

EU-Bosnia and Herzegovina Stabilisation and Association Agreement
4th SUB-COMMITTEE ON JUSTICE, FREEDOM AND SECURITY
Brussels, 5-6 December 2019

European Commission's
RECOMMENDATIONS

The Commission's Recommendations below following the Sub-committee meeting are grouped under the relevant key priorities of the May 2019 Commission's Opinion on Bosnia and Herzegovina's application for EU membership, and include the short-term recommendations from the accompanying Analytical Report.

Functioning of the judiciary

Key priority 6. *Improve the functioning of the judiciary by adopting new legislation on the High Judicial and Prosecutorial Council and of the Courts of Bosnia and Herzegovina in line with European standards.*

Analytical report

→ *adopt the revised Law on the HJPC and Law on the Courts of Bosnia and Herzegovina in line with European standards; implement the measures in the area of criminal procedure as set out in the HJPC action plan; apply consistently and improve rules on the appointment, performance appraisal, integrity and training of judges and prosecutors;*

→ *revise the enforcement procedure laws in the entities and Brčko District, in particular with a view to reducing the backlog of utility bill cases by relieving the courts from the burden of uncontested claims.*

Notably:

Strategic documents, legal framework and management body

- The BiH Ministry of Justice (MoJ) is urged to finalise the draft law on the High Judicial and Prosecutorial Council (HJPC), on the basis of the legislative initiative presented in June 2018 by the HJPC, as well as in line with the relevant opinions of the Venice Commission and the Experts' Report on the Rule of Law Issues in BiH.
- The BiH MoJ is urged to finalise the draft law on BiH Courts in line with EU law.
- The BiH Council of Ministers (CoM) is urged to adopt the revised Justice Sector Reform Strategy (JSRS) Action Plan (2020), and prepare the post-2020 JSRS, including a number of objective indicators to measure and report on the progress of the reform.

Independence, impartiality, professionalism and accountability

- The HJPC is invited to step up implementation and monitoring of its Action Plan 2018-2020 and to report regularly on it.
- The HJPC is urged to set up a system of rigorous and credible verification of asset declarations of the members of the judiciary in line with the findings of the Expert Report on the Rule of Law Issues in BiH, including by setting up a functionally independent and

financially sustainable unit in charge of verification of declarations of assets and financial disclosure forms. Verification of asset declarations of management positions and HJPC members need be treated with priority.

- The HJPC is urged, in line with the findings of the Experts' Report on the Rule of Law Issues in BiH, to ensure that all appointment decisions are thoroughly motivated, according to predetermined criteria, and that the practice of deviations from the order of candidates on the ranking list is ended.
- The HJPC and the competent authorities are urged to organise a single annual examination as the only entry point to the profession and to establish a long term preparatory programme for law graduates who have passed the bar examination. .
- The HJPC is urged to ensure that disciplinary procedures are effective, impartial, independent, and that the resulting disciplinary sanctions are dissuasive, in line with Commission recommendations.
- The HJPC is urged to ensure the effectiveness of regulatory safeguards aiming at impartiality, notably in cases of conflict of interests and abuse of the random case allocation.
- The HJPC is urged to effectively monitor the adoption of integrity plans and the implementation of the guidelines on prevention of conflict of interest in the judiciary by all courts and prosecutor's offices in the BiH.

Quality of justice and training

- The HJPC is invited to adopt a comprehensive communication strategy addressed to the HJPC members and judicial office holders, aimed at strengthening transparency and public trust.
- The HJPC and the two Judicial and Prosecutorial Training Centres at entity level should, in a coordinated way, introduce a mentoring scheme throughout the judiciary in BiH.
- The HJPC, in close cooperation with the courts, should ensure online public access to all court decisions. The joint panels of the highest judicial instances and the HJPC should resume their efforts to harmonize the case law and establish a joint case-law database, publicly accessible.
- The HJPC should implement the conclusions of the October 2019 TAIEX Seminar on Quality in the Judiciary, including by introducing indicators to measure the quality of justice.
- The HJPC should provide updated data for the two new regional projects, which aim at improving the measurement of the performance of the justice system: the 'Western Balkans Dashboard' project with the Council of Europe's Commission for Efficiency of Justice (CEPEJ) and the Regional Justice Survey project with the World Bank.

