

# Outline for a Common Western Policy Pivot on BiH

**A DPC Policy Brief**

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## EXECUTIVE SUMMARY AND RECOMMENDATIONS

Recent popular unrest and protest in Bosnia and Herzegovina (BiH), driven by a lack of political accountability and a dire socio-economic reality, caught all established interests – including the political elite and international actors – off-guard. While the initial instances of violence have thankfully not been repeated, the full political spectrum raced to deflect popular opprobrium by kindling ethnic fear, or harness it politically. The situation remains volatile. Even if the protest movement dissipates, the deep social frustrations that underlie it will continue to simmer and eventually find another outlet – with the potential for violence which could be diverted ethnically.

The EU, which has steered the international approach toward BiH since 2005, has yet to develop a credible reaction. The European Commission's proposal for more "Structured Dialogues" on a wider range of topics will just pile new failure upon a three-year history of counterproductive policy. Croatia's still-underdeveloped policy proposals would combine the EC's false hope in "pre-screening" with a co-optation of EU policy by an ethnically skewed Croat-centric focus.

Long-diverging situational assessments among the EU membership, also reflected in the Peace Implementation Council Steering Board, have hobbled an effective policy approach to date. Germany's policy since early 2010 has formed the foundation of the current failed EU approach. It is presently the center of gravity for common EU foreign policy. Recent public statements have indicated that Germany is willing to take a more active foreign policy role. As with Kosovo, a German-British joint policy initiative would attract enthusiastic American backing and form the nucleus of a long-overdue pan-Western policy approach. The basic outlines of this policy shift (further elaborated in the full memo) are the following:

- Base its EU integration policy on strict application of conditionality;
- Send a clear message defining the framework for Bosnia's future development – no change of borders, no RS secession, no centralized state, no third entity. A functioning state can be designed and agreed among BiH citizens within these parameters.
- Neutralize the ability of politicians to perpetuate and leverage fear by re-establishing respect for the basic Dayton rules – and recognition that they will be enforced until they are replaced by a new constitutional order;
- Make use of all available tools to confront political elites and actors who block, undermine, or fail to advocate credible reforms; and
- Build a popular constituency for this approach with citizens.

In practical terms, a recalibrated EU policy toward BiH would include the following basic elements (further elaborated herein):

- Immediate measures to prevent post-unrest violence and pre-election destabilization;
- Division of labor between EU institutions and Dayton instruments;
- A new approach to using the EU's integration structures and tools;
- A more prudent financial assistance policy; and
- Building a real partnership between the EU and citizens for a functional BiH.

Given Germany's policy to date, it is imperative that once agreed, such a joint policy be articulated publicly, *in BiH*, at the highest levels: either foreign ministers or heads of government.

## The Protests

The protests in Bosnia and Herzegovina (BiH) which began on February 5<sup>th</sup> in Tuzla and resulted in violence and destruction of public buildings there, in the capital Sarajevo, and elsewhere in the Federation of Bosnia and Herzegovina (FBiH), resulted from long-simmering social frustration at the political elites of the country in general. It is fortunate that the continuing protests and public forums (“plenums”) have remained peaceful since February 7<sup>th</sup>. However, the political and institutional responses have been shameful, and reflect the extent to which leadership is tone-deaf about the needs and demands of citizens. The reaction of public security forces was uncoordinated. The response of political leaders was to either attempt to harness the unrest, co-opt it, or deflect it. Some key figures used ethnic rhetoric and attempted to characterize the movement as “anti-Croat” or “anti-RS,” without offering evidence in that direction; indeed the potential for expanded and sustained protests countrywide, including in the RS, is a strong possibility. Every established political interest remains on edge, as does the general population. The potential for larger-scale social unrest, which can be diverted into ethnic violence remains.

The international community was as unprepared for the unrest as the BiH political class. In a previously scheduled attempt to bring political party leaders to agreement over the European Court of Human Rights Sejdić-Finci ruling, EC Enlargement Commissioner Štefan Füle effectively admitted the failure of the European Union’s approach to BiH on February 14 – after over two years of dedicated yet ill-thought out EU engagement on the matter, while taking no responsibility for this failure. The EU-led international posture in BiH is now effectively in neutral.

