

POSITION OF MIGRANTS, REFUGEES AND ASYLUM-SEEKERS

RELATIONS BETWEEN BIH AND THE EU:

How to Achieve the Complete Respect of Human Rights of Migrants and Asylum-seekers

INITIATIVE FOR MONITORING
THE EU INTEGRATION OF
BOSNIA AND HERZEGOVINA

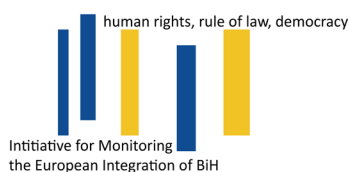
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CONTENT

LIST OF ABBREVIATIONS	3
GLOSSARY	4
INTRODUCTION	5
 I GENERAL REMARKS ON THE POSITION AND RIGHTS OF MIGRANTS IN BIH	 7
1.1 Relevant Statistics	7
1.2 Accommodation and Conditions in Reception Centres	8
 II LEGAL AND INSTITUTIONAL FRAMEWORK	10
2.1 Normative Framework in the Area of Migrations	10
2.2 Institutional Framework	11
 III INTERNATIONAL STANDARDS AND HARMONISING THE LEGISLATURE WITH THE EU ACQUIS	 13
 IV CONCLUDING REMARKS	 18
 ABOUT THE INITIATIVE	 20



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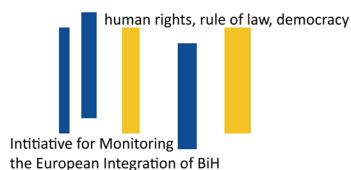
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LIST OF ABBREVIATIONS

BD	Brčko District
BiH	Bosnia and Herzegovina
CoM	BiH Council of Ministers
CSW	Centre for Social Work
DRC	Danish Refugee Council
EC	European Commission
EU	European Union
EP	European Parliament
FBiH	Federation of Bosnia and Herzegovina
HNC	Herzegovina-Neretva Canton
IOM	International Organization for Migration
LoA	Law on Asylum
OSCE	Organization for Security and Co-operation in Europe
RS	Republika Srpska
SC	Sarajevo Canton
UNHCR	UN Refugee Agency
USC	Una-Sana Canton

GLOSSARY

Migrant: IOM defines migrant as a person who moves or has crossed an international border, or who moves away from his or her place of usual residence within his or her state, regardless of (1) person's legal status; (2) whether movement is voluntary or forced; (3) reasons of movement; or (4) duration of stay. IOM deals with migrants and problems related to migrations and, in agreement with states, migrants who are in need of international migrant services.

Irregular migrant: A person who owing to irregular entry, breach of condition of entry or the expiry of their visa lacks legal status in a transit or host country. Definition includes, inter alia, those persons who have entered a transit or host country lawfully, but who have overstayed for a longer period than authorised or subsequently taken up unauthorised employment (they are also called illegal/undocumented migrants or migrants in an irregular situation). Term *irregular* is preferable to *illegal* since the latter carries a criminal connotation and it is considered that it negates the humanity of migrants.¹

Mixed migration flow: the so-called mass migrations of mixed type (refugees, asylum-seekers and economic migrants, victims of smuggling or trafficking in human beings, women and children, as well as other categories of vulnerable persons without valid documents) are denoted in Europe as *refugee/migrant crisis*.

Refugee: Refugees are persons who have left their countries of origin due to well-founded fear of persecution, conflict, general violence or other circumstances which have seriously disturbed public order and who, as a result of that, need international protection. Definition of refugee is found in the 1951 Convention and UNHCR Statute.

Asylum-seekers: Asylum-seekers are persons who seek protection as refugees while they await for the government to decide on their requests. In Bosnia and Herzegovina, Sector for Asylum of the Ministry of Security is responsible for those seeking international protection, who are then entitled to primary health care, primary and secondary education, free legal aid and psychosocial support.²

Unaccompanied and separated children: Children who are separated from both parents or from previous legal or usual guardian, but not necessarily from other relatives. Hence, it can include children accompanied by other adult members of their family. Unaccompanied children are children separated from their parents and other relatives and who are not cared for by an adult who by law or custom has responsibility to do so.³

1 IOM and UNHCR, Reports on migrations, Recommendations for journalists.

2 Ibid

3 UNICEF Child Focused Rapid Assessment – Key Findings and Recommendations, 2018.
More information can be found in Inter-agency Guiding Principles on Unaccompanied and

INTRODUCTION

We are witnesses of the alarming trend of human rights violations of irregular migrants, asylum-seekers and refugees in all parts of Europe which unfortunately also includes BiH. What was observed as a constant trend is the increase in control on border crossings aimed at discouraging/discovering migrants and their return to countries they came from. Examples of migrants, including asylum-seekers who tried entering the EU territory irregularly, witnessing illegal deprivation of liberty and being held in rooms reminiscent of detention, more frequent violent push-backs of migrants and asylum-seekers, inhumane conditions in accommodations in reception centres, limited access to health care and similar are common.

