

**Statement for the Oireachtas
Joint Committee on EU Affairs**

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Chairman, esteemed members of the Committee,

It is an honor and pleasure to appear before the Joint Committee once again. I am grateful for the invitation to speak on Ireland's potential to help reverse the negative trajectory in Bosnia and Herzegovina during its EU presidency beginning in January 2013.

The Oireachtas has led European parliaments on this issue for some time, giving greater attention to the region – Bosnia in particular – than legislators in most other member states. This attention has delivered important dividends. It is my firm conviction that the principled scrutiny given by this Committee to the impunity of at-large Bosnian Serb war crimes indictee Ratko Mladić was a major factor – along with the strong report of the ICTY's Chief Prosecutor and the firm stand of your Dutch colleagues – in tipping the balance for Serbia's previous government to "find," apprehend and transfer Mladić and Croatian Serb indictee Goran Hadžić to The Hague for trial.

This example illustrates the role Ireland can play in the EU, even when it does not hold the EU presidency. That agenda-setting role is a powerful tool, even following the Lisbon Treaty. I was glad to see that Europe Minister Lucinda Creighton, who was seated here in the Committee when I last spoke before you two years ago, recognizes "we cannot force change and reform" in the region during the Irish presidency, "but we can incentivize it." My colleague Bodo Weber and I recently completed a study on the role of Croatia and Serbia in Bosnia and Herzegovina, coupled with the expectations and policies of the EU, US and Turkey toward these relationships. The regional dynamic and the entry of Croatia are important, but I would like to focus my brief opening remarks on what the EU could do to incentivize durable progress in Bosnia.

The political, social and economic situation in Bosnia and Herzegovina has been deteriorating for some time – in the case of the political dynamic, for almost seven years. Unfortunately, the posture of the international community, and the EU in particular, contributed in a major way to the prevailing dynamic. The widely held view that the "pull of Brussels" would obviate the need for the hard-power Dayton enforcement instruments of the Office of the High Representative and a Chapter 7-mandated EUFOR was proven false by the end of 2006. Yet it remains the foundation of the current policy. So while the Dayton rules remain legally valid, there is no political appetite to enforce those rules, nor to create a conducive environment for a new constitutional incentive structure. This bureaucratic autopilot will lead to disaster for Bosnia and the EU – it is only a matter of time. The current trajectory leads to violent collapse.

The Dayton Accords, signed 17 years ago, were – as one would expect – built around the interests of the signatories. The structures therein were not designed to provide for popular or democratic accountability, but rather to preserve the assets and control over public space that the then-ruling parties had established before or during the war. Simply put, it created an oligarchy masquerading as a democracy. The international community – and especially the US – has never directly spotlighted the Dayton system's perverse incentives, since we midwived the deal. Over time, more players entered the political game, occasionally supplanting the ruling parties. But the rules never changed. Hence, Bosnia and Herzegovina has the most stable political class in Europe. The only ways to depart its ranks are death, trial and imprisonment at The Hague, or forming unviable splinter parties. Other than that, it's a lifetime membership of a club with great benefits. For Bosnia's ruling class is a political-business-organized crime nexus with control across the spectrum of politics, media, academia, and the economy.

This breadth of control allows massive patronage opportunities. Politics is a for-profit enterprise in Bosnia. The system is designed to facilitate corruption. It also promotes the leveraging of an even more potent political tool: fear. The ruling elite wants to maintain all these privileges and remain unaccountable, both politically and legally. This is a better deal than anything the EU can possibly offer.

This presents an unprecedented challenge to the practice of enlargement to date. The EC, EEAS, and most member states display a learning disability on pursuing their stated goals, let alone protecting their own interests, in the Bosnian reality. The EU has “partnered” with a leadership has no interest in actually meeting EU standards, despite repeatedly ignored commitments to do so. This has created a perverse role reversal in which EU officials have become supplicants to Bosnia’s political leaders. The farce of only asking for “credible effort” toward implementing the December 2009 judgment of the European Court of Human Rights in the Sejdić-Finci case to activate the SAA is a clear illustration of this dynamic. The EC’s structured dialogue on the judiciary in Bosnia, begun in response to an anti-Dayton challenge by then Republika Srpska Premier Milorad Dodik, is another. The Commission has staked so much credibility on the structured dialogue that it has given the RS leverage over it rather than the other way around. The RS has taken full advantage of this, effectively making the EC complicit in its effort to gut the Court of Bosnia and Herzegovina, the State Prosecutor’s Office, and the High Judicial and Prosecutorial Council. The RS’ continued defiance of the EC’s admonition not to pass a Law on Courts violating the HJPC’s prerogatives has not impeded the structured dialogue; rather, it has further defined deviancy down.

