

# Report to the European Parliament by the OHR and EU Special Representative for BiH, July – December 2003

End of year report for the European Parliament

July – December 2003

## Summary

During the second half of 2003, the Office of the High Representative (OHR) continued its efforts to oversee implementation of the civilian aspects of the 1995 Peace Agreement for Bosnia and Herzegovina (BiH).

The OHR remained focused on its overall **aim of setting Bosnia and Herzegovina (BiH) irreversibly on the road to statehood within the European Union (EU)**, and on preparing the ground for a **phasing out of its own mission** within the coming years.

The hallmark of the OHR's work in BiH remained the continued implementation of its **Mission Implementation Plan (MIP)**. In December 2003 the OHR presented for endorsement by the Peace Implementation Council (PIC) an update to its MIP; a formal assessment for the first year of the MIP; and set out clearly the essential objectives that for the OHR's work in 2004 and beyond. In light of progress made, the OHR **reduced the number of core tasks** remaining from six to four for 2004.

During the reporting period, clear progress was made on each of these priorities.

As part of entrenching the **Rule of Law** in BiH, considerable progress was made in establishing a State-level **High Judicial**

**and Prosecutorial Council (HJPC)**. Together with local and international partners, both the OHR and the European Union Police Mission (EUPM) continued to oversee the establishment of the **State Information and Protection Agency (SIPA)** for BiH. SIPA's establishment is the first phase in the overall police restructuring effort by anchoring competency for complex and serious crimes, including most organised crimes, terrorism, and war crimes at the State level.

The work of the **three expert reform Commissions** launched by Lord Ashdown earlier in the year – covering **Indirect Tax Policy, Defence, and Intelligence** – dominated the latter half of last year, as these commissions completed their mandates, presented their findings, and formulated strategies for the next phase of operations. **A further reform Commission**, aimed at unifying the ethnically divided city of **Mostar**, produced its recommendations in December.

In the second half of 2003 the close co-operation between the OHR, the EU and the United States continued in the area of **disabling support networks of Persons Indicted for War Crimes (PIFWCs)**. On 30 October, the OHR organised a donors' conference hosted by the ICTY in The Hague to raise funds for the **implementation of the Domestic War Crimes Chamber project**. The conference resulted in pledges of 15.7 million euros.

Apart from the progress in establishing the Indirect Tax Authority, on the **economic front** the OHR also oversaw an agreement on an **internal debt plan**, which removed a major obstacle to investment and job creation in Bosnia and Herzegovina. The second stage of the **Bulldozer Initiative was launched**. This programme is designed to help BiH businesses tear down roadblocks and cut through red tape in order to free up the economy for growth and job creation. During the reporting period, the Bulldozer Committee identified a further 50 economic roadblocks for removal.

The **public administration reform** was further strengthened by

the appointment of a National Co-ordinator at the BiH Ministry of Justice. Throughout the reporting period the OHR continued, in close consultation with UNDP, to supervise the last phase of the establishment of the **Federation Civil Service Agency**.

In the field of refugee return, the progress of early 2003 continued with the BiH institutions taking over full responsibility for this issue during the final months of the year. In view of this substantial progress it was possible to **close the Refugee Return Task Force** as a separate OHR function **on 31 December**. However the OHR has retained a small Verification Unit actively to monitor the process and to advise the domestic partners on the realisation of their strategic goals.

During the reporting period, the High Representative further **reduced the use of his executive powers**. In 2003 the executive powers were used 96 times of which 36 times between July-December. **This trend is expected to continue** as BiH progresses steadily within the Stabilisation and Association process.

In November, the European Commission issued its **Feasibility Study for BiH**, including 16 priority areas for action where Bosnia must make substantial progress if the European Commission is to be in a position to recommend the opening of SAA negotiations. In December, NATO issued clear benchmarks for BiH's entry into the **Partnership for Peace (PfP)**.

## **Political developments**

The reporting period was marked by political clashes between the Government and opposition, coupled with growing tensions in the ruling coalition, dominated by the three national parties. The opposition parties from both Entities made some attempts to consolidate forces before the October 2004 municipal elections.

Relations between SDA and HDZ – the two main governing parties in the Federation of BiH – remained strained, sustaining

parallelism along ethnic lines, in spite of the constitutional changes introduced two years ago. Increasing political jostling within the SDA leadership, in part triggered by the illness and death of the party's founder and first president of BiH, Alija Izetbegovic, had an impact on the government of the Federation; in particular on the position of Prime Minister Ahmet Hadzipasic and his government. In the Republika Srpska tensions in the governing coalition did not lead to the often-predicted reshuffle of the government. However much debate continued to surround the constitutional position of the RS, given the State's assumption of new competencies in the areas of defence and taxation.