Irregular migrations do not constitute a criminal act and, consequently, irregular migrants enjoy certain rights and freedoms. One of the rights is the right to express the need for asylum, that is the right to access to a just and efficient system and procedures related to asylum. A special focus of this analysis will thus be on the legal aspects of enjoying the right to asylum as a single key element for the protection of human rights which further enables the access to basic scope of rights, such as the access to health care and social services, education, unhindered movement, etc.

What is distinct for BiH is the fact that a large number of expressed intents for asylum is different than the number of actual asylum-seekers. One of the most important reasons for that is that BiH represents a transit country, and not a final destination for migrants, refugees and asylum-seekers.

This analysis is not aimed at offering answers to all the questions and problems, but at pointing out several **key consequences of the humanitarian crisis** on the one hand, and, on the other hand, at **reminding of national and international instruments of human rights protection in the context of accession to the EU** for BiH which is a potential candidate, but where a great role definitely lies in the fact that it is not exempt from acting in line with the EU standards. Regulations regarding the treatment of foreign citizens in BiH are mostly in accordance with the EU acquis, however, they need to be harmonised regarding access to rights, especially for vulnerable groups. Implementation of a balanced humanitarian approach to these mixed migrations needs to be harmonised at both interstate and regional levels.

We can definitely ascertain that, in the public and the official discourse as well, the principle of respect for the rights of refugees and migrants moved into the background in relation to the question of security, border protection so that even the liberal democratic countries of the EU initiate and introduce policies contrary to the standards of respecting

human rights and international standards in general. **Sofia Declaration**⁴ adopted on May 17, 2018, supported by the EU and Western Balkans partners, states concerns with “many security challenges” that demand coordinated individual and collective action and calls for cooperation in stemming illegal migration flows.

This document will not, however, deal with migrations in terms of the EU member states and their citizens in regards to free movement, labour mobility, academic and research mobility and similar which are monitored and controlled in other ways and in line with different set of rules.

Available documents, strategies and laws applicable in BiH relating to migration management were used for the purpose of creation of this preliminary analysis. Additionally, data of relevant organizations, both international (primarily IOM, the EU Delegation, and UNHCR) and local, data of relevant ministries will be used as indicators of current situation in this area. A difficulty in seeing the problem and creating a comprehensive picture on the state of migrant crisis in BiH lies primarily in the fact that the relevant institution in BiH have relied almost exclusively on the support of international organizations, due to their unpreparedness in managing the migrant crisis. The state organization of BiH definitely did not benefit this situation. BiH Ministry of Security and other institutions at the state level did not succeed in establishing an efficient coordination mechanism aimed at offering efficient management of the humanitarian aspect of the migrant crisis. The constant objections of the state level and the overload of local communities led to a complete disaster from the creation of the completely inadequate Vučijak camp, which the international institutions reported about as an inhumane and unacceptable treatment, as it was the case, to the fact that Lipa camp is still in use, at the time of writing this analysis, although it is also inadequate, and it is a place where migrants and refugees sleep without tents during the winter, without any access to hygienic conditions.

Adequate data on the actual number of migrants and refugees and their demographic characteristics also presents a difficulty in mapping the problems and causes, but it is certain that the existing data constitute a basis for further research which can explain the humanitarian implications of this issue. In order to get a more suitable perspective of the problem of the (un)suitable response to the protection of migrants' rights and the humanitarian response to the crisis, in the first segment we will briefly refer to the available data on the situation mixed type migrations, primarily with a focus on the humanitarian aspect.

I GENERAL REMARKS ON THE POSITION AND RIGHTS OF MIGRANTS

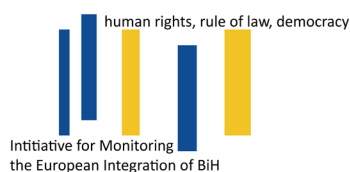
In May 2015, the EU has adopted the European Agenda on Migration.⁵ This document has four key postulates: 1. Reducing the incentives for irregular migrations; 2. Saving lives and securing external borders; 3. Strengthening the common asylum policy; and 4. Creating a new policy on legal migrations. The Commission has in that respect significantly increased the budget for the joint operations of Frontex, and also presented a draft for security and defence policies aimed at stemming smuggling of migrants. In the context of the adopted joint agenda on migration, EC in its 2020 Report on BiH states:

EU support on migration in Western Balkans promoted the creation of new or more robust institutions, laws and procedures in the areas of asylum, protection and border management, as well as the transposition of complex and demanding EU acquis.

The closing of the Hungarian border in 2015, and later the signing of an agreement between the EU and Turkey has led to forced stay of migrants and asylum-seekers in the transit countries which exposed these categories to additional risks to their health and lives, forcing them to hire smugglers and human traffickers, use unsafe crossings, enter into conflicts with the army and the police, and face numerous other challenges. This has also led to a significant increase in funds spent on border surveillance, but it also serves as an excuse for an increased use of the police and military in terms of protection of the EU borders. The agreement with third countries which are not the EU member states establishes a certain type of cooperation which in principle leads to the engagement of the third countries in limiting movement of migrants and asylum-seekers (see more on limiting the movement at the EU border in Chapter III of this analysis, Subchapter Access to Right to Asylum). Such politics of the EU affected BiH already at the start of 2018. The route followed by migrants and asylum-seekers was redirected to the BiH territory. The majority enters from Serbia and Montenegro and proceed to exit points in Velika Kladuša and Bihać towards the state border with Croatia.

