

**Negotiating Conditionality:
An Updated Review of the European Union
Progress Reports for Bosnia and Herzegovina**

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by Patrick Dick

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Executive Summary

The purpose of this updated report is to review the European Union's (EU) evolving approach to Bosnia and Herzegovina (BiH) in assessing fulfillment of EU membership conditions. In particular, this report is concerned with the following questions:

- **How have EU requirements for BiH changed over time, if at all?, and;**
- **Have priorities evolved, and, if so, how?**

The European Commission “has drawn detailed conclusions regarding Bosnia and Herzegovina... based on the technical analysis contained in... the annual EU Progress Reports for accession-bound countries.”¹ These Progress Reports are technical in nature, but are nonetheless collective assessments generated by a committee of diagnostic evaluators. Apart from the political and economic situation, the Progress Reports “review Bosnia and Herzegovina’s capacity to implement European standards, that is, to gradually make legislation in key policy areas more compatible with European legislation and standards.”² As such, they are a useful barometer of progress made not only in reform, but also expectations and requirements.³ They provide a useful annual baseline to consider both the status of the country in question in its reform and accession preparations, *as well as the EU’s expectations for the country in question*.

In an effort to answer the above questions, the author has analyzed the annual EU Progress Reports for Bosnia and Herzegovina from 2005 – 2013. These reports break down EU requirements by topic and sector. They are published with a nearly identical structure year after year, which facilitates comparison. The following five areas are examined: Agriculture, the Constitution, the Judicial System, Education, and Minority Rights and Protection. These sections were chosen for their link to constitutional reform issues—specifically those identified as crucial for EU accession (justice, agriculture, constitution)—as well as broader human rights issues related to BiH as a post-war, transition state (education, minority rights).⁴

¹ European Commission, *Commission Staff Working Paper, Bosnia and Herzegovina 2011 Progress Report* (Oct. 12, 2011): 3.

² 2005:1.

³ De Ridder, Eline 2011. “Civil Society Development During Accession: On the Necessity of Domestic Support to EU Incentives.” *Sociologia* 43(6): 623 – 656.

⁴ Issues of local self-governance are of great interest to a number of civic actors interested in constitutional reform and governance reform; however, this issue is not systematically reviewed in the Progress Reports.

The observations made in 2012 have been updated and reassessed. As mentioned in 2012, the language used in the Progress Reports closely mirrors political milestones with few exceptions. The use of imperative language regarding agriculture swung dramatically from very frequent, to almost absent, and now back. The resurgence of agricultural reform as a priority coincides with the accession of Croatia, the largest importer of BiH's most important export, to the EU.

The rebound of imperative language related to judicial reform in the past two years indicated that the previous drop reflected not any progress but its fallen place on the EU agenda. Conversely, the 2012-2013 jump in attention for the judicial system itself seems to be directly linked to a political flagship for the EU, the Structured Dialogue on Justice, and the rise of justice as an enlargement priority.⁵

Nevertheless, when compared with the reports issued during Slovakia's accession process (1998 – 2003), the BiH reports are quite stagnant in terms of their content and the tone of criticism. While this may quite fairly reflect the lack of reform in BiH, the lack of clear, imperative language, which unequivocally 1) highlights the multiple failures to reform, 2) identifies those responsible, and 3) demands progress as the price for continued cooperation and assistance, is a notable change.

While a thorough analytical overlay of the political situation from 2005 – 2013 on the content and tone of reports is beyond the scope of this exercise, a few signposts provide useful context. The reports are issued in the autumn of each year. Key events to bear in mind when reviewing the reports include: the failure of the "April package" in spring 2006; the domestic "Prud process" from November 2008 – January 2009; the Butmir constitutional reform exercise in late 2009; the visit of EU foreign policy chief Baroness Catherine Ashton to BiH in May 2011; the launch of the Structured Dialogue on Justice the following month, Croatia's accession in July 2013 and; the conclusion of the first household and population census since 1991 in October 2013.

Regardless of the extent of imperative language used, the progress reports take an increasingly critical tone when discussing most policy areas. For instance, the 2013 Progress Report is quite clear about the fact that corruption and organized crime are problems.⁶ This is helpful in identifying the remaining reform obstacles and problems areas. The reduction of imperative language, however, is more difficult to explain. In the absence of implemented reform, one

⁵ Neven Mimica, Vice-President of the European Commission. Short presentation: "Budgetary Management of EU pre-accession funds in the areas of judicial systems and the fight against corruption in candidate and potential candidate countries". European Parliament Plenary Session, 21 October 2013.

⁶ 2013: 14, 15, 53.

would expect the use of imperative language to remain stable at a minimum, if not increase as the reform environment stagnates or worsens. It would also be reasonable to expect such language to increase as the reports become more critical. However, the EU has drawn few firm lines in BiH, and local officials with an interest in whittling down EU expectations have, not surprisingly, come to see conditionality as something negotiable.⁷

⁷ Chivvis, Christopher S., and Harun Dogo 2010. "Getting Back on Track in Bosnia and Herzegovina." *The Washington Quarterly*, 33(4): 103 – 118.

NEGOTIATING CONDITIONALITY:
AN UPDATED REVIEW OF THE EUROPEAN UNION PROGRESS REPORTS FOR
BOSNIA AND HERZEGOVINA

Introduction

The international community has been involved in the transition process of Bosnia and Herzegovina (BiH) perhaps more than in any other post-communist and/or post-conflict country in Europe. In the wake of the dissolution of the Socialist Federal Republic of Yugoslavia, BiH society experienced the worst violent conflict on the European continent since the Second World War. Both features have made the country's transition particularly complicated. Through a variety of institutions the international community first took part in this process as outside actors attempting to arrest the armed conflict, then subsequently as peacekeepers and, ultimately, actors in the political transition to a democratic state capable of joining its own clubs – the EU and NATO⁸.

The European Union (EU) has increasingly been involved in this process and has gradually taken on the international lead in fostering the country's political and economic development. This is particularly true since the EU began to incorporate the Balkans in its enlargement ambitions, admitting Croatia in 2013. As in other post-communist societies in Central and Eastern Europe, the EU has aimed to impel BiH leaders to adopt democratic reforms using the lure of EU membership.

The hypothesis being implicitly tested in this report is that given the lack of progress of reforms in BiH since 2006, it was presumed that the use of “imperative language” would remain stable or increase as a sign of pressure and a clear expression of the expectations for reform. As a proxy indicator for the EU's evaluation of reform and stated expectations for reform, the instances of imperative language (words such as “must”, “necessary” or “required”⁹) used in each target sector/section were counted. Both active and passive voice were counted as long as the verb was imperative. Any change over time would represent the level of expectations and requirements by the EU towards BiH. The figures included in the report below show the change in the use of such language over time.¹⁰ Each sector is also examined for more general

⁸ Stability Pact for Southeastern Europe, 1999, available at <http://www.stabilitypact.org/about/constituent.asp>

⁹ Any derivative of the words mentioned was counted unless clearly referring only to something tangential, and therefore not demanding policy action. The words were: need, needs, [is] needed, [is] required, requirement, must or should.