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Two important reforms in the areas of defence and taxation were adopted at the State level in December, establishing two key institutions with state-wide competencies. The BiH Defence Law gave the BiH Presidency command and control of the armed forces across the country. It also established a BiH Ministry of Defence with a policy-setting role in all matters and a new operational command at the State level. The Law on Indirect Taxation established the state-wide Indirect Taxation Authority, which, for the first time in BiH's post-war history, will provide a guaranteed source of income to the State treasury. The BiH Parliament passed these two laws with the support of the Entity parliaments, although strong international pressure on the governments and parliaments was necessary to adopt both reforms.

During the reporting period Lord Ashdown also launched a new Commission under international community chairmanship with the aim of unifying the city of Mostar . This ethnically divided

city remains – eight years after the war – a collection of municipalities without coordination or the capacity to generate development, while threatening to destabilise BiH as a whole. In December, the Chair produced recommendations outlining the steps that needed to be taken to ensure Mostar has a unified administration.

The once disputed Brcko District also moved forward in the latter part of the year, particularly with regard to judicial reform and property repossession. The Brcko Assembly succeeded in adopting a long awaited but controversial Election Law in the summer, enabling the Brcko Supervisor to schedule the District's first local elections, to be held at the same time as BiH's municipal elections in October 2004

## **Mission Implementation Plan**

In December 2003, at the PIC Steering Board meeting in Brussels, the OHR presented for endorsement an update to its Mission Implementation Plan. This comprehensive document served as a formal assessment for the first year of the MIP, and set out clearly the main elements of OHR's work in 2004. In light of progress, the OHR reduced its number of core tasks remaining from six to four for 2004, to include the following:

- Entrenching the Rule of Law
- Reforming the Economy
- Strengthening Capacity of BiH's Governing Institutions, especially at the State Level
- Establishing State-level Civilian Command and Control over the Armed Forces

The updated MIP can be found with the original document on OHR's web page at <https://www.ohr.int/ohr-info/ohr-mip>.

This report is based on the original six core tasks of the OHR's MIP 2003, namely:

- Entrenching the rule of law

- Ensuring that extreme nationalists, war criminals, and their organised criminal networks cannot reverse peace implementation
- Reforming the economy
- Strengthening the capacity of BiH's governing institutions, especially at the State-level
- Establishing State-level civilian command and control over armed forces, reform the security sector and pave the way for integration into the Euro-Atlantic framework
- Promoting the sustainable return of refugees and displaced persons.

### **Entrenching the Rule of Law**

The OHR continued its work to implement Lord Ashdown's stated priorities of "first justice, then jobs, though reform." Through the Independent Judicial Council (IJPC), the OHR has continued to oversee the complete restructuring of the court system in BiH. This process, slated for completion by April 2004, was designed to deliver a significant reduction in the total number of judges (28%) and generate significant savings (approx. 3,6 Million Euro annually). The implementation of a streamlined court system involves 22 court mergers, two of which were successfully completed in the reporting period.

The minor offence court restructuring project started in October 2003 and issued its preliminary report in December 2003. The goal of the project is to assess the entire system- which include 116 minor courts and 316 judges, who handle hundreds of thousands of cases each year- and to provide recommendations for future streamlining.

Working with the EUPM and with others, OHR facilitated negotiations with BiH officials to create a State-level, multi-ethnic High Judicial and Prosecutorial Council (HJPC) that will appoint and discipline judges and prosecutors, in addition to serving as the foundation for a new judiciary that meets the highest European standards. The OHR's Independent

Judicial Commission (IJC) assisted BiH to draft a law establishing this body and developed a plan to phase out its operations by April 2004, shifting them to the secretariat of the permanent, nationalised HJPC.

During the reporting period the OHR together with the European Union Police Mission (EUPM) continued to oversee the establishment of the State Information and Protection Agency (SIPA) for BiH. A package of laws was prepared for consideration in the parliamentary process. Through this package SIPA will be given appropriate law enforcement powers, professional standards and procedures, and provisions to address money-laundering and witness-protection issues. The SIPA laws were drafted, considered and revised through the joint efforts of the OHR, the EUPM and other international agencies working with a task force appointed by the BiH Council of Ministers. The package now awaits consideration in the parliamentary process. The SIPA initiative represents the first phase of the overall police restructuring effort by anchoring state competency for complex and serious crimes, including most organised crimes, terrorism, and war crimes.

