

REPORT

(No) ROAD TO EUROPE

*HARD LOOK AT
BOSNIA AND HERZEGOVINA'S
IMPLEMENTATION
OF SAA AND
EUROPEAN PARTNERSHIP*

TABLE OF CONTENTS

Executive Summary	3
BIH’s Road to Europe.....	4
Key Documents and Facilities.....	5
Stabilisation and Association Agreement (SAA).....	5
European Partnerships (EP).....	6
Action Plan for Implementation of EP Priorities	6
Financial Assistance	7
Case Study: Transport Policy	8
Introduction.....	8
Road to Europe.....	9
SEE Core Regional Transport Network (SEE-CRTN) [EP3.KP.094].....	9
State Law on Railways & Railway Network Statement [EP3.KP.096].....	11
Road Transport Acquis Approximation [EP3.KP.095].....	12
Conclusion	14
Endnotes.....	16

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EXECUTIVE SUMMARY

November 2010 will be very important month for Bosnia and Herzegovina's future European orientation. Newly elected leaders are about to consolidate new governments and visa liberalization process is about to be completed. The European Commission's (EC) progress report will assess BiH's possibility to pursue candidacy status and Bosnia is more persistently opening up new chapters to be fulfilled on road the EU.

At this stage BiH's efforts are supported by limited funding from the EC (IPA Framework's Components I and II only) with a prospect to be geared up for more significant funds (IPA Components III-V, FP7) in the future. Along with its neighbours (Serbia, MN, Macedonia), BiH will not have access to the full package of pre-accession assistance until the EC's requirements, such as establishment of the Decentralized Implementation System (DIS), are met and the country achieves the candidate status. Assistance that had been extended to BiH so far was a part of the first package, which provides transition and institution building assistance, and is divided into more specific criteria: political, economic, ability to assume the obligations of membership and support.

Novel to Bosnians is that this type of assistance is not, as much, driven locally, but mostly by the EC. In addition, political dynamics and stalemates were often used as a reason to void any influence over the purpose and implementation of this assistance. Priorities initially set up have gone through modifications, delays or in some case scenarios total disregard. That in return had its consequences.

This, at times mutually "confusing", relationship between EC and BiH with ad hoc priorities being set up to meet the formalities rather than genuine necessities, made the whole process weak. Political uncertainties served as an excuse for lack of implementation of even purely technical activities, leaving little or no space to deliver anything substantial. Instead of implementing more advanced and "real needs-based" projects, in some cases BiH still implements the basics.

In order to begin next phase on the country's way to EU, BiH must take ownership, become an active partner in the process, genuinely assess the progress, recognize and learn from the failures, learn how to replicate successes and how to actively participate in policy setting. Most importantly, it needs to put in place the structures needed to fully benefit from the assistance.

This report calls for re-thinking of what Bosnia and Herzegovina pursues, what the true costs of mismanaged projects are, and how adequate those policies are. To do so, the study of the transport sector examines the value of the EU instruments extended to the country, its level of the ownership over these processes, and particularly important, the relevance of those policies for BiH at this moment.

In this context, the debate over the purpose and the adaptive nature of the EU instruments extended to BiH takes a decisive role. The current dynamics urge for viable policies driven in domestic ownership, not only in terms of amounts to be given to BiH, but more importantly of the types, relevance, and finally the value of the extended assistance for BiH's road to Europe.

BiH must take an ownership and become an active partner in the EU accession policy development and implementation process.

BIH'S ROAD TO EUROPE

The June 2000 Santa Maria de Feira European Council¹ recognised that all the countries of the Western Balkans (WB) are potential candidates for EU membership. On December 2002, during the Copenhagen meeting, the Council affirmed this European perspective of the countries of the Western Balkans, and set the criteria, known as “Copenhagen criteria”, which were broadly grouped into: political, economic, and EU standards. From that moment on, indeed all WB countries got an opportunity to join the EU club.

In March 2003, the idea of the enlargement was at its peak. The EC has reiterated that the future of the Western Balkans is within the EU and pledged its full support to the endeavours of the WB countries to consolidate democracy, stability and to promote economic development².

To make this process possible and doable, at June 2003 Thessaloniki meeting, the Council created new instruments to foster closer ties to the EU, including the Stabilization and Association Agreement (SAA), the first step toward eventual EU accession. Along with the other Western Balkan states, Bosnia was entailed. At the time this report is published, BiH, along with other WB countries, continues to actively seek the EU membership.

In this course, Bosnia has encountered a greater degree of difficulty in meeting some of the conditions compared to other Western Balkan countries. Numerous hurdles, including slow progress in defence, security sector³, and public administration reforms, slowed Bosnia's progress in negotiating and concluding the SAA. On June 16, 2008 Bosnia and Herzegovina (BiH) signed the SAA⁴ with the EU. It was the last WB country to do so.

The following compares the pace of BiH's road to the EU (SAA) with its neighbours:

1999: The EU proposes the new SAP for five WB countries.

April 2001: European Commission (EC) and Macedonia⁵ signed the SAA.

October 2001: The EC and Croatia⁶ signed the SAA.

October 2005: The EC recommends starting SAA negotiations with BiH.

October 2007: The EC and Montenegro⁷ signed the SAA.

April 2008: The EC and Serbia⁸ signed the SAA.