1.1 Relevant Statistics

In early 2018 Bosnia and Herzegovina experienced a drastic increase in the number of migrants and refugees entering the country. Already at the very beginning, the relevant institution faced a challenge in terms of human and financial resources, and to this day they have not adopted strategic documents which would enable better and more suitable crisis management primarily aimed at the human rights protection. UNHCR estimates that around 69,800 migrants and asylum-seekers entered the country between 2018 and the time of writing this report. Una-Sana



⁵ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_

Canton and Sarajevo Canton share the greatest burden of the migrant crisis. A smaller number of migrants and asylum-seekers is located in Tuzla Canton. Since there is no reception centre in this area, help for migrants and asylum-seekers among which is a significant number of children, is primarily offered by nongovernmental organizations. The current report of IOM for the period until February 4, 2021⁶ gives the following data. The current number of migrants and asylum-seekers in temporary reception centres in BiH is 5,597. UNHCR estimates that there is roughly around 2,000 people outside the reception centres. The number of unaccompanied children, according to the UNHCR, is 205. At the beginning of 2021, UNHCR partnered with DRC and IOM unofficially reported that there is an increase in the number of declined requests for accommodation of minors in the reception centre Emmaus, reported by the minors themselves. Overall, the three most commonly reported countries of origin were: Pakistan, Afghanistan and Iraq.

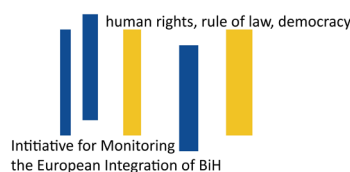
Extremely poor coordination between the relevant institutions and organizations in crisis management and a lack of clear methodology for gathering data are still some of the basic drawbacks. Inadequate or incomplete reporting on migrants and asylum-seekers in BiH also leads to stigmatisation of this population, and consequently to safety threats.

1.2 Accommodation and Conditions in Reception Centres

At the time of writing this report, there are five (5) temporary centres accommodating migrants and asylum-seekers in BiH. Following the fire started by the migrants in Lipa camp in December 2020⁷, who were probably dissatisfied with quality of life in the camp, BiH Armed Forces set up 30 improvised tents, with the capacity of 900 places, where 898 migrants and asylum-seekers have been placed during this period⁸. These living conditions are inhumane, especially during the winter. Additional sanitary containers and separate rooms for isolation and quarantine need to be set up following the guidelines of public health care institutions, and as a consequence of COVID-19 pandemics are still extremely necessary.

There are two reception centres managed by the state: Salakovac, reception centre for refugees, and Delijaš, reception centre for asylum-seekers. There are several reception centres in USC: temporary reception centre Sedra in Cazin municipality, Bira camp in Bihać was closed in October 2020, temporary reception centre Borići also located in Bihać, reception centre Miral in Velika Kladuša which will be closed in spring 2021 as it was announced in the media.

In Sarajevo Canton there are currently two camps which are open,



6 https://bih.iom.int/sites/default/files/IOM%20BiH%20External%20Sitrep_05%2002%202021%20Final.pdf

7 Fire in Bira Camp in Bihać. <https://balkans.aljazeera.net/news/balkan/2020/12/23/pozar-u-kampu-lipa-u-bihacu>

8 <https://iom.us18.list-manage.com/tracklick?u=7fa4ed97b90df810fd0bdaa1d&id=307e83dc3f8e=664b548857>

Ušivak in Hadžići and temporary reception centre Blažuj.

Council of Europe Commissioner for Human Rights has witnessed, following several official visits to BiH where she visited the existing accommodations, the extremely poor conditions in which migrants and asylum-seekers live. In December 2020, the Commissioner invited the BiH Council of Ministers and Ministry of Security to urgently ensure that the basic needs of this population are met, such as adequate accommodation, access to health care, food, water and clothes, regardless of the legal status of these persons, and regardless of whether they are treated as persons in transit or persons who have the intention of remaining in the country. In her letter addressed to all aforementioned institutions, she stated that it is necessary to ensure adequate conditions for reception as integral part of this process, meaning that Federation of BiH, Republika Srpska, and District Brčko, as well as all the cantons in Federation of BiH, should share the responsibility for accommodation of migrants and asylum-seekers more evenly.⁹

Many international organizations have warned, in their reports and official visits too, that it is necessary to improve the protection of human rights of migrants and asylum-seekers, and especially of those who do not possess valid documents, as well as children, and ensure their right to access to health care and education.