The OHR provided continuing support to the Prosecutors' Office of BiH in the form of prosecutors, translators, equipment, and technical expertise. The Office continued to work with the prosecutors in both entities to assist with the investigation and prosecution of cases of financial crimes or corruption. The Specialised Department for Organised Crime, Economic Crime and Corruption of the BiH Prosecutor's Office began investigating and prosecuting cases of major organised crime and corruption in the country in the reporting period. The Department includes both international and national prosecutors who are using the provisions of the new Criminal Procedure Code enacted early in 2003. The Court of BiH ruled in cases of forgery, smuggling, drug trafficking, and human trafficking and more than 200 defendants were being processed on additional charges. In October the Court conducted its

first trial with international judges presiding and using the plea-bargaining provisions of the new Code.

On 25 September, local officials signed an agreement designed to deal with the backlog of cases pending before the Human Rights Chamber and to redirect the flow of additional cases to the Constitutional Court . The OHR worked together with the Constitutional Court , the Human Rights Chamber, BiH officials and international organisations to develop a “road map” by which the mandate of the Human Rights Chamber and some staff would be transferred permanently to the Constitutional Court . This plan was endorsed both by the PIC and approval was sought and found from appropriate local officials and donors in the international community.

### Ensuring that extreme nationalists, war criminals, and their organised criminal networks cannot reverse peace implementation

In the second half of 2003 the close co-operation between, the OHR, the EU and the United States continued in the area of disabling support networks of Persons Indicted for War Crimes (PIFWCs). At the OHR's initiative the EU has maintained the visa ban list aimed at individuals suspected of obstructing the ICTY in its mandate and providing material support to PIFWCs. The US froze the assets of a number of persons on similar grounds.

On 30 October, the OHR organised a donors' conference hosted by the International Criminal Tribunal for Yugoslavia (ICTY) in The Hague to raise funds for the implementation of the War Crimes Chamber project. The conference resulted in pledges of 15.7 million euros (nearly half of the estimated total of 38 million euros needed) for operations of the domestic war crimes chamber during its first two years. Various working groups were set up involving both representatives of the BiH authorities and international organisations to address issues relevant to the establishment of the chamber – such as



legislation, witness protection and case review. On 5 December the Joint Executive Board of the Implementation Task Force for the War Crimes Chamber project held its inaugural session. All relevant BiH authorities participated together with several international organisations, such as ICTY, OSCE, the Council of Europe, SFOR, EUPM, UNHCR and UN OHCHR. All committed themselves to establishing the War Crimes Chamber.

In early September 2003, the RS government made its initial 2 million KM (1 million EURO) payment to the Srebrenica-Potocari Foundation as prescribed in the March 2003 decision by the Human Rights Chamber, to compensate families of persons missing since the 1995 massacre. The decision calls for an additional 2 million KM to be paid out in KM 500.000 tranches over the next four years. On 8 September the RS government provided a report to the Human Rights Chamber, as outlined in its above-mentioned decision, purporting to disclose information on the deceased and their whereabouts. In response Lord Ashdown praised the RS government for recognising the scale of the crimes committed in Srebrenica but criticised the authorities for failing to provide sufficient information concerning the events that took place. Lord Ashdown pressed the leadership in Republika Srpska to establish an independent commission to report on what exactly happened in and around Srebrenica. The RS government established the Srebrenica Commission on 15 December. Lord Ashdown wrote to the RS President and Prime Minister on 19 December to express his regret that it had taken so long for the Commission to start its work. He expected the Commission to complete its tasks and to publish its final report on 14 April 2004 and underlined that "any attempt to obstruct the work of the Commission would be regarded as a clear attempt to obstruct the rule of law". The Commission started its work on 12 January 2004.

## **Reforming the economy**

While significant progress was made completing portions of the economic agenda presented to the PIC in July 2003, the

condition of BiH's economy remained parlous. Roughly 30 percent of the population remained below the official poverty line, with a further 20 percent within a small margin of it. Not only did BiH continue to struggle to make its post-socialist transition, yet some reforms already in place have yet to show positive results. As with other areas, economic reforms continue to be plagued by lack of political will from BiH government officials at all levels, outright obstructionism, inter-party and inter-ethnic tensions, lack of resources, and similar impediments.