16 June 2008: The EC and BiH signed the SAA.

Unfortunately, the problems continued. Complex institutional and political environment in BiH caused significant delays in the accession process. It took BiH five months only to ratify the 2008 IPA agreement, which has seriously delayed implementation of planned activities. These delays compromised the timelines of the implementation of priorities defined by the EP agreements. At times, the EC responded by shifting or relaxing the original set of policy priorities. However, most of these deviations occurred in the implementation phases resulting with projects that failed to meet originally set policy objectives. This was finally manifested in deviations from the original EU accession timetable for BiH and moving toward less concrete and more watered-down integration objectives.

The European Council reiterated that the future of the Western Balkans is within the European Union.

Bosnia and Herzegovina signed the Stabilization and Association Agreement on June 16, 2008, nine years after the SAP was introduced for the Western Balkans countries. It was the last country in the region to sign the SAA.

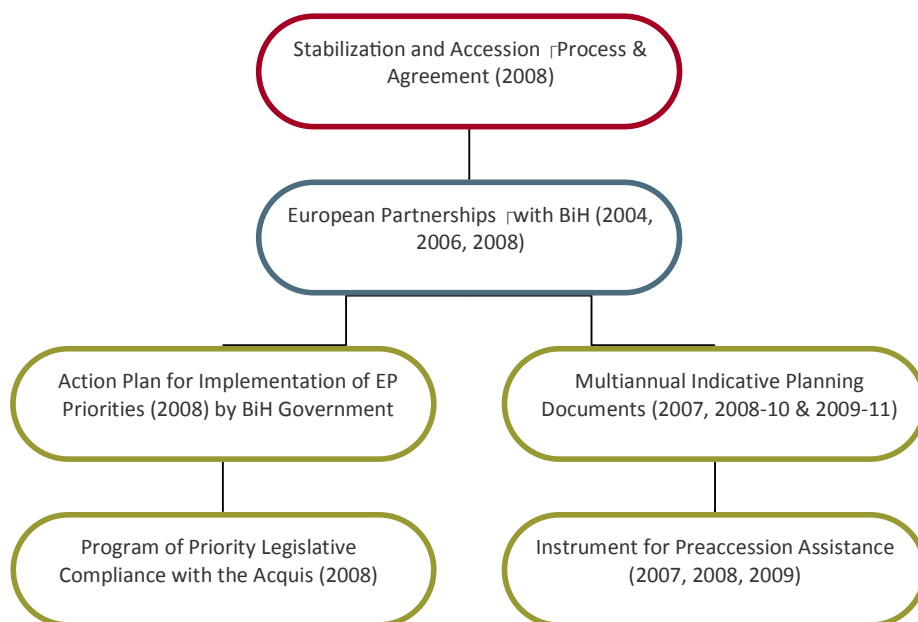
As of today, BiH is one of the few countries in the world that has been excessively documented and analysed in terms of transitional democracy setting, state building and possible EU path directions. Overload of information produced by international and domestic stakeholders is bulky and informative, but not necessarily as adequate or sufficiently transparent to be used by the public.

This report investigates EP process through a case study model that analyses primarily the relevance of undergoing processes and projects designed to follow it, the timeliness, completeness and efficiency of the EP priorities' implementation. The study focuses on the transport sector, one of the most relevant and citizens-oriented policy areas. Using the information gathered from the official sources⁹ the study reviews the progress in implementation of the EP priorities and contrast its findings against the progress reports.

The SAA, European Partnerships with BiH, and all other key documents were developed by the European Commission with only nominal participation of the BiH institutions.

KEY DOCUMENTS AND FACILITIES

To properly examine the context of the BiH's relation with the EU in terms of its participation in the SAP, we need to understand selected key documents and facilities that were developed to guide this process.



It should be noted here that the SAA and all three European Partnerships, as well as other documents described above, were developed by the EC with only nominal participation of the BiH institutions. Additionally, there were delays in implementation resulting in shifting priorities from one EP to the next.

STABILISATION AND ASSOCIATION AGREEMENT (SAA)

The Stabilisation and Association Agreement (SAA) is part of the EU Stabilisation and Association Process¹⁰ (SAP) within the context of the European

Neighbourhood Policy¹¹ (ENP). Integral part of the SAA is the Interim Agreement, which focuses on the trade-related areas of the SAA, has been in force since July 2008. The exact requirements contained within the SAA are tailored for each country within the scope of the Thessaloniki Agenda. However, the SAA does not require the exacting levels of policy harmonisation to those of the member countries, therefore some of the policy areas may be omitted.

The SAA, much like the European Partnership agreements, was prepared by the EC with only nominal participation of the BiH institutions in their development.

EUROPEAN PARTNERSHIPS (EP)

Within the SAP framework for the Western Balkans, the EC has set up European Partnerships (EP) with Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia, including Kosovo, as defined by United Nations Security Council Resolution 1244 of 10 June 1999. The EP agreements provide a policy setting framework¹² and enable a financial structure to facilitate integration with the EU.¹³ They are also intended to propagate the conditionality¹⁴ principles by uniting all EU demands and assistance for meeting them into a single framework. Progress on implementation of the priorities is monitored by Reform Process Monitoring meetings and by the bodies established by the Interim Agreement.

To date, the European Council (EC) has made three Decisions on the Principles, Priorities and Conditions in the European Partnership with BiH. The first EP was adopted by the Council in 2004¹⁵ while Bosnia's politicians were trying to reach a sufficient political agreement on the reforms, so this EP presented an introductory set of priorities only.