9 <http://www.sarajevotimes.com/commissioner-mijatovic-calls-authorities-in-bosnia-to-address-shortcomings-in-their-handling-of-migrants/>

II LEGAL AND INSTITUTIONAL FRAMEWORK

2.1 Normative Framework in the Area of Migrations

Among the most important laws dealing with migration management in BiH are **Law on Asylum**¹⁰ (adopted in 2016) and **Law on Foreigners**¹¹ (adopted in 2015), **Law on Border Control** (last amended in 2014), **FBiH Law on Employment of Foreigners** (2012), **RS Law on Employment of Foreign Citizens and Persons without Citizenship** (2009). Additionally, strategic documents such as **Strategy in the Area of Migration and Asylum and Action Plan for the Period 2016-2020**, **Strategy of Integrated Border Management in Bosnia and Herzegovina for the Period 2019-2023**¹², **Strategy for the Reception and Integration of Bosnia and Herzegovina Nationals who Return Under Readmission Agreements 2015-2018**.

Considering that the valid strategies and action plans are either expired or need to be adequately adopted to the recent situations, steps need to be taken in the following period in order to adopt a new strategy and action plan for migrations and asylum. At the same time, BiH needs to create a realistic plan of urgent measures in order to deal with a potential additional influx of migrants and refugees.

Stabilisation and Association Agreement signed by the European Union and its member states on the one hand, and Bosnia and Herzegovina on the other¹³, in Article 6, states the commitment of BiH to engage in activities of joint interest with the EU member states, in which one of the priorities is fighting illegal migrations. Additionally, it is compulsory that BiH ensures gradual harmonisation of the existing laws and future legislation with the EU acquis. In relation to this, it is also compulsory that BiH ensures proper application and enforcing of the existing and future legislation.

Considering the increase in number of migrants and the renewed existence of multiple illegal border crossings, we can conclude that the illegal migrations are organised in an increasingly efficient manner. BiH is a transit country for migrants and asylum-seekers and a state bordering the EU. Consequently, it is necessary, as it has been stated several times in this analysis, to develop strategic documents regarding migration management which will respect dignity and rights of migrants and asylum-seekers, and especially vulnerable groups.

Although a series of strategic initiatives and aforementioned documents

10 <http://www.msb.gov.ba/docs/BiH%20Asylum%20Law%202016%20E.doc>

11 http://www.fipa.gov.ba/publikacije_materijali/zakoni/04.02.2017%20Law_on_foreigners_of_BiH.pdf

12 From the EC Progress Report on BiH 2020: *The legal framework for border control is partly aligned with the EU/Schengen acquis and is implemented smoothly. The country adopted a new integrated border management (IBM) strategy and its action plan for 2019-2023, in line with the EU acquis. Bosnia and Herzegovina has yet to establish a national coordination centre (NCC) in line with the EU/Schengen acquis and best practices for information sharing and coordination between all relevant law enforcement agencies.*

13 https://www.dei.gov.ba/uploads/documents/sporazum-o-stabilizaciji-i-pridruzivanju-izmedu-eu-i-bosne-i-hercegovine-eng-jezik-compressed_1604320227.pdf

financed by the EU and other donors have been established, the capacities and coordination system of competent bodies are not adequate for managing the current situation.

Zagreb Declaration¹⁴ from May 20, 2020, which was signed by the leaders of 27 EU member states, with consultations with the Western Balkans country leaders, focuses, among other things, on the state cooperation in facing migration challenges, including stemming migrant smuggling, cooperation with Frontex, European Asylum Support Office and Europol. Further it is stated that the remaining agreements on the status with Frontex should be concluded without any further delays, and that the EU will continue supporting the improvements of migrants and asylum-seekers reception capacities in Western Balkans.

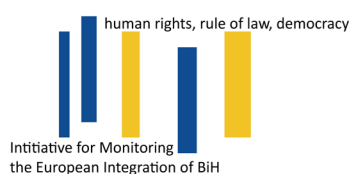
BiH still has not started the procedure of closing the agreement on status with Frontex.

Apart from difficulties in facing the situation with migrants, the return and readmission of foreign citizens also present a huge problem to BiH. BiH has signed the agreements on readmission with the European Union and the countries in the region. The agreements with Turkey and Moldova still have not been ratified, and in October 2020 the agreement on readmission with Pakistan was concluded. Although the negotiations about readmission were held with the countries in the region, the agreements have not been concluded and it is uncertain when that will happen, especially in regards to the current situation regarding irregular or mixed migrations.

While discussing the EU accession process and measures which need to be undertaken, candidate states and potential candidate states, such as BiH, will need to follow EURODAC regulations. These regulations refer to establishing technical assistance which will be able to register irregular migrants and asylum-seekers, their route, time and place of their first entrance to a member state, etc. and all this will be achieved through the use of biometric identification (finger prints).¹⁵ However, it is of key importance, we can even say it is a prerequisite in order to establish such a system, that legal provisions are created in line with the EU acquis. A significant problem BiH faces regarding the return of irregular migrants is a lack of mechanisms for positive identification. This has been accentuated through an increase in the number of migrants, most of whom do not possess any identification documents.

