

Discussion paper: options for EU engagement in Bosnia and Herzegovina

I – EU's strategy in Bosnia and Herzegovina

The Western Balkans are **an integral part of Europe**, geographically surrounded by Member States and **their future lies within the EU**. In its last December 2021 Conclusions, the Council clearly reaffirmed the EU's unequivocal support to the European perspective of the Western Balkans. To make progress on its EU path, Bosnia and Herzegovina (BiH) needs functioning institutions, able to adopt and implement reforms – which is why EU efforts are heavily focussed on consolidating rule of law, governance and the overall functionality of the country.

As part of the EU's **enlargement policy**, EU relations with BiH are guided by the **Stabilisation and Association Process** and, since 2015, underpinned by the **Stabilisation and Association Agreement (SAA)** which will contribute to the country's approximation with the EU acquis. The EU continues to provide substantial financial and technical assistance to support reforms in BiH, including through the **Instrument for Pre-accession Assistance (IPA)**.

In response to BiH **application for EU membership in 2016**, at the request of the Council the Commission prepared an **Opinion** in 2019 setting out the **14 key priorities** covering democracy/functionality, rule of law, fundamental rights and public administration reforms that the country needs to implement to open accession negotiations. Political dynamics in BiH have held back progress on these priorities, including on the **longstanding electoral and constitutional reforms**, which is essential to improve functionality and bring the country forward on the EU path.

The main **objectives of the EU in the country** remains:

1. ensuring that the country is irreversibly on track towards EU membership.
2. continuing supporting progress in the Stabilisation and Association Process, and
3. ensuring a stable, viable, peaceful, multi-ethnic and united country that cooperates peacefully with its neighbours

The EU is engaged in BiH via **all its instruments**. The EU's presence in BiH is assured through a **double hatted EU Head of Delegation/EU Special Representative in BiH, with offices in Sarajevo, Banja Luka, Brčko district and Mostar**, as well as the **EU military operation EUFOR Althea**. The Operation is deployed in the country since 2004 with a UN executive mandate to ensure the safe and secure environment. The current force strength in-theatre amounts to a **600-strong personnel**.

II – Challenges for the EU in Bosnia and Herzegovina

BiH is facing one of the deepest political crises since the end of the armed conflict in 1995. The crisis jeopardises the stability and security of the country – and of the region – and at the same time **seriously undermine the country's EU perspective**. It further **put into question the EU's role as a geopolitical actor**, its ability to shape its continent around its **values and standards**, and preserve its immediate neighbourhood from **opposing external influences**.

The country's progress on EU reforms is hijacked by **the nationalist ruling parties**, preferring blockage to compromise, using the complex decision-making structures inherited from the **Dayton Peace Agreement** to preserve their vested interest^[1]. In these circumstances, **corruption** is flourishing, reaching all structures of public administration. Additionally there is no willingness to promote **reconciliation**, instead, leaders continue to engage in **historical revisionism**, including **genocide denial** and **glorification of war criminals**. The weaknesses of the Federation entity is providing additional arguments for **secessionist discourses** of the Republika Srpska leadership.

Trust among ruling political leaders has almost entirely **broken down**, with rising divisive and inflammatory discourses from all sides and the lack of credible **dialogue** process.

Against the backdrop of increasing **war rhetoric**, EUFOR Althea assesses that there is **no immediate danger** to the safe and secure environment and that most alarmist assessments are unlikely. However, **recent incidents** have demonstrated that the potential for local outburst of violence cannot be underestimated.

There are other longstanding challenges in BiH, including important **socio-economic reforms**. The current **political stalemate** has prevented much needed **structural reforms** addressing the **systemic corruption, high unemployment rate**, dysfunctional public sector, inadequate health and education sectors, outdated infrastructure as well as **declining labour force and investments**. BiH also faces **migration challenges**, as revealed by last winter 2020/21 humanitarian crisis, also mainly due to dysfunctionality of the country's decision-making and political leaders' lack of political will to address this issue.