Amid these challenges, progress was made in several areas during the reporting period, including on customs reform, creating a business-friendly environment, and restructuring the electricity sector. The merger of the three customs administrations into one state-level Customs Administration – which will also become the agency responsible for the introduction and implementation of VAT – created the makings of a single indirect taxation system in BiH. In addition to ensuring the establishment of a State-level Indirect Tax Authority (ITA), OHR also oversaw an agreement on an internal debt plan, which removes a major obstacle to investment and job creation in the country.

The OHR successfully assisted the State Veterinary Institute to become operational and capable of fulfilling its international requirements, which is expected to go a long way towards generating greater confidence in local and international investors. Progress was also made toward finalising the legal framework in the utilities sector. The Law on Civil Aviation was adopted by the Parliament in December and is expected to come into force soon. The OHR also ensured proper execution of the annual budget drafting process and drafting of the State and Entity Budgets for fiscal year 2004.

The release of the audits of the three public telecommunication companies revealed alarming patterns of

mismanagement and incompetence, which have cost consumers and taxpayers huge amounts of money. With the OHR's support, several pieces of legislation were drafted – including Laws on Public Enterprises, Investment of Public Funds, and on Public Procurement – which are expected to institutionalise management oversight and modern accounting standards in BiH.

In its ongoing effort to create more jobs in the country, the OHR began its second portion of the two-staged Bulldozer Initiative. Launched in November 2002, this program is designed to help BiH businesses tear down roadblocks and cut through as much red tape as possible to free up the economy for growth and job creation. During the reporting period, the Bulldozer Committee identified a second instalment of 50 economic roadblocks and discussed with local businessmen and associations legal solutions to these impediments. Adoption of the new reforms is expected during the first quarter of 2004.

The OHR also continued to drive efforts to transfer the competency for privatisation of strategic enterprises from the Canton Privatisation Agencies to the FBiH Privatisation Agency, and to establish a single information point for privatisation opportunities. Of 15 enterprises scheduled for sale by tender by the end of 2003, 14 were published. The highest-profile privatisation example involved the sale of the Holiday Inn Hotel in Sarajevo .

### **Strengthening the capacity of BiH's governing institutions, especially at the State-level**

In September, the Public Administration Reform (PAR) process was further strengthened by the appointment of a National Coordinator at the BiH Ministry of Justice responsible for managing and overseeing the development of a more efficient and affordable public administration, an essential prerequisite for European integration.

Throughout the reporting period the OHR continued, in close

consultation with UNDP, to supervise the last phase of the establishment of the Federation Civil Service Agency, including the staffing of the agency plus the full implementation of the Civil Service legislation at the entity, cantonal and municipal levels. Apart from UNDP the agency will need additional funding and strong independent leadership to become an efficient and effective instrument for recruiting public officials on the basis of merit.

### Establishing State-level civilian command and control over armed forces, reform the security sector, and pave the way for integration into the Euro-Atlantic framework

The Defence Reform Commission (DRC) presented its report on 25 September, including a proposed BiH Law on Defence – which establishes a State level joint command and control of the Armed Forces of BiH – and requirements for a new State Minister of Defence. All participating parties on the Commission recognised that this was only a first step towards total integration of BiH's armed forces, which would be required before any full membership of NATO. By the end of November, the BiH Law on Defence and amendments to the Entity constitutions were enacted by the BiH Parliamentary Assembly and by the legislatures of the FBiH and the RS. At its 4 December meeting, the North Atlantic Council noted that passage of the BiH Defence Law proved BiH a credible PfP candidate and urged BiH "to envisage the Istanbul Summit (in June 2004) as a realistic target by which it could meet the outstanding conditions" set forth by NATO.

In the discussions surrounding the adoption of the Law on Defence, the DRC also drew special attention to the need for the Armed Forces in BiH to be affordable, proposing the downsizing of many elements in the defence establishment. It also suggested that BiH look beyond PfP and make an explicit commitment to achieving membership of NATO in the future. These recommendations provide a basis for additional reforms required to fulfill this aspiration.

During the reporting period, a Joint Defence and Steering Committee of the BiH Parliamentary Assembly was put into operation, manifesting the principle of parliamentary oversight. The Presidency was urged to move ahead quickly to appoint the key State level positions such as the Minister of Defence and Deputies. Preparations for the transition of the Standing Committee on Military Matters Secretariat into a Ministry of Defence were launched.