The latest installment in this sad spectacle is a deal between the SNSD, which governs the Republika Srpska, and the SDP, which leads the ruling coalition of the Federation. These two parties both suffered major humiliations in the October municipal elections. If enacted, the key ingredients of this deal would strengthen the entities at the expense of the state, allow politicization of the judiciary, strip public assets for political usage, saddle the Central Bank with debt undertaken by entities and lower level governments, and stack the deck for the 2014 general elections by closing electoral lists and ending centralized vote counting. While there has been notable resistance to some provisions by some members of the international community, Norway, Sweden and the Netherlands on the judiciary for example, the overarching tenor of the international response has been to withhold judgment, accentuate the positive, and applaud that politicians agreed on *something*. This hardly projects commitment to the EU’s professed values, nor does it develop public confidence in the “European path.” Quite the contrary. The EU is setting itself up for certain failure – one it can ill afford.

Now for the good news. The EU *can* succeed in Bosnia *with* its existing set of tools and *without* derogating from its standards – but not without leaving the comfortable familiarity of its standard operating procedures, and not alone. The West will succeed together or fail together in Bosnia.

In his appearance before the Committee earlier this year, EUSR Peter Sørensen expressed his view that the executive mandates of the High Representative and a Chapter 7-empowered EUFOR should remain for the foreseeable future. I couldn’t agree more. I wish more EU member states understood that these are force multipliers and enablers for the EU’s soft power, not impediments. Clarity that these instruments will remain on the ground and used as-needed to enforce Dayton’s provisions and protect the gains made since 1995 until Bosnians agree upon and enact a functional constitutional alternative would enable organic progress by disempowering the ruling elite from leveraging fear. With those guardrails re-established, popular demands for accountability can gain traction.

The EU could do more with fewer resources, provided it calibrates those resources to address the main impediments to self-propelled progress. To be effective, the EU must refrain from reinforcing those who already benefit from the existing system. Delivery on commitments must precede disbursement of your taxpayers' scarce and hard-earned funds.

The EU's values, standards and practices are its most powerful tools. Conditionality must be firm to be effective. Deviation from criteria does not generate lasting momentum; instead, it devalues the EU's credibility as a community of rules, let alone a serious policy actor. The Commission, EEAS, member states, and EU Delegation need to attribute blame where it is due – and not with generalizations, but at specific doorsteps on the issues in question.

The potential constituency for European values in Bosnia is to be assembled at the popular level, not in the ruling elite. Small amounts of funds devoted to organic (rather than donor-conjured) civic initiatives can develop meaningful partnership between the EU and Bosnians to drive reform forward. The requirements in the SAA and Acquis provide plentiful material for constituency building – the impending economic and social disaster of loss of agriculture market access to Croatia and the EU due to political malpractice within Bosnia is perhaps the most obvious of these. Only with concerted pressure from the EU and organized Bosnian citizens, in an environment where fear has been defused, is forward movement by Bosnia's politicians possible.

The Council called for a politically potent “reinforced presence” in Bosnia and Herzegovina in its conclusions of March 2011, but it is hard to square this with the reality on the ground. The EU Police Mission is closed and EUFOR has been halved in the past year. The touted reinforcement was encapsulated in the arrival of EUSR Peter Sørensen and his ability to recommend application of “restrictive measures” to the Council – asset freezes, visa bans, and holds on funding. Were the EUSR “the decider” on application of these measures, it would be a powerful and convincing tool. But at present, it is effectively unusable. Only if Council members agreed in advance and in the abstract to reify his recommendations at their next session would it be effective.

Ireland's politicians from across the party spectrum have already demonstrated leadership on matters of great importance to Bosnia. During Ireland's presidency, you should demand a long-overdue wholesale reassessment of the EU's policy toward Bosnia, so as to develop a fresh, intellectually honest, and creative approach that can succeed. I assure you that this would be embraced by the EU's true partners in Bosnia.