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Research Article

HOW NOT TO DO EUROPEAN INTEGRATIONS: BOSNIA AND HERZEGOVINA AND LEGAL CHALLENGES IN ACCESSION PROCESS TO EUROPEAN UNION

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ABSTRACT

Background: *Bosnia and Herzegovina, with its complex constitutional and legal system, is facing many difficulties in its progress toward European Union membership. These challenges have been worsened by political instability, exacerbated by geopolitical shifts in Europe following Russian aggression on Ukraine. Legal complexities in the constitutional order of Bosnia and Herzegovina are often used to halt the country's progress and divert it from its European trajectory. This article analyses the specific instances of very unfavourable legal solutions that are hindering the EU accession process, as well as the recommendations put forth by the EU Commission aimed at removing these legal obstacles. There is an urgent need for reform of constitutional and legal rules to enable the country to effectively continue its EU accession path. The importance of the EU membership perspective for Bosnia and Herzegovina extends beyond simply joining a desirable club of prosperous countries; the reforms required during the EU accession process are needed to strengthen the efficiency of state institutions and secure lasting peace in the country and region. As such, the urgency and potential impact of these proposed legislative changes cannot be overstated.*

Methods: *The research primarily employs a combination of analytical, normative, and comparative methods to examine the legal system and chronology of the integration process. The legal historical method is also used where appropriate. The research focuses on the content of constitutional norms, relevant legislative acts in Bosnia and Herzegovina, and legislative acts of the European Union and other countries. These legislative acts are compared with EU recommendations and legislation from other EU member states to identify the discrepancies. The article provides an overview of the legal framework governing EU integrations in Bosnia and Herzegovina, including norms of international law, constitutional law, national legislation, and EU law that are negatively impacting the EU accession process, and offers certain recommendations for their improvement.*

Results and conclusions: *The research has identified certain norms of constitutional and legislative origin in the legal system of Bosnia and Herzegovina that are harming the country's ability to effectively engage in the EU accession process. Through a normative approach, the article gives recommendations for their improvement, which are in line with the standards set by the institutions of the EU. Amending these problematic legal frameworks would remove their use as political tools aimed at halting the country's progress in the EU integrations.*

1 INTRODUCTION

Bosnia and Herzegovina (hereafter: BiH) is showing a high degree of difficulty moving forward on the integration path to become a member of the European Union (hereafter: EU). The reasons for that can be identified as legal and political. The constitutional setup of BiH can be described as probably one of the most complex in the world.

In the aftermath of the brutal war of 1992-1995, the Dayton Peace Agreement (hereafter: DPA) established a much-needed peace but resulted in a fragile and inefficient state. The DPA foresees the continuity of the state of Bosnia and Herzegovina as a sovereign and independent country and ensures its territorial integrity. On the other hand, the country is internally divided between the "entities" of the Federation of BiH, the Republic of Srpska, with the later addition of a District Brčko as a separate administrative unit. Furthermore, the entity of the Federation of BiH is divided into ten cantons.

At the state level, powers are narrowly defined, with most competencies given to the entities. With this complex territorial division and fragmented division of competencies, the decision-making process in state institutions, such as the Presidency, Parliament, and the Government, is ripe with possibilities of use of veto powers in the form of specific ethnic quotas, the necessary number of votes from every ethnic group and every entity.[1]

In addition to the complex constitutional setup, the DPA foresees a specific role of High Representative, tasked with the interpretation and application of the peace agreement. This position is granted sweeping powers – known as the "Bonn powers" – allowing for legislative intervention and removal of officials from office.[2]

The primary ethnic groups in BiH, referred to as the "constituent peoples" (i.e. Bosniaks, Serbs, and Croats), are awarded a set of group rights in the form of necessary quotas for state positions and during the decision-making process, or process of adoption of laws, exemplified by the existence of "House of Peoples" in the state parliament.[3] However, these special rights have been deemed by the European Court of Human Rights

1 Edin Šarčević, *Dejtonski Ustav: Karakteristike i Karakteristični Problemi* (Konrad Adenauer Stiftung 2009) 200.

2 David Chandler, *Bosnia: Faking Democracy after Dayton* (2nd edn, Pluto Press 2000) 125.

3 Lada Sadiković, 'Ustavna Diskriminacija Građana' (2015) 2 Pregled 1.

(hereafter: ECtHR) in its landmark *Sejdic-Finci* case, as well as several other cases, as discriminatory against the "others" – minorities or persons not declaring as members of one of the constituent peoples.[4]

The ECtHR itself sees the current constitutional setup of BiH as one created in the necessity to stop the brutal war but urges the country to adopt necessary constitutional reforms. As a result, these constitutional and legal complexities are often rendering the reforms very difficult, and there is an urgent need for a move from the "Dayton era" towards the "Brussels era" and the adoption of changes needed in the EU integration process.[5]

The importance of EU integration and the BiH's membership perspective cannot be understated. For BiH, joining a club of developed countries is not just a question of joining but also implementing crucial reforms needed to create a democratic society and efficient state institutions and preserve peace and stability within the country and region of the Western Balkans.

The changed geo-political landscape in Europe, following the aggression of the Russian Federation on Ukraine, has had profound repercussions for BiH. Legislative complexities are additionally aggravated by the political difficulties, primarily instigated by the leaders of the entity of the Republic of Srpska, who have a pro-Russian and separatist agenda. Their actions are often intended to slow or even stop the progress of the country on the path towards the EU and NATO membership.[6]

That is not to say that other political leaders are not showing negative tendencies and lack enthusiasm towards the reforms needed for EU accession, but the activities of the leaders of the entity of the Republic of Srpska are carrying additional security and geopolitical overtones. The legal deficiencies are used as a tool to achieve those geopolitical goals. Hence, the removal of legal deficiencies would prevent the possibility of them being misused for political purposes, especially when instigated by external actors.[7]

The current status of the BiH integration process to the EU is at a perilous crossroads. The EU has granted the candidate status to BiH; however, there are no signals regarding the opening of the first chapters of the negotiation process. On the other hand, the retrograde

4 Dženeta Omerdić and Harun Halilović, 'Discrimination Based on Place of Residence in Recent Jurisprudence of the European Court of Human Rights with Emphasis on Bosnia and Herzegovina' (2022) 1 IUS Law Journal 60, doi:10.21533/iuslawjournal.v1i1.10.

5 Nicola Sibona, 'Bosnia and Herzegovina from Dayton to the European Union' (2010) 1 International Journal on Rule of Law, Transitional Justice and Human Rights 146.

6 'Bosnian Serb Leader Awards Russian President Putin Medal in Absentia' (*Reuters*, 8 January 2023) <https://www.reuters.com/world/europe/bosnian-serb-leader-awards-russian-president-putin-medal-absentia-2023-01-08/> accessed 15 July 2024; 'High Representative's Address to UN Security Council' (*Office of the High Representative (OHR)*, 15 May 2024) <https://www.ohr.int/high-representatives-address-to-the-united-nations-security-council/> accessed 15 July 2024.

7 In a similar fashion, legal mechanisms are used to block important decisions within the EU itself, as in the case of Hungary's leader Viktor Orban.

pull of disrupting geopolitical factors is using this "vacuum" to slow down or halt the integration process altogether. As said, the EU integrations and the implementation of EU law and standards, primarily related to the rule of law in BiH, are not only a question of joining the EU but need to be seen in the context of two ongoing processes. The first one is the state-building process that started after the conclusion of the Dayton Peace Agreement, which aimed primarily to halt the bloody conflict of the 1990s and ensure a dysfunctional yet peaceful status quo, thus not leaving many mechanisms that would enable the country to progress in the EU integration path fully. The second process is a regional process of reconciliation and normalisation of relationships between the nations and peoples in the Western Balkans region, with the ultimate goal of making the countries and societies of the Western Balkans ready for EU membership. The harmonisation of national legislations and the implementation of EU standards, especially related to the rule of law and other related principles such as the protection of minority rights and anti-corruption policies, all part of the EU integration process, is, therefore, a quintessential tool not only in terms of potential accession but in terms of state-building and regional cooperation and stabilisation.

The focus of this article is on the legal analysis of the constitutional and legislative solutions in the current legal system of Bosnia and Herzegovina, which are serving as a contributing factor to the difficulties in legal approximation and implementation of standards related to the rule of law and access to justice, as the necessary elements of the not only the EU integration process but a state-building and, in a broader context, process of regional stabilisation.

The article aims to give an overview of legal difficulties and deficiencies in BiH's EU integration process by analysing the relevant legislation and the recommendations provided by the European Commission. When appropriate, it employs methods of legal analysis, content analysis, historical insight, and comparative overview, offering recommendations through a normative approach.

The first section presents an overview of BiH's integration path, followed by an analysis of the country's obligations in the EU integration process, primarily the obligation of adoption and, subsequently, of implementation of EU law (*acquis*) and activities of BiH (or lack thereof) in their fulfilment. The article then examines certain deficiencies in BiH's constitutional and legislative system, such as the System of the European Integration Process (the so-called Coordination Mechanism) and the constitutional division of competencies between different levels of government. These issues are compared with the recommendations and requirements defined by the European Commission and standards applied in some EU countries with federal constitutional systems. Finally, suggestions for improvements are given, followed by concluding remarks.

2 METHODOLOGY

The primary goal of this research is to establish certain legislative challenges present in the legal system of BiH that harm the country's ability to fulfil its obligations in the EU integration process, as well as other obligations related to issues of access to justice. The sources used in the research are primarily related to the relevant legislation in BiH and the case law of national and international courts, as well as academic writings written on the subject. These sources are adequate and necessary in establishing BiH's obligations of BiH, identifying certain solutions in the legal system that have negative effects, and providing recommendations.