The EP was updated on 30 January 2006¹⁶ (2nd EP with BiH) and then again on 18th of February 2008¹⁷ when the 3rd and current EP with BiH was adopted.

This time, they presented progressively extended list of requirements, adding new priorities to reflect the progress made since the previous iterations. These agreements were designed to renew existing relations and provide additional support to BiH's European perspective. EPs identified short and medium term priorities which led Bosnia into a real, contractual relationship with the EU. They called for further reforms in presented areas and committed the BiH Government to align its legislative framework with the Acquis.

ACTION PLAN FOR IMPLEMENTATION OF EP PRIORITIES

The three EPs set priorities for policy reforms on a timetable of short-term and medium-term priorities to provide guidance to the country. *In practice this means that the short-term priorities were expected to be completed within one to two years. The medium-term priorities should be completed in three to four years or alternatively, as the case study will show, transferred into short-term priorities when the EP is updated within the next two years.*

In response to this identification of priorities, the authorities developed an Action Plan for Implementation of the EP Priorities (AP) in 2008, which details on the implementation of the EP priorities. It was developed by the Directorate of European Integrations (DEI), a State-level agency responsible for coordinating the overall task of EU accession process for BiH. The Council of Ministers of BiH

The European Council has adopted three European Partnerships with Bosnia and Herzegovina to date. The latest update was adopted on February 18, 2010.

The BiH Government has adopted an Action Plan for Implementation of the EP Priorities in 2008 and a

(CoM) adopted the plan, thereby committing to implement the EP priorities within the agreed timelines. The Action Plan was accompanied with a Document of Legislative Priorities for Compliance with the Acqui (Acqui Priorities).

The AP grouped priorities into Chapters (political, economic requirements, and European standards). The priorities are further organized into Sections (e.g. Democracy and Rule of Law, Sectoral Policies), then Areas (e.g. Transport Policy) and Priority Codes (e.g. SEE-CRTN [EP3.KP.094], Roads [EP3.KP.095], Railways [EP3.KP.095]). The measures to implement priorities are listed for each Priority Code with clearly identified deadlines and a responsible institution(s).

FINANCIAL ASSISTANCE

The 2009-2011 Multi-Annual Indicative Planning Document (MIPD) for BiH was adopted in July 2009 as the latest of the three MIPDs¹⁸ for BiH. The MIPDs were created by the EC to direct spending of the Instrument for Pre-Accession Assistance (IPA)¹⁹, a facility designed to provide financial and technical assistance²⁰ to support BiH's on its road to the EU accession.

IPA translates more general goals of MIPDs into specific implementation activities implemented through technical assistance and twinning projects. These projects are programmed in a standardized Project Fiche formats and represents the scope of implementation of the MIPD.

However, the scope and volume of available funding does not cover the entire breadth and width of the EP requirements. The EU assistance needs to be more closely coordinated with other donors and international actors.

For this process to be successful, it requires not only 'Donor Coordination Forum' to contribute to the programming and provision of funds needed for implementation of the priorities.

It is of paramount importance to ensure forward-looking, optimal synergies between the available IPA funding, international donors, and most importantly BiH Government's own budgetary allocations if the needs are to be efficiently managed for successful completion of the EP priorities.

CASE STUDY: TRANSPORT POLICY

The 3rd European Partnership (EP) With Bosnia and Herzegovina dated 18/02/2008:

Chapter (EP Priority):	EU Standards
Section:	Sectoral Policies
Area:	Transport Policy
Priority Codes (included):	Development of SEE-CRTN [EP3.KP.094] Road Transport Acqui Approximation [EP3.KP.095] State Railway Law & Network Statement [EP3.KP.096]
Priority Codes (excluded):	EU Common Airspace, 1st Transitory Phase [EP3.KP.097] Conditions for Competition on Railways [EP3.KP.160] Transport Acquis Approximation [EP3.KP.161] EU Common Airspace, 2nd Transitory Phase [EP3.KP.162]

INTRODUCTION

Since 2004, when the European Partnership has been mentioned for the first time, to date Bosnia faced numerous tasks to uptake on its path to the EU. The recent reports²¹ painted a worrying picture of the EP implementation progress and the pace of the reforms. To this day, however, it remains unclear exactly how much has been achieved in the EP priority reforms implementation, how relevant is the prioritization of the short-term and medium-term tasks, and how feasible are the current EP’s and Action Plan’s targets.

The debate upon this matter was, nonetheless, limited to the amount of money (not) spent as the information about the progress was too vast and too unstructured to be easily understood and interpreted by the public. What was missing in this debate was the question relevance of the projects BiH is about to uptake: Were they tailored according to the specific country needs, what are the priorities, and what is their relevance for BiH.

This study discusses the progress made in the transport sector, one of the most relevant and citizens-oriented policy areas. The transport sector was identified as an example of a success²², having performed particularly well in comparison to other sectors.

More importantly, the transport sector is an ideal field in which the Balkans can exploit and take advantage of their favourable geographic position and its geopolitical importance. BiH participates in development of the SEE Core Regional Transport Network that linked to, and compatible with the trans-European networks, stands at the helm of WB countries’ efforts to integrate in the political and economic mainstream of Europe. Railways and roads transport play a key role to play in providing safe and cost-effective transport of goods that will foster the development of trade within the region and between the region and the European Union.