General elections will take place in early October. At present, there is no clear political vehicle for the social discontent with political incumbents or the system that they have steered for nearly two decades. The majority of politicians will be in a defensive posture. Protests may morph into a spoiled ballot rejection of the entire political menu. Voter turnout may well be low, further indicating citizen rejection of the current system. The situation is more volatile than at any time since the Dayton Accords were signed.

There has been increased international awareness to BiH in the past month; press attention remains higher than it has been in well over a decade. The fact that Ukrainian protests, unrest, and far greater violence occurred took place in late February diverted policy attention somewhat at a time when a policy reassessment should have begun. But in the aggregate, there is a greater recognition in major Western capitals that Europe’s periphery is not inherently stable and that long-standing policies have not delivered the desired results. In BiH’s case, this is a country which functions effectively and can propel its own integration into Euro-Atlantic institutions. It was long purported that enlargement alone would achieve this. It is readily apparent this is not the case.

## Germany’s Central Role in the EU’s BiH Policy

Prior to 2010, Berlin’s policy toward BiH occupied a middle ground between those countries which were fully convinced that the EU’s enlargement-centric strategy would eventually lead to domestically driven reform and progress toward membership, and those which still believed there remained a need for

maintaining the Dayton-mandated executive instruments of the international High Representative and EUFOR. But in early 2010, Germany shifted into vehement and uncompromising alliance with the former group, putting it at odds with Britain and the Netherlands within the EU, and the US, Turkey, Canada and Japan in the Peace Implementation Council (PIC) Steering Board. The German Foreign Office has navigated from its policy, not the ground reality, holding out hope for momentum which has never materialized. To date, the German policy remains one of “strategic patience;”<sup>1</sup> not revisiting the current policy from first principles or experience. One striking example is Berlin’s unwillingness to employ financial leverage in BiH – a completely opposite position to that applied toward fellow Eurozone members. Berlin’s policy remains firmly against replacing the international High Representative, allowing the incumbent to use his executive “Bonn Powers,” or reinforcing EUFOR. All were deemed “impossible” – the former due to Russian resistance, the latter due to lack of appetite in the West to contribute troops. Without a top-level policy shift in Berlin, EU policy will generally remain on bureaucratic autopilot when it comes to these issues, or the overall philosophy of the EU approach.

### **Commissioner Füle’s New/Old Idea: More Structured Dialogue**

Immediately after the recently admitted failure to negotiate a Sejdić-Finci implementation plan, Commissioner Füle announced three new initiatives toward BiH,<sup>2</sup> counseling leaders to heed the voice of the people. These would be built on the existing model of the “Structured Dialogue” on the judiciary and the use of Instruments for Pre-Accession (IPA) funds. The three “new” elements of Füle’s proposal, which are to include participants from all relevant government bodies in BiH and their topical counterparts in the Commission, are as follows:

1. Improved economic governance – EC assistance in preparing a National Economic Reform Program, and promotion of greater coordination on economic and fiscal policies. This would be combined with a Competitiveness and Growth Program to press for sectoral reforms in transport, energy, and telecoms.
2. A joint EC-BiH working group to accelerate implementation of projects funded under the Instruments for Pre-Accession, IPA I.
3. Widening the existing Structured Dialogue on the Judiciary to “start to tackle some of the elements of Chapter 23,” particularly on corruption, noting the need to include civil society in the process.

There are a number of problems with such a proposed approach, however.

First, the RS has consistently undermined the EU’s declared goal of a single economic space in BiH in recent years, as well as subverting – together the Social Democratic Party (SDP), which runs the Federation Government – state-level economic governance institutions, such as the Ministry of Foreign Trade and Economic Relations. The EU – in particular the Commission – has mostly avoided the issue, let alone challenging the RS’ actions. The announced initiative gives no indication that it would confront the real

<sup>1</sup> Discussions with German diplomats, Berlin and Sarajevo, January-March, 2014.