With general elections to be held in October 2022, there is a growing and **widespread dissatisfaction** among the population about the ability of the political class to deliver the long awaited change and progress. As a consequence, a high share of the population continues to **vote with their feet and emigrate**. Recent data have demonstrated that there is a **clearly increasing emigration trend over the period 2010-2019 from BiH to the EU**, with **11,000 to 56,000** residence permits issued annually^[2]. In this circumstances some politicians are playing with nationalistic rhetoric and actions to revert the attention from dire economic and social situation.

Political disagreements between ruling coalition partners (SDA and HDZ BiH) have since crystallised around **the issue of the constitutional and electoral reform**, with divergent views over what the reform should include. Some parties are already announcing they consider **boycotting** the general elections or the implementation of its results, if no agreement is found on the reform, something which could lead to a **further escalation** of the political crisis.

Tensions further increased in July 2021, following the decision of former High Representative Valentin Inzko to **enact a law criminalising the denial of genocide** and glorification of war criminals. In reaction, RS-based parties have been united in **boycotting State-level decision-making bodies** (Presidency, Council of Ministers and Parliament), thereby blocking their functioning. **Polarisation rose further** when the new **High Representative (HR)** took office in August, and steady refusal of all RS-based parties to recognise his role and mandate. **Russia and China** have also played a key role in preventing HR's endorsement in the UN Security Council.

In October 2021, the crisis took another worrying turn when SNSD leader announced an initiative to return to **"original Dayton"**, **roll back reforms** – with no legal basis – and to withdraw from State-level agencies and repatriate competences at entity level, including on **taxation, judiciary, investigative police and the army**. Concrete steps have already been taken, with the set-up of expert teams to prepare a legislative package for some 140 laws to establish parallel institutions, and the adoption of a RS law foreseeing the establishment of a parallel **RS agency for medicines and medical devices** by **28 June 2022**. The threatened withdrawal of RS-based judges and prosecutors from the High Judicial and Prosecutorial Council would also seriously disrupt the BiH judiciary.

BiH is also theatre of **third states' influences**. **Serbia and Turkey** are engaging at high level to **normalise the situation**. Others, like **Russia and China**, are exploiting existing divisions to **undermine reform efforts and the country's EU perspective**: **Russia might intensify its destabilising activities through Republika Srpska if the relations between EU and Russia further deteriorate**. The deterioration of EU-Russia relations may have a spill-over effect on

BiH with Moscow expanding its destabilising activities. Such negative influences also spilled over into multilateral settings (cf Joint Russian/Chinese draft UNSC resolution on OHR), also impacting the EU with threats to **veto the renewal of EUFOR Althea's executive mandate**.

III – State of play of current EU engagement

In the past months, the EU has aimed to **occupy the space**, and actively **engage** towards facilitating a swift resolution of the two aspects of the ongoing crisis – on one side facilitating an agreement on the **constitutional and electoral reform**, and on the other side helping to normalise the political situation and preserving the country's **unity, sovereignty and territorial integrity**.

a) On the constitutional and electoral reforms

The EU has a special stake, since a successful constitutional and electoral reform (CR/ER) addressing the **Opinion key priorities** would allow BiH to make a **decisive step forward** on its **EU integration path**. A successful reform would be a powerful **positive political signal**, improve the functionality of the Federation, and allow next elections to be held in line with EU and international standards. A **functioning Federation** would further contribute to **discourage** further steps towards **RS secession**.

This is why the EU and the US have facilitated **four rounds of talks on CR/ER**, with the support of the Venice Commission. The success of this reform hinges upon finding a **balanced package**, in line with **EU standards**, which reflects the concerns of all the parties to reach the required **two thirds majority support** in the Parliament [3]. Such package should include four elements:

1. Amendments to the election law to **improve electoral standards (transparency and integrity)** in line with OSCE/ODIHR, and GRECO recommendations (*Opinion priority 1*);
2. Amendments to **the Constitution to implement ECtHR Sejdić-Finci rulings** and allow all citizens to run for the State Presidency and House of Peoples (*Opinion priority 4f*) in line with Venice Commission Opinions;
3. A review of the **election modalities of the Presidency** to ensure the geographic distribution of electoral support of the two Presidency members from across the Federation entity
4. Improvements to the **functionality of the Federation entity**.

