

Substantial Change on the Horizon?

A Monitoring Report on the EU's New Bosnia and Herzegovina Initiative

A DPC Policy Paper

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EXECUTIVE SUMMARY

In November 2014, Germany and the United Kingdom launched a new policy initiative for Bosnia and Herzegovina (BiH). One month later, the European Union adopted the initiative as its own new EU initiative for BiH. Earlier, in February 2014, violent social protests had broken out in BiH and marked the failure of the EU's previous policy approach in catalyzing real change in the country. At the same time, the protests drew new attention in the West to continuing problems in BiH. This enabled Berlin and London, whose dispute over the correct course of action to take in BiH had blocked the Union from having any meaningful policy, to get together behind a joint initiative. The focus of the new initiative was on structural socio-economic reform. Sensitive political issues like constitutional reform were pushed aside – for consideration at a later stage in enlargement – in order to unblock BiH's long stalled EU integration process.

From a distance, the initiative may appear successful; in September 2016, less than two years after the start of the new initiative, the Union's General Affairs Council (GAC) referred BiH's membership application to the European Commission to prepare an Opinion. This marked the last of three steps in the EU integration process, originally foreseen as a reward for the fulfillment of certain reform conditions. This was followed by the entering into force of the long-delayed Stabilisation and Association Agreement (SAA) and BiH's official application for membership. In addition, the centerpiece of the initiative, the so-called Reform Agenda was agreed and implementation initiated.

However, close examination of the state of reform within the scope of the EU initiative challenges this positive impression. The reality is that the limited reforms achieved so far are fragile, sustainability of the reforms is highly questionable and the long-term socio-political outlook remains tenuous.

BiH authorities were able to agree with the EU and the International Financial Institutions (IFIs) on a broad agenda for socio-economic reform, the Reform Agenda 2015-18. If *fully* implemented, the Agenda could profoundly undermine the country's patronage system – the system that forms the *raison d'être* of the political elites and the main cause of the state's dysfunctionality and reform resistance. The Agenda has indeed brought some momentum to needed reforms not seen in a decade. Most of the reform momentum is due to the actions of the IFIs, especially the International Monetary Fund (IMF), which put in place new credit arrangements to support the Agenda and imposed strict financial conditionality. In one of the key reform areas, modernization of the labor market, two new entity labor laws were adopted. Yet this new legislation, praised by the EU and the IFIs for its positive and far-reaching impact, falls far short of expectations. And in all other reform areas covered by the Agenda, structural reforms are still at an early stage. There have been numerous delays since 2015 in the implementation of Reform Agenda measures resulting from disputes among the ruling elites over their entrenched interests which are endangered by the reforms. 2018 is an election year, which means that a very limited time slot remains to implement those multiple structural reforms. It is simply impossible for many of them to be completed within that timeframe.

With respect to other conditions the EU made on BiH's progress toward EU integration, the Union has continued its practice of retreating from conditionality in the face of resistance to reform. EU

institutions have compromised on their own set conditions, lowered conditionality, ignored self-set deadlines and in some cases, dropped conditionality entirely. When conditions were fulfilled, it was mainly due to the EU's inattention to the substance (or lack thereof) of the "solutions" agreed among BiH political leaders, thus turning conditionality into an exercise in mere box-ticking. The result is that some of the solutions may never function in practice.

Finally, the relationship between the EU and BiH in implementing the EU initiative has turned into a closed-shop operation. Parliaments, civil society and the public at large have largely been bypassed in terms of policy development and policy making. The EU's unwillingness to – and unfamiliarity with – developing a popular constituency has weakened its leverage and increased that of recalcitrant BiH politicians. An awareness that BiH leaders were not genuinely interested in reform – and the need for broad civic support to overcome this impediment, was allegedly the basis for the initiative to begin with.

Given this background, prospects for the successful further implementation of the Reform Agenda appear grim, even more so because there are a multitude of uncertainties regarding the way forward. At the time it adopted the UK-German initiative in 2014, the EU weakened conditionality for the last step of its BiH initiative – referral of BiH's membership application to the European Commission - from "full implementation" to "meaningful progress" in implementing the Reform Agenda. Currently, no plan is in place to press for full implementation as an absolute condition for further BiH progress in EU accession. Also, on December 9, 2016, the European Commission handed the Questionnaire over to BiH authorities, the answers to which will enable the preparation of its Opinion on the membership application. Since then, government institutions at all levels have been busy answering several thousands of questions. There are already signs that they will lose focus on implementing the Reform Agenda, or worse, that political elites could use the Questionnaire as an excuse to dodge further reforms.

However, the Reform Agenda process has proven that the leading international actors in BiH *can* successfully push for the country to get on a sustainable reform track – as demonstrated by the IMF's application of tough conditionality. It's not because conditionality doesn't or cannot work in BiH – as many EU officials argue – that the EU initiative has so far yielded only limited results, but rather because the EU has lacked the political will to consistently signal and apply tough, strict conditionality. This is due to the low priority that Germany and other key EU actors have assigned to BiH, amidst other pressing international challenges and an increasingly complicated geopolitical order. Yet a collapse of the Reform Agenda may not be just another failure of the EU in BiH. Loss of EU initiative risks leading to renewed violent social unrest that in 2014 triggered these responses, with the likelihood that politicians this time will succeed in deflecting it in an ethnic direction, unlike 2014. Such intentionally diversion into ethnic violence would pose a direct security risk to the EU. To prevent such a scenario requires political will and leadership by the EU, but primarily by Germany, to genuinely lead the Reform Agenda towards successful completion. No substantial additional resources are needed, but a strategic re-thinking and adjustment of the initiative is required. This process must include the EU's acceptance and inclusion of BiH's citizens as its allies in pushing for structural socio-economic reforms.

I. Introduction

On September 20, 2016, the European Union's General Affairs Council (GAC) decided to forward Bosnia and Herzegovina's (BiH) membership application to the European Commission for an Opinion.¹ With that decision, the third and last step of an initiative led by Germany and the UK, aimed at revitalizing the Western Balkan country's EU integration process after a decade of total stalemate, was completed less than two years after its launch. The GAC decision was hailed by the Union's highest officials in charge as a great success for the EU's policy, and a sign of substantial change underway in BiH.² The decision, however, came only five days before the authorities of the Republika Srpska (RS), one of BiH's two entities, organized a referendum on the legality of Republika Srpska Day, although the country's Constitutional Court had declared the holiday unconstitutional and suspended the referendum. The EU (and the US) subsequently characterized the RS authorities' move as both unconstitutional, and against the Dayton Accords. The referendum added to doubts that previously had been raised by some analysts about whether the EU's BiH initiative had really set in motion a serious reform momentum and opened the path to substantial change. Based on those competing assessments, this report analyzes the state of implementation of the EU's BiH initiative, starting with its centerpiece, the so-called Reform Agenda, while also addressing the remaining reform elements, as well as the conditions that led to the September 20 decision.

On November 5, 2014, during a Western Balkans foreign ministers conference in Berlin,³ the governments of Germany and the United Kingdom launched a joint initiative to revitalize BiH's EU integration process through a proposed change in the Union's approach. UK and Germany disagreement over threat assessment and the right course of action to pursue in BiH had blocked the Union for half a decade from formulating any meaningful BiH policy.⁴ The cooperation between Berlin and London led the EU to adopt the initiative as the Union's own new BiH initiative, formalized through the conclusions of the Foreign Affairs Council (FAC) of December 15, 2014⁵, which allegedly contained only cosmetic changes to the original proposal –or so it was thought until only recently.

The German-British initiative had been billed as a direct reaction to violent social protests that erupted in BiH in February 2014, when citizens in large parts of the country took to the streets to protest against the dire socio-economic situation. Specifically, the protests were aimed at the weak rule of law and

¹ *Council conclusions on the application of Bosnia and Herzegovina for membership of the EU*, General Affairs Council (GAC), September 20, 2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/09/20-conclusions-bosnia/>.

² See statements by Johannes Hahn, Commissioner for European Neighbourhood Policy & Enlargement Negotiations, and Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy, New York September 21, 2016, available at: <https://www.youtube.com/watch?v=CMOa3qs8CLw>.

³ Aspen Institute Germany's annual Western Balkans foreign ministers' conference, in November 2014 organized in cooperation with the British embassy in Berlin. Author present at public presentation of initiative.

⁴ Since the two other member states among the EU's 'big four' (France and Italy) had basically checked out from any serious political engagement in the Western Balkans, the path to any policy change of the Union in practice had to start with Berlin and London.

⁵ *Council conclusions on Bosnia and Herzegovina*, Foreign Affairs Council (FAC), 15 December 2014, available at: <http://www.consilium.europa.eu/en/workarea/downloadasset.aspx?id=40802190979>.

systemic corruption, and they held the political class as a whole as the single most responsible factor for the country's lack of any perspective.⁶ After a last desperate attempt to negotiate a solution to the country's remaining condition to unblock the EU integration process, the implementation of the Sejdić-Finci ruling⁷, the then Commissioner for Enlargement, Stefan Füle, more or less openly declared the failure of the EU's BiH approach that had seen the country's membership bid blocked for almost a decade.⁸

The EU's new approach removed the remaining condition, "meaningful progress" in the implementation of the Sejdić-Finci ruling, from blocking BiH's next step in the EU integration process – the entering into force of the country's Stabilisation and Association Agreement (SAA). The ruling would either be addressed prior to BiH becoming a candidate country or even during the accession process (that remained undefined) in order to move forward with the country's integration process.⁹ It was to be replaced with a three-step process of conditions to be met, rewarded by progress in EU integration, as laid down in a letter from the then German and British foreign ministers, Frank-Walter Steinmeier and Philip Hammond. The proposal was sent to the EU's High Representative for foreign and security policy, Federica Mogherini, and the Commissioner in charge of enlargement policy, Johannes Hahn, on November 4, 2014.¹⁰ The three steps were:

1. A written commitment – BiH party leaders were asked to "make a long-term, irrevocable written commitment to establish – in the framework of the EU accession process – functionality at the state level by implementing necessary reforms, with the objective of making Bosnia and Herzegovina ready for the EU." The document should include the commitment to "an initial agenda for reform worked out under leadership of the EU... [and] include items from the Copenhagen Criteria (socio-economic-reforms, including the 'Compact for Growth', rule of law, good governance), but also selected functionality questions." As a reward for party leaders' signature under the commitment,

⁶ Bodo Weber / Kurt Bassuener, *EU Policies Boomerang: Bosnia and Herzegovina's Social Unrest*, DPC Policy Brief, February 2014, available at: http://democratizationpolicy.org/pdf/briefs/DPC%20Policy%20Brief_Bosnia-Herzegovina's%20Social%20Unrest.pdf.

⁷ In 2009 the European Court of Human Rights (ECHR) ruled that parts of the BiH constitution were not in line with the principle of non-discrimination as enshrined in the European Convention on Human Rights, due to the fact that BiH citizens who are not part of the three constituent peoples (Bosniaks, Croats, Serbs) cannot stand for certain offices (e.g., cannot become a member of the collective state Presidency of BiH or of the BiH Parliamentary Assembly's House of Peoples. See: *Case of Sejdić and Finci vs. Bosnia and Herzegovina*. Judgement, December 22, 2009, available at: [http://hudoc.echr.coe.int/eng?i=001-96491#%22itemid%22:\[%22001-96491%22\]}](http://hudoc.echr.coe.int/eng?i=001-96491#%22itemid%22:[%22001-96491%22]})

⁸ *Commissioner Füle and Secretary General Jagland regret the lack of progress in implementing the Sejdić-Finci judgement*, Brussels, April 8, 2014, available at: http://europa.eu/rapid/press-release_MEMO-13-316_en.htm.

⁹ Though not explicitly mentioned in the written documents of the new initiative, the second, less prominent condition left unfulfilled from the previous period – a so-called coordination mechanism among BiH levels of government to speak with one voice vis-à-vis the EU – was also to be postponed until after the SAA entry into force.

¹⁰ Joint letter by German and British foreign ministers Frank-Walter Steinmeier and Philip Hammond to High Representative of the EU for Foreign Affairs and Security Policy Federica Mogherini and Commissioner for European Neighbourhood Policy & Enlargement Negotiations Johannes Hahn, Berlin/London November 4, 2014, available at: http://infographics.economist.com/20141108_Letter/Letter.pdf.

the “Council would then put the SAA into force.”¹¹ The December 2014 FAC conclusions slightly modified that procedure, asking for the BiH Presidency to first agree on the commitment before party leaders sign it, and then also for the BiH Parliament to endorse the written statement.¹²

2. Membership application – following the BiH authorities’ agreement on a subsequent start of work on the initial agenda for reform, Steinmeier and Hammond wrote, “the [European] Council would invite Bosnia and Herzegovina to apply for membership after some initial progress on the implementation.”
3. Commission opinion – according to the foreign ministers’ letter, the membership application would again be followed by a period in which BiH authorities continue to work on the reform agenda. Then, after “full implementation of the agenda, the Council would request the Commission’s opinion on the membership application.” Preparation of such an opinion, the so-called *avis*, would start with the Commission sending out a voluminous questionnaire to BiH for which BiH authorities would have to prepare extensive answers, based on which the Commission would form its opinion. This whole stage in BiH’s EU integration process, however, is not covered by the German-British/new EU initiative. The letter only vaguely refers to it by stating that “the state of play on the implementation of Sejdić-Finci should play an important role in the Commission’s opinion.”¹³

The rationale behind the new EU approach, which was only partly explained in public, rested on several assumptions and ideas: First, the failure of the EU’s previous approach was explained away on the basis that it had addressed “intractable issues too early in the [EU integration] process” a reference to constitutional reform and an alleged mistake the new initiative was seeking to avoid; second, by its concentration on (allegedly) non-ideological socio-economic issues, the initiative narrowed the political elites’ opportunities to resist reforms by playing the ethno-nationalist card; third, socio-economic reforms directly linked to citizens’ interests and needs would give the EU the opportunity to employ bottom-up pressure by reaching out to BiH’s citizenry; and fourth, the UK and Germany had finally agreed to apply their strongest deployable tool to enforce reforms – financial conditionality – through the EU’s cooperation with International Financial Institutions (IFIs).¹⁴

Critics of the new EU approach questioned the rationale on all counts. They countered that it had in fact not been any alleged intractability of previous conditions, but a lack of political will by the EU to confront political elites in BiH over reforms, which saw the Union constantly backing down on its own conditionality from which the elites learned the lesson to not take EU conditionality too seriously. Critics further argued that this was the reason for the blockage over the one remaining condition – Sejdić-Finci. By replacing the Sejdić-Finci condition with the signing of a non-binding “irrevocable written commitment,” they argued, the EU would repeat the mistake it made when launching its previous

¹¹ Steinmeier-Hammond letter.