<sup>2</sup> Štefan Füle, “Bosnia-Herzegovina – EU: Deep Disappointment on Sejdić-Finci Implementation,” February 14, 2014, at [http://ec.europa.eu/commission\\_2010-2014/fule/headlines/news/2014/02/20140218\\_en.htm](http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2014/02/20140218_en.htm)

problems of governance in BiH.

Second, the effective use of available IPA funds has largely been prevented by the RS' resistance to using them to make state-level institutions stronger or more functional. Banja Luka has accordingly undermined decision-making processes agreed between BiH authorities and the Commission. Brussels has repeatedly acquiesced to such attacks, thereby further complicating efforts to apply funding effectively. It is hard to see how the formation of a working group could overcome the essentially political origin of the underperformance in IPA project implementation.

Finally, the Structured Dialogue mechanism has in nearly three years delivered few positive tangible results, while it has not prevented the accelerated erosion of the rule of law. The process was initiated in mid-2011 in response to a threatened referendum by then-Republika Srpska (RS) Premier (now President) Milorad Dodik. The Structured Dialogue was a new approach that essentially fast-forwarded to discussions (not negotiations) on *Acquis* Chapters 23 and 24 prior to BiH's attaining candidate status, when such talks normally begin. Yet while introducing the Structured Dialogue neutralized the referendum threat, in practice it has not resolved the conflict that stood behind it – the RS' consistent attack on state-level judicial institutions and of post-war strengthening of the rule of law. Throughout the Dialogue, the Commission has demonstrated no political will to forcefully resist such attempts. Consequently, the Structured Dialogue model so far has acted as an enabler and accelerator for policy malpractice, rather than as a brake. Expanding it to other spheres would thus only compound the damage already wrought.

Instead of reassessing the EC and EU's approach, Commissioner Füle is advocating more of the same. Not only will this avoid confronting the real problems; it will actively worsen them and make the EC complicit in this process.

### **Ideas from Zagreb – Desperation and Attempts to Europeanize “the Croat Question”**

The Croatian Government, both in a non-paper by Ambassador to the United States Joško Paro presented to Assistant Secretary of State Victoria Nuland, was already advocating for a new Western approach to BiH in December 2013. Subsequent proposals made by Foreign Minister Vesna Pusić<sup>3</sup> and a paper reportedly prepared for the March 17 Foreign Affairs Council meeting, added some additional elements.<sup>4</sup> No single document or statement includes every proposal; the policy may indeed be evolving. But the basic elements of Zagreb's desired approach appear to be the following in the aggregate:

1. A “tailor-made accession process for BiH,” bypassing the standard accession process – including the SAA with the Sejdić-Finci condition. This “new *sui generis* accession process” would see the country granted “special acceding country status” by an as-yet undefined set of criteria;

<sup>3</sup> “Speech at Johns Hopkins University,” Washington DC, February 28, 2014 – available at [http://www.mvep.hr/en/the-ministry/minister/speeches/speech-on-johns-hopkins-university\\_7584.html](http://www.mvep.hr/en/the-ministry/minister/speeches/speech-on-johns-hopkins-university_7584.html)

<sup>4</sup> “Promemo – Bosnia and Herzegovina,” Croatian MFA document, March 2014; “Prijedlog za novu EU strategiju prema BiH”, Radio Free Europe, March 13, 2014, available at <http://www.slobodnaevropa.org/content/prijedlog-za-novu-eu-strategiju-prema-bih/25294183.html>

2. Linking BiH's internal integration on the basis of "full equality of constituent peoples" to EU accession – "double integration," as Ambassador Paro terms it;<sup>5</sup>
3. Instituting "pre-screening" of *Acquis* chapters prior to BiH candidacy;
4. Privatization of remaining publicly-owned enterprises.
5. "Synchronized assistance and cooperation:" development assistance, twinning, cross-border projects, and coordinated funding from international financial institutions.

