

# ***CHALLENGES ON THE PATH TO EUROPEAN INTEGRATION: HARMONIZATION OF NATIONAL LEGISLATION IN BOSNIA AND HERZEGOVINA WITH ACQUIS COMMUNAUTAIRE***

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## **Abstract**

*One of the most important primary sources of EU Law in Bosnia and Herzegovina is The Stabilization and Association Agreement. By signing it, BH has entered into a contractual relationship with the European Union and made a commitment to harmonize national legislation with Acquis Communautaire.*

*Bosnia and Herzegovina is a complex decentralized state with two entities and if one part fails to harmonize its legislation with Acquis it is going to generate negative consequences on the process of the EU integration. There is almost no horizontal cooperation between the two entities, since they are in constant political antagonism.*

*A special analysis is given on what could be a successful model of coordination between the state and the entities in process of harmonization of national law with legal heritage of the EU. Also, it has been analyzed which segments of good practice from the EU would fit in legal and political context of BH.*

**Keywords:** European Union; Acquis Communautaire; The Stabilization and Association Agreement; Harmonization of Legislation; Horizontal and Vertical Coordination

## **Introduction: Acquis Communautaire**

Acquis Communautaire is term originated from French, and represents summary of all obligations that certain country must fulfill in order to be admitted to the European Union. Subjects of the Acquis are individuals and legal persons, Member States and community authorities. In territorial terms, the scope of application of the rules is bounded by the borders of the EU and the Member States. Only in special situations, some individual communitarian regulations may be applied outside the EU.

## **Copenhagen Criteria**

The Copenhagen criteria are among the most important conditions for membership in the EU. Obligation of the harmonization of national legislation with Acquis is one of three Copenhagen criteria. To become an EU member, country must have a fully harmonized legislation in each of 35 chapters of EU law, which currently include 10,000 regulations or about 100,000 pages of the Official Journal of the EU.

## **The Stabilization and Association Agreement**

Good horizontal and vertical coordination is a key prerequisite for the successful adoption of the Acquis in all Member States, especially in those who have complex structure. One of the most important sources of EU law in BH is The Stabilization and Association Agreement with the EU. The primary objective of The Agreement is formally joining the EU in a certain transitional period (6-10 years), during which the candidate gradually adjusts its legislation to the EU. The Agreement gives the country status of associate member, and confirms its status of potential candidate for EU membership. BH has signed The Agreement on 16<sup>th</sup> of June 2008. It has been already six years, and the process has been very slow. The European Commission, in order to give a positive opinion, requires compliance of regulations throughout the territory of BH.

## **Harmonization of National Law in Bosnia and Herzegovina**

In BH, there are no uniform methodology and nomotechnical rules for harmonization with the sources of EU law. BH is complex decentralized state with two entities. It's Constitution clearly prescribes competences that are at the state level, while all other belong to the entities. BH needs a multi-year plan for the harmonization of legislation (with an

annual implementation plans). There is almost no horizontal cooperation between the two entities. As for vertical coordination between different levels of government when drafting laws, it is on a very low level. There are no permanent working groups that would work on harmonization with EU law.

Personnel potential of BH in meeting the obligations of EU integration is inadequate. Civil servants in administrative authorities have insufficient knowledge of the process of EU integration and commitments, foreign languages, EU legislation, etc.

### **Models of Coordination between the State and the Entities in Process of Harmonization with Legal Heritage of the EU**

Causes of poor coordination of lie in the absence of unified methodology and nomotechnical rules for transposition, efficient coordination mechanisms, but primarily in constant political antagonisms. However, some EU members who have had similar problems, for example Germany and Belgium, have managed to overcome them. Examples of good practice from other countries may not only be transplanted from one system to another. What we would propose as model of coordination are segments of good practice from the EU which are to fit in legal and political context of BH.

Zero option is to leave the current situation, but in this case the harmonization process will be slow and anarchic, each level of government will carry out the harmonization on their pace and methodology without compliance with the other levels.

The first option is to form an authority at the state level which will determine in whose jurisdiction is harmonization with the Acquis. Harmonization would be carried out by relevant state and entity ministries. The first objection to this model is a question which institution would have the authority to coordinate this process and which mechanisms would be at its disposal to implement decisions. Next is how this institution could be impartial and resist political pressures.

Another option is the framework legislation on the BH level. It is a model in which the coordination would be done by passing the framework laws on the state level, and the lower levels of government would pass its laws in accordance with its responsibilities. This model has a small chance to be supported by all levels of government.

The third option - an agreement between the state and entities with stipulated sanctions for failure to perform obligations is the model that could accelerate the harmonization process and lead to long-term sustainable solution. This agreement would clearly define the mechanisms of coordination and mutual obligations. It would manifest political willingness of the government to expedite the process of harmonization. This model is acceptable to all parties in BH. This is showed by the surveys we conducted among representatives of institutions. There are two possible doubts about this model - why to sign the agreement when Working groups including representatives from all levels have already been formed and what kind of sanction could be agreed and who would be responsible for its execution. Most of the working groups had not met once. Fine would probably be the most effective.

### **Conclusion**

BH has, by signing The Stabilization and Association Agreement, taken over the obligation to harmonize its legislation with EU law. However, this process does not go at a satisfactory pace. Unified methodology and terminological rules for harmonization at all levels do not exist. Positive is the fact that governments at all levels adopted similar decisions on harmonization with EU law. The horizontal and vertical coordination between different levels of government is at a very low level. There are no permanent Working groups between different levels of government that would work on a joint harmonization.

Political instability prevents the adoption of effective mechanisms for coordination between different levels of government.

BH is not the only country that has difficulties in harmonization with the EU law due to its complex structure. Complex countries in the EU (Germany, Belgium, Spain) have developed their own models of coordination and cooperation between different levels of government. BH should take certain elements of these models, their legal and political context, in order to develop its own model of coordination.

A model that could accelerate the harmonization process and lead to long-term sustainable solution is an agreement between the government and lower levels of government which should clearly define the mechanisms of coordination and mutual obligations in the process of harmonization. Also, it would define the sanctions for those who do not respect the deadlines. By signing the agreement would be manifested political willingness of the government to expedite the process of harmonization. This model has a long-term dimension.

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