The research employs several methods, including content analysis of legal sources, such as relevant legislation and case law. This method is used to ascertain the norms having a negative effect on the country's ability to fulfil the obligation of the EU integration process. The norms are analysed separately as well as in connection with other relevant norms regulating the area in question. Case law analysis includes the analysis of relevant sections of national and international court decisions.

The comparative method is used in conjunction with other methods, such as the normative method, to compare previously identified norms of the legal system of BiH with relevant norms found in other legal systems of European countries, which also have complex constitutional structures with elements of federalism. The comparison aims to establish how certain matters are regulated in other countries, primarily certain Member States of the EU, that, notwithstanding the fact of their federal structure, can successfully fulfil obligations under EU law.

Legal historical analysis and case study describe the trajectory of BiH's EU integration process and the specific issues it has faced along the way. The methods provide a contextual background of EU integration issues in BiH and the Western Balkans region.

The normative method offers certain solutions and changes in BiH's legal system, concluding the legal analysis and comparative method. The changes *de lege ferenda* are provided in the form of proposed constitutional/legislative amendments or legal adaptation of certain solutions found in comparative law and in the form of different approaches in the interpretation and application of current legal solutions. Normative change aims to propose solutions to the obstacles the country faces in the EU integration process, which is one of the primary goals of this research.

3 LITERATURE REVIEW

The existing literature related to the legal system of Bosnia and Herzegovina and its EU integration is primarily written by authors and researchers from Bosnia and Herzegovina who have an immediate interest in the topic. Regarding the constitutional legal system of Bosnia and Herzegovina, Imamović Mustafa and Ibrahimagić Omer provide accounts of the

historical development of the legal and political system in Bosnia and Herzegovina, providing the context and background necessary for understanding the legal setup as a result of negotiated solutions in the DPA.[8]

Kasim Trnka analyses the concept of the "constituent peoples" and its significant position in the constitutional order of BiH.[9] His research and presentation of the decision-making process in the Parliamentary Assembly of BiH is particularly significant, pointing to systemic deficiencies arising from the conception of the Dayton constitutional system of BiH and its implications on the decision-making process.[10] Significant research is carried out by Dzeneta Omerdić, providing important interpretations about the peculiarities of the constitutional system of Bosnia and Herzegovina and its society, and about the (in)compatibility of constitutional solutions with legal standards of EU, and the implementation of reform processes, as well as the problems that complicate them.[11]

Faris Vehabović's work addressed the position of the European Convention on Human Rights and Basic Freedoms (ECHR) in the constitutional and legal system of BiH, identifying the special features of that position, as well as problematic phenomena and incompatibilities of the constitutional and legal arrangements with ECHR legal standards and the principles of rule of law and access to justice.[12] Sofia Sebastian Aparicio conducted an exceptional analysis of activities undertaken in the direction of capacity building and elements of statehood, the so-called "state-building" process, especially in the context of a deeply divided society in Bosnia and Herzegovina.[13] Edin Šarčević provided an analysis of the Dayton constitutional system of BiH, offering a commentary on the issue regarding the compatibility of the Dayton conception with the principles of constitutional and international law and readiness to comply with EU standards.[14]

Christian Steiner and Nedim Ademović presented various aspects of the constitutional system of BiH, analysis of components, characteristics, problems, functional deficiencies, and inconsistencies with human rights and EU standards.[15] Saša Gavrić, Damir Banović and

8 Mustafa Imamović, *Historija države i prava Bosne i Hercegovine* (Magistrat 2003); Omer Ibrahimagic, 'Državnopravni kontinuitet Bosne i Hercegovine i pitanje nacije' (2015) 2 Zbornik radova Pravnog fakulteta u Tuzli 148.

9 Kasim Trnka, *Konstitutivnost Naroda: povodom odluke Ustavnog suda Bosne i Hercegovine o konstitutivnosti Bošnjaka, Hrvata i Srba i na nivou entiteta* (Kongres bošnjačkih intelektualaca 2000).

10 Kasim Trnka i dr, *Proces odlučivanja u Parlamentarnoj skupštini Bosne i Hercegovine: stanje, komparativna rješenja, prijedlozi* (Konrad Adenauer Stiftung 2009).

11 Dzeneta Omerdic, 'Bosna i Hercegovina u procesu ispunjavanja političkih kriterija iz Kopenhagena: napredak ili stagnacija?' (2015) 2 Društveni ogledi 27.

12 Faris Vehabović, *Odnos Ustava Bosne i Hercegovine i Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda* (ACIPS 2006).

13 Sofia Sebastia Aparicio, *State Building in Deeply Divided Societies, Beyond Dayton in Bosnia* (ProQuest Publ 2014).

14 Šarčević (n 1).

15 Nedim Ademović (ed), *Constitution of Bosnia and Herzegovina: Commentary* (Konrad Adenauer Stiftung 2010).

Christina Krause in the collection on the political system of BiH, which offers an account of the implications of the constitutional and legal system of BiH on its political system as well as the necessary changes (and lack thereof), especially in the context of EU integrations.[16] David, Chandler, with a realistic presentation and analysis of the state of democracy in Bosnia and Herzegovina, talks about the phenomenon of "quasi-democracy" and fictitious adherence to international legal standards and reforms in the EU accession process, which takes place with the full awareness of certain international institutions.[17] Francine Friedman analysed Bosnia and Herzegovina as a political entity and the negative implications of the constitutional and legal system as well as the insufficient progress towards overcoming the disparity between international and EU standards, and the political and legal reality of Bosnian society, highlighting the importance of EU related constitutional and legal reform.[18]

The literature related to the context of Bosnia and Herzegovina and EU integrations can provide insight into the shortcomings of the constitutional system of Bosnia and Herzegovina and its inconsistencies with the standards of international law, primarily the standards of ECHR. However, there is a lack of analysis of the influence of the constitutional and legal system of Bosnia and Herzegovina and its ability to fulfil international legal obligations, primarily those resulting from European integration. Insight and clarification of the mutual conditionality of the rule of law with the EU integration process, as well as an analysis of the implications of the adoption and application of the *acquis*, are also lacking.

4 OVERVIEW OF THE EUROPEAN INTEGRATION PATH OF BIH

Like other countries of the Western Balkans, the process of European integration of BiH began at the end of 1996, with the adoption of a new initiative of the EU, which aimed to stabilise, democratise, and start the integration process for the countries of the Western Balkans. Among those countries, BiH had a particularly unfavourable starting position as it was just beginning to recover from a brutal war that lasted from 1992 to 1995, during which many war crimes were committed, including genocide in Srebrenica[19]. During the French presidency of the EU Council in December 1996, the so-called "*Royamont initiative*" to stabilise and build peaceful relations in the region was initiated.[20] As part of the initiative, in 1997, the humanitarian and financial programs "PHARE" and "*Obnova*" were launched, the realisation of which was conditioned by a certain level of respect for human rights and the principles of democracy and the rule of law. In 1998, a consultative BiH-EU Working

16 Damir Banovic i Saša Gavrić (ur), *Država, politika i društvo u Bosni i Hercegovini Analiza postdejtonskog političkog sistema* (Magistrat 2011).

17 Chandler (n 2).

18 Francine Friedman, *Bosnia and Herzegovina: A Polity on the Brink* (Routledge 2004).

19 Further information available: <https://www.irmct.org/specials/srebrenica20/> Accessed 15 July 2024

20 Nataša Beširević i Ivana Cujzek, 'Regionalna politika Europske unije prema Zapadnom Balkanu: dosezi i ograničenja' (2013) 50(1) Politička misao 161.

Group was established to provide expert assistance in implementing EU standards in the fields of economy, education, judiciary, media, and administration. This can be marked as the first step taken in approximating the legislation of BiH to the acquis and sort of a step towards a "quasi-approximation" to the *acquis*. [21] In the same year, officials of BiH and the EU signed the Declaration on Special Relations between BiH and the EU.

In 1999, the EU launched the Stabilization and Association Process (hereafter: SAP) intended for the countries of the Western Balkans, combining a regional and individual approach. The SAP's medium-term goal is to conclude the Stabilization and Association Agreement (hereafter: SAA), which establishes a formal international legal framework for relations between the countries of the Western Balkans and the EU, particularly regarding EU integration. The SAP has several goals: developing economic and trade relations within the region itself and between the region and the EU as well; providing economic and financial support; increasing support for democratisation, development of civil society, education, and institution building; promoting cooperation in matters of justice and security; advancing political dialogue and, as an important milestone in the process, negotiating and concluding the SAA.

With the initiation of the SAP, the European Council in Fiera determined that all countries participating in the SAP, including BiH, were potential candidates for EU membership. As a first step in concretising the plans, in March 2000, an individual program for BiH called the "Roadmap" was launched. The Roadmap outlined 18 steps required to initiate a feasibility study for the conclusion of the SAA with the EU.[22]

After a more extended period of fulfilling the Roadmap requirements in 2008, the SAA between BiH and the EU (and its Member States) was signed. However, its application was soon suspended due to BiH's failure to fulfil several obligations, particularly those related to the principles of human rights and the rule of law. Central to this was the non-implementation of the judgment of the ECtHR in the notable *Sejdić-Finci* case.[23] Thus, it can be said that the conditionality principle has followed the European integration path of BiH from the very beginning.

