

Retreat for Progress in BiH? –

The German-British Initiative

A DPC Policy Paper

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**Sarajevo - Berlin - Brussels,
November 2014**

A report from
Democratization Policy Council

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Editing: DPC Editorial Board

Sarajevo – Berlin – Brussels

November 2014



This report was made possible with support from the Rockefeller Brothers Fund. The opinions and views of the authors do not necessarily state or reflect those of the Fund.

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

On the heels of the October general elections, representatives of Germany and the United Kingdom announced a new initiative to engage with Bosnia and Herzegovina (BiH) and re-shape its European integration path after years of stalemate or even reform regression.

The initiative includes all of the off-the-shelf ingredients of previous efforts to jump-start the reform process in the BiH, such as written commitments (applied in the past to police reform, constitutional reform, etc.) and a reform agenda (as in the Partnership Document). But it lacks the specificity or leverage of these past efforts. The aim seems to be to steer around all contentious issues and focus on socio-economic development without associated “political” reforms. To this end, it postpones and substantially weakens the condition that the European Court of Human Rights’ Sejdić-Finci ruling be implemented. But the economic pillars of power of the BiH political elites are just as sensitive for them as the ethnonationalist ones.

The initiative builds on the shaky foundation of the EU’s prior behavior in BiH, which has led local political leaders to rightly discount the Union’s seriousness on conditionality. Unless this perception is changed, this Initiative is likely to fail just as those which preceded it.

This brief reviews the initiative contents and background, based on an assessment of the available documents and interviews with stakeholders who were and were not consulted on the process. Most importantly, it offers specific, targeted recommendations for how this plan should be amended and augmented to ensure that it could at best create a new impetus for reform, and at worst does not further hasten the country’s decline. The Democratization Policy Council urges the European Union member states to consider these specific and achievable amendments before the Foreign Affairs Council on November 17. A weak approach at this critical time would be damaging to the country, and to citizens’ belief in the process and the international approach to BiH and its leaders. There is still time to productively amend the announced approach, and truly set the scene for a period of forward rather than backward movement. To that end, DPC recommends that the EU:

- Refrain from lowering the bar on conditionality once again by removing the Sejdić-Finci condition for the SAA’s entry into force.
- Set the initial reform agenda instead of allowing political leaders to do it according to their own interests. The agenda should contain:
 - The institutional and other reforms conditioned in the 2008 Partnership Document.
 - Specific steps to reverse the reform and institutional rollback tolerated by the EU since 2008 (e.g., the BiH Conflict of Interest Law, RS Law on Courts, RS Law on Police Officials, Canton 7 Privatization Agency Law, etc.).
 - Annulment of all legal acts undermining the integrity of the state as a single economic space, including suspension of RS activities on South Stream until there is a state-level energy policy, a state-level gas law, and a state-level regulatory agency.

- Restoration of the roles of state-level institutions such as the Ministry for Foreign Trade and Economic Relations (MOFTER) and return of the Directorate for European Integration (DIE) to ministerial status.
- Return to recognition of the Council of Ministers as BiH’s “coordination mechanism” for EU matters.
- Confirmation that any continuation of the Structured Dialogue needs to include civil society representatives throughout, and that key judicial and legal reform issues – BiH Law on Courts, HJPC Law, etc. – cannot be compromised
- Establishment of a Privatization Review Panel to meet citizen demands from February 7 protests.

For BiH to apply for membership, all elements of the reform agenda described above should be implemented, except for those that derive from the Partnership Document. On these intermediate steps should be implemented. The *avis* should only be requested after the reform agenda is completed.

Supporters of the initiative – including the broad international community – should also:

