

EUROPEAN UNION – BOSNIA AND HERZEGOVINA

6TH SUB-COMMITTEE MEETING

JUSTICE, FREEDOM AND SECURITY

8-9 DECEMBER 2022

BRUSSELS (VIRTUAL MEETING)

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 reflect the short-term recommendations from the 2022 Country Report.

The Commission recommended to the Bosnia and Herzegovina authorities that the drafting of strategies and legislation aimed at aligning with the EU acquis/EU standards needs to demonstrate a common vision and countrywide ownership, favour quality over speed, be accompanied by a proper stakeholders' consultation and by the allocation of resources adequate for the implementation of the objectives of the strategy/legislation. Furthermore, the collection of relevant data/statistics should be improved and a monitoring mechanism put in place for the implementation of the strategy/legislation for the whole country.

1. Functioning of the judiciary

Opinion 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.*

- As an Opinion key priority, BiH should improve the functioning of the judiciary, by adopting the new law on the High Judicial and Prosecutorial Council and the new law on the Courts of Bosnia and Herzegovina, in line with European standards. The latter shall take into consideration the requested Opinion of the Venice Commission, expected in Q1/2023.
- BiH should address the findings of the Expert Report on Rule of Law issues, starting with establishing a credible and rigorous system of verification of assets of judicial office holders, and members of the High Judicial and Prosecutorial Council, which shall be subject to close external monitoring, by urgently adopting the necessary amendments to the HJPC Law, in line with the recommendations of the European Commission and of the Venice Commission, and by providing resources to the asset declarations verification department to be established within the HJPC Secretariat. The adoption of the amendments and the adequate budgetary resources shall take place by Q2/2023.

- Consistently apply and significantly improve rules and practices on the appointment, integrity and training of judges and prosecutors; ensure that a system of performance appraisal is in place, which is primarily based on quality criteria. Decisions on appointments must be exclusively based on merits, while criteria such as ethnicity or gender must remain as exceptions and thoroughly substantiated. Disciplinary and criminal records must be seriously evaluated in case of promotions.
- Increase the quality of both initial and continuous training, focusing on integrity and the international and European law in the curriculum, including the EU acquis on the Rule of Law.
- Adopt the new Justice Sector Reform Strategy 2021-2027 and Action plan (Q2/2023).
- Ensure that disciplinary procedures are effective, impartial, independent, and that the resulting disciplinary sanctions are proportionate and dissuasive. In this context, the findings and recommendations from the 2022 expert peer review shall be duly taken into account.
- Demonstrate tangible results on the implementation of the recently adopted Communication Strategy of the Judiciary.
- Revise the enforcement procedure laws in the entities and Brčko District, especially to reduce the backlog of minor value and utility bill cases by relieving the courts from the burden of uncontested claims and by introducing professional bailiffs. Authorities shall take immediate action upon formation of governments at all levels, no later than Q3/2023.
- Implement urgent measures to address the issue of excessive delays of judicial proceedings, amongst others by amending civil and criminal procedure codes until Q4/2023 and by adopting legislation to ensure the right to a judgement within a reasonable time, notably in the Federation entity by Q2/2023.

2. War crimes

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

- Effectively implement the revised National War Crimes Strategy and appoint the Supervisory Body without further delays. (Q1/2023)
- Enhance regional cooperation on the processing of war crime cases.
- Transpose the sentences of ICTY and its successors into domestic criminal records before the next session of the sub-committee. (Q2/2023)
- Support and strengthen the role of the Missing Person Institute of BiH, through an appropriate level of staffing and resources.
- Amend the existing Agreement on assuming the role of co-founders of the Missing Persons Institute of Bosnia and Herzegovina to ensure full BiH ownership over the process of accounting for missing persons.
- 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.
- Initiate an inclusive discussion for developing 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, concretely on subsidiary liability including application of statute of limitations against third persons, and imposition and pursuit of high court fees in related unsuccessful civil compensation claims, in particular in the Republika Srpska entity.
- Establish a budget-funded mechanism for compensation claims of civil victims of war in case of insolvent convicted perpetrators. (Q3/2023)