The last round of EU/US talks (25-30.01) have allowed important progress on all these elements, however discussions need to be pursued amongst the leaders and the institutions in order to reach an agreement, possibly ahead of the October general elections. Three scenarios can be devised in the near future: i) In the most positive outlook, there is an agreement on the CR/ER and elections are held in line of the new framework. If no agreement is reached, then in the worse-case scenarios local actors could ii) attempt to prevent the elections from taking place (by blocking the necessary funding); iii) is there a failure, further escalation of demands can also be foreseen, with possible boycott of the elections and/or contest of results, and increasing centrifugal forces further dysfunctionality for Federation. .

b) On the political crisis

The EU, in close partnership with **partners** and in particular the **US** and the **Office of the High Representative (OHR)**, has in the past months actively engaged in facilitating a resolution of the crisis through **dialogue** mainly, as other options would make the implementation of the EU agenda

more challenging. Talks with the various parties have allowed to **identify issues** which if resolved could help normalise the situation. However, efforts to launch a concrete **dialogue process** within the State institutions have so far **not been conclusive**. RS-based parties have continued boycotting Parliament, including the two working groups set up to discuss State property issues, and amendments to the criminal code and continued on its path of **dismantling state institutions**. In February 2022, RS-based parties are set to return to State institutions, but the RSNA has also confirmed that the reasons for its earlier conclusions on 'returning of competencies' remain valid (implicitly also maintaining its course on the RS agency for medicines and medical devices).

IV – Policy options for EU's way forward for the period up to the next 2022 general elections Following latest developments, this note explores options for EU's way forward based on a sequenced approach:

i) Further strengthening the political dialogue

Keeping in mind the longer term objective to **keep BiH firmly on the EU integration path**, the main trajectory throughout the next months should remain **political dialogue**.

On the **CR/ER, continued high level engagement** to facilitate an agreement on the reform package. Active involvement of all the EU actors (HRVP, EUSR, Commission and EU Member States) will be necessary, also to clarify that the 2022 elections need to take place as scheduled, irrespective of the reforms outcome. A **fifth round of EU/US facilitated talks** should take place and **HRVP** should mobilise in the **final stretch** of the discussions.

On the **political crisis**: In close coordination with key partners, **intensify facilitation efforts** so RS leadership's **commitments** to fully return to the State institutions translate **into concrete steps forward**. Our engagement should then focus on facilitating the launch of a **concrete dialogue within State institutions** on issues which persistently fuel political tensions. All EU actors should be mobilised and continue high level engagement with BiH authorities and political actors, also stressing the **consequences** if the situation does not improve swiftly. Such diplomatic efforts could include a **high-level facilitation meeting with BiH leaders**, convened by the **HRVP**. **HRVP** should continue engage and coordinate with **leaders in the region**, especially Serbia.

Increase active communication in a Team Europe format and also with key partners (e.g. joint EU/US statements) to **raise awareness** on EU's activities and counter disinformation. The EEAS WB StratCom Taskforce could be tasked to prepare a **strategic communication plan** to support facilitation efforts.

ii) EU financial assistance as a leverage

BiH currently benefits from a portfolio of around **€400 million** of ongoing/active bilateral IPA funds and a portfolio of **€ 1077 million** of investments (including € 242 million of grants) through regional actions and the Western Balkans Investment Framework (WBIF). If the overall political situation does not improve in the short term, the EU could decide to use its **EU financial assistance** as leverage.