- Re-establish red-lines, noting clear consequences, jointly articulated not just by Berlin and London, but by the EU and the US. There can be no toleration of further steps to undermine the country’s territorial integrity in the guise of fragmentation or partition disguised as “decentralization” or “federalism.” Maintenance of international Dayton responsibilities will remain until a post-Dayton order, accepted by each self-defined group of citizens, is determined.
- Develop a real Compact with BiH Citizens to forge a direct alliance with citizens for meaningful reform, where necessary confronting recalcitrant elites from both above and below. Support to citizens should not be confused with the cultivation of EU-funded client NGOs who serve as EU implementing partners or service providers.
- Establish an Independent Privatization Agency to remove the ability of politicians to dispense with the proceeds of privatized enterprises at whim, and to instead channel dedicated funds for economic development and needs-based social welfare.
- Marry IFI funding to the reform agenda and thus move the use of financial leverage to the core of the EU conditionality policy.
- Adopt a strategic approach with BiH’s neighbors. Demand Serbia’s leaders publicly state they do not support RS secession. Insist that both Croatian government officials and opposition parties’ representatives cease their ethno-national approach to BiH for an EU approach.
- Ensure the appointment of a politico for the vacant post of EUSR who feels comfortable with leadership and willing to act as an executive, working to help define EU policy in BiH. The FAC should give their Special Representative real power by stating outright that they will follow the EUSR’s lead on when to apply “restrictive measures” (asset freezes, visa bans, and funding stoppages).

Introduction

On November 5, at a meeting of foreign ministers from the Western Balkans convened by the Aspen Institute at the British Embassy in Berlin, German Foreign Minister Frank-Walter Steinmeier and British Foreign Secretary Philip Hammond announced a joint initiative on Bosnia and Herzegovina (BiH). It had been foreshadowed in an October 24 opinion piece by Hammond which appeared on the Foreign and Commonwealth Office website and in the BiH media.¹ The ministers outlined the new proposed EU approach in their speeches, a joint article, and in a letter to Federica Mogherini, the EU's new High Representative for Foreign Affairs and Security Policy, and to Johannes Hahn, the new European Commissioner for the Neighborhood Policy and Enlargement Negotiations. The aim of the proposal, the ministers wrote in their letter, was "to get Bosnia and Herzegovina moving again on the reform track towards becoming a state that can be functional as a member of the EU."²

The convergence of British and German policy was noteworthy: it seemed to put an end to five years of divergence on Bosnia and Herzegovina.³ The new policy is supposed to be the basis for a long-awaited "new" EU approach to the country, given the widespread recognition of the failure of efforts on the part of the EU to date.

This policy brief analyzes the content of the initiative and determines whether the proposed approach is likely to perform as advertised: to "get Bosnia and Herzegovina moving again on the reform track" by identifying a broader reform agenda.⁴

How We Got Here – the Intellectual Foundations of the Initiative

In the introduction to their letter to Brussels and their subsequent articles, Steinmeier and Hammond explain the rationale of the joint initiative, including why Bosnia got stuck in the reform and EU integration process. A piece by Steinmeier and Hammond, published in BiH media on November 6, added:

"We don't want to return to times when laws and decisions were taken on international order."⁵

Such statements are consistent with the narrative adopted by Berlin, many other continental member states, and the EU itself, according to which BiH politicians would adopt the reforms required to move

¹ Philip Hammond, "The Case for Change in Bosnia," October 24, 2014.

Available at: <https://www.gov.uk/government/news/foreign-secretary-the-case-for-change-in-bosnia>

² Letter of Foreign Ministers Frank-Walter Steinmeier and Philip Hammond to EU High Representative for the CFSP Federica Mogherini and Commissioner Johannes Hahn, November 4, 2014.

See: http://infographics.economist.com/20141108_Letter/Letter.pdf

³ See Kurt Bassuener and Bodo Weber, "House of Cards: the EU's "reinforced presence in Bosnia and Herzegovina – Proposal for a new policy approach," DPC Policy Paper, Sarajevo and Berlin, May 2013. Pages 3 and 4. Available at: <http://www.democratizationpolicy.org/pdf/briefs/may.pdf>

⁴ Letter, page 1

⁵ *Nezavisne Novine*, "Bosna i Hercegovina: Britansko-njemačka inicijativa," November 5, 2014, Available at: <http://www.nezavisne.com/index/kolumne/Bosna-i-Hercegovina-Britansko-njemacka-inicijativa-271532.html>

toward EU membership even in the absence of external pressure. That narrative has been maintained despite the overwhelming evidence of its fallacy that has accumulated since 2007. Inherent in this approach is the assumption that those who criticize the ineffectiveness of the current policy pine for externally driven state-building through the use of the international High Representative's executive Bonn Powers. The fact that there have been no serious advocates of such a policy rewind – either among interested external powers⁶ or among those who attempt to affect their policies⁷ – has not dented its durable appeal as a talking point. It provides a convenient tool with which to deflect and dismiss *any* critique of the EU's demonstrated ineffectiveness in BiH, and sets the tone for the premature dismantling of international hard power tools in BiH – the High Representative and EUFOR. Germany has used this line of argument within the EU to parry British (and other member states') questioning of the EU-led approach, particularly since 2008-9.⁸ It appears that now Britain itself has signed on to it.