While the SAA itself was largely suspended, certain parts, primarily related to customs regulations, were temporarily enforced. Since there was a complete standstill in the execution of the ECtHR judgments after the signing of the SAA – a standstill that continues to this day – the so-called "British-German initiative for BiH" was created in 2014. This initiative called on authorities and elected political leaders and representatives in BiH to accept and commit, in a written statement, to the implementation of institutional reforms

21 Bedrudin Brljavac, 'Europeanisation Process of Bosnia and Herzegovina : Responsibility of the European Union?' (2011) 13(1-2) Balkanologie 4, doi:10.4000/balkanologie.2328.

22 ibid 5.

23 European Parliament resolution of 6 February 2014 on the 2013 progress report on Bosnia and Herzegovina (2013/2884(RSP)) [2017] OJ C 93/122.

at all levels and the development of a comprehensive reform plan, known as the "Reform Agenda," in cooperation with the EU. Based on these activities, the EU Council decided in 2015 that the SAA with BiH could enter into force.[24]

As the next significant step in EU integration, BiH submitted an Application for membership in the EU on 15 February 2016. After a long process of collecting and submitting the answers to the European Commission's questionnaire, on 29 May 2019, the Commission adopted an Opinion on the candidacy of BiH for membership in the EU. The Opinion has a legal basis in Article 49 of the TEU[25] and is significant for the institutions of the EU who take it as a point of reference in the further integration process. Meanwhile, BiH, during the application process, did not carry out any unique diplomatic activities to speed up or facilitate the process of EU integrations.[26]

The content of the Opinion itself is essentially very critical of BiH. BiH may eventually become a member of the EU, but it "*... does not yet sufficiently fulfil the criteria related to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, set by the Copenhagen European Council in 1993.*"[27] And as such, it is unable to fulfil the obligations arising from membership in the EU. Significant reforms are needed to get to the point where the country can implement the EU obligations.

It should be borne in mind that the Commission is also guided by its interests and the interests of the EU because, as the Commission states, there is a fear that BiH, with its current constitutional framework and a complicated decision-making process, which contains many possibilities of use of veto powers by representatives of one of the constituent peoples, would threaten the very functioning of the EU and its decision-making process.[28]

Consequently, the European Commission has determined 14 priorities and recommendations for the authorities in BiH that need to be fulfilled. Recommendation

24 Council of the EU, 'Bosnia and Herzegovina: Conclusion of Stabilisation and Association Agreement' (*Council of the EU, the European Council*, 21 April 2015) <https://www.consilium.europa.eu/en/press/press-releases/2015/04/21/bih-conclusion-stabilisation-association-agreement/> accessed 15 July 2024.

25 Article 49 of the TEU reads: *'Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account....'* See, Treaty on European Union (Consolidated version) [2016] OJ C 202/43.

26 Miljenko Musa, 'Uloga kulture kao meke moći: Bosna i Hercegovina na putu prema europskim integracijama' (2020) 2(2) South Eastern European Journal of Communication 83, doi:10.47960/2712-0457.2020.2.2.77.

27 Communication from the Commission to the European Parliament and the Council: Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, COM (2019) 261 final (29 May 2019) 14 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0261> accessed 15 July 2024.

28 ibid 13.

No. 4 is among the most important, where the Commission considers that BiH "... Bosnia and Herzegovina needs to bring in line its constitutional framework with European standards and ensure the functionality of its institutions to take over EU obligation. While a decentralised state structure is compatible with EU membership, Bosnia and Herzegovina will need to reform its institutions to be able to participate in EU decision-making effectively and to fully implement and enforce the acquis."[29] In order to "ensure legal certainty on the distribution of competences across levels of government" and "…introduce a substitution clause to allow the State upon accession to temporarily exercise competences of other levels of government to prevent and remedy breaches of EU law."[30]

In its Opinion, the Commission requested BiH to amend its constitutional legal framework to "…ensure equality and non-discrimination of citizens, notably by addressing the Sejdić-Finci ECtHR case law" and to "…ensure that all administrative bodies entrusted with implementing the acquis are based only upon professionalism and eliminate veto rights in their decision-making, in compliance with the acquis."[31] Both aforementioned problems can be traced to the constitutional principle of constituent peoples, the implementation of which leads to discriminatory situations towards the citizens of BiH who are designated as members of the constituent peoples or as "others". This framework creates dysfunction in the decision-making process, especially within legislative bodies.

Following the adoption of the Opinion and determination of priorities by the Commission, BiH's political landscape faced new difficulties and blockades, particularly with the rise of secessionist policies from pro-Russian political leaders in the entity of the Republic of Srpska. These developments were fueled by shifting geopolitical relations in Europe, triggered by Russia's aggression against Ukraine. As a result, BiH's European integration process is losing momentum, and its power to stimulate internal social reforms is declining.[32] At the same time, these circumstances were also seen as an opportunity to shift the focus of the integration criteria and to use the momentum following the granting of the candidate status to Ukraine and Moldova.[33]

In the context of the changed geopolitical circumstances in Europe, the EU Council granted candidate status to BiH on 15 December 2022. That decision was primarily made with the interests of the citizens of BiH in mind and not by merit of the results of the government of BiH and its political representatives in fulfilling the defined priorities.[34]

29 ibid 14.
30 ibid 15.
31 ibid 16.
32 Aparicio (n 13) 293.
33 Nathalie Tocci, 'Why Ukraine (and Moldova) Must Become EU Candidates' (2022) 22(15) Istituto Affair International Papers 7.
34 Josep Borrell, 'EU Candidate Status for Bosnia and Herzegovina: A Message to the People and a Tasking for Politicians' (*European Union External Action*, 16 December 2022) <https://www.eeas.europa.eu/eeas/eu-candidate-status-bosnia-and-herzegovina-message-people-and-tasking-politicians_en> accessed 15 July 2024.

5 THE OBLIGATION TO COMPLY WITH THE ACQUIS

The SAA between BiH and the EU (and its member states)[35] represents a legally binding framework for relations between BiH and the EU.[36] As such, it contains many important provisions that have the potential to produce major repercussions within the legal order of BiH. The obligation to harmonise the candidate country's legal system with the *acquis* is one of the fundamental and inevitable obligations that has existed since the first enlargement process. Without it, membership in the EU is practically unthinkable.

Accordingly, this represents one of the basic obligations that BiH has in its European integration process and is defined by the SAA. Under Article 70 of the SAA, BiH undertook an international legal obligation to gradually harmonise its legislation, past and future, with the *acquis*. Namely, Article 70 of the SAA states: "... Bosnia and Herzegovina shall endeavour to ensure that its existing laws and future legislation will be gradually made compatible with the Community acquis. Bosnia and Herzegovina shall ensure that existing and future legislation will be properly implemented and enforced… The SAA further states that: "… This approximation shall start on the date of signing of this Agreement and shall gradually extend to all the elements of the Community acquis referred to in this Agreement by the end of the transitional period defined in Article 8 of this Agreement... Approximation shall, at an early stage, focus on fundamental elements of the Internal Market acquis as well as on other trade-related areas. At a further stage, Bosnia and Herzegovina shall focus on the remaining parts of the acquis.."[37]

The SAA also contains obligations related to certain segments, where specific deadlines are provided. Such provisions are contained in Articles 71-77 of the SAA, which refer to the harmonisation of rules related to competition, public enterprises, public procurement, intellectual property rights, standardisation, metrology and accreditation, labour and occupational safety, and consumer protection.

As stated, Article 70 of the SAA represents the central norm that defines the obligation to harmonise national regulations with *the acquis* and prescribes the general obligation of BiH to harmonise its legislation with *the acquis*, while the other articles of Chapter VI of SAA prescribe special obligations that refer to certain segments. Thus, Article 71 of the SAA focuses on prohibited practices and rules of conduct related to competition rules, and Article 72 on special rules related to public companies. Article 73 guarantees intellectual property rights, while Article 74 relates to the special mutual rights of companies concerning public procurement. Article 75 concerns the necessary compliance in standardisation, metrology, and accreditation.

35 The SAA itself was concluded as a 'mixed agreement' in which the EU and its member states participate together.

36 Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part [2015] OJ L 164/2 <http://data.europa.eu/eli/agree_internation/2015/997/oj> accessed 15 July 2024.

37 ibid, art 70.

These aforementioned articles focus primarily on the mutual rights and obligations of the SAA parties in specific areas while reaffirming BiH's established obligation to harmonise its entire legislation with the provisions *of the acquis*. This is especially emphasised in Articles 76 and 77, which prescribe that BiH will harmonise its legislation and standards in the segments of consumer protection and the field of labour, occupational safety, and equal opportunities.

As a form of realisation of the obligation to harmonise the legislation of BiH with *the acquis*, Article 70 of the SAA foresees the adoption of a National Program to enable the implementation of obligations in a systematic manner. Thus, Article 70 provides: "*Approximation shall be carried out on the basis of a programme to be agreed between the European Commission and Bosnia and Herzegovina..*".[38] The obligation to establish this national program is a fundamental step towards the successful implementation of the *acquis adoption process*, and the same obligation is provided for in all agreements on stabilisation and association of neighbouring states.

