnia and Herzegovina had led to the “special” approach of the European Union toward the integration process, known as Stabilisation and Association Process which marked the official start of the integration process of Bosnia and Herzegovina in 1999. In 2008 European Commission and Bosnia and Herzegovina signed the Stabilisation and Association Agreement (SAA), which stated the obligation for Bosnia and Herzegovina to harmonise its legislation with the *acquis communautaire*. In the same year Bosnia and Herzegovina got the status of the potential candidate with the perspective to become a member state¹. In the year of 2010 visa free regime has been introduced for all Bosnia and Herzegovina citizens having biometric passport. Since then this regime has been jeopardised several times, however it still exists. The SAA and the free visa regime are two main steps, stepping stones towards the European Union. Bosnia and Herzegovina's neighbouring countries are (almost) all member or soon becoming a member state of the European Union, forming, at the same time new potential market – Adria Region Market. The position of Bosnia and Herzegovina is determined by relations with neighbouring countries. It seems that in just few years Bosnia and Herzegovina will not be able to compete with those countries in the Region at all and consequently will get ghetto position with no possibilities to co-create the European Union internal market. In the meantime, however, while not member Bosnia and Herzegovina needs to cooperate with the neighbouring countries. Regional cooperation and good neighbourly relations form an essential part of Bosnia and Herzegovina's process of moving towards the European Union. This is how Bosnia and Herzegovina can participate in the Adria Region Market. The question that arises here is – what is the Region now? Soon is going to be split into two parts: EU and the others. How will the relations between the two be solved?

Since 2002 the European Commission has reported regularly to the Council and Parliament on the progress made by the countries of the Western Balkans Region. Bosnia and Herzegovina 2012 Progress Report² was negatively marked. The overall conclusion was that only sporadic and negligible examples of progress in reforms were made, so that Bosnia and Herzegovina was not able to submit a credible application for European

¹ Rodin, Sporazum o stabilizaciji i pridruživanju u pravnom poretku Evropske zajednice i Republike Hrvatske, Zbornik radova Pravnog fakulteta u Zagrebu, 2003, br. 3/4, p. 592.

² European Commission, Commission Staff Working Document Bosnia and Herzegovina 2012 Progress Report, Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2012–2013 {COM (2012) final 600}.

Union's membership. The reason for that primarily lay in fact that Bosnia and Herzegovina is in violation of the fundamental provisions of the SAA. *In concreto*, the Constitution is non compliant with the European Convention on Human Rights (ECHR)³⁴ as well as with the principles of free competition.⁵ These are also the main reasons why the European Union itself did not ratify the SAA, so it is not enter into force yet. From the other point of view, one of the World Bank, Bosnia and Herzegovina is in non-enviable and discouraging position. According the World Bank Doing Business Rank⁶ Bosnia and Herzegovina is on 126th place out of 185 economies, taking into consideration the criteria for the ranking such as: starting a business, dealing with construction permits, getting electricity etc.

3. Bosnia and Herzegovina – facts and figures

The probable reason why the European Commission issued the negative Progress Report and why the World Bank ranked Bosnia and Herzegovina as a country in which starting business is very money and time consuming lays in facts and figures that will be shown.

As it is know, Bosnia and Herzegovina is composed of two Entities Federation of Bosnia and Herzegovina (decentralised, composed of 11

³ The Constitution of Bosnia and Herzegovina prevents citizens who do not declare themselves as one of the three constituent peoples (Bosniak, Serb or Croat) from standing as candidates for the Presidency and the House of Peoples of the Parliamentary Assembly. An Interim Joint Parliamentary Committee was set up in October 2011 and tasked with drafting amendments to the Constitution of Bosnia and Herzegovina and the Election Law to comply with the European Convention on Human Rights (ECHR) and the judgment of the European Court of Human Right (ECtHR) regarding discrimination against citizens on the ground of ethnicity. An internal Road on the EU integration aimed at meeting the conditions for the entry into force of the Stabilisation and Association Agreement (SAA) and for a credible membership application was agreed at the High Level Dialogue on the Accession Process (HLDAP). The first timeline (31 August) set in the Roadmap for the submission for a joint proposal to comply with the European Court of Human Right (ECtHR) decision in the Sejdic-Finci case, was not met. Bosnia and Herzegovina 2012 Progress Report, p. 8.