A central element of the Hammond-Steinmeier thesis is that domestic political elites failed to meet their obligations while the EU acted in good faith. Conveniently forgotten is the extent to which EU officials have in fact collaborated with party leaders throughout the recent period of non-reform, providing political cover for obstructionist BiH officials and making it more difficult for BiH citizens to even try to hold their leaders responsible for their (in)actions.

Also central to the German-British initiative is the implication that the EU's adoption of the European Court of Human Rights' December 2009 ruling in the Sejdić-Finci case as a requirement for the activation of BiH's Stabilization and Association Agreement (SAA) has become an obstacle to progress toward other reforms, proving too high a hurdle for BiH politicians. According to the letter to Mogherini and Hahn:

“Despite considerable goodwill and persistent efforts by the European Union...a local focus of political elites on narrow ethno-political and party interests has time and again impeded necessary reform... To avoid the impasse resulting from addressing intractable issues too early in the process, we propose to identify a broader agenda of reforms to be implemented in the next stages of Bosnia and Herzegovina's EU integration process...”⁹

At least the letter specifically mentions “Sejdić-Finci.” In his farewell article in the local press, outgoing EUSR Peter Sørensen merely alluded to the issue, despite the time he spent in (still opaque) and

⁶ Including even relative hardliners in the Peace Implementation Council Steering Board such as Turkey, the US, and (until last week) the UK.

⁷ Despite regular assertions by ESI, ICG, and others to this effect, DPC has *never* advocated that OHR be a spearhead for reform or state-building. Rather, DPC has consistently insisted that so long as Dayton remains the constitutional order of BiH, its enforcement must be assured by maintaining a capable OHR and EUFOR.

⁸ As late as May 2014, a German diplomat from the Western Balkans Department of the Foreign Office (AA) used this line of argument in a public hearing on Bosnia in a Bundestag Foreign Policy Subcommittee to discredit the British Bosnia policy – as negotiations between the AA and the FCO over the joint initiative were already ongoing. DPC personal observation, Berlin, May 2014.

⁹ Ibid.

enabling negotiations with BiH political leaders on this topic.¹⁰

There was, however, nothing preordained in the failure to implement the Sejdić-Finci ruling. As has often been the case in BiH, international conditions are adopted and set in the belief that they can be met in the short-to-medium term, thereby demonstrating reform momentum. Sejdić-Finci was no exception. There were multiple methods proposed which would not have threatened any people's or party's interests.¹¹ Yet the EU's Enlargement Commissioner Štefan Füle acquiesced to the ruling becoming hijacked by "the Croat question," ceasing efforts to find a remedy that would address the underlying problem identified by the Court, and instead supporting efforts to retro-engineer solutions to indefinitely ensure the complete dominance of the three constituent peoples at the expense of citizens and others.

The Initiative also implies that the Sejdić-Finci requirement was a tactical mistake concerning an arcane, minor point. However, the ruling was about ensuring respect for the fundamental human and civil rights of BiH citizens, as guaranteed in Article 14 of the European Convention on Human Rights – one of the EU's own foundational elements.

Past practice has conditioned BiH political leaders to conclude that international – and particularly EU – conditions are malleable, and therefore need not be met. Resistance to reform has not incurred costs, but rather paid dividends in terms of reduced conditionality and more policymaker attention.

While being presented as a proposal to jump-start the long moribund reform process in BiH by re-sequencing the agenda, the Initiative essentially advocates more of the same, while demonstrating a willingness to bend to the interests of BiH elites.

The Initiative and its Discontents...

Effectively mobilized, German-British unity on BiH should be an unalloyed good. The initiative recognizes the reality that the reform process in BiH will be a long one, requiring comprehensive reform, at least implicitly recognizing the failed incremental approach tried by the EU thus far. However, the initiative, at least as it is being explained at the present, is rife with troubling elements and fundamental misunderstandings of the nature of BiH's political paralysis.

