



**Bosnia's Perpetual Purgatory: The Inability to Fulfill EU Accession
Requirements**

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Abstract: This paper argues that Bosnia and Herzegovina (BiH) should not begin the European Union's accession process, and should instead remain on the 'potential candidates' list due to their continuous inability to meet the EU acquis. While some progress was made in 2020 towards meeting this goal, such as moderate candidate victories in the November election (over the reigning populist politicians) and the first elections being held in Mostar in December, BiH has failed to address the root of the issues. By examining the European Commission reports for BiH and researching the historical context surrounding the flawed state institutions, the following conclusion was determined. Due to BiH's failure to comply with EU accession's political, legal, and economic requirements, they are unable to be considered for induction, and the status quo should remain. Instead, the EU should foster methods of reconciliation for the three ethnic groups that dominate Bosnian society to help build consensus and foster compromise to fulfill accession requirements.

The November 2020 municipal elections in Bosnia and Herzegovina (further referred to as BiH) could be just what the state needs to finally fulfill the elusive EU accession requirements that they have been unable to implement. In some of BiH's most influential cities, such as Sarajevo and Banja Luka, moderates defeated the long reigning nationalist party leaders, a shock to election pollsters. These results are largely due to public disappointment in the government's handling of the COVID-19 pandemic, which amplified the systemic issues of corruption and public distrust within the country. The inadequate pandemic response coupled with the growing public consensus that BiH is ready for a new constitution more conducive to state reforms is largely responsible for this change.¹ Outside of the cities, nationalist leaders still maintained their seats in power, but despite this, many political analysts predict that these moderate victories could usher in a new era conducive to implementing the reforms needed to meet the Copenhagen criteria.²

Despite receiving international support since the 2004 Thessaloniki Summit, which cemented a pathway to membership for many Western Balkans states, BiH has been unable to meet EU requirements for a multitude of reasons, leaving them in a state of purgatory on the "potential candidates" list. Membership in the EU would provide countless benefits for BiH, especially as a result of increased freedom of movement, increased economic opportunities, and increased national legitimacy. Despite these benefits, the long list of reforms that must be implemented to achieve membership renders accession a daunting and future achievement, rendering citizens and government officials uninterested in such a long term benefit. While the

¹ RFE/FL's Balkan Service. "Envoy Hails Bosnia's Election Results, Agrees New Constitution Needed." RadioFreeEurope RadioLiberty, November 25, 2020.

<https://www.rferl.org/a/envoy-hails-bosnia-election-results-agrees-new-constitution-needed/30968961.html>.

² Euronews with AP, AFP. "Nationalist Parties Lose Key Cities in Bosnia's Municipal Elections." euronews, November 16, 2020.

<https://www.euronews.com/2020/11/16/nationalist-parties-lose-sarajevo-and-other-major-cities-in-bosnia-s-municipal-elections>.

moderate victories in the past elections point to some promising changes in the future, BiH has repeatedly failed to institute reforms. In 2015, the EU and BiH entered a Stabilisation and Association Agreement (SAA) in the hopes of EU accession.³ Despite this, the 2019 and 2020 European Commission reported a poor assessment of BiH's completion of the Copenhagen criteria⁴ and compliance with the EU acquis, which leaves the goal of joining the Union still a distant hope.⁵

The EC deemed BiH as being in an “early stage regarding its level of preparedness to take on the obligations of EU membership,” recommending the fulfillment of fourteen stipulations in order to complete the political, legal, and economic requirements of accession.⁶ Some progress has been made as one of the fourteen requirements was completed in July 2020, since rules of procedure for the EU-Bosnia SAP committee were agreed upon, and it was announced that elections would be held in the city of Mostar for the first time in December 2020.⁷ However, these achievements barely make a dent in the list of reforms still required. BiH

³ Alija Kozljak, *Deadlock in Bosnia and Herzegovina - Extensive Political and Security Consequences*, in Conference: Southeast Europe: History, Culture, Politics, Economy, St. Cyril and St. Methodius University of Veliko Tarnovo, October 2020, https://www.researchgate.net/publication/344450506_Deadlock_in_Bosnia_and_Herzegovina_-_extensive_political_and_security_consequences.

