

Information Documents

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Bosnia and Herzegovina:

Compliance with obligations and commitments and implementation of the post-accession co-operation programme

Update on developments (July – December 2006)

Document presented by the Secretary General

Executive summary

During the period under review, Bosnia and Herzegovina presented a mixed picture of progress and stagnation, while important challenges lie ahead for the first semester of 2007.

On the one hand, the country has achieved some positive steps: the organisation of free and fair general elections on 1 October 2006 - for the first time entirely run by the national authorities - some progress towards integration into Euro-Atlantic structures, especially membership in NATO's Partnership for Peace Programme (PfP) and technical progress in the negotiations for a Stabilisation and Association Agreement (SAA) with the EU.

Implementation of the co-operation programmes with the Council of Europe continued and some important benchmarks were achieved, such as the adoption of a State Anti-Corruption Strategy on 15 June 2006.

On the other hand, however, progress towards more effective State institutions (e.g. police reform) and democratic governance remained limited. Neither could progress be registered concerning the compliance with the remaining few obligations and commitments towards the Council of Europe.

This slowing down of the pace of reform can be explained by the pre-electoral period and the continuing lengthy post-electoral transition towards the formation of operational legislative and executive bodies in both Entities and at State level.

In the coming six months, Bosnia and Herzegovina (BiH) will face very important changes with the planned reduction of the role of the international community.

These changes and the challenges that they may entail for the country, underline again the need to complete the first stage of constitutional reform in the first semester of 2007, thus endowing the country with the necessary tools to consolidate its democratic reform process.

I. INTRODUCTION

1. The purpose of the present document is to update the information contained in the Twelfth Report (November 2005 – May 2006) on *Bosnia and Herzegovina - Compliance with obligations and commitments and implementation of post-accession co-operation programmes*, of 21 June 2006 (SG/Inf (2006) 12).

2. It is not intended as a full report, but reflects the period of relative political, governmental, legislative and administrative stasis in the country both preceding and following the general elections held on 1 October.

3. A full thirteenth report, based on a Secretariat mission to BiH, will be prepared as soon as political developments in BiH allow, particularly the formation of governments and administrations, but at any event no later than March 2007.

II. POLITICAL CONTEXT

4. The main event during the last six months was the elections of 1 October 2006. BiH voters were called upon to elect the three members of the BiH Presidency, the President and two Vice-Presidents of the Republika Srpska, delegates in the Bosnia and Herzegovina (BiH) and Federation (FBiH) Parliament House of Representatives, the Republika Srpska (RS) People's Assembly and delegates to the assemblies of the ten cantons in the BiH Federation.

5. Approximately 2.8 million registered voters could choose from among 36 political parties, with 8 formal coalitions and 12 independent candidates.

6. The election campaign was again marked by a nationalist, ethnic rhetoric of many political parties that gained momentum in the run-up to polling day.

7. These elections were the first to be managed under the full responsibility of the BiH authorities. The Central Election Commission was widely credited to have acted with professionalism and efficiency.

8. Since the elections, which took place over two months ago, party leaders have been engaged in complex political negotiations to form a parliamentary majority at State level. Divisions remain on crucial issues, such as on how to deal with the package of constitutional amendments which were rejected by Parliament in April 2006.

9. At the time of drafting, appointment procedures remain complicated at all levels except RS. Neither the State or FBiH House of Representatives has even a speaker yet, nor do half of the Cantons. Only the RS and Cantons 8 and 9 have designated a Prime Minister.

10. In June 2006, the Steering Board of the Peace Implementation Council (PIC) initiated the procedure of progressively reducing the role of the High Representative (OHR) in BiH. At the time of the December 2006 meeting of the Steering Board, it was foreseen that by the end of June 2007, the OHR would close and that the power to impose legislation and remove political leaders from office – the so-called “Bonn powers” - would be abolished. The mandate of the OHR would be transformed into that of a European Special Representative (EUSR), with the sole task of assisting and supporting the BiH authorities on the way to Euro-Atlantic integration. This scenario could,

however, be reviewed during the February 2007 PIC meeting, taking into account the overall situation in BiH and the region.

11. It should be recalled that in August 2006, the OHR decided to appoint a Special Envoy to Mostar with a triple mandate as a mediator, arbitrator and, if necessary, initiator of solutions to the remaining problematic municipal relations in the city. He also appointed a new 5th District Brcko Supervisor and Deputy High Representative, confirming the transitional nature of local governance in BiH. During the last six months, the “Bonn Powers” were not evoked / used.