2.2 Institutional Framework

In 2018, the OSCE Mission in BiH has created an assessment of the situation regarding migrants and refugees in BiH¹⁶ which, among other things, mapped relevant actors (both competent institutions and other institutions, and organizations) involved in the issue of migrant



¹⁴ <https://europeanwesternbalkans.com/2020/05/06/zagreb-declaration-6-may-2020/>
¹⁵ Regulation EC 862/2007
¹⁶ <https://www.osce.org/bs/mission-to-bosnia-and-herzegovina/397322>

situation. The main conclusion regarding this issue is that the main actors in BiH are not sufficiently coordinated nor prepared to provide a suitable response to the situation of migrant crisis. The institutions mapped in this process are: BiH Border Police, Service for Foreigners' Affairs of BiH, health centres and hospitals, centres for social work, local administration and agencies for the implementation of law, prosecutors' offices and courts, civil society organizations and informal volunteer groups, as well as religious communities. Some of concrete recommendations stemming from this analysis are: capacity building of the competent institutions so that they may provide an adequate response to the migrant situation, ensuring a sufficient number of trained and qualified personnel including translators/interpreters, cultural mediators and officers, improving the data collection and data management (including sex- and age-disaggregated data) in order to ensure a more efficient monitoring of the situation and to contribute to the development of evidence based strategies/plans for unforeseen situations, establishing an efficient communication network in order to ensure a proper dissemination of information at local, cantonal, entity and state levels, creating and distributing clear guidelines and standard operative procedures and strengthening referral mechanisms in order to enable relevant actors to meet the needs of vulnerable migrants and refugees, and organising regular coordination meetings with international organizations, embassies and the leading active nongovernmental organizations in order to discuss the latest events and financial needs. All the recommendations listed in this analysis are still relevant.

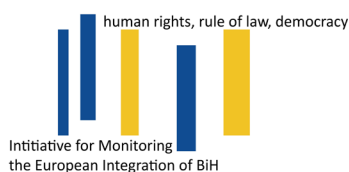
III INTERNATIONAL STANDARDS AND HARMONISING THE LEGISLATURE WITH THE EU ACQUIS

The national legislation can generally be considered as harmonised with the international standards in the area of human rights ratified by BiH and which include, on top of the ones previously mentioned (see Chapter II), **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**¹⁷. The **UN Convention and Protocol Relating to the Status of Refugees**¹⁸ also reinforces the principle that human beings should enjoy basic rights and freedoms free from any discrimination.

BiH Law on Foreigners was adopted in 2015 primarily because of the need to enhance the former law and to amend it in line with the EU acquis, that is, directives and regulations. Then valid Law on Movement and Stay of Aliens and Asylum was divided into two currently valid laws – Law on Foreigners and Law on Asylum. BiH Law on Foreigners is a comprehensive law regulating issues of migration flow in BiH, and, among other issues, the procedure of foreigners entering into BiH, including visa regime and visa liberation, issuing travel documents for foreigners, stay of foreigners and their removal from BiH, rights and obligations they have, possibility of work and education in BiH.

Law on Foreigners contains two important principles – the non-refoulement principle and the non-discrimination principle. Regarding the prohibition of discrimination, an extremely important law is the **Law on Prohibition of Discrimination** itself which regulates the prohibition of discrimination towards any person or group of persons and those related to them or connected otherwise on grounds of their race, skin colour, language, religion, ethnic affiliation, national or social origin, connection to a national minority, political or any other persuasion, property, membership in trade union or any other association, education, social status and sex, sexual expression or sexual orientation, and every other circumstance with a purpose or a consequence to disable or endanger recognition, enjoyment or realization, of rights and freedoms in all areas of public life. Law on Foreigners stipulates the requirement for the competent institutions to notify the foreigner¹⁹ in all the segments of the procedure on the rights and responsibilities stemming from it, and that they are obliged to make it possible for a foreigner who does not understand the language of the procedure to follow it through a translator or an interpreter, and the requests for exercising this right according to the Law and the evidence supporting the request, as well as subpoena, rulings and other court documents, are delivered in one of the official languages of BiH.

According to the existing normative framework in place in BiH, illegal



¹⁷ <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>

¹⁸ <https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>

¹⁹ A foreigner is a person who is not BiH national.

migrations and stay in BiH territory do not constitute a criminal act on their own. In regards to this, migration custody is not used in cases of illegal border crossings. During 2019, there were several media reports on the detainment of migrants and asylum-seekers in rooms reminiscent of custody units, which were also unsuitable for detainment.²⁰ Following the media reports, there is no record that this practise continued. In case of a decision on deportation, irregular or illegal migrants can leave the country voluntarily and without a deadline for extradition. According to the Law on Foreigners, custody can be used as the last measure while the extradition or deportation procedure is progress. Detention can last up to 90 days, with the possibility of extending it for another 90 days. If the migrant cannot be extradited to a safe third country, then the detention can last for up to 18 months, which can occur in case of countries with which BiH has not signed agreements on readmission, such as Pakistan, Syria, Algeria or Afghanistan, the countries from which the highest number of migrants and asylum-seekers present in BiH are. In terms of complete harmonisation of Law on Foreigners with the EU directives²¹ in this area, it is necessary that several amendments are made in order to address a more adequate protection and treatment of foreigners (which includes migrants and asylum-seekers), and these are: expanding the circle of persons who are considered family to those for whom there is another justified (humanitarian) reason that they are considered a family, expanding the group of protected characteristics in cases of forced expulsion and return to a country where their lives and freedoms are jeopardized, including the protection of fundamental human rights in procedures of expulsion in order to introduce a way of controlling the treatment by the competent institutions during the implementation of these measures and including access to free legal aid for certain (vulnerable) categories of foreigners.²² The House of Peoples of the Parliamentary Assembly of BiH discussed the amendments to the Law on Foreigners in urgent procedure and the statement of grounds states that these amendments are aimed at deterring migrants and asylum-seekers from committing criminal acts and violent offences and disturbances of public peace and order. In order to seriously approach