Three selected areas²³ of transport policy are reviewed to explore and test the nature of progress, achievements and problems. In its review, the study poses one simple question: “with all the available assistance, are we getting any closer

to the EU". In corresponding analysis it traces the pace of Bosnia's progress to the EU and the links between the policy priorities set in the top-level documents: Stabilization and Association Agreement (SAA), European Partnership with BiH (EP), the BiH Government's Action Plan (AP), and Multi-annual Indicative Planning Documents (MIPDs) and the corresponding EC financial and technical assistance extended through the IPA framework and its projects.

ROAD TO EUROPE

SEE CORE REGIONAL TRANSPORT NETWORK (SEE-CRTN) [EP3.KP.094]

The land transport in the Balkan region is important for two reasons: firstly because transport infrastructure and services are lagging behind the trends in the region and the EU, and secondly because it is nodal for transport between east and west. Transport is an ideal field in which the Balkans can exploit and take advantage of their favourable geographic position and its geopolitical importance.²⁴

The sector's importance has been recognized also by the EU: "Establishing adequate transport networks in the South and Eastern Europe (SEE), linked to, and compatible with the trans-European networks is a joint objective of the countries of region, and constitutes part of their efforts to integrate in the political and economic mainstream of Europe"²⁵.

For the first time after 90ies and within the European framework, a significant development momentum was created when BiH signed the Memorandum of Understanding²⁶ (MoU) committing to cooperate in enhancing the development of the SEE Core Regional Transport Network (SEE-CRTN)²⁷.

In a series of actions, significance of this joint venture was underlined. The European Partnership with BiH (EP) from 2006 confirmed the SEE-CRTN's importance and established a medium-term priority to complete the 'Implementation of the MoU of the SEE-CRTN'²⁸ by 2010. The updated EP from 2008 reconfirmed its importance by 'promoting' this requirement to a short-term priority and reaffirming the 2010 completion deadline.

Despite its importance and the regional character of this priority, the BiH Government's Action Plan (AP) from 2008 failed to confirm the 2010 due date for implementation of this priority. Instead, the AP stated that "additional consultation was required", a status usually reserved for politically infeasible projects or whose completion requires institutional capacity to be built. This issue of regional importance has been used as a political scapegoat, BiH's lack of commitment to the SEE-CRNT implementation was not publicly discussed, and solutions were proposed. Today, the country is not benefiting from regional initiatives, such as establishment of "Cargo 10", a joint cargo railway corporation²⁹ due to delays and lack of progressive and critical thinking in BiH.

A. IMPLEMENTATION

On the implementation level all three MIPDs recognized the regional importance and complexity of the MoU's implementation³⁰ and important

SEE-CRTN is key to integrating the region in the political and economic mainstream of Europe.

On joining Cargo 10:

*"...[Cargo 10] is our only way salvation and way forward since the rail companies have closed the markets & lost (all) business opportunities."
Dušan Spremo, RS Railways' Executive Director for Operations.*

"... [Cargo 10] is the only means for us to enter the markets... but delays were caused by the management changes..." Nijaz Puzić, FBiH Railways' Executive Director for Operations.

reference, at this stage, was made in the 2007 National Program (NP) stating that BiH had “completed reconstruction of 60km of track for SEE-CRTN and has established the preconditions (financial and design) for a further 210km”³¹. The MCT’s Project Management Unit prepared the projects to received EUR 22.3 million from the IPA Framework³².

The projects were developed to increase the institutional capacities, provide technical assistance to harmonize BiH regulation with the Acqui, and most importantly, to improve the SEE-CRTN infrastructure, including:

- (i) Construction of the Mahovljani motorway exchange,
- (ii) Rehabilitation of the railways safety-signalling systems,
- (iii) Overhaul of the railway infrastructure, and
- (iv) Rehabilitation of the water ways on Sava as part of the SEE-CRTN

B. PROGRESS

In 2008, EC published its flagship report. Its Progress Report used very “symbolic” institutional language stating the following: there was evidence that BiH “has continued to actively participate in the implementation of MoU”. In EC terminology that is called “Good progress”. That meant that BiH was well on its way to fully implement the MoU and was doing a “good” job. Then, a year later, the 2009 EC Progress Report downgraded the performance to “slow but continued progress”³³.

But the buck didn’t stop there. As the preliminary designs and plans for a Pan-European corridor were presented, there was an indication that the institutional capacity of the MCT was insufficient to effectively prioritise investments. The South East Europe Transport Observatory (SEETO) workshop participants³⁴, who discussed the alignment of the SEE-CRTN countries’ laws with the EU Directives, questioned the soundness of implementation plans and pointed out to the persistent problems in BiH, including:

- (i) Lack of capacity and slow pace of implementation
- (ii) Lack of non-discriminatory access to (railway) infrastructure,
- (iii) Lack of the state-level authority, stressing that the entity-level railways were not obeying the state-level requirements.

Even though the concerns were raised in 2009 by the SEETO and other actors, there was no debate in BiH on this issue and as a result the entity operators have maintained sole access to their rail infrastructures and their desire to open the markets remains very low. The key sector-level documents, such as the transport policy, strategy and action plans, are not developed.

This is negatively affecting the programming of next MIPD (2011-13) and delays access to the IPA’s Components. But more importantly, the lack of these documents is preventing open access to the BiH’s infrastructure and the country’s participation in the regional Core Network.

