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# **Europeanization and Multi-level Environmental Governance in a Post-conflict Context: the Gradual Development of Environmental Impact Assessment Processes in Bosnia-Herzegovina**

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**(7840 words, including footnotes, excluding references and abstract)**

**Abstract:** The post-conflict case of Bosnia-Herzegovina (BiH) provides a challenging case for the approaches employed by the EU to bolster state and non-state actor capacities related to environmental governance in post-socialist states. This article examines four major consultative environmental impact assessment (EIA) processes in BiH in order to identify factors that either enable or impede the development of multi-level environmental governance at the state and sub-state entity levels. Larger ENGOs provide scientific opinions and smaller organizations lack capacity to participate at all. The complex configuration of state institutions, compounded by inadequate staffing and funding, create impediments for effective governmental hierarchy during EIAs. However, international financial institutions and technical consultants involved in EIAs have taken a pivotal tutelage role to familiarize local stakeholders with best practice, which has led to some improvements in multi-level environmental governance during EIAs in BiH, though the impact is dependent on staff retention in Bosnian public bodies.

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## Introduction

In this article we consider how compliance with EU environmental standards and policy, as outlined in Chapter 27 of the *acquis*, has impacted upon an emergent model of environmental governance in Bosnia-Herzegovina (BiH). In particular, we seek evidence of whether formal compliance is transforming vertical governmental hierarchy and horizontal networks so as to generate new forms of co-operation between state and non-state actors during decision-making and implementation. We use four examples of environmental impact assessment (EIA) processes as indicative case studies. The multi-level deliberative EIA process adopted in BiH in 2002 and harmonised to approximate EU standards provides an opportunity to investigate whether new modes of environmental governance are developing. It offers an optic on the nature of the interaction between levels of government, as well as the involvement of non-state and private actors. EIA processes require both the *hierarchy* of a capable governmental authority to implement the process and organise multi-level consultations, as well as productive and interactive *network governance* between state and non-state actors. The four EIA case studies relating to major road-building projects were selected using the following criteria: (i) the processes were completed using the most recent legislation to examine public consultation with formal compliance; (ii) international financial institutions were significant investors, which made documentation easier to obtain and enabled analysis of the role of external actors; and (iii) at least one case from each entity.

Existing research on environmental governance in BiH suggests that despite formal legal compliance with EU standards environmental decision-making and enforcement continue to reflect, and are heavily determined by, the particular political and constitutional context of a consociational confederation in which state-level power and authority is very weak vis-à-vis the ethnicised entity-level administrations (Fagan and Sircar 2010a). In particular, the absence of an efficacious state-level environmental agency with over-arching jurisdiction seems to impede the co-ordination of expertise and technical capacities, and allows power and authority to remain fragmented at entity and cantonal levels. This also makes it difficult to transform patterns of localised decision-making, which continue to be closed to new knowledge and actors (Fagan 2012). What we contribute in this article is detailed comparative case-study analysis of which domestic factors and variables determine the progressive transformation of environmental governance in BiH, and how. Our starting premise is that the country represents a particularly complex case-study of Europeanization via enlargement, in which moving from formal to informal compliance – a complex process that has proved difficult for all post-communist states negotiating their accession to the EU – is mitigated by compound variables relating to the transition from communism as well as the legacies of conflict and state fragmentation (Keil 2013).

Drawing on the conceptual analysis of new modes of governance offered by Börzel (2009a, 2009b, 2009c), in conjunction with the work on ‘political steering’ by Mayntz and Scharpf (1995), we argue that for new modes of governance to occur – understood here as ‘the making and implementation of collectively binding decisions that are not hierarchically imposed...(and) systematically involve private actors, for-profit and/or non-governmental organisations (NGOs) in policy formation and implementation’ (Börzel 2009b, p. 8) – policy makers must also be able to impose policy *hierarchically* (Mayntz and Scharpf 1995). In other words, the empowerment of non-state and private actor networks engaged in non-hierarchical policy deliberation and implementation is not in itself evidence of new modes of governance, unless there is also an indication of an increased

capacity of policy makers to steer outcomes and exert their shadow of hierarchy over private actors and interests.

Whilst we acknowledge that formal compliance (in this case with the EIA directive) is a critical foundation for establishing new modes of governance, we question the extent to which there is a direct correlation between formal compliance with EU standards, and the emergence of progressive change. Rather, on the basis of our data, we suggest that new forms of co-operation between government and citizens occurred in response to the specific intervention of the European Bank for Reconstruction and Development (EBRD). As providers of the funds to build the motorways traversing BiH, the Bank decided to offer significant tutelage to ministry officials responsible for preparing documentation and engaging with citizens. It was this intervention that seemed to make a critical difference to the type of governance interaction. Thus, whilst formal compliance with EU standards may well form an important foundation on which change can potentially be built, ensuring that formal compliance leads to the emergence of new networks or greater hierarchical steering is, according to our findings, contingent upon the involvement of other actors.

We begin by setting out certain expectations as to what Europeanization can be expected to achieve, based on the experience of Central and Eastern Europe and the fifth enlargement (2004, 2007), and consider what EU compliance has and has not achieved in terms of environmental governance in these new member states. This allows us to identify what we can realistically expect the impact of Europeanisation on BiH to be.

