

2015 EC PROGRESS REPORT FOR BOSNIA AND HERZEGOVINA

What to Expect - and What Not To

Later this month, the European Commission is scheduled to publish its 2015 Progress Report for Bosnia and Herzegovina, a document that purports to be the EU's annual manifesto of priorities for the country

Like its predecessors of the last five years, however, the report will come up short. Its content will continue to be driven by inertia, though attempts by the Commission to inflate any signs of progress are a common feature that can be expected as well. There is some indication that turnover within the Commission following the 2014 European elections may open up some institutional space for a more frank reckoning with the lack of progress in the country, which has been mired in political stagnation for nearly a decade. However, there is also a risk that institutional commitment to the still vague "Reform Agenda" will limit this slender opportunity.

The interaction of these forces is complex. Here is what to expect from this year's report.

The Procedure

As a follow-up to its yearly review of the annual progress report for BiH, in 2014 DPC carried out in-depth interviews with contributors to the document to get a better understanding of the drafting and editorial process - that is, to determine who calls the shots. Officials within the recently reshuffled (and re-titled) Directorate General for European Neighborhood Policy and Enlargement Negotiations (DG NEAR, previously known as DG ELARG) where the progress reports are assembled, confirmed that the reports are reviewed and scrubbed at several institutional levels from the month of March through to its publication in October. For instance, at the desk level in DG NEAR on Rue de la Loi in Brussels, input from other directorates general (agriculture, finance, telecoms, etc.) is incorporated into early drafts initially put together by policy officers at the EU Delegation to BiH on Skenderija Street in Sarajevo. During this process, some of the draft language evolves according to what one official referred to as "guidance," which - while opaque - seemed to come from the political level, at least indirectly.

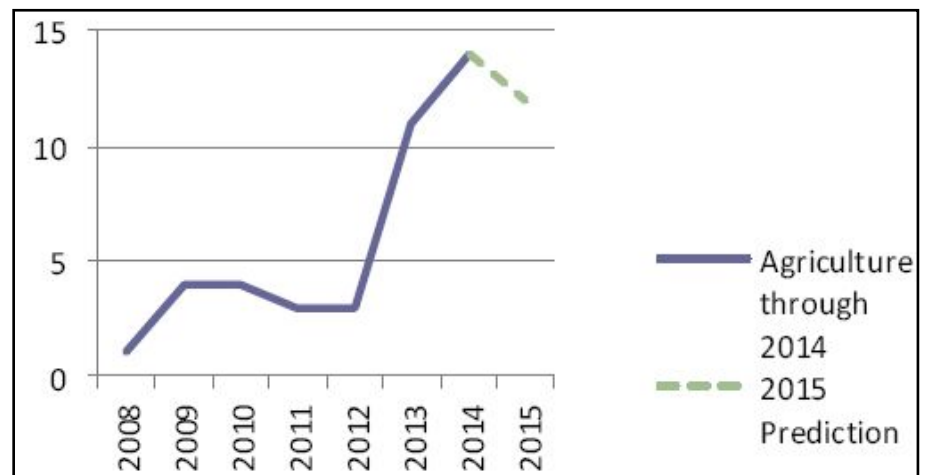
The finished product also depends to some extent on expedience. High staff turnover in delegations and limited human resources in Brussels means that much of the usually 60-

By Patrick Dick
Democratization Policy Council

plus-page reports are inherited and heavily recycled from year to year. This tendency is certainly reinforced in BiH by the lack of real progress on the ground.