¹² FAC December 15, 2014 conclusions.

¹³ Steinmeier-Hammond letter.

¹⁴ Hammond-Steinmeier letter; interviews with German and British diplomats, Berlin and Sarajevo 2014-15; Bassuener/Vogel/Perry/Weber *Retreat for Progress?*, DPC Policy Note, November 2014, available at: <http://democratizationpolicy.org/pdf/briefs/DPC%20Policy%20Paper%20-%20Retreat%20for%20Progress%20in%20BiH.pdf>.

policy.¹⁵ Those skeptics noted that it may indeed be more difficult for political elites to challenge socio-economic issues on ethnic grounds, but that they would find other ways to block structural economic reforms as those reforms would strike at the heart of their power base, the patronage system. Those who challenged the new EU approach further questioned the EU's, and particularly Germany's, resolve to apply financial conditionality in the event of reform blockage, as cutting off financial support could again result in violent social unrest – a scenario that would require the readiness to apply hard power to prevent a serious security threat. Finally, the capability of the EU to use combined external and bottom-up pressure to push political elites towards real social change was questioned because the EU had been unable to establish a true, pro-active partnership with citizens in its enlargement policy.¹⁶

This report analyzes the conduct of the new EU initiative for BiH and the implementation of reform conditions, with a special focus on its core element, the Reform Agenda. On one hand, it looks at reforms undertaken by BiH authorities, regarding conditions set by the EU and agendas and actions plans drafted in cooperation with it, as well as whether these reforms indicate real structural change. On the other hand, it reviews the performance of the EU – whether it stuck to the conditionality it set and whether it consistently pursued the rationale behind the initiative. Finally, the report will also look into the operational side of the EU's new policy, its internal organization and relationship with various external actors in BiH, both international and domestic.

II. Steps undertaken within the EU-initiative

Step 1: Written Commitment – SAA enactment

As was predicted by the authors of the EU's new policy approach, obtaining a pledge to sign an unenforceable written commitment to reforms proved to be the easiest step on the path to implementation – yet one not free of complications. The Steinmeier-Hammond letter left open the question of who should actually prepare the declaration. Some diplomats preferred that the EU draft the text and have party leaders sign it, but it was the newly-formed Presidency of BiH that took the initiative at the end of 2014 and came up with a first draft – strongly encouraged by representatives from EU institutions.¹⁷ Yet this draft met resistance from some political actors, first and foremost from RS President Milorad Dodik. His objections were consistent with the RS government's policy over the past decade, which had focused on strengthening the autonomy of the entity vis-à-vis the state by emphasising both formal and self-defined or alleged competences of each governance level, in particular the entities. Negotiations between the EU and party leaders, especially the RS President, solved the conflict. As one EU member state diplomat explained, “the EU Delegation [to BiH] looked at his [Dodik's] objections and determined not all of them were illegitimate. There is an effort to

¹⁵ This refers to the EU's 2007 giving up on previously demanded police reform, and the replacement of this condition with the signing of a written commitment to a future police reform in order to free the path for the EU and BiH to sign the otherwise blocked Stabilisation and Association Agreement.

¹⁶ *Retreat for Progress?*

¹⁷ Interview with EU member state diplomat, Sarajevo December 2014.

accommodate Dodik, he wasn't uncooperative... So the obstruction was overcome."¹⁸ With Dodik on board, the 14 party leaders agreed on a revised version of the draft in mid-January 2015. After the BiH Presidency agreed on the final version on January 29, the party leaders signed it, and the Parliamentary Assembly of BiH endorsed the written commitment on February 23.¹⁹

The commitment, though written by domestic authorities, for the most part copied content and wording from the Steinmeier-Hammond letter, though concepts were more fully elaborated. Point one referred to the establishment of institutional functionality and efficiency at all governance levels in order to prepare for EU membership. The only concrete measure it listed was the urgent establishment of a so-called coordination mechanism. In point two, leaders committed to an initial agenda for reform that concentrated on socio-economic reforms, but also included the strengthening of the rule of law. Point three referred to additional measures on functionality to be undertaken after the initial reform agenda had been implemented and highlighted the implementation of the Sejdić-Finci ruling. The only original issue, not copied from the UK-German letter, were "measures to accelerate the reconciliation process," listed as part of the future reform agenda. Yet neither the authorities nor political party leaders have come back to this issue since the signing of the commitment, and it did not find entry into the agenda later.

Concessions made to RS President Dodik in the written commitment consisted of two identical passages stressing that reforms will be implemented "in accordance with respective constitutional competences" of government institutions at all levels in BiH. Asked why the EU had started the implementation of its new initiative with concessions to RS President Dodik – something that had been constant in the EU's previous, failed approach – a high-level German diplomat argued that "those are only empty words. By giving in on some formulations in essence we don't lose anything"²⁰ – thus basically subverting the official insistence on the "irrevocable" character of the written commitment. On June 1, 2015, the EU brought its SAA with BiH into force.

Reform Agenda compilation

Before moving on to the next step, political leaders in BiH had to agree on a reform agenda with the EU in line with what they had committed to in writing. After the completion of the post-election formation of executives at the state and entity levels in April 2015, the EU Delegation (EUD) to BiH invited the entity prime ministers and the head of the BiH Council of Ministers (along with their economic advisors), as well as the country representatives of the World Bank and the International Monetary Fund (IMF) to a meeting to present their ideas. The meeting was held in May 2015 at the Jahorina mountain resort near Sarajevo. Based on that session, the EUD put together a first draft agenda that was basically a "compilation of the issues brought forward by the Prime Ministers."²¹ After two months of back and

¹⁸ Interview with EU member state diplomat, Sarajevo January 2015.

¹⁹ *Written Commitment of Bosnia and Herzegovina*, available at:

http://www.europarl.europa.eu/meetdocs/2014_2019/documents/dsee/dv/0507_11/0507_11en.pdf

²⁰ Interview with German diplomat, Berlin March 2015.

²¹ Interview with BiH Council of Ministers official, Sarajevo, June 2106.

forth discussion and 13 different drafts altogether, state and entity authorities agreed in July on the final text of what was to become the Reform Agenda 2015-18²² (the three action plans for the state level and the two entities were adopted between August and October 2015). While most of the discussions and negotiations had been about prioritizing, sequencing and timelines and not about substantial disagreements, an issue did come up between the RS government and the IFI's, particularly the IMF. Banja Luka wanted to raise the country-wide VAT tax rate and include it in the Agenda as a way to improve revenues. For the IFIs this ran counter to the basic rationale driving the Agenda, fiscal discipline. As an IFI representative explained to the author:

“the tax rate is high enough – but too few pay. The IMF is working on a plan to broaden the base. The IMF's position is – ‘sure, raise the rate if you need to. But *only* after you exhaust the space to broaden the base with the current rate.’ The FBiH and BiH agree. The RS said ‘sure, we'll do this – as long as we get the evaluation [of the effect of tax base broadening measures] by year's end.’ This is nonsense. They can't even introduce all the measures necessary by then, let alone assess whether they're working.”

Despite IMF resistance that was shared by the World Bank, “the RS government managed to get a diplomatically phrased sentence into the final Reform Agenda, as a result of an EU-RS bargaining deal.”²³ As a result, the section of the Reform Agenda dealing with taxation and fiscal sustainability in reference to measures on broadening the tax base reads that “if the measures prove to be insufficient by the end of 2015, additional measures, including a VAT increase, will be considered.”²⁴ The EU's indulgence on this point of dispute may have partly resulted from differences in policy philosophy between the German and British authors of the initiative and the EU. While the Steinmeier-Hammond letter defined the EU's role as “leadership,” the December 2014 EU Council conclusions only referred to the Reform Agenda in terms of it being worked out “in consultation with the EU.”²⁵

Step 2: Non-credible membership application by self-invitation

Following agreement on the Reform Agenda and the adoption of some first reform measures during the second half of 2015, a struggle evolved between BiH leaders and the EU on the conditions and timing for the next step in the EU's initiative – the application for membership. Germany and Great Britain had clear criteria for submission of the application, which included two conditions that had been long stalled: adaptation of the SAA trade chapters and of a so-called coordination mechanism (details below). While several other member states were more flexible on conditionality than the two initiators of the EU's new initiative, the latter were supported by the Netherlands, the state scheduled to take over the EU presidency for the first half of 2016.

²² “Reformska agenda dogovorena;” BHRT, July 24, 2015, available at: <http://www.bhrt.ba/vijesti/bih/reformska-agenda-dogovorena/>.

²³ Interview with IFIs official, Sarajevo August 2015.

²⁴ *Reform Agenda for Bosnia and Herzegovina 2015-2018*, working translation, available at: <http://europa.ba/wp-content/uploads/2015/09/Reform-Agenda-BiH.pdf>.

²⁵ Steinmeier-Hammond letter; EU Council December 15, 2015 conclusions.

On the domestic side, it was in particular Dragan Čović, the Croat member of the BiH Presidency, who forcefully pushed for an early application submission. In July 2015, Čović had taken over the 8-months rotating role of Chair of the Presidency of BiH and was eager to gain credit for the membership application during his short mandate. As a Dutch diplomat explained, “we were approached already during the summer of 2015 on a date; Čović approached our foreign minister on the margins of the UN General Assembly. We succeeded to push the whole issue down the road until the end of 2015.” According to the diplomat, BiH political leaders “tried to frame us. We were confronted with a lot of disinformation during our presidency.”²⁶

The Netherlands, Germany and the UK went back to BiH political leaders during December 2015, to see where things stood on the unfulfilled conditions. Čović was already announcing he would hand over the application in January 2016.²⁷ For the next several weeks they continued to receive the same answer – that agreements were “only a matter of days,” – although there was no palpable progress. Diplomats from the three member states began to send clear messages to the political leaders that the credibility of the application should take precedence over a date, first in private talks, but as that seemed to have no effect, increasingly in the public sphere as well.²⁸ Member states’ diplomats discussed all possible options, including that the EU would reject receipt of the application from Čović, who had announced that he would finally hand-deliver it in mid-February.

A week before the planned application day, an agreement on a coordination mechanism collapsed. The Council of Ministers previously had adopted a draft mechanism at a non-public session on January 26. Both the session and the decision were kept secret until the mechanism was published in the BiH Official Gazette on February 9. As a reaction to that procedure, the RS leadership retreated from the deal on which they previously had signaled general agreement. Despite the clear failure to get this one key condition fulfilled, the process nevertheless went on as planned, because, as a Council of Ministers official explained, “we received advance signals from Mogherini that an agreement on the mechanism is not a precondition for the application.”²⁹ Indeed, the December 2014 Council Conclusions had not mentioned any procedure for applying for membership and the EU’s enlargement process does not have any formal or legal conditions to fulfill in order to hand in a membership application. But by retreating to this formalistic position, Mogherini undermined any idea of a “credible” application as well as the German-British rationale to use this step in the initiative as leverage for reforms. In the end, according to a diplomat from one of the member states advocating for the tougher approach, “it was [EU Special Representative to BiH Lars Gunnar] Wigemark who decided there was sufficient progress for the application.”

A last-ditch effort by the Dutch foreign ministry to have a low-profile application handover by sending their state secretary was thwarted by Brussels, who “wanted a big show.” Instead, Dragan Čović handed

²⁶ Interview with Dutch diplomat, 2016.

²⁷ Aplikacija BiH za članstvo u EU još na čekanju?, available at <http://www.dw.com/bs/aplikacija-bih-za-%C4%8Dlanstvo-u-eu-jo%C5%A1-na-%C4%8Dekanju/a-18973433>

²⁸ BiH Foreign Minister Igor Crnadak, during a visit to London in January 2016, was explicitly told that BiH should not hand in the application at that point in time; interviews with EU member state officials, 2016.

²⁹ Interview with BiH Council of Ministers official, 2016.

BiH's membership application over to the Dutch foreign minister, who received it on behalf of the EU in Brussels on February 15, 2016. No invitation by the European Council, as foreseen in the Steinmeier-Hammond letter, had preceded the procedure; it was a *de facto* application by self-invitation. Looking back at the events of the summer of 2016, an EU member state diplomat explained that “there is disappointment that since Čović handed over the application six months ago, he has pretty much disengaged on the EU initiative. That’s exactly what we feared back then.” Another diplomat added that “since February 15, Čović has been very obstructionist.”³⁰

Towards Step 3: Commissioner Hahn’s March 2016 conditions, Brussels deadline(s)

When key EU member states fought for tough conditionality at the beginning of 2016, they agreed that giving the membership application away for free was not a good idea. As one diplomat put it, “once it’s in, the pressure to pass it through, be generous on conditionality will rise.”³¹ He was very soon to be proven right. On March 21, 2016, the enlargement commissioner, Johannes Hahn, was the first EU official to visit Sarajevo since the handover of the application. In a press conference with the Chair of the BiH Council of Ministers, Denis Zvizdić, he set the stage for BiH’s further path towards EU integration. For the European Council to discuss the application, Hahn listed four conditions: 1. Progress in implementing the Reform Agenda; 2. Adaptation of the SAA agreement; 3. Adoption of a coordination mechanism; and 4. Publication of the official results of the 2013 census. He also set a deadline; For the Council to consider BiH’s application at the July 2016 session, the conditions had to be fulfilled by the end of April, beginning of May at the latest. Otherwise, the next chance when the Council could deal with BiH would be six months later, in 2017.³²

However, as spring passed without any progress, EU institutions fell back on the old policy of setting deadlines, and then, in the face of reform resistance, bending them. BiH political leaders missed Hahn’s deadline with no consequences. Then, on May 12, a high-level delegation from Brussels, which included Christian Danielsson, Director General of the DG NEAR, and Thomas Mayr-Harting, Managing Director for Europe at the European External Action Service (EEAS), visited Sarajevo. They reconfirmed the four conditions, but noted that it was nevertheless still possible for the European Council to discuss BiH’s application in July, if all were implemented “in the very next weeks.”³³ With no progress in sight, EU institutions continued to insist on conditionality. But that didn’t last for long. Still in May, “Brussels pressured the Dutch to simply declare ‘meaningful progress,’”³⁴ in order for the EU to maintain the July Council meeting deadline. The Hague resisted and kept up some reform pressure. To do otherwise would have killed conditionality and completely destroyed the EU initiative’s credibility. BiH political leaders were stuck with the four conditions.