3. Anti-corruption policy

Opinion 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.*

- Adopt the law on the prevention of conflict of interest at state level by Q2/2023, in accordance with EU standards and GRECO recommendations, and establish an efficient mechanism for checking the accuracy of asset declarations of public officials at all levels.
- Establish functioning mechanisms for prevention of conflict of interest at the levels of state (Q3/2023), of the Federation and of the Brčko District (Q4/2023).
- Complete the legal framework on the protection of whistle-blowers at all levels of government.
- Demonstrate progress towards establishing a track record on the repression and prevention of high level corruption, and ensure an effective and independent judicial process in the COVID-related corruption cases.
- Adopt a new state-level anticorruption strategy and action plan and ensure the professionalisation and effective coordination of corruption prevention bodies at all levels of government. Ensure that anticorruption strategies are harmonised across the country. (Q1/2023)
- Adopt the Budget of Institutions of BiH and International Obligations of BiH for 2023 providing necessary funds for the Central Election Commission of BiH (CEC) to hire new staff in the CEC's audit department to monitor compliance with political party financing regulations, in line with ODIHR/GRECO recommendations. (Q3/2023)
- Significantly improve the track record of proactive investigations, confirmed indictments, prosecutions and final convictions against corruption and electoral fraud cases, notably at

high-level. Present detailed track record data, including the relevant articles of the criminal codes.

4. Fight against organised crime

Opinion 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.*

- Adopt a new strategy and accompanying action plans to fight against organised crime. (Q1/2023)
- Significantly improve the track record of proactive investigations, confirmed indictments, prosecutions and final convictions against organised crime cases. Present detailed track record data, including the relevant articles of the criminal codes.
- Address the recommendations of the 2022 peer review on countering organised crime and corruption.
- Adopt strategic framework and action plans for fighting cybercrime at the governments' level where the strategies do not exist. (Q3 2023)
- Strengthen financial investigations and adopt standard operating procedures to run financial investigations.
- Ensure that the national contact point for cooperation with Europol is fully functional (Q1 2023), and establish a firearms focal point. (Q2 2023)
- Keep giving high priority to the full implementation of the Joint Action Plan on Counterterrorism for the Western Balkans and all of its 5 objectives as well as the actions included in the corresponding bilateral Implementing Arrangement.
- Introduce registers on beneficial ownership information with timely and unrestricted access for competent authorities and the Financial Intelligence Unit (FIU), in line with the 4th and 5th 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. (Q4/ 2023)
- Adopt a new law on anti-money laundering and countering the financing of terrorism (AML/CFT), in line with 4th and 5th AML Directives.
- Adopt action plans for the implementation of a new countrywide counterterrorism strategy for 2021 to 2026. (Q1/2023)

- Implement programmes to prevent all forms of radicalisation and facilitate disengagement from violent extremism; implement a multi-agency approach on prevention of radicalisation leading to all forms of violent extremism and terrorism, by involving – further to security actors - also the other relevant stakeholders like social workers, health care professionals, education sector, civil society organisations; Enhance cooperation on Prevention and Countering of Violent Extremism (P-CVE) between governmental and non-governmental actors.
- Ensure a proper management of returning Foreign Terrorist Fighters and their family members, also in view of expected returns, and release from prison, by facilitating cooperation among different professional profiles.
- Draft (by Q2/2023) and adopt a New Strategy for drugs after 2023 and commit to the adoption of an action plan to implement that strategy.
- Adopt the revised legislation to prevent and suppress the abuse of narcotic drugs and enhance the mechanisms to fight the abuse of drugs. (Q2/2023)
- 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 in order to enhance cooperation and coordination. (Q4/2023)
- Actively participate in the IPA-project with the European Monitoring Centre for Drugs and Drug Addiction, and design concrete working arrangements with the EU Drugs Agency to further the cooperation and learn from the experiences the Agency can provide.
- Introduce flexible mechanisms to allow for a regular updating of the list of controlled psychoactive substances.
- Establish the Early Warning System. (Q4/2023)
- 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. (Q4/2023)
- Establish asset management capacities at the state level and designate an asset recovery office(s) responsible for facilitating the tracing, identification and seizure of crime proceeds.