The two-fold political crisis already **impacts** the ability of BiH to fully benefit from EU financial assistance under IPA-III and the Economic Investment Plan, as necessary **countrywide sectoral strategies** are not in place. With the caveat that citizens and civil society should not be impacted, **IPA funding** as well as **EU Member States' bilateral contributions** could be **reviewed or suspended**. Close coordination with **International Financial Institutions** (IFIs) should be

sought further - in particular with the IMF, EBRD, EIB - to agree on a coherent approach on financial support to BiH and prepare the ground for further conditioning and/or tactical delays.

iii) ***Restrictive measures***

EU policy instruments also comprise a **sanctions framework in place since 2011**, through the Council Decision 2011/173/CFSP[4] renewed on an annual basis and related to activities that (a) **undermine the sovereignty, territorial integrity, constitutional order** and international personality of BiH; (b) **seriously threaten the security situation**; or (c) **undermine the Dayton/Paris General Framework Agreement for Peace**.

If the **unilateral takeover of competences from the State to the RS becomes operational**, then **individual restrictive measures** (asset freeze / travel bans for physical and legal entities) should be considered on the basis of this Council Decision. Sanctions **may also be considered** in relations to **other activities** which would represent a threat to the country, in line with the framework in place. Such instruments should remain a **last resort measure**, once it previous ones have failed, as it bears the **significant risks to derail BiH's path towards the EU**. In all cases, a **carefully calibrated approach** is needed to **achieve results**. Ultimately, all the envisaged measures should gradual and reversible.

iv) ***Maintaining Peace and Security as an overarching priority***

In the **worst case scenario**, if the instruments above were unsuccessful in changing the negative course of action, if the country entered into the electoral period without an agreement on CR/ER and secessionist policies were pursued, then security incidents are possible. **EUFOR Althea**, which benefits from the **trust and support of all actors in the country**, would need to remain the **main bulwark** should the situation developed into a **security crisis**. EU Member States' and international partners' full support to the **renewal of the Operation's mandate next October** will be key.

The Operation continues to **closely monitor the situation** and is ready to rely on its **executive mandate to deter and use force**, as conferred by the UNSC under Chapter VII of the UN Charter (GFAP, annex 1A and 2). EUFOR will also continue conducting the verification and inspection of weapon and ammunition holdings, storage sites and of defence industry factories as well as awareness on import and export of ammunition, weapons and explosives. In the event of a **serious deterioration** of the security situation, the Operation would **activate the Reserve Forces** which are fully manned and maintained at high readiness to deploy.

v) ***Refocus and intensify the work on the implementation of the Opinion 14 key priorities***

In the **best case scenario**, the situation will eventually **normalise**, thanks to the EU's **collective engagement**. Work with the authorities on the **overall Opinion's 14 key priorities** will resume, with a view for BiH to **decisively advance on the EU path** and achieve **candidate status**. The focus should remain on improving the **functionality of the country, rule of law and anti-corruption reforms** (including with the adoption of the Law on Public Procurement, the integrity amendments to the HJPC and the Law on conflict of interests) and **reconciliation**. The EU should encourage BiH authorities to finalise and adopt the **action plan on the implementation of the 14 key priorities**, blocked since 2019, ensure **respect of the SAA**, regularly submit their **Economic Reform Programme** and fully take part in the annual **economic and financial dialogue** with the EU and its Member States. All EU actors should also intensify work with **champions of good governance in BiH** with a view to advance on important aspects of EU-related policies - **reconciliation, good governance, multicultural integrated education** - which have seen little progress overall.

In all above areas the EU in Team Europe should further enhance its reaching out to **citizens**, **think tanks** and actors in the **civil society** through a dedicated **communication** strategy.

[1] Current political crisis is also **affecting BiH's contractual relations** with the EU under the **SAA**: since September 2021, the country has failed in its SAA obligation to prepare and participate in the Stabilisation and Association Committee and in four sub-committee meetings so far.

[2] Eurostat, 2020, <https://ec.europa.eu/eurostat/web/main/data/database>, such number decreased in 2020 to 35,158 new resident permits for BiH citizens in EU27, most likely due to the impact of Covid pandemic

[3] i.e. the ruling coalition at the state level and at least seven additional MPs from opposition parties