

## HARMONIZATION OF BIH LEGISLATIVE REGULATIONS OF THE EUROPEAN UNION

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**Summary:** Harmonization of domestic legislation with EU legislation is the biggest challenge for BiH in the EU integration process and is one of the many criteria that BiH needs to meet in order to join the EU. The process of legal harmonization and adoption of European standards entails comprehensive internal reforms, a general recovery of the system, stronger economic development and more intense foreign policy action. On its path to EU membership, BiH must align its legislation with 100,000 pages of EU legislation. Alignment of national legislation with EU legislation is not a simple rewrite of the law, but implies its adaptation to local conditions. With the provisions of the Stabilization and Association Agreement, BiH has undertaken to align its national legislation with EU legislation. The complexity of the legal system of Bosnia and Herzegovina stands out as one of the fundamental challenges in the harmonization process. As an expression of the country's willingness to meet its obligations and respond to the challenges of EU integration, the governments of potential candidate countries are adopting and adopting an Integration Program that defines and elaborates on the goals and objectives of EU accession, develops policies, reforms and measures to implement them. BiH is the only country that has not developed an Integration Program on its European path. In the process of BiH integration and approaching the EU as a whole, the key role belongs to the Directorate for European Integration of BiH as a permanent body of the Council of Ministers of BiH.

**Keywords:** *acquis* harmonization, *acquis communautaire*, European integration, Bosnia and Herzegovina, Directorate for European Integration

### 1. Introduction

In the process of Bosnia and Herzegovina's integration into the European Union, there are numerous criteria that our country needs to meet in order to reach its ultimate goal - first to become a candidate country and then to become a member of the European Union. Among other things, it is necessary to proceed with the adoption of the *acquis communautaire*. Harmonization of domestic legislation with EU legislation represents the biggest challenge for BiH in the EU integration process. Successful harmonization of legislation and implementation of harmonized regulations are the most important prerequisites for further steps towards EU membership.

On June 16, 2008, Bosnia and Herzegovina signed the Stabilization and Association Agreement, which is the first formal contractual relationship between BiH and the EU. By signing the SAA, Bosnia and Herzegovina has undertaken the obligation of gradual harmonization of legislation. The SAA entered into force on 1 June. 2015. godine. The process of harmonization of BiH. Legislation with the *acquis communautaire* represents the most complex and time-consuming process facing us in the process of Euro-integration, but also a process that requires additional costs. It is a process that never really ends due to the fact that the *acquis*

communautaire<sup>13</sup> is constantly evolving, requiring the participation of a large number of professionals of different profiles who are expected to be familiar with domestic legislation, techniques of domestic law writing, as well as European Union legislation. Alignment of national legislation with EU legislation is not a simple rewrite of the law, but implies its adaptation to local conditions. With the Stabilization and Association Agreement, BiH is primarily committed to harmonizing legislative provisions relating to the internal market and trade, and later to other parts of the *acquis*. One of the fundamental challenges in the harmonization process is the complexity of the legal system of Bosnia and Herzegovina. Namely, a large number of EU regulations is in the competence of the entities (according to some statistics as much as 70%), which speaks in favor of the fact that it is a very demanding and time-consuming process, especially for entities that are required to adopt a large number of EU regulations. Harmonization of legislation is not only about transposing parts of the *acquis* into domestic law, but applying such harmonized regulations in a way that guarantees citizens legal certainty. This aspect is particularly important in Bosnia and Herzegovina because a single EU legal act can potentially be transposed into one or more regulations at one or more levels of government.

The heads of the coordination process at the level of the Federation of Bosnia and Herzegovina are the line ministries, each within its own competence. In addition to the text of the regulations, the ministries are obliged to submit to each regulation harmonized with EU regulations appropriate tables, on the basis of which the Directorate for European Integration assesses whether and to what extent a specific regulation is in line with EU regulations.

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<sup>13</sup>The term *acquis communautaire* is of French origin and is interpreted as the overall legal heritage of the European Community. Since the

At the level of the Federation of Bosnia and Herzegovina there is no official database through which it is possible to determine the exact number of regulations that have been taken over from the regulations of the European Union. However, harmonization at the level of the Federation of Bosnia and Herzegovina has so far been carried out gradually, in line with the commitments and priorities assumed.