¹⁰ It is important to note that each section consists of a few paragraphs, with the longest sections themselves consisting of no more than a few pages. The total inclusion of imperative words and phrases can in some cases be

trends, and any notable qualitative changes over time are noted.

Following the policy sector analyses, a short review of Slovakia's experience with progress reports is included to provide a basis for some comparison. The case of Slovakia is instructive given some important commonalities between the two countries: both post-communist countries oriented toward the European Union, both having experienced illiberal regimes in the transition and pre-accession process, and therefore been considered to be laggards in their respective regions. Initial analysis suggests that engagement in Slovakia leading up to EU accession was considerably more comprehensive and dynamic, involving both credible rewards as well as requirements that left little room for debate regarding EU expectations.

Holding all else constant, in the absence of changes on the ground in BiH we would expect the frequency of imperative language to remain constant. Any *progress* in reform would clearly cause this number to go down; as the tone of the reports becomes increasingly critical, however, this number was expected to rise, or, at least remain stable. Yet, in the aggregate, this is not so. External analyses of political developments in BiH since 2005 almost uniformly contend that little if any substantial progress has been made in the EU accession process or reform in general.¹¹ Meanwhile, the amount of imperative language has varied—and in key cases declined—even in the absence of reform.

1. Agriculture

Overall: Agriculture saw the sharpest swing in imperative language in the Progress Reports. In 2005, in the first Progress Report for BiH, 12 examples of imperative language are counted in this section of the Report. In 2011, the number had dropped to three, swinging back up to 11 in 2013. Regarding specific recommendations, 2011 marks the first time a Progress Report failed to recommend the establishment of a state-level Ministry of Agriculture. Though imperative language was never used with respect to the specific establishment of a state-level ministry, from 2005-2010 the lack of such a Ministry was indeed specified as a concern. For example, in 2006 the report notes it was causing “the development of a comprehensive agricultural

low, ranging from zero to twelve in any given section. However, while a small data set, it is *consistent* as they reflect the same report over seven years, and is therefore an appropriate basis for trend analysis.

¹¹ Bahtić-Kunrath, Birgit 2011. “Of Veto Players and Entity Voting: Institutional Gridlock in the Bosnian Reform Process”. *Nationalities Papers: The Journal of Nationalism and Ethnicity*, 39(6): 899 – 923; Bieber, Florian and Gülnur Aybet 2011. “From Dayton to Brussels: The Impact of EU and NATO conditionality on State Building in Bosnia and Herzegovina.” *Europe-Asia Studies* 63(10): 1911 – 1937; Muehlmann, Thomas 2008. “Police Restructuring in Bosnia and Herzegovina: Problems of Internationally-led Security Reform.” *Journal of Intervention and Statebuilding* 2(1): 1 – 22; Noutcheva, Gergana 2009. “Fake, Partial and Imposed Compliance: the Limits of the EU’s Normative Power in the Western Balkans”. *Journal of European Public Policy*, 16(7): 1065 – 1084; Sebastian, Sofia 2009. “The Role of the EU in the Reform of Dayton in Bosnia-Herzegovina”. *Ethnopolitics* 8(3-4): 341 – 354.

strategy [to be] delayed.”¹² In 2008, it was noted that “there [had] been no progress made in establishing” such a ministry.¹³ These comments (and others) suggested EU concern about the impact and implications of the lack of such a Ministry; the absence of such language since 2011 leads one to question whether the EU has reduced its demands for fulfillment of its own requirements based on what it thinks the market will bear.

Sectors covered: State-level Ministry of Agriculture; veterinary sector; lack of a phytosanitary agency; food safety: law and lack of agency; reporting and data; uncertainty regarding land ownership (2005 and 2006); labs and certification bodies; government support for agriculture; animal health and disease control; and general coordination.

Notable changes over time:

- The level of agricultural support from the state was included only from 2007 – 2010;
- The need for better labs and certification bodies was mentioned only from 2006 – 2009;
- The need to remedy uncertainties about land ownership was included through 2006;
- The establishment of a state-level Ministry of Agriculture was specified and (at least) tacitly recommended until 2011, after which it was not included.

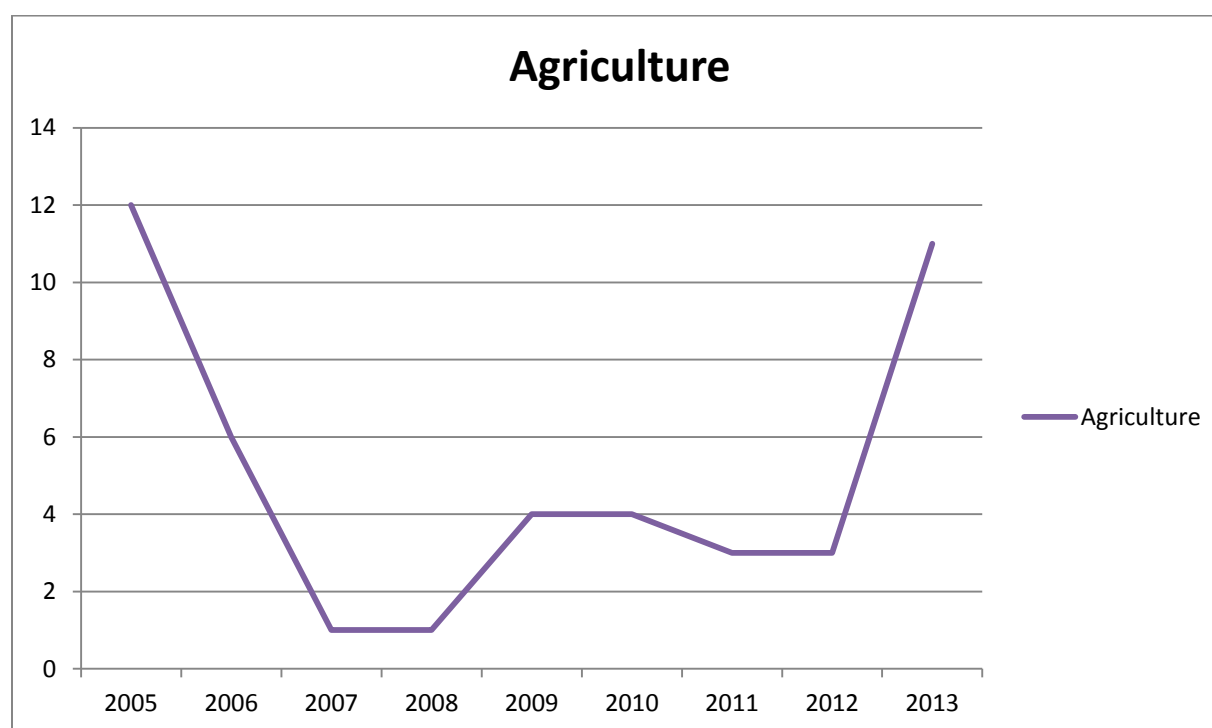


Figure 1 The Number of Instances of Imperative Language Used for 'Agriculture'