12. On 8 November 2006, the OHR Schwarz-Schilling presented a report to the UN Security Council on the situation in BiH. In his report, he singled out a number of areas where progress still remains to be made:

- Constitutional reform
- Law on higher education
- Police reform
- Reform of public broadcasting
- Co-operation with ICTY.

13. These areas are identical, except for the reform of local self-government, with the major political commitments taken by BiH upon becoming a member of the CoE in April 2002. No progress can be registered in their fulfilment since the twelfth monitoring report was issued.

14. On 21 November 2006, the UN Security Council unanimously renewed the mandate of the European Stabilisation Force (EUFOR) to BiH for a further 12 months.

15. It should also be noted that on 16 November 2006, thanks to the efforts of the SRSG, the CoE became a member of the Board of Principals of the international community in BiH and hence part of the PIC. This positive development will allow the CoE to be fully associated in the co-ordination activities of the international community, contributing to the increased visibility and efficiency of the Council’s programmes.

III. DEMOCRATIC INSTITUTIONS

Constitutional reform

16. The discussion on constitutional reform has been stalled since the package of constitutional amendments failed to be adopted, by two votes, by the BiH House of Representatives in April 2006.

17. Under the Constitution, the BiH authorities have until 8 February 2007 to form their new government, and at present it seems that only then can discussions on constitutional amendments begin. However, the parties that supported the package in April and that command the majority to adopt the constitutional amendments in the House of Representatives are not necessarily the parties who would form a government coalition.

For the international community, the adoption early on in the new legislature of the already agreed constitutional amendments remains as the pre-condition for any serious attempts to embark into the more far-reaching reforms which are necessary to consolidate the statehood of BiH and its full integration in European and Transatlantic structures.

Re-enforcing BiH statehood and integration into Europe

18. On 8 November 2006, the European Commission issued its progress report on BiH. The basic message of the document was that reinforcing the statehood of BiH was a *conditio sine qua non* for an accession perspective. However, in the eyes of the EC, progress in this direction still remained insufficient. In particular, the report pointed to the contentious issues of constitutional and police reform and co-operation with the ICTY. EU Enlargement Commissioner Rehn underlined that BiH might be able to conclude its SAA by the end of 2006, only if perceptible progress on these issues is reached.

The EC progress report makes numerous references to CoE standards in the fields of Rule of Law and Human Rights.

19. At the Riga NATO Summit of 28 and 29 November 2006, it was decided that BiH would be included in the Partnership for Peace Programme (PFP), in spite of the fact that co-operation with the ICTY, regarding the war crime indictees Mladic and Karadzic, had not been successful.

Elections

20. As outlined above, the Parliament and Presidency Elections of 1 October 2006 were the first to be organised under the full responsibility of the BiH authorities and were marked by the absence of violence and/or disorder. In a widely publicised statement, the joint PACE/ODIHR election monitoring mission declared that “*the manner in which the elections were held generally is in accordance with international standards*”, paid tribute to the BiH authorities and in particular to the Central Election Commission, but recalled that in some important aspects the elections themselves violated Protocol No. 12 of the ECHR.

21. However, some concerns for future elections remain. The communication infrastructure between the Local, Regional and Central Electoral Commissions needs to be modernised, in order to allow for publication of the final election results within a few days. The heavy slant of the Electoral Commissions, at all levels, towards political partisanship needs to be revised, notably by including more professional politically non-aligned persons.

Development of functioning of local democracy

22. The Congress adopted its Report and Recommendation on *Local Democracy in Bosnia and Herzegovina* at its autumn session on 14 and 15 November 2006.

The report notes that the signed European Framework Convention on Transfrontier Co-operation and the signed European Charter for Regional and Minority Languages have still not been ratified.

It also confirmed that constitutional reform was still needed at State and FBiH levels before local democracy can develop properly. The competency of the Federation of BiH must be expressly stated, in order to ensure the constitutional basis for the FBiH Law on the Principles of Local Self Government.

IV. HUMAN RIGHTS

A Council of Europe conventions in the field of human rights

1. ECHR: "Compatibility exercise"

23. The report on the compatibility of BiH's legislation and practice with the ECHR was finalised and sent to the CoE Secretariat in October 2006. It is currently being edited and translated and will be published during the first quarter of 2007. An awareness-raising conference on the results of this exercise will follow its publication. This event will target all national institutions involved in the daily application of the ECHR and the execution of the ECtHR judgments, as well as NGOs.