### **The legacy of Europeanization: environmental governance in post -communist states**

The model of Europeanization in post-socialist Central, Eastern, and Southeast European countries aimed at creating an effective 'shadow of hierarchy' in governmental institutions (Héritier and Lehmkuhl, 2008), whilst also seeking to strengthen networks of non-state actors. The EU employed conditionality to drive rapid formal compliance with European standards by linking institutional and legislative reform to further European integration and accession progress (Grabbe, 2006; Schimmelfennig and Sedelmeier, 2005). In an attempt to trigger social learning during the pre-accession period, the EU also used non-financial assistance, such as twinning programmes, in which officials from member states offer legal and administrative assistance to states harmonizing their practices to the *acquis*. In the realm of the environment, this involved, for example, connecting both state and non-state actors around particular EU Directives, including: Flora, Fauna and Habitats; Wild Birds; EIA; Integrated Pollution Prevention and Control; and Water Framework Directives (Börzel, 2009c, p. 41). The EU also provided short-term project funding to build the capacities of environmental NGOs in each applicant state, but also for 'green' NGO networks operating across the region (Carmin and Vandever, 2004; Jehlička and Tickle, 2004; Fagan 2010). The EU also offered funding for state and non-state actors through the PHARE (Poland and Hungary – Aid for the Restructuring of the Economies), ISPA (Instrument for Structural Policies for Pre-Accession), and SAPARD (Special Accession Programme for Agricultural and Rural Development) programmes, totalling billions of Euros (Börzel, 2009c, Sissenich, 2007).

The perspective of environmental politics and policy affirms the suggestion within the general literature on Europeanization that there is merit in decoupling formal compliance from practical application (Falkner 2008). Indeed, the post-communist states were generally quite adept at enacting the 450 pieces of environmental legislation and directives encompassing recommendations, guidelines and stipulations (Jordan 1999; Börzel 2009c, p. 40). However, in terms of triggering new modes of governance, evidence would suggest that Europeanization via enlargement achieved relatively little. EU assistance undoubtedly empowered a band of

environmental NGOs to engage with domestic governmental institutions and become involved in policy development and enforcement in the Czech Republic (Fagan 2005), Bulgaria (Baker 2002), Poland (Guttenbrunner 2009), and Romania (Parau 2009). Yet the rapid pace of reform, combined with the high costs of compliance with environmental standards meant that decision-making became somewhat opaque, involving technical experts within government agencies, and environmental NGOs were often given little access, time or opportunity to become involved (Guttenbrunner 2009; Buzogany 2009). This is not to suggest that state agencies necessarily became more capacious or effective as a consequence of the adoption of EU compliant environmental laws. As formal compliance occurred at a far faster pace than the development of institutional capacities, state actors found themselves just about 'muddling through' to achieve minimal compliance, especially in Romania (Buzogány, 2009).

The absence of new modes of governance in the realm of environmental policy and politics in Central, Eastern, and Southeast Europe is a reflection of the complexities and costs of transposition, the speed with which the Commission demanded compliance and the absence of a transition period, in conjunction with a legacy of socialist-era policy-making traditions. Beyond a battery of new laws and procedures, EU compliance went some way to strengthen state and non-state actors, but did not fundamentally alter modes of decision-making or implementation. If anything, it reinforced command and control approaches, with 'the involvement of non-state actors...barely (going) beyond consultation and outsourcing' (Buzogány 2009: 188).

### **Europeanization and environmental compliance in Bosnia-Herzegovina**

Despite the enormous challenge that the successor states of the former Yugoslavia presented to this model of Europeanization via enlargement, the approach and strategies were exported to the Western Balkans, with some additional features to address the post-conflict context, such as co-operation with the International Criminal Tribunal for the former Yugoslavia and refugee return (Juncos 2012, p. 61; Phinnemore 2013). In May 1999, the General Affairs Council of the EU outlined the strategies for consolidating closer ties with the states in the Western Balkans through the Stabilization and Association process. The main instrument for this process was a bilateral agreement with the EU, the Stabilization and Association Agreement (SAA), which would be specifically tailored to the context of each country in order to highlight the necessary changes to comply with EU standards.

In the case of BiH, there was a marked shift from 'Dayton' to 'Brussels' from 2000 onwards (Chandler, 2005), when the Peace Implementation Council concluded that the transformation of BiH would be primarily driven by the stipulations of the Stabilization and Association process. In March 2000, the European Commissioner for External Relations provided an 'EU Road Map', which was a list of reforms for BiH to undertake before a Feasibility Study for an SAA could take place, and in November 2003, the European Commission approved the SAA Feasibility Study and noted progress in achieving the conditions in the Road Map. The EU then laid out the parameters for closer links between Europe and BiH in its first European Partnership document in 2004 (2004/515/EC), which was updated the European Partnership document in January 2006 (2006/55/EC) and in February 2008 (2008/211/EC) based on the annual evaluations by the European Commission, and mainly focused on bolstering central state capacity. Further to the requirements for a State Environmental Agency and ratification of international Conventions, the 2008 document also included state-level administrative capacity building, better co-ordination between governmental institutions, a stronger EIA process, and the adoption of a statewide Law for Environmental Protection. After a serious impasse over police reform amongst leaders from different ethnic groups and a subsequent 'climb down' by the EU on constitutional reforms, the

SAA was finally signed in June 2008. The SAA indicated areas of environmental governance for specific attention for strengthening capacities and co-ordination: the reduction of pollution; development of sustainable and clean sources of energy; the effective implementation of EIA and strategic environmental assessment; and ratification of the Kyoto Protocol.<sup>1</sup>

To facilitate the process of Europeanization, other assistance programmes have been replaced by the Instrument for Pre-Accession Assistance programme, which is more focused on shaping the political environment towards eventual accession into the EU. Strategic documents related to the Instrument for Pre-Accession Assistance programme indicate the increasing importance of the environmental sector in the building of governance in BiH. The 2007-2009 Multi-annual Indicative Planning Document identified the environment as an important focus for EU efforts, with a particular emphasis on the formulation of a national environmental strategy supported by a state-level Environmental Agency, and a national framework Law on Environment. At the time of writing there has been no progress on either.