⁴ The judgement in Sejdic-Finci case, which tackles prohibition a Rom and a Jew from standing for election to the House of Peoples of the Parliamentary Assembly and for the State Presidency can be found at <http://www.echr.coe.int/echr/> (15.3.2013).

⁵ Although Bosnia and Herzegovina 2012 Progress Report states that the country's commitment under the Interim Agreement with regard to public undertakings remains to be fulfilled, this is not the case. Bosnia and Herzegovina did apply the European Union's competition principles to public undertakings and undertakings to which special and exclusive rights were granted. See Competition Act 2 of Bosnia and Herzegovina, Official Gazette of BiH, No. 48/05, 76/07 and 80/09.

⁶ <http://www.doingbusiness.org/data/exploreconomies/bosnia-and-herzegovina/> (15.3.2013).

cantons) and Republic of Srpska (centralised), plus District of Brčko. The constitutional structure is asymmetric and quite complex, it means not only one, or at least three, but 13 constitutions. At the same time, such a decentralised structure means huge administrative machinery comprises of flabbergasting number of 149 ministers.⁷ Most matters are the responsibilities of the entities and very few on the state level. The following matters are the responsibilities of the institutions of Bosnia and Herzegovina: foreign policy, foreign trade policy, customs policy, monetary policy, finances of the institutions and for the international obligations of Bosnia and Herzegovina, immigration, refugee, and asylum policy and regulation, international and inter-Entity criminal law enforcement, including relations with Interpol, establishment and operation of common and international communications facilities, regulation of inter-Entity transportation and air traffic control.⁸ All governmental functions and powers not expressly assigned in the Constitution of Bosnia and Herzegovina⁹ to its institutions shall be those of the Entities.¹⁰ Main areas are responsibility of the entities, and this is the reason why in Bosnia and Herzegovina there are very few laws on state level. Abovementioned Art. 3(3) of the Constitution of Bosnia and Herzegovina could be considered as a disintegrating factor of (the market) Bosnia and Herzegovina. Significantly enough, although there are no many of them, but all state laws¹¹ are in line with the *acquis*. The Constitution of Bosnia and Herzegovina lowered the jurisdictions for a lot of economic matters which is completely contrary to the sense of economic relations. Bosnia and Herzegovina is too small country for such a decentralisation, too small for having, for example three laws on company, two laws on obligations, three laws on bankruptcy, three real property laws etc.

On the other side, political determination of many factors and legal solutions is inevitable. What political decision in legal area can do and what damage can make?

The complex political and ethnical structure in Bosnia and Herzegovina has determined the rule by which members of the particular decision-making

⁷ Council of Ministers of Bosnia and Herzegovina 10 ministers, Republic of Srpska Government 17 ministers, Federation of Bosnia and Herzegovina 17 ministers, 10 Cantons in Federation of Bosnia and Herzegovina 99 ministers and District Brčko Government 6 ministers.

⁸ Constitution of Bosnia and Herzegovina, Art. 3(1).

⁹ The Constitution of Bosnia and Herzegovina is the fourth Annex of the Dayton Peace Agreement reached in Dayton, Ohio, USA on 21st of November, 1995 and formally signed in Paris on 14th December, 1995 putting an end to the Bosnian War of Independence. For this reason, the Constitution has the form of an international treaty.

¹⁰ Constitution of Bosnia and Herzegovina, Art. 3(3).

¹¹ Such as Public Procurement Law, Competition Act and State Aid Law.

body are appointed primarily on the ground of their nationality. That fact by itself is already controversial even without adding the rule by which decision-making process is conditioned by national voting. The example of the Competition Council's composition and decision-making process speaks for itself. Appointment of the Council of Competition is carried out in the following way: three members shall be appointed by Council of Ministers of Bosnia and Herzegovina, with one member per each of the three constituent nations; two members shall be appointed by the Government of the Federation of Bosnia and Herzegovina and one member shall be appointed by the Government of the Republic of Srpska.¹² The way of composition would not be problematic itself since it mirrored complex and rich national structure of Bosnia and Herzegovina. The problem arises when national structure is set as a parameter in deciding wheatear or not there is a violation of law or in establishing a (new) legal concept, as stated in the Competition Act. Decisions of the Council of Competition shall be made by majority vote of members present, provided that at least one member from among the constituent peoples must vote for each decision.¹³ It is obvious and unacceptable that political and national (often nationalistic) reasons could prevail over professional and legal arguments.

