

**House of Cards: the EU's “reinforced presence”
in Bosnia and Herzegovina**

Proposal for a new policy approach

A DPC Policy Paper

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

For seven years running, international actors have obsessed over their posture, structure and responsibility in Bosnia and Herzegovina (BiH). The assumption that led to the shift to an “ownership” approach – that BiH would propel itself into the Euro-Atlantic mainstream – has long since foundered on the shoals of BiH’s systemic realities. Deep divisions opened within the Peace Implementation Council Steering Board (PIC SB) and among EU members as the hopelessness of the current approach became increasingly evident. No systematic analysis was conducted on why the EU’s inducement of potential membership failed to deliver traction, as it had elsewhere. Paralysis set in.

The arrival of a “reinforced EU presence” under the unified leadership of EU Special Representative Peter Sørensen in September 2011 gave the EU the undisputed lead international role in BiH. London and Washington de-emphasized their misgivings with the EU approach in the hope of a fresh start. Yet the political situation has reached an all-time low. BiH currently seems ungovernable – and the international community seems at a complete loss as to what to do about it, other than call upon Bosnian politicians to behave and for citizens to hold them to account.

The international community’s primary problem in BiH is not one of conflicting philosophies, but rather of a lack of political will to deal with reality. Unwillingness of bureaucrats to tell their political masters the truth – that their chosen policy has failed and cannot succeed – is to blame. As a result, bureaucratic instrumentalism and finger-pointing predominate. Political resistance to the “European path” on the ground has been met with lowered benchmarks or their abandonment altogether. This policy leaves domestic political elites with the strong impression that far from entailing adoption of non-negotiable standards, EU integration is an *à la carte* process in which the EU itself is often the supplicant – an open invitation to undermine existing rules and regulations, rather than work on adopting new ones.

The EU is and will remain an actor stuck in the morass of BiH politics. Yet it refuses to even recognize itself as a political actor, unable to admit the limitations of its approach in BiH. The EU eschews applying the potential leverage in its existing “toolbox” to drive democratization and reform. Until this potential is developed and employed, the “reinforced” EUSR/Head of Delegation will be as unsuccessful as his last three double-hatted predecessors. Now is the time to develop a real, integrated strategy toward making BiH a self-sustaining state.

Where to go from here? – Recommendations for a new policy approach

Though the situation looks increasingly insoluble, the fundamental problems in BiH are in fact not difficult to identify – or fix. A wholesale revolution in the international policy is not required, but a necessary strategic reassessment is. This would have to start with the EU demonstrating the political will to adopt a new approach toward BiH which accepts the ground realities that make BiH a highly specific enlargement case. In order to succeed in BiH, the EU together with the PIC SB must: 1. base its EU

integration policy on strict application of conditionality; 2. neutralize the ability of politicians to leverage fear and re-establish respect for the basic Dayton rules; 3. confront political elites and actors who block or undermine reforms; and 4. build a popular constituency for this approach with citizens.

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

This new policy approach for BiH would be focused around four key areas, all of which require a major *philosophical* reset for the major foreign actors in BiH, but not major *institutional* change.

Division of labor between EU institutions and Dayton instruments:

- Reaffirm a strategic and collaborative relationship between the EU and other powers on the PIC Steering Board, particularly the US and Turkey.
- Define the terms of a synergetic division of labor that will maintain the EU and its integration policy in the leading role, while retaining the Dayton institutions with full operational capacity until they are no longer needed.

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

- Apply strict conditionality. Put the SAA into force and suspend it until BiH meets the conditions.
- End the reductionist concentration on conditionality for SAA and membership application in favor of a wider, overall package of reform requirements for BiH, including constitutional reform.

A more prudent financial assistance policy:

- The EU should curtail macro-financial assistance to BiH until strict conditions are fully met. In addition, it should ensure (in cooperation with other Western actors) that the IMF applies stricter conditionality in its financial assistance to BiH.

Building a popular constituency for a functional BiH:

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

Introduction

On April 8, 2013, Štefan Füle, the European Commissioner for Enlargement and European Neighbourhood Policy, declared Bosnia and Herzegovina's path toward integration into the EU stalled. In a joint statement with Thorbjørn Jagland, the Secretary General of the Council of Europe, he expressed “deep regret” at the lack of progress achieved by political leaders toward reaching an agreement to implement the judgment of the European Court of Human Rights in the Sejdić-Finci case¹ and cancelled the High-Level Dialogue on the Accession Process (HLDAP) meeting scheduled for April 11.² Only two months before, the EU had set the end of March as the deadline for an agreement.