Despite the repeated requests for a state-level environmental agency in EU strategic documents and progress reports, the state-level Directorate of European Integration and a small department within the Ministry for Foreign Trade and Economic Relations (MOFTER) only have weak coordinating roles over environmental matters. The Directorate of European Integration is a permanent body within the state-level Council of Ministers led by its Head, who co-ordinates activities related to European integration, including harmonization with EU Directives. The Directorate's authority is limited to a co-ordination and advisory role in environmental policy, mainly focusing on analyses of the harmonization between Bosnian legal frameworks and EU Directives.

The Environmental Department at MOFTER attempts to bring together the entity-level Ministries to harmonize with EU standards. For the tasks associated with harmonization, it would be ideal to have a separate Ministry and approximately 150 members of staff, but at the time of the research, the Department had six officials and money in the budget to only cover salaries.<sup>2</sup> There are two main problems with the state-level capacities for environmental governance, both of which are related to the legacies of the ethno-territorial fragmentation of authority in BiH. The first is that the Ministries in the Council of Ministers act independently, and there is little evidence of co-operative 'joined-up' government, resulting in a lack of consensus-based coalitions at the state level leads to a lack of inter-sectoral policies.<sup>3</sup> A second problem is that progress towards a Ministry for Environment or a State Environmental Agency is impeded by the entities, which do not want to cede power to the Centre. Although there is a draft Law for Environment, entity officials objected to the initial versions of the law with a State Environment Agency, so this has been removed in subsequent versions.<sup>4</sup> Political parties in BiH continue to be at an impasse regarding a package of constitutional reforms, including the creation of state-level Ministries for Agriculture and Environment.

Although BiH has not complied with the stipulation of a state-level environmental agency, the EIA legislation seems to be harmonized to standards set out by the EU, albeit at the sub-state entity level. The EIA laws in each entity - FBiH (the Federation of Bosnia-Herzegovina) and RS (Republika Srpska) - broadly adhere to the most recent version of the EU Directive (2003/35/EC), which includes the provisions of the Aarhus Convention stipulating public participation in environmental decision-making. In both entity laws, there is a requirement for interested parties to be able to access relevant information and provide feedback at all stages of the environmental

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<sup>1</sup> Article 108, SAA.

<sup>2</sup> Interview with the Head of the Environment Department, MOFTER, Sarajevo, 19 March 2010.

<sup>3</sup> 2009 European Commission Progress Report.

<sup>4</sup> Interview with the Head of the Environment Department, MOFTER.

decision-making process (Art. 36 of FBiH Law, Art. 35 of RS law).<sup>5</sup> Selected features of the EIA laws and the EU Directive are summarized in Table 1. In addition to the requirements listed in Table 1, if there is a potential transboundary (either inter-entity or inter-state) environmental impact from the proposed project, in line with the Espoo Convention on EIA in a Transboundary Context (1991), these affected external parties should be included in the assessment process (Art. 63 in FBiH, Art. 68 in RS law).

**Table 1: Comparison of selected features of the EU Directive on EIA with laws on environmental protection in FBiH and in RS (from Fagan and Sircar, 2010a)**

Selected parts of the EU EIA Directive	Laws in BiH
Art. 3: the EIA shall identify direct and indirect effects on humans, flora, fauna, soil, air, water, climate, material assets and cultural heritage.	This list of requirements is included in both Laws on Environmental Protection (Art. 53 in FBiH; Art. 55 in RS)
Art. 4(2): Projects in Annex I of the Directive must have an EIA. For projects in Annex II, the authorities make a case-by-case assessment or set thresholds for an EIA.	In both entities, laws and by-laws related to environment (e.g. Law on Water Protection) include a list of projects and thresholds that are subject to EIA studies.
Art. 5(3): The developer should provide information on the details about the project, possible mitigation, environmental impact, alternatives explored and a non-technical summary.	For the preliminary EIA (Phase I), this information should be provided to the responsible entity ministry by the developer. This information should also be included in the final EIA study (Phase II).
Art. 6: the public shall be informed by the appropriate means about the project, decision-making process and public consultation. There should be 'early and effective' opportunities to participate in the process for deciding whether the project EIA is approved.	Interested parties within the public must be consulted during all stages of the process. During Phase I, the Ministry makes documents available for comments for 30 days and organizes public hearings near the site of the proposed project. During Phase II, the Ministry sends the draft EIA to relevant institutions and interested parties, so that comments can be received within 30 days. Public hearings are organized near the site of the proposed project and announced within local media and on the Ministry web pages.

In some ways, the process in BiH has more robust features than some of the other European EIA processes, such as the preliminary scoping phase, which can be weak or absent in some other countries. Scoping has not been the norm in Hungary (Palerm, 1999), Italy (Del Furia and Wallace-Jones, 2000, p. 477) and France (Glasson and Bellanger, 2003, p. 618). However, as the case studies will show, the shortcomings regarding capacities amongst state and non-state stakeholders, coupled with the fragmented institutional configuration at the sub-state level, has led to constraints in the implementation of an effective and multi-level EIA process for major infrastructure projects, though similar social and administrative difficulties have been experienced in other European countries with a more recent history of active public engagement: the post-socialist countries of

<sup>5</sup> The FBiH law is the Law on Environmental Protection, Official Gazette of FBiH, no. 33/03, 19 July 2003. The RS law is the Law on Environmental Protection (consolidated text), Official Gazette of RS, no. 28/07, 28 March 2007.