2. European Social Charter

24. No progress has been made since June 2006 with regard to the ratification of the European Social Charter, which was one of the commitments undertaken upon accession.

B. Human rights institutions

Restructuring of the Ombudsman Institutions

25. The deadline foreseen for the transition from Entities Ombudsmen to a unified State Ombudsman is 31 December 2006. Administrative arrangements for the transfer of functions are progressing, but since the appointment mechanisms for the new State Officials involves Parliament directly, some delays are more than likely.

Concerns remain about the lack of confidence in the new institution. The reasons for this are a still-perceived ethnic bias (the new Law foresees that the headquarters of the new Institution will be in Banja Luka), a lack of clarity about the procedure for the election of the new State Ombudsmen and a fear of political interference due to close party connections to the Office.

There also seems to be a risk that the experience and competence acquired by the Entity Ombudsmen over the last 12 years may be lost in this new institution, there is not one single Entity Ombudsmen who would be prepared to work with the State Ombudsmen Office.

C. Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY)

26. Mr Mladic and Karadzic, the most wanted fugitives in BiH, remain at large.

However, the number of cases treated at the War Crimes Chamber of the State Court of BiH has increased from 2 to 14. The Court is also formulating a policy of continuing training for sitting judges of the War Crimes Chamber.

On 14 November 2006, the State Court rendered its first judgment in a war crimes case referred to by the ICTY under Article 11 bis of its Statute.

D. Sustainable return of refugees and displaced persons

27. In September 2006, the Council of Europe Development Bank (CEB) granted a donation of 406,500 euros in order to create housing for IDPs, in co-operation with UNHCR. The project targets the remaining inhabitants of collective centres in BiH, with a view to facilitating their reintegration.

E. Freedom of expression and information

28. The Law on the Public Radio-Television System of BiH still needs to be fully implemented and this can only be done by making sure that the already existing bye-laws be adapted to it.

V. RULE OF LAW

Reform of the judiciary

29. According to high-level interlocutors in Sarajevo, “no significant” movements have taken place in the field of judicial reform. The state jurisdiction remains very limited in spite of the setting-up of a number of High State judicial bodies.

Further progress has been achieved in the development of the BiH Judicial and Prosecutorial Training Centre.

Fight against corruption and organised crime

30. The State Anti-Corruption Strategy, elaborated with the assistance of the CoE, was adopted by the Council of Ministers on 15 June 2006. At present, the State Court has 24 cases pending regarding organised crime. It appears, however, that the police are both ill-equipped and lack training in how to deal with such serious crimes.

Police reform

31. The leadership of the RS continues to challenge the legitimacy of the Directorate for Police Restructuring Implementation, in which the RS is only an observer for the moment and also to question the political agreement, which was endorsed by the RS National Assembly.

The Director’s mandate expires at the end of 2006. If his mission remains unaccomplished, it may further complicate domestic politics in BiH, as well as the State’s relations with the EU, as the creation of a police at State level is one of the conditions laid down by the European Commission to conclude an SAA.

32. The issue of the compliance of the UN-managed decertification, of several hundred policemen between 1995 and 2003, with ECHR standards remains high on the political agenda in BiH. In October 2005, the Venice Commission urged the UN to create a body to review the challenged decertification cases and in 2006 three former policemen appealed to the ECHR. In all three cases, the applicants invoke Articles 6, 7 and 13 of the Convention and Article 4 of Protocol No. 7 to the Convention

Penitentiary

33. During the updating period, the Canadian International Development Agency-financed Prison Reform project continued. It should be noted that 3 meetings of the Management Support Group took place between June and November 2006 and that state and entity authorities are co-operating within the framework of this Group. The specific initiatives, related to the assessment of prisoners and complaints and inspection mechanisms, also continued to be implemented, as well as the work on the legal reform.

VI. EDUCATION

Primary and secondary education

34. While some positive progress in adopting *Guidelines for History and Geography Textbook Authors* and the development of new history textbooks can indeed be recorded, it appears that ethnic segregation in schools is a phenomenon that is continuously gaining momentum in BiH. In order to address this issue, the Framework Law for Primary and Secondary Law needs to be implemented. In the long term, the authorities may want to consider introducing a new core educational curriculum for the whole of BiH, complemented by a set of culturally-specific subjects.