The obligation to develop a program for legislative harmonisation was also the basic obligation for other countries that underwent the integration process (e.g. countries of Central and Eastern Europe whose integration was based on the so-called European treaties). The program is adopted by each candidate country separately, which is why it is also called the "national" program for adoption/alignment with *the acquis*. While the program's title can bear a different name, its content must correspond to the requirements and past experiences of integration processes.[39]

A national program for the adoption *of the acquis communautaire* is a comprehensive long-term document that defines elements such as the dynamics of the adoption of *the acquis*, the strategic guidelines, policies, reforms, structures, resources, and deadlines that should be implemented by a country. The national program follows the criteria of Copenhagen and Madrid. It includes political and economic criteria, with a special emphasis on the ability of the country to assume obligations arising from membership in the EU and the ability of the administration to respond to the requirements of the European integration process and the adaptation of national legislation. Further, the national program represents an important source of information for the business and economic sector, which can be used when planning future activities in terms of announcements of anticipated legal changes. From that aspect, the national program represents an important instrument for transparency in the work of the candidate country.

38 ibid.

39 Uroš Ćemalović, 'Framework for the Approximation of National Legal Systems with the EU's Acquis: From a Vague Definition to Jurisprudential Implementation' (2015) 11(1) Croatian Yearbook of European Law and Policy 245, doi:10.3935/cyelp.11.2015.200.

6 HARMONISATION OF NATIONAL LEGISLATION AND RESPECT OF RULE OF LAW PRINCIPLE IN THE MEMBER STATES OF THE EUROPEAN UNION – COMPARATIVE EXPERIENCE

The harmonisation of national legislation and subsequent implementation of the EU *acquis* represents one of the fundamental issues of the existence and functioning of the EU in general. On the other hand, respect for the principle of the rule of law, the implementation of the ECHR standards, and the execution of the judgments of the ECtHR represent some of the fundamental values of the EU, which are defined by its founding acts, i.e. in the Treaty on the European Union (TEU) itself, but also in the General Principles of EU law, as well as in other primary and secondary sources of EU law. The EU institutions have singled out the principle of the rule of law as a fundamental value, a *conditio sine qua non*, both in terms of internal relations and regarding the accession of new members.

When it comes to the application of the *acquis* in the Member states of the EU, the basic legal framework is set by fundamental doctrines, where the role of the EU Court of Justice is extremely important. Several significant judgments, such as the C-26/62 Van Gend en Loos and C-6/64 Costa v ENEL, in which the court developed the central principles of direct application and effect (direct effect) and supremacy (primacy) of EU law, are among the most significant cases.[40] The influence of those judgments, as well as the positions taken in them and subsequent case law, represent the foundations of the legal order of the EU and are of crucial importance. However, debates surrounding these principles are still visible today, as seen in the examples of positions taken in Poland that call into question the principle of supremacy of EU law.[41] Consequently, the EU Commission initiated proceedings against Poland for violating obligations from the TEU, as well as proceedings for violation of the rule of law principles that potentially can result in the denial of money from EU funds.[42] That issue is still unfolding, but it is significant as a signal not only of stagnation in the integration process but also of the appearance of signs of its regression.

In the context of previous episodes of EU enlargements, most candidate countries did not show great difficulties when it came to the adoption of regulations. The only candidate country that did not accept changes to its national legislation and ultimately gave up on EU integration is Iceland. Namely, for Iceland, the prospect of accepting the EU's common

40 Karen J Alter, *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe* (OUP 2003) 17, doi:10.1093/acprof:oso/9780199260997.001.0001.

41 Marta Lasek-Markey, 'Poland's Constitutional Tribunal on the Status of EU law: The Polish Government Got all the Answers it Needed from a Court it Controls' (*European Law Blog*, 21 October 2021) <https://www.europeanlawblog.eu/pub/polands-constitutional-tribunal-on-the-status-of-eu-law-the-polish-government-got-all-the-answers-it-needed-from-a-court-it-controls/release/1?readingCollection=9160a7ae> accessed 15 July 2024.

42 European Commission, 'European Commission, Measures taken by the Commission against Poland, more information' (*European Commission*, 22 December 2021) <https://ec.europa.eu/commission/presscorner/detail/en/ip_21_7070> accessed 15 July 2024.

policy on fisheries – an area of significant economic activity for Iceland – was a critical point of contention. The refusal to harmonise regulations in the fisheries policy segment, which is regulated jointly at the level of the EU, was a key factor in Iceland's decision to abandon its candidacy and withdraw from the EU accession process.[43]

Some other countries, however, had difficulties ensuring the effective application of the newly adopted regulations. Following the great Eastern enlargement, the institutions of the EU observed that several newly admitted states had serious systemic deficiencies in terms of the rule of law, minority protection and the fight against corruption. For instance, Romania and Bulgaria are often mentioned in the Commission's reports in the context of serious deficiencies in the fight against corruption.[44] While Hungary,[45] led by political representatives who propagate the ideas of "illiberal democracy," is identified in the Commission's reports as a state with worrying deficiencies in terms of the respect for the principle of rule of law and the rights of minorities.[46]

Experience from previous enlargements shows that some countries have demonstrated regressive trends, prompting the reaction of the EU institutions, who have initiated various procedures and even threatened sanctions.[47]

The core admission criteria for EU membership are designed to ensure that future Member States can effectively participate in the EU's economic, legal, and political life. The premise is that the Member States of the EU themselves meet the same criteria; however, doubts can be expressed as to whether certain members, at this moment, actually meet the criteria required.[48]

The goal of EU integration is to strengthen the rule of law and ensure the adoption of the EU *acquis* while effective mechanisms, such as the aforementioned conditionality mechanisms, remain available to EU institutions. Although these mechanisms do not always produce the desired results during the candidacy phase, they still represent much more effective "tools" than those that the institutions of the EU have at their disposal after the entry of a new Member State in the EU.

43 András Jakab end Dimitry Kochenov (eds), *The Enforcement of EU Law and Values: Ensuring Member States' Compliance* (OUP 2017) 397, doi:10.1093/acprof:oso/9780198746560.001.0001.

44 Franco Peirone, 'The Rule of Law in the EU: Between Union and Unity' (2019) 15 Croatian Yearbook of European Law & Policy 71.

45 Astrid Lorenz and Lisa H Anders (eds), *Illiberal Trends and Anti-EU Politics in East Central Europe* (Palgrave Studies in European Union Politics, Palgrave Macmillan Cham 2020) 113, doi:10.1007/978-3-030-54674-8.

46 Sophie Hinger and Reinhard Schweitzer (eds), *Politics of (Dis)Integration* (IMISCOE Research Series, Springer Cham 2019) 197, doi:10.1007/978-3-030-25089-8.

47 Jakab and Kochenov (n 42) 75.

48 Ilina Cenevska, 'The Rule of Law as a Pivotal Concept of the EU's Politico-Legal Order' (2020) 11(1) Iustinianus Primus Law Review 3.

7 SYSTEM OF COORDINATION OF THE PROCESS OF EUROPEAN INTEGRATION IN BOSNIA AND HERZEGOVINA (COORDINATION MECHANISM)

Aiming to facilitate the fulfilment of requirements of the EU integration process, the political representatives in BiH drafted and agreed on the creation of the Coordination System of the European Integration Process in BiH, also known as the Coordination Mechanism. However, its functionality, as well as its constitutional validity, is questionable.

Coordination can generally be classified into two types: horizontal coordination, which refers to the harmonisation of activities between authorities at one level of government, and vertical coordination, which involves the coordination of activities between different levels. Coordination can be binding, i.e. when the involved authorities must implement the decisions made, or non-binding, in which case, it is more akin to consultation rather than coordination. In the constitutional order of BiH, an example of binding horizontal coordination is defined in the work of the Council of Ministers of BiH, where institutions at the level of BiH are obliged to implement the decisions of the Council of Ministers of BiH.[49]

Activities related to fulfilling obligations in the EU integration process fall within the competence of different levels of government in BiH (state, entity, and canton level). Consequently, the Coordination Mechanism in BiH was established. It defines the institutional and operational system of coordination between institutions of different levels in BiH during the implementation of activities related to the EU integration process. It defines joint bodies, composition, competencies, and mutual relations.

The Coordination Mechanism was established by the Decision of the Council of Ministers of BiH (hereafter: Decision).[50] This reflects the first weakness of the Mechanism, which lies in its constitutional and legal basis. Namely, a question such as the implementation of European integration obligations is of high priority and constitutional importance. In this case, such an important issue was not legislated by the Constitution, nor by Law, but by a Decision as a by-law.

According to the Decision on the establishment of the Coordination Mechanism itself, coordination is defined as a set of activities carried out to ensure "*the greatest degree of coordination and coherence in the work of institutions at all levels of government in BiH*" related to the fulfilment of obligations from the SAA and "other obligations" in the EU integration process.[51] Immediately in the definition, an acceptance of the existence and

49 Enver Ajanovic, 'Mehanizam koordinacije u upravnim institucijama Bosne i Hercegovine' (2017) 2 Pregled 86.

50 In this case, the BiH Council of Ministers refers to Articles 17 and 23 of the Law on the Council of Ministers, which refer to the types of decisions adopted by the Council 'in the exercise of its rights and duties' and which regulate issues of the Directorate for European Integration.

51 Decision of the Council of Ministers of Bosnia and Herzegovina no 197/16 of 23 August 2016 'On the Coordination System of the European Integration Process in Bosnia and Herzegovina' [2016] Official Gazette of BiH 72/16.

tolerance of inconsistencies and incoherence in the work of institutions is visible because the goal is not the harmonisation and uniform implementation of activities. The very foundations of the Coordination Mechanism are not defined and set on the values of the EU but on the "*principles of respecting the existing internal legal and political structure and the protection of certain jurisdictions by the Constitution*" and "*ensuring the visibility*" of different levels in fulfilling obligations from the EU integration process within their jurisdiction.[52]

Coordination is divided into vertical (between different levels) and horizontal (within levels of government), with each level of government independently regulating the structure and way of achieving horizontal coordination. This points to a major weakness in the Coordination Mechanism: decisions made within the Coordination Mechanism must be implemented through horizontal coordination at each individual level, but there is no mandatory vertical coordination.