Besides the political arguments, there are also economic reasons which are not enabling Bosnia and Herzegovina to get closer to the European Union. As it is known, according to the one of three Copenhagen criteria a state needs to satisfy the "existence of functioning market economy and capacities of the economy to cope with competitive pressures and market forces in the Union". It is possible to view the issue of the existence of functioning market economy through a few sub-criteria,¹⁴ while capacity to cope with competitive pressure and market forces within the Union could be questioned whether domestic companies have enough capacities to accept these changes.¹⁵

¹² Competition Act, Art. 22(3).

¹³ Competition Act, Art. 24(2).

¹⁴ Macroeconomic stability has been achieved including adequate price stability and sustainable public finances and external accounts; broad consensus exists about the essentials of economic policy; significant barriers to market entry (establishment of new firms) and exit (bankruptcies) are absent; equilibrium between demand and supply is established by the free interplay of market forces, prices, as well as trade, are liberalized; the legal system, including the regulation of property rights, is in place, laws and contracts can be enforced and the financial sector is sufficiently well developed to channel savings towards productive investment.

¹⁵ Medjedovic/Zaimovic/Efendic, *Economic Challenges of BIH Integration to the EU*, ICES 2008, University of Sarajevo School of Economics and Business, 2008, p. 2–3.

4. Future position – the possibility of an Island?

European Union Enlargement Commissioner Stefan Fuele warned Bosnia and Herzegovina it was seriously late in its progress toward European Union membership as it had failed to meet the conditions set by the bloc, notably referred to the request that Bosnia amend its constitution in order to remove a provision that discriminates against Roma, Jews and other minorities in political life.¹⁶ The European Commission set 30 November 2012 as the deadline for Bosnia and Herzegovina to change the Constitution, but local political leaders have failed to find a compromise on the issue. Integration process of Bosnia and Herzegovina should not be a victim of political outsmarting. The scope of the tasks which Bosnia and Herzegovina must accomplish in order to keep up with its neighbours in the following ten years demands total political determination and systematic and technical commitment to all the requirements laid down by the European Union, not just those deemed acceptable at any given moment or those that can be met by the only possible compromise available under the prevailing political conditions.¹⁷

Bosnia and Herzegovina is too small country for being in position to non accept i.e. to refuse the possibility of becoming a member state of the European Union. It is not strong (enough) to resist the overall europeisation, and there are no reasons for doing so. Nevertheless, integration into the European Union is probability for Bosnia and Herzegovina to become more integrated itself. At the same time internal integration and stabilisation is a precondition for the stabilisation and improvement of the Region.

Bosnia and Herzegovina 2012 Progress Report final remark is that the political representatives of Bosnia and Herzegovina need to anchor the European Union agenda at the heart of the political process and translate political agreements into concrete actions. Otherwise, it seems that the enlargement of the European Union will become a never ending story (for some countries).

The European integration process still remains a victim of “higher political purposes”, whatever they are and however (well) explained they are. Besides, Bosnia and Herzegovina is still far behind what was defined in Copenhagen as the “existence of functional market economy and capacities for the economy to cope with competitive pressure and market forces in the Union”

¹⁶ <http://www.eubusiness.com/news-eu/bosnia-enlarge.11j> (21.3.2013).

¹⁷ Monitoring of the BiH European Integration Processes, Annual Report for 2011, Foreign Policy Initiative BH and SIDA, p. 9.

since the problems exist in competition policy, lack of consensus on economic policy in the country, development of the financial sector and non-banking financial institutions, enormous barriers to market entry and exit, lack of a functional legal framework efficiently regulating property rights, the small share of the SME sector in the market, and a high share of the public sector in GDP.¹⁸

Economic (re)integration of Bosnia and Herzegovina is an open question, but in reality is quite impossible without massive political changes.

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¹⁸ Medjedovic/Zaimovic/Efendic, *Economic Challenges of BIH Integration to the EU*, ICES 2008, University of Sarajevo School of Economics and Business, 2008, p. 13.

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