¹² 2006: 37

¹³ 2008: 44

Analysis: Agriculture has historically been one of the most important policy areas for EU accession, as is evident by the impact of the Common Agricultural Policy (CAP), a cornerstone of the European Common Market where resources have been concentrated for decades. Policies regarding coordination, harmonization, competition, protected designation of origin (PDO) and the ability to compete in the European Market have historically been prioritized by EU policy makers.¹⁴

The clear diminished imperative tone through 2012 on the issue of agriculture in BiH suggested either diminished engagement in, or diminished expectations for reform. But the incidence of imperative language seems to reflect political events in BiH. The language and tone were strongest at the time of the comprehensive April package; dropped to nearly nothing, rose slightly around the time of the Prud and Butmir reform efforts, and then dropped again. Yet Croatia's entry into the EU in July 2013 put Bosnia—for which agricultural exports are a vital economic factor—in a difficult position due to lack of preparation of its own regulatory infrastructure. Progress reports have inconsistently reflected these continuing challenges, less specifically pointing out the deficiencies blocking the development of a competitive, high-quality agricultural sector. Instead, an amorphous comprehensive cooperation and harmonization strategy is recommended to address the identified issues.

2. Constitution

Overall: Beginning in 2006, a separate subsection titled “Constitution” was included under the heading of Political Situation.¹⁵ The 2006 report notes that these reforms cannot be imposed. However, from then on it was noted each year that constitutional reform is necessary to improve functionality and to ensure the protection of human rights. The 2005 Venice Commission report emphasizing functionality and human rights is referenced in 2005 (under the general heading of “Democracy and Rule of Law,” where “Constitution” was later inserted) and 2006. In later reports, more emphasis is placed on the need to fulfill international requirements such as those from the Peace Implementation Council (PIC) or the European Partnership agreement. After 2009 **the *Sejdić-Finci* ruling** is specifically identified as a benchmark, and in 2010 its implementation deemed “necessary.”¹⁶

Areas covered: Venice Commission (noted only in 2005 and 2006); bureaucratic inefficiency; fiscal (un)sustainability; past attempts at reform; ownership (only 2007); the Presidency and

¹⁴ Daugbjerg, Carsten and Alan Swinbank 2007. “The Politics of CAP Reform: Trade Negotiations, Institutional Settings and Blame Avoidance.” *Journal of Common Market Studies*, 45(1): 1 – 22; Wallace, Helen, William Wallace and Mark A. Pollack 2008. Policy Making in the European Union, fifth edition. Oxford University Press, Oxford.

¹⁵ For this reason, the following graph begins in 2006.

¹⁶ 2010: 9

House of Peoples; ECtHR; Vital National Interest and Entity-voting vetoes (explicitly, only in 2005), and; overlapping competences in the FBiH (after 2009); Reform of the Federation (2013).

Notable change over time:

- Overall, the reports slowly but surely move away from framing the need for constitutional change in terms of functionality and human rights, to framing the issue within the fulfillment of PIC and European Partnership requirements, often noting as well that only under these circumstances can the OHR be closed. The section on constitutional reform is dominated by *Sejdić-Finci* by 2010, though issues of functionality are still noted.
- Until 2010, there was an overall tendency to focus on the RS as the principal obstacle with respect to the lack of administrative harmonization,¹⁷ noting in 2008 that “the most frequent challenges came from the political leadership of Republika Srpska.”¹⁸ It was only in 2010 that the reports first commented on the bureaucratic inefficiencies of the Federation, at the same time reducing its focus on the problems in and generated by the RS.¹⁹ In 2013, fruitless efforts to reform the Federation were mentioned.
- In 2013 a shift favoring fulfilling SAA requirements over the 5+2 requirements for closing down the OHR became clear. Only one of the latter requirements were mentioned, and that having seen no progress.

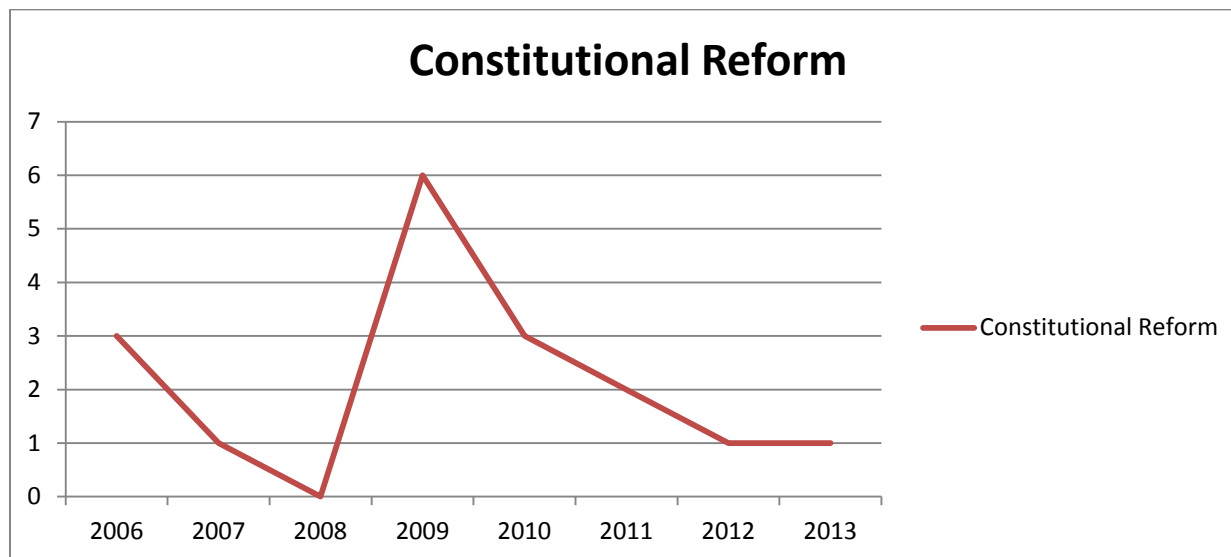


Figure 2 The Number of Instances of Imperative Language Used in the section 'Constitution'

¹⁷ 2007: 7-8; 2008: 7; 2009: 8.