Hungary (Palerm, 1999) and Bulgaria (Almer and Koontz, 2004); and the Southern European states of Portugal (Gonçalves, 2002, p. 250), Greece (Androulidakis and Karakassis, 2006), and Italy (Del Furia and Wallace-Jones, 2000).

### **Case studies: major road-building EIA processes in BiH**

The research focused on four major road-building EIA processes in RS and in FBiH: the Banka Luka-Gradiška road; Sarajevo Bypass; Buna-Neum road; and the Mostar Bypass. The cases were selected using the following criteria: the EIA processes were completed using the recent legislation to examine public consultation with formal compliance; IFIs were significant investors, which made documentation easier to obtain; and at least one case would be selected from each entity, since RS and FBiH are the pivotal governance actors in BiH. The only EIA in RS within the research timeframe was for the Banja Luka-Gradiška road, which connects RS to the Croatian border in the north, which ultimately links to Hungary and to the Adriatic coast in Split. Another important route is Corridor 5c (E73), one of the pan-European corridors along which a motorway has been planned, which goes from Budapest to the Adriatic port of Ploče. The Sarajevo Bypass is part of the Corridor 5c project, which would not only improve the transport links between Sarajevo and the rest of the region, but also relieve the local traffic congestion by diverting through-traffic around the city. The municipality of Neum is now essentially cut off from the rest of the country, so the completion of a modern fast Buna-Neum road will link the 'Bosnian Riviera' to the rest of the country and fit in with the Government's long-term strategies for development of the region. The final EIA examined in this section is for the Mostar Bypass, which will change the alignment of the existing road between Široki Brijeg and Mostar to relieve local traffic congestion. We collected data on these EIA processes between 2008 and 2010 by analysing policy documents and international financial institution codes of practice, and by organising focus groups, observing public consultations, and conducting a number of interviews with domestic and international stakeholders closely connected with the road-building EIAs under study. Although the data were collected a few years ago, more recent scholarship on environmental governance confirms that weak non-state mobilisation (Castán Broto 2013) and low community 'ecological conscience' (Ateljevic et al. 2013) that we find in our research is still a problem. Moreover, the EU continues to highlight the incomplete reform of public consultation during EIA processes (European Commission 2013). Thus, our findings in this article are as relevant as when the data were collected.

The role of state, non-state, and international stakeholders during EIA processes will be examined in the following sections.

### **Domestic public institutions: differences between RS and FBiH**

The rapidity and requirements of European legislation has outpaced the reforms in both entities, and there is a large gap in the capacity to fulfil all of the duties in a manner compliant with EU best practice. For example, the staffing at the FBiH Ministry for Environment and Tourism (FMOIT) for processing environmental permits remained low, and it still took several months to receive replies from the Ministry.<sup>6</sup> Much of this has to do with the legislative pressures of completing environmental permits in the entity, for future and existing structures. FMOIT was able to process

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<sup>6</sup> Interview with an official at the Federal Roads Directorate, Sarajevo, 19 February 2009.

40-45 environmental permits annually, but there are thousands of installations within FBiH that will need to be reassessed. There were ten members of staff at FMOIT responsible for environmental permits, but cantonal and FBiH authorities needed to process 6000-7000 permits over the next few years, which would require at least 20-25 members of staff at FMOIT.<sup>7</sup> The situation is more challenging in RS, where there were six officers for all of the tasks associated with environmental management, so that members of staff need to work together when a request for a permit is received.<sup>8</sup> The lack of staffing had been exacerbated, since the department in RS had only five members, with one former member promoted to the role of Deputy Minister.<sup>9</sup>

With the centralised structure in RS, the burden of policy implementation falls more strongly on the entity level, whilst there is an intermediate cantonal level of authority in FBiH that is able to alleviate some of the pressure from the entity level authorities. However, the thresholds enshrined in the cantonal laws on environment set unrealistic targets to adhere to European and international standards, compounded by a severe lack of staffing, which has led to ever-increasing workloads without a change in budgets or capacities. For example, there are six officials in the Sarajevo Canton Ministry for Spatial Planning and Environmental Protection (including a Deputy Minister for Environmental Protection), but by February 2009 there was no specialist for nature and no resources to hire a replacement, and by October 2009 the official responsible for environmental permits had been on indefinite leave, thus requiring the remaining staff members to fulfil all of the duties of the Ministry (including EIA) with one-third less staff.<sup>10</sup> There were similar levels of staffing at the corresponding ministry in the Herzegovina-Neretva Canton in Mostar. Still, the Sarajevo and Herzegovina-Neretva Cantons were in a slightly better situation, since they have nearby urban centres with public and private institutions with technical expertise to evaluate the environmental impact of development. All of the remaining cantons had smaller numbers of staff in the relevant section of the respective Ministries with the exception of Tuzla, which usually scores quite well on measures of environmental governance, since there are numerous active NGOs, relatively high levels of technical capacities, and a local university. Other cantons had an acute dearth of staff overseeing environmental matters. Canton 10 had only one member of staff in the Ministry with competence over environmental matters, there were no inspectors, and the Ministry processed only one environmental permit in 2009. Bosnian Podrinje and Zenica-Doboj Cantons also had only one official each to handle all environmental matters, including the processing of environmental permits. This lack of staff was especially acute in the Zenica-Doboj Canton, which processed 35 permits in 2009, nearly the same number as in Sarajevo Canton.<sup>11</sup> The most local level of governmental administration, the municipality, has no competencies over environmental permits (including EIA), so the capacities are very low.