Efficiency and effectiveness

- The HJPC (in coordination with Court Presidents and Chief Prosecutors) and competent executive authorities need to take decisive measures to reduce the backlog in the judiciary.
- The competent executive authorities should implement a set of measures to address the issue of excessive delays of judicial proceedings, amongst others by amending civil and criminal procedure codes and by adopting legislation to ensure the right to a judgement within a reasonable time.
- The HJPC and competent executive authorities should continue to develop a model for the professionalization of bailiffs.

- The competent authorities should amend the Laws on Courts in the Entities and Brčko District to enable more efficient transfer of cases and delegation of judges.

Prosecution of war crimes, missing persons and transitional justice

Key Priority 5. Take concrete steps to promote an environment conducive to reconciliation in order to overcome the legacies of the war.

Notably, BiH authorities are urged to:

- Adopt the National War Crimes Strategy.
- Ensure long-term financing by the BiH budget of the judges and prosecutors specifically hired to tackle the backlog of war crimes cases.
- Support and strengthen the role of the Missing Person Institute of BiH, through an appropriate level of staffing and resources.
- Amend the existing agreement to ensure full BiH ownership over the process of accounting for missing persons (Agreement on assuming the role of co-founders of the Missing Persons Institute of Bosnia and Herzegovina).
- Strengthen the forensic medicine capacities in the country, particularly in the Federation entity, to reinforce the process of identification.
- Establish a support fund of missing persons, as provided by the law.
- Develop and adopt a countrywide transitional justice strategy.
- Develop and adopt a state-level law prescribing the minimum rights of civilian victims of wartime torture throughout the country, in line with the commitments under the UN Convention on Torture.
- Substantially improve the system of redress for civilian victims of wartime sexual violence and torture, particularly on subsidiary liability including application of statute of limitations against third persons and imposition of high court fees in related unsuccessful civil compensation claims.
- Establish a budget-funded mechanism for compensation claims of civil victims of war in case of insolvent convicted perpetrators.

The fight against corruption and organised crime

Key priority 7. Strengthen the prevention and fight against corruption and organised crime, including money laundering and terrorism, notably by:

- a) adopting and implementing legislation on conflict of interest and whistle-blowers' protection;***
- b) ensuring the effective functioning and coordination of anti-corruption bodies;***
- c) align the legislation and strengthen capacities on public procurement;***
- d) ensuring effective cooperation among law enforcement bodies and with prosecutors' offices;***
- e) demonstrating progress towards establishing a track record of proactive investigations, confirmed indictments, prosecutions and final convictions against organised crime and corruption, including at high-level;***

f) de-politicising and restructuring public enterprises and ensuring transparency of privatisation processes.

Anti-money laundering

Notably, BiH authorities are urged to:

- Introduce registers on beneficial ownership information, in line with the 4th Anti Money Laundering Directive and as agreed in the November 2019 EC-BiH administrative arrangement following up to the EU-WB6 Action Plan on Counterterrorism.

Anti-corruption policy

Analytical report:

- *ensure the implementation of anti-corruption strategies and action plans, notably by providing appropriate resources and establishing monitoring mechanisms;*
- *ensure the effective functioning and coordination of corruption prevention bodies among themselves and with the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK);*
- *demonstrate progress towards establishing a track record on the repression and prevention of corruption, notably by imposing effective and deterrent sanctions, including the confiscation of proceeds of crime.*

Notably, BiH authorities are urged to:

- Adopt consistent anti-corruption policy documents and action plans, in particular the new BiH Anticorruption Strategy 2020-2024, and ensure their effective implementation and evaluation.
- Establish the anticorruption body for Canton 10 (Livno) and move forward with the professionalization of *ad hoc* anticorruption bodies throughout the country.
- Further strengthen the capacities of the Central Election Commission's audit department to monitor compliance with political party financing regulations, in line with ODIHR/GRECO recommendations.
- Amend the relevant legislation and establish an efficient mechanism for checking the accuracy of asset declarations of public officials at all levels, as well as establish functioning mechanisms for prevention of conflict of interest, notably at the level of the Federation entity and of the Brčko District.