There are a number of problems with this proposed approach. Most obviously, recent protests and assemblies demonstrate outright popular antipathy toward further privatization, given perceived (and actual) cases of private enrichment of officials and other abuses in past privatizations. Ambassador Paro's blithe statement that "a Bosnian spring is unlikely to happen" may have seemed conventional wisdom when he wrote it late last year; it is far less clear-cut now.

But there are far deeper problems. Despite decrying the current integration process under the SAA as hopeless, the proposal is based on precisely the same unfounded attractive force. It calls for "clear deliverables, neglecting to note that Sejdić-Finci implementation and a "coordination mechanism" were supposed to exactly this sort of short-term deliverable when set by the Commission. The Croatian proposal implies that the EU has practiced strong conditionality toward BiH on the SAA, and that developments proved that implementation of Sejdić-Finci is impossible. Yet the EU demonstrated an almost unlimited flexibility instead of firm conditionality. The Commission accepted Sejdić-Finci's linkage to the "Croat question," rather than the rights of the "others" in BiH, or the privileges to be accorded to the constituent peoples over and above citizens. This led to negotiations with political leaders on constitutional changes that had nothing to do with SAA conditionality. The Commission had no mandate from the EU to do so. Effectively, the Croatian policy proposal would formally import the "Croat problem" into EU policymaking. The proposal also insists that there is an "absence of any need for enforcement;" that the new EU policy would be self-enforcing. Given the fact that the current EU enlargement-centric approach was sold exactly the same way, this is questionable. It is also hard to see how transparent privatization could be achieved without new, compelling conditionality. Finally, the Zagreb proposal makes only passing mention in its latest iteration of the other EU condition beyond Sejdić-Finci which impedes a "credible application" for membership: a so-called "coordination mechanism."

While not central in the presentation, woven throughout this loosely sketched-out approach is the presumption that the "Croat question" is central to government dysfunction and lack of progress. In fact, as recent protests have demonstrated it is the lack of accountability of *any* public officials which is the main impediment to self-propelled progress. In addition, there is a prevailing assumption, also without evidence, that the forward movement of Croatia and Serbia will drive forward movement in BiH. Furthermore, the RS' constant political efforts to undercut the state are not addressed.

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<sup>5</sup> Ambassador Paro's non-paper, presented to the State Department in late December 2013, is titled "Double Integration Approach for a European Bosnia and Herzegovina." The theme was later adopted by Edward Joseph, who presented it in an op-ed in February 2014: "Bosnia's Day of Reckoning Demands Bold Action," *Balkan Insight*, February 7, 2014, at <http://www.balkaninsight.com/en/article/bosnia-s-day-of-reckoning-demands-bold-action>

But most importantly, as is the case with Commissioner Füle, the “pre-screening” proposal put forward by Ambassador Paro, Foreign Minister Pusić in the February 10 Foreign Affairs Council, and the latest Foreign Ministry paper, ignores the fact that the EU has already tried to use such “pre-screening” through the Structured Dialogue as a reform driver. It has failed.

Zagreb’s advocacy for reducing EU conditionality and a “tailor-made accession process” for BiH in the current political atmosphere of skepticism toward further enlargement – and its own direct experience of a rising EU bar – demonstrates a lack of realism. The newest paper is heavily focused on throwing additional resources at the problem in a broad spectrum of areas. But BiH authorities have repeatedly left money on the table; it is therefore hard to see increased funding as a likely driver of reform. Zagreb’s proposal has already drawn critique from a couple of member states on its Bosnia proposal for exactly those reasons.<sup>6</sup>

So Zagreb’s ideas thus far display a central contradiction: they recognize and declare the failure of the current approach, while offering essentially more of the same as a remedy. The latest policy paper proclaims that “it is the hour of Europe”<sup>7</sup> and states that “the (enlargement) process should be the way for resolving individual obstacles,” which has actually been the EU’s standard line for some time. At the same time, the proposals are also imbued with the general perception from Zagreb that Croats are disadvantaged by the current system and any further progress demands their greater collective empowerment. The recent debate in the Croatian Sabor, in which a third entity in BiH was debated, was at least more honest in declaring it an option.<sup>8</sup>

### **What’s Needed: A New EU Approach, and American Support**

The lack of unity among key Western actors, particularly within the EU, has long hampered an overdue reassessment of policy toward BiH. From an American, British and Dutch standpoint, Germany has been the central outlier. The unity of this group, as demonstrated in dealing with Serbia and Kosovo, is not only potent – it is a prerequisite for success.