The changing of the guard in Brussels following last year's elections to the European Parliament may open opportunities for change. Similar to when a firm comes under new management, a new Commission means the arrival of new commissioners, who often want to make their mark by mak-

space for the Commission to address BiH more assertively through the progress reports, a change that would be welcomed by reform activists on the ground. Officials contend that progress reports were not necessarily meant to be prescriptive, but they have become increasingly aware of the absence of a more forward-looking and robust document since reference to the oft-cited European Partnership document was discontinued after 2008.² More recent interviews have revealed that a descriptive "status report" methodology will be applied starting with the 2015 progress reports. This particular report is expected to highlight and



ing changes. That tendency has been in evidence with Jean-Claude Juncker's new Commission, in office since November 2014. The question is whether such institutional changes in EU policy toward BiH, and whether the shift will be reflected in the 2015 Progress Report. The initiative launched by the German and British governments and adopted by the EU last December, now known as the "Reform Agenda," deferred implementation of the most difficult reforms in exchange for promises from BiH's insulated and divided political leadership of still-undefined, more immediate, and less difficult reforms. However, the move allowed the Stabilization and Association Agreement, which more formally links BiH to the EU, to be activated after a seven-year delay. Though the agenda is not itself based on the EU acquis, as are progress reports, the nudge could create

assess nine focus areas from the acquis: public administration, justice, organized crime, the fight against corruption, financial control, public procurement, statistics, freedom of expression, and fundamental rights. Exactly how thorough, how assertive, and how useful the new methodology is remains to be seen.

The 2015 EC Progress Report for BiH will be an interesting indicator of how wide that institutional window of opportunity has actually opened - or whether it opened at all. Looking at three sections of the progress reports that DPC has monitored as bellwethers - Agriculture, Justice, and the Constitution - our predictions are conservative. Despite changes in the terminology applied from year to year, the EU has consistently avoided sensitive political issues and has backed away from concrete or controversial reform recommendations. Verbiage may evolve, but in terms of substance and imper-

ative language - tracked here - we consider it unlikely that the 2015 report for BiH will differ much from its immediate predecessors.

Agriculture

Agriculture is one of BiH's most important economic sectors. Politically, it is also one of the EU's. One look at the EU's budget or the recent farmers' protests in Paris and Brussels makes this clear. In some ways, the 2014 EC Progress Report for BiH was remarkable. In 2014, the use of imperative language was higher than it had been previously, suggesting a link with Croatia's EU accession, one of BiH's largest agricultural trading partners. At stake was the interim agreement which would allow BiH farmers to continue traditional trade with Croatia despite BiH lacking the phytosanitary checks needed to export agricultural products, especially dairy, to the EU. BiH leaders failed to sign the agreement because of internal stalemate - a common refrain - and the progress report betrayed the Commission's frustration.

This year, that frustration will have likely subsided somewhat with the entry into force of the much-delayed SAA, and the recent preparation of new legislation for dairy exports. BiH recently got a green light for milk exports to the EU for four companies that acquired EU certificates thanks to the consistent efforts of BiH Minister of Foreign Trade and Economic Relations Mirko Sarovic. It was a notable achievement in a country incapable of providing an EU-standard food safety certification regime. Expect praise on this issue and for imperative language to slip some as a result.

In other ways, however, the 2014 report did not deviate from recent trends. For instance, there was no mention of Bosnia and Herzegovina's lack of a state-level ministry of agriculture, despite clearly being included as a common-sense policy solution until 2010. In fact, policy on this issue seems curiously incoherent. Officials in the Directorate General for Agriculture (DG AGRI) recently expressed surprise upon hearing that their long-standing recommendation for a state-level ministry is no longer featured in the reports.