5. Law enforcement cooperation

Opinion 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.*

- Strengthen cooperation among law enforcement agencies, notably by establishing specialised multi-agency investigation teams for complex cases, including financial investigations, or Joint Investigation Teams (JITs); improving mutual access to electronic databases and the secure exchange of information.
- Create a new Automated Fingerprint Identification System (AFIS).
- Ease the real-time exchange of criminal intelligence between law enforcement agencies at all levels, including use of crime registries.
- Initiate a formal process supporting a more integrated approach on DNA databases as a prerequisite of countrywide coordination and strengthen cooperation with other countries. (Q3/2023)
- Further develop and enhance intelligence-led policing at all levels of government.
- Secure the opening of the negotiation process towards the signing of an international agreement between Bosnia and Herzegovina and the EU on cooperation with Eurojust at the earliest convenience (Q1/2023).
- To align the legislation on personal data protection with EU standards (Q2/2023).
- Establish contacts with the European Public Prosecutor's Office (EPPO) and relevant counterparts in Bosnia and Herzegovina to provide for cooperation channels (Q1/2023).

6. Migration asylum and border management

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

- Adopt the recently drafted Law on Foreigners with a ‘non-refoulement’ mechanism aligned to the EU Acquis (Q4/2023).
- Adopt the new Law on Border Control enhancing the Integrated Border Management policy (Q2/2023).
- Adopt the migration strategy and action plan and dedicated budget to strengthen capacity in the area of migration management (Q2/2023).
- Take over responsibility for the management of migration and asylum and improve coordination mechanisms.
- Continue to strengthen capacity in the area of asylum, border management and returns.
- 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 (Q4/2023).
- Continue to ensure unhindered action and cooperate with humanitarian partners and civil society organisations to address the basic needs of refugees and migrants.

- Conclude the Working Arrangement with Frontex (Q1/2023). Open the negotiation process for a Frontex status agreement for the deployment of EBCG standing corps under the current 2019 EBCG Regulation. (Q3/2023)
- Intensify information campaigns on the rights and obligations of visa-free travel.
- Maintain current channels for the exchange of information and ensure more intensive cooperation with the European Commission and its agencies on migration and border management, notably Europol, CEPOL, EBCGA and EUAA.

7. Fundamental rights

Opinion 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.*

Opinion Key priority 10. *Ensure the right to life and prohibition of torture, notably by (b) designate a national preventive mechanism against torture and ill-treatment*

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

Opinion 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.*

Opinion 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.*

- Harmonise 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. (Q4/2023)
- Promote conducive environment for civil society and improve systematic institutional follow-up to cases of threats and intimidation against members of civil society.
- Adopt a strategic framework for cooperation with civil society at all levels of governance. (Q4/2023)
- Ensure systematic country-wide data collection on threats and attacks against journalists and media workers (Q2/2023) and ensure appropriate institutional and judicial follow up.
- Ensure that no steps are taken that would further undermine exercising freedom of expression. Consistently apply defamation laws in line with European and international standards, including on determining award of damages and ensuring the expedient processing of defamation cases.
- Ensure systematic data collection on hate speech and hate crimes, including hate speech online, and improve identification and reporting of such occurrences by law-enforcement agencies, as well as effective follow-up. (Q2/2023)