¹⁸ 2008:7

¹⁹ 2010: 8

Analysis: The language used in the section on the Constitution closely mirrors political events. The spike in imperative language used in 2009 clearly coincides with the Prud and then Butmir Processes (which are mentioned in the 2009 and 2010 reports, respectively). The subsequent drop reflects the failure of Butmir, the stalemate following the 2010 general elections and the subsequent stagnation with respect to Constitutional Reform. The apparent shift in emphasis from the need for constitutional reform to address broad functionality and human rights issues seems to have been eclipsed by a single-minded focus on the *Sejdić-Finci* issue. The lack of persistent reference to the 2005 Venice Commission report is curious. The omission severs the link between constitutional reform and functionality, ultimately leading to a near total focus on *Sejdić-Finci*. While the Court ruling of course must be addressed, BiH's ability to effectively prepare for EU membership without broader structural reforms is highly questionable. This was appreciated and explained in the early Progress Reports. Now the *Sejdić-Finci* ruling alone is the focus.

While the need for constitutional reform has long been appreciated by outside observers, the erratic changes in imperative language on this issue is perplexing. The need was identified. But while no reform was made, the tone of the reports varies widely. The highest instances of imperative language seem to occur at the same time as the April package effort and the Prud initiative, suggesting that on the issue of constitutional reform the Report can be seen primarily as a *reactive* instrument – reflecting the efforts ongoing at the time – rather than as a tool providing consistent guidance, recommendations and incentives that in itself could drive and promote a reform environment.

3. Judicial System

Overall: The most consistently discussed issues included in the “Judicial System” section concerned cooperation and harmonization, particularly across entity boundaries, but also among prosecutors in different police jurisdictions. The other problems that were most frequently cited were administrative, with the enormous backlog of cases, budget and human resource issues being referenced each year. As early as 2006, the reports mention that “further efforts are necessary to improve the functioning of the judicial system.”²⁰ Subsequent reports note the “difficult environment”²¹ in which progress has been limited.²² The lack of a supreme court was mentioned in 2007, 2008, 2009, and 2010,²³ though its remedy was not expressly

²⁰ European Commission. *Bosnia and Herzegovina 2006 Progress Report*. Brussels 2006: 11.

²¹ 2007: 14; 2008: 13

²² 2009: 12; 2010: 12; 2011: 11

²³ 2007: 14; 2008: 13; 2009: 12.

suggested or required. The lack of a supreme court was not mentioned after 2010, however.²⁴

In 2013, moderate progress in matters of efficiency, facilities, and political support were reported, but political influence in the judicial system was a noteworthy concern. The harmonization of criminal codes and staffing deficiencies continued to be highlighted as concerns.

Areas covered: cooperation; harmonization; judicial training; juvenile justice; staffing and human resources; judicial independence; budget; backlog of cases; protection of witnesses, and communications and technology.

Notable changes over time:

- The increasingly critical tone found in earlier reports seems to have abated by 2013, though the protection of witnesses, the independence of the judiciary, the backlog of cases and the lack of specialized staff were still identified as problems;
- The need for a supreme court was recognized in 2007, 2008, 2009 and 2010, though there was no mention made in 2011, 2012, or 2013;

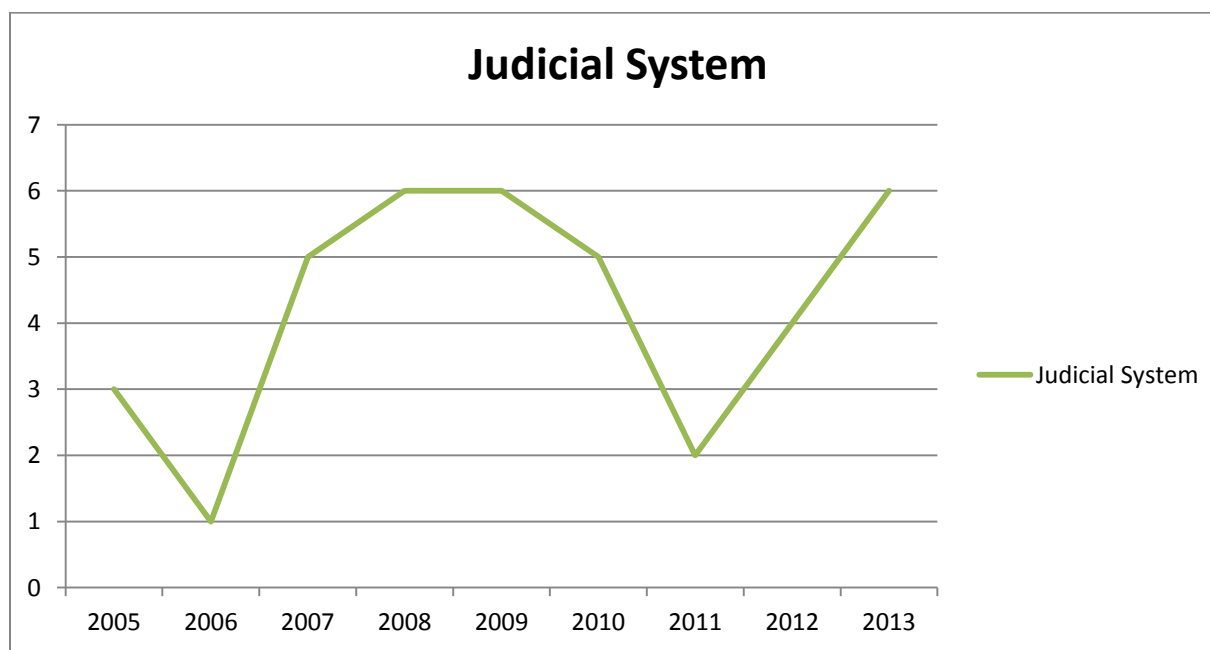


Figure 3 The Number of Instances of Imperative Language Used for 'Justice'

Analysis: An effective judiciary in line with best practices is critical for the EU accession process

²⁴ See: 2011: 11

for several reasons. First, it is necessary for effectively fighting organized crime and corruption, both of which continue to impede political and economic development in BiH.²⁵ Second, reform of the judiciary also affects the domestic prosecution of war crimes trials, and important issue for reconciliation in the country. Third, rationalizing the judicial system has been identified as a key factor in attracting foreign direct investment (FDI).²⁶

The use of imperative language regarding the Judicial System in BiH follows a unique trajectory compared to the rest of the sectors covered in this report. The sector saw a considerable increase following the failure of the April Package, as opposed to the decrease seen in other sectors, with high usage of imperative language. Nevertheless, 2009 seems again to be a pivotal year, after which the use of such language declines, dropping annually through 2011, when the “Structured Dialogue”²⁷ on the judicial system was launched, after which such language rose considerably. The lack of any call for a BiH supreme court in after 2010 is noteworthy, in particular due to the beginning of Structured Dialogue; this may suggest that the Progress Report was not used to help to set an agenda for Structured Dialogue, or that the agenda itself reduced targeted goals compared to pre-2010 Progress Reports.