20 Reactions to a video of migrants in cages. <https://ba.voanews.com/a/reakcije-na-video-migranata-u-kavezima/4888014.html>

21 EC Directive 2004/38/EC on the right of the Union and their family members to move and reside freely within the territory of the Member States; – EC Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents; – EC Directive 2003/86/EC on the right to family reunification; – EC Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; – EC Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted; – Directive 2008/115/EC of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals; – Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; – Council Directive 2000/78/EC prohibiting discrimination on the grounds of religion or belief, disability, age or sexual orientation and – Directive 2006/54/EC and Direktiva 2004/113/EC prohibiting discrimination on grounds of sex (which based on the European Court practice includes gender identity and expression as well)

22 See more at: Proposal for Amendments to the Law on Foreigners in BiH in accordance with the EU acquis. <https://soc.ba/site/wp-content/uploads/2017/10/Prijedlog-izmjena-i-dopuna-Zakona-o-strancima-BiH-u-skladu-s-pravnom-stecevinom-EU.pdf>

the protection of migrants and asylum-seekers it is necessary to first determine what the deficiencies of this legal solution are and to approach its amendments in a systematic manner.

Access to Right to Asylum

From the perspective of the fundamental values of the EU, apart from freedom, democracy, rule of law and respect for the human rights, it is necessary to mention the respect for the human dignity, equality, respect for the rights of minorities, and a special significance is placed on accessing and exercising the right to asylum.

According to the reports of the United Nations High Commissioner for Refugees (UNHCR), in November 2020, the procedure for 295 asylum-seekers was in progress, while 400 persons were waiting for the registration of their application with the Ministry of Security Sector for Asylum. Asylum-seekers are still faced with obstacles when trying to start the procedure and to obtain the decision on asylum. Many migrants have problems with obtaining the confirmation on the expression of the intent to seek asylum, which is necessary for registering their request for asylum. Additionally, reaching a decision on asylum lasts long. According to the UNHCR, on average it took 313 days to reach the decisions which were made in October, and the aforementioned figure does not include the time asylum-seekers spent while waiting to register their request for asylum, which sometimes takes months, depending on the migrant's location within the country.²³

Contemporary migration flows and the necessity that the member states react as adequately as possible to the circumstances that have arisen have resulted in additional amendments to the legislation of the European Union. The Law on Asylum of Bosnia and Herzegovina was adopted in 2016 and it for the most part reflects harmonisation with the EU acquis and introduces a principle of *sur place*, regulating the refugee status and the status of subsidiary protection, stating the rights of asylum-seekers to work, guaranteeing the best interest of the child and right to education, introducing novelties in terms of right to information, legal aid, psycho-social help, introducing the non-refoulement principle, etc. In the context of right to asylum, LoF stipulates that a foreigner who expresses the intent for asylum is issued a confirmation on the expressed intent by the Service for Foreigners' Affairs, and the confirmation determines the direction of movement and the deadline by which a person has to come to the Ministry to submit the request for asylum in person. The confirmation is considered as a right to stay in BiH until the end date stipulated in it. A particularly problematic is the end date of the confirmation on the expressed intent for submitting the request for asylum, since the period until the end date cannot be longer than eight days. In extraordinary circumstances of a large number of simultaneous expressions of intent for asylum, the period until the end date of the

23 <https://rm.coe.int/commhdh-2020-30-letter-to-the-authorities-of-bosnia-and-herzegovina-en/1680a099b6>

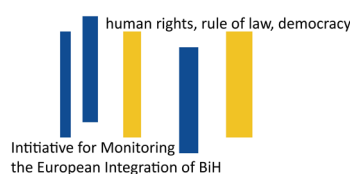
confirmation on the expressed intent can be 14 days. In practice, this has created great problems for those who had expressed the intent which the competent institutions did not resolved during the stipulated period of the confirmation validity. In its Report on BiH for 2020, the European Commission has invited BiH to ensure adequate humanitarian aid and protection (including accommodation, food and medical assistance) and efficient access to the procedures of **getting asylum for the persons who seek asylum and migrants located in its territory since 2018**. Although BiH is a so-called transit country, it is pointed out that the access to the procedures for asylum and overall migration framework is “generally weak” and it is recommended that a special focus is placed on the full political responsibility for migration management which needs to ensure that the refugees and migrants receive adequate protection and help; that the crisis response capacities are improved, that efficient coordination and suitable intervention planning are ensured; **that the procedure for obtaining asylum are strengthened so that the persons in need can have the international protection**; that the control of the border is increased, including human resources and equipment; and that the legal framework and implementation capacities for voluntary and forced return are improved.