Since January 2013, when Commissioner Füle appeared before the Council of Europe Parliamentary Assembly (PACE), the tone of statements from EU officials has sharpened. Füle warned that if the general elections in October 2014 were held under the current discriminatory constitutional framework, they would not be considered legitimate.³ Since then, EU and member-state officials have taken pains to get across one overarching message: should BiH's politicians not agree on an arrangement to implement Sejdić-Finci by the end of March or before the April 11 meeting, allowing activation of the SAA and a “credible application” to be filed with the EC by the end of 2013, the country would be stalled on its European path until after the 2014 elections.⁴

It was not supposed to be this way. In March 2011, the EU announced a “reinforced presence” in BiH, the aim of which was to finally secure the leading role for the EU among international actors in the country. It was meant to end persistent friction in the international community over the right policy approach, focused on the future of the executive mandate-based Dayton instruments (OHR and EUFOR) on the one, and the “ownership”-based EU integration toolbox on the other side. The EUSR was to be “decoupled” from the international High Representative and merged with the EU Delegation in BiH. Peter Sørensen was to take the new role as EUSR and head of the largest EU office anywhere in the world and thus personify the EU's “reinforced presence.”⁵ BiH's enlargement perspective was to be the primary driver for reform and source of EU leverage.

A visit by Catherine Ashton, the EU's foreign policy chief, to Banja Luka in May 2011 deliberately

¹ The plaintiffs, Dervo Sejdić, a Rom, and Jakob Finci, a Jew, brought suit against BiH for disallowing them to run for the Presidency and upper house, the House of Peoples, in which only the constituent peoples – Bosniaks, Croats and Serbs – are represented. The December 2009 ECtHR ruling requires BiH to amend its constitution to allow them to run for these offices.

² Joint Füle-Jagland statement, April 8, 2013, <http://www.delbih.ec.europa.eu/News.aspx?newsid=5646&lang=EN>.

³ http://europa.eu/rapid/press-release_SPEECH-13-50_en.htm

⁴ Conversation with EUSR officials, Sarajevo, February 2013. “Credible effort” to implement the December 2009 Sejdić-Finci ruling has generally been taken to mean legislation in parliamentary procedure. This is the EU's stated threshold for allowing the Stabilization and Association Agreement to come into force, which in turn is a precondition for a “credible application” for EU membership.

⁵ On several occasions, the authors queried how the EU presence was “reinforced” following the radical cut in EUFOR, the EU's military mission and the elimination of the EU Police Mission (EUPM). The answer was perennially “Sørensen (himself) is the reinforced presence.”

undermined the will of a majority on the Peace Implementation Council Steering Board that High Representative Valentin Inzko use his executive “Bonn Powers” to forestall a referendum on the state judiciary by then-RS Prime Minister Milorad Dodik, sowing discord among the PIC’s Western members. The move heralded the desire of the EU’s External Action Service (EEAS), the European Commission, and many member states to assert EU dominance as an international actor in BiH. Mid-2011 was clearly the most fractious period among the international actors, with divisions evident in the PIC SB and the EU. Since Sørensen’s arrival, this friction has diminished in its virulence; all PIC SB members proclaim their support for the EU’s leadership. The international Dayton institutions, meanwhile, have been gutted.

The EU has thus had undisputed dominance as the preeminent international actor in BiH since September 2011. But more than a year and a half into the EU’s “reinforced presence,” Füle’s cancellation of the April 11 meeting amounted to a confession that the EU’s policy has failed. This failure has yet to be explained and understood.

A new international policy alignment

The policy alignment of international actors in BiH has substantially shifted over the last two years, not as a result of a coherent international assessment or results-oriented strategy but as the unintended outcome of a turf war.

The antecedents of the current policy environment reach back many years⁶ and include a shift in US policy away from “nation-building” in the Balkans and the success of the EU’s embrace in 2004 of seven former Soviet-occupied countries and former Yugoslav Slovenia, which helped build a sense of historic momentum and inevitability. The EU’s transformational power was seen as inexorable in the Balkans, and international state-building efforts in BiH had achieved considerable results by 2005. A transition to a non-executive EU leading role was planned. The prevailing assumption among Western policymakers was that the “pull of Brussels” would impel further reform and preserve what had been achieved to date.