4. Education

Overall: The field of education was perhaps the most consistent of all of the policy fields examined. Nevertheless, it also exhibits the lowest incidence of imperative language—that is, it is easily the most passively written of any of the policy fields examined, likely reflecting the paucity of EU standards or expectations for education as a policy issue among prospective member states. However, as there has been little systemic education reform since 2005, review of this sector remains interesting.

Of all of the topics covered in this report, education encompasses the most policy issues. This is because issues related to education are cross-cutting and fall into multiple policy issue sections such as socio-economic rights, minority rights as well as education policy.²⁸ Further, much of

²⁵ Divjak, Boris and Michael Pugh 2008. “The Political Economy of Corruption in Bosnia and Herzegovina.” *International Peacekeeping*, 15(3): 373 – 386; Wadsworth, Frank H., Jerry Wheat and Brenda Swartz 2012. “Balkan Corruption Perception: Impediments to Competitive Activity in Bosnia-Herzegovina, Croatia, FYROM, Serbia/Montenegro and Slovenia.” *International Business and Economics Research Journal*, 11(7): 731 – 744.

²⁶ Hellman, Joel and Daniel Kaufmann 2001. Confronting the Challenge of State Capture in Transition Economies.” http://info.worldbank.org/etools/docs/library/18070/fandd_statecapture_english.doc

²⁷ None of the Recommendations on Structured Dialogue on Justice, developed at three meetings in 2011, call for a state-level supreme court but for increased harmonization between the two entity-level Supreme Courts. <http://europa.ba/Default.aspx?id=87&lang=EN>.

²⁸ Within the Progress Reports, the fields of “Social and Economic Rights”, “Respect for and Protection of Minority Rights” and “Education and Research” were examined. Issues concerning research were excluded from the

the treatment of education consists of broad references to the issue. For example, there are several references to the discrimination faced by minority groups in “housing, health care, employment *and education*” (*italics added*).²⁹ Once Education as a specific policy topic was introduced into the Progress Reports in 2007, most of the discussion became dedicated to the harmonization of a primary school curricula (primarily the introduction of the nine-year curriculum), coordination across the country’s 13 ministries of education,³⁰ and the issue of segregation in the education system—particularly with respect to the problem of “two schools under one roof.” Discrimination against minorities in schools and their curricula was also a major concern, especially concerning BiH’s Roma population. Only in 2005 did the report highlight the impeded student mobility generated by lack of a common curriculum—an interesting observation as the mobility challenges that arise from disparate and uncoordinated systems and curricula remain.

Areas covered: Separation of children along ethnic lines (including ‘two schools under one roof’); mobility of students within the state; teaching of minority languages; discrimination and low enrollment of the Roma population; lack of educational opportunities for disabled children; Bologna Process; ethnically neutral curricula; hostility towards minorities and returnees; discrimination of IDPs; (low) attendance of early-childhood education programs; coordination of BiH’s 13 ministries of education; access to education for national minorities; progress in the realm of higher education; research capacity; state-level accreditation agencies and capacity, and; efficiency of educational spending.

Notable changes over time:

- Education was originally only incorporated into other policy areas, but after 2007 became its own topic;
- Issues regarding segregation and the educational needs of minorities were consistently mentioned with critical language such as “serious concern”, though imperative language is absent;³¹
- By 2011 the issue of *coordination* received the most attention within the issue of “Education and Research.”³²
- In 2013, it was noted that the underlying structural issue[s] facilitating discrimination in primary and secondary education “still needs to be addressed

examination.

²⁹ 2005: 24; in 2009, it is noted that Internally Displaced Persons (IDPs) and returnees “still face discrimination in employment, access to health care, *education*, pensions and social rights” (*italics added*).

³⁰ Each Entity has an MoE, and each of the 10 cantons has an MoE. The District of Brčko has an Education Department which serves the same function as an MoE.

³¹ 2011: 41.

³² 2011: 41 – 42.

politically,”³³ suggesting that two unsuccessful court cases challenging such practices would not necessarily have changed much.

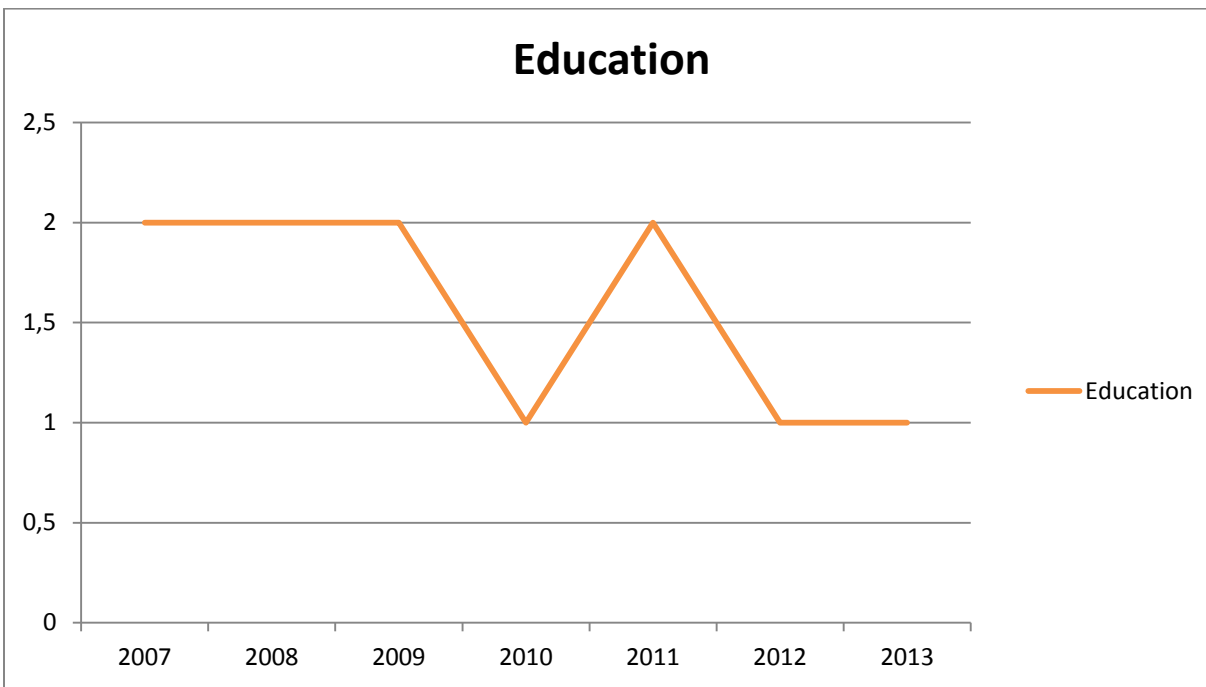


Figure 4 The Number of Instances of Imperative Language Used for 'Education'