According to the Constitution of the Federation of Bosnia and Herzegovina there are certain areas in which the Federation has exclusive competence, but also in areas where the federal authorities and the cantons exercise the competence jointly or separately, or the competence is exercised by the cantons with the coordination of the federal authorities. Also, according to the Constitution of the Federation of Bosnia and Herzegovina, the cantons have all the powers not explicitly entrusted to the federal government, which implies the complexity of transposing EU regulations at the level of the Federation of Bosnia and Herzegovina, and above all the division of the *acquis communautaire* and its transposition into national legislation.

The process of harmonizing the regulations of Republika Srpska with the *acquis* commenced in 2007. More than 1500 laws and regulations have passed through the harmonization process since 2007. The Ministry of Economic Relations and Regional Cooperation has been designated as the coordinating body for this process, and within each line ministry the persons responsible for harmonizing regulations have been designated. The procedure for harmonizing the regulations of the Republika Srpska with the EU *acquis* is governed by the Government Decision on the procedure for harmonizing the legislation of the Republic of Srpska with the *acquis communautaire* and Council of

entry into force of the Treaty of Lisbon, the word *communautaire* in the meaning of the Community is no longer used.

Europe<sup>14</sup> legal acts of 2011. An integral part of the Decision is the Methodology for harmonization of the legislation of the Republic of Srpska with the *acquis communautaire*, which aims to provide the necessary assistance to processors and proposers of regulations in transposing Union legislation into the domestic legal system, and to serve as a guiding tool for solving problems arising from the harmonization process legislation.

The Ministry of Economic Relations and Regional Cooperation monitors the implementation of the Decision and reports to the Government of the Republika Srpska and the National Assembly of the Republika Srpska on the most significant results achieved in the field of transposition of the *acquis communautaire* and Council of Europe legal acts, as well as on any problems identified in the legislative alignment process.

## 2. *Acquis communautaire*

One of the fundamental legal and political principles of European integration is the *acquis communautaire*. It covers a set of legal norms and court decisions binding on all EU Member States. Each country wishing to accede to the European Union must accept the founding treaties and other content derived from the treaties and align its legislation with the *acquis communautaire*. The *acquis communautaire* is, in fact, an accumulation of all European Union law from its inception to the present day. The EU legal framework consists of<sup>15</sup>:

- A. Primary Legislation - Founding and Accession Treaties;
- B. International law, customary international law and general EU legal principles;
- C. Secondary legislation;

- D. Court of Justice case law;
- E. Negotiations, political and other commitments undertaken by the Member States.

*Secondary legislation* consists of legal acts adopted by the EU institutions, in accordance with the competences assigned to them by the Treaty on the Functioning of the EU, and includes *regulations, directives, decisions, recommendations and opinions*. Unlike regulations, directives and decisions that are legally binding acts, recommendations and opinions are not binding. Regulations oblige Member States both in terms of the results they produce and in the form and methods of implementing the act itself. Directives are binding on the results to be achieved, but leave the Member States the freedom to choose the form and method of application, a feature that makes them different from regulations. Decisions are referred to a specific Member State, a legal or natural person, and relate only to the individuals covered by the decision. Recommendations and opinions are legally non-binding acts, which the courts take into account when considering decisions in individual cases, especially if they help to interpret other national or EU legislation.

For the purpose of negotiations between the candidate countries and the European Union, all the *acquis communautaire* is divided into thematic chapters. For the fifth enlargement of the European Union (10 members that joined in 2004), the entire *acquis* was divided into 31 chapters. For the accession negotiations of Bosnia and Herzegovina, other candidate and potential candidate countries, the *acquis* is divided into 35 chapters. These 35 chapters relate to the following<sup>16</sup>: freedom of movement for goods, freedom of movement for workers, right of establishment and freedom to provide services, freedom of movement of

<sup>14</sup>RS Official Gazette, No. 46/11

<sup>15</sup> Fleschner, S, Grubešić, N, Šabanović, A, *Priručnik za izradu obrazloženja pravnih propisa*, Sarajevo: "Dobra knjiga" d.o.o, 2013, str. 25.