Yet the announcement of the impending closure of the OHR and the immediate curtailment of applying the Bonn Powers made at the beginning of 2006 (an election year) had unplanned effects. Milorad Dodik became the dominant figure in BiH politics with his revived secession threats. In an implicit alliance with his Bosniak counterpart, Haris Silajdžić, he initiated a return to the politics of nationalist conflict, at least rhetorically. Political elites became ever less willing to engage in dialogue and compromise. The international community reacted by lowering its own standards and conditionality in the vain hope that this would allow momentum to develop. The EU in 2008 signed a Stabilization and Association Agreement (SAA) with BiH despite the collapse of police reform, turning substantial benchmarks into

⁶ For a more detailed background account see DPC’s 2010 Policy Brief *Are we there yet? International impatience vs. a long-term strategy for a viable Bosnia* by Kurt Bassuener and Bodo Weber, <http://democratizationpolicy.org/images/policybriefs/policybrief1.pdf>.

mere declarations of intent for future reform signed by party leaders.⁷ When it implicitly acknowledged that its timetable for transition could not be met due to the deterioration in the political situation, the PIC SB reduced a standing set of 47 reform targets (the Mission Implementation Plan) into the “5+2” set of objectives and conditions. Neither concession yielded substantial progress.

Despite a growing awareness of the inadequacy of applying the Central European enlargement experience to BiH, no policy adjustment or even serious debate followed. Sticking to the policy was a question not of political principles or convictions, but of bureaucratic inertia and a lack of political will. Furthermore, following Kosovo’s declaration of independence in 2008, neither the EU nor the US had the will to contend with two crises at once.⁸ The international discourse over BiH became mired in a philosophical narrative, rather than being based on the ground reality: “ownership” was the solution, and the OHR the main problem.⁹ Closing OHR became an end in itself for many international actors. Mid-level Eurocrats were stuck with marrying this approach to the political reality on BiH. But given their political superiors’ refusal to reconsider their policies, ignoring reality and shifting the blame was a safer career move. Critics of the EU’s policy failure were dismissed as pining for Ashdown-era, externally-driven, state-building.

New governments in Britain and Germany in early 2010 brought friction between those willing to face political reality and the dominant group in the EU into focus. Chancellor Merkel began her second mandate with even deeper discomfort (typical for post-war German policy-makers) with international military and executive-mandate missions. Merkel and her FDP coalition partners agreed that the OHR was the problem.¹⁰ Conservative Prime Minister David Cameron’s coalition with the Liberal Democrats included BiH in the coalition agreement.¹¹ Foreign Minister William Hague strongly advocated the integration of the Western Balkans and Turkey into the Union, and displayed a pronounced interest in fixing the EU’s BiH problem. Berlin, which had been less forceful than Brussels and many “Club Med”¹² members in pressing the anti-OHR narrative, now took leadership of this group (which included France and Italy, as well as the EU’s bureaucracy), advocating elimination of the Dayton instruments. London called for maintaining the existing instruments as a safety net until there was proof that BiH was irreversibly on track towards EU and NATO membership.

After Berlin’s initial effort to sidestep the 5+2 conditions and close OHR failed due to British, American and Turkish resistance in the PIC SB, Germany resorted to a guerrilla warfare approach: attempting to weaken or kill off Dayton institutions through bureaucratic maneuver and budgetary means, touching

⁷ http://www.ohr.int/ohr-dept/rule-of-law-pillar/prc/prc-other/default.asp?content_id=40959

⁸ Meeting with senior European Council official, July 2008.

⁹ See, for example, the influential article by Gerald Knaus and Felix Martin, “Travails of the European Raj,” <http://www.journalofdemocracy.org/articles/gratis/KnausandMartin.pdf>.

¹⁰ In 2008, while still in opposition, the FDP’s parliamentary group had dismissed “5+2” and called for the immediate closure of the OHR.

¹¹ Discussion with veteran British MP, London, January 2013.

¹² The Sarkozy administration’s lack of political interest in BiH was summed up by a French diplomat as “no more troops, no more money, no more investment in BiH.” Discussion with a French Bosnia expert, Paris, 2011.

off a two-year turf war between Berlin and London that substantially altered the international community's institutions on the ground.