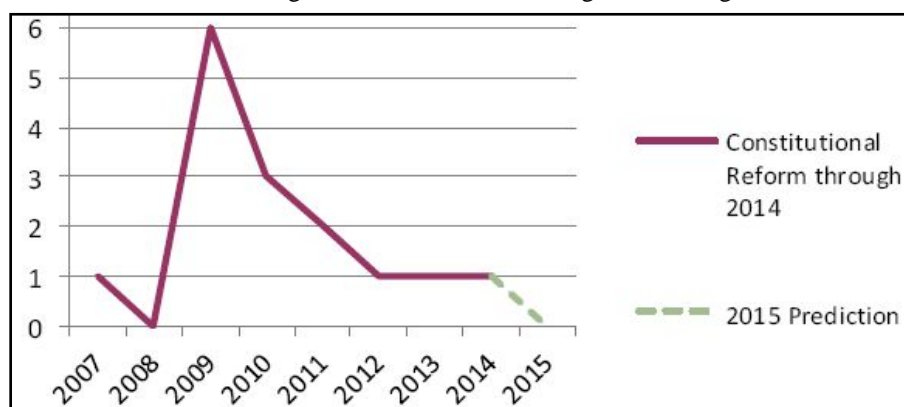
A likely explanation is that a state-level ministry (also included in the 2006 April Package) would be contrary to the "cede no ground" approach taken by Republika Srpska over the past decade, in which the entity's political leadership fiercely challenges existing state competences and denies that new ones are necessary. History suggests that the EU has become progressively less willing, not more, to stand up to Banja Luka. As one knowledgeable BiH official wearily remarked, "we are far away from a

ministry. (The EU) just want to see us moving forward." Expect no mention of such a ministry in 2015.

Justice

Trends in this sector suggest the annual report is more about EU process than actual progress. Between 2009 and 2011, use of imperative language dropped in this section. Since 2012, however, its use has consistently and sharply risen. Much of the rise can be attributed to the Structured Dialogue on Justice, the EU's flagship program for the BiH justice sector that was launched in 2011.

In the 2015 report, expect tepid progress in the justice sector to be noted, despite none actually having been made on the ground. Also expect the level of interest in justice sector reform to remain high. The use of



imperative language is likely to remain steady or perhaps even rise. It should be expected that the long-mooted and now scheduled (for 15 November) RS referendum on the constitutionality of the entire state-level judiciary will prompt language questioning its legality. However, do not expect the progress report to criticize Milorad Dodik, the RS's provocative leader, by name for manipulating the Structured Dialogue to suit his own agenda.

Constitutional Reform

The progress reports have in many cases simply ignored widely-acknowledged constitutional deficiencies in BiH. For several years, the need for broader constitutional reform has gone unmentioned, replaced instead by an emphasis on compliance with the 2009 European Court of Human Rights Sejdic-Finci decision. Meanwhile, the German-British initiative, encapsulated by the still-not-public "Reform Agenda," explicitly deemphasizes fundamental constitutional reforms in favor of practical, supposedly less sensitive economic policy changes. At first glance, this seems to move in the direction of functional practicality-the right direction.

But, as DPC's own analysis predicted, the resequencing primarily serves to show the appearance of progress where there is none. Thus, expect that once-again, the mention of much-needed organizational, electoral and procedural changes to the Constitution will be avoided. The use of imperative language will remain at a low level and likely be reserved for Sejdic-Finci, again relegating the constitutional reforms needed for a functional state to secondary status.

In an ideal world (but one in which BiH would be still, sadly, just as dysfunctional), the 2015 EC Progress Report for BiH would show signs of returning to the specificity of, and ultimately replacing, the 2008 European Partnership document, which explicitly outlined key priorities and expectations for the partnership between the EU and BiH. Expectations ranged from the general, such as the

need to "make substantial progress on creating a single economic space in Bosnia and Herzegovina," to the specific, such as adopting "the required public broadcasting legislation at the level of the Federation of Bosnia and Herzegovina." The document's clarity made it a reference of choice for reform campaigners. Unfortunately, over the years it has been overtaken by the less direct and less helpful progress reports. The progress report could become a more relevant document and reference standard by more explicitly incorporating and referencing the 2008 European Partnership document - and by the Council's reaffirmation of the importance of these goals. To be a true baseline of, and catalyst for, reform, the 2015 EC Progress Report for BiH should highlight, for instance, the need to "work towards the establishment of a state-level Ministry of Agriculture, Food and Rural Development with sufficient resources to implement its tasks," or "amend electoral legislation regarding members of the BiH Presidency and House of Peoples to ensure full compliance with the European Convention on Human Rights and the Council of Europe post-accession commitments." In this way, the annual exercise could begin to be less a report on process and more a report on progress.