⁴ The Copenhagen Criteria is a set of standards that candidate states must fulfill in order to join the EU. These three categories, which will be further explored in the paper, include; democratic components (democratic institutions must be stable and protect human and minority rights), judicial components (there must be an independent judiciary free of outside influence and corruption to preserve the rule of law), and economic components (the economy must be organized in a way conducive to fulfilling EU market and trade obligations and market forces). In addition, the organization of the government must be in compliance with EU policy and standards to fulfill the previously mentioned criteria.

“Glossary of Summaries, Accession Criteria (Copenhagen Criteria),” EUR-Lex Access to European Union Law, https://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhagen.html.

⁵ European Commission (2019), *Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union*, Brussels: Communication From the Commission to the European Parliament and the Council, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-opinion.pdf>, 14.

⁶ See note above.

⁷ Ewb and Tanjug, “Bosnia Fulfilled One of 14 Priorities from the European Commission's Opinion.” European Western Balkans, July 23, 2020, <https://europeanwesternbalkans.com/2020/07/23/bosnia-fulfilled-one-of-14-priorities-from-the-european-commission-opinion/>.

must remain on the EU's "potential candidate" list because of the need to reform their constitution and election process to achieve democratic legitimacy, crackdown on corruption and organized crime to strengthen the rule of law, and make changes in the economic sector to meet EU market demands. Until these issues are rectified, BiH will remain unable to fulfill Union membership obligations and comply with the EU *acquis*,⁸ and thus should not be considered a candidate for EU accession at this time.

Democratic Legitimacy: Constitution and Election Reforms

Following the mass ethnic cleansings of the Bosnian War in 1995, the Dayton Peace Agreement, which became The Constitution of Bosnia and Herzegovina, emphasized ethnicity and granted considerable oversight powers to the international community, which still remains today. The war, stemming from the breakup of Yugoslavia, saw extreme multiethnic conflict between the dominant ethnic groups (the Serbs, Croats and Bosniaks), resulting in heinous attacks on civilian populations. The conflict finally came to an end after international intervention from NATO. While institutionalizing ethnic divisions within the Constitution may have been constructive at the time, it has proved counterproductive to fostering democratic legitimacy and creating a common identity.⁹ School segregation, in which students all learn in the same building but are divided by ethnic group and given different curricula - normalizing the division of people by ethnicity still remains in place today.¹⁰ The Constitution has prioritized

⁸ Ismar Velić, "COPENHAGEN CRITERIA AND WESTERN BALKAN CANDIDATE COUNTRIES FOR MEMBERSHIP IN EUROPEAN UNION: CASE OF BOSNIA AND HERZEGOVINA," *Zbornik Radova - Journal of Economy and Business*, no. Special (2018): pp. 278-312, <https://www.cceol.com/search/article-detail?id=782196>, 285.

⁹ See note 2.

¹⁰ "Progress in Bosnia and Herzegovina Hampered by Political Standstill, Corruption, High Representative Tells Security Council | Meetings Coverage and Press Releases," United Nations, May 6, 2020, <https://www.un.org/press/en/2020/sc14180.doc.htm>.

ethnic accommodation, which is largely attributed with being the main cause for the government gridlock today.¹¹

The Dayton Peace Agreement split the state into two entities, the Croat and Bosniak dominated Federation of Bosnia and Herzegovina (containing three Croat majority cantons, five Bosniak majority cantons, and two mixed cantons) and the Serb dominated Republika Srpska.¹² This ethnically homogenous division of the state has led to stalemates in the electoral and administrative processes. No leaders are willing to compromise on their own national interests, and doing so would only hurt their electoral chances.¹³ In addition, only the three constituent peoples (Croats, Bosniaks, and Serbs) are recognized in the Constitution, granting them privileges based on ethnicity that minority groups, such as Jews and Roma, are not awarded.¹⁴ These privileges include the right to stand for elections, which is a breach of European standards, and the guarantee that the three constituent ethnicities must be represented in government.¹⁵ In addition to representation, each of the three constituent peoples have extensive veto rights which has resulted in no incentive to compromise in passing legislation.¹⁶ As a result, political parties remain ethnically divided, and many decisions that are made are done using urgent procedures to force consensus, which undermines democratic legitimacy amongst the public.¹⁷