After several months of British resistance, the German-led camp succeeded in early 2011 in pushing through the decoupling of the EUSR from the OHR. In March, the European Council laid the foundation for the merger of the EUSR and the EU Delegation to BiH into what was to become the EU's largest office abroad. While the Lisbon Treaty provided a plausible argument for decoupling, Berlin's main goal was to weaken OHR by removing EUSR staff from the OHR, where they had been operating jointly for the same immediate superior. Soon after, Berlin and its allies sought to further weaken OHR following budget agreement at the March 2011 PIC SB meeting. One German diplomat labelled this "killing OHR through the budget."¹³ With no interest in letting the OHR continue to do real work, the German camp complained about "overlap" with the EUSR and demanded further substantial cuts in experts and whole departments that aimed at the heart of OHR's expertise.¹⁴ In parallel, the same group prevented the High Representative from using his powers. In July 2011, Berlin prevailed upon London to agree to close the EU's Police Mission just as the EUPM found itself in the midst of a battle with the RS government over a law which would reverse the mission's success in insulating policing from political influence.¹⁵ The German government also aimed to end the EU's military mission (EUFOR), which had taken over NATO's Dayton obligation to ensure a "safe and secure environment" and is equipped with a UNSC Chapter 7 mandate.¹⁶ While it failed to eliminate the executive mandate, Berlin in November 2011 forced London to accept the halving of the forces to fewer than 600 troops, far too few to pose a credible deterrent or to maintain reactive capability.¹⁷ Around the same time, Germany and the UK for some six months blocked one another's candidates for the position of EUSR/head of delegation, until Ashton finally picked Peter Sørensen, the EUSR in Macedonia.¹⁸

This turf war left the EU deeply divided over BiH. Neither side had achieved its maximum goals, but London clearly found itself on the losing end. With the EU's institutions' mandates to be prolonged on an annual basis by consensus in the European Council, it was forced to give in to Berlin – or accept compromise deals that in amounted to the same in substance. The Cameron government took a distant, skeptical position vis-à-vis the EU in the Euro crisis, which left it with little leverage with which to bargain over BiH. The US generally agreed with London's views on BiH; the State Department became increasingly worried that the EU was not up to the task. Yet rather than engage directly with Merkel to get her to change her policy, Washington left the UK hanging. There was no willingness to advise

¹³ Conversation with a Western diplomat, Sarajevo, June 2011.

¹⁴ The attack on OHR's budget only partly succeeded and was revived in the next annual negotiations in 2012.

¹⁵ See page 123 in Azinović/Bassuener/Weber, *Assessing the potential for renewed ethnic violence in Bosnia and Herzegovina: A security risk analysis*, Sarajevo 2011.

¹⁶ In March 2011, in the midst of the Federation government formation crisis, Berlin had quietly withdrawn its contingent from EUFOR.

¹⁷ Britain, which had withdrawn its contingent from EUFOR in 2007, contributed an over-the-horizon reserve company based in the UK to back EUFOR.

¹⁸ http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/125003.pdf

¹⁸ Conversations with European diplomats, Berlin-Brussels-London 2010-11.

principals to engage Berlin at that rarefied level over BiH.¹⁹ London had little choice but to support the new EUSR and hope that Sørensen would prove himself an Atlanticist.

While Berlin did not succeed in getting OHR and EUFOR closed, it succeeded in hollowing them out. The High Representative was weakened and immobilized. Other PIC SB members still interested in BiH were sidelined.²⁰ Turkey found itself increasingly left alone in the battle for drawing international attention to BiH. Russia aligned with Dodik, not out of any strategic interest, but to exploit the West's weakness and extend its global influence, at no cost.²¹ Germany clearly maintained the upper hand: it succeeded in establishing the EU's primacy among international actors on the ground. The downside for the EU is that now there can be nobody else to blame in the impending reckoning with reality.

Meanwhile on Planet BiH

The disconnect between these frictions and reality on the ground could hardly have been starker.