³⁰ Interviews with several EU member states’ officials, 2016.

³¹ Interview with EU member state official, January 2016.

³² Hahn-Zvizdić March 21, 2016 press conference video, available at: <http://europa.ba/?p=41199>.

³³ Transcript of the press conference with DG NEAR Director General Danielsson and EEAS Managing Director Mayr-Harting, available at: <http://europa.ba/?p=42546>.

³⁴ Interview with EU member state official, 2016.

Condition One: Reform Agenda implementation progress

After the Reform Agenda was adopted in mid-2015, entity governments undertook some reform steps that brought BiH authorities initial praise from the EU. It seemed that its new initiative had finally created some fresh reform momentum. On July 31, the Federation of BiH adopted a new labor law, which had long been requested by the IFIs; the RS, though lagging behind, followed at the very end of 2015. After that, there was virtually no further implementation of the Agenda throughout the first half of 2016. Commissioner Hahn, in his March press conference,³⁵ had signaled that there was some flexibility regarding what constituted progress in implementing the Reform Agenda, given its broad nature. But it was the struggle between authorities and the IMF over a new credit arrangement that was the breaking point for measuring success. In support of the Reform Agenda, the IMF had prepared a new credit arrangement designed for countries that undertake structural economic reforms – the Extended Facility Fund (EFF). Apart from a long list of conditions that were to form an integral part of the Agenda, the IMF also set a few preconditions for authorities to meet for the fund to approve the credit. Three of those preconditions, directed at the RS government, blocked the negotiations: broadening of the tax base, exchange of tax data among the entities, state and Brčko District and reform of state-owned banks in the RS. Banja Luka especially resisted the last two. It was not until the end of June 2016 that the RS finally gave in on all three and the IMF prepared to approve the EFF in July.³⁶ However, it was not until after the summer that BiH formally applied for the credit as the issue got drawn into political leaders' conflict over the EU's remaining conditions.

Condition Two: Adaptation of the SAA Trade Agreement – unity in surrender

The second condition BiH's leaders were facing in 2016 was a specific one, as it had no real link with the EU's new initiative and the Reform Agenda, but rather was related to an unresolved conflict in the relationship between BiH and the Union dating back to 2012: the adaptation of the SAA Interim Trade Agreement to Croatia's EU entry in 2013. Before 2013, trade relations between BiH and Croatia were regulated through their membership in CEFTA (Central European Free Trade Agreement), while BiH's trade relations with the EU's 27 member states were regulated by an SAA Interim Trade Agreement. BiH and Croatia have a substantial trade exchange volume, especially in agricultural products, with a clear deficit on the BiH side.

With Croatia becoming the additional 28th member state, there was a formal need to adapt BiH's Interim Trade Agreement through a protocol, in order to accommodate Croatia in the agreement. The European Commission demanded that this adaptation be done in the same manner as in previous similar cases of enlargement, based on the so-called "traditional trade" methodology, a demand that triggered a long-lasting dispute. Under the Interim Trade Agreement, EU member states were granted the right to export products to BiH, especially agricultural products, exempt from customs tariffs and within certain quotas agreed for each individual product. Under that so-called traditional method, the quantities of products that Croatia had exported both customs and tariffs-free into BiH before becoming an EU member would simply be added to the existing EU quota, to be used by companies from all 28 member states.

³⁵ <http://europa.ba/?p=41199>.

³⁶ Interviews with IFIs representatives, 2016.

BiH, unlike Croatia's other traditional partners in the region, for example Serbia, rejected this methodology. In 2012, the BiH Council of Ministers formed a negotiation team and defined a negotiation position that insisted on only a technical adaptation of the trade agreement without adding Croatia's quotas, citing severe negative consequences for BiH agricultural producers. The reason for this exclusive BiH resistance was political. Under CEFTA, in 2011 BiH and Croatia had fully liberalized their trade relations, particularly on agricultural products, unlike other Western Balkan CEFTA members, for example Croatia and Serbia, that agreed only on custom tariff-free trade within narrowly set quotas to protect domestic production. The reason for this was that at the time, Croat and Serb members of ruling coalitions in BiH were still defending the interests of their ethnic motherlands over those of BiH citizens. As a consequence, accepting the traditional methodology would have meant an additional disadvantage for BiH agricultural producers as they are not in a position to compete with the huge agricultural industries from the EU. By resisting the Commission's demand, political leaders from all ethnic groups in BiH came together in defense of state interests for the first time in many years, while Brussels stuck to bureaucratic traditions in defense of its new member state, reluctant to create any precedence with BiH's specific case.³⁷

The new EU initiative freed the path for BiH's SAA to finally enter into force and Brussels stepped up the pressure on BiH leaders regarding the adaptation of the trade agreement. The EU initiative's new "momentum" finally created conditions for resolving the dispute – with BiH authorities bowing to EU pressure. In its November 2015 session, the BiH Presidency decided to change the country's negotiating position and accept the Commission's traditional trade methodology, but under two conditions – that the adding of Croatia's tariff-free quotas should enter into force in phases, and that the EU should provide some sort of financial compensation for the economic loss inflicted on BiH agricultural producers. In May 2016, the Council of Ministers negotiating team reached an agreement with the European Commission. A gradual phase-in over a two-year period of certain agricultural product quotas such as fish, milk, dairies and sausages was agreed. No agreement was reached over any compensation. Negotiations had proven that there was no concrete practical basis for this original Presidency demand and no existing EU funds or mechanisms for any such financial compensation.³⁸

The BiH leaders' unity in surrender, however, was destroyed by RS President Dodik, who, at the end of June, publicly announced that he disagreed with the deal and that the entity government would block it. Dodik argued from the old negotiating position, stating that the overall damage to the BiH economy would equal 210 Million Convertible Marks (KM) per year without ever providing any basis for his calculation. He conditioned RS agreement to financial compensation. However, through his resistance over the years to any policy measure that even resembled the strengthening of state-level institutions, Dodik was the official most responsible in the country for blocking the modernization of BiH agriculture and the use of EU funds. In 2016 alone, RS resistance to any state strategy for the development of

³⁷ Interviews with BiH Council of Ministers officials, Sarajevo 2012-13, 2016; *Conclusion of the Protocol to the Interim Agreement on Trade and Trade Related Matters / Stabilisation and Association Agreement between BiH and EU – facts and developments*, Council of Ministers non-paper.

³⁸ Interview with BiH Council of Ministers official, Sarajevo 2016; *PROTOCOL to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, to take account of the accession of the Republic of Croatia to the European Union*, January 17, 2017, available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A0117\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A0117(01)&from=EN).

agricultural production meant that BiH left 40 to 60 Million KM of offered EU IPA and IPARD funds³⁹ on the table. Dodik's blockade forced the German government to intervene.⁴⁰ During a visit of the three-member Presidency of BiH to Berlin, German Chancellor Angela Merkel offered her support to find a solution. On July 13, German Agriculture Minister Christian Schmidt was sent to Sarajevo to meet with Dodik. After the meeting, he announced a breakthrough, and declared success. The two, Dodik explained, had agreed for the World Bank to be commissioned to conduct an independent analysis to assess the real damage inflicted on BiH agriculture and on the basis of that analysis "the German government will approve measures that will contribute to reducing or eliminating the losses for our farmers." Dodik's declaration was no more than political spin – there was an agreement on the World Bank analysis, but the German government had merely offered technical assistance to BiH farmers. Berlin had no intention of paying for Dodik to implement an EU condition. Funds were offered through EU programs – the very funds Dodik's agriculture policy had prevented from being used. Dodik, however, was satisfied with the political attention he gained and the RS agreed to the negotiated adaptation of the SAA trade agreement.⁴¹ A breakthrough on BiH's membership application remained blocked, however, by the one condition left unfulfilled – the coordination mechanism.

Condition Three: The coordination mechanism

The last remaining condition, the agreement on a so-called coordination mechanism, was probably the most controversial issue among BiH political leaders since Sejdić-Finci. Early in the EU integration process, Brussels had demanded that BiH authorities establish bodies and procedures for the internal harmonization of the management of EU integration reforms. Given the highly-fragmented structure of the state, this was considered a basic necessity to ensure that BiH "speak with one voice." Thus, a coordination mechanism was put in place for BiH to manage EU IPA funds and for other important matters. Later, the EU added the existence of a functioning coordination mechanism to its list of conditions for the SAA to enter into force. As EU officials admitted, for Brussels, the coordination mechanism served as a "placeholder" to secure some element of stability in EU-BiH relations for the period of time that BiH would not be pressured to make serious constitutional reforms towards a functional state as those were intended to be addressed at a later stage, during the accession process.⁴²

2011 marked a breaking point in the infighting over a coordination mechanism. That year, the RS government refused to honor an agreement on the receipt of IPA funds that had been reached, with RS involvement, through the existing coordination mechanism. At the last moment, Banja Luka demanded that four projects be removed from the agreement because allegedly they foresaw the creation of additional state-level institutions. If the projects were not removed, the RS would block the whole agreement and BiH would lose the annual IPA funds. The EU accepted this form of blackmail by calling

³⁹ The Instrument for Pre-accession Assistance (IPA) is the means by which the EU supports reforms in the 'enlargement countries' with financial and technical help. IPARD is IPA's rural development component.

⁴⁰ "Dobro je da smo definisali rokove," *BH Dani*, October 14, 2016.

⁴¹ "Schmidt: Njemačka će pružati tehničku podršku BiH i pobrinuti se da novac dođe do onih kojima je najpotrebniji," *Oslobođenje*, July 13, 2016, available at: <http://www.oslobodjenje.ba/vijesti/bih/schmidt-njemacka-ce-pruzati-tehnicku-podrsku-bih-i-pobrinuti-se-da-novac-dode-do-onih-kojima-je-najpotrebniji/175087>; interview with German government official, July 2016.

⁴² Interview with EU officials, Sarajevo 2013.

on the ruling parties at the state and entity levels to solve the issue among themselves, which meant giving in to the RS' ultimatum. This killed off a well-functioning coordination mechanism that had been based on respect for the competences of state-level institutions centered around the BiH Council of Ministers and the Directorate for European Integration. In accordance with the BiH Constitution and the Law on Ministries and Other State Bodies of BiH, the state is responsible for relations with the EU and is allocated the role of coordinating among entity ministries to the state-level ministries. The EU's actions marked the beginning of a fight by the Dodik regime, later joined by Croat ethnic parties, to use the political struggle over a new coordination mechanism as a crowbar to incrementally change the nature of the state by demanding that entities, and later also the cantons, be put on an equal footing with state-level institutions.⁴³ The EU's "agree among yourselves" approach destroyed any basis for an agreement on a new coordination mechanism, because it gave Serb and Croat political actors legitimacy for their attempts to move towards further, informal ethno-territorialization of the state, to which Bosniak and multi-ethnic political actors could only react by blocking any proposed coordination mechanism.⁴⁴

Under the new EU initiative, the issue of the coordination mechanism was revived, and EU pressure was put on the ruling actors to finally come to an agreement. When the new head of the BiH Council of Ministers, Denis Zvizdić, from the leading Bosniak party, the SDA, took office in March 2015, he took, according to a Council official, a "new, pragmatic approach" regarding agreement on a new coordination mechanism. What this meant was that Bosniak political elites had finally given in to Serb and Croat nationalist political pressure. In June 2015, Zvizdić formed a team to draft a coordination mechanism that was to include representatives from the Council of Ministers and the entities. He accepted the RS government's demand to use a 2013 draft that suited Banja Luka as the starting point for the entity representatives to participate.⁴⁵ After the secretly-adopted draft of January 2016 failed to receive RS support, negotiations over the modification of the text continued through to April/May. A final text was agreed on, following a high-level meeting of state and entity officials from the SDA and Dodik's SNSD on July 31, and a subsequent meeting on August 18, 2016 that also included representatives of the Croat ethnic HDZ party.⁴⁶

The major aspects of the agreed coordination mechanism reveal the true nature of the agreement reached.⁴⁷ The decision creates a hierarchy of four bodies for the internal coordination of BiH's EU integration process (Art. 1) – the Collegium for European integration, a ministerial conference, the Commission for European Integration, and working groups. All bodies are structured in the same way; they consist of representatives of executives from all governance levels – state, entities, the ten Federation cantons and Brčko District. Participation of a representative from each of them is needed for a quorum and all decisions are taken by consensus (Art.3). Moreover, selection of the chairs of the

⁴³ Kurt Bassuener, "European Commission indulges RS power play, undercutting state institutions and its own credibility," *Istinomjer*, available at: <http://istinomjer.ba/european-commission-indulges-rs-power-play-undercutting-state-institutions-and-its-own-credibility/>.

⁴⁴ Kurt Bassuener/Bodo Weber, *House of Cards: the EU's "reinforced presence" in Bosnia and Herzegovina*, DPC policy paper, May 2013, p.10.

⁴⁵ Interview with BiH Council of Ministers official, June 2016.

⁴⁶ Interview with BiH Council of Minister official, August 2916.

⁴⁷ Decision on the System of Coordination in the Process of European Integration in Bosnia and Herzegovina, Council of Ministers of BiH final version, August 23, 2016.

working groups is not clearly limited to ministry representatives from the Council of Ministers (Art. 10 (1)) – a breach of the Law on Ministries and Other State Bodies of BiH. In addition, the decision also determines the composition of the BiH delegations within the joint EU-BiH bodies within the SAA. Thus, the coordination mechanism defines that BiH’s Standing Delegation with the Stabilisation and Association Committee “shall be the permanent members of the Commission for European Integration” (Art. 11(3) (b)) – i.e., representatives from all governance levels. This is not only in violation of the competences of the State of BiH as defined by the Constitution, but also in violation of the SAA the EU signed with BiH, which states that the BiH Delegation to the SAA Committee is “composed of representatives of the Council of Ministers.”⁴⁸

That such an agreement was accepted and *de facto* approved by the EU within the new BiH initiative’s conditionality framework clearly legitimized the undermining of the state and of the constitutional order by various ethno-nationalist political actors. At the same time, it offered no guarantee that BiH will speak with one voice in the future, but rather is a perfect vehicle for an executive at any governance level to block any decision. Asked whether any EU institution or member state government had set any benchmarks or criteria on what the coordination mechanism should include, an EU diplomat admitted that “no one insisted on any criteria or benchmarks,”⁴⁹ clearly indicating that the EU’s approach was to get *any* agreement it could on a coordination mechanism with no regard for its efficacy.