While often presented as vexingly complex, the overarching problems in BiH are actually easy to identify. External actors do not hold the sole power to resolve them, but a posture based on the actual dynamics would enable citizens of Bosnia and Herzegovina to take the initiative in developing a viable alternative to the current dysfunctional system. This would put an entirely new framework and dynamic in place in which even the current elites would be forced to ultimately act fundamentally differently.

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<sup>6</sup> Interview with EU official, Brussels March 2013.

<sup>7</sup> This is an astounding allusion for the Croatian MFA to make in a document, given it was first uttered in July 1991 by then-European Council chair and Luxembourg Foreign Minister Jacques Poos. It was followed by the legendary inability of the EU to develop a credible response to the war in Croatia and later in Bosnia. See Toby Vogel, “Not-so-innocent bystanders,” *European Voice*, July 26, 2012. Available at: <http://www.europeanvoice.com/article/imported/not-so-innocent-bystanders-74929.aspx>

<sup>8</sup> Elvira Jukić, “Croats Say Own Entity Will Make Bosnia ‘Home,’” *Balkan Insight*, March 4, 2014 at <http://www.balkaninsight.com/en/article/croats-say-own-entity-will-make-bosnia-home>

The West handed over an incomplete and semi-functional state to predatory domestic elites. The EU-led approach in BiH prematurely disabled the only real accountability mechanism that prevailed in BiH, the international High Representative, without a policy designed to ensure domestic political and legal accountability structures were in place prior to this shift. The EU's enlargement toolbox is inadequate to the task of resisting efforts to gut state institutions or roll back democratic reforms by sub-state level actors – at least not without hitting the state or citizens as a whole. In a division of labor, the Dayton instruments should deter and react to such actions while the EU should pursue a positive reform agenda. This should involve setting benchmarks, naming actors and actions that undermine the EU-path, laying out incentives for citizens and elites, and spelling out benefits to citizens from the integration process – not just attaining membership.

Simply put, to succeed in BiH, the EU together with the PIC SB must:

1. Base its EU integration policy on strict application of conditionality;
2. Send a clear message defining the framework for Bosnia's future development – no change of borders, no RS secession, no centralized state, no third entity. A functioning state can be agreed among BiH citizens within these parameters.
3. Neutralize the ability of politicians to leverage fear by re-establishing respect for the basic Dayton rules – and recognition that they will be enforced until they are replaced by a new constitutional order;
4. Make use of all available tools to confront political elites and actors who block or undermine reforms; and
5. Build a popular constituency for this approach with citizens.

BiH's citizens have never before demonstrated their pronounced sense of how poorly served they are by their entire political elite. Therefore, with the EU in the lead, international actors need to engage citizens as partners – and force multipliers – in their effort to catalyze the transformation of BiH into a country which can serve its citizens and ultimately join the EU and NATO. This would constitute an effective alliance between the EU and other Western actors with BiH citizens against the inert and recalcitrant political elite.

This new policy approach for BiH would be focused around five key areas, all of which require a major *philosophical* reset for the major foreign actors in BiH, but neither major *institutional* change nor massive investment of additional resources.

***Immediate measures to prevent post-unrest violence and pre-election destabilization:***

- Joint statement by high-level German, British and American officials to the Bosnian public, delivered in Bosnia – no entity secession, no third entity, no further ethno-territorialization, no centralized state.
- Reinforce EUFOR's deployed and over-the-horizon forces, increase their mobility, and declare readiness to use them to prevent any unilateral challenges to the Dayton order.

**Division of labor between EU institutions and Dayton instruments:**

- Re-establish a collaborative relationship between the EU and other powers on the PIC Steering Board, particularly the US and Turkey, behind a common strategy. Russia's capacity to act as spoiler is enabled and magnified by Western disunity. Russia must be reminded that the PIC SB is not formally a consensus body.
- Define the terms of a synergetic division of labor that will maintain the EU and its integration policy in the leading role, while retaining the Dayton institutions with full operational capacity until they are no longer needed.