Room to Maneuver, not Room to Reform

The initiative calls for an "initial agenda for reform" to "encompass socio-economic issues as outlined by the 'Compact for Growth,' rule of law, good governance as well as more readily resolvable institutional

¹⁰ Peter Sørensen, "Sørensen: Three next steps on the EU path," *Nezavisne Novine*, October 28, 2014. (also published in *Oslobodjenje* and *Dnevni List*). Available at: <http://europa.ba/News.aspx?newsid=7431&lang=EN>

¹¹ Indirect election by the constituent peoples' caucuses in the BiH Parliament would have solved the Presidency issue, for example. Many other proposals were offered, including several in the study *New/Old Constitutional Engineering?*, available at <http://www.analitika.ba/en/node/149>. In November 2011, three NGOs presented specific proposals for how reform could be achieved without harming the interests of any of the country's peoples at a formal Parliamentary hearing on the topic. All such proposals were dismissed and ignored.

questions.”¹² None of this provides clear targets.

The first point in the initiative’s proposed way forward is that:

“Bosnian party leaders...make a long-term, irrevocable written commitment¹³ to establish – in the framework of the EU accession process – functionality at all state levels by implementing necessary reforms, with the objective of making Bosnia and Herzegovina ready for the EU... the EU would ask party leaders to agree in the written commitment to have an initial agenda for reform worked out under the leadership of the EU.”

It is not clear whether the EU’s “leadership” would mean setting conditions or merely facilitating agenda-setting with party leaders. Nor is it clear which party leaders will be included. Those in state-level government? Entities? Cantons? It is clear that the country’s democratic institutions, such as the Parliament, are irrelevant for international interlocutors. The initiative apparently focuses solely on party leaders, continuing the current EU policy.

The second point says that once such a commitment is signed, “the Council would then put the SAA into force... After some initial progress on the implementation, the Council would invite Bosnia and Herzegovina to apply for membership.”¹⁴ In this wording, the ministers leave the definition of “some initial progress” open to interpretation and political expedience, rather than demonstrable and implemented results.

The third and final point of the Steinmeier-Hammond letter reads, in its entirety:

“The new government of Bosnia and Herzegovina should then continue to work on the implementation of the initial agenda for reform. After full implementation of the agenda the Council would request the Commission’s opinion on the membership application. The state of play on the implementation of Sejdić-Finci *should play an important role* in the Commission’s opinion.” (emphasis added)

In this phrasing, it is clear that implementing Sejdić-Finci need not be an absolute requirement for BiH to get a positive assessment of its application for membership (*avis*). This is an even lower standard than the risible “credible effort” demanded previously to simply activate the SAA.¹⁵ It suggests that resolution Sejdić-Finci might be postponed until membership negotiations.

Is This Approach Really “New?”

While the initiative is being presented as a new approach, judging from its ingredients, it is in fact more

¹² It is fair to note that implementation of the Sejdić-Finci ruling was widely considered in December 2009 as “readily resolvable.”

¹³ Underlined in the original.

¹⁴ Underlined in the original.

¹⁵ See “Commissioner Füle and Secretary General Jagland regret the lack of progress in implementing the Sejdić-Finci judgement,” European Commission Memo, April 8, 2013. Available at: [http://europa.eu/rapid/press-release MEMO-13-316_en.doc](http://europa.eu/rapid/press-release_MEMO-13-316_en.doc)

of the same – only weaker and with fewer evident “red lines.”

The deferral of Sejdić-Finci conditionality until (maybe) the request of an *avis* on BiH’s membership application recalls another episode in which the EU retreated from a condition in pursuit of restoring “momentum:” the reinterpretation of what constituted “police reform” to allow the initialing (2007) and signature (2008) of the SAA.¹⁶ In that case, the passage of laws and establishment of police coordination agencies was at least required. Needless to say, the hoped-for momentum on the EU reform path never emerged. The list of the EU’ undercutting its own conditionality and underlying reform aims in – conditioning BiH political leaders not to take the EU conditionality policy seriously – is long.

Furthermore, with the exception of the stillborn “Compact for Growth,” which was a composite of sensible but off-the-shelf elements, the ingredients generally identified in the Hammond-Steinmeier letter – “socio-economic reforms..., rule of law, good governance, but also selected functionality questions,” are not only inherent in the *acquis*, but were also articulated in the 2008 Partnership Document, which the EU has effectively long since shelved as too demanding as a result of its being concrete, replete with some two dozen reform conditions.¹⁷ Among them were harmonized state-wide fiscal surveillance and financial mechanisms and financial audit institutions, a state-level agricultural ministry and Supreme Court.