The “non-condition”: publication of the 2013 census results

The publication of the results of the 2013 census (the first since the war), constituted an awkward condition by the EU institutions’ own rationale. Though in his March 21, 2016 press conference in Sarajevo, Commissioner Hahn had listed it among the set of conditions, EU officials later stressed that it was not an official condition, as it had never been defined as such in any Council conclusions. But it was nevertheless presented as a *de facto* condition, as reliable data provides a necessary basis for formulating government policy, and thus also for planning structural economic reforms under the Reform Agenda. The European Commission also needed census data to support the further conduct of BiH’s enlargement process.⁵⁰

For a decade and a half after the end of the war, the need for a census was glaringly evident. Wartime ethnic cleansing operations took their toll with 100,000 killed, 2 million (half the population) displaced, and an exodus of refugees that resulted in hundreds of thousands of internally displaced persons in every corner of the country. However, attempts to organize a census had failed repeatedly.

In 2005, the United Nations Development Program (UNDP) and the EU Delegation to BiH drafted a working paper confirming the need for data, but also acknowledging the political implications related to both explicit and informal collective ethnic power-sharing agreements (very often unrealized) at virtually every level of government.⁵¹ Since the war, laws have referenced the 1991 census as the basis for the

⁴⁸ STABILISATION AND ASSOCIATION AGREEMENT BETWEEN BOSNIA AND HERZEGOVINA, OF THE ONE PART, AND THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES, OF THE OTHER PART, Article 118.

⁴⁹ Interview with EU member state diplomat, Sarajevo, June 2016.

⁵⁰ Interview with EU official, Berlin, June 2016.

⁵¹ “BiH Census: Proposed Way Forward.” A paper by the United Nations Development Programme (UNDP) and the Delegation of the European Commission (EC) to Bosnia and Herzegovina, July 2005.

allocation of certain positions; other laws reference “the last” census leading to legal interpretation problems which continue today.⁵² However, the leading political parties were unable to reach an agreement on what a census would ask, measure and count, particularly when it came to ethno-national issues.⁵³ While RS authorities sought a process that would include such ethnic data to confirm the new facts on the ground, Bosniak and Croat politicians continued to view the exercise in the context of the incomplete and potentially ongoing return of refugees and internally displaced persons.

The situation remained stalled despite EU efforts. In February 2008, the Council of the European Union included the planning for, and implementation of, a census in the so-called Partnership Document.⁵⁴ In 2011, the adoption of a Law on Census was included as one of the three requirements for BiH to meet to unblock the SAA.⁵⁵ (The other two were a Sejdić-Finci remedy and a Law on State Aid). The EU never sought to encourage the conduct of a non-ethnic census in BiH by, for example, sending a strong message to the politicians and people of the country that Brussels not only did not need the controversial questions, but that Brussels would also not fund such unnecessary questions; they claimed this was an issue for local decision-makers, though in fact much of the money was coming from external sources.

A Law on Census was finally adopted in 2012; while viewed as a success, touchy political questions concerning methodology and analysis (e.g., issues of stated residence vs. place of work; how to explain and use data for non-mandatory questions, etc.) nevertheless remained unresolved.⁵⁶ It was considered “good enough for now.” While a substantial part of the approximately 25 million Euros it cost to conduct the census was paid for by the EU, with Sweden also providing substantial financial and technical support (in support of the general capacity of the three statistics agencies, the International Monitoring Operation, technical equipment and guidance, etc.), there was again little private and no public effort to seek to de-ethnify the census controversy by publicly stating that the ethno-national questions were not needed for BiH’s EU accession path. Outstanding questions regarding future data analysis were ignored, as were complaints about irregularities in the data collection process.⁵⁷

The count was held in October 2013 and the preliminary data released shortly thereafter, but then the process stalled.⁵⁸ The primary sticking point was over which forms would be counted. The RS in particular sought to eliminate to the greatest extent possible census forms filled out by those who

⁵² <http://www.democratizationpolicy.org/how-will-the-bih-census-results-be-used->

⁵³ The controversial identity questions were ethnicity/nationality, religious affiliation and mother tongue, a proxy for ethnic affiliation). None of these questions are required by the EU.

⁵⁴ “Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina and repealing Decision 2006/55/EC.” Official Journal of the European Union. 19 March 2008, available at: http://www.esiweb.org/pdf/bosnia_European%20Partnership%202008.pdf

⁵⁵ See for example a 2011 interview with EUSR Peter Sørensen, http://europa.ba/wp-content/uploads/2015/05/delegacijaEU_2012011214105974eng.pdf

⁵⁶ Perry, Valery. “The 2013 Census in Bosnia and Herzegovina: A Basic Review.” *Democratization Policy Council Policy Note*. October 2013, available at:

<http://www.democratizationpolicy.org/uiimages/pdf/dpcpolicynotebihnewsseries3bihcensus.pdf>

⁵⁷ Jukic, Elvira M. “Bosnian NGOs Call for Boycott of Census.” *Balkan Insight*. 3 October 2013, available at: <http://www.balkaninsight.com/en/article/bosnian-ngos-call-for-census-boycott>

⁵⁸ “Preliminary Results of B&H Population Census: 3.791.662 People in B&H.” *Sarajevo Times*. 5 November 2013, available at: <http://www.sarajevotimes.com/preliminary-results-of-bh-population-census-3-791-662-people-in-bh/>

stated that their residence was in BiH while indicating that they worked or studied abroad; primarily those Bosniaks who had left and sought to maintain residence and often voting rights in the RS while actually outside of BiH for various amounts of time. However, Croat parties desperately wanted to ensure that their ethnic kin living and working in neighboring Croatia would indeed be counted. The Bosniaks had an interest in showing a presence in places such as Srebrenica, and demonstrating that they were in the majority. All three constituent peoples were aware of the political and even constitutional risk of a sizeable population of “Others.”

2014 and 2015 passed without agreement, leading to increasing concern that the data would not only be contested but would be increasingly out of date. The EU avoided direct engagement, yet it began to put out public feelers to link the publication of the results to EU progress. In late December 2015 and early 2016, the media noted that publication of the census results could be linked to BiH’s submission of an EU membership candidacy application.⁵⁹ In March 2016, EU Commissioner Hahn noted that publication of census results was needed for BiH to receive the application questionnaire from Brussels.⁶⁰ However, throughout the spring, agreement on the methodology to facilitate publication of the final results remained elusive.

In April 2016, the EU and its experts became more directly involved, seeking to assist the local parties in finding “compromises” to bridge the gap; for example, by proposing different approaches to counting and categorizing census forms so that only those BiH residents working in neighboring countries (e.g., Croatia and Serbia) be counted, but not those elsewhere (e.g., in Germany).⁶¹ As there was no basis for such proposals in the Law on Census, they were resisted by some officials.⁶² On May 18, the director of the BiH Statistics Agency, Velimir Vukić, stated that the Agency had agreed on an approach⁶³ which was met with significant resistance from RS President Dodik.⁶⁴ Throughout May and June the debate continued. What should have been a simple methodological count became a granular exercise in finding

⁵⁹ Džano, A. “Zolić o popisu stanovništva: Političari će iz rukava izvući podatke o BiH i poslati ih Evropskoj uniji.” *Klix.ba*. 30 December 2015, available at:

<http://www.klix.ba/vijesti/bih/zolic-o-popisu-stanovnistva-politricari-ce-iz-rukava-izvuci-podatke-o-bih-i-poslati-ih-evropskoj-uniji/151229059>; “Genjac: Tek kada dobije upitnik iz Bruxellesa BiH će znati da je njena aplikacija za EU kredibilna.” *TRT*. 1 February 2016, available at:

<http://www.trt.net.tr/bosanski/bosna-i-hercegovina/2016/02/01/genjac-tek-kada-dobije-upitnik-iz-bruxellesa-bih-ce-znati-da-je-njena-aplikacija-za-eu-kredibilna-426092>.

⁶⁰ “Komesar EU: BiH do maja mora ispuniti uslove.” *Mojkontakt.com*. 21 March 2016, available at:

<http://mojkontakt.com/2016/03/komesar-eu-bih-do-maja-mora-ispuniti-uslove/>.

⁶¹ Discussions with officials, June 2016.

⁶² “RS i dalje ne priznaje metodologiju o popisu stanovništva, Krečić pisao Wigemarku, Inzku i Zvizdiću.” *Klix.ba*. 24 May 2016, available at: <http://www.klix.ba/vijesti/bih/rs-i-dalje-ne-priznaje-metodologiju-o-popisu-stanovnistva-kremic-pisao-wigemarku-inzku-i-zvizdicu/160524016>

⁶³ “Konačno donesena odluka o objavi rezultata popisa stanovništva u BiH.” *Klix.ba*. 18 May 2016, available at: <http://www.klix.ba/vijesti/bih/konacno-donesena-odluka-o-objavi-rezultata-popisa-stanovnistva-u-bih/160518081>.

⁶⁴ “Dok u RS-u osuđuju, Evropska unija pozdravlja odluku o objavi rezultata popisa stanovništva u BiH.” *Klix.ba*. 18 May 2016, available at: <http://www.klix.ba/vijesti/bih/dok-u-rs-u-osuduju-evropska-unija-pozdravlja-odluku-o-objavi-rezultata-popisa-stanovnistva-u-bih/160518129>.

a “fix” to the satisfaction of all the parties.⁶⁵

On June 30, at the last possible moment, the results were announced, immediately leading to questions concerning differences from the 2013 preliminary results count, and over the RS’s insistence that an additional 200,000 forms were incorrectly included.⁶⁶ However, in theory, and regardless of the continuing debates on the validity of the census numbers and breakdown of data, it was known even then that the challenges were far from over. The questionnaire includes questions on the number of people in the country, and if the RS continues to disagree with the published census results and with a coordination mechanism in place that is based on consensual decision-making, the most likely answer of BiH to the first of over 3,000 questions in the questionnaire could (still) be – “we don’t agree on an answer.”

Step 3: The GAC September 20, 2016 decision

Following the fulfillment of all four conditions at the end of August that Commissioner Hahn had set in March 2016, EU member states discussed BiH’s membership application at the September 20 General Affairs Council (GAC) meeting. The GAC praised the agreements on the conditions as well as the “meaningful progress” made in implementation of the Reform Agenda and called for implementation of the remainder of the Agenda. It decided to refer the membership application to the European Commission to prepare an Opinion.⁶⁷ With this decision, the EU formally achieved the goal of the German-British initiative less than two years after its launch. However, completion of its cornerstone, the Reform Agenda, was far from finished. The Steinmeier-Hammond letter had stated that “the Council would request the Commission’s opinion on the membership application after full implementation of the agenda.”⁶⁸ This discrepancy revealed that something had happened to the understanding that the EU was taking over the German-British initiative as its new EU initiative, which was not explained at the time and went unnoticed. When the EU member states voted on the new initiative in December 2014, they stated that “meaningful progress on the implementation of the agenda for reforms... will be necessary for a membership application to be considered by the EU.”⁶⁹ It remains unclear what took place behind the scenes in the EU that led to this substantial lowering of the bar of the German-British initiative at the end of 2014. According to a German government official, “it became clear at an early stage that the reform agenda will be much broader than we originally thought, the initial agenda was thought to focus on 4 to 5-10 items, but then the IFIs moved in with their much broader agenda. So it was clear the agenda cannot be fully implemented at the early stage of the EC Opinion preparation.”⁷⁰

⁶⁵ “Dragan Čović: Jukićeva odluka o objavi rezultata popisa je greška koju moramo ispraviti,” Klix.ba. 22 May 2016, available at: <http://www.klix.ba/vijesti/bih/dragan-covic-jukiceva-odluka-o-objavi-rezultata-popisa-je-greska-koju-moramo-ispraviti/160622036>.

⁶⁶ Perry, Valery. “Some Census Findings that Caught my Eye.” DPC Blog. 6 July 2016, available at: <http://www.democratizationpolicy.org/some-census-findings-that-caught-my-eye>

⁶⁷ *Council conclusions on the application of Bosnia and Herzegovina for membership of the EU*, General Affairs Council, September 20, 2016, available at:

http://www.consilium.europa.eu/press-releases-pdf/2016/9/47244647511_en.pdf.

⁶⁸ Steinmeier-Hammond letter.

⁶⁹ December 15, 2014 Foreign Affairs Council Conclusions on Bosnia and Herzegovina.

⁷⁰ Interview with German government official, Berlin September 2016.

This explanation, however, seems questionable, as there were only five weeks between the publication of the German-British initiative and the Foreign Affairs Council decision to adopt the initiative as the EU's own, and the Agenda took shape months after the adoption of the Council conclusions. What is clear is that the shift in the condition for the GAC to refer BiH's membership application to the EC to prepare an Opinion, from "full implementation" to "meaningful progress" in the implementation of the Reform Agenda leaves the EU's policy on implementation of the remaining parts of the Reform Agenda completely in limbo. This is even more worrying as the real substantial reforms within the Agenda are yet to be implemented, as the following section will demonstrate.