This governmental gridlock has caused complications and uncertainty within the federal government, leaving unequal enforcement of legislation and vast uncertainty. BiH must “enhance the capacity to assess legislation” and reform the ethnic stipulations in the Constitution in order

¹¹ Florian Bieber, “Bosnia and Herzegovina since 1990,” in *Central and Southeast European Politics since 1989*, ed. Sabrina P. Ramet (Cambridge: Cambridge University Press, 2019), pp. 311-327, <https://doi.org/10.1017/cbo9780511803185.018>, 314.

¹² Florian Bieber, “Bosnia and Herzegovina,” 314.

¹³ Florian Bieber, “After Dayton, Dayton? The Evolution of an Unpopular Peace,” *Ethnopolitics* 5, no. 1 (2006): pp. 15-31, <https://doi.org/10.1080/17449050600576324>, 20.

¹⁴ See note 2.

¹⁵ European Commission (2019), *Commission Opinion on Bosnia*, 7.

¹⁶ Florian Bieber, “Bosnia and Herzegovina since 1990,” 315.

¹⁷ European Commission (2019), *Commission Opinion on Bosnia*, 7.

to fulfill EU accession standards.¹⁸ As of now, the “equality of citizens is not ensured” by the Constitution, and the government would be unable to participate in EU decision-making if the status quo remains.¹⁹

While some progress has been made in line with adhering to EU recommendations, such as the first elections in Mostar, which occurred in December 2020, there has been no improvement in election transparency, and public perception of election integrity remains low.²⁰ There is still no cooperation within Parliament, which is essential for adopting the EU acquis, and non-constituent peoples have no electoral representation.²¹ BiH must either abandon the Dayton Peace Agreement or implement heavy reforms to more evenly distribute power, define veto rights, and abandon ethnic stipulations in order to be considered a candidate for EU accession. The purpose is to streamline the administrative structure so it can recognize various national identities and meet EU requirements upon induction.²²

Constitutional reform has proven to be nearly impossible due to the varying goals of each of the three constituent peoples and vetoes stifling any efforts. Nationalists play on the fear that any changes would threaten their relative position, making it impossible to achieve the two-thirds majority vote required in Parliament for amendments to be ratified.²³ Optimism for future prospects is evident though as the COVID-19 pandemic has forced ethnic groups to come together to find a common solution. While this was initially successful, and the tripartite presidency even launched a process for implementing the fourteen priorities recommended by

¹⁸ European Commission (2019), *Commission Opinion on Bosnia*, 9.

¹⁹ European Commission (2019), *Commission Opinion on Bosnia*, 13.

²⁰ European Commission (2020), *Bosnia and Herzegovina 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*. Brussels: 2020 Communication on EU Enlargement Policy. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf, 7.

²¹ European Commission (2020), *Bosnia and Herzegovina*, 8.

²² Florian Bieber, “After Dayton, Dayton?,” 28.

²³ Solveig Richter, “Missing the Muscles? Mediation by Conditionality in Bosnia and Herzegovina,” *International Negotiation* 23, no. 2 (2018): pp. 258-277, <https://doi.org/10.1163/15718069-23021155>, 263.

the EC's 2019 report, the typical ethnic-bloc gridlock soon returned, leaving the public disappointed at the failure to handle the COVID-19.²⁴ Until BiH is able to reform the Constitution and electoral process to be in line with the EU acquis, thus improving democratic legitimacy, they will remain unable to meet the Copenhagen political criteria leaving them on the "potential candidate" list.