Against this backdrop of low capacities, the EIA procedure for the Banja Luka-Gradiška road was the first major project for the ministries and the entity-level roads directorate in RS. Officials in the Ministry of Ecology were satisfied that although there was a strict legal framework with which all stakeholders were gradually became acquainted, the public consultation was good and all of the

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<sup>7</sup> Interview with FMOIT official, Sarajevo, 20 October 2009.

<sup>8</sup> Interview with an official at the RS Ministry for Spatial Planning, Construction, and Environmental Protection, Banja Luka, 18 February 2009.

<sup>9</sup> Interview with an official at the RS Ministry for Spatial Planning, Construction, and Environmental Protection, Banja Luka.

<sup>10</sup> Personal communication with official at the Ministry for Spatial Planning and Environmental Protection, Sarajevo Canton, October 2009.

<sup>11</sup> To estimate the level of existing capacities, Sarajevo and Herzegovina-Neretva Cantons were interviewed in February 2009 and April 2009, respectively. The remaining cantons completed a short electronic questionnaire in June 2010, which was then translated from local languages into English.

steps were followed.<sup>12</sup> The municipal governments in the affected locations arranged the meeting venue and associated logistics. However, the role of both local and entity-level governmental institutions was weak overall, and more focus was given to the minimal adherence to the new legal requirements rather than understanding the impact of the road project.<sup>13</sup> In addition to the lack of administrative capacity and unfamiliarity with the new EIA process, staffing turnover at the Roads Directorate has exacerbated the situation. The co-operation between EBRD and the RS Roads Directorate was particularly good during the Banja Luka-Gradiška road EIA, since there was an official at the Directorate who had specific expertise in environmental aspects of road building.<sup>14</sup> Moreover, there was adequate staffing for the RS Directorate duties during the EIA process, including the hosting and chairing of the meetings.<sup>15</sup> The incoming RS Government changed the staffing at the public agency, including the removal of the aforementioned official with specific expertise on the environment and road projects, and there is currently only one official in the Roads Directorate Environment Department. Another problem, both in RS and in FBiH, is that due to low financial capacity, the technical consultant is paid by the developer and selects the stakeholders, leading to a possible conflict of interest.<sup>16</sup>

There has been a similar steep learning curve for the Ministry and Roads Directorate in FBiH. The Roads Directorate was present at all public hearings in more recent EIA processes to answer questions, and, in addition to its expected role, also arranged and facilitated meetings. The reason for this is that the FBiH Ministry for Environment did not previously have adequate staff and office space to undertake the leading role in the EIA process, and one of the lessons that needed to be learned from the Sarajevo Bypass consultation is that FMOIT had to become the 'competent authority'.<sup>17</sup>

Following on from this, there have been important changes at both the Roads Directorate and the Ministry in FBiH. After the Sarajevo Bypass EIA, the World Bank stipulated that the Roads Directorate establish an Environmental Department, and there is now a one-person Department that acts as a Liaison to FMOIT and sends initial documents to the Ministry at the start of an EIA. FMOIT also has a stronger role in the Public Consultation process, in contrast to its role during the Sarajevo Bypass consultation. At the public hearing for the Mostar Bypass in Rodoč in September 2009, an advisor from FMOIT chaired the meeting, and a second official from FMOIT collected an audio recording and minutes.<sup>18</sup> The same officials from FMOIT and the Roads Directorate attended the two public hearings in Neum and in Stolac in January 2010 as part of the public consultation process for the Buna-Neum road EIA.

At these public hearings in Rodoč, Stolac, and Neum, the official responsible for issuing environmental permits in the Herzegovina-Neretva Canton was present, but only took the role of an interested local stakeholder.<sup>19</sup> The Sarajevo Canton Ministry only had involvement in the scoping phase for the Sarajevo Bypass project, and sent opinions from the cantonal research institutes to

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<sup>12</sup> Interview with official (1) at the Department of Environmental Protection, Ministry for Physical Planning, Civil Engineering and Ecology, RS, Banja Luka, 18 February 2009.

<sup>13</sup> Personal communication from a former official at the RS Roads Directorate.

<sup>14</sup> Interview with official at EBRD, Sarajevo, 19 February 2009.

<sup>15</sup> Personal communication from a former official at the RS Roads Directorate.

<sup>16</sup> Interview with the Center for Environment, Banja Luka, 12 May 2008.

<sup>17</sup> Telephone interview with official at Environmental Resources Management (Germany).

<sup>18</sup> Public hearing on the EIA for the Mostar Bypass, Rodoč, 2 September 2009.

<sup>19</sup> Public hearing on the EIA for the Mostar Bypass, Rodoč.

FMOIT. The cantonal Ministry for Spatial Planning and Environmental Protection was not invited to the second phase, did not receive any of the documents, and did not see the final permit. However, there is a high workload, so the primary concern is to process permits at the cantonal level, not participate as stakeholders in larger EIAs.<sup>20</sup> Municipalities in BiH did not play a substantive role in the consultation process for EIA studies researched.

In general, there are heterogeneous trends in the two entities. In RS, the only competent authority for environmental permits for major road-building projects is at the entity level. However, the staffing of the main governmental stakeholders decreased since the Banja Luka-Gradiška EIA, and individuals with the relevant experience left the Roads Directorate when the new Government was elected. The governmental authorities in FBiH share some of the same problems, namely lack of staffing and budgetary capacities, expertise held by individuals (not institutions), and a resulting large backlog of permit applications. However, unlike the counterparts in RS, there was some evidence of a gradual change of practice in both the Roads Directorate and in FMOIT, despite continuing problems with capacities.