Regarding vertical coordination, the Decision on Coordination Mechanism establishes joint bodies for facilitating cooperation,[53] namely: a) college for European integration, b) ministerial conferences, c) commission for European integration, and d) working groups for European integration.[54]

As the Coordination Mechanism primarily oversees the implementation of the provisions of the SAA, it also defines the participation of representatives of BiH in bodies composed of representatives of the EU and BiH in the form of permanent delegations within the Stabilization and Association Council, Committee and Sub-committee for Stabilization and Association, and other bodies.[55]

The most significant issue with the Coordination Mechanism lies in Article 3 of the decision establishing it, which defines that the method of decision-making in all bodies created within the Coordination Mechanism is consensus.[56] The quorum includes representatives

52 ibid.

53 Using the term 'joint' in the context of state bodies is unconstitutional. This was also confirmed by the judgment of the Constitutional Court BiH from January 20, 2023, which declared the phrase 'joint institution' unconstitutional. See, Case U-23/22 (Constitutional Court of BiH, 20 January 2023) <https://www.ustavnisud.ba/uploads/odluke/_bs/U-23-22-1358652.pdf> accessed 15 July 2024.

54 Decision of the Council of Ministers of Bosnia and Herzegovina no 197/16 (n 50).

55 ibid.

56 Adopting decisions by consensus in the Coordination Mechanism is a particularly difficult task, given the large number of parties involved. Making harmonized decisions in the Coordination Mechanism practically requires the unanimity of a larger number of actors than the constitutional changes themselves. In addition, this solution is even below the standards and framework of the Dayton Peace Agreement and is reminiscent of some solutions from the negotiations that preceded the DPA, such as the Vance-Owen and Owen-Stoltenberg plans, which implied the existence of 'joint' or 'union' bodies that coordinate and make decisions by consensus.

of all levels.[57] This means that when decisions are made in matters under the jurisdiction of the cantons,[58] all ten cantons must consent. In addition, any decision adopted by one of the bodies can be reviewed (and annulled) by a "higher body" within ten days.

In the event that a body does not agree on a point of view, the issue will be referred to a higher level within the Coordination Mechanism, including the College for European Integration, which makes decisions by consensus and is defined as the highest political body in the Coordination Mechanism.

The College for European Integration consists of the chairman of the Council of Ministers, the deputy chairman, the president, and two members of the Government of the Federation of BiH and the Government of the entity of the Republic of Srpska, the mayor of Brčko District, and the presidents of cantonal governments. The function of the chairman of the College is held by the chairman of the Council of Ministers of BiH, and the same can be extended to certain relevant ministers, although they do not have the right to vote. The function of the College's secretariat is performed by the Directorate for European Integration.[59]

8 COORDINATION MECHANISM AND FULFILLMENT OF OBLIGATIONS FROM EUROPEAN INTEGRATION

In its Opinion on the application of BiH for membership in the EU (Opinion), the EU Commission referred to issues related to the Coordination Mechanism on several occasions, especially in the Analytical Report. The Commission refers, in one of the fourteen priority recommendations for BiH, to the inefficiency and unsatisfactory results of the Coordination Mechanism. Analysing the Coordination Mechanism and its complexity, the Commission includes "…*over 1400 civil servants from 14 governments at all levels*."[60] The Coordination Mechanism consists of 36 working groups covering chapters *of the acquis*. The Commission

57 Article 3, paragraph (2) of the Decision on the Coordination Mechanism reads: *'The quorum for holding meetings and adopting decisions in the bodies referred to in Article 2, paragraph (4) of this decision must be composed of the authorized: a) representative of the Council of Ministers of BiH, b) representative of the Government Republika Srpska, c) a representative of the Government of the Federation of BiH, d) representatives of all 10 cantonal governments, e) a representative of the Government of the Brčko District of BiH, and in accordance with the constitutional competences for the matter considered at the session, that is, which is the subject of the decision.*

58 Due to extensive number of competences of entities and cantons, this turns out to be almost every question.

59 Decision of the Council of Ministers of Bosnia and Herzegovina no 197/16 (n 50).

60 Commission Staff Working Document, Analytical Report Accompanying the document Communication from the Commission to the European Parliament and the Council: Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, SWD(2019) 222 final (29 May 2019) 19 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2019%3A222%3AFIN> accessed 15 July 2024.

notes that the decisions made within the Coordination Mechanism are not legally binding, and when an agreement is reached through the Coordination Mechanism, it needs to be confirmed and implemented by the authorities of all 14 executive authorities. Analysing the functionality of the Coordination Mechanism, the Commission references its testing in 2017 and 2018 during the process of formulating responses to the Commission's Questionnaire, a necessary step before the creation of an Opinion on BiH's application for EU membership. The Commission states that, despite establishing a Coordination Mechanism, authorities of BiH could not agree on answers to 22 questions.[61]

The Commission's recommendations regarding the Coordination Mechanism referred primarily to a need for clearer distribution of responsibilities between levels and enhanced cooperation of all levels. In its second recommendation, as one of the key priorities that BiH should fulfil in its EU integration path, the Commission states the need to ensure visible results when it comes to the functioning of the Coordination Mechanism, particularly on issues related to EU integration. This entails, first and foremost, the adoption of the National Program for the adoption *of the acquis*.[62]

As noted, the Coordination Mechanism has several shortcomings, the first of which lies in its constitutional foundation. The Mechanism was established in the form of a Decision adopted by the Council of Ministers of BiH. Namely, the role and significance of the Coordination Mechanism is a segment that touches on constitutional issues and refers to the fulfilment of international legal obligations. Accordingly, the issue must be resolved at a higher normative level, i.e. by the Constitution itself or the law at least. Instead, it has been established as a by-law, which undermines its legal basis.

The inadequacy of this normative act and legal basis is especially evident when considering that the BiH Constitution itself allows for coordination to be led by the Presidency. This avenue provides a more suitable constitutional legal basis for initiating coordination processes than the Council of Ministers. Namely, in Article III, Paragraph 4 of the Constitution of BiH, it is stated that " *...4. The Presidency may decide to encourage inter-entity coordination in matters that are not within the jurisdiction of BiH provided for by this Constitution, unless in a specific case one entity opposes it.*"[63]

This provision suggests that the Coordination Mechanism could – and perhaps, should – have been led by the Presidency as a body competent for "*encouraging inter-entity coordination*" on issues that are not within the express competence of the state level. However, the effectiveness of this aforementioned constitutional provision is impaired by the possibility of entity opposition.

61 ibid 19.

62 The opinion of the Commission states: *'Ensure visible results when it comes to the functioning of the coordination mechanism on issues related to the EU at all levels, including the preparation and adoption of the national program for the adoption of the acquis.'*

63 Constitution of Bosnia and Herzegovina no 327/09 of 26 March 2009 <https://www.ustavnisud.ba/en/constitution-of-bosnia-and-hercegovina> accessed 15 July 2024.

If the aforementioned article is taken into account in the context of Article IV, Paragraph 4, Point a), which refers to the scope of work of the Parliamentary Assembly of BiH and states that it is responsible for *"a) Passing laws that are necessary for the implementation of the decisions of the Presidency or for the performance of the functions of the Assembly according to this Constitution*." This implies that there is a constitutional basis for the Parliamentary Assembly to adopt the laws necessary to implement the decisions of the Presidency.

It is also evident from the comparative practice of the Member States of the EU that the aforementioned question of the fulfilment of obligations stemming from the EU integrations (or, later, membership) is resolved by constitutional and legal provisions. Namely, in the example of the Federal Republic of Germany, as an EU member state with a highly developed federal system, a kind of coordination involving extensive consultations is carried out on a constitutional and legal basis, led by the federal level.

In Germany, the questions of mutual relations and consultations in matters of the EU were carried out on the basis of the Law on the Cooperation of the Federal Government and the German Federal Council,[64] as well as Article 23 of the Constitution of the Federal Republic of Germany. This article outlines the obligation of consultations with Länders (federal states) but determines that the Federal Government retains the authority to make decisions. It highlights that these decisions are guided primarily by the need to fulfil the international obligations on behalf of the nation as a whole, stating that ".. *this process shall be consistent with the responsibility of the Federation for the nation as a whole*." [65]

In addition to the above example, the Kingdom of Belgium, another EU member state with a highly federal constitutional order, offers a similar coordinating body. This body, known as the Concertation Committee, has general competence and coordinates the activities of authorities at both the federal level and the level of federal units. Unlike BiH's system, it not only deals with issues of EU law but functions as a general mechanism of cooperation between representatives of various levels through non-binding vertical coordination, which, has proven effective. It was established by a special law and based on Constitutional provisions.

Since the Coordination Mechanism in BiH was, from the very beginning, established on "*the foundations of the protection of the constitutional distribution of competencies*" and "*visibility*" of different levels and not on the values that imply effective European integration, the solution is inconsistent with the principles of the EU and the process of European integration, which requires efficiency, unambiguity, and uniform performance of EU obligations.

64 Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union of 4 July 2013 ' Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union - EUZBBG' <https://www.gesetze-im-internet.de/englisch_euzbbg/> accessed 15 July 2024.