Rule of Law: Organized Crime and Corruption

In addition to being unable to meet the political criteria, BiH has also failed in fulfilling the Copenhagen judicial criteria.²⁵ One of the most explicit manifestations of the weak rule of law is the public distrust of the police and the rampant organized crime and corruption. In the city of Banja Luka, widespread protests occurred in 2019 after the body of twenty-one year old David Dragicevic was found in a creek. The failure of the police to properly investigate the homicide led to public outrage and solidarity with David's family, thus creating the "Justice for David" movement and turning the young man into a symbol of police corruption. Allegations from the family are that David was abducted and assaulted by people with ties to high ranking police officials leading to a cover-up. Similar stories are found across BiH, which sparked solidarity amongst its citizens. Civil unrest and protests grew out of the failure of the government to address organized crime and corruption, even reaching 40,000 people at a rally in Banja Luka in a showcase of public distrust towards police.²⁶

The EU has tried to facilitate police reforms in BiH to help them become better equipped to tackle organized crime between 2008-2009, but was unsuccessful. Government endorsed

²⁴ See note 9.

²⁵ Copenhagen judicial criteria refers to legitimate rule of law and a strong independent judiciary that can pass judgements free of influence and corruption, https://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhagen.html.

²⁶ Barbara Surk, "In Bosnia, a Father's Grief Swells Into an Antigovernment Movement," The New York Times (The New York Times, January 8, 2019), <https://www.nytimes.com/2019/01/08/world/europe/bosnia-davor-dragicevic-milorad-dodik.html>.

public relations campaigns tried to give the police a more human face to reduce public distrust, but were ineffective and BiH has made no efforts at reform itself.²⁷ This failure, evident today in the animosity towards the police as seen from mass protests, completely undermines the rule of law in the country.

Corruption and organized crime stem from the opportunities to profit from the instability that occurred in BiH during and after the Bosnian War. After the implementation of the Dayton Peace Agreement the economic markets liberalized rapidly, but the political system and the rule of law were slow to follow, creating the perfect conditions for corruption to facilitate “winners and losers along ethnic lines.” Privatization schemes, which included exchanging vouchers for company shares, facilitated ethnic exclusion as certain groups favoured their own members. This resulted in certain companies being dominated by only one ethnic group, monopolizing the profits, and continuing to use ethnicity as a factor above merit in granting others similar opportunities.²⁸

The Constitutional Court has and continues to reflect the challenges of corruption as it has become the central mechanism for this issue. The Court remains the final authority on conflict between and within the branches of government. Yet, despite this, many of the decisions made are not enforced and there remains little independence in the decision making process.²⁹ According to the EC’s 2019 report, the Constitution does not “guarantee the independence, autonomy, and accountability” of the judiciary and corruption remains widespread in all levels of government.³⁰ Until there is harmonization within the legislature and judiciary to equally enforce

²⁷ Gemma Collantes Celador, “Becoming ‘European’ through Police Reform: a Successful Strategy in Bosnia and Herzegovina?” *Crime, Law and Social Change* 51, no. 2 (May 2008): pp. 231-242, <https://doi.org/10.1007/s10611-008-9157-x>, 240.

²⁸ Valery Perry, “Frozen, Stalled, Stuck, or Just Muddling through: the Post-Dayton Frozen Conflict in Bosnia and Herzegovina.” *Asia Europe Journal* 17 (August 23, 2018): 107–27. <https://doi.org/https://doi-org.myaccess.library.utoronto.ca/10.1007/s10308-018-0525-6>.

²⁹ European Commission (2019), *Commission Opinion on Bosnia*, 8.

³⁰ See note 17.

regulations and make decisions independently, the entire system remains viewed as illegitimate amongst the public. It is also rare for corruption cases to be prosecuted in the courts and there are no protections for whistleblowers who come forward. In addition, there must be transparency in court appointments and privatization processes in order to complete anti-corruption initiatives.