In this context of concern over the increasing number of “two schools under one roof” - and in spite of the positive progress made in the case of Mostar Gymnasium - it should be noted that no reply was received from the Mostar authorities, to the joint letter by the OSCE and CoE of 16 May 2006, urging them to at least administratively unify schools in the city.

Higher education

35. A second draft Higher Education law was passed by the Council of Ministers, without the Serb votes, on 1 June 2006. Discussions in the Parliamentary Commission on Constitutional and Legal Affairs in September 2006 yielded five versions of the draft for consideration by MPs. Not one was approved, as the Commission could not agree upon the principles of the law and forwarded it to Parliament in September with a negative recommendation. A complicated procedure of voting in Parliament, whereby there are two voting cycles (a simple majority and entity voting) and loopholes in the rules of procedure leaves open a number of procedural possibilities for the law to be neither fully dismissed nor adopted, especially since neither the Serb or Croat representatives support the principles of the law.

In July 2006, a Croat parliamentarian submitted a draft law in the state-level Parliament that assigns all competencies to the level of the State. This version will be on the agenda of the upcoming legislature.

36. While most of the provisions on the higher education law can be agreed upon, one outstanding issue still remains: the level at which accreditation of higher education institutions should be decided. It is hoped that this contentious issue will be negotiated, early in 2007, by the new Government.

37. Given the delay in adopting the state-level higher education law, several cantons in the Federation as well as the Republika Srpska adopted new legislation before the beginning of the school year 2006/2007 in order to start reforms.

38. The RS Ministry of Education and Culture asked the CoE to provide expertise on the law. The CoE responded that the overriding concern was to assist in the development of legislation which will establish common norms and standards throughout BiH but that once the state-level law is in place, the CoE stands ready to assist in harmonising the entity-level law with the state-level legislation.

39. Overall, the BiH higher education landscape is still very much fragmented, because of the current constitutional configuration and also the lack of will to compromise.

VII. CONCLUSIONS

40. With the exception of the successful domestic conduct of the general elections, progress of the integration of BiH into Euro-Atlantic structures and the technical progress in SAA negotiations, the progress towards sustainable and effective democratic governance and administration has been limited during the period covered by this update. No progress has been achieved in the fulfilment of the remaining commitments accepted by BiH when joining the CoE. This can largely be explained by the pre-electoral period and the governmental and parliamentary vacuum which followed the elections.

41. It is also improbable that progress will gather momentum in the months to come. The pace of political life has considerably slowed down in BiH and will more or less stay that way until 8 February 2007, when the new government is supposed to be formed. This provides time for the international community to prepare an assessment of the situation in BiH.

42. From the above picture, it clearly appears that at the present time the pivotal issue for the future of BiH is constitutional reform. Failure to complete the first stage of this reform during the first semester of 2007, might influence the international estimation of the situation.

43. The Thirteenth Report on BiH's compliance with obligations and commitments and implementation of the post-accession co-operation programme will be prepared on the basis of a Secretariat mission which is to take place immediately after the constitution of the new governmental and parliamentary institutions. This would be shortly before the PIC meeting, scheduled for late February 2007, which is expected to confirm the change of the OHR mandate, thus ensuring that CoE concerns would be taken into account by the assessment of the International Community and ultimately when formulating the mandate of the EUSR.

986th meeting – 7 February 2007

Item 2.1a

Current political questions

a. Activities for the development and consolidation of democratic stability

. *Bosnia and Herzegovina*

. *Serbia (Kosovo)*

(GR-DEM(2007)CB2 and SG/Inf(2006)16)

Decisions

The Deputies

1. took note of the synopsis of the meeting of GR-DEM held on 30 January 2007 (document GR-DEM(2007)CB2);

Concerning Bosnia and Herzegovina

In the light of the conclusions of the update report by the Secretariat on the compliance with obligations and commitments and implementation of the post-accession co-operation programme (document SG/Inf(2006)16),

2. asked the newly established authorities of Bosnia and Herzegovina to take into consideration the recommendations contained in the report and pursue their efforts in order to fulfil all outstanding Council of Europe obligations and commitments;

3. asked the Secretariat to contact the newly established authorities with a view to planning the next monitoring visit and to examine with them the co-operation assistance activities which the Council of Europe should continue to implement in order to assist them in the fulfilment of their outstanding commitments, with a view to submitting proposals on this matter in due course;

Concerning Serbia (Kosovo)

4. invited the Secretariat to make initial proposals for future Council of Europe assistance programmes in Kosovo, based on the requests made by various international partners, for consideration at a forthcoming meeting of GR-DEM.