A large number of international organizations monitoring the state of human rights and the EU institutions have reported on violent push-backs of migrants and asylum-seekers on the Croatian border which is completely in contrast to the international refugee law and the EU law, which guarantee the asylum seekers’ right to remain on the territory of an EU member state until the decision on their request of asylum is reached. The highest number of the violent push-backs from the Croatian border is recorded by DRC and it is more than 21,000 since May 2019.²⁴

The European Parliament has on multiple occasions touched on a subject of the EC decision on allocating EUR 6.7 million grant funds to Croatia aimed at reinforcing the activities of border control at the external border in Croatia due to “increased migratory pressure”.²⁵

Commissioner of the EC Directorate-General Migration and Home Affairs Ylva Johansson reminded of the importance of establishing monitoring mechanisms in line with the European Charter of Human Rights and the EU law in the area of border control and the importance of timely, effective and independent investigation on the reports regarding migrant treatment.

In November 2020 in her response to the complaint filed by the international organisation Amnesty International, the EU Ombudsman has announced an investigation of the possible oversight of the EC to ensure that the Croatian authorities respect the fundamental rights during the implementation of border activities financed by the EU and relating to migrants and asylum-seekers.²⁶



²⁴ <https://drc.ngo/our-work/where-we-work/europe/bosnia-and-herzegovina/>

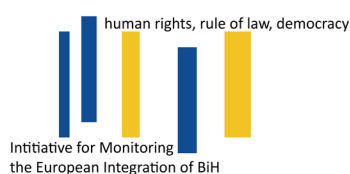
²⁵ https://www.europarl.europa.eu/doceo/document/E-9-2019-004213-ASW_EN.html

²⁶ The Guardian, “Croatia denies migrant border attacks after new reports of brutal pushbacks,” 23 October 2020, at: <https://www.theguardian.com/global->

While discussing the responsibilities between BiH and the EU in segment relating to the harmonisation of legislation in the area of asylum, it is of particular importance to pay attention to the additional harmonisation of legislation with the Council Directive 2001/55/EC on the minimal standards for providing timely protection in the event of massive influx of displaced persons and measures for promoting balance among the member states in receiving such persons and bearing the consequences thereof; Council Directive 2003/86/EC on the right to family reunification; European Commission Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; European Commission Directive 2013/32/EU²⁷ on common procedures for granting and withdrawing international protection; European Commission Directive 2013/33/EU laying down standards for the reception of applicants for international protection.

Thus, it is necessary to harmonise the existing legal definitions of **refugee**, definition of **temporary protection** as well as a definition of **particular social groups**. Article 13 of LoA regarding family reunification needs to be extended to protection not only of refugees but also those under the subsidiary protection. Regulation regarding the informing of foreigners expressing intent for applying for asylum, apart from the right to be informed in a language they understand about the procedures, rights, responsibilities stemming from their status, also needs to guarantee the right to be informed on other civil society organizations working on the protection of the rights of refugees or particular vulnerable groups.

Subsequent application is one of the provisions missing in LoA and it presents a possibility to make a subsequent application. This provision is defined by Directive 2013/32/EU which defines the aforementioned issue as an application for international protection filed after the final decision on the previous application is made, including the cases when the applicant has explicitly dropped their application and cases when the determining authority has rejected the application after the explicit cancellation in line with this Directive. Additionally, it is necessary to harmonise the provisions of LoA in segment relating to the temporary protection with the Council Directive 2011/55 EC, provisions relating to the limitation of movement with the Directive 2013/33/EU, and to enable legal aid through civil society organisations providing free legal aid and/or representing applicants. This provision on direct involvement of certain nongovernmental organisations would signify an additional protection and support to marginalized groups.²⁸



development/2020/oct/23/croatia-denies-migrant-border-attacks-after-new-reports-of-brutal-pushbacks.

27 Directive on procedure is one of the most commonly contested documents which caused many controversies. It points to the inconsistencies with international documents on human rights and law of the Union seeking removal of at least 12 provisions (Peers i Rogers, 2006:410). Provisions of the aforementioned Directive on qualification are not in line with the general principles of the EU law, including the respect of Convention on Refugees from 1951, as well as the European Convention on human rights (ECRE, 2010:4).

28 More at: https://soc.ba/site/wp-content/uploads/2017/10/Azil_23102017_web.pdf

IV CONCLUDING REMARKS

The response to situation regarding migrations in BiH is inadequate and it shows institutional and coordination weaknesses. It is irrefutable that the humanitarian aspect of migration situation in BiH needs to be solved as a priority and urgently, and that the entity of RS needs to be included in it. The political rhetoric does not contribute to a better treatment of migrants and asylum-seekers which leads to a lack of a timely response regarding the protection of their rights, and as a consequence of suitable crisis management plans there is a fear that it will lead to an even greater disaster in case of an additional influx of migrants. The international organisations implementing the EU aid projects in managing migration situation also bear responsibility for monitoring compliance with the international standards.