Since achieving political dominance in Republika Srpska in early 2006, Dodik has openly sought to systematically undermine the state: not only its ability to develop its competences, but its ability to operate within its current ones. From being seen as a reformer at the time of the intended international policy shift in 2006, Dodik has proceeded to expose the international community's weakness through regular provocations. These have passed without consequences for him. Dodik has predicted and advocated the dissolution of BiH and independence for RS, saying that these are historically inevitable.²² He has hijacked the concept of "reform" of BiH, demanding a return to the original Dayton state structure as the only way the country could survive. Such a structure would be even more dysfunctional than the present one, leaving BiH with no prospects to ever enter the EU, despite Dodik's declarations that he wants integration.²³

Dodik has repeatedly acted on his various provocations. In May 2011, during a visit to Banja Luka by Ashton,²⁴ Dodik agreed to drop ("for now") a demand for an RS-only referendum on the state judicial system. But in the months that followed, the RS undid parts of police reforms²⁵ and of judicial reform,²⁶ and struck International deals – one with Serbia and Italy, one with Croatia – on cross-border hydroelectric power projects without involvement from state-level institutions, undermining the

¹⁹ Conversations with US and other Western diplomats and officials, Sarajevo-Washington-Berlin 2010-2013.

²⁰ These included The Netherlands, which typically aligned with Britain in the PIC SB, and Canada and Japan, which regularly joined ranks with the US.

²¹ Conversations with international diplomats, Sarajevo 2011-2013.

²² http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=10&dd=04&nav_category=167&nav_id=648792

²³ <http://razglasaj.ba/dodik-rs-ne-zeli-izgubiti-svoj-identitet-u-procesu-europskih-integracija-bih>

²⁴ <http://www.europeanvoice.com/article/2011/may/ashton-holds-crisis-talks-in-bosnia/71076.aspx>

²⁵ On the adoption of the RS Law on Police Officials in July 2011 see pages 121-122 in Azinović/Bassuener/ Weber, *Assessing the potential for renewed ethnic violence in Bosnia and Herzegovina*.

http://www.democratizationpolicy.org/images/studies/DPC-AI_BiH%20Security_Study.pdf

²⁶ <http://istinomjer.ba/13/01/2012/its-the-eus-turn-now/>

sovereignty of the state.²⁷ The RS has also put great effort into unilaterally harmonizing entity legislation in the field of economy with that of Serbia, further fragmenting BiH's economic space - even though a single economic space is a key condition for EU integration.²⁸

Such actions have sent ripple effects through the whole political system, slowly moving the country from chronic instability to almost complete ungovernability. The multi-ethnic SDP antagonized many Bosnian Croats and their parties when it put forward, in 2006 and 2010, Željko Komšić for the Croat seat on the state presidency. While the bid had a political logic it lacked any strategic vision.²⁹ The state-level government has been unstable and highly inefficient, unable to proceed on various reforms. Since the October 2010 general elections, the prevailing political dynamic has become ever more fractious. It took 16 months for a new state-level coalition to emerge;³⁰ political brinkmanship between the SDP-led "platform coalition" (with the SDA, Radom za Boljitak, and HSP) and the HDZ BiH/1990 coalition over the formation of the Federation government set the tone. The state-level coalition assembled at the end of 2011 collapsed in mid-2012, to be succeeded by a coalition in which the SDA was replaced by media tycoon Fahrudin Radončić's Party for a Better Future (SBB).³¹

SDP leader Zlatko Lagumdžija had in 2010 been Dodik's leading antagonist and chief advocate of a stronger central state. Following the SDP's and SNSD's major losses in municipal elections in October 2012, Lagumdžija and Dodik agreed on a joint platform that would, *inter alia*, reduce electoral representation and transparency, strengthen the entities financially at the expense of the state, and subvert the independence of the judiciary.³² The subsequent move by the SDP to break the Federation-level coalition as well, replacing the SDA and two smaller parties with the SBB and the two HDZs, has led to an open political war between the SDP and the SDA. Both parties have instrumentalized existing statutory and legal means to achieve their ends, a policy which damages the new party alliances and has led to a total paralysis in the Federation.³³

Beginning in 2006, and at a quickening pace since the 2010 elections, BiH's politics and society has been dominated by the pursuit of unfulfilled agendas – such as a third, Croat, entity – and the use of destructive strategies and tactics. Political actors are now being swept along by their own irresponsible actions, having lost the ability to foresee the effects of their tactical maneuvers. Komšić's re-election, for example, prompted the return to a collective victimhood discourse among Croats. The Sejdić-Finci ruling was similarly hijacked and employed in the service of the "Croat question." Dragan Čović, junior partner

²⁷ See DPC's study *Croatian and Serbian Policy in Bosnia-Herzegovina: Help or Hindrance?*, Sarajevo, October 2012, pp. 12, 23. http://www.democratizationpolicy.org/images/studies/dpc_neighbors_study_final.pdf

²⁸ For example, since summer 2012, all foreign and domestic companies that intend to do business in the RS are obliged to open accounts with an RS-based bank. Interviews with economic experts, EU officials, Sarajevo-Banja Luka 2012-13.

