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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

on the progress achieved by Bosnia and Herzegovina in implementing the priorities identified in the “Feasibility Study on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union (COM (2003) 692 final)”

1. INTRODUCTION

The Thessaloniki European Council in June 2003 confirmed the Stabilisation and Association process (SAP) as the European Union's policy framework for South Eastern Europe. The SAP provides for the establishment of Stabilisation and Association Agreements (SAAs) between the EU and the SAP countries¹. The Thessaloniki European Council also confirmed that Bosnia and Herzegovina is a potential candidate for EU membership. The European perspective for the Western Balkans has been confirmed by the Presidency Conclusions of the June 2005 European Council.

In November 2003, the Commission presented a Feasibility Study (FS) on the preparedness of Bosnia and Herzegovina to negotiate a SAA². The FS concluded that the Commission would decide on a recommendation for a Council decision to open negotiations for a SAA with Bosnia and Herzegovina as soon as it would ascertain that significant progress had been made in meeting the sixteen priorities set out under Section C (Conclusion) of the Study.

The present Communication assesses whether Bosnia and Herzegovina has made the required "significant progress" in addressing the FS priorities.

2. RELATIONS BETWEEN THE EUROPEAN UNION AND BOSNIA AND HERZEGOVINA

Currently, the EU has no contractual relation with Bosnia and Herzegovina. Nevertheless, a structured dialogue between Bosnia and Herzegovina and the EU has been established in recent years. Bosnia and Herzegovina has been benefiting from various SAP instruments since the outset of this initiative, notably from autonomous trade concessions covering almost all Bosnia and Herzegovina's products, and from substantial financial support.

In 1998 an EU Declaration on "Special Relations between EU and Bosnia and Herzegovina" led to the establishment of the EU/Bosnia and Herzegovina Joint Consultative Task Force (CTF) to assist in the preparation of contractual relations. Since the 2003 Feasibility Study, the CTF has focussed upon promoting and monitoring reforms in the key areas identified by the FS. These areas coincide to a very large extent with the short term priorities of the European Partnership for Bosnia and Herzegovina adopted in June 2004³

3. PROGRESS BY BOSNIA AND HERZEGOVINA IN ADDRESSING THE PRIORITIES IDENTIFIED IN THE 2003 FEASIBILITY STUDY (FS)

The 2003 FS and the perspective to negotiate a SAA have acted as a powerful catalyser to implement reforms in Bosnia and Herzegovina. The most relevant achievements in addressing the sixteen FS priorities are summarised below.

In relation to existing conditionality and international obligations (FS1), Bosnia and Herzegovina has completed the remaining requirements of the EU Road Map⁴ and has

¹ Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Serbia and Montenegro

² COM (03) 692 of 18 November 2003

³ Council Decision 2004/515/EC; OJ L221/2004

⁴ In 2000, an EU "Road Map" identified eighteen initial steps to be taken by Bosnia and Herzegovina prior to the preparation by the Commission of a study assessing the feasibility of opening SAA negotiations with Bosnia and Herzegovina. The Road Map steps

ensured compliance with the Dayton-Paris Peace Accords. Co-operation with the International Criminal Tribunal for former Yugoslavia (ICTY) has seen important progress and a substantial number of indicted war criminals have been transferred to The Hague in recent months. In its tenth report issued at the end of April 2005⁵, the Council of Europe (CoE) recognised that Bosnia and Herzegovina has honoured most of its post-accession commitments, and outlined a number of recent positive developments in the fields of human rights and the rule of law. Regarding governance (FS2), the functioning of the Council of Ministers (CoM) and of the Parliament has overall improved. New State-level Ministries and institutions have been established and they are now progressively being equipped to properly perform all their duties. The “Action Plan for Priority Reforms” has been adopted, and a consolidated State-level government work plan matching policy priorities with budgetary resources has been established.

Bosnia and Herzegovina’s public administration (FS3) has also been strengthened. The necessary funding has been provided for the Civil Service Agencies at State and Entity levels, and inter-agency co-operation has improved. The administrative structures directly related with European integration (FS4) have been considerably reinforced. In particular, the Directorate for European Integration (DEI) is now operational and has become a central counterpart for the development of the relations between Bosnia and Herzegovina and the EU.