The SEE-CRNT MoU is not fully implemented.

Key sector-level documents, such as the transport policy, strategy and action plans, are missing.

The State Law on Railways needs to be fully implemented and in compliance with the Acquis Communautaire

STATE LAW ON RAILWAYS & RAILWAY NETWORK STATEMENT
[EP3.KP.096]

The European Partnership with BiH (EP) from 2006 stated that an obligation to ‘implement the State Law on Railways’ is a short-term priority, implying a 2008 deadline for this task³⁵. This priority was a result of the fact that the adopted State Law on Railways³⁶ was **not harmonized** with the EC Directive 2001/14³⁷, and was only partly in compliance with the EC Directive 91/440³⁸.

The reforms are advancing, albeit slowly.

In 2008, however, the third EP extended the deadline to “**fully implement the State Law on Railways**” by 2010³⁹. This was yet another delay caused by lack of concrete action was missing at the implementation side. BiH was falling behind the neighbouring countries and the need to accelerate reforms became urgent as the 2010 target, set for all countries in the region, was not to be missed.

In response to this priority, the BiH Government’s Action Plan from 2008 committed to a February 2010 deadline. However, **no measures were proposed** and instead of developing mechanisms for its implementation, the priority was classified as an “*additional consultation required*”, using the same excuse of ‘political uncertainty’ or ‘institutional capacity’, as described in the SEE-CTRN (EP3.KP.094) section above. Furthermore, this priority was omitted in the 2008 Acquis Priorities document even though the adopted Law was not compliant with the Acquis. It will be interesting to see what conclusions will the next EC’s Progress Report and the following DEI’s semi-annual report substantiate.

The need persists to accelerate rail reform.

A. IMPLEMENTATION

On the implementation side, the importance of this priority was aptly reflected by the 2008-10 MIPD and the 2007 National Programme. The IPA (2007-2009) framework implemented several projects related to this priority, here are some:

- (i) EUR 0.7 million, 2007 capacity building project for the MCT⁴⁰,
- (ii) EUR 1 million technical assistance project in 2008 to “implement the Law on Railways of BiH and to identify, adopt, and implement the Acquis provisions related to the railway sub-sector”⁴¹, and
- (iii) EUR 14 million IPA-2009 project to ‘Improve regional transport infrastructure core network in Bosnia and Herzegovina’, which was co-funded by the EC, EIB, and EBRD with a goal to build a trans-European road and rail network.

The ‘Railway Package II’ Directives on rail safety remain to be implemented.

This represents almost 10% of the total IPA allocation for BiH in the period from 2007 to 2009. It included three significant capacity building twinning assistance projects aiming to enable the BiH key institutions to implement the EP priority reforms.

B. PROGRESS

Despite the technical and financial assistance extended in this area, the progress in this sector was described in the EC’s 2009 Progress Report⁴² as “*advancing, albeit slowly*”.

The Railway Regulatory Board (RBB) has completed its recruitment and training, but in the latest DEI’s report progress was limited to the RBB’s issuing “*some licenses for freight wagons*” and for FBiH only⁴³.

The Railway Package II Directives on rail safety remain to be implemented and the SEETO⁴⁴ voiced concerns the lack of reform progress and the persistent problem in BiH concluding that a **“swift action is required to establish full compliance with the EU Directives if the 2010 target, set for all countries in the region, was not to be missed”**⁴⁵.

The RS Railways and the FBiH Railways have issued their network statements, but otherwise little substantial progress was made in this area. Railway companies remained vertically integrated and infrastructure managers are not independent, which is an Acquis requirement. The laws are not harmonized with the EU Directives, and most importantly, the conditions for open access to railway markets were not created.

In conclusion, while the institutions have reported (some) progress, the findings showed that in practice the entity have maintained their monopolistic positions, prevent transparent access to the railway infrastructure, and have little or no desire to open to the markets. The true price of the stalemate and inability to implement reform priorities is that the country and its citizens are not able to benefit from regional initiatives to access markets, such as the Cargo 10 joint corporation, and the lack of market liberalisation hinders economic growth.

Railway companies remained vertically integrated and infrastructure managers are not independent hindering competition and market liberalization.

ROAD TRANSPORT ACQUIS APPROXIMATION [EP3.KP.095]

*“Each mode has a role to play in providing safe and cost-effective transport of goods that will foster the development of trade within the region and between the region and the European Union”*⁴⁶.

The importance the road transport legislative approximation to the Acquis was recognized in the European Partnership with BiH (EP) from 2004. It stated that *“BiH needs to begin the process of bringing its transport legislation in line with the Acquis”* and warned that *“where legislative approximation is concerned, incorporation of the EU acquis into legislation is not in itself sufficient; it will also be necessary to prepare its full implementation”*.

Incorporation of the EU acquis into (road transport) legislation is not in itself sufficient; it is necessary to prepare its full implementation.

The EP update from 2006 defined the 2010 deadline for this (medium term) policy priority and the EP in 2008 confirmed this priority and its 2010 deadline, citing the need to *“ensure progressive approximation of legislation to the transport acquis, notably as regards technical and safety standards, social standards and market liberalisation”*⁴⁷.

This meant that the BiH authorities had four years to harmonize the country’s legislative framework with more than **90 EU Directives**⁴⁸ to achieve this approximation. There was a long way ahead for BiH to meet standards that will match the EU perspective on road transport.