In December of 2019, it was reported that BiH only indicted eight out of twenty-three people on cases of corruption over the course of the entire year, all being petty offenders, showcasing the institutional failure to get to the root of the problem.³¹ On December 9, 2019, a large march was held in Sarajevo in honour of the “victims of corruption” and to send a message to the government that the public wants corruption cases to be taken seriously. It has also been reported that The High Judicial and Prosecutorial Council of Bosnia (HJPC) has members sit “on disciplinary commissions in cases against other HJPC members” which exacerbates the mistrust in the system for BiH citizens.³²

In a second report released in 2020, the EC has assessed that there has been little to no progress in legitimizing the rule of law in BiH. They declared that the HJPC President failed to distance himself from “political interference from other branches of government” and the independence of the judiciary continues to be undermined.³³ There must be more effort to make judicial appointments transparent and impartial as conflicts of interest are also widespread.³⁴ The EC also charged that the corruption, evident in all levels of government, is affecting “the daily life of citizens.”³⁵

Corruption remains an issue during the COVID-19 pandemic as fears regarding the management of “international financial and material assistance” to the country are prevalent.

³¹ Dzana Brkanic, “Bosnia Courts Avoid Prosecuting 'Big Fish' for Corruption,” Balkan Insight, December 13, 2019, <https://balkaninsight.com/2019/12/09/bosnia-courts-avoid-prosecuting-big-fish-for-corruption/>.

³² See note 20.

³³ European Commission (2020), *Bosnia and Herzegovina*, 15.

³⁴ European Commission (2020), *Bosnia and Herzegovina*, 18.

³⁵ European Commission (2020), *Bosnia and Herzegovina*, 22.

There is no government coordination to “track international assistance to avoid profiteering,” and many citizens worry that aid is being exploited for personal use.³⁶ Until BiH reforms the judiciary to prevent corruption and reforms the police to better tackle organized crime, the rule of law continues to be seen as illegitimate by Bosnian citizens. As of now, BiH is unable to fulfill the judicial requirements of the Copenhagen criteria and, therefore, must stay on the “potential candidates” list.

Economic Reforms

BiH is currently unable to meet the economic requirements of EU membership. The economy remains “structurally unregulated” and does not have the high-tech industry needed to survive the competition in the European Single Market.³⁷ While largely caused by the lack of political action, the BiH’s economy remains in a state of arrested development and unable to cope with market forces. In addition, organized crime contributes to the black-market economy, which accounts for 25 percent of the country's GDP and reveals key weaknesses within government institutions to adequately respond.³⁸

Unemployment also remains high among youth, largely due to poor education, and those that are more highly educated often leave the country for better opportunities abroad.³⁹ For example, in 2018 alone nearly 45,000 people emigrated from BiH due largely to the inability to find suitable employment.⁴⁰ The 2020 EC report stipulated various shortcomings within BiH’s economic sector that must be remedied to comply with the EU acquis. These include establishing

³⁶ “Corruption, Political Blockages, Threaten International Efforts to Help Bosnia and Herzegovina Weather Coronavirus || UN News,” United Nations (United Nations, May 6, 2020), <https://news.un.org/en/story/2020/05/1063432>.

³⁷ Ismar Velić. "COPENHAGEN CRITERIA," 278.

³⁸ Ismar Velić. "COPENHAGEN CRITERIA," 296.

³⁹ European Commission (2019). *Commission Opinion on Bosnia*, 11.

⁴⁰ “Cost of Youth Emigration from Bosnia and Herzegovina,” Westminster Foundation for Democracy (WFD), June 12, 2020, <https://www.wfd.org/2020/06/12/cost-of-youth-emigration-from-bosnia-and-herzegovina-2/>.

a regulatory framework to increase transparency and the harmonization of business regulations.⁴¹ In addition, there are high barriers of entry and exit into markets which prevents economic growth and disincentivizes privatization.⁴² In order to cope with the market forces of the EU, better public education, and increased public investment in infrastructure is paramount.⁴³ BiH must also enhance the free movement of capital in order to facilitate increased investments in industries and implement strong regulations to fight against money laundering and corruption.⁴⁴ Finally, reforming the banking sector is also essential as the EU requires the independence of banks, and BiH must “enhance administrative capacity to monitor and implement reforms.”⁴⁵ Currently there is a low level of transparency in terms of fiscal policies and no methods of oversight to combat corruption. The Central Bank fails to maintain independence, as per 2019 EC regulations, and the overall economic situation in the state is unstable. Without these pertinent changes, EU accession remains out of reach.