III. Analysis of Reform Agenda-related reforms undertaken so far

The broad economic reform agenda that the EU and the IFIs specifically designed for BiH and agreed among state and entity executives was not such an exceptional endeavor by the Union but fit within the broader policy context. In 2013, the EU made economic governance a new priority in its enlargement policy.⁷¹ A procedural framework was established that was implemented starting in 2015, focusing on short- and medium-term measures for fiscal sustainability and structural economic reforms. The policy presented a modified extension of the so-called European Semester⁷² – an instrument to harmonize economic and fiscal policies among EU member states – to (potential) candidate countries. Also, the Reform Agenda was built on the Compact for Growth and Jobs, a more narrow economic reform agenda that the EU and BiH authorities agreed on in 2014. The Compact, too, was modeled along the lines of a same titled Compact that the European Council had adopted in 2012, aimed at restoring economic growth in the EU following the Euro crisis.⁷³

The "Reform Agenda for Bosnia and Herzegovina 2015-2018" set out the "main plans for socio-economic and related reforms at all levels of government during the remainder of their democratic mandates," that is until the 2018 general elections. It defined "a broad set of medium-term priorities" that were to be "distilled into specific measures and undertakings" to be implemented in 2015-16. Those would be further refined, leading to "follow-up specific measures that will bring the Agenda into the medium term."⁷⁴ The Reform Agenda, aimed at creating a stable macroeconomic environment and boosting economic growth, focuses on seven areas: labor market; public finance, taxation and fiscal sustainability; improvement of business climate and competitiveness; social welfare, pension and health care reform; restructuring of public enterprises; public administration reform and Rule of Law.⁷⁵

⁷¹ Matteo Bonomi, *Economic governance in the Balkans: Towards a more sustainable path of economic development?*, European Policy Center Policy Brief, November 10, 2016, available at: http://www.epc.eu/documents/uploads/pub_7130_ecogovernanceinbalkans.pdf.

⁷² <http://www.consilium.europa.eu/en/policies/european-semester/>.

⁷³ The *Compact for Growth and Jobs in Bosnia and Herzegovina* and background information are available at: http://europa.ba/?page_id=547.

⁷⁴ Reform Agenda for Bosnia and Herzegovina 2015-2018. Working Translation, pp.1-2; available at: <http://europa.ba/wp-content/uploads/2015/09/Reform-Agenda-BiH.pdf>.

⁷⁵ This report slightly modifies the list of areas as officially used by the EU and BiH authorities – it itemizes public enterprise restructuring as a separate, seventh area (officially listed within the fiscal sustainability area), and

This section analyzes reform measures implemented to date in accordance with the various action plans, as well as those that remained unimplemented – focusing on the period up until the September 2016 EU General Affairs Council decision to task the Commission with an Opinion on BiH’s membership application. The second part of the section analyzes the reforms that remain to be implemented until 2018. Finally, on the basis of both aspects, it tries to assess the degree to which the various reforms undertaken point to real, substantial reform changes, underway or not.

Labor market: The new entity labor laws

Reform of the labor legislation in the two entities in 2015 formed the major part of Reform Agenda measures undertaken in 2015. The Federation of BiH passed its new Law on Labor on July 31, shortly after the Agenda had been agreed on and weeks before the entity government even adopted its Action Plan for the Agenda. The Republika Srpska labor law followed at the end of the year, when the National Assembly passed the new legislation on December 28. The reforms drew praise both from the EU and the IFIs. Unblocking the labor legislation reform in the Federation, where attempts to change the existing law originating from 1999 (the RS labor law originated from 2007) failed for many years despite pressure from the IFIs, was particularly identified as an indicator that the EU’s new approach had created reform momentum.⁷⁶ At the same time, no other measure implemented to date within the framework of the Reform Agenda has drawn so much public attention within BiH and provoked such fierce social and political resistance.

The existing labor laws had long been considered by international experts as outdated, with provisions reflecting the transition from a socialist to a market economy that marked the period in which they had been adopted. The Reform Agenda’s section on the labor market referred to BiH’s persistent problem of unemployment and underemployment. In 2014, the country had an official unemployment rate of over 40% and a real rate assessed at around 27%, while the overall employment rate that year stood at a low of 32%.⁷⁷ The Agenda defined an increase of flexibility in working conditions, the setting of wages based on skills and work performance and the development of “a culture of collective bargaining and social dialogue” as the aims of labor legislation reform. In addition, the Federation government argued that the new labor law would end the privileged position of those employed in the public sector, especially in public administration. Trade unions, on the other hand, fiercely protested the new draft law that they identified as neo-liberal, aiming to dismantle worker rights.⁷⁸

groups reform of the health sector (officially listed as part of the fiscal sustainability sector, too) together with social welfare and pension reform.

⁷⁶ See, for example, the extraordinary, overall positive assessments in the European Commission’s 2015 Bosnia-Herzegovina Report, November 2015, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_bosnia_and_herzegovina.pdf.

⁷⁷ Bodo Weber, *Bosnia and Herzegovina after the February 2014 protests: is there a potential for renewed violent social unrest?*, AI-DPC BiH Security Risk Analysis Policy Note #02, Berlin/Sarajevo, November 2015, p.9. available at: <http://www.democratizationpolicy.org/pdf/AI-DPC%20BiH%20Security%20Risk%20Analysis%20Paper%20Series%20202%20Potential%20for%20Renewed%20Social%20Violence.pdf>.

⁷⁸ Information on new entity labor laws and the circumstances surrounding their adoption are based on the following detailed study: Bodo Weber, *Die neue Arbeitsgesetzgebung in BuH, die EU-Reformagenda und die*

A close examination of the new labor legislation reveals that while it introduced additional flexibility in working relations, it entirely missed the other targets. Both entity laws are a mixed bag of new labor rights and a lowering of others. Several provisions contribute to more flexibility in working conditions – possibilities for fixed-term contracts are extended, firing employees for economic reasons is made easier, a work performance element is introduced into wage-setting and the level of allowances that so far made up a large share of workers' income is reduced. In addition, the new laws put an end to the unlimited term of collective agreements, enforcing the re-negotiation of all existing agreements.

The new Federation labor law had absolutely no impact on the privileged position of those employed in the public sector. This was reflected in, among other things, wages and allowances that are substantially higher than in most parts of the private sector, a factor that substantially distorts the labor market. This is the case because those privileges are not determined by the labor law, but by a separate law on wages in public administration, as well as by the collective agreements for public administration. And while the Federation government in subsequent negotiations over the collective agreement has demonstrated no serious will to substantially reduce those privileges, a new wage law is only planned at a later stage of the Reform Agenda.⁷⁹ In the RS, the situation is similar, where the entity government did not even announce any plans to cut the privileges in the public sector – a major reservoir of patronage and the central pillar of Dodik's regime – when it introduced its new labor law.⁸⁰

Concerning the strengthening of the underdeveloped social dialogue in BiH, the process of introducing new labor legislation has done even further damage. On one hand, problems with social dialogue originate in structural distortions of both trade union and employers' associations on which the new labor laws had no influence. During the post-war de-industrialization, trade unions lost large parts of their socialist-era membership. Today, trade union associations in both entities are dominated by members from the public sector. As employment in this sector has been mostly based on political party affiliation, the associations have kept their close relationship with, and dependency on, the ruling political elites, albeit under changed circumstances. The same goes for the employers' associations. Due to a large number of enterprises in parts of the country still being public, and the dependency of many private sector companies on ties with the ruling political elites (via e.g., public tenders and politically motivated lending from domestic banks), there are very few companies that perform under true free market conditions. The new labor laws had no impact on these structural problems. On the other hand, the process of adopting new labor laws was accompanied by aggressive interventions from the Federation government into the social dialogue, pitting the government against both the trade unions and the employers in cases where the two partners in the social dialogue reached agreements. In the RS, the government changed the rules for recognition of trade union associations as representative, thus using the labor law to bring a second, smaller, and more loyal association into the dialogue. At the same time, several provisions of the law provided an opening for the government to usurp the position of the partners in the social dialogue.⁸¹

internationalen Finanzinstitutionen – überfällige Strukturreformen oder neoliberaler Abbau von Arbeiterrechten?, study for the Friedrich-Ebert-Stiftung Sarajevo, December 2016.

⁷⁹ Interview with IFI official, Sarajevo 2016.

⁸⁰ *Die neue Arbeitsgesetzgebung in BuH, die EU-Reformagenda und die internationalen Finanzinstitutionen.*

⁸¹ Ebd.

Finally, another key structural problem related to the labor market that remained unaffected by the new labor laws was the weak implementation of workers' rights in practice. Due to the weak rule of law in general, especially in the economic sphere, the implementation of workers' rights, particularly in the private sector, is very uneven. While a number of successful companies grant rights and wages well above the legal standards set by the law and collective agreements, others violate the rights of their workers egregiously – in hiring and firing, in setting wages and in not paying social contributions. Affected workers have very little prospect of enforcing their rights through the court system, where the privileged position of public employees is also reflected. In the RS, whole provisions of the 2007 labor law were implemented in the private sector, making it questionable whether even those new additions to the labor law that are in line with Reform Agenda targets will ever be implemented in practice.⁸²

Business climate and competitiveness

In order to promote both the domestic and foreign private sector (and investment) in BiH, it is crucial to improve the business climate and competitiveness to create a market economic framework. The Reform Agenda in this area focused on addressing the complexity and inconsistency of regulatory frameworks and tax systems, on removing high administrative barriers to businesses and doing away with hidden forms of state subsidies and other forms of public assistance.⁸³

BiH authorities had implemented only a small number of measures in this area by September 2016 – and most of *those* were implemented already in 2015. The Federation of BiH passed laws on enterprise and foreign direct investment. The RS passed laws on corporate and property taxes. The RS also passed a law aimed at making bankruptcy management more efficient. At the state level, a new law on customs policy was adopted to simplify customs procedures.

More substantial progress began only after the IMF's new credit arrangement with BiH entered into force in September 2016 – due to the arrangement tightly linking the payment of credit tranches to strict conditions and timelines.⁸⁴ A larger number of laws have been adopted since autumn 2016 and several others are in the adoption process. Yet implementation of a number of measures suffers from substantial delays, and others have remained politically blocked for quite some time. In both entities, measures have been prepared to speed up connecting new businesses to the electricity supply, and pilot projects set up to rationalize procedures for obtaining construction permits. The preparation of lists of para-fiscal fees existing at all levels of governance was completed. As a next step, executives will be obliged to draft laws that define rationalized lists of permitted fees and at the same time forbid the addition of any new fees not already on those lists. In 2016, the Federation government was working on the simplification of business registration procedures through the introduction of so-called one-stop-shops; according to the Action Plan this was scheduled to be implemented in November 2016, but has

⁸² Ebd.

⁸³ Reform Agenda, pp.3-4.

⁸⁴ IMF Country Report No. 16/291, esp. Table 9.: Bosnia and Herzegovina: Structural Conditionality, pp.35-36, September 2016, available at: <http://www.imf.org/external/pubs/ft/scr/2016/cr16291.pdf>.

been substantially delayed and is now expected to be in place in mid-2017. (They already exist in the RS.) In the RS, the implementation of measures to rationalize agricultural subsidies is under way.⁸⁵

Strengthening banking sector regulations in order to safeguard the stability of the financial sector and revive bank lending is another key element in the Reform Agenda. IMF leadership has yielded some reform progress. In December 2016, the RS adopted new laws on banks and on the banking surveillance agency aimed at strengthening oversight, though slightly missing the IMF's November deadline (the RS Action Plan deadline was June 2016). In the Federation, turmoil in the ruling coalition has stifled activities related to the Reform Agenda since spring 2016. Two similar draft laws were submitted to parliament only at the very end of 2016, and are thus expected to be adopted no earlier than spring 2017, if at all.⁸⁶ The Federation's delay was one of the primary reasons the IMF postponed payment of the second tranche of the EFF credit at the beginning of 2017.⁸⁷ At the same time, reform of the laws on the entities' development banks, also set for November 2016, remains delayed. In the Federation, several laws drafted by the government, such as the Law on Games of Chance (not an official part of the Reform Agenda) and the Law on Forestry aimed to regulate business and taxation in these segments of the economy, but led to a lasting crisis of the ruling coalition, and conflict between the coalition partners SDA and HDZ. The question of the division of taxes among various governance levels in the Federation touched upon entrenched ethno-territorial economic interests. In addition, the Law on Forestry also touched upon unresolved ethno-political conflicts over the constitutional order of BiH that the EU had declared it would circumvent through the Reform Agenda. As a consequence, adoption of the Law on Forestry, scheduled for December 2016, is still pending (as is adoption of the Law on Games of Chance).⁸⁸

Overall, if all laws and other measures planned within this area of the Reform Agenda are adopted and thoroughly implemented, it will mean a substantial boost for a regulatory framework of a market economy in BiH. Yet many reform measures target the entrenched interests of the political elites and represent a direct threat to the nexus of systemic corruption and political patronage that underlies the political system in BiH. The whole sector of construction permits forms a traditional field of high-level corruption. The 2015-2018 Reform Agenda seems to be too short a timeframe to move from pilot projects to addressing the problem through structural change. Rationalizing agricultural subsidies would remove one of the key instruments of political patronage. And the regulatory vacuum in forestry has long been the basis for the wood industry making up one of the traditional components of the country's grey economy. The segment that particularly cuts into the core of the patronage system is related to banking sector reforms. In the RS, political lending by a number of domestic private banks to private businesses as well as direct lending by the entity development bank has formed the key instrument for the regime to control the private sector, a means that has contributed to the near financial collapse of the entity in recent years. IMF conditionality in 2016 forced the RS government to remove its

⁸⁵ Ibid.; interview with IFI official, Sarajevo 2016.

⁸⁶ Non-paper on the state of play of Reform Agenda implementation, EU Delegation to Bosnia and Herzegovina, December 12, 2016; the deadline set for the Federation banking law adoption in the original Action Plan had been December 2015.

⁸⁷ "Neispunjavaње obaveza prolongira drugu tranšu MMF-a," *Capital.ba*, February 8, 2017, available at: <http://www.capital.ba/neispunjavaње-obaveza-prolongira-drugu-transu-mmf-a/>.

⁸⁸ Non-paper on the state of play of Reform Agenda implementation.

representatives from directly taking credit decisions in the development bank, and further forced it to liquidate two private banks. Under the EFF, Banja Luka is obliged to conduct stress tests for four more key private banks. Implementing these measures to end political lending in the banking sector would mean cutting off its power base for the RS regime, while losing the IMF credit could lead the RS into financial collapse in the short to mid-term.⁸⁹

On top of these challenges, improvement of the business climate and competitiveness as well as the practical impact of the adopted laws and measures will, to a large extent, depend on structural reforms in two other areas covered by the Reform Agenda – restructuring of public enterprises and strengthening of the rule of law.

State-owned enterprises

State-owned enterprises (SOEs) are remnants of the socialist past as well as of the post-war privatization processes. They make up an important share of the huge public sector in BiH, especially in the Federation. The larger SOEs function as cash cows for the ruling political elites, nontransparent and badly managed, with high, politically-motivated overemployment and privileged wages and rights.