The BiH Government’s 2008 Action Plan made a reference to the priority need to *‘Approximate the laws of the acquis in the field of road transport’* and listed the June 2009 deadline for the measure: *‘Implementation of Regulations on technical inspections of vehicles (binding of inspection stations in a single information system)’*. The Action Plan also set the February 2010 deadlines for implementation of three more priority measures in this Area⁴⁹. While these measures were designed to address a range of technical activities, no specific measures were identified to deal with the overall road transport Acquis approximation.

A. IMPLEMENTATION

Looking into the implementation of these priorities, it is notable that the MIPD assumed achievement of more modest outcomes. The 2007-09 MIPD stated that the *'alignment of the transport sector to the Acquis will be advanced'*, whilst the 2008-10 and 2009-11 MIPD reiterated this requirement advance approximation of the road transport Acquis. In contrast, the 2007 and 2008 National Programmes (NP) stated that there is a need to make progress *"first in road maintenance and road safety"*⁵⁰ before other aspects of road transport, such as Acquis approximation were tackled. *The NP document, two years after completely ignored the issue.* The result of this programming was that no IPA-funded projects were awarded to the transport sector⁵¹.

B. PROGRESS

The latest DEI's semi-annual report (as of Dec 2009) stated that the June 2009 tasks were completed as of September 2009. However, the completion of that activity and its relevance in terms of the overall approximation to the EU standards in the road transport segment can only be tested in practice as the regulation comes into effect.

Nonetheless, the reports said nothing of the level of completion and quality of road transport Acquis approximation, just that the first of the technical activities were completed. At the same token, completion of the remaining priority measures, due on February 2010, should be reflected in the next EC's Progress Report and confirmed in the following DEI's semi-annual report.

CONCLUSION

Take a scenario: It's 2010 and the regional roads and railways are fully opened to markets allowing unrestricted access to its infrastructure running the most modern multi-modal cargo transport system in compliance the EU grade safety and technical requirements. The fully staffed and operational roads and railways authorities have an automated system of licensing for all operators and the Adriatic ports are work at capacity to 'feed' the railway system with cargo.

It is 2010, and BiH is at the deadline for implementation of EP priorities in this area, but the reality is nowhere near this scenario. BiH has indeed signed a Core Transport Network MoU, but has it has never been fully implemented. The key sector-level documents, such as the transport policy, strategy and action plans, are not developed. This is negatively affecting the programming of next MIPD (2011-13) and delays access to the IPA's Components.

But more importantly, the lack of these documents is preventing open access to the BiH's infrastructure and the country's participation in the regional Core Network. It is difficult to imagine just how the economy is expected to recover and grow without these facilities in place and operational.

Furthermore, the pace of the Acquis approximation is anything but satisfactory (Law on Railways was adopted but it is not compliant with the EU Directives).

Acknowledging "*slow, but continued progress*" cannot serve an excuse much less a substitute for an active participation in the reforms. Again, it is 2010, a deadline for "short-term" priorities imposed by the EP. The authorities will be hard pressed to show satisfactory progress in this area (road transport regulation needs to be harmonized with over 90 EU directives and so far, that process has been opaque at best).

It is encouraging that the MCT's Project Implementation Unit (PIU) is staffed, trained and operational. It has assumed its portion of responsibility and works to put forward concrete outputs.

Overall assessment, however, still implies modest success. Incessant lack of capacities, poor pace of setting up state authorities, and poor authority exercising track-record makes the whole structure cumbersome for the EU compliance and raises concerns over the BiH institutions' achieving 2012 priority implementation targets. Set of very technical requests could have been completed, but never did under the pretext of the complex political dynamics. Standards that were adopted are deficient in terms of operationalization and the process of training and staffing institutions progresses with considerable delay.

We're at the mid-point of the EP implementation and it is the high time for BiH to take ownership and become an active partner in the process. It needs to setup the structures needed to implement the priorities, and do a comprehensive stock-taking exercise over what has been achieved to date, what is really needed and in what order. Assuming ownership over complex planning and implementation processes is challenging but essential for success.

To contribute to the effort, guided by the lessons learnt from the study, we offer the following recommendations:

- (i) *BiH authorities need to take ownership over the priority reform processes and become an active partner in the EP update, MIPD and IPA programming. They need to join those discussions at the beginning 'armed' with the insider's knowledge to ensure that the priorities are implemented in ways that are most beneficial for the country.*
- (ii) *Stock-taking exercise of what is really needed, in what order, and when. BiH needs to recall that the EU membership is a policy orientation and a vision, and that the Road to EU is far more important than the membership itself. That Road brings standards and best practices from EU member countries that will help rebuild the country, revitalize its economy, and increase the wellbeing of the nation.*
- (iii) *An immediate update of the EP for BiH is needed, but it has to be done taking into account true progress and achievements, and the real needs.*
- (iv) *All ministries and other relevant BiH institutions must immediately establish fully operational and competent PIUs to actively participate in the development and implementation processes.*
- (v) *Progress and the country's performance need to be scrutinized closely, and proactively monitored. Process monitoring need to be setup and forward-looking planning exercises need to occur on regular intervals to prevent delays or transferring priority implementation targets from year to year with little apparent progress taking place between the EP updates.*
- (vi) *Forward-looking, optimal synergies between the IPA funding, international donors, and the BiH Government's own budgetary allocations need to be achieved and efficiently managed to ensure successful completion of the EP priorities implementation.*

ENDNOTES

¹ http://www.europarl.europa.eu/summits/fei1_en.htm

² Quote from the Thessaloniki agenda for the Western Balkans: Moving towards European Integration: http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/sap/thessaloniki_agenda_en.htm

³ It is interesting to note here that Bosnia was also required to reform its police force, a requirement presented to no other WB country...