Cooperation in the field of drugs

Analytical report:

- *adopt the action plan to allow for the implementation of the national strategy on supervision over narcotic drugs, prevention and suppression of the abuse of narcotic drugs for the period 2018-2023.*

Notably, BiH authorities are urged to:

- Adopt the revised legislation to prevent and suppress the abuse of narcotic drugs and enhance the mechanisms to fight the abuse of drugs.
- Formalise the cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and establish a focal point for drug issues for the whole country and the Early Warning System.
- Introduce flexible mechanisms to allow for a regular updating of the list of controlled psychoactive substances.

Fight against organised crime and law enforcement cooperation

Analytical report:

→ *strengthen cooperation among law enforcement agencies, notably by establishing specialised multi-agency investigation teams for complex cases involving economic crime, corruption and organised crime, improving mutual access to databases and the secure exchange of information, strengthening financial investigations and establishing a firearms focal point;*

→ *demonstrate progress towards establishing a track record of investigations, prosecutions, final convictions, the seizure and confiscation of proceeds of crime in organised crime cases, with a particular focus on money-laundering.*

Notably, BiH authorities are urged to:

- Further strengthen and align the legal framework with EU *acquis*, notably legislation on cybercrime, legislation on civil possession of weapons, explosives for civil use and transport of dangerous goods.
- Establish asset management capacities at the state level and designate an asset recovery office responsible for facilitating the tracing, identification and seizure of crime proceeds.
- Establish computer emergency response teams (CERT) at the state level and in the Federation entity and enhance their functioning in the *Republika Srpska* entity.
- Adopt a strategic framework for the fight against serious and organized crime, including on cybercrime and trafficking in human beings, and produce a Serious and Organized Crime Threat Assessment (SOCTA) in line with the EUROPOL methodology and with involvement of competent authorities from all levels of government.
- Further strengthen intelligence-led policing at all levels of government.

Fight against terrorism

Analytical report:

→ *improve capacity for countering terrorism through better cooperation and coordination, by enhancing the exchange of criminal intelligence, and establishing programmes to prevent radicalisation and facilitate disengagement from violent extremism.*

Notably, BiH authorities are urged to:

- Implement all measures included in the November 2019 EC-BiH administrative arrangement following up to the EU-WB6 Action Plan on Counterterrorism.

Judicial cooperation in civil and criminal matters

Analytical report:

→ *fully implement the operational cooperation agreement with Europol, notably by appointing the national contact point, and sign the cooperation agreement with Eurojust;*

Notably, BiH authorities are urged to:

- Enable operational cooperation with Eurojust, while ensuring adequate data protection standards.
- Amend legislation on international legal assistance, adopt additional bilateral agreements on court-to-court cooperation in the region and beyond, and strengthen judicial cooperation with EU Member States.
- Swiftly finalise internal procedures necessary to accede to international instruments in the field of judicial cooperation, such as the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, and the Protocol of 23 November 2007 on the law applicable to maintenance obligations.
- Strengthen the training of judges and prosecutors on use of international judicial cooperation instruments, in particular Council of Europe instruments (Mutual Assistance, Extradition, Transfer of Sentenced Persons).

Asylum, migration, border management and visa policy

Key priority 8. *Ensuring effective coordination, at all levels, of border management and migration management capacity, as well as ensuring the functioning of the asylum system.*

Analytical report:

→ *ensure effective coordination of border control and migration management, and strengthen asylum procedures to provide persons in need with international protection.*

Asylum and migration

Notably, BiH authorities are urged to:

- Enhance operational capacities to ensure access to asylum procedure and related rights.
- Take over responsibility for the management of migration, ensure adequate contingency planning and improve coordination mechanisms.
- Increase migratory crisis response capacities, primarily additional accommodation and healthcare capacities to address the increased migratory influx, notably by identifying adequate reception capacities.
- Improve the efficiency of the registration and identification of migrant population and inter-agency cooperation, primarily through additional human resources.

- Intensify implementation of readmission agreements and step up efforts to conclude additional readmission agreements with the countries of origin of irregular migrants and other countries at high migratory risk.
- Improve the control over biometric passport manufacturing and procurement process.
- Ensure unhindered action and cooperate with humanitarian partners and civil society organisations to address the basic needs of refugees and migrants.