<sup>16</sup>[https://hr.wikipedia.org/wiki/Pravna\\_ste%C4%8Devina\\_Europske\\_unije](https://hr.wikipedia.org/wiki/Pravna_ste%C4%8Devina_Europske_unije)

capital, public procurement, company law, intellectual property rights, competition, financial services, information society and media, agriculture and rural development, food security, veterinary and phytosanitary surveillance, fisheries, transport policy, energy, taxes, economic and monetary union, statistics, social policy and employment, entrepreneurship and industrial policy, trans-European networks, regional policy and coordination of structural instruments, justice and fundamental human rights, justice, freedom and security, science and research, education and culture, environment, consumer and health protection, customs union, external relations, foreign, security and defense policy, financial control, financial and budgetary provisions, institutions, other issues.

The governments of potential candidate and associate countries of the European Union, as an expression of the country's willingness to fulfill its obligations and respond to the challenges of EU integration, adopt and adapt an Integration Program. It is a strategy document that sets out and elaborates on the goals and objectives of the EU accession process. They set out a plan for meeting the membership criteria and a plan for aligning domestic legislation with that of the European Union. It can be characterized as a fundamental guide for all levels of government and a planner for harmonizing domestic legislation with EU legislation. They elaborate in detail the policies, reforms and measures for their implementation, and may include projected budgets for the implementation of the Program. BiH is the only country aspiring to join the European Union without a National Integration Program, which

results in the absence of the EU Acquis Commitment Program (NPAA).

### 3. Harmonization, methods, techniques and instruments of legislative alignment

In the process of BiH integration and approaching EU membership as a whole, the key role belongs to the Directorate for European Integration of BiH (DEI). The DEI has been established as a permanent body of the Council of Ministers of BiH whose role, rights, obligations and competences in the integration process are defined by existing substantive and formal regulations.<sup>[17]</sup> This institution, called the BiH Directorate for European Integration, has been in existence since March 2003. In the period 2001/2002. The DEI was a special ministry - the Ministry for European Integration of the Council of Ministers of BiH. The Directorate provides expert and technical support regarding European integration and is directly responsible to the Chairman of the Council of Ministers of BiH. The responsibilities of the DEI are<sup>[18]</sup>:

- Coordination of activities on alignment of BiH legal system with EU law;
- Checking the compliance of draft laws that are in line with EU legislation;
- Coordination and monitoring of the implementation of decisions adopted by the institutions and bodies of the BiH administration, entities and the Brcko District of BiH regarding all measures required in the European integration process;

<sup>17</sup>Law on the Council of Ministers of BiH (Official Gazette of BiH, No. 30/03, 42/03, 81/06, 76/07, 81/07, 94/07 and 24/08), Article 23, Law on Ministries and other administrative bodies, Official Gazette of BiH, no. 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09 and 103/09, Article 18; Decision on the Directorate for European Integration, Official Gazette of BiH, No. 41/03,

Articles II. and III; Rules of Procedure of the Council of Ministers of BiH, "Official Gazette of BiH", No. 22/03, Article 6, Paragraph 3, Article 12, Article 31 f

<sup>18</sup>Manual for Harmonization of the Regulations of Bosnia and Herzegovina with the EU Regulations, <http://www.dei.gov.ba/dei/documents/compliance/default.aspx?id=3959&langTag=en>

- Participation in legal activities or in the drafting of laws and guidelines relating to activities undertaken in the European integration process;
- Acting as the main operational partner of the EU institutions in the PSP;
- Establishment and maintenance of functional cooperation with ministries and other bodies of BiH administration as well as with entity governments on issues of strategy and policy of integration, legal harmonization and coordination of assistance.

The process of European integration requires a comprehensive adaptation of policies, the institutional framework and the legal system to meet European standards in all areas. The process of legal harmonization and adoption of European standards entails comprehensive internal reforms, a general recovery of the system, stronger economic development and more intense foreign policy activity in areas that affect the dynamics of relations between Bosnia and Herzegovina and the European Union. Bosnia and Herzegovina on its path to EU membership must align its legislation with 100,000 pages of EU *acquis*. The Directorate for European Integration (DEI) coordinates all coordination activities. All proponents of legal regulations in BiH, before submitting a normative act for consideration to the Council of Ministers, are required to submit it to the Directorate in order to determine the degree of compliance with the *Acquis communautaire*.