At the time of the Partnership Document’s drafting, the BiH Council of Ministers was recognized as the “coordination mechanism” for IPA projects and other EU matters. However, as BiH politicians have taken advantage of the international hands-off “ownership” approach, there has been less and less inclusion of democratic institutions in *any* reform processes, in favor of *ad hoc* political-party driven bodies. As the appropriate institutions have been sidelined by the parties, the alleged need for new “coordination mechanisms” began to take hold as a mantra, and was in fact accepted by the EU and others.¹⁸ There are countless examples of the impact of these developments on practical reforms and normal citizens.

¹⁶ This episode has been told in detail repeatedly in the intervening years. A recent example is Branka Marijan and Dejan Guzina, “The Politics of the ‘Unfinished Business:’ Bosnian Police Reform,” July 4, 2014, Center for International Governance Innovation, Waterloo, Ontario. Available at <http://www.isn.ethz.ch/Digital-Library/Articles/Detail/?id=181189> Also see Daniel Lindvall’s detailed study of the process through 2009: “The Limits of the European Vision in Bosnia and Herzegovina – An Analysis of the Police Reform Negotiations,” University of Stockholm, 2009. Available at <http://www.diva-portal.org/smash/get/diva2:276829/FULLTEXT02>

¹⁷ DPC discussion with EU officials, February 2013.

¹⁸ For example, to avoid political confrontation, the European Commission effectively collaborated with the Republika Srpska in gutting the existing coordination mechanism (the BiH Council of Ministers), which ultimately led to the loss of access to millions in IPA funds. Worse yet, it initiated a race to the bottom, with HDZ leader Dragan Čović, having seen that obstruction and resistance pays from the experience of his ally, RS President Milorad Dodik, demanding cantonal vetoes on IPA funds to match what in effect are entity vetoes.

Fail, Retreat, Repeat

According to German and British officials, the “breakthrough” represented by the initiative is that the gap between them has now closed. This would be laudable if the joint policy were credible. But the mere fact that Berlin and London have agreed is hardly sufficient to generate success. Judging from the ingredients on display thus far, the likelihood of success by any rational definition is slim.

The initiative is aimed at promoting reforms of the kind citizens demand – socio-economic improvement and the rule of law – while avoiding or postponing topics that have been manipulated by politicians into “vital national interests,” such as the Sejdić-Finci ruling. The implicit assumption is that economic issues are less vital to the political elites, and will therefore not engender resistance. This is clearly not the case, given the reliance of political elites on patronage.¹⁹ The posture of the West – and the EU in particular – has been to enable political manipulation by not defining and defending clear red lines on behavior. In pursuit of that goal, the initiative, presumably at Berlin’s insistence, scrupulously avoids any mention of the obligations undertaken with the Dayton Peace Accords, again revealing division between the two capitals. In his October 24 article, Foreign Secretary Hammond went further than any other major Western official in reiterating this responsibility and what it means:

“Don’t waste precious time arguing about referendums and separation. That is not going to happen. We have a legal responsibility to protect the territorial integrity of Bosnia and Herzegovina, and we remain as committed to that responsibility as we were when the Dayton Peace Agreement was signed 19 years ago. The redrawing of borders in the Balkans is finished.”²⁰

The fact that his German counterpart refused to sign-on to what was supposed to be a joint article because of its imperative tone was telling.²¹ None of Hammond’s counterparts on either side of the Atlantic have repeated this commitment to date.

Dropping the Sejdić-Finci condition on the grounds that it “cannot be imparted to citizens”²² also does the plaintiffs an injustice. The case emerged from two of many disenfranchised BiH citizens who fought and won a legal battle for redress of a wrong. It was a civic triumph over elites, which the EU adopted as a condition on the grounds of the fundamental rights involved.²³ By acquiescing to the political elites’

¹⁹ Independent, pro-European RS economist Damir Miljević commented that the Initiative will have “very little impact on citizens economic and social situation” as it does not confront the crime and corruption that lies at the core of the profound socio-economic decline. He warned the RS is bankrupt and that Dodik and his regime would not leave power without violence. “Nešto milom. A nešto ucjenama, Dodik ce skupiti većinu kratkog daha,” Available at: <http://www.vijesti.ba/intervjui/246069-NESTO-MILOM-NESTO-UCJENAMA-DODIK-SKUPITI-KLIMAVU-VECINU-KRATKOG-DAHA.html>

²⁰ Philip Hammond, “The Case for Change in Bosnia,” October 24, 2014.