**A new approach to using the EU's integration structures and tools:**

- Apply strict conditionality. Put the SAA into force and immediately suspend it until BiH meets the conditions.
- The EU should continue to demand implementation of the Sejdić-Finci ruling, but cease allowing this to be an avenue for wider demands for territorial and structural reorganization, as it has become.
- End the reductionist concentration on the SAA and membership application in favor of a wider, overall package of reform requirements for BiH, including constitutional reform to establish political accountability and state functionality. The EU is to set the benchmarks – state functionality, integration of institutions, and establishing a single market – and assess whether they have been met. Its role is not to present any models or engage in top-down constitutional reform initiatives.

**A more prudent financial assistance policy:**

- The EU should not offer further macro-financial assistance to BiH unless it is linked to strict, economic development-oriented conditions. In addition, it should ensure (in cooperation with other Western actors) that the IMF applies stricter conditionality in its financial assistance to BiH.
- Consider the German model of the *Treuhandanstalt*, which took public enterprises in the former GDR into receivership and oversaw their privatization, as part of new conditions to be applied for financial assistance. This would provide a public and accountable mechanism as well as a lever with which to resolve long-blocked economic reforms in BiH.<sup>9</sup>

**Building a real partnership between the EU and citizens for a functional BiH:**

- Clearly define to the public the EU's new integrated approach with the PIC SB, and how this can finally lead to BiH's membership in the EU, so that political elites cannot spin their way out of it.
- Help build a popular constituency for progress by identifying lost opportunities and the direct damage inflicted by BiH's political class by their unwillingness to meet EU requirements. Publicly assign responsibility to those political actors who have undermined or blocked reforms and specify the real-time costs of not meeting EU requirements on specific sectors of the population and the economy.

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<sup>9</sup> See Kurt Bassuener, "Stop Funding BiH Politicians' Irresponsibility," *Bosnia Daily*, January 16, 2014, at: <http://democratizationpolicy.org/uimages/e-bdaily%203194.pdf>

- Respond to popular demand for accountability by restoring another accountability mechanism under international purview: international prosecutors in the Office of the Prosecutor and judges in the Court of BiH. This would have particular resonance in dealing with organized crime and corruption. These would have to be imposed by the High Representative with full support of the Western members of the PIC SB (e.g., against Russian resistance).

### ***Germany's Particular Role***

Recent events in BiH provide perfect political cover for a policy shift on the country. Without a doubt, a German policy shift of the sort outlined above will be noticed, as it departs in a number of fundamental ways from the current “strategic patience” policy (which has been described by one German diplomat as “wait and see”). The bottom line of such a policy is to enforce the current Dayton Accords until they are replaced by a more accountable and functional system, while actively pursuing developing the latent popular constituency for the latter.

It is imperative that such a policy shift be *declared* at a high-level once agreed among Berlin, London and Washington. Prior to such an announcement Ankara should also be consulted. There may well be pushback from an increasingly problematic Russia. But on most matters, its ability to generate mischief will be neutralized if there is Western unity. BiH is an arena in which Germany should make clear that its deference to Russia will not continue. London and Berlin should jointly determine which capital will take the lead in articulating the new policy to fellow EU members, the EU institutions (perhaps jointly), the PIC Steering Board, and the public. In the PIC, Berlin is best placed to approach Russia, while London is best placed to approach Ankara.

It is unlikely that senior German officials will evince much enthusiasm for increasing EUFOR strength. But Germany's own unwillingness to contribute should not impede others. Berlin should at least cease to resist a force structure re-assessment and a force-generation effort to increase EUFOR's deterrent and reaction capability. Non-EU member Turkey already contributes heavily to EUFOR. The EU should feel compelled to make the mission credible. It should be remembered that NATO retains its Chapter 7 mandate; it could re-assume that responsibility if the EU is unwilling to fulfill it.