Harmonization, ie harmonization of legislators, implies a uniform harmonization of the laws, regulations and administrative provisions of the Member States with the *acquis* in order to regulate EU-wide social relations. Differences in the laws of the Member States are eliminated

through *unification, harmonization and coordination*.

The unification establishes a single legal regime whereby national rules are replaced by EU regulations in those areas where the EU has exclusive competence. The main instruments used for unification are regulations.

Harmonization is the process of aligning Member States' legislation with the objectives set out in EU directives. This entails the obligation to transpose and incorporate the relevant provisions of the relevant directive into national law.

Coordination stems from certain EU legal acts that require the coordination of activities and the exchange of information, as well as the conclusion of agreements between Member States on specific issues. The decision on the procedure for harmonization of the legislation of Bosnia and Herzegovina with the *acquis communautaire* obliges the regulators and the Directorate for European Union<sup>19</sup> to fully monitor the harmonization process, from drafting of the legislation to the stage of adoption and adoption of amendments to the regulations in the legislative bodies. The objective of this decision is to ensure the preconditions for the proper alignment of BiH legislation with the EU *acquis*, to monitor the process of harmonization and reporting on regulatory compliance, as well as the consistent use of professional terms when translating BiH legislation into English. The Decision establishes an obligation to develop harmonization instruments in the process of drafting / drafting regulations harmonizing the legislation of Bosnia and Herzegovina with the *acquis*. Instruments for harmonization of BiH legislation with the *acquis* are:

- Compliance Table, and
- Declaration of Conformity.

<sup>19</sup> Official Gazette of BiH, No. 75/16

The following indications are used to indicate the degree of compliance of the legislation with the *acquis*<sup>20</sup>:

- Fully aligned,
- Partially aligned,
- Mismatched,
- Non-transferable.

In fulfilling its obligation during the harmonization process, Bosnia and Herzegovina is required to align its legislation with both directives and regulations, and other relevant legislative decisions. It is necessary to mention that by admission to the Council of Europe on April 24, 2002, she accepted the high values promoted by this body in the field of protection of human rights, parliamentary democracy, the rule of law and awareness-raising on European identity, on which it is obliged to harmonize its legislation. and Council of Europe documents. Legal documents adopted by the Council of Europe are conventions, which are crucial for the legal cooperation of Member States in the fields of fundamental rights and judicial cooperation.

*Harmonization of rights* is achieved through negative and positive harmonization. Negative harmonization implies strict prohibitions contained in the Treaty of Lisbon<sup>21</sup> and other EU legal acts, such as the abolition of all tariff and quantitative restrictions on trade, the prohibition of customs duties on imports and exports, the prohibition of any discrimination of any kind (based on sex, racial or ethnic origin) origin, religion or belief, disability, age or sexual orientation). Positive harmonization is the process of harmonization through the adoption and

implementation of legal acts or harmonization measures. The most important ways of legal alignment are the maximum and minimum harmonization and the principle of mutual recognition. Maximum harmonization is a detailed and complete editing of a particular area (regulations on food, products dangerous for life and human health, cosmetic and pharmaceutical products). Minimum harmonization establishes a minimum of legal regulation, which enables Member States to prescribe stricter standards than those prescribed by EU legal acts (consumer and environmental regulations). The application of mutual recognition means that one Member State recognizes the rules of another Member State. Examples of mutual recognition are the areas of freedom of movement for goods, freedom of movement for workers, etc.

There are three main alignment techniques:

- Transposition (verbatim takeover) - implies the transcription of EU regulations into national legislation, literally word for word. The transposition ensures the full and correct fulfillment of the obligations imposed, which may result in the use of terminology which is unknown or does not correspond to the terminology in the national legal system.
- Rephrasing - involves assuming the essence of the obligation arising from the directive and allowing the omission of those parts of the text that are not relevant and leaving the freedom for EU Member States to act in accordance with national law.