Border management and visa policy, including post-visa liberalisation monitoring

Notably, BiH authorities are urged to:

- Adopt the new Integrated Border Management (IBM) Strategy and Action Plan for 2019-2023.
- Ensure that all personal identification systems installed at borders and future systems such as the Personal Identification Secure Comparison and Evaluation System (PISCES) comply with EU requirements for the protection of personal data.
- Continue to organise information campaigns on the rights and obligations of visa-free travel.

Fundamental rights

Key priority 9. *Strengthen the protection of the rights of all citizens, notably by ensuring the implementation of the legislation on non-discrimination and on gender equality.*

Analytical report:

→ *implement court rulings to put an end to divided education;*

Notably, BiH authorities are urged to:

Non-discrimination policies / Equality between women and men

- Adopt the revised Action Plan for implementation of the ECtHR Sejdić-Finci case law.
- Establish adequate and reliable statistical data collection and ensure its application for overall analyses and assessment of discriminatory occurrences in the country.
- Take concrete measures towards the administrative and legal unification of the outstanding cases of ‘two schools under one roof’, and implement the Recommendations for inclusive education in BiH adopted by the BiH CoM in October 2019. Adopt and implement the Policy recommendations with a Roadmap for promoting inclusive education in BiH, developed in 2018-2019 via the EU-CoE Horizontal Facility project on ‘Quality education in multi-ethnic societies’. Complete and implement the Common Core Curriculum based on learning outcomes and widen the availability of National Group of Subjects teachings throughout the country.
- Ensure systematic data collection on hate speech and hate crimes and improve identification and reporting of such occurrences by law-enforcement agencies, as well as effective follow-up.

- Adopt amendments to the RS Criminal Code to reflect the amended RS Law on Protection from Family Violence, in order to bring the legislative framework in line with the Istanbul Convention.

Right to life - prevention of torture and ill-treatment - prison system

Key priority 10. Ensure the right to life and prohibition of torture, notably by (a) abolishing the reference to death penalty in the Constitution of the Republika Srpska entity and (b) designate a national preventive mechanism against torture and ill-treatment.

Analytical report:

→ *designate the national preventive mechanism on torture and ill-treatment and amend the Law on the Human Rights Ombudsman;*

Notably, BiH authorities are urged to:

- Ensure an effective and independent investigation in all cases of suspicious deaths and unresolved killings.
- Implement the recommendations provided by the UN Committee against Torture (UNCAT) in its Concluding observations on the sixth periodic report on Bosnia and Herzegovina of 22 December 2017 and following the visit of the CoE CPT in June 2019.
- Put in operation the BiH State Prison, including by finalising legal documents and recruitment of competent personnel.

Freedom of assembly and association

Key priority 11. Ensure an enabling environment for civil society, notably by upholding European standards on freedom of association and freedom of assembly.

Notably, BiH authorities are urged to:

- Harmonize legislation and practices on freedom of assembly across the country in line with the European Commission’s recommendations stemming from the peer review on freedom of assembly conducted in May 2018 and the Venice Commission Opinion of December 2019.

Freedom of expression

Key priority 12. Guarantee freedom of expression and of the media and the protection of journalists, notably by (a) ensuring the appropriate judicial follow-up to cases of threats and violence against journalists and media workers, and (b) ensuring the financial sustainability of the public broadcasting system.

Analytical report:

→ *ensure protection of journalists and a systematic institutional follow-up of threats and violence against them;*

→ *ensure the financial sustainability and political independence of public broadcasters, and harmonise entity legislation with the state-level law on the public broadcasting system;*
→ *adopt legislation on media ownership transparency and criteria on public advertising.*

→ *align the legislation on data protection and on freedom of access to information with EU standards.*

Notably, BiH authorities are urged to:

- Collect data on threats and attacks against journalists and media workers and ensure appropriate follow up.
- Ensure consistent application of defamation laws, including on determining award of damages and ensuring the expedient processing of defamation cases.
- Fully implement the legislation on public service broadcasting, including by: registering the PBS Corporation and implement the second phase of digital switchover by means of jointly promoting and coordinating technical development and introduction of new technologies without PBS Corporation being registered in line with applicable legislation; guaranteeing political neutrality and independence of public service broadcasters' steering boards; ensuring a sustainable financing model for the public broadcasting system and especially as regards collection of RTV fee to a single account for the whole country, in accordance with the BiH Law on PBS System (Article 23); fully harmonising entity laws with the state-level laws and secure their full implementation in the best interest of the public.
- Submit the new draft law on public service broadcasting to the Commission services for assessment of compliance with the EU acquis.