Available at: <https://www.gov.uk/government/news/foreign-secretary-the-case-for-change-in-bosnia>

²¹ Conversation with EU member state official, November 2014.

²² Explanation by a British diplomat on why the Initiative allows SAA activation sidestepping the Sejdić-Finci condition, Berlin, November 2014, BiH Foreign Minister Zlatko Lagumdžija repeated this talking point in his greeting the German-British Initiative at the Berlin Aspen event.

²³ Another similar case was decided by the court in 2014 – the Zorlić case. A third case with similar dynamics known as the Pilav case is pending decision.

redefinition of the ruling for their own purposes, the EU once again disenfranchised not only the plaintiffs, but all citizens. They now add insult to injury by stating in effect that their rights are marginal to the body politic and should be postponed for the greater good.

A Summing Up

First, it is difficult to see how the initiative restores the EU's battered credibility on holding firm on conditionality when it both ignores the EU's previous retreats from its own conditionality and starts off with a reward for BiH political elites who have resisted meeting long articulated conditions.

It is telling that all the political leaders immediately fully endorsed the initiative, except for the newly elected Serb member of the BiH Presidency, Mladen Ivanić, who warned that "to oblige politicians with a piece of paper doesn't mean anything because something has been signed already a thousand times and this never led anywhere. That's why in my opinion this is senseless."²⁴

Second, the carrots are defined, but the sticks are not. British diplomats have privately explained that Berlin has dropped its previous resistance to employ financial leverage to enforce conditionality.²⁵ This would seem to be contradicted by a German Foreign Office official's statement that "the sanction for non-implementation of commitments is not being awarded the next steps in EU integration."²⁶ This sounds like a re-articulation of the common EU notion that denial of a carrot is a stick. There are clear indications that party leaders are unimpressed by implications (not readily supported in the letter) that financial conditionality *will* be applied.²⁷ The day after the initiative was announced one of them noted that he thought international actors were too fearful of potential social unrest to ever apply leverage through international financial institutions like the IMF and World Bank.²⁸ This is not surprising in light of years of experience of non-reform and unfulfilled promises — all while the cash flowed.

Third, it is not clear how the "initial reform agenda" is to be defined, let alone its implementation measured. Do BiH politicians play the leading role in setting the agenda? If so, what "leadership" is the EU undertaking in the process?

Fourth, citizens are oft-cited in the Steinmeier-Hammond letter as the intended beneficiaries of the initiative, and the initiative apparently intends to employ popular pressure as a tool to ensure politicians' fulfillment of commitments. But citizens are *not* the constituency for the initiative. BiH political party leaders are. There is no evident plan to meaningfully engage citizens, though allegedly,

²⁴ "Mladen Ivanić o Njemačko-britanskoj inicijativi: Važnije je biti istinski opredjeljen za reforme," Available at: <http://www.radiosarajevo.ba/novost/170430/mladen-ivanic-o-njemacko-britanskoj-inicijativi-vaznije-je-biti-istinski-opredijeljen-za-reforme>

²⁵ DPC interviews with British diplomats, November 2014.

²⁶ Conversation with Foreign Office official, Berlin, November 5, 2014.

²⁷ "Ferguson: Naša inicijativa osmišljena je da podrži formiranje vlasti na osnovu prioriteta građana!," *Dnevni Avaz*, November 7, 2014. Available at: <http://www.avaz.ba/clanak/144853/ferguson-nasa-inicijativa-osmišljena-je-da-podrzy-formiranje-vlasti-na-osnovu-prioriteta-gradana>

²⁸ DPC interview, November 2014.

there is a plan to engage a Western PR company to draft an outreach plan to BiH citizens.²⁹ Another failed, Western tailored set of standard PR messages it not what is needed.

Finally, other than replacing democratic institutions with an informal political party cabal as the EU's partners, there is no explanation of why reforms that have failed for years might suddenly materialize. The elephant in the room remains – a political structure that includes zero incentives for reforms or accountability to citizens, and allows for fear and patronage to be the dominant drivers of social and political life.