<sup>20</sup> Decision on the Procedure for the Harmonization of the Legislation of Bosnia and Herzegovina with the *Acquis Communautaire*, Official Gazette of BiH, No. 75/16, Annex I, Harmonization Instruments - Section F

<sup>21</sup> The Treaty of Lisbon (also the Reform Treaty), the full name of the Treaty of Lisbon amending the

Treaty on European Union and the Treaty establishing the European Community, is an international treaty signed in Lisbon on 13 December 2007 with a view to addressing further institutional functioning Of the European Union. The treaty entered into force on 1 December 2009, after having passed the ratification process in all EU Member States.

- Referral - Only in cases where the directives are very precise and where they relate to technical issues. It implies listing the provisions of a specific regulation in the annexes of domestic regulations.

#### **4. European Commission Technical Assistance in Harmonization of Laws - TAIEX**

TAIEX stands for Technical Assistance and Information Exchange Unit of DG Enlargement in the Commission. The aim of TAIEX is to provide short-term technical assistance to the new Member States, Candidate Countries and Western Balkan countries for the purpose of approximation, application and enforcement of EU legislation.

There are three basic forms of assistance provided under TAIEX:

- Thematic seminars on specific issues of EU law and its implementation,
- Targeted study visits to EU institutions or organization of workshops,
- TAIEX Progress Editor.

The TAIEX progress editor is a software program created as a means of sharing information on EU legislation and national programs adopted in the legislative alignment process, with the aim of providing beneficiary countries with a database of EU legislation to facilitate the process of harmonization and monitoring of progress.

In this program, the information is contained in three categories:

- EU measures (EU legislation),
- National measures (harmonizing regulations)
- Translations of EU legislation.

The program is considered useful for both the EU Commission and the beneficiary countries.

#### **5. The importance of the *acquis* in the EU membership negotiation process**

By signing the SAA, BiH has entered into a contractual relationship with the EU, which has undertaken a number of commitments with the aim of obtaining candidate status and starting accession negotiations. The provisions of Article 70 of the SAA stipulate the obligation to align existing and future BiH legislation with EU legislation. In 2011, the BiH Council of Ministers adopted the Decision on Instruments for Harmonization of the Legislation of Bosnia and Herzegovina with the *Acquis communautaire* of the European Union<sup>[22]</sup>, which explains the importance and role of harmonization instruments. First of all, the comparative view determines:

- The actual degree of compliance,
- The process of harmonization of BiH legislation is followed, and
- The basis for establishing the necessary database on harmonized regulations is being created.

Comparative presentation also plays a special role in the future of so-called screening, that is, assessing the compatibility of national legislation with EU legislation conducted by the European Commission and the candidate country for EU membership. Compliance assessment is the basis for bilateral negotiations, and a positive assessment of meeting the legal criteria for EU accession facilitates the process and contributes to a better preparedness of BiH institutions for the negotiation process.

Screening is carried out separately for each negotiation chapter, and its duration by chapter depends on the scope and volume of the *acquis*. The opening of negotiations on a particular chapter begins the substantive phase of the negotiations, during which the conditions under which a

<sup>22</sup> Official Gazette of BiH, No. 23/11;

candidate country will accept, apply and implement the *acquis communautaire* in that chapter are negotiated.

## 6. European Commission Progress Report on Bosnia and Herzegovina

The European Commission regularly reports to the Council of the European Union and the European Parliament on the progress made by the Western Balkan countries in the European integration process, appreciating the fulfillment of the Copenhagen criteria (Copenhagen criteria)<sup>[23]</sup> and the conditions of the Stabilization and Association Process. The content of the Report includes a brief description of the relationship between the candidate countries and the European Union, an analysis of the country's political and economic criteria for membership, and an analysis of the country's ability to implement European standards, ie to gradually align its legislation and policies with the *acquis* in accordance with The Stabilization and Association Agreement. Progress is measured on the basis of decisions made, laws adopted and measures implemented.

The latest European Commission Report<sup>[24]</sup> on Bosnia and Herzegovina for 2016 was published on 9.11.2016. and relates to the

period from October 2015 to September 2016.