### **Weak environmental NGO involvement**

The development of effective environmental NGO capacities as part of multi-level environmental governance in BiH, including participation in EIAs, suffers from several challenges. First, the lack of a politicisation of environmental protection in the process of regime change in most parts of Yugoslavia during the late 1980s has stymied the creation of a national environmental movement, though there was a green movement in Slovenia (Figa, 1997). Second, the effect of ethno-territorial separation among the three constituent groups shape the political spectrum, so it has been difficult to create a national network of active environmental NGOs across ethnic boundaries (Fagan and Sircar, 2010b).<sup>21</sup> Third, many environmental NGOs are not really non-governmental. Individuals linked to public institutions, research institutes, and universities create NGOs to provide an alternative revenue stream - which was also the case for donor funding in the Soviet Union (Mandel, 2002) - is not unique to BiH. Those with access to the existing technical resources available at university faculties and governmental institutions have an advantage in applying for and obtaining EU funding. For example, a university professor who is also the director of the Hydro-engineering Institute at the Faculty of Civil Engineering, University of Sarajevo heads the Centre for Sustainable Development, an organisation that has been highly successful in obtaining EU funding (Fagan, 2010). Fourth, large environmental NGOs working on a pan-EU level, the so-called 'Green 10' have had a far less active role in the Western Balkans compared to the significant social learning role during Central, Eastern, and Southeast European accession in 2004 and 2007 (Bomberg, 2007).<sup>22</sup> However, there are ongoing projects being implemented by the European Environmental Bureau and BirdLife Europe, though these initiatives have been implemented far later in the Europeanization process.

As in other parts of post-socialist Europe, more successful NGOs have become involved in EIA processes as technical consultants or service providers, without a role in social mobilisation (Hallstrom, 2004; Hicks, 2004). This has been done both to fulfil the requirements of the EU-compliant legislation and to compensate for a lack of state capacities (see Buzogány and Sotirov et

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<sup>20</sup> Interview with the Deputy Minister for Environmental Protection, Ministry for Spatial Planning and Environmental Protection, Sarajevo Canton, Sarajevo, 19 February 2009.

<sup>21</sup> Interview with an official from Ekotim, Sarajevo, 9 October 2009.

<sup>22</sup> The Green 10 organisations are: Birdlife Europe; CEE Bankwatch Network; Climate Action Network Europe; European Environment Bureau; Transport and Environment; Health and Environment Alliance; Friends of the Earth Europe; Greenpeace; Naturefriends International; and the WWF European Policy Office.

al. in this volume). For example, the only organisation that was invited and attended the scoping meetings for the Banja Luka-Gradiška EIA was Ekos, which was not a community organisation, but rather a quasi-NGO with a high degree of scientific-technical capacity headed by a professor at the Faculty of Science from the University of Banja Luka. Most of the invited NGOs included in the Public Consultation and Disclosure Plan for the Sarajevo Bypass were quasi-NGOs headed by university professors that drew on the technical resources and expertise in their respective faculties.<sup>23</sup> The Centre for Sustainable Development was asked for a *technical* opinion on a bridge that would go over a Ramsar (i.e. protected wetland) site, and though not an invited stakeholder, the organisation provided a technical opinion for the Corridor 5c Feasibility Study.<sup>24</sup>

The only NGO with a dual technical/social role was the Center for Environment in Banja Luka, which works on a national and regional level in networks with other large ENGOs, but also participated in a social mobilisation context during the Banja Luka-Gradiška EIA. However, the Center for Environment was not identified in the list of NGO stakeholders by the authors of the Public Consultation and Disclosure Plan, so it needed to request documents from the Ministry and the RS Roads Directorate, and a representative attended one of the meetings during the second phase (draft EIA) in the municipality of Laktaši. The Center for Environment became involved in the process for a variety of reasons, but particularly to support local citizens from the settlement of Jelica Brdo who would be displaced by the construction of the road.<sup>25</sup> However, the issue was resolved in favour of the *status quo* and the residents have been displaced, since the EIA did not cover the section through Jelica Brdo.

The peripheral participatory role of NGOs seems to have continued for more recent EIAs. For the Mostar Bypass EIA, only two small environmental NGOs, Eko Most and Eko Jasenica, were present. Eko Most did not contribute to the meeting, but said that it had sent a comment to the Ministry, though this was not indicated by FMOIT at the start of the meeting. For the Buna-Neum road public hearings in Stolac and in Neum, Novi Val and Eko Most had been invited, but representatives from neither organisation attended.<sup>26</sup> In general, local citizens had a low opinion about the capacity and motivations of NGO representatives at the Mostar Bypass EIA, and felt that ENGOs were not engaged enough in the process.<sup>27</sup> Representatives from FMOIT were more critical about the role of NGOs in the process, saying that these organisations were weak, tended to not be involved in the meetings, and were a 'waste of money'.<sup>28</sup> However, this may be a misrepresentation of ENGO involvement in EIA processes in BiH. For example, Novi Val, based in Blagaj, has been invited to many EIA public meetings, but many of these are far away, so that attendance was difficult and the NGO did not have local knowledge about the ecology. Representatives from Novi Val suspected that the reason for this was that the Ministry selected stakeholders to make up numbers in order to be legally compliant, and not necessarily identify local non-state actors who could respond ably to the plans of the project developers.<sup>29</sup>

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<sup>23</sup> Telephone interview with an official from Ekotim, 19 March 2009. The interviewee suggested university professors establish NGOs as grant-seeking organisations, since they may be eligible for money as non-profit bodies which they would not be as academic bodies.