These changes are crucial not only to comply with EU accession demands regarding the economy, but also to be able to support the high-pressure market demands that come with being a Union member. Until these requirements are fulfilled, BiH is unable to qualify for admittance into the EU.

Recommendations and the Road Ahead

Due to BiH’s failure to comply with the Copenhagen political, judicial, and economic criteria, the country should not graduate from the “potential candidates” list. However, the road ahead appears to be positive regarding the state’s ability to make the necessary reforms. The progress made in 2020, including the first elections to be held in Mostar, government

⁴¹ European Commission (2020). *Bosnia and Herzegovina*, 47.

⁴² European Commission (2020). *Bosnia and Herzegovina*, 50.

⁴³ European Commission (2020). *Bosnia and Herzegovina*, 53.

⁴⁴ European Commission (2020). *Bosnia and Herzegovina*, 62.

⁴⁵ European Commission (2020). *Bosnia and Herzegovina*, 83.

cooperation at the beginning of the COVID-19 pandemic, and the creation of procedures for the EU-Bosnian SAP committee, all send the message to Brussels that hope for BiH joining the EU should not be abandoned.⁴⁶ The most notable change was the successes of moderates in the November election, signifying that the public is ready for an end to the nationalist status quo, fostering the right conditions for constitutional reforms.⁴⁷

While BiH has made positive inroads towards fulfilling EU criteria, there are also steps that the EU can take in order to facilitate the continuation of this process. Going forward, the EU should learn from past mistakes, especially the failed Butmir negotiations in 2009. Too much international interference limits local input into any reforms and has proven to lead to apathy within BiH, which is counterproductive to producing long-term conditionality agreements.⁴⁸ Instead, the EU should focus on the root cause of most of BiH's problems: the lack of ethnic reconciliation since the Bosnian War. There has been limited regional recognition of the war crimes that occurred only twenty-five years ago, and within the country there has been no political will to foster any sort of common national identity.⁴⁹ Fostering reconciliation and making EU accession a more tangible reality will increase the odds of intergovernmental cooperation and encourage the reform process.

BiH joining the EU is attractive because of the regional stability that accession would bring to the Western Balkans. BiH's bilateral issues (such as border disputes between BiH and Croatia) are low on the list of barriers of accession, though, as more pressing internal problems

⁴⁶ See note 6.

⁴⁷ RFE/RL's Balkan Service, "Envoy Hails Bosnia's Election Results, Agrees New Constitution Needed," RadioFreeEurope/RadioLiberty (Envoy Hails Bosnia's Election Results, Agrees New Constitution Needed, November 25, 2020), <https://www.rferl.org/a/envoy-hails-bosnia-election-results-agrees-new-constitution-needed/30968961.html>.

⁴⁸ Solveig Richter, "Missing the Muscles?," 266.

⁴⁹ Peace and Security Council. "Bosnia and Herzegovina: Some Politicians Still Ignore 'Core European Values' 25 Years after Peace Deal || UN News." United Nations. United Nations, November 5, 2020. <https://news.un.org/en/story/2020/11/1076922>

remain.⁵⁰ While the future looks promising for BiH to implement reforms, in the meantime it is paramount for the EU to help conjure a collective identity and ethnic reconciliation to encourage the necessary cooperation needed for reforms. However, despite positive future prospects, BiH is currently unable to fulfill the Copenhagen political, judicial, and economic criteria, and must remain on the “potential candidates” list until the appropriate reforms to strengthen democratic legitimacy, the rule of law, and the economic sector are made.

⁵⁰ Beáta Huszka, “The Power of Perspective: Why EU Membership Still Matters in the Western Balkans,” ECFR, January 7, 2020, https://ecfr.eu/publication/the_power_of_perspective_why_eu_membership_still_matters_in_western_balkans/.

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