65 Basic Law for the Federal Republic of Germany of 23 May 1949 'Grundgesetz für die Bundesrepublik Deutschland' <https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html> accessed 15 July 2024.

The introduction of a consensual decision-making requirement within the Coordination Mechanism, involving a large number of representatives from different levels of government, creates an extremely unfavourable solution that will have repercussions on BiH's ability to fulfil its obligations in the European integration process. In practice, decision-making in the Coordination Mechanism, in some respects, is brought to the level and the "weight" of the adoption of constitutional changes. The recommendation of the Commission to abolish the possibility of veto in the bodies responsible for European integration issues refers primarily to the Coordination Mechanism.[66]

This situation is further aggravated by the practically "non-binding" nature of the Coordination Mechanism's decisions, meaning that adopted decisions have yet to be implemented by the authorities at each level.[67] Further, the Coordination Mechanism lacks any provision for central oversight or enforcement of these decisions. This could lead to a situation where one decision adopted (consensually) in the Coordination Mechanism can be implemented in several (14) different ways without central oversight.[68]

According to the above, it can be concluded that the Coordination Mechanism represents an extremely unfavourable solution that does not align with the standards of EU Member States. Its lack of efficiency and prompt fulfilment of obligations arising from EU law is not in accordance with the recommendations of the European Commission. It is reasonable to expect that, in its current form, the Coordination Mechanism will pose a major challenge to BiH's progress to EU integration.

9 ACTIVITIES OF BOSNIA AND HERZEGOVINA IN FULFILLING THE OBLIGATION TO HARMONIZE NATIONAL LEGISLATION WITH THE ACQUIS AND LEGAL ISSUES

It can be said that BiH is not fulfilling the obligation of harmonisation of its national legislation with the *acquis*, as defined in the SAA. Certain activities that are carried out are uncoordinated and are carried out without central monitoring or quality control of the implemented legislative changes, so it can be said that such an uncoordinated approach can only contribute to an even greater disharmony of the regulations adopted at different levels within the national legislation. The main reason for the non-fulfilment

66 Thus, the Commission states in the Opinion that in order to *' ...ensure that all administrative bodies in charge of implementing the acquis are based solely on professionalism and to remove the right of veto in the decision-making process, in accordance with the acquis. '*

67 Practically, it means that even a 'harmonized' decision can be applied in 14 ways.

68 The Decision on the Coordination Mechanism reads: *'Article 2 (3) coordination of the process of European integration in BiH is achieved at the horizontal (coordination within one level of government organization) and vertical level (coordination between different levels of government organization), In accordance with paragraph (2) of this article, the structures and modalities of achieving horizontal coordination are regulated by each level of government independently, in accordance with its constitutional order and administrative-legal specificities, capacities and needs, and they are not the subject of this decision.*

of the obligation to align with *the acquis* and an uncoordinated approach is the non-fulfilment of the primary obligation, which is the failure to adopt the National Program to harmonise legislation with *the acquis*.

BiH still has not adopted the National Program, although this obligation has existed since the entry into force of the SAA. Moreover, no serious activities are being carried out to create such a program. The Commission, in its Analytical Report with the Opinion on BiH's request for membership in the EU, determined that BiH has not undertaken activities towards the adoption of the National Program or any similar document. BiH adopted the document "Strategy of European Integration of BiH", which, among other things, envisages undertaking activities on the creation of the National Program. However, these activities have not been implemented.[69] Meanwhile, different levels of government adopt certain documents, regulations, and instructions for harmonising legislation with the *acquis*, but this only results in even greater fragmentation and diversity in the "adopted" and "harmonised" *acquis*.[70]

The Commission notes that the activities carried out at different levels in the direction of harmonising legislation with *the acquis* are uncoordinated. Different levels of government are establishing certain bodies (such as committees and offices) for this purpose, mainly tied to the respective legislative bodies of the entities or cantons responsible for harmonising activities with the *acquis*. However, the quality of those activities in some cases is lacking, and the Commission has raised concerns about the capacity of the aforementioned bodies to carry out these tasks, particularly at the cantonal level.

On the other hand, there is no coordination between different levels of government, especially between the entities, in the implementation of activities to harmonise legislation with the *acquis*.[71] The Commission concludes that BiH cannot guarantee compliance with the *acquis* at all levels due to the "problematic" shared competence[72] and the absence of provisions that would ensure the competence of the state level for the implementation of EU law.

According to the Commission's opinion, it is also problematic that the bodies coordinating EU issues differ within the entities. As mentioned, within the Federation of BiH, each cantonal government has its own coordinator for the EU, although their capability is often questionable. The Directorate for European Integration (DEI) is responsible for evaluating whether the regulations adopted are compatible with the *acquis,* but only at the state level (and not the level of entities or canton). Moreover, their evaluation does not oblige the authorities to change the law, while the governments of the two entities and Brčko District have their own compliance evaluation offices. According

69 Commission Staff Working Document (59) 19.

70 ibid.

71 Saša Leskovac, 'Državno uređenje Bosne i Hercegovine i upravni kapaciteti za implementaciju zakonodavstva EU' (2013) 2 Sarajevski žurnal za društvena pitanja 45.

72 ibid.

to the Commission's opinion, "...*This highly fragmented system may lead to discrepancies between the various levels of government and it is likely to prevent the country from adequately meeting its EU membership obligations, thus risking to significantly slow down the EU integration process of Bosnia and Herzegovina. The country should ensure that approximation with the EU acquis is done in a systematic and coherent manner in order to guarantee consistent application and enforcement of EU law*." [73]

BiH needs to ensure alignment with *the acquis* in a "systematic and coherent" way, and as the first step in this direction, the adoption of the National Program is needed. In addition to the primary obligation to adopt the National Program,, the Commission concludes that BiH also does not fulfil other obligations related to the sectoral harmonisation of regulations, defined in chapter VI of the SAA.[74]

According to Article 70 of the SAA, in addition to the obligation to harmonise, BiH also undertakes the obligation to adequately apply the adopted regulations. That provision has a special meaning if it is seen in the context of preparing the country for the later application *of the acquis* after the end of the European integration process and the case of (improbable but possible) full membership in the EU.

It can be said that BiH does not fulfil the international legal obligation to harmonise its legislation with *the acquis*, as per the SAA, especially its Article 70 and other provisions of Chapter VI of the SAA. The obligation to adopt and later implement *the acquis* is a fundamental legal obligation arising from the European integration process contained in the Copenhagen criteria and a basic obligation arising from membership in the EU. BiH, as a state and a subject of international law, undertook the aforementioned obligations of harmonisation with the *acquis* by its sovereign decision, and their fulfilment is primarily the responsibility of the state. The causes for certain difficulties in the (future) application of the adopted regulations can be identified in the shortcomings of the Coordination Mechanism and the distribution of competencies.

10 ISSUES OF NON-PERFORMANCE OF COURT DECISIONS AND ACCESS TO JUSTICE

There are several issues related to the rule of law and access to justice in BiH. One of the most significant problems related to access to justice is the pervasive practice of non-performance of court decisions. This practice is present even in the case of judgments adopted by the Constitutional Court of BiH and ECtHR. Such practice leaves the citizens of BiH without adequate judicial recourse and, in the structural sense, undermines the very notions of the rule of law, division of powers, and judicial review.

73 Commission Staff Working Document (59) 20.

74 European Commission, 'Key Findings of the 2022 Report on Bosnia and Herzegovina' (12 October 2022) <https://ec.europa.eu/commission/presscorner/detail/en/country_22_6093 > accessed 15 July 2024.

In the context of EU integrations, the issues of non-execution of court decisions and the overall state of the rule of law became problematic in the early stages of the integration process. The entering into force of the SAA with BiH was suspended due to non-implementation of the judgment of the ECtHR in the *Sejdic-Finci* Case.[75] The judgment has still not been implemented, and since the ECtHR adopted the landmark *Sejdic-Finci* case, many other cases have followed, similarly related to the discriminating features of the BiH Constitution.

Respect for the principle of the rule of law and implementation of obligations under the ECHR are marked as highly important in the SAA with BiH. The SAA puts special emphasis on the efficiency of the judiciary and the implementation of court decisions. The respect of the obligations under the ECHR is defined as one of the essential elements of the SAA.[76] Defined as such, the breaches of essential elements can lead to the suspension or revocation of the SAA.

The non-implementation of the decisions of the Constitutional Court of BiH gained special visibility in the ECtHR case of *Baralija*.[77] The case's background shows gross abuse of the rule of law, the right to free and fair elections, and the possibility of access to justice. The background of the case was such that certain provisions of the Statute of the City of Mostar were deemed discriminatory by the Constitutional Court of BiH, which ordered amendments to the Statute of Mostar and the Election Law. However, due to the non-implementation of the decision of the Constitutional Court of BiH, the residents of Mostar were left without the possibility to vote in the local elections for several election cycles.

The applicant (Ms. Baralija) claimed a violation of human rights, and the ECtHR found violations and discriminatory treatment of the citizens of Mostar in general and the applicant specifically. In its judgment, the ECtHR stated that the failure to implement court judgments undermines the principle of the rule of law and jeopardises access to courts. The Court described the issue as systemic, rejecting the justifications for the political stalemate and the inability to find political solutions in a difficult climate as insufficient.[78]

The issues of non-implementation of the decisions of the Constitutional Court of BiH can also be related to certain politically motivated activities, primarily those of the leadership of the entity of the Republic of Srpska (RS). The Constitution of BiH and the Rules of the Constitutional Court of BiH foresee that the composition of the Constitutional Court of BiH includes international judges who cannot originate from neighbouring countries and

75 *Sejdić and Finci v Bosnia and Herzegovina* App nos 27996/06 and 34836/06 (ECtHR, 22 December 2010) <https://hudoc.echr.coe.int/fre?i=001-96491> accessed 15 July 2024.