The Expert Commission on Intelligence Reform finalised the draft law on the Intelligence and Security Agency in August. The law was submitted the following month to the BiH Council of Ministers (CoM), but the CoM failed to take action on it, raising concerns in light of renewed terrorist outrages abroad. Government procrastination threatened to disrupt earlier progress made in unifying the BiH intelligence-security sector at the State level, while exacerbating the danger posed to BiH's citizens by an insufficient security service. On 18 December, Lord Ashdown submitted the law, with minor amendments, directly to BiH's Parliamentary Assembly and asked the legislature to decide on the most appropriate procedure to ensure its adoption by March 2004.

### **Promoting the sustainable return of refugees and displaced persons**

OHR made considerable progress in return of refugees and displaced persons (DPs) during the reporting period, preparing the ground for the closure of the OHR's Refugee Return Task Force (RRTF) by the end of 2003 and the transfer of its Annex VII responsibilities to the BiH authorities. According to UNHCR statistics, nearly 1 million people, including some 430,000 so-called minority returns had returned in or to BiH. Approximately 350,000 refugees and DPs, (estimation of the BiH Ministry for Human Rights and Refugees (MHRR)) still have not returned to their pre-war homes, although many among them still expressed the desire to do so. This shows the potential for continuing returns.

The countrywide property repossession rate rose above 90 percent in the last half of the year. This total indicates substantial completion of the Property Laws Implementation (PLIP), promising its finalisation in all BiH municipalities in early 2004. While no major internal obstacles to achieving this goal were expected, there were still problems with refugees in BiH who remained unable to repossess property in their countries of origin and continued to occupy pre-war homes of BiH citizens. For instance, it is estimated that more than 20,000 Croatian Serbs were still trying to return to Croatia , while that country is applying for full EU membership.

On 30 September, the BiH Parliamentary Assembly adopted Amendments, which identified the MHRR as the main policy-making and supervisory body for Annex VII issues. The MHRR was also provided with a field structure via the establishment of four regional centres ( Banja Luka , Mostar, Sarajevo , and Tuzla ). Furthermore the BiH Commission for Refugees and DPs was established as the main co-ordinating body between the State, Entities, and Brcko District. Finally the Return Fund, a State-level institution responsible for the financial realisation of return and reconstruction projects was created.

The OHR remained heavily engaged in the transfer of responsibilities to domestic authorities of the Commission for Real Property Claims (CRPC), as established under Annex VII. A great deal of work was done to identify alternative sources of funding the ongoing return process. As a result, BiH became a member of the Council of Europe Development Bank (CEB), entitled to CEB loans for financing return and reconstruction projects. Bearing in mind the decreasing donor funding for BiH, this membership will be of the great importance for achieving substantial completion of Annex VII by the end of 2006, as foreseen by the MHRR.

In view of the described progress, it was possible to close the RRTF as a discrete OHR function on 31 December 2003.

However the OHR has retained a small Annex VII Verification Unit actively to monitor the process and to advise the domestic partners on the realisation of their strategic goals.

### **BiH in the region**

Significant steps toward reconciliation between the former warring states of BiH, Croatia , and Serbia and Montenegro (SiCG) were taken during the reporting period. On 10 September, SiCG President Svetozar Marovic publicly apologized to Croatian President Stjepan Mesic during his trip to Belgrade for atrocities committed against Croatian citizens during the war. On 13 November, Marovic extended another public apology during the Inter-state Co-operation Council meeting “for every evil or tragedy that anyone in BiH suffered from anyone from SiCG.”

Another positive signal was sent on 2 October when BiH, Croatia, and SiCG concluded a tripartite agreement by signing the Protocol on the Three-Point Border between the countries. This agreement established on paper the two points where the borders of the three countries meet and proclaims that these borders cannot be removed. BiH also took steps to simplify movements of people among the three countries by signing bilateral agreements separately with Croatia and with SiCG. These agreements enable BiH citizens to pass across borders carrying only personal identification cards.

### **BiH and the European rapprochement process**

The European Union Police Mission (EUPM) has now become a well-established feature of police life in Bosnia and Herzegovina , consisting of nearly 500 police officers and some 60 civilian experts from 33 states. For the first time, the Russian Federation has also contributed personnel to the EUPM.

EUPM’s programmes, aimed at creating sustainable policing arrangements under BiH ownership and in line with best

European and international standards, became well established. The strengthening of the State-level law enforcement agencies, the fight against organised crime (in particular trafficking in human beings), and the safety and security of returnees, continued to be EUPM priorities. The EC Feasibility Study underlined the need for further reforms in the BiH police, and particularly stressed the need for a reinforcement of the State-level law enforcement capacity, as well as the need for further restructuring and rationalising the BiH police forces.