²⁹ Conversation with SDP officials, Sarajevo 2010.

³⁰ <http://www.setimes.com/cocoon/setimes/xhtml/hr/features/setimes/features/2011/12/29/feature-01>

³¹ <http://www.setimes.com/cocoon/setimes/xhtml/sr/Latn/features/setimes/features/2012/06/06/feature-02>

³² *Agreement on program/project cooperation in legislative and executive powers in BiH 2012-2014.*

³³ <http://www.slobodnaevropa.org/content/nazire-li-se-kraj-politicke-krize-u-fbih/24953696.html>

in an HDZ-SNSD alliance to undercut the “platform coalition,” overplayed his hand in internationally brokered talks to form a stable FBiH government, leading to his and the HDZ 1990’s exclusion from FBiH positions – and thereby resources with which to fuel their patronage system. The HDZs accepted in 2012 the conditions they had rejected in 2011, following the SDP’s ouster of the SDA. But as of yet, they have been unable to take up their positions due to the continued blockage of the Federation government.

The SDP entered coalition negotiations in 2010 based on joint a platform³⁴ of democratic reform and EU integration. By late 2012, it ended up with coalition agreements with the HDZ and Dodik’s SNSD which seemed to undercut all that the party claimed to stand for, while the ongoing battles with its former partner, the SDA, have prevented it from implementing most of these agreements. Because of a conflict over the coalition’s budget policy in which it declared to defend the integrity of the state against the SDP, which had conceded to the SNSD, the SDA, which in 2010 demonstrated more openness to make concessions to the HDZ and SNSD, ended up being thrown out of coalition at the state and Federation levels by the SDP. In employing procedural and legal means to block each other’s removal from power at entity and cantonal levels, both parties damaged their democratic credentials.

Political turmoil in the Federation appears to benefit Dodik, insofar as it diverts domestic and international actors from paying attention to his actions. Yet this has insulated him from facing turmoil in the RS resulting from his policies. Though he remains the dominant figure in BiH politics, his politics of unilateralism and provocation have had destructive economic effects, particularly to his supposed constituency in the RS. This has undercut his and the SNSD’s legitimacy despite a chronically weak opposition, as the 2012 local election results demonstrate.³⁵

As this brief survey suggests, international actors have helped create an environment in which neither they nor BiH’s political class can achieve their agendas. They have done so by insisting that BiH’s elites reach agreements among themselves, while neglecting those institutions which had governed political behavior. All actors have miscalculated and have now arrived in unintended destinations.

The cumulative economic and social impact on BiH of decades of political mismanagement on all of BiH is now impossible to camouflage, despite continued infusions of foreign funds. Public servants’ salaries have been cut, there are increasing layoffs and strikes³⁶, and reduced revenue from taxpayers is forcing governments to subsidize pension and health funds with loans. Citizens increasingly recognize that this cannot continue. Continued and deepened political-institutional instability has annulled all efforts, on state or entity levels, to improve the unfavorable business environment.³⁷ In addition, due to the state

³⁴ <http://www.sdp.ba/dokumenti/programska%20platforma.pdf>

³⁵ The SNSD lost 26 mayors in the October 2012 municipal elections. See http://www.europeanforum.net/news/1525/local_election_results_in_bosnia_herzegovina_show_major_loss_for_snsd

³⁶ <http://www.slobodnaevropa.org/content/kolaps-gradskog-prevoza-u-sarajevu-ne-odustaju-ni-strajkaci-ni-vlada/24949114.html>

³⁷ Interviews with domestic and international economic experts, Sarajevo 2012-2013.

and Federation government chaos, standby arrangements negotiated with the IMF have come under threat.³⁸ Without these funds, BiH faces fiscal collapse. This amplifies the likelihood of social unrest – and its potential to generate violence.³⁹