- Adopt legislation on hate speech aligned with the ECtHR case-law and the EU acquis. (Q3/2023)
- Submit to the Commission new draft legislation on the Public Broadcasting Service to ensure its alignment with the EU acquis (Q2/2023). Fully implement the legislation on public service broadcasting guaranteeing political neutrality and independence of public service broadcasters' steering boards and ensuring a sustainable financing model for the public broadcasting system. (Q1/2023)
- Ensure that the new drafts of the Law on Electronic Communication and the Law on Electronic Media are in line with the EU acquis, and include relevant provisions on media ownership transparency and criteria on public advertisement. Submit new draft laws to the Commission to ensure its alignment with the EU acquis. (Q1/2023)
- Develop legislation on free access to information at State and Entity level harmonised across the country and aligned with relevant European standards and EU acquis, by using SIGMA model law on free access to information as a basis for drafting new laws (Q2/2023). Submit to the Commission, before the adoption procedure, new draft laws to ensure their alignment with the EU acquis and relevant standards.
- Adopt a set of countrywide policy frameworks with regard to protection and enforcement of human rights, including non-discrimination, protection of persons belonging to minorities, and transitional justice. (Q3/2023)
- Prepare a broader reform of the BiH Ombudsman institution to ensure its functionality and effectiveness.
- Step up the engagement of the Office of Ombudsman in the court proceedings, in line with the recommendations from the Priebe report.
- Adopt the Draft Amendments to the Law on Ombudsman for Human Rights BiH designating the Human Rights Ombudsman as National Preventive Mechanism. (Q2/2023)
- Establish adequate and reliable statistical data collection and ensure its application for overall analyses and assessment of discriminatory occurrences in the country. (Q2/2023)
- Adopt the revised Action Plan for implementation of the ECtHR Sejdić-Finci case law. (Q1/2023)
- Ensure inclusive and quality education for all (continuous), and overcome the discriminatory practice of “two schools under one roof” including by implementing the relevant domestic court rulings. (Q2/2023)
- Ensure adequate protection for vulnerable groups of migrants, such as unaccompanied and separated children, pregnant women, single parents, persons with disabilities, sick persons and victims of violence in line with international standards. (Q3/2023)
- Specify main measures planned to address the serious systemic problems regarding inhuman and degrading treatment of children in institutional facilities and any concrete action taken towards the transition from institutionalised to community based care of children belonging to vulnerable groups. (Q2 2023)
- Improve the status of wartime sexual violence victim by implementing August 2019 UNCAT Decision, requiring provision of compensation, rehabilitation and a formal apology by the authorities. Ensure implementation of the pending UNCAT 2017 recommendations. (Q1/2023)

- Further harmonise FBiH Law on Protection from Domestic Violence with the Istanbul Convention standards and adopt amendments to the FBiH Criminal Code with an aim to ensure uniform regulation and prosecution of domestic violence as a criminal offense. (Q2/2023)
- Ensure that the use of foster care and alternative solutions are further promoted, and that specific measures are undertaken to tackle exploitation of children and child begging. (Q3/2023)
- 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. (Q3/2023)
- Improve gender-disaggregated data-collection on socio-economic needs of persons in vulnerable situations. (Q3/2023)
- Improve mapping of the needs of persons in vulnerable situations, especially persons with disabilities, national minorities (Roma). (Q2/2023)
- Ensure implementation of the Action Plans for the Social Inclusion of Roma and on the rights of LGBTIQ persons and the allocation of necessary implementation budgets. (Q3/2023)
- Ensure implementation of Poznan Declaration commitments on Roma integration. (Q3/2023)
- Harmonise 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). (Q2 2023)
- Develop child-friendly protection mechanisms and structures.
- Establish adequate and reliable statistical data collection and ensure its application for overall analyses and assessment of discriminatory occurrences in the country and conduct gender impact assessments to feed policy-making at all levels. (Q2/2023)
- Reinforce implementation of the BiH Gender Action Plan and BiH UNSCR 1325 National Action Plan at all levels and ensure timely preparations of the Action Plans for the upcoming years, with clear steps, milestones and sources of funding. (Q2/2023)
- Continue aligning legislation with the Gender Equality Law and the Istanbul Convention (Q3/2023).
- Address the latest CEDAW and GREVIO reports' conclusions and recommendations in the laws, national strategies and action plans on gender equality and anti-discrimination. (Q3/2023)
- Promote gender equality in the institutions and the civil service. (Q3/2023)
- Improve the institutional response to gender-based violence and harassment, including on protective measures, victim support, legal aid in particular for children and persons in vulnerable situations, and safe accommodation. (Q3/2023)
- Align legislation to introduce uniform minimum maternity leave benefits across the country and harmonise the definition of maternity, paternity and parental leave.
- Simplify and further clarify the procedure of legal sex change for transgender persons and reinforce their social inclusion. (Q3/2023)