Conclusion and recommendations

At face value, the new policy is simply repackaged German Foreign Office policy, burnished with British backing, intended for adoption by the whole EU. This may be attractive to many as it would preclude a more thorough and intellectually honest policy rethink.

The initiative ignores the lessons of policy implementation that were successfully applied by the German government to the Serbia-Kosovo case – setting red lines with Merkel's statement on the end of border changes in the Balkans, a clearly defined set of reform packages, and the firm commitment to uphold such tough conditionality. Consequently, Chancellor's Office representatives have distanced themselves in private from the process. "Don't expect too much from (the initiative)," one official stated before the announcement. "It's not a big turn."³⁰ The big question is what was in it for Britain, which had fought hard within the EU repeatedly to defend the Dayton instruments and to enact tougher conditionality, particularly on EU and IMF lending. It appears that Britain desperately wanted agreement with Germany, and is hoping that the mere fact that there is any joint effort will make the initiative successful.

The hope that deferring Sejdić-Finci condition will enable progress in other areas is fundamentally flawed and should be dropped. The fact that this proposed policy shift is so central to the "readjusted sequencing of the EU integration process" embodied in the initiative illustrates how thin the foundation of the proposal actually is. Further, it ignores the complete lack of progress on a host of other issues since the 2009 Sejdić-Finci ruling – in areas such as agriculture, disaster prevention, justice sector strengthening, etc. The absence of reform cannot be blamed on Sejdić-Finci; it is simply a reflection of the BiH political elite's lack of interest in reform. There is nothing in the current formulation of the initiative to change their calculus.

The following summarizes substantial, specific and targeted additions that DPC believes other EU member states should consider including in the initiative, which Berlin and London aim to have adopted by the Foreign Affairs Council on November 17. These elements should be integrated into the "initial reform agenda," ***which should be defined by the EU, not developed with BiH political party leaders***. If the aim is to get BiH prepared for membership, the EU cannot afford to be coy or modest in its

²⁹ DPC interview with British diplomat, November 2014.

³⁰ Conversation with Chancellor's Office official, Berlin, October 2014.

demands.

To that end, DPC recommends:

- 1) **Don't re-invent the wheel-** dust off the **2008 Partnership Document**, which contains a great deal of specificity on reforms required for BiH's "becoming a state that can be a functional member of the EU," which the Steinmeier-Hammond letter defines as the initiative's "ultimate objective." The Partnership Document contains requirements for new institutions, including a state Ministry of Agriculture (now advocated by a statewide network of farmers) and a Supreme Court.
- 2) **Repair the damage** done to the state since the regression began in BiH. No reform agenda can be truly credible or prospective if it allows BiH politicians to continue to benefit from previous malfeasance and bad faith. To date, all these acts have been tolerated, or worse, by the EU.
 - a) Reverse the reform and institutional rollback, including: BiH Conflict of Interest Law (targeted in SDP-SNSD interparty deal of 2012), RS Law on Police Officials (which allows political interference), RS Law on Courts (to which the HJPC objected on several grounds; the EC indulged RS defiance), Canton 7 Privatization Agency Law, etc.
 - b) Annulment of all legal acts undermining the integrity of the state and single economic space. This should include RS refraining from activities on South Stream until there is a state-level energy policy, a state-level gas law, and a state-level regulatory agency.
 - c) Restore the roles of state-level institutions such as the Ministry for Foreign Trade and Economic Relations (MOFTER) and the Directorate for European Integration, in the latter case by returning its ministerial status.
 - d) Return to recognition of the Council of Ministers as BiH's "coordination mechanism" for EU matters, explaining to citizens that this mechanism *already exists*.
- 3) **Re-establish red-lines**, noting clear consequences. This should be jointly articulated not just by Berlin and London, but by the EU and the US. Foreign Secretary Hammond led the way with his statement noted above. There can be no toleration of further steps to undermine the country's territorial integrity in the guise of fragmentation or partition disguised as "decentralization" or "federalism". Maintenance of international Dayton responsibilities will remain until a post-Dayton order, accepted by each self-defined group of citizens, is determined.
- 4) **Structured Dialogue:** Any continuation of the Dialogue should include civil society representatives throughout. Key judicial and legal reform issues – BiH Law on Courts, HJPC Law, etc., - cannot be compromised.
- 5) **Develop a real compact with BiH citizens.** While the enlargement process has succeeded elsewhere with an elite-focused approach, based on the assumption that politicians are

accountable to citizens. That is clearly not the case in BiH. The EU must act accordingly, forging a direct alliance with citizens for meaningful reform, where necessary confronting recalcitrant elites from both above and below. The EU has enormous potential leverage, should it employ it creatively. Support to citizens should not be confused with the cultivation of EU-funded client NGOs who serve as EU implementing partners or service providers.