Analysis: The EU does not have strict standards in primary and secondary education; outside a directive for the provision of compulsory and free tuition for primary/secondary education, the issue is minimally mentioned in the *acquis communautaire*.³⁴ Unlike agriculture or the rule of law, education is generally left to member states to manage. This is particularly the case with the cultural aspects of education. Education issues related to the economy/market, higher education and research are covered in more detail in the Progress Reports. However, as a post-war state with continuing significant human rights concerns, education does occupy a different position in BiH, thereby leading to some (albeit minimal) mention in the reports of issues and concerns.

The steady, low usage of imperative language regarding education correlates with the lack of systemic reform to resolve the country's education and segregation problems. If the EU accession process is the principal incentive for BiH authorities for reform, and education is *not* presented as an EU priority, then the lack of substantive reform is understandable. This sectoral

³³ 2013: 18, referring to cases in Travnik (2012) and Mostar (2013)

³⁴ Council Directive 77/486/EEC of 25 July 1977

analysis is perhaps most notable for suggesting the correlation between the absence of a requirement, and a lack of reform.

5. Protection of Minority Rights

Overall: The protection of minority rights is addressed in the broader field of Human Rights; further relevant topics are also covered in the subsection “Democracy and Rule of Law.”

Within these sectors, the marginalization of the Roma population in BiH is clearly prioritized, with the Roma being discussed much more extensively than any other group. Also featured prominently is the question of the return of Internally Displaced Persons (IDPs) and refugees to places where they are minorities (minority returnees are quite often persons from one of the constituent peoples who live in a region where they are a minority, though they are not distinguished in the Progress Reports from other “national minority” returnees). In 2010, all of the national minorities officially recognized as such are enumerated in a footnote on the right to cultural protection.³⁵ Other than that, mention of other national minorities is scarce, often limited to BiH’s Jewish community. And their mention is not necessarily consistent: the Jewish national minority was only mentioned in 2005, 2007 and 2010.

Areas covered: international agreements and conventions signed by BiH; access to political and government jobs; marginalization of the Roma population in BiH; status of the Jewish and Ukrainian population in BiH (only 2005); and the inter-related issues of eligibility to run for an office in the state Presidency, exclusion of minorities from the House of Peoples, and *Sejdić-Finci* (after 2009); constitutional reform (after 2007).

Notable changes over time:

- The tone of the reports did not become much more critical over time, in contrast to the other sectors; if anything, it became more conciliatory. Beginning in 2011, instead of noting the “limited progress” as in previous years, the report begins with “Overall, a framework is in place...,” though few of the topics covered reported progress in implementation;³⁶
- There is a clear emphasis on addressing the marginalization of the Roma in particular. The only discussion of discrimination against the “Others” was generally related to the Presidency or the House of Peoples (linked to *Sejdić-Finci*).

³⁵ See: 2010: 19

³⁶ 2011: 19; 2012: 19; 2013: 19

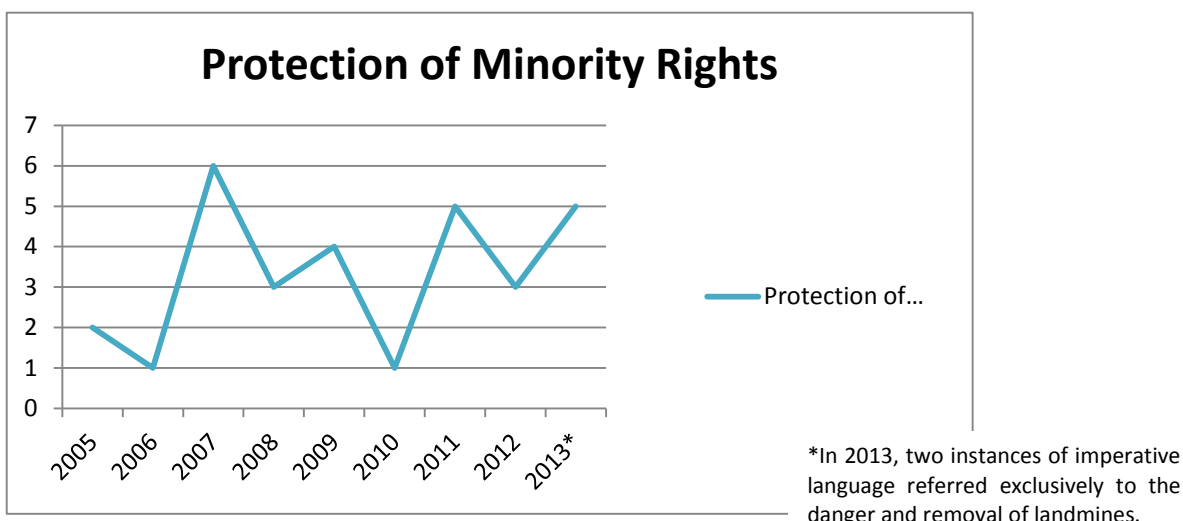


Figure 5 The Number of Instances of Imperative Language Used for 'the Respect for and Protection of Minority Rights'

Analysis: There are two interesting features that come out of the reporting on minority rights. First, though it subsequently dropped, it is interesting that there was a rise in imperative language between 2010 and 2011; only education saw a similar increase in that time period, while in the other three sectors the frequency dropped. Further, while the strong language with reference to Roma issues is consistent with engagement on this issue through programs such as the Decade for Roma Inclusion,³⁷ attention to non-Roma minority issues is again largely focused on the *Sejdić-Finci* implementation (it is worth mentioning that Dervo Sejdić is himself a Rom). The much more “political” minority rights concern minority returnees, or, more simply, the rights of constituent peoples in a region where they are a minority (a Serb in Mostar; a Bosniak in Banja Luka, etc.) receives less attention. However, though there is some variation in the level of imperative language over time, there is no trend demonstrating reduction of such language. This may suggest that there is a willingness to forcefully remind of BiH obligations in this matter periodically; the language remaining would then be how one might in fact define “minority rights.”