76 Stabilisation and Association Agreement (n 35).

77 *Baralija v Bosnia and Herzegovina* App no 30100/18 (ECtHR, 29 October 2019) <https://hudoc.echr.coe.int/eng?i=001-197215> accessed 15 July 2024.

78 ibid.

are selected by the President of the ECtHR in consultation with the BiH Presidency.[79] The work of those judges has proven essential in bringing balance between the locally elected judges who are coming from one of the constituent peoples of BiH. However, in recent political actions, the leadership of RS is accusing "foreign judges" of anti-Serb bias, requesting their removal.[80] Those are some of the reasons cited for the decision of the RS not to implement the judgments of the Constitutional Court of BiH. That decision has even been turned into a law.[81] Such activities are seriously undermining the effectiveness of the Constitutional Court of BiH and the sovereignty of the state institutions, jeopardising the very notion of the rule of law and the ability of the citizens of BiH to access justice.

The non-implementation of court decisions represents a significant problem; as per the Constitutional Court of BiH report, the practice is becoming systemic.[82] This practice undermines the authority of the courts, weakens the sovereignty of the state, undermines the rule of law and the division of powers, and deprives citizens of access to justice and judicial review.

The non-implementation of court decisions, including the ones of the ECtHR, is also defined as a crime under the legislation of Bosnia and Herzegovina. However, the practice of the prosecutors' offices is either to dismiss criminal reports against the responsible persons or to accept the justifications of political stalemate as a legitimate justification for the non-implementation of judicial decisions.[83]

The ECtHR, in the *Baralija case*, considering the difficulties of the political climate, concluded that, under the BiH Constitution and national legislation, the Constitutional Court BiH could itself order interim provisional measures that would be temporary until the legislature or executive government found a permanent solution.[84] However, the Constitutional Court BiH rarely uses those powers. An example of the use of those powers is seen in the case related to the names of illegal cities. The background of that case was

79 Article 6, Paragraph 1 of the Constitution of BiH reads: *"The Constitutional Court of Bosnia and Herzegovina shall have nine members. a) Four members shall be selected by the House of Representatives of the Federation, and two members by the Assembly of the Republika Srpska. The remaining three members shall be selected by the President of the European Court of Human Rights after consultation with the Presidency"*. See, Constitution of Bosnia and Herzegovina (n 62).

80 Majda Ruge, 'Time to Act on Bosnia's Existential Threat' (*Foreign Policy*, 3 November 2021) <https://foreignpolicy.com/2021/11/03/bosnia-serbia-russia-secession-milorad-dodik-eu-us-nato/> accessed 15 July 2024.

81 Daria Sito-sucic, 'Bosnian Serb Lawmakers Vote to Suspend Rulings of Bosnia's Top Court' (*Reuters*, 27 June 2023) <https://www.reuters.com/world/europe/bosnian-serb-lawmakers-vote-suspend-rulings-bosnias-top-court-2023-06-27/> accessed 15 July 2024.

82 'Conclusions and Recommendations' (Enforcement of Decisions of the Constitutional Court of Bosnia and Herzegovina: Conference, Jahorina, 13–14 June 2023) <https://www.ustavnisud.ba/uploads/documents/conclusions-and-recommendations-of-the-conference-enforcement-of-decisions-of-the-ccbh_1686903839.pdf > accessed 15 July 2024.

83 ibid.

84 *Baralija v Bosnia and Herzegovina* (n 76).

such that some cities in BiH changed their names, mostly reflecting the ethnic changes during the war. The Constitutional Court BiH found those changes discriminatory and ordered the return of pre-war names or the selection of ethnically neutral ones. That decision was also not implemented, and the Constitutional Court BiH, by its own decision, changed the names of several cities.[85] The decision was intended to be temporary; however, it turned out to be a permanent solution.

Strengthening the judiciary is needed to ensure citizens have access to judicial review. The adoption of interim measures by the Constitutional Court BiH can be seen as one way to remedy the inaction of the legislative and executive government. However, the Court's reluctance to use such an option may stem from concerns that temporary solutions could become permanent due to the ongoing inaction and political stalemate of other branches of government, leading to another kind of imbalance.[86]

11 RECOMMENDATIONS FOR ACTIVITIES AIMED AT FULFILLING THE OBLIGATION TO HARMONIZE NATIONAL LEGISLATION WITH THE ACQUIS AND ACCESS TO JUSTICE

The shortcomings in BiH's EU integration process must be viewed in the context of the broader systemic factors. The unfinished process of state-building following the entering into force of the DPA has left the country without effective mechanisms to remove deadlocks. Rather than encouraging speedy reforms, the DPA incentivises the ethnic-centric status quo, hindering progress towards EU membership. Implementing necessary standards, primarily related to the rule of law and harmonisation of national legislation, would enable that "paradigm shift" from the Dayton era to the Brussels era. However, mechanisms contained in the current constitutional and legal order, as analysed, are a major contributing factor to the stalemate and can be misused for blockades, especially given the perilous geopolitical situation. These deficiencies risk not only stalling but also potentially halting the EU integration process, which could lead to further deterioration of the constitutional and legal order, threatening the very processes of state-building and regional stabilisation. Therefore, the fulfilment of the obligations of adopting the *acquis* is important not only for EU integration but also for the further development of the state of BiH and the region of Western Balkans.

As a first step in fulfilling the obligation of adoption of the *acquis*, BiH must adopt the National Program for Harmonization of Legislation with the *acquis*. However, BiH has not undertaken activities in the direction of adopting this program. Furthermore, the activities

85 ibid.

86 Dženeta Omerdić and Harun Halilović, 'The case of Baralija v Bosnia and Herzegovina: A New Challenge for the State Authorities of Bosnia and Herzegovina?' (2020) 13(4) 13 DHS-Social Sciences and Humanities 238.

carried out at different levels of government, aimed at harmonising the legislation with *the acquis*, in addition to the questionable capability of certain levels, are carried out uncoordinated. This disorganisation only deepens the fragmentation of BiH's legal order.

As one of the main causes of the non-adoption of the National Program and the non-implementation of the obligation to harmonise legislation with the *acquis,* the Commission cites the shortcomings of the Coordination Mechanism. To address this, substantial amendments are necessary, particularly regarding removing the possibility of a veto, i.e. significant changes will have to be made in the decision-making process, as recommended by the Commission.

Given all the shortcomings of the Coordination Mechanism mentioned in the previous section, it is reasonable to anticipate great difficulties in fulfilling the EU integration obligations. These shortcomings, primarily visible in the consensual decision-making and the involvement of all levels of government, are also visible in the Commission's Opinion. The Commission's priority recommendations for BiH emphasise the need to ensure "*... that all administrative bodies entrusted with implementing the acquis are based only upon professionalism and eliminate veto rights in their decision-making, in compliance with the acquis.*"[87]

Once laws are adopted and harmonised with *the acquis*, ensuring proper application is necessary. Accordingly, the EU establishes that it is the state's primary duty to organise its system of government and the distribution of competencies to ensure the effective and prompt execution of the obligation to apply the law of the EU. In light of this, the Commission, in its Opinion on several occasions, cites fragmentation in the division of competencies as one of the basic problems in BiH's ability to fulfil international legal obligations, especially obligations arising from membership in the EU, in accordance with the Copenhagen criteria.

With the aim of future application of *acquis*, the Commission recommends amending the constitutional provisions on the distribution of competencies to facilitate the efficient and prompt implementation of EU law, particularly after BiH's potential accession as a member. Specifically, the Commission suggests introducing a clear and precise "clause" in the Constitution of BiH, as stated in its priority recommendations, which would allow the state level to temporarily assume the duties of implementing the mandate of the EU until a more permanent solution is established within the legal order of the state.

For this reason, the Commission states in its priority recommendations for BiH that it is necessary to introduce "*... a substitution clause to allow the State upon accession to temporarily exercise competences of other levels of government to prevent and remedy breaches of EU law.*"[88]

87 Communication from the Commission to the European Parliament and the Council (n 26) 15.
88 ibid 14.

In this way, the Commission points to the necessity of changing the very Constitutional rules on competencies, which is explicitly stated in priority No. 4 of the Opinion, where it states how to: "*Fundamentally improve the institutional framework, including at constitutional level, in order to: a) Ensure legal certainty on the distribution of competences across levels of government*."[89]

A potential model for such a clause can be found in comparative law, such as Article 169 of the Constitution of the Kingdom of Belgium. This provision allows authorities at the federal (national) level to take over ("replace") the authorities of the federal units (in the case of Belgium, the communities and regions) in fulfilling the obligations that arise from the application of the EU law, until, or unless, the issue is eventually regulated differently within the constitutional legal order, as stated in the previous part.[90] This replacement clause could be introduced in BiH through constitutional amendments. However, given the political complexities in BiH, such constitutional changes would be particularly difficult.

Certainly, constitutional amendments are the ideal solution for implementing this change; a similar effect could potentially be achieved with a different approach in the interpretation of the existing norms of the Constitution of BiH. Namely, under Article 1, Paragraph 4 of the Constitution of BiH,[91] the state level has the obligation to establish a single market on the entire territory of BiH. In addition, as stated in the provisions of Paragraphs 1 and 6 of Article 2 of the Constitution, BiH is responsible for guaranteeing the "highest level" of human rights and freedoms, with the entities required to assist the state in fulfilling these obligations.[92] Both of these norms already provide a legal basis and authority for the state level to carry out activities related to the application of EU law.