The Reform Agenda foresaw the restructuring of SOEs and sorted them into three groups: 1) restructure and keep; 2) restructure and privatize; 3) liquidate. To prepare the SOE restructuring process, both entity governments started to cooperate with the World Bank, which began a screening of the railway companies. While the Federation agreed with the World Bank to screen all public companies in 2016, in order to prepare the later restructuring of mines and the Telecom companies, the RS refused to cooperate. Instead, the RS government started to prepare the liquidation of non-viable companies as well as the selling of others, in both cases of mostly small companies. At the end of 2016, both entity governments adopted restructuring plans for their railway companies, developed in cooperation with the World Bank. The restructuring of these and of other companies targeted, if implemented in 2017, would lead to huge layoffs in both entities, a move potentially socially explosive a year before the next general elections. Experts in the RS estimate that the railway company has double the staff needed. At the same time, restructuring of the company will be very costly, as it has massive debts from unpaid social contributions and unpaid taxes. A huge problem particularly in the Federation is unpaid social contributions in public enterprises, as a result of which many employees in non-viable companies can't retire, and the companies can't be liquidated. The problem affects tens of thousands of employees. A draft Law on Linking Mission Years of Service has still not been adopted, though the Action Plan had originally foreseen October 2015 for its adoption. Under the Law, the missing contributions for the period between 1992 and 2014 would be paid for by the government. The reason for the delayed adoption of the law has been the failure to secure the funds for the hundreds of millions of Euros the measure would cost over several decades.⁹⁰

⁸⁹ Interviews with IFI officials, Sarajevo; economic experts, Banja Luka, 2016.

⁹⁰ *Third Progress Report on the Action Plan for the Implementation of the Reform Agenda of Bosnia and Herzegovina* incl. *Consolidated Action Plan*; interviews with IFI officials, Sarajevo, economists, Banja Luka, 2016; *Prednacrt Zakona o preuzimanju finansiranja neizmirenih doprinosa za penzijsko i invalidsko osiguranje za osiguranike zaposlene u privrednim društvima sa većinskim državnim kapitalom, javnim preduzećima i ustanovama u Federaciji Bosne i Hercegovine u periodu 01.04.1992. – 31.12.2014 godine.*

Public finance, taxation and fiscal sustainability

The failure to maintain fiscal control over public spending has been one of the main threats to the socio-economic stability of the dysfunctional, highly-fragmented BiH state in recent years. Government spending increased in the post-war era due to extensive public sector employment and social transfer payments that are not needs-based, two core pillars of the patronage system. Thus, overall, government spending made up almost 50% of GDP in 2014. At the same time the public debt has risen dramatically over the years, standing at 46% of GDP in 2014.⁹¹

Consequently, the Reform Agenda put major stress on fiscal consolidation.⁹² The Agenda contained plans to work towards a medium-term stabilization of budgets and the medium-term reduction of public debts. This was to be achieved by reducing public spending and the size of government, and by increasing revenues through a broadening the tax base, reducing tax exemptions and improving the tax administrations. In this way, room would also be created for an increase in public investment.

The implementation of the measures laid down in the action plans has generally been positive, though experiencing substantial delays, with some important measures not yet implemented or politically blocked.⁹³ Budgets for 2016 and 2017 were adopted on time at state and entity levels. A freeze of the total wage bill and a moratorium on new hirings in public administrations were introduced in 2015. Governments at all levels started to identify the overall public wage bill. The exchange of tax data between the state, entities, and Brčko District only started in June 2016, instead of the end of 2015 as foreseen, due to long-term resistance from the RS government. A debt management strategy was adopted at the state level in April 2016, with a four-month delay. In the Federation, the Law on Corporate Income Tax and the Law on Contributions were adopted in 2015 as scheduled, removing certain tax exemptions for companies and broadening the tax base on contributions to salaries. Measures were adopted for better control of spending by lower levels of government. In the RS, several fiscal laws – on fiscal responsibility, tax procedure, and fiscal cash register – were adopted in 2015. On the other hand, several key measures of the Agenda have not been implemented. A joint measure by state and entities to enhance the authority of tax administrations, due in 2016, has not been implemented. The increase of excise duties on fuel, aimed at funding highway construction, has been pending since March 2016, due to a conflict between entity governments over the division of the additional funds. Non-implementation of the measure is another key reason why the IMF postponed the payment of the second tranche from the EFF credit at the beginning of 2017.⁹⁴

Overall, measures implemented in this area of the Agenda already have had a certain effect on public spending discipline and fiscal consolidation. Public debt in 2015 was down to 43% of GDP as the budget

⁹¹ Bodo Weber, *Bosnia and Herzegovina after the February 2014 protests*, DPC-AI BiH Security Risk Analysis Policy Note #2, September 2015, available at: <http://www.democratizationpolicy.org/pdf/AI-DPC%20BiH%20Security%20Risk%20Analysis%20Paper%20Series%20202%20Potential%20for%20Renewed%20Social%20Violence.pdf>.

⁹² Reform Agenda, pp.2-3.

⁹³ *Third Progress Report on the Action Plan for the Implementation of the Reform Agenda of Bosnia and Herzegovina* incl. *Consolidated Action Plan*.

⁹⁴ Non-paper on the state of play of Reform Agenda implementation; “Neispunjavanje obaveza prolongira drugu tranšu MMF-a.”

deficit fell to 0.8%. The overall public debt, however, continues to be very high, and both entity governments have continued to borrow from commercial banks in 2016 and rely on short-term measures to fund their budgets, such as the issuance of treasury bonds. Debt servicing continues to take up a rising share of budgets, 44% in the Federation and 58% in the RS in 2016, leaving very little maneuvering space for public investment or other discretionary spending.⁹⁵ Whether BiH is really moving towards fiscal sustainability over the next years will depend on several factors. There are huge arrears, unpaid bills to private contractors, as well as hidden public employment that need to be made transparent in order to get a clear picture of the real financial situation, especially in the entities. Connected with this, statistical data is still not fully transparent, and therefore inconclusive.⁹⁶ Ethno-political friction in the Federation may impede the Federation authorities from establishing control of cantonal public spending and wage bills. Moreover, a sustainable stabilization of public budgets and public debt will to a large extent depend on reform of the pension and health care systems in both entities, as well as on the public administration reform. Finally, with the 2018 general election year approaching, there is the open question of whether the fiscal discipline that has been achieved will survive 2017 – and into the upcoming general election cycle. Elections typically generate inflated public expenditure through transfer payments and other patronage mechanisms.

Pension, health care and social welfare reform

In BiH, both the pension and the health care system have suffered a long time from being financially unsustainable, primarily due to a poor ratio of contributors to beneficiaries originating in the low employment rate as well as the demographic structure of society and the dodging of obligatory payments into the system. On the pension system side, a tradition of early retirement through bribing doctors and the expansion of privileged pensions for veterans have contributed heavily to deepening deficits. The fragmented network of health care institutions correlates with the country's constitutional structure. Politically advantageous overemployment of non-medical/administrative staff, add to the structural problem. In addition, social transfer payments since socialist times fail to target those really in need of assistance, instead of concentrating on privileged classes of beneficiaries.⁹⁷

The Reform Agenda announced reforms of the pension and health sectors, aiming to make social welfare systems financially sustainable and to avoid the distortion of incentives in the economy.⁹⁸

Reforms were at an early, preparatory phase in September 2016, and are still at that stage now. Regarding the entity health care sectors, the Federation government is preparing the reform of the network of institutions at the cantonal and municipal levels, which also targets the ratio of medical to non-medical staff. The RS government is working on a similar rationalization of the network of institutions. Subsuming the health sector into the entity general budget is currently planned for March 2017 – the original deadline was December 2015. In the Federation, this process, which includes the entity and the ten cantons, is also still ongoing. The increase of state-level excise duties on alcohol and

⁹⁵ *State of the Nation Report No.4*, Centers for Civil Initiatives, Sarajevo January 2017, pp.13, 25-30, available at: <http://www.posaonarodu.ba/files/preview/64/797>.

⁹⁶ Interviews with IFI officials, 2016.

⁹⁷ *Bosnia and Herzegovina after the February 2014 protests*.

⁹⁸ Reform Agenda, pp.3, 5.

tobacco, meant to stabilize health insurance funds, is pending adoption of health sector reforms in both entities. The measure remains blocked by the HDZ, which defends the interests of tobacco producers located in the Croat majority areas of Herzegovina.⁹⁹

Regarding pension reform, in 2016, governments of both entities prepared legislation for the introduction of voluntary pension funds. In the Federation, the government introduced legislation into parliament at the end of 2016. The legislation was aimed at reforming pension and disability insurance, which would lead to better financial control of the pension fund, raise the retirement age, and reduce early retirement. In 2016, the RS government concluded that no further reform of the entity's pension system was needed.

As for social transfer payment systems, the Federation government is currently expected to adopt a law establishing a single registry of beneficiaries in the first half of 2017, and to prepare a report and action plan on how to improve targeting of social transfers by September 2017. The original action plan deadline had been March 2016. Also in the Federation, the implementation of the last phase of the audit of veteran benefits, particularly of privileged pensions, is expected to be completed by the end of 2017.¹⁰⁰

Despite the fact that those reform measures, either underway or planned, point towards systemic reforms, serious structural problems and challenges remain. None of the reforms can solve the problem of the unfavorable ratio of contributors to beneficiaries in either the pension or health care systems. It is not clear whether the RS government has committed to tackle the problem of administrative staff overemployment within the framework of health care reform, while the rationalization of the network of institutions in the Federation might meet ethnopolitical resistance in certain cantons. Likewise, it is unclear whether the implementation of the third phase of the audit of privileged pensions in Croat-majority cantons will not meet the same resistance several years ago that prevented the audit in the first place. No review of existing early retirements has yet been planned within the pension reform process. Finally, a few years ago, despite IFI credit arrangement conditions, entity governments prevented the reform of veteran transfer payments that constitutes a huge burden on budgets. This crucial element of any reform of social welfare has been sidestepped by international institutions and the Reform Agenda.¹⁰¹

Public administration reform

Oversized public administration has long been one of the main problematic features of BiH's fragmented state institutions – and of the patronage system that developed on that basis. Employment in the administration has traditionally been dependent on party affiliation, not competence. The overall number of those working in public administrations at all levels of governance has not been available for many years. Inefficient and overstaffed administration presents one of the main burdens on public budgets. There have been numerous reform attempts undertaken over the last ten to fifteen years,

⁹⁹ *Third Progress Report on the Action Plan for the Implementation of the Reform Agenda of Bosnia and Herzegovina* incl. *Consolidated Action Plan*; RA action plans; Non-paper on the state of play of Reform Agenda implementation; interviews with IFI officials, 2016.

¹⁰⁰ Non-paper on the state of play of Reform Agenda implementation.

¹⁰¹ Interviews with IFI officials, economic experts, Sarajevo-Banja Luka 2016.

initiated by the international community, all with very little to no effect.

For good reason, the Reform Agenda had identified public administration reform as “one of the key priorities in ensuring fiscal sustainability and the quality of public service delivery.” It provided for a new round of reforms aimed at creating “a modern, competent, transparent, effective, cost-efficient and accountable public administration.” Employment based on competence and a payment system based on merit should be part of those reforms.¹⁰²

The implementation of those ambitious reforms is still in an early, preparatory stage. In 2016, the World Bank was charged with drafting a screening report on reforms implemented so far. In its recommendations, the report aimed at a long-term strategy that goes well beyond the Reform Agenda 2015-2018 timeframe. In 2016, entity governments and the Council of Ministers worked on preparations for a public administration reform, and on new salary and hiring systems for public servants. All levels of government are expected to agree on a Public Administration Reform Strategic Framework in 2017. Since 2015, entity governments and the Council of Ministers have implemented a wage bill freeze and a moratorium on new hirings and have worked with the World Bank on a registry of all those publicly employed; in October 2017, they are expected to adopt operational plans to substantially reduce public employment to numbers set by the IMF – that are not yet public.¹⁰³

It is far too early to see any measurable reform progress. But it is hard to believe political elites are ready for substantial reform at this time – or to downsize the public administration. Though several amendments to laws on public service/servants were adopted at state and entity levels in 2016, the ruling elites have demonstrated that they intend to maintain political control over public administrations.¹⁰⁴ Even if the deadline for adopting and publishing plans to reduce public employment will be respected, the implementation would have to start in 2018, when the next general elections are scheduled in BiH.

Rule of law

None of the socio-economic reforms in the areas covered by the Reform Agenda can be either successful or sustainable without the implementation of the rule of law in BiH. Since the international community abdicated its responsibility to hold BiH authorities to account a decade ago, the country has witnessed the systematic dismantling of post-war achievements in strengthening the rule of law in regard to the independence of the judiciary, democratic policing, and the strengthening of state-level rule of law institutions. The European Union in particular, has contributed to this hollowing out of the rule of law by constantly compromising over the political elites’ attacks on the constitutional order, the Dayton Accords and justice sector institutions.

Despite the centrality of the rule of law to any economic reform or development, the Reform Agenda and the various action plans in this area aimed very low. The Agenda contains no real structural reform

¹⁰² Reform Agenda, p.7.

¹⁰³ Interview with IFI officials, 2016; *Third Progress Report on the Action Plan for the Implementation of the Reform Agenda of Bosnia and Herzegovina* incl. *Consolidated Action Plan*; RA action plans; Non-paper on the state of play of Reform Agenda implementation.

¹⁰⁴ Amendments to the Law on Public Service of BiH, Law on Public Service of FBiH, Law on Public Servants of RS.

targets. The 2014-2018 Justice Sector Reform Strategy and Action Plan is the only instrument for structural judicial reform mentioned in the Agenda and those documents are very broad and general. For security agencies, noted measures are mostly technical in nature, focused on the fight against corruption and organized crime, without touching on the core, structural political problems that plague institutional efficacy. The only more fundamental, concrete measure included in the Reform Agenda is the establishment of commercial courts in the Federation of BiH.¹⁰⁵

Implementation has fallen below even these low targets:

In 2016, international actors involved in implementing the Reform Agenda raised doubts about establishing separate commercial courts in the Federation in accordance with the existing RS model. The main reason given was that commercial courts in the RS don't in fact function well, which means actors in the economic sphere can't efficiently enforce their rights through the judiciary. A World Bank study completed at the end of 2016 recommended to *not* establish a system of separate commercial courts, but instead to strengthen the existing commercial departments of the regular courts in the Federation.¹⁰⁶ Yet it is unclear how such an aim could be accomplished, and no such measures have been foreseen in the Reform Agenda action plan for the Federation.