⁴ http://www.europa.ba/files/docs/publications/en/SAP_en.pdf

⁵ http://www.delmkd.ec.europa.eu/en/eu_and_fyrom/agreements.htm

⁶ <http://www.euractiv.com/en/enlargement/eu-croatia-relations-linksdossier-188293>

⁷ http://ec.europa.eu/enlargement/potential-candidates/montenegro/relation/index_en.htm

⁸ http://ec.europa.eu/enlargement/potential-candidates/serbia/relation/index_en.htm

⁹ The sources include the EC's and the DEI's progress reports, as well as interviews with the government officials, EC representatives, and key stakeholders in BiH.

¹⁰ The SAP was created for the potential candidate countries that aspire to become EU member countries in order to avoid socio-economic shocks or political setbacks at the time of accession. This is achieved by requiring that a potential candidate country achieves a greater level of political consolidation and economic stability before the accession talks commence.

¹¹ ENP link: http://ec.europa.eu/world/enp/index_en.htm

¹² The partnerships for the West Balkan Countries have Regulation (EC) No 533/2004 as their legal basis.

¹³ http://europa.eu/legislation_summaries/enlargement/western_balkans/r18008_en.htm, note: As a candidate country for which membership negotiations have already begun, Croatia benefits from its own accession partnership

¹⁴ The EU assistance to the western Balkan countries is conditional on further progress in satisfying the Copenhagen criteria as well as progress in meeting the priorities listed in the EP. This assistance is also subject to the conditions defined by the Council in its conclusions of 29 April 1997, particularly in regards to the recipients' undertaking to carry out democratic, economic and institutional reforms. Specific conditions are also included in individual annual programmes. The EC monitors the EP implementation through regular (usually annual) reports summarizing the potential candidates' preparations for accession. Failure to respect these conditions could lead the Council to take appropriate measures on the basis of Article 21 of Regulation (EC) No 1085/2006 or, in the case of pre-2007 programmes, on the basis of Article 5 of Council Regulation (EC) No 2666/2000.

¹⁵ European Partnership 2004: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004D0515:EN:HTML>

¹⁶ European Partnership 2006 was based of the findings of the 2005 Commission's Progress on BiH. Available at: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=306D0055

¹⁷ European Partnership 2008: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:080:0018:01:EN:HTML>

¹⁸ MIPD 2007 and MIPD 2008-10 preceded the current MIPD 2009-2011

¹⁹ The funding is split by component of IPA: in BiH's case as a potential candidate, only components I and II. The first is the largest and most important: in 2009 for BiH, EUR 83.8 million was given for component I, but only EUR 5.2 million for component II.¹⁹ The broad component I – 'Transition Assistance and Institution Building' – is divided into more specific criteria: political, economic, ability to assume the obligations of membership and support. These are further divided into objectives and expected results. For example, under political criteria, one objective is to 'support development of civil society', where an expected result is 'A permanent dialogue between authorities and civil society'. Link:

http://www.delbih.ec.europa.eu/files/docs/en/ipa/2_-_Implementing_Council_Regulation.pdf

²⁰ The MIPD and the annual IPA-related National Programmes (NP) were developed by the EC in consultation with the BiH National IPA Coordinator (NIPAC). It is expected that once the BiH Decentralized Implementation System (DIS) is established, the Directorate for European Integration (DEI) will take over the planning and

programming. The funding available is defined by the Multi-Annual Indicative Financial Framework (MIFF), which details the funds available per period (usually year) and per component of the IPA. The MIPD outlines the areas of activity that require and are eligible for funding. The spending commitments are outlined for a three year period, following the short-term and mid-term priorities identified by the EP. The MIPD's focus is established by the EP, Progress Reports and EU enlargement strategy. The MIPDs are reviewed and updated annually.

²¹ Article on: <http://www.vesti.rs/Ekonomija/Od-175-uslova-ispunili-samo-jedan.html> stated that "BiH authorities have completed on the visa liberalisation process, a single completed priority from 175 EP priorities for BiH. The implementation of all other priorities has not yet started or was only partially completed"

²² The implementation activities are managed by the Ministry of *Transport and Communications of BiH's (MCT) Project Implementation Unit* and coordinated by the Directorate for European Integrations of BiH. The Unit is lead by an SPO has a staff of 5 people. The MCT and the Unit have commended for their successes by both the DEI and the EC Delegation in BiH. The unit is one of the first such units established in BiH and has received extensive training and technical assistance. Based on the interview with Mr. Nebojsa Zecevic, a task manager within the DEI held on 03/08/10

²³ It should be noted that the study was limited to those areas which have completion dates set for 2010 or earlier. For clarity, we will use the both the official activity Priority Codes and the name of activity as they are used in the European Partnership agreements, the Action Plan and the breath of implementation documents (all the way down to the IPA Project Fiches). For instance, the "State Law on Railways & Network Statement" activity bears a Priority Code [EP3.KP.096]. For easier reference, we have also included this legend at the beginning of the case study.