The EU’s “reinforced presence”: process without progress

Some form of “reinforced EU presence” had been under discussion since the 2005 decision to transition away from OHR. Several non-papers over the years made proposals for a possible design of the EU presence and the mandate and main reform fields it would have to concentrate on. By the time the German-led camp finally achieved decoupling, very little of those plans and ideas remained. In its March 21, 2011 conclusions, the Council of the EU⁴⁰ announced its decision to establish a “reinforced, single EU Representative.” This is regularly referred to by EU officials as a “strategy document.”⁴¹ The conclusions, and in more details the July 18, 2011 Council decision on appointing the EUSR, laid out the mission and mandate of the new EUSR and his office. Yet both documents remain extremely vague and limited. The EUSR’s mandate and authority can be summed up with five verbs - “advise,” “assist,” “facilitate,” “monitor,” and “coordinate.”⁴² The policy objectives and strategic range are essentially reduced to de-blocking the Stabilization and Association Process, while the March conclusions define the three conditions for the SAA to enter into force – adoption of a State Aid Law, of a Census Law and “credible effort” toward implementing the Sejdić-Finci ruling. To date, no more in-depth policy strategy has been produced by the EEAS, Commission, Council, or the EU Delegation. The three SAA conditions in particular demonstrate how the establishment of a single, reinforced presence has in fact left the EU’s policy unchanged. This policy is anything but strategic. It is defined by ad-hocery, the imperative to avoid confrontation with the RS, a tendency to respond to political resistance by watering down conditionality, and the need to declare progress in order to “prove” its own effectiveness. The fact that the EU left its integration policy unchanged signaled the real limits of the single EU representative’s authority and maneuvering space.

Viewed against the overall reform challenges BiH faces, the three SAA conditions appear to be random, abysmally low benchmarks. A Law on Census and the subsequent organization of a census produce the statistical data that form a key technical basis in the country’s EU integration process. A State Aid Law creates the institutions and procedures for BiH to govern public resources, including those future resources originating from EU structural funds. The implementation of Sejdić-Finci is a condition

³⁸ <http://www.slobodnaevropa.org/content/kredit-mmfa-upitan-zbog-politicke-krize/24949130.html>

³⁹ The potential for social unrest and violence has been analyzed in Azinović/Bassuener/Weber, *Assessing the potential for renewed ethnic violence in Bosnia and Herzegovina*.

http://www.democratizationpolicy.org/images/studies/DPC-AI_BiH%20Security_Study.pdf

⁴⁰ Council Conclusions on Bosnia and Herzegovina, 3076th Foreign Affairs Council Meeting, Brussels, March 21, 2011 http://www.consilium.europa.eu/uedocs/cms_data/docs/missionPress/files/BosnieHEN21031101.pdf.

⁴¹ Discussions with EU officials 2011-2012.

⁴² Council Decision 2011/426/CFSP of 18 July 2011 appointing the European Union Special Representative in Bosnia and Herzegovina

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:188:0030:0033:en:PDF>.

externally imposed on the EU by the ECtHR that tackles constitutional discrimination against minorities.

At the same time, the selection of the census condition for technical reasons has led the EU to artificially treat the issue as a purely technical one. The census in BiH has traditionally been and remains an issue of intense political infighting, affecting ethnic group rights and access to public resources. As a result, conflicts over the census have continued after the passage of a census law in February 2012. It remains an open question whether it can be held as planned in October – already a five-month delay.⁴³ The passing of a state aid law in 2012 hardly serves as an indicator for the BiH state’s capacities to manage funds, considering the fact that the EU Delegation in Sarajevo still conducts part of the planning process for BiH’s EU pre-accession funds. This should normally be handled by the country’s own institutions.⁴⁴ Finally, the Sejdić-Finci ruling addresses an important constitutional issue from a human rights perspective. But when considering the full panoply of impediments to functionality in the current constitutional system, the changes the ruling should compel are still relatively minor. By inventing a new low benchmark of “credible effort” toward implementing the Sejdić-Finci judgment to allow the SAA to come into force, the EU acceded to the HDZs’ effort to conflate the ruling with its goal of solving the “Croat question” – still without achieving any results.