With respect to the Justice Sector Reform Strategy, during summer 2015, the EU "solved" a conflict between state and entity level executives related to the long-standing controversy over the adoption of a new Law on Courts of BiH that would regulate reform of the Court of BiH (more details below). The EU successfully pressed the other stakeholders involved in the drafting and adoption of the Strategy to accept RS wording that mirrored Banja Luka's position on that issue. The move had no impact on solving the controversy, and served only to pave the way for the Strategy to be adopted in September 2015. The EU's compromising behavior towards the RS has brought no real progress at all – adoption of the Action Plan for the Strategy remains blocked, which constitutes more than three out of the five years the Strategy was intended to cover.¹⁰⁷

Meanwhile, throughout 2015 and 2016, the EU continued to compromise or keep a low profile on various lingering and new attempts to undermine the judiciary and rule of law more generally:

During these two years, the EU continued to ignore that the RS Law on Courts remained in force. The Law, adopted in 2011, is illegal as it usurps the competences of state-level judicial institutions and thus dealt a death blow to the Justice Sector Reform Strategy existing at the time of the adoption of the law. The EU had only halfheartedly fought adoption of the Law at that time, and subsequent attempts to seek compromise over illegal provisions of the Law proved equally unsuccessful.

In autumn 2015, EU institutions again signaled their readiness to compromise over another attempt by the RS government to undermine the judiciary, this time over the long-standing conflict over a Law on Courts of BiH. The RS government had tried for years to diminish the jurisdiction of the Court of BiH by taking advantage of the debate on the transformation of the appellate chamber of the Court of BiH into a separate court through the adoption of a Law on the Court of BiH. Brussels accepted two draft laws as the basis for further negotiations, both of which *actually* originated from Banja Luka. One, if adopted,

¹⁰⁵ Reform Agenda, p.6.

¹⁰⁶ Interviews with EU officials and justice sector officials, Sarajevo 2016-17.

¹⁰⁷ Interview with international judicial expert, Sarajevo 2015; *Third Progress Report on the Action Plan for the Implementation of the Reform Agenda of Bosnia and Herzegovina* incl. *Consolidated Action Plan*.

would leave no authority for state-level courts to rule on attacks on the constitutional order of BiH; the other, again if adopted, would secure a general amnesty for high-level officials accused of corruption and organized crime.

The EU has also not reacted to a draft RS Law on Public Prosecutors that the RS government submitted to parliament in April 2016. The draft law, similar to the RS Law on Courts, illegally usurps the competences of higher-instance, state-level judicial institutions, making a mockery of the current judicial reform strategy.¹⁰⁸

“Selected functionality question”

The original German-British initiative foresaw that the Reform Agenda would include “selected functionality questions.” The December 2014 EU Council conclusions spoke of “agreed functionality issues” that would include “the EU coordination mechanism.”¹⁰⁹ However, the Reform Agenda, adopted in 2015 and approved by the EU, does not list any measures related to “functionality” and neither do the action plans. No measures that relate to the improvement of institutional functionality have been implemented since 2015, apart from (if we count it) the coordination mechanism.

General assessment

Regarding the general assessment of the Reform Agenda implementation, both domestic and international actors involved agree that some reform momentum has been created. There is cooperation between the entity governments (and with the BiH Council of Ministers) on harmonizing legislation not seen in the previous decade, which reaches even beyond measures included in the action plans. A small number of technocrats drive this progress. One EU member state official insisted that “there are only five officials in the country that push the reforms – [head of Council of Ministers Denis] Zvizdić, [minister of foreign trade Mirko] Šarović, [Foreign Minister Igor] Crnadak [director of the Directorate for European Integration of BiH Edin] Dilberović and [Federation Prime Minister Fadil] Novalić – none in the RS.” There is general agreement among EU diplomats that the Federation government wants to advance economic reforms, yet it is not clear whether political leaders will allow it, and if they do, for how long, whereas the RS government has been unwilling to push for serious structural reforms at all. The latter’s assessment changed in the summer of 2016, when the RS accepted the conditions for the IMF credit arrangement. The answer to the question of what motivated the policy shift is most often found in the RS’ near financial implosion. How genuine this ostensible will to reform will last is an open question for most actors involved. When it comes to the implementation of Reform Agenda measures, the RS government, unlike the Federation government, so far has almost completely avoided any reference to the Agenda.¹¹⁰

Finally, there is certain unease among some of the original authors of the EU’s new BiH initiative on the general direction the Reform Agenda has taken. One EU member state official explained that the original

¹⁰⁸ Interviews with justice sector officials, Sarajevo 2016-17.

¹⁰⁹ Steinmeier-Hammond letter; December 15, 2014 EU Council Conclusions.

¹¹⁰ Interviews with BiH officials from state and entity level and EU member states’ officials, BiH 2016.

idea behind the German-British initiative was that the Agenda would focus on a limited number of areas and measures. Instead, it developed into a broad reform agenda, sort of a “huge shopping wish list.” This has created a tactical problem for the international actors involved, such as the EU, because due to their overload, “it becomes easier for Bosnian politicians to outmaneuver us.”¹¹¹

IV. The operational mechanics

This section assesses the way in which the European Union is operationally handling its BiH initiative, primarily focusing on the Reform Agenda. It evaluates how EU institutions have been organized internally, how they interact and cooperate with other international actors involved in the Agenda – the IFIs, EU member states and important non-EU countries, – the relationship between the EU and domestic authorities in BiH, as well as the Union’s approach to the other political and social actors and citizens in the country.

The EU’s relationship with domestic authorities

Judging from the performance of EU institutions in BiH and Brussels concerning the Agenda, it seems there has been a shift from an initiative led by the Union, based on strict conditionality, towards a more traditional EU approach in which EU institutions view themselves primarily as a “facilitator” and stress “process” and “momentum” over conditions. As an official from a member state active with the Reform Agenda said, “the EU doesn’t like to talk about conditionality, or call it that way.”¹¹² This shift seems to mirror the redefining of the Union’s role in the drafting of the Agenda from “leadership” foreseen by Germany and the UK, to a more consultative role defined in the EU’s adoption of the initiative as its own. This approach is reflected in the way EU institutions approached the important issue of the sequencing of various reform elements contained in the Agenda. When asked about the rationale behind the existing sequencing, as determined in the action plans, and about how much the EU intervened in the issue, an EU official explained that “some things are organically given, some reforms organically come later as they take time for preparations, other reforms are linked. This organically determines part of the sequencing. For the rest, we leave the decision to the local authorities – it’s an issue of political ownership.”¹¹³ Such an approach, however, does not take important policy aspects into account. It leaves political elites in BiH with maneuvering space to put less politically painful reform steps first in the sequencing to avoid political costs and gain benefits, for example, IFI credits, and then later in the process, to abandon reforms entirely, without consequences.

EU internal operations

The EU institutions’ approach to their role in the implementation of the Reform Agenda seems to not only have been affected by the institutions’ traditional philosophy, but also constrained by several organizational aspects. When the Reform Agenda was compiled and then adopted in 2015, there was a core group of half a dozen high level officials at the EU Delegation/EU Special Representative’s (EUD/EUSR) Office in Sarajevo in charge of the process, among them several economists. However, in

¹¹¹ Interview with EU diplomat, 2016.

¹¹² Interview with EU member state official, Sarajevo 2016.

¹¹³ Interview with EU official, 2016.

the first half of 2016, all but one had left Sarajevo, undermining the continuity in the EU's engagement.¹¹⁴ In addition, there is an organizational problem connected to EU institutions' screening and vetting of reform measures and laws prepared by BiH authorities. The Reform Agenda is not part of any formally existing step in the EU enlargement process. Many of the socio-economic reforms are of a nature traditionally addressed in the accession process. The EU has thus tried to establish a more or less informal operational setting described by one EU official as "accession light." Experts at the EUD/EUSR and at the DG NEAR in Brussels screen new laws and other measures prepared by the authorities to determine if they are in accordance with the Reform Agenda. On specific policy issues, the DG NEAR shares the draft measures with other Directorates General, like the DG Economic and Financial Affairs Council (ECOFIN). However, there is a problem with the lack of clear benchmarks. There is the *acquis*, but as there is no accession process, there are no chapters, and no chapter screenings or benchmarks. At the same time, as one EU official noted in 2016, "there is a problem with the other DGs, no readiness to participate in the screening process. This leaves the DG NEAR overstretched, creates a capacity problem there."¹¹⁵

This situation obviously impacts the EU institutions' approach to vetting reform measures, especially when one considers existing challenges. As an IFI official explained, "there is this set of laws in the action plans, so you can tick boxes when they are adopted. But then on substance, you've got elements of rollback in some of these laws, and even on generally good new laws, it is highly questionable whether they will be implemented in practice."¹¹⁶ Regarding the EU institutions' approach to vetting, an official noted that "we assess whether laws are broadly in agreement with the Reform Agenda's aims. It is important to maintain momentum."¹¹⁷ Overall, there have been very few cases in which Brussels strongly pushed back against problematic individual provisions in Reform Agenda legislation. And it is unclear to which extent the EU is monitoring the implementation of new laws and other measures, if at all, or whether it has the organizational capacities to do so.

The role of member states

Apart from member states that presided over the EU, particularly the Netherlands in the first half of 2016, it was the governments of Germany and the UK that were the most proactive on the Reform Agenda. Regarding the German-British role, an official from one of the two states noted that "we stay out of the operational business. We compiled the initiative together, but after the EU's endorsement, we handed over operational work to the EUD/EUSR. We are now in a supportive role." That role has included hand-wringing for the British and the German ambassadors whenever there have been obstacles and reform resistance, both behind the scenes as well as in public. It has also included lobbying EU institutions and other member states, including fighting back attempts to back down or compromise over EU conditionality. In addition, the UK Government has been very active in providing technical support. It has contracted a number of consultants to assist with reforms at the state and

¹¹⁴ Interviews with EU officials, Sarajevo 2016.

¹¹⁵ Interviews with EU officials, Sarajevo 2016.

¹¹⁶ Interview with IFI official, Sarajevo 2016.

¹¹⁷ Interview with EU official, Sarajevo 2016.

entity levels, including Price Waterhouse Coopers, who assists the Federation Government in the restructuring of state-owned enterprises.¹¹⁸

The role of non-EU actors – the US

The US Government has played an important, supportive role in the EU's BiH initiative and implementation of the Reform Agenda, despite its negative opinion about it. State Department officials had been skeptical about the initiative from the very outset, unconvinced about the approach of circumventing core political issues like constitutional reform. But they were outmaneuvered by Germany and the UK in 2014 in a double sense – in the way the two countries secured endorsement of the initiative by the then Secretary of State John Kerry¹¹⁹ and in the way Berlin and London prepared their initiative without consulting Washington prior to making it public, thus basically killing a new constitutional reform initiative that the State Department had been preparing.¹²⁰ State Department officials have generally refrained from making their opinion on the EU initiative public and have supported the EU, mostly through the US Embassy and USAID on the ground in BiH. USAID, for example, has been participating in compiling a registry of para-fiscal fees. The US has taken a particularly active role on measures included in the Reform Agenda area dealing with rule of law and good governance related to the fight against terrorism. Though US officials insist that terrorism is linked to economic reforms as “it affects the country’s attractiveness to foreign investors,” US engagement in this field seems nevertheless to be primarily motivated by the general priority the US Government has given to terrorism in its policy in the Western Balkans in recent years.¹²¹

Despite the US Government’s engagement in the Reform Agenda implementation process, the State Department’s skepticism about the EU’s policy approach has remained unchanged. Thus, in early 2017, a US diplomat asserted that “the Reform Agenda is dead.”¹²²

Division of work between the EU and IFIs (World Bank, IMF)

The active role of the International Financial Institutions in the Reform Agenda was already highlighted prominently in the Agenda. In the introductory section that defines the framework of the Reform Agenda it states that “priorities for reforms were previously discussed with the IFIs... as such, the reforms could also form the basis for negotiating individual programs for financial and technical assistance.”¹²³ In the course of the Reform Agenda process, the World Bank and the IMF have taken on core roles that are probably even more important than that of the EU, each in their own capacities – the IMF with a focus on fiscal consolidation and on the fiscal aspects of structural reforms, the World Bank with a focus on lending support to structural reforms through technical assistance and know-how.

¹¹⁸ Interviews with EU member states and IFIs officials, Sarajevo 2016.

¹¹⁹ The UK foreign minister had called his US counterpart and got his endorsement on the phone, without previously consulting with staff at the State Department on the initiative’s details.

¹²⁰ Interviews with US diplomats, Berlin-Sarajevo November-December 2014.

¹²¹ Interviews with US diplomats, Sarajevo 2016.

¹²² Interview with US diplomat, February 2017.

¹²³ Reform Agenda, p.1.

The IMF entered into the Reform Agenda process with the instrument of an Extended Fund Facility (EFF)¹²⁴ – a credit program designed to support structural economic reforms through specific features (longer repayment periods, among others). The World Bank entered with the continuation of earlier engagement subsumed under a new internal tool – the so-called Systematic Country Diagnostic (SCD). The SCD was used to produce a first BiH country report in 2015,¹²⁵ and the report was used at the May gathering on Jahorina that kicked off the Reform Agenda compilation process. The SCD approach is very broad and reaches beyond the scope of the Reform Agenda, but matched many reform areas and aims of the Agenda, though it also sets some other, additional priorities.¹²⁶ Through the EFF the IMF loaned 550 million Euro to BiH in a three-year program that started in September 2016.¹²⁷ The World Bank so far agreed to lend 170 million USD to the country between 2015 and 2017 through three so-called Development Policy Loans (DPLs).¹²⁸ Both are budget support loans. Although the EU lends additional support through its European Bank for Reconstruction and Development (EBRD), it is the IMF and World Bank that make up the main financial conditionality-based leverage behind the EU’s Reform Agenda policy.