The European Commission (EC) report once again stated that no progress had been made in implementing the decision of the European Court of Human Rights (ECHR) in the cases of “Sejdić and Finci”<sup>25</sup> and “Zornic v. BiH”<sup>[26]</sup> and that the BiH Constitution remained discriminatory, as they were demonstrated the ECHR's decisions in the above cases and also in the “Pilav”<sup>[27]</sup> case. More work is needed to address human rights and minorities. Some progress has been made, in particular with the adoption of amendments to the Anti-Discrimination Law. However, the strategic, legal and institutional framework, as well as the framework for strategic policies on respect for human rights, still need to be significantly improved. The report emphasizes the improved mutual cooperation of parliaments and notes that progress has been made in adopting legislation that meets the priorities stemming from the Reform Agenda. Regarding the functioning of the executive, the Report welcomes the continuity of work on the Reform Agenda, the effective cooperation of the state and entity levels in its implementation, the adoption of the Action Plan for its implementation, and the adoption of documents in line with the reform priorities. In relation to the work of

<sup>23</sup> The Copenhagen criteria are the rules that define which country is eligible to join the European Union. In 1993, following the request of former Communist countries for EU membership, the European Council adopted three main criteria that candidate countries must meet if they wish to become members: economic, political and legal criteria.

<sup>24</sup> European Commission Report on Bosnia and Herzegovina 2016, [http://www.dei.gov.ba/dei/media\\_servis/vijesti/default.aspx?id=17656&langTag=en-BA](http://www.dei.gov.ba/dei/media_servis/vijesti/default.aspx?id=17656&langTag=en-BA)

<sup>25</sup> Sejdić and Finci v. Bosnia and Herzegovina (Applications no. 27996/06 and 34836/06 of the European Court of Human Rights) is the name of a court case conducted from 2006-09. before the European Court of Human Rights in Strasbourg, following the suit of Derv Sejdić and Jakob Finci,

against Bosnia and Herzegovina, who were prevented from being elected to the Presidency of Bosnia and Herzegovina and the House of Peoples of Bosnia and Herzegovina as members of national minorities.

<sup>26</sup> Azra Zorić complained about the violation of human rights because, although she is a member of the Social Democratic Party, she cannot be elected to the House of Peoples of BiH unless she declares herself a member of a constituent people.

<sup>27</sup> Dr. Ilijaz Pilav, as a surgeon in Srebrenica in 2006, could not run in the general elections for a member of the BiH Presidency from Republika Srpska, because only Serbs from this entity are eligible, as Bosniaks and Croats in the Federation have the exclusive right. When he had exhausted all possibilities of protecting his own suffrage in BiH, he addressed the court in Strasbourg.



the Constitutional Court, the problems of non-implementation of the Constitutional Court's decisions were noted. The European Commission's report notes some progress in the legal framework for financing civil society organizations and developing mechanisms for the cooperation of institutions with civil society, noting that there is still no single framework for effective cooperation and complete transparency of funding. The evaluation of public administration reforms emphasizes that public budgets continue to be adopted in a non-transparent manner, without citizen participation and without adequate budget execution reporting. It was positively estimated that the 2016 budgets were adopted on time (except in the Brcko District), ignoring the fact that they were adopted in an emergency procedure. The European Commission assessed the continued presence of political pressure on the judiciary, but no specific case was mentioned. According to the Report, the judicial system of Bosnia and Herzegovina has reached a certain level of preparedness and some progress has been made in terms of accountability and integrity, with the Action Plan for the implementation of the Justice Sector Reform Strategy 2014-2018. has yet to be adopted. Although some acts in the area of the fight against corruption have been formally adopted, there has been no real progress in this area. The European Commission has also made a number of recommendations for improving activities aimed at gaining EU membership.

## 7. Conclusion

BiH state institutions will have to align their laws with EU law. The bearers of the establishment of new legal provisions must be state institutions. The EU has prioritized reforms in BiH in the areas of public administration, judiciary, police, military and education. Key constitutional and legal changes relate primarily to human rights. The current BiH Constitution allows for the violation of human rights and freedoms,

especially regarding the election of members of the BiH Presidency and the election of members of the House of Peoples of the BiH Parliament. Overall obligations in the field of constitutional reforms and legislation indicate the necessity of adopting various laws, regulations and regulations in order to harmonize BiH's legal system with the EU legal order in various fields of trade, intellectual property, competition, public procurement, elimination of all forms of discrimination, etc. . The development and implementation of the Integration Program would effectively put an end to a number of political "conflicts" over competencies between the state and entities, as well as between federal and cantonal authorities.

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