<sup>24</sup> Interview with an official at the Centre for Sustainable Development, Sarajevo, 4 November 2008.

<sup>25</sup> Interview with an official from the Center for Environment, Banja Luka, 17 February 2009.

<sup>26</sup> Public hearings for the Buna-Neum road EIA in Neum and Stolac, 12-13 January 2010.

<sup>27</sup> Citizens during a focus group organised by the researchers after the Mostar Bypass EIA public meeting in Rodoč, 2 September 2009.

<sup>28</sup> Comments by an FMOIT official after the Buna-Neum EIA meeting in Stolac, 13 January 2010.

<sup>29</sup> Comments made by a Novi Val representative at a focus group in Blagaj, 18 March 2010.

Thus, there was little evidence of multi-level co-ordination during EIA processes between state and non-state actors, with NGOs mainly providing technical support for governmental authorities without engaging with local citizens.

### **International financial institutions, Foreign Technical Consultants, and Social Learning**

The gradual changes in governmental practices outlined above were encouraged, in part, by the international investors and technical consultants, which had a tutelage role in addition to their primary responsibilities within the EIA process. The role of EBRD and the World Bank as development-led donors meant that the monies invested for various infrastructure projects came with 'strings attached'. The requirements for the EIA process for the road projects under study were covered in the previous EBRD Environmental Policy document of July 2003.<sup>30</sup> EBRD also had a physical institutional presence in BiH (in Sarajevo), and thus officials from EBRD actively participated and intervened during the EIA studies for the Sarajevo Bypass and Banja Luka-Gradiška roads. Most importantly, EBRD attended meetings with the technical consultants, Ministries and the Roads Directorates at each stage of the EIA process to review the documents, check that the comments from the consultation process had been incorporated into subsequent drafts of the documentation, and advise the competent authorities on how to proceed.<sup>31</sup>

Thus, EBRD had specific rigorous environmental stipulations for its project. By contrast, the European Investment Bank (EIB) had no explicit environmental policy, and thus, its oversight regarding projects in BiH was different from the other large development-led multi-lateral lenders. These differences were evident in the contrast between the Sarajevo Bypass and Mostar Bypass projects, the latter of which was led by the EIB. The EIB had no permanent mission presence in BiH, so representatives from the bank visited approximately every quarter, but otherwise, the EIB gave developers 'a free hand' in the implementation of projects.<sup>32</sup> This meant that the EIB only required for projects to be compliant with the local legal framework and did not demand any specific stipulations across countries. The EIB also does not have a physical presence during the public consultations and no tutelage role, unlike other multi-lateral lenders. For this reason, there were no representatives from EIB at the Mostar Bypass EIA public hearing in Rodoč.<sup>33</sup>

The technical consultants also contributed to the social learning of local competent authorities during the earlier EIA processes. The French company BCEOM was the lead consultant for the Banja Luka-Gradiška project. Representatives from BCEOM were on-hand at public meetings to answer questions, and BCEOM provided questionnaires to stakeholders in order to register feedback on the EIA study. It was difficult to obtain any further details about the role of BCEOM during the process, since the author of the study has since passed away, and the remaining engineers familiar with the project no longer work in the area.<sup>34</sup> For the Sarajevo Bypass, the lead consultant was Louis Berger, which worked on the overall management of the project and completed the economic/financial feasibility studies. Representatives from Louis Berger involved in the EIA process for the Sarajevo Bypass connected the effective completion of the process to the close contact between the international consultants, FMOIT and the Roads Directorate.<sup>35</sup> The tutelage

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<sup>30</sup> Available online here: <http://www.ebrd.com/downloads/research/policies/policy.pdf>

<sup>31</sup> Interview with EBRD official, Sarajevo, 19 February 2009; written response from a former official at the RS Roads Directorate, 16 March 2009.

<sup>32</sup> Interview with an official at the FBiH Roads Directorate, 9 October 2009.

<sup>33</sup> Public hearing on the EIA for the Mostar Bypass, Rodoč.

<sup>34</sup> Written correspondence from officials at BCEOM, 8 May 2009.

<sup>35</sup> Written comments from an official at Louis Berger, 15 April 2009

role was assisted by Environmental Resources Management, a Frankfurt-based company that prepared the EIA study. The consultants from Environmental Resources Management not only completed the required technical aspects of the EIA process, but also fulfilled a teaching role for the local competent authorities. EBRD expected the German firm to drive the process through joint meetings with the Bank, FMOIT, and the FBiH Roads Directorate, where the international actors presented charts and diagrams of the process to ensure that local actors were learning about the procedure.<sup>36</sup>

This strong tutorial role by consultants during the EBRD-led EIA processes can be contrasted with more recent EIB-managed road EIA processes. For the Mostar Bypass, the project was managed by the Italian firm C. Lotti and Associates, whilst the EIA study is prepared by the Mostar-based Eko Plan. For the Buna-Neum road EIA (for the Neum-Stolac section), the EIA was prepared by the Sarajevo-based Energoinvest, whilst the UK-based Roughton International handled the project management. For the public hearings examined for this research, the local EIA authors (Eko Plan and Energoinvest) presented summaries of the EIA study. International actors are far less visible than in the earlier processes, and there are no joint meetings between the EIB, FMOIT, Roads Directorates, and international consultants. There remains insufficient capacity amongst local technical consultants to manage the whole process, yet there is a legal requirement for the EIA author to be a locally registered company. The result is that the feasibility studies tended to be prepared by international consultants, with a local firm responsible for the EIA study.<sup>37</sup> Thus, the early EIA processes where the investment was led by EBRD showed evidence of significant opportunities for tutelage by which EBRD and the international technical consultants oversaw and illustrated the EIA process at every stage. However, in more recent EIA processes, despite existing capacity problems amongst local consultants, there is little evidence of this social learning structure, which may be the consequence of the investment being led by EIB, which is more 'hands off' about its investments as long as the project developers adhere to local legislation.