- 6) **Privatization Review Panel:** The establishment of such a body would respond to a central demand from the February 2014 protests, and from citizens in every part of the country. The panel should include representatives of workers associations and unions, civil society, independent economic experts, government officials, and experts on corruption delegated by the Council of Europe’s Group of States against Corruption (GRECO). The mandate of the panel would be to review the larger cases of privatization, BiH-wide, for which scrutiny was demanded in protests. In neighboring Serbia, the EU demanded that the government review 24 privatizations, based on recommendations from a civic anti-corruption council.³¹ Until such a review is completed and lessons are learned, no further privatization should be allowed. This approach would both put the brakes on further legalized theft, and show that the EU and other international partners have heard citizens, and are aware of the history of this issue.
- 7) **Establish an Independent Privatization Agency:** Removing the ability of politicians to dispense with the proceeds of privatized enterprises at will – and instead ensuring it is channeled into dedicated funds for development and social welfare, for example – would increase trust in the process.³²
- 8) **Marry IFI funding to the reform agenda.** It is true that the IMF in particular resists applying what it sees as “political” conditionality. But “political” is in the eye of the beholder. When a majority of shareholders of the IMF agree that a crisis demands attention, the IMF will lend – or not. The problem to date has been a lack of sufficient political will, high enough in the respective governments, to trump the traditional resistance of finance ministries to demanding such conditionality be applied. ***Without application of financial leverage, no reform agenda will move forward, however ambitious or tame its content.***
- 9) **What should be required for each step toward candidacy?**
 - a) For BiH to apply for membership, all elements of the reform agenda described above should be implemented, except for those that derive from the Partnership Document.
 - b) For those elements contained within the Partnership Document, certain intermediate steps should be achieved prior to application. These include the establishment of those state-

³¹ Euractiv, “Serbia targets corruption as part of EU integration drive,”

Available at: <http://www.euractiv.com/serbia/police-arrested-wealthiest-serbs-analysis-516638>

³² For a fuller explanation of the possibilities of the *Treuhand* model, see Kurt Bassuener, “Stop Funding BiH Politicians’ Irresponsibility,” Bosnia Daily, January 16, 2014, available at:

<http://democratizationpolicy.org/uimages/e-bdaily%203194.pdf>

level institutions necessary for BiH to be able to resume agriculture exports to Croatia and the wider EU and the intermediate coordination mechanism among intermediate joint coordination body among the entity supreme courts, Court of BiH and Brčko District Appellate Court as proposed by the Venice Commission.³³

- c) The *avis* should only be requested after the reform agenda is completed.

10) Adopt a strategic approach with BiH's neighbors.

- a) Serbia: Serbian leaders have openly stated, albeit behind closed doors, that they do not support RS secession. The EU and West need to demand that such a statement be made publicly – a long overdue bookend to Stipe Mesić's statement that Sarajevo was the capital of BiH Croats, not Zagreb. This will not only pay dividends in BiH, robbing any in the RS of illusions of support from across the Drina. It would also help defuse Russian influence, ending Moscow's evident desire that BiH be a front in its new geopolitical confrontation with the West.
- b) Croatia: Other EU members need to demand that Zagreb – both government and opposition parties – cease their efforts to instrumentalize EU policy for ethno-national political and territorial goals in BiH.

11) Leadership: If Berlin and London want to set the tone for EU policy toward BiH, they must support the appointment of a politically empowered new EUSR in Sarajevo. The credibility of the EU and the EUSR has never been lower. The next EUSR needs to be an individual who feels comfortable with leadership and willing to act as an executive, working to help define EU policy in BiH, both on the ground and in Brussels. This is an inherently political – not diplomatic or bureaucratic – skill set. The FAC should state outright that they will follow the EUSR's lead on when to apply "restrictive measures" (asset freezes, visa bans, and funding stoppages), giving their Special Representative real power.

³³ Venice Commission Opinion No. 648/2011, adopted 15-16 June 2012.
At <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282012%29014-e>