

THE GERMAN-BRITISH INITIATIVE (II)

Denial of a Carrot Is a Stick

It is difficult to see how the German-British 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 Ivanic, 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."

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. 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." This sounds like a re-articulation of the common EU notion that denial of a carrot is a stick.

The Elephant in the Room Remains

There are clear indications that party leaders are unimpressed by implications (not readily supported in the letter) that financial conditionality will be applied. 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. 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,

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though allegedly, there is a plan to engage a Western PR company to draft an outreach plan to BiH citizens. 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



Sarajevo: There is no evident plan to meaningfully engage citizens

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.

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."

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 EU Cannot Afford to Be Coy

The hope that deferring Sejdic-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 Sejdic-Finci ruling - in areas such as agriculture, disaster prevention, justice sector strengthening, etc. The absence of reform cannot be blamed on Sejdic-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 demands. To that end, DPC recommends: 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.

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.

Re-Establish Red-Lines

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.

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. 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. Return to recognition of the Council of Ministers as BiH's "coordination mechanism" for EU matters, explaining to citizens that this mechanism already exists.

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.

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. 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.

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



Sorensen: The next EUSR needs to be an individual who feels comfortable with leadership and willing to act as an executive

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. 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.

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.

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. What should be required for each step toward candidacy?

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. For those elements contained within the Partnership Document, certain intermediate steps should be achieved prior to application. These include the establishment of those state-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 Brcko District Appellate Court as proposed by the Venice Commission.

The avis should only be requested after the reform agenda is completed.

Adopt a strategic approach with BiH's neighbors.

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 Mesic'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.

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.

Politically Empowered EUSR

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.