## Conclusion

What then does the proxy of EIAs suggest about the emergent model of environmental governance in BiH, and the impact of EU compliance on the relationship between state and non-state actors, and the interaction between hierarchy and networks? The above analysis demonstrated that formal legislative compliance has only led to limited transformation of environmental governance in BiH, and only when certain international financial institutions (particularly the World Bank and EBRD) take a strong tutelage role. Our study also highlights the negligible impact of building a 'shadow of hierarchy' at the state level in BiH, since pivotal authority is held at the entity levels in the confederal consociational structure of the country. Thus, the main impediment to environmental governance in BiH is the inertia caused by ethno-territorial fragmentation of authority. Ethnically defined entities are unwilling to cede power to the centre, thus blocking state-level hierarchy over environmental matters. Network governance amongst local government is far weaker than in neighbouring countries, since the ethnified political space does not allow cross-ethnic co-operation, whether it traverses municipal, cantonal, or entity borders. Environmental NGOs, especially those that are active within local communities, are also reluctant to link with groups 'on the other side', thus hampering network governance and wider regional or national environmental movements.

We also examined various instruments used by the EU and other international actors to see whether they have been successful in triggering new modes of environmental governance. Many of the

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<sup>36</sup> Written comments from an official at Environmental Resources Management, 23 March 2009.

<sup>37</sup> Interview with an official at the FBiH Roads Directorate, 9 October 2009.

findings regarding the benefits and drawbacks of EU strategies to develop new modes of environmental governance in the Bosnian case resonate with the experience of European integration in Central and Eastern Europe. In particular, formal compliance through external incentives and donor project funding, both of which appear as enabling factors on the surface, also have detrimental effects on the development of new modes of environmental governance. Harmonisation and formal compliance with the environmental *acquis* changes the local political opportunity structure to allow more actors to be involved in environmental governance. Yet setting rules that do not reflect the existing lack of governmental capacities results in a ‘race to the bottom’ whereby new institutions barely have the resources to deliver minimum requirements let alone engage in wider deliberation with new policy and knowledge networks. Similarly, whilst direct project funding from donors has allowed environmental NGOs to build up capacities to engage more effectively with government, these professionalised organisations have become disconnected from local communities and civil society networks, as was the case in Central and Eastern Europe. This suggests that neither of the two primary strategies used for Europeanization of environmental governance, conditionality and direct funding, is a panacea: conditionality rapidly harmonises legal-political systems, but hierarchy capacities lag behind; and direct funding bolsters environmental NGO capacities, whilst donor-driven initiatives weaken the capacity to network with local communities. Tutelage provided by international actors results in social learning and is the most significant enabling factor for both hierarchical and network environmental governance. However, contrasting with Central and Eastern European Europeanization, transnational environmental NGO networks are far less visible throughout the Western Balkans, especially in BiH. Most importantly, the effect of ethno-territorial separation, which is enshrined in the Bosnian constitution, differentiates BiH from previous efforts by the EU in Central and Eastern Europe. The ethnified political space in Bosnia represents a particularly strong impediment to EU strategies in the country, hindering both effective centralised hierarchy and a robust network of environmental NGOs across ethnic lines. The factors enabling or impeding network and hierarchical environmental governance in BiH from our analysis are summarised in Table 2.

**Table 2: factors enabling or impeding environmental governance in BiH**

	<b>Enabling</b>	<b>Impeding</b>
<b>Network</b>	<p>EU tutelage and partnership project funding for environmental NGOs builds networks.</p> <p>IFI tutelage during EIAs facilitates interaction between government, technical consultants, public bodies, and environmental NGOs.</p> <p>Donor project funding increases environmental NGO capacities to interact with government</p>	<p>Ethno-territorial fragmentation prevents inter-ethnic co-operation across governmental institutions and environmental NGOs.</p> <p>EU project funding decreases environmental NGO engagement with local communities.</p>
<b>Hierarchy</b>	<p>Tutelage from international financial institutions during EIAs builds governmental competence.</p> <p>Formal compliance with EU directives creates better public administration</p>	<p>Rapid harmonisation without improving existing institutional capacities worsens governance performance</p> <p>Ethno-territorial fragmentation leads to a weakened central state government</p>

Thus, the most evident finding from our research is that the constitutional setting and the political stasis constitute the most formidable constraint, and continue to render weak both hierarchy and network formation. Yet the value of imparting further social learning as widely as possible amongst relevant officials and non-state actors, so that the learning becomes properly institutionalised, should not be dismissed as futile. Strengthening ties between local environmental NGOs and European-wide networks was an effective strategy in Central, Eastern, and Southeast Europe and would likely exert a two-fold impact in BiH in building more robust new modes of environmental governance: empowering non-state actors to challenge the weakness of state-level regulation and the deficiencies of state-wide hierarchy, whilst also strengthening local environmental NGO networks.

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