In the area of human rights (FS5), it is important to note that legislation necessary to support refugee returns has been adopted, and that a Bosnia and Herzegovina Refugee Return Fund has been established and is in operation. Human rights-related competencies have been transferred from the Entity-level to the State-level, as recommended by the CoE and other international bodies. The Human Rights Commission has been established; it is working within the Constitutional Court and is ensuring due follow up to human rights-related cases. Adequate funding is provided for the Court. In the field of judiciary (FS6), legislation to establish a single High Judicial and Prosecutorial Council (HJPC) for Bosnia and Herzegovina has been adopted and the HJPC is now operational. This is a crucial step to consolidate State authority over the Entity judiciaries and to strengthen the independence of the judiciary throughout Bosnia and Herzegovina. Staff and funding for the State Court and Bosnia and Herzegovina’s State Prosecutor have been provided.

As regards tackling crime, especially organised (FS7) crime, Bosnia and Herzegovina has made considerable progress in building up State-level law enforcement capacity, in particular by allocating the necessary resources to ensure the proper functioning of the State Information and Protection Agency (SIPA). The Bosnia and Herzegovina Ministry of Security is progressively being equipped in order to implement its tasks adequately. In the field of police reform, the Agreement on Restructuring of Police has been adopted by the parties, in line with the three principles outlined by the Commission, namely i) all legislative and budgetary competencies for all police matters must be vested at the state level, ii) no political interference with operational policing and iii) functional local police areas must be determined by technical policing criteria where operational command is exercised at the local level.

were "substantially completed" in September 2002. This opened the door to the preparation of the Commission’s Feasibility Study (FS).

⁵ SG/Inf (2005)8 of 25 April 2005

Proper structures to address asylum and migration (FS8) in conformity with international standards have been established. The Ministry of Security has taken over the responsibility for refugee status determination from UNHCR and has defined related criteria and procedures.

With regard to the reform of the customs and tax administrations (FS9), Bosnia and Herzegovina has ensured the implementation of the recommendations of the Indirect Tax Policy Commission, notably through the adoption of the Law on the Indirect Tax Authority (ITA) and the related enabling legislation. ITA is now operational, as well as the new Customs Authority. Progress has been made as regards the introduction of the VAT, which is now scheduled for 1st January 2006.

In the area of budget legislation and practice (FS10 + FS11), budget legislation covering multi-annual budget planning and forecasting has been adopted and substantial steps have been taken to elaborate a consolidated government account. Moreover, progress has been made as regards the establishment of a centralised record for all income accruing to public authorities at different levels of government, including grants and other forms of international assistance.

As regards statistics (FS12), Bosnia and Herzegovina has adopted and is implementing the Law on Statistics aiming at the creation of a functioning system with clear lines of responsibility and co-ordination mechanisms. Bosnia and Herzegovina has started to provide trade statistics to EUROSTAT.

In the field of trade (FS13), Bosnia and Herzegovina has prepared a draft trade policy. With a view to promoting exports, but also to enhancing standards and the single economic space, Bosnia and Herzegovina has established, at State-level, certification and other procedures for the export of animal products. A Phyto-sanitary Office has been established.

In the field of energy (FS14), Bosnia and Herzegovina has developed Action Plans for the restructuring of the electricity market and started their implementation. It has also made progress in terms of regional co-operation in this area, notably through the implementation of measures identified in the 2003 Athens Memorandum of Understanding on Energy.

Bosnia and Herzegovina has been able to make significant achievements in establishing a single economic space (FS15) within the country. It has adopted a new Competition Law and established its main management body, the Competition Council. It has also introduced provisions on the mutual recognition of products by the Entities and has set the framework for the implementation of a common public procurement regime throughout the country. Some progress has also been made in removing duplicate licences, permits and similar authorisation requirements, facilitating operations of service providers (limited to the areas of banking, insurance and accounting and auditing). Finally, Bosnia and Herzegovina has adopted the necessary legislation for the creation of a single business registration system, recognised throughout the whole country.

As far as public broadcasting (FS16) is concerned, Bosnia and Herzegovina has adopted the Law on Public Broadcasting System and the parliamentary procedure for the adoption of the Law on Public Broadcasting Service has been initiated and is well advanced. This legislation is in line with European standards and the Dayton-Paris Peace Accords.