³⁷ 2007: 19; 2008: 20; 2009: 20; http://www.romadecade.org/decade_action_plans

Case Study Comparison: Slovakia

In order to establish a broad frame of reference, Slovakia's past Progress Reports (in earlier years called "Regular Reports") provide useful food for thought. Though there are some important differences between BiH and Slovakia—most notably post-conflict dynamics in BiH and each country's starting point in terms of development when EU engagement began—Slovakia is a suitable comparison for several reasons related to its internal political dynamics at the time of its European accession journey. Like BiH, Slovakia was the product of the dissolution of a larger state, and considered a laggard in the region with respect to the implementation of liberal, democratic reforms. The EU's preferences were, at crucial points, clearly expressed with respect to political candidates in Slovakia, as has been the case in BiH. Furthermore, the EU has had every incentive to affect policy outcomes in BiH as it had in Slovakia, lest enlargement's conditionality lose credibility.³⁸

Slovakia was nearly derailed from its EU path as late as the 2002 parliamentary elections when former Prime Minister Vladimir Mečiar and his People's Party – Movement for a Democratic Slovakia (HZDS)—received more votes than any other party in the country.³⁹ Mečiar's initial tenure as prime minister from 1993 to 1998 had been characterized by illiberal, heavy-handed administration, corruption and little judicial independence. Mečiar's plurality in 2002 threatened to disrupt the progress that had been made during the previous four years under the pro-EU successor government. But, as in 1998 (when he also won a plurality), EU pressure played a significant part in his inability to form a government in spite of winning a plurality of votes in both elections.⁴⁰

The period covered by the Regular Reports coincides with the period of the most rapid pro-EU reform in Slovakia: 1998 to 2003. In 1998, Slovakia found itself several years behind its regional counterparts in terms of EU accession due to Mečiar's illiberal regime. After a reading of the BiH Progress Reports and considering the country's lack of forward movement, one might expect a fairly critical EU Progress Report for Slovakia in 1998 as a result, becoming progressively less so over time as needed reforms were implemented.

For Slovakia, this was true; the tone of the reports becomes quite positive, even laudatory, by 2002.⁴¹ Nonetheless, the general use of imperative language did not decline in spite of the

³⁸ Joseph, Edward P., and R. Bruce Hitchner 2008. "Making Bosnia Work: Why EU Accession is Not Enough." *USIPeace Briefing*, United States Institute of Peace.

³⁹ Schimmelfennig, Frank, Stefan Engert and Heiko Knobel 2003. "Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey". *Journal of Common Market Studies* 41(3): 495 – 518.; Vachudova, Milada Anna 2005. Europe Undivided: Democracy, Leverage and Integration after Communism. Oxford University Press, New York.

⁴⁰ Schimmelfennig, Engert and Knobel (2003); Vachudová (2005).

⁴¹ "Regular Report from the Commission on Slovakia's Progress Towards Accession" 2002: 23

progress made in implementing needed reform and moving closer to Europe. The use of such language with respect to the judiciary, for example, rose from nothing in 1999 to three instances in 2000 and four in 2001. This occurred while also devoting a considerable amount of space to detailing the progress that had been made. Interestingly, the reports do not maintain their strict organizational structure like the BiH reports. Not only are the Regular Reports for Slovakia much longer and more detailed overall than the BiH equivalents, but they get somewhat longer over time until 2003 (up to 149 pages for Slovakia in 2002, compared to 66 for BiH in 2011).⁴² The judiciary section, for example, becomes increasingly comprehensive even as the report notes progress. The Regular Reports for Slovakia are also notable for emphasizing the need for actual *implementation* of reforms. There is quite a stark contrast between the evolving format of the Slovakia reports versus the static (if considerably more critical) reports for BiH.

The other notable difference between EU reporting on Slovakia and Bosnia is the practice of referring to previous progress reports. The reports on BiH have *never* referred back to previous editions on any of the five sectors assessed in this policy note. In 2000, reporting on the judiciary, the report referenced the earlier Regular Reports, citing their emphasis on judicial independence in Slovakia.⁴³ In 1999, the previous year's assessment of the political situation leading up to pre-accession talks is cited.⁴⁴ This is significant, if for no other reason than it establishes links of accountability to the reports' own previous standards, something that has been argued to be missing in BiH.⁴⁵

Overall, the EU Regular Reports for Slovakia through its EU accession process were much more comprehensive. They also followed a more intuitive pattern than those for BiH: they began with criticism, which evolves into praise as accession drew nearer. While this is likely reflective of the success of EU pressure for reforms in Slovakia, the increased use of imperative language also suggests that as a country gets closer to EU membership, the expectations for completing reforms become *more* stringent, leading to increased pressure the closer the country gets to the finish line. Alternately, the case of Slovakia (and BiH) suggests that accession to the European Union is a dynamic and evolving process that is driven more by political than by technical imperatives.⁴⁶

⁴² From 2006 to 2011, the number of pages in the report varies from 55 to 66, whereas the Slovakia Reports range from 52 to 149 pages.

⁴³ Slovakia 2000: 16

⁴⁴ Slovakia 1999: 11

⁴⁵ Azinović, Vlado, Kurt Bassuener and Bodo Weber. "Assessing the Potential for Renewed Ethnic Violence in Bosnia and Herzegovina: A Security Risk Analysis." Atlantic Initiative, Democratization Policy Council (October 2011).

⁴⁶ See: Noutcheva (2009); Vachudová (2005).

Conclusion

If accession is at the end of the day firmly grounded in political rather than technical imperatives, and annual reports are driven by qualitative and often subjective assessments, what does this review offer? A number of trends can be observed.

First, though the structure and content of the EU Progress Reports on Bosnia and Herzegovina has been relatively consistent over time, the verbiage and tone of the reports have varied in important ways, as detailed above. Furthermore, the change in content that *has* occurred (e.g., agriculture and judiciary) has been significant, with the failure to note the establishment of a state-level Ministry of Agriculture and Supreme Court being the most notable. That VNI and “Entity veto” are not specifically highlighted as anything more than inconveniences except in 2009 is in line with other instances in which 2009 was an important year for promoting reform.

Second, the EU’s clear preference for the 5+2 Agenda to be implemented has been consistently reduced to emphasize only the specific measures required to shut down the OHR. The 2013 report mentioned only that no progress had been made in the distribution of property between the different levels of government, and that very briefly.⁴⁷ Many of the 5+2 requirements are in fact covered by the SAA, and it is still the case that the reports refer to these broad principles very generally through different policy priorities as well. The 2013 report has simply demonstrated that the EU has begun to favor a much more targeted approach, which emphasizes specific goals – the less political the better.