As the implementation of the Reform Agenda progressed, the importance of the IFIs grew. Thus the World Bank has become engaged in six of the seven Reform Agenda areas – fiscal sustainability, business environment, labor market, pension, health care and social welfare reform, state-owned enterprise restructuring and public administration reform. Some form traditional areas of World Bank expertise and/or of long-term engagement in BiH, others were added. Thus in 2016, the EU asked the World Bank to take the lead among international actors involved in the Reform Agenda implementation process in dealing with the issue of the establishment of commercial courts in the Federation of BiH (that officially falls within the business environment area). The IMF’s activities, too, span most of the areas of the Agenda.¹²⁹

While some of the reasons for this expansion may be the IFIs expertise and previous engagement on many of the Reform Agenda issues in BiH, there is also an additional reason. As an IFI official explained in 2016, “the EU wants us to adopt the EFF so they have some benchmarks through us.”¹³⁰ In contrast to the EU’s “accession light” which is devoid of clear benchmarks, the IMF with its EFF offers not only the systematic screening of all Reform Agenda legislation and measures relevant for the IMF program, but also very clear quarterly benchmarks that are directly linked to the payment of credit tranches.¹³¹

Concerning the cooperation between the EU and the IFIs, IFI officials insist that it is “closer than ever, but not perfect.”¹³² The latter refers to instances where the EU has compromised over conditionality

¹²⁴ <http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/20/56/Extended-Fund-Facility>.

¹²⁵ World Bank, *Rebalancing Bosnia and Herzegovina. A Systematic Country Diagnostic*, Sarajevo November 2015, available at: <http://documents.worldbank.org/curated/en/910521467992511665/Rebalancing-Bosnia-and-Herzegovina-a-systematic-country-diagnostic>.

¹²⁶ Interview with IFI official, Sarajevo 2016.

¹²⁷ IMF Country Report No. 16/291.

¹²⁸ Interview with IFI official, Sarajevo 2016.

¹²⁹ Interviews with IFI officials, Sarajevo 2016.

¹³⁰ Interview with IMF official, 2016.

¹³¹ IMF Country Report No. 16/291, Table 9: Structural Conditionality, pp.35-36.

¹³² Interview with IFI official, 2016.

when the IFIs stood firm. An IFI official offered a rather blunt description of the relationship:

“The IFIs are focused on the substance of reform, the European Commission on the procedure. That usually works ok, since we don’t care about the procedure and they don’t care about the substance.”¹³³

Over the course of the Reform Agenda implementation in 2015 and 2016, the EU and the IFIs seem to have moved in opposite directions – the EU has moved towards lowering conditionality and compromising, while the IFIs (particularly the IMF), have moved towards tougher conditionality in BiH than ever before. EU member states officials note that “the IMF has become really tough on conditionality. According to their representatives, apart from Ukraine, IMF’s toughest conditionality in Europe is placed on Bosnia and Herzegovina.”¹³⁴ In practice, the IMF has even *de facto* moved beyond two institutional no-goes – cross-conditionality and “political conditionality.” The former refers to the linking of IMF conditionality to that of other institutions, for example of the World Bank or the EU. Yet with the close cooperation between the IMF and the World Bank, for example, a *de facto* interrelatedness of conditionality has developed in various areas of the Reform Agenda, where the IMF deals with the fiscal, and the World Bank with the organizational aspects of structural reforms. The latter means that the IMF in its reform conditionality policy traditionally refrains from anything deemed “political.” Here the IMF has substantially moved out of its comfort zone. For example, as part of the EFF, the IMF has conditioned the strengthening of the coordinating role of the Central Bank of BiH, among others of the entity banking agencies. As an IMF official revealed in 2016, “we’ve told the entity governments this is the last chance for entity banking agencies to become serious. They’ve got one year. After that, we will ask for a state-level agency instead.”¹³⁵ Such a position aimed at ensuring functionality, which dives into the institutional structure of the state, had been unthinkable only one year before and is something from which the EU has recoiled throughout its decade of pseudo-conditionality.

Lack of transparency: the role of parliaments, civil society and citizens

The EU originally justified its new initiative for BiH as a shift of the reform focus towards the interests and needs of the country’s citizens. In various Council conclusions, the EU has demanded that the “Reform Agenda should be developed and implemented in consultation with civil society.”¹³⁶ In reality, however, the Reform Agenda and wider EU initiative implementation process over the last two years has moved in the complete opposite direction. It has demonstrated continuity with the EU’s previous approach of nontransparent, behind closed doors negotiations with political party leaders and top state officials. Even worse, decision-making processes seem to be more nontransparent and closed than at any point during the previous decade.

The Reform Agenda development was anything but a broad integrative process. Limited on the domestic side to prime ministers and their closest economic advisors, no relevant economists seem to have been

¹³³ Interview with IFI official, 2015.

¹³⁴ Interview with EU member state official, Sarajevo 2016.

¹³⁵ Interview with IMF official, 2016.

¹³⁶ EU Council Conclusions on Bosnia and Herzegovina, December 15, 2014.

included, nor were any of the relevant social interest groups in the economic sphere consulted.¹³⁷

Parliaments in BiH have been left without the opportunity to play an active role. When the Reform Agenda was agreed on, it was submitted to parliaments as a *fait accompli*. MPs were told that the Agenda had been agreed with the EU and the IFIs, and that they needed to support it through their vote for the good of the country.¹³⁸ Most Reform Agenda-related legislation submitted to parliaments have been subject to an urgent procedure adoption mechanism, leaving little room for MPs to file amendments and with almost no prospect of them getting adopted by the ruling coalitions. What's more, such expedited procedures are tacitly approved by the EU. The most prominent example was the July 2015 adoption of the Federation Labor Law. Opposition MPs in the Federation parliament protested the adoption, insisting the ruling coalition had breached several of the parliamentary rules of procedure by pushing the law through Parliament under urgent procedure. In an official statement, the EU Delegation hailed the adoption of the new labor law despite the critique, signaling tacit agreement with the expedited procedure. Half a year later, the Federation Constitutional Court annulled the Labor Law. It supported the opposition MPs' assessment that the adoption of the law presented a multiple breach of the parliamentary rules of procedure, and subsequently, of the Constitution. The judges cited a gross violation of the principles of democratic legislative process. The EU Delegation issued no public statement on the court's ruling.¹³⁹

Civil society, too, instead of being included as advertised, has been left out of the Reform Agenda process. The representative of one of the biggest and most influential civil society organizations in BiH, whose portfolio spans several of the agenda areas, complained that "there is no transparency, no inclusion of civil society at all. We've never been invited to any Reform Agenda consultations." Another NGO representative added that "though we publicly objected to several laws adopted under the Reform Agenda, we've never been contacted by the EU Delegation." A third, added that in 2016, the Commission cancelled the traditional (Progress) Report preparatory consultation with civil society in Sarajevo and Brussels.¹⁴⁰

BiH citizens have been left even more in the dark on the Reform Agenda and agenda proceedings. There has been very little outreach to citizens. It has been more or less limited to a PR campaign that included billboards and a website (www.reformskaagenda.ba), informing the public about the Reform Agenda, and financed by the UK Government's Good Governance Fund. However, the campaign and who is behind it has not been transparent, and has been limited to the Federation only. The RS Government did not agree to participate in the project, insisting it would conduct outreach to its citizens exclusively under its own terms.¹⁴¹

¹³⁷ Interviews with economists, employers' association representatives, Banja Luka-Sarajevo 2016.

¹³⁸ Interview with Federation of BiH Parliamentary Assembly MP, Sarajevo 2016.

¹³⁹ *Die neue Arbeitsgesetzgebung in BuH, die EU-Reformagenda und die internationalen Finanzinstitutionen*, pp.3, 13-14.

¹⁴⁰ Interviews with civil society representatives, Bosnia and Herzegovina 2016.

¹⁴¹ Interviews with EU and UK Government officials, 2016.

V. Conclusions

The EU's new initiative for BiH, launched in December 2014 and based on a joint German-British initiative, has indeed met its core aim of unblocking the country's EU integration process that had been stalled for a decade. In less than two years, BiH completed the three steps on the path to EU integration – from the entering into force of the SAA, to the September 2016 General Affairs Council's referral of the membership application to the European Commission for an Opinion – seen as a reward for the fulfillment of a number of important conditions, including the development and initiation of a broad agenda for structural economic reforms.

However, completion of these stages has been based almost entirely on the EU retreating from its stated conditions. The EU diluted conditionality (and on one occasion fully dropped it) and it was only due to the resistance of a few, pro-active member states – primarily the UK, Germany and the Netherlands – that the EU did not drop conditionality entirely from its implementation toolkit. Declarative progress has been facilitated by the EU's acceptance of the formal fulfillment of conditions with no interest at all in the substance of the solutions agreed among political leaders in BiH. Those agreements, enabled by some of BiH's political elites bowing tactically to EU pressure, have in some cases damaged BiH's economic interests, undermined the constitutional order of the country, and even violated the EU's Stabilisation and Association Agreement with the Western Balkan country. What's more, two of the formally fulfilled conditions (a functioning coordination mechanism and validation of census results) may very well never be applied in practice, and thus not serve the purpose for which the EU made them a condition in the first place, ending up instead as mere boxes to tick by Brussels.

Regarding the centerpiece of the EU initiative, the Reform Agenda 2015-2018, the EU cajoled BiH political leaders to compile an ambitious, broad agenda for structural economic reform and set in motion a certain reform momentum. If fully implemented and taken to its logical conclusion, the Reform Agenda could do much to uproot the system of political patronage that has prevented the democratic and market economic transformation of the country since the end of the war and caused a permanent, structural, political, and socio-economic crisis. However, in September 2016, when the EU made its decision to complete the last step in its initiative, most of the really substantial, politically and socially painful reforms were still only at a preparatory stage, and remain in the same stage today. At the same time, implemented reforms, such as the adoption of new labor laws in both entities, have been much less substantial than proclaimed by these governments, the EU, and the IFIs. Due to political resistance, there were already serious delays in the implementation of the Reform Agenda during 2015 and 2016. As 2018 will be an election year, very limited time remains in 2017 to implement those multiple structural reforms, while many of them (such as public administration reform and restructuring of public enterprises) are objectively impossible to complete within that timeframe. The EU's focus on socio-economic reforms was supposed to insulate the reform process from the political elites' ethnonationalist politics-as-usual. But the Reform Agenda implementation process has nevertheless hit on entrenched ethnonationalist interests and divisive constitutional issues. This is most pronounced in the Federation, where conflicts between the main Croat and Bosniak coalition partners had drastically slowed down the work of the entity government and parliament. In addition, various ethnopolitical conflicts among the ruling political elites, not linked to the Reform Agenda, have regularly slowed down government operations, precisely because they served as a useful distraction from socio-economic reforms. Finally, prospects for success of the structural economic reforms, even if fully implemented, are

seriously threatened due to the lack of rule of law in BiH. It is both worrying and indicative that the rule of law is the only element of the Reform Agenda on which targets are exceedingly low. Consequently, the impact of measures implemented to date on the structural problems of the judiciary and the police agencies in the country has been negligible; political elites have continued their attacks on the judiciary and their attempts to roll back reforms, yet the EU continues to eschew serious pushback.

When it comes to the performance and role of the various actors involved in the Reform Agenda process, there is a widening gap between the EU, which has moved back towards compromising over conditionality, and the IFIs, which have moved towards exceptionally tough and strict conditionality. This mismatch threatens to lead to developments where the IFIs' persistence in enforcing substantial, structural reforms results in serious clashes with BiH's political elites and/or in renewed social unrest, while the EU remains politically unprepared to face any such scenarios which might pose a threat to the stability of the country. At the same time, by turning the Reform Agenda process into a closed-shop operation, the EU has again excluded civil society and the citizens of BiH from engagement in the process, and missed the opportunity to turn them into allies for pressuring the political elites to undertake substantial reforms. This is more serious than it may first appear, as it was the conclusion that political elites are unwilling to undertake real reforms and are thus genuinely disinterested in EU integration that marked the starting point of the EU initiative.

Given these developments, prospects for the successful further implementation of the Reform Agenda appear grim, even more so because there are a multitude of uncertainties regarding the way forward. The EU weakened conditionality for the last step of its initiative in BiH from "full implementation" to "meaningful progress" in implementing the Reform Agenda, and there is no plan in place on the further conduct towards full implementation, including on how to condition progress with the next steps in EU integration. Also, on December 9, 2016, the European Commission handed the Questionnaire over to BiH authorities, the answers to which will enable the preparation of its opinion on the membership application. State institutions at all governance levels in the coming months will be busy answering several thousands of questions. There is a risk that they will lose focus on implementing the Reform Agenda, or even worse, that political elites will use the Questionnaire as a cover-up to block further reforms. Finally, due to the UK's preparations to exit the European Union, Germany is losing its strategic partner in pushing the Reform Agenda in BiH and within the EU, while no new strategic partners among member states are in sight. And the overall geopolitical instability marked by the continuous crisis of the EU, and the unclear global role of the US under a Trump administration, does not make a European focus on BiH easier.

However, the Reform Agenda process has also proven that the leading international actors in BiH can successfully push for the country to adopt reforms, despite worsening international political conditions – as demonstrated first and foremost by the IMF's performance of tough conditionality. While many EU officials continue to argue that conditionality doesn't work in BiH, this is neither true nor the reason for the meager results of the Reform Agenda to date. Rather, the EU's apparent allergy to sustained and consistently strict conditionality squanders its leverage, which could be employed to drive forward movement. It was limited political will within the German government in 2014 to seriously deal with BiH that shaped the German-British initiative. On the Berlin side, it originated in the foreign ministry, not the Chancellor's office, and it was developed at the middle layer of the ministry's hierarchy, as top officials had been occupied with the Ukraine crisis. As a German government official in 2016 concluded

regarding Berlin’s role in the Reform Agenda process, enforcing tough conditionality “would require strong political interest; but Chancellor Merkel has too many other things to do.”¹⁴² This approach is counterproductive, and undercuts Germany’s credibility. Better not to champion an initiative if there is not the requisite will to make it succeed. If the Reform Agenda fails, Germany and Britain will have “ownership” in the eyes of most – and correctly so.

The EU still stands a chance of leading the Reform Agenda towards successful completion and not ending up with the Agenda dead or perhaps having made things worse for BiH. It’s not rocket science. To get there, the Union won’t need to mobilize serious additional resources, but will need serious political will that so far has been lacking. Without that, the Reform Agenda will fail. That outcome would only ensure the continuing stranglehold of the political elite on the political, economic and social situation in BiH to the further and lasting detriment of its citizens and destabilization of the country.

¹⁴² Interview with German government official, Berlin, 2016.