While the state level shares these obligations and the necessary competencies with the entities, as stated in the judgment of the Constitutional Court of BiH regarding the issue of old foreign currency savings,[93] the division of competencies does not limit the state from carrying out the activities of adopting legislative solutions that regulate a certain

89 ibid.

90 Article 169 of the Belgian Constitution reads: *'In order to ensure the observance of international or supranational obligations, the authorities mentioned in Articles 36 and 37 can, provided that the conditions stipulated by the law are met, temporarily replace the bodies mentioned in Articles 115 and 121. This law must be adopted by a majority as described in Article 4, last paragraph.'* See, Belgium's Constitution of 1831 with Amendments through 2014 <https://www.constituteproject.org/constitution/Belgium_2014.pdf?lang=en> accessed 15 July 2024.

91 Article 1 paragraph 4 of the Constitution of BiH reads: *'4. Movement of goods, services, capital and persons There is freedom of movement throughout BiH. BiH and the entities will not hinder the full freedom of movement of persons, goods, services and capital throughout BiH. No entity shall exercise any control at the border between the entities'.* See, Constitution of Bosnia and Herzegovina (n 62).

92 Article 2 paragraph 6 of the Constitution of BiH reads: *'BiH and both entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms.' For this purpose, there is a Human Rights Commission for Bosnia and Herzegovina, as provided for in Annex 6 of the General Framework Agreement.'*

93 Case U-14/05 (Constitutional Court of BiH, 2 December 2005).

area in a general way. This enables the entities to treat and implement the same matter legislatively and administratively.

In addition to that, there is a Constitutional possibility to "assume" competencies without requiring prior consent from the entities, as outlined in Article 3, Paragraph 5. This mechanism can be invoked when necessary to preserve the state's sovereignty, territorial integrity, political independence, and international subjectivity. However, the Constitution of BiH does not precisely define the content of the mentioned situations nor specify the conditions when their "protection" is required. In the absence of such clarity, the interpretations and understandings offered by the Constitutional Court of BiH are of great importance.

In its decision related to the constitutionality of the establishment of the Court of BiH,[94] the Constitutional Court of BiH gave an interpretation that broadens the understanding of this constitutional basis. It stated that this provision could be used both in situations when "the sovereignty, territorial integrity, political independence, and international subjectivity of the state" is directly threatened, as well as in situations when the takeover of certain competencies is undertaken to improve the "the sovereignty, territorial integrity, political independence, and international subjectivity of the state", i.e. in the situations without the existence of a direct and imminent threat, but with a goal of enhancing the state's capabilities.

12 CONCLUSIONS

BiH is showing higher-than-usual difficulties in the implementation of reforms necessary for the accession to the EU. The country is struggling to undertake basic necessary steps in the direction of EU integration, such as the adoption of a National Program for the adoption of the *acquis*. Reasons for that are of a legal and political nature. The very constitutional setup of the country is making it difficult to manage. The Constitution was adopted as a part of the Dayton Peace Agreement compromise, with the primary goal of stopping the war and preserving peace between the warring ethnic groups. Still, it is making any reforms very difficult, if not practically impossible. The competencies are divided between the state level, entities, and Brčko district, and in the entity of Federation of BiH, between the cantons. The narrow scope of competencies at the state level leaves lower levels of government in positions of power, especially concerning laws and activities necessary for EU integrations. Furthermore, the decision-making process is ripe, with the possibility of veto and blockade on ethnic and territorial grounds. Specifically, in the case of legislation related to EU integrations, relevant solutions such as the Coordination Mechanism have extremely negative repercussions.

94 Nedim Ademović, Joseph Marko i Goran Marković, *Ustavno pravo Bosne i Hercegovine* (Konrad Adenauer Stiftung 2012) 117.

The Coordination Mechanism was established to ensure cooperation between different levels of government in the process of adopting and applying legislation and decisions necessary for the adoption of the *acquis* and other reforms necessary in EU integrations. However, in its Opinion on the BiH's application for EU membership, the European Commission was especially critical of the Coordination Mechanism. The main criticism centres on the decision-making process within the Coordination Mechanism, which requires consensus of all the levels involved. Furthermore, the decisions, if adopted, are left to lower levels to implement without any central oversight of such implementation. That practically gives the possibility of divergent implementation of the decisions adopted through the Coordination Mechanism. The Commission has called for significant changes to the decision-making rules within the Coordination Mechanism to ensure its efficacy.

Furthermore, the Commission has requested the adoption of changes within the Constitution of BiH to ensure that the state level can assume the competencies necessary for the implementation of EU legislation, at least until the issue is resolved permanently within the country. These recommendations primarily reflect the EU's interest in ensuring that BiH's complex decision-making system and division of competencies do not hinder the uniform application of EU law or disrupt the EU's decision-making process after BiH's potential accession to the EU.

On the other hand, constitutional and legal possibilities of blockades are amply used, primarily by the leadership of the entity of the Republic of Srpska, which has a pro-Russian political agenda and harbours secessionist goals. This has notably slowed down the BiH's progress towards EU (and NATO) integration. These anti-EU policies have become more evident since the Russian Federation's aggression on Ukraine, further complicating the geopolitical landscape in Europe.

Another issue, especially highlighted in the SAA itself, is the non-implementation of judicial decisions. The non-implementation of the judicial decisions is especially worrying in the case of judgments adopted by the Constitutional Court of BiH and the ECtHR. Such practice is deteriorating the state of the rule of law, the authority of state institutions, and the ability of the citizens to access justice.

The identified deficiencies of the BiH's constitutional and legal framework – evident in the Coordination Mechanism, the division of competencies, and the practice of non-implementation of the court decisions – pose a serious threat to slow down or halt the EU integration process. Such development not only risks delaying BiH's accession but jeopardises the broader state-building reforms required following the entry into force of the DPA. More broadly, it could hinder the stabilisation of the Western Balkans region.

To secure BiH's stability, preserve its EU integration path, and prevent malicious influence of actors with opposite agendas, it is of utmost importance to implement the recommendations of the European Commission related to the changes in the Coordination Mechanism and the Constitution of BiH. The EU's persistent support is necessary, as

alternative scenarios could destabilise BiH and a somewhat peaceful Balkans region. Removing these legal deficiencies would take away the tools currently used by actors who ultimately oppose BiH's progress toward EU membership.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ЯК НЕ ВІДПОВІДАТИ ЄВРОІНТЕГРАЦІЇ: БОСНІЯ ТА ГЕРЦЕГОВИНА ТА ПРАВОВІ ВИКЛИКИ В ПРОЦЕСІ ВСТУПУ ДО ЄВРОПЕЙСЬКОГО СОЮЗУ

Гарун Галілович

АНОТАЦІЯ

Вступ. *Боснія та Герцеговина зі своєю складною конституційною та правовою системою стикається з багатьма труднощами на шляху до членства в Європейському Союзі (ЄС). Ці виклики посилилися через політичну нестабільність, що виникла внаслідок геополітичних змін в Європі після російської агресії проти України. Правові труднощі в конституційному порядку Боснії та Герцеговини часто використовуються, щоб зупинити прогрес країни та відвернути її від європейського курсу. У цій статті аналізуються конкретні випадки несприятливих правових рішень, які перешкоджають процесу вступу до ЄС, а також рекомендації, надані Комісією ЄС, що спрямовані на*

подолання цих правових перешкод. Існує нагальна потреба в реформуванні конституційних і правових норм, щоб дати можливість країні ефективно продовжити шлях вступу до ЄС. Важливість перспективи членства в ЄС для Боснії та Герцеговини виходить за межі простого приєднання до бажаного «клубу успішних країн»; реформи, які необхідні під час процесу вступу до ЄС, потрібні для посилення ефективності державних інституцій і забезпечення тривалого миру в країні та регіоні. Таким чином, нагальність і потенційний вплив цих запропонованих законодавчих змін неможливо переоцінити.

Методи. *Дослідження насамперед використовує комбінацію аналітичних, нормативних і порівняльних методів для вивчення правової системи та хронології процесу інтеграції. Історико-правовий метод також використовується там, де це доречно. Дослідження зосереджено на змісті конституційних норм, відповідних законодавчих актів Боснії та Герцеговини, законодавчих актів Європейського Союзу та інших країн. Ці законодавчі акти порівнюються з рекомендаціями ЄС та законодавством інших держав-членів ЄС для виявлення розбіжностей. У статті подано огляд нормативно-правової бази, що регулює євроінтеграційні процеси Боснії та Герцеговини, зокрема норми міжнародного права, конституційного права, національного законодавства та права ЄС, які негативно впливають на процес вступу до Європейського Союзу, а також запропоновано певні рекомендації щодо їх удосконалення.*

Результати та висновки. *У дослідженні було виявлено певні норми конституційного та законодавчого походження в правовій системі Боснії та Герцеговини, які шкодять здатності країни ефективно брати участь у процесі вступу до ЄС. За допомогою нормативного підходу у статті було надано рекомендації, які відповідають стандартам, встановленим інституціями ЄС, щодо вдосконалення цих норм. Зміни в цих проблемних правових питаннях дозволять усунути їхнє використання як політичних інструментів, що зупиняють прогрес країни в євроінтеграції.*

Ключові слова: *Боснія і Герцеговина, приєднання до ЄС, євроінтеграції, правова гармонізація, acquis.*