4. OVERALL CONCLUSION

Taking into account the above, the European Commission considers that Bosnia and Herzegovina has made significant progress in addressing the sixteen priorities identified in the framework of the 2003 Feasibility Study. Therefore, in line with the FS conclusions, the Commission is in a position to recommend to the Council the opening of negotiations for a Stabilisation and Association Agreement with Bosnia and Herzegovina. The Commission will accordingly present draft negotiating directives to the Council.

However, the opening of negotiations will require that BiH State Parliament endorses the Agreement on Restructuring of Police.

Moreover, Bosnia and Herzegovina needs to continue, in a sustained way, its reforms. Bosnia and Herzegovina should ensure the completion of outstanding FS issues and focus on adequate implementation of the European Partnership priorities. The Commission will continue monitoring closely the progress made by Bosnia and Herzegovina.

The pace at which Bosnia and Herzegovina draws closer to the EU depends essentially on its speed in adopting and implementing the necessary reforms. Continued focus by the authorities on European integration is, therefore, key to the sustainability of the process. In order to progress through the various stages of the process, both before and during the negotiations, Bosnia and Herzegovina must, in particular, continue to co-operate with the International Criminal Tribunal for former Yugoslavia (ICTY) with a view to rapidly achieving full co-operation, adopt the Law on Public Broadcasting Service and ensure the implementation of the police reform and of the Public Broadcasting legislation.

In addition to the above-mentioned areas, the authorities should pay special attention to and achieve substantial progress in relation to the following issues:

Implementation of the outstanding Council of Europe post-accession obligations, in particular in the areas of electoral law and education and adoption of the legislation necessary for the establishment of a single Ombudsman in Bosnia and Herzegovina.

With regard to governance and public administration, adequate staffing and suitable premises need to be made available for all State-level ministries and institutions. Bosnia and Herzegovina must develop a comprehensive Action-plan for public administration reform and ensure its implementation. It should also enhance aid co-ordination capacities of the Directorate for European Integration. Furthermore, it is essential that State-Entity coordination be further improved.

Sustained efforts are necessary to tackle crime, and in particular organised crime, efficiently. The Ministry of Security should be reinforced both in terms of staff and funding. The laws establishing the Data Protection Commission and the Information Society Agency should be adopted. The Specific Action Oriented Measures against Organised Crime should be fully implemented.

A sound and comprehensive Trade Policy Strategy should be rapidly adopted and implemented. Bosnia and Herzegovina should ensure that its trade-related contractual commitments are fulfilled and that the Free Trade Agreements are properly implemented. BiH international trade commitments, including its offers within the ongoing WTO accession negotiations, should be fully consistent with the objectives of the future EU-Bosnia and

Herzegovina SAA and with Bosnia and Herzegovina's obligations therein and should therefore take fully into account EC own international trade commitments. Ensuring the adequate supervision and management of free zones in accordance with EU standards is essential. Furthermore, the issuing and control of certificates of origin need to be enhanced and BiH should fully apply customs valuation rules in accordance with international standards.

Additional measures are necessary to achieve Bosnia and Herzegovina's single economic space. Bosnia and Herzegovina needs to accelerate the removal of duplicate licences, authorisations and similar barriers to the existence of an actual single economic space, including through the establishment of the necessary state-level institutions. Public procurement legislation should be brought progressively in line with EU standards and should be consistently implemented, including through the establishment of the bodies foreseen by the law. Continued efforts are necessary to implement the laws on standardisation, metrology and intellectual property, as well as to ensure the adequate functioning of a single business register. Further efforts are necessary to complete the implementation of the Law on Statistics and to further develop and harmonise the production of statistics.

Should the Commission note at any time that Bosnia and Herzegovina has not lived up to its commitments and has not satisfactorily addressed the issues highlighted in this Communication, it may propose to the Council that the SAA negotiations be suspended.

To support the efforts made by Bosnia and Herzegovina before the formal opening of negotiations and throughout the negotiation process, the Commission will further intensify discussions with the authorities, in particular by setting up sectoral groups, as appropriate. The Commission is also committed to supporting this process through its financial assistance programme.