²⁴ The role of transport in the development of the Balkans; pantelis skayannis, Department of Planning and Regional Development and South and East European Development Center (SEED), University of Thessaly, Greece HARALAMBOS SKYRGIANNIS Department of Planning and Regional Development,, University of Thessaly, Greece, http://www.seedcenter.gr/projects/MNE/1stconfer/1stconf_papers/Skayannis.pdf

²⁵ Available at: <http://ec.europa.eu/enlargement/archives/seerecon/infrastructure/sectors/transport>

²⁶ The MoU was signed by the European Commission, Albania, BiH, Croatia, the Former Yugoslav Republic of Macedonia, and Serbia and Montenegro (including Kosovo)

²⁷ The Network includes "4,300 km of railways across five countries in the Western Balkans, 6,000 km of roads, major ports and airports, and the inland waterways of the Danube and the Sava" and the total cost of developing the SEE-CRTN was estimated at over EUR 16 billion. This arrangement has also facilitated the Regional Steering Committee, which serves as a regional coordinating mechanism, to supervise and promote implementation of the Core Network. Its members are senior civil servants from the signatory countries and their involvement is designed to ensure a continuity of approach to the process. Stability Pact for South Eastern Europe: For more information visit the Report on Regional Transport Cooperation:

<http://www.stabilitypact.org/wt2/RTC.asp>

²⁸ Signing the MoU, only three days prior to the publication of EP 2004, for Bosnia, no SEE-CRTN commitments were identified as short or medium term priorities. What was left was the MoU's Annex II that sets out clearly what should be included in future action plans, including an extensive stock-taking exercise of the existing network, and an "implementation schedule for each prioritised element in the plan, with the most reliable possible information for years one and two, and best estimates for subsequent years".

²⁹ Article: <http://www.nezavisne.com/stampano-izdanje/eu-bih/Cargo-10-dobar-znak-za-integraciju-regiona-69452.html>

³⁰ The 07-09, 08-10, and 09-11 MIPDs described the intent that BiH will continue to implement MoU on the Core Transport Network.

³¹ National Program 2007: http://ec.europa.eu/enlargement/pdf/bosnia_and_herzegovina/ipa/ipa_2007annex-20080529_en.pdf

³² MIPD 2011-13 Consultation Workshop's review of IPA implementation, held on 23/06/10

³³ BiH 2009 Progress Report (p. 50):

http://ec.europa.eu/enlargement/pdf/key_documents/2009/ba_rapport_2009_en.pdf

³⁴ Support for Implementing Measures for the South East Core Regional Transport Network (SE-CRTN) Multi Annual Plan (EuropeAid/125783/C/SER/ MULTI) – 04/28/2009 SEETO Workshop

³⁵ The same document also established a medium-term priority to ‘*continue the restructuring and liberalisation of the railway sector*’ a key to creation of a rail network statement enabling an open access to the BiH’s rail infrastructure.

³⁶ The State Law on Railways was adopted in 2005 (Official Gazette of BiH, No. 52/2005)

³⁷ European Directive 2001/14 (26/02/2001) provides for open access to railway infrastructure capacity as well as the levying of charges for safety certification and use of railway infrastructure

³⁸ European Council Directive 91/440/EC (29/07/1991) provides for the rights of multiple users on international rail infrastructures

³⁹ The EP 2008 also required to immediately “prepare railway network statement for open access to infrastructure use” and to create conditions for competition on the railway track over the medium-term.

⁴⁰ The twinning project’s goal was the MCT’s institutional development and capacity building ‘concerning establishment and functioning of the Railway Regulatory Body, to assure implementation of the law in line with the *acquis* and EU principles’. Project fiches is available at:

http://ec.europa.eu/enlargement/pdf/bosnia_and_herzegovina/ipa/43_provision_of_technical_assistance_to_railway_authorities_en.pdf

⁴¹ Article ‘BiH Railway Twinning Project successfully completed’:

<http://www.europa.ba/?akcija=vijesti&akcija2=pregled&jezik=2&ID=218>

⁴² EC in BiH 2009 Progress Report p. 50

⁴³ The RS railroads have not yet submitted their requests to the RBB.

⁴⁴ Support for Implementing Measures for the South East Core Regional Transport Network (SE-CRTN) Multi Annual Plan (EuropeAid/125783/C/SER/ MULTI) – 04/28/2009 SEETO Workshop

⁴⁵ EU echoed this urgency in the 2009 Progress Report with “The need persists to accelerate rail reform in accordance with the ‘Addendum to the Memorandum of Understanding on the development of the South-East Europe Core Regional Transport Network for a South-East European railway transport area’”.

⁴⁶ GIBB Ltd. 1997

⁴⁷ European Partnership 2006

⁴⁸ Action Plan 2008: p. 7 & Annex No. 46 pages 167 - 187

⁴⁹ The actions with the February 2010 deadline are: ‘*Full implementation of the Ordinance on technical inspections of vehicles AETR Use Agreement*’ (EU Directive 561/2006) and ‘*Implementation of the Licensing Rulebook*’.

⁵⁰ National Program 2007: http://ec.europa.eu/enlargement/pdf/bosnia_and_herzegovina/ipa/ipa_2007annex-20080529_en.pdf

⁵¹ None of the road transport area projects submitted by the MCT PIU and the DEI to the EC in BiH were approved