Third, that there is a marked drop in imperatives in constitutional reform and justice sector reform in 2010 and 2011, while at the same time increasing usage regarding education and minority rights issues, is still curious. It suggests a functional delinking between the structures and systems that should protect these rights. This may be coincidental, but the fate of constitutional and justice reform will ultimately provide the foundation for any progress in those other sectors.

Finally, it is fair to note that if something is *not* mentioned, or is not consistently mentioned using imperative language, then it can reasonably be thought to not be a reform priority. Although one EU official recently reiterated that the Progress Reports are not, in fact, “prescriptive,”⁴⁸ local stakeholders will prioritize their reform challenges according to the benefits that they feel such reform will deliver. It is for this reason that dropping the state-level Ministry of Agriculture and Supreme Court continues to be cause for concern. Such a change may signal (rightly or wrongly) that such systematic reforms are not in fact needed, expected,

⁴⁷ 2013: 7

⁴⁸ Presentation of the 2012 Progress Report to local NGOs. EU Delegation, Sarajevo. 12 October 2012.

or even recommended. These reports have an audience in BiH: policy-makers, politicians, activists, and a certain segment of citizens engaged in policy debates. Reform-minded NGOs and other actors do use these reports as a tool, seeking to glean more information on trends and priorities so that they may seek to leverage such priorities in a way that can strengthen their own social activism and efforts.⁴⁹

Given the consistent state of political deadlock in BiH—or ‘crisis’, as it is currently being referred to—the European accession process (and the substantial amounts of money and structural support it brings) is the single largest carrot and potential stick for reform and change in BiH. In spite of its rigorous engagement in countries such as Slovakia, in which requirements for reform actually had an impact on domestic politics, *the EU has been reluctant to insist on strict conditionality*. Even though considerable cuts in IPA funds were announced in the fall of 2013, this came only after expectations had been lowered in several areas.

It is also interesting to note that up through 2012 the trend seemed to suggest that the EU was prioritizing the tenuous stability of the *status quo* over reform. But 2013 saw a jump in the use of imperative language in two important policy areas. This only happened *after* the Commission had decided to cut IPA funding to BiH by 54 percent, however, again indicating that the Progress Reports may be more of a reactive than vanguard instrument.

While largely technical, the EU accession process always involves political considerations. The Progress Reports on Bosnia and Herzegovina are no exception. The continued failure to mention the need for a state-level Supreme Court or Ministry of Agriculture in the latest reports is of serious concern. This omission is not justified in any way; the mention of the need for these bodies in previous reports has simply been abandoned. This may represent reduced expectations for BiH reform moving forward, in spite of clear, increasing popular disappointment in its progress toward Europe. Whether a strategy focused on stability over reform will be successful—not only in preparing BiH for EU membership, but in remedying BiH’s unresolved post-war stateness problems, consolidating its democratic structures, and thawing its frozen conflict⁵⁰—remains to be seen.

⁴⁹For example, in autumn 2011 a coalition of five NGOs representing several hundred NGOs from throughout BiH prepared a response on the Progress Report, highlighting their concerns about substantive development in the non-profit, civil society sector, the formulation of the Progress Reports in BiH themselves, and the general process of supporting BiH in its preparation for EU accession; see: “Reaction to the 2011 Progress Report in BiH” (10 November 2011).

⁵⁰ Bišćević, Hido. “Bosnia Stalemate Turning into ‘Frozen Conflict’”. EurActiv.com. March 2010. Web. 24 September 2011. <http://www.euractiv.com/enlargement/bosnia-stalemate-turning-frozen-conflict-news-343803>

ANNEX: COMPARISON OF IMPERATIVE LANGUAGE BY SECTOR

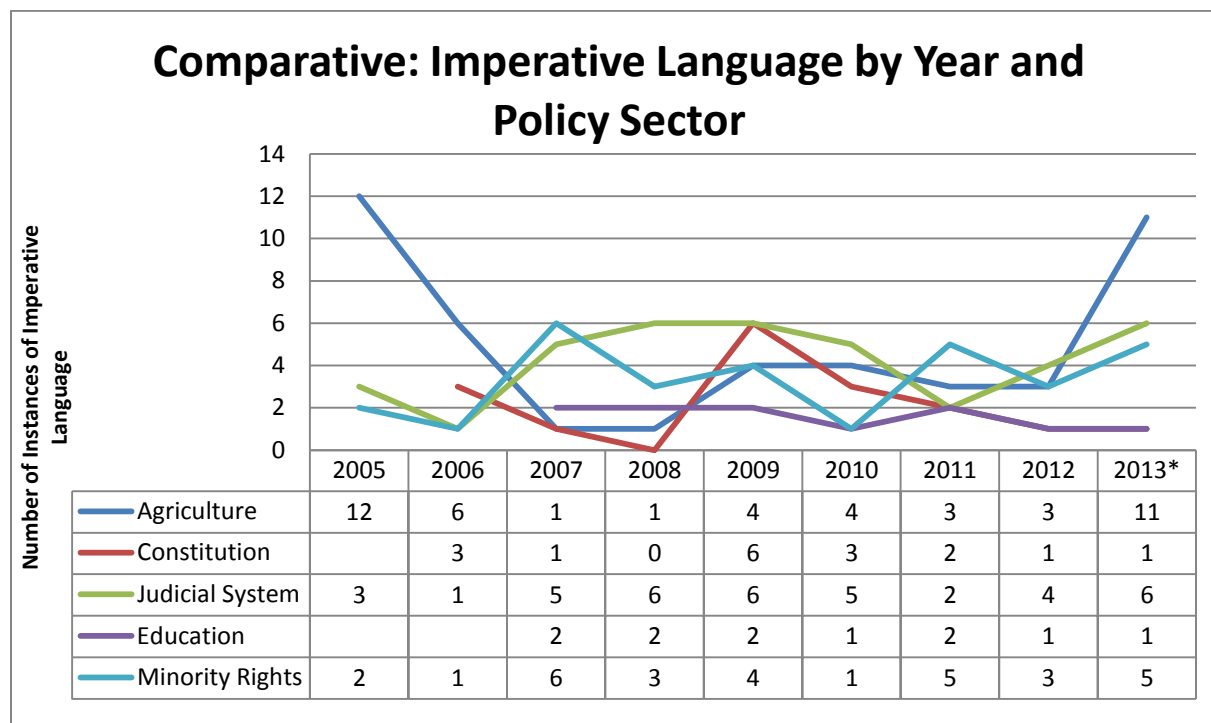


Figure 6 Number of Instances of Imperative Language Used by Year and Policy Sector