Ensuring an efficient system of monitoring compliance with the international standards in implementation of secured funding by national and international institutions and urgently establishing an adequate coordination of all relevant bodies

An important aspect we discussed in the analysis is establishing mechanisms of cooperation and coordination, in order to improve border monitoring, registration and identification of migrants. Every member state as well as potential member state, such as BiH which is bound by the signed Stabilisation and Accession Agreement, must ensure a suitable normative framework, harmonised with the EU documents with the aim of managing migrations, and its complete implementation as well. Although the normative framework is mostly harmonised with the EU acquis it is necessary to ensure additional harmonization primarily with the aim of ensuring protection for vulnerable groups, not only asylum-seekers but also those under the subsidiary protection, better access to rights in the areas of social and health protection and education, and access to the labour market. Of course, apart from harmonizing legislation, it is also necessary to intensify the efforts of implementation. The protection of right to asylum as an individual right, prohibition of expulsion or repatriation, non-discrimination principle, etc. represent a foundation which needs to be kept in mind while creating policies and amendments, not only of legal, but also of strategic documents (strategies and action plans the implementation of which is either not adequate or they are outdated). The starting point is definitely the EU acquis, as well as international documents adopted by BiH, and it is of utmost importance that all the strategic documents are completely compatible with each other.

Submitting the amendments to Law on Foreigners and Law on Asylum in line with the EU acquis which would adequately respond to the needs of migrants and asylum-seekers and opening additional capacities within institution for processing applications for asylum and subsidiary protection in order to respond to the mass mixed migrations

The perception of migrants and asylum-seekers marked as a threat to social security, social changes, and the safety aspect as well is the main theme present in the public discourse. This discourse has in any case moved from the humanitarian issue to the security issue with an increasing number of stereotypes and prejudices. The increase in negative attitude in BiH has also led to further divisions and more commonly organised protests in cases of opening or preparing reception centres. Although BiH seeks to solve such situation, with all the existing political obstructions, managing migrations in certain EU member states (Greece, Slovenia, Croatia, and Hungary) is focused primarily on border protection and control of migrants' movement, and less on their reception and integration.

Investigate and adequately address reports of violent treatment of migrants and asylum-seekers in which the EU member states participate, primarily on the border with Croatia

Finally, additional efforts need to be made regarding the cooperation related to identification and procedures of repatriation of foreigners who did not obtain right to asylum, subsidiary protection or other form of protection. The implementation of readmission agreements has become more challenging considering the increasing influx of migrants.

Making additional efforts in order to sign agreements on readmission with the countries of origin of migrants present in BiH and improving mechanisms for voluntary return

ABOUT THE INITIATIVE

The Initiative for Monitoring the European Integration of Bosnia and Herzegovina is an informal coalition of forty civil society organisations which contributes to monitoring the reforms and oversees the implementation of policies, rights and standards of the European Union, focusing on the issues of democratisation, rule of law, and human and minority rights. Learn more about the Initiative at: <https://eu-monitoring.ba/en/about-the-initiative/>.

Active member organizations:

Aarhus Centre in BiH, Sarajevo
Association for Democratic Initiatives, Sarajevo
Association Network for Building Peace, Sarajevo
Balkan Investigative Reporting Network in BiH, Sarajevo
BH Journalists, Sarajevo
Centre for Investigative Reporting, Sarajevo
Centre for Political Studies, Sarajevo
Civil Society Promotion Centre, Sarajevo
Forum ZFD, Sarajevo
Foundation 787, Sarajevo
Foundation Cure, Sarajevo
Helsinki Citizens' Assembly, Banja Luka
Hope and Homes for Children, Sarajevo
Kali Sara – Roma Information Centre, Sarajevo
Land of Children, Tuzla
MyRight – Empowers People with Disabilities, Sarajevo
Oštra Nula, Banja Luka
Sarajevo Open Centre, Sarajevo
Transitional Justice, Responsibility and Remembrance, Sarajevo
Transparency International in BiH, Banja Luka/Sarajevo
TRIAL International, Sarajevo
Vaša prava BiH (Your Rights BiH), Sarajevo
Women to Women, Sarajevo
Youth Centre Kwart, Prijedor
Youth Initiative for Human Rights in BiH, Sarajevo
Zašto ne (Why Not), Sarajevo

Coordinators of the Initiative:

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Supporting organisations:

ACIPS, Sarajevo; Association of Students of Tuzla University's Faculty of Law; Banja
Luka Association of Queer Activists (BUKA), Banja Luka; Centre for Socio-Ecological
Development, Banja Luka; Human Rights Centre of the University of Sarajevo; Crvena
(Red), Sarajevo; European Research Centre, Sarajevo; Green Council, Sarajevo; Infohouse,
Sarajevo; OKC Abrašević, Mostar; Perpetuum mobile, Banja Luka; Association PEKS, Tuzla; Vesta, Tuzla; Foreign Policy Initiative BiH, Sarajevo; Green Neretva, Konjic.