Protection of vulnerable groups

Key priority 13. Improve the protection and inclusion of vulnerable groups, in particular persons with disabilities, children, LGBTI persons, members of the Roma community, detainees, migrants and asylum seekers, as well as displaced persons and refugees in line with the objective of closure of Annex VII of the Dayton Peace Agreement.

Notably, BiH authorities are urged to:

- Renew the Federation entity Strategy on Deinstitutionalisation and Transformation of Social Protection Institutions expiring in 2020 and ensure its effective implementation, notably by allocation of sufficient budgetary means.
- Ensure that the use of foster care and alternative solutions are further promoted and specific measures are undertaken to tackle exploitation of children and child begging.
- Significantly improve the collection of reliable data on child poverty rates, violence against children, in particular belonging to vulnerable groups such as children with disabilities, Roma children, and girls.
- Improve the rate of preschool attendance.
- Harmonize relevant laws in line with the Convention on the Rights of the Child (inter alia criminal laws, family laws, domestic violence laws, laws related to child protection and laws related to social care).
- Adopt and implement at all levels the BiH Action Plan for Equality of LGBTI persons.

- Simplify the procedure of legal sex change for transgender persons and reinforce their social inclusion.

Procedural rights and access to justice

Notably, BiH authorities are urged to:

- Develop and adopt amendments to the laws on civil proceedings aimed at improving the status of victims granted vulnerable status during criminal proceedings and seeking compensation in civil lawsuits.
- Improve the legislative framework governing the identity protection of victims and witnesses in civil proceedings.
- Open legal aid offices at State level and in the two cantons where they are still missing. Perform a new countrywide needs assessment on legal aid.

Social inclusion of the Roma

Notably, BiH authorities are urged to:

- Develop and adopt a new post-2020 Roma action plan
- Ensure adequate funding for the implementation of the revised BiH Roma Action Plan (2017-2020), including at the local level, reversing the recent trend of budgetary reduction.
- Ensure entity and cantonal-level implementation of the Framework Action Plan on the educational needs of the Roma, including by allocating adequate funding.
- Implement the Operational Conclusions from the 2018 and 2020 Roma social inclusion seminars and the 2019 Poznan Declaration of Western Balkans Partners on Roma Integration.
- Address recommendations of the 4th Opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, as well as the 2017 CoE/ECRI report.

Refugees and internally displaced persons

Notably, BiH authorities are urged to:

- Improve consolidated beneficiary data, compiling information collected at all administrative levels and create an updated status on the situation of IDPs and refugees.
- Develop an action plan to solve the situation of persons still living in collective centres.
- Improve law enforcement response and prosecution of cases of attacks against returnees, including processing of crimes of incitement of ethnic and national hatred.

Protection of personal data

Notably, BiH authorities are urged to:

- Ensure that draft laws at all levels are submitted to the Personal Data Protection Agency for its opinion whenever they concern data protection issues.

- Ensure that the right to privacy and data protection does not disproportionately hinder the right to access to information, particularly when in public interest, and is balanced against other fundamental rights and legitimate objectives in a democratic society.

Financial assistance and donor coordination in the JHA area
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Notably, BiH authorities are urged to:

- Prepare and submit to the Commission a Training Map on rule of law issues (chapters 23 and 24) in a coordinated and comprehensive (sectoral) manner, with maximum 20 events for each chapter per year.
- Consult the European Commission (TAIEX Unit) and the European Union Delegation effectively on the list of participants in TAIEX events.

FOLLOW-UP ACTIONS

Bosnia and Herzegovina is kindly asked to:

- Provide an update on the adoption of integrity plans and the implementation of the guidelines on prevention of conflict of interest in the judiciary by all courts and prosecutor's offices.
- Provide an update on the process of professionalization of ad hoc anticorruption bodies.
- Submit the draft law on Data Protection, which aims to align with the EU acquis (GDPR and Dir 680/2016) and opinions received from various Government institutions.
- Submit the new draft law on public broadcasting services.