This minimalistic approach stands in sharp contrast with the EU’s last document which actually defined the terms of BiH’s reform path toward EU integration – the European Partnership Document with BiH passed by the Council in February 2008.⁴⁵ In the Document, the EU systematically lays out a long list of short-term and medium-term reform priorities, criteria and conditions, including a large number of state-level laws, the strengthening of newly-established state-level institutions as well as the establishment of new ones, such as a state-level agriculture ministry – all measures aimed at harmonizing policy in a fragmented state. These conditions were included in subsequent EC Progress Reports, as have others such as the establishment of a Supreme Court of BiH, a long-term EU demand. However, in the face of political resistance the Partnership Document has been quietly ignored by the EU as a policy tool,⁴⁶ and many of its reform conditions have disappeared from the progress reports after 2010, including the need for a Supreme Court.⁴⁷ Ironically, when the Venice Commission recommended the establishment of a Supreme Court in a 2012 opinion on the state of the judiciary in BiH requested by the European Commission in the context of the Structured Dialogue, the Commission

⁴³ <http://www.slobodnaevropa.org/content/popis-stanovnistva-u-bih-politicki-pritisci-i-pozivi-na-bojkot/24922386.html>.

⁴⁴ Conversations with BiH and EU officials, Sarajevo 2011-2013.

⁴⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:080:0018:0031:EN:PDF>

⁴⁶ When EU officials were queried about the status of the Partnership Document, it was characterized as “unrealistic.” While still valid, it would now be treated “more like informal conditions” – interview with EUSR officials, February 2012.

⁴⁷ See DPC Policy Note *Requirements and Reforms, Cause and Effect: A Review of the European Union Progress Reports for Bosnia and Herzegovina for the Fulfillment of the Copenhagen Criteria* by Patrick Dick, pp.7-8. http://www.democratizationpolicy.org/images/policynote/dpc_policy_note_new_series_final.pdf

ignored the proposal.⁴⁸

The EU refrains from using even its dramatically reduced conditions as a policy lever. The SAA, signed in early 2008, had by 2012 been ratified by all 27 member states. Yet it has not been brought into force, as the non-implementation of the Sejdić-Finci ruling would force its immediate suspension – and that would send the wrong message about “momentum.” Similarly, the passing of a state aid law in March 2012 came after a period of one and a half years during which BiH was in violation of the interim trade agreement – yet the EU did not suspend the agreement.

The EU has set a higher, though still low, bar for BiH’s tendering of a “credible application” for membership: apart from the SAA entering into force this includes an agreement on a “coordination mechanism” for BiH’s governments to interact with the Union and apply its standards.⁴⁹

Yet the establishment of such a coordination mechanism, of procedures and bodies for the harmonization of the management of EU integration reforms is no reliable guarantee against its political instrumentalization, as a conflict between the ruling parties over the annual IPA pre-accession programming demonstrated in 2011. In summer 2011, the RS Government objected to a number of IPA projects because in its view they empowered state-level institutions, and threatened to block the annual programming as a whole, which would have led to BiH losing €96 million in pre-accession support. The planning process had already been completed and approved by the BiH Council of Ministers, on which the RS’s ruling SNSD was well represented, with Nikola Špirić holding the chairmanship. The RS undermined an existing “coordination mechanism” that had functioned well for years. The European Commission rewarded this ill-will, extending the deadline and calling on “the parties” to sort it out. In the end the SDP-led Federation government agreed to cancel the disputed state-level projects in favor of additional projects managed by the entities.⁵⁰ This was the first signal that Dodik and Lagumdžija could find a *modus vivendi* – concentrating resources in the entities under their control.

By conceding to Banja Luka’s blackmail and accepting the resulting political deal, the European Commission undermined its own policy – and credibility – in BiH. Since the beginning of accession talks with Croatia in 2005, the Commission had told BiH officials they needed to make institutional and legislative preparations for Croatia’s membership in the field of agricultural and food products in order not to lose access to the Croatian market. These reforms were blocked, mostly by the RS, as its authorities argued against *any* strengthening of state-level competencies. The EU’s dropping of its demand for a state-level agriculture ministry encouraged this. Among the state-level IPA projects prevented by the RS in 2011 was one to strengthen phytosanitary controls and bring plant health

⁴⁸ Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina, Opinion No. 648 / 2011, Venice Commission, 15-16 June 2012 <http://www.venice.coe.int/webforms/documents/CDL-AD%282012%29014.aspx>.

⁴⁹ <http://www.euractiv.com/enlargement/fuele-laments-bosnia-lack-progre-news-516303>

⁵⁰ Conversation with BiH party representatives and state officials, Sarajevo 2011 and February 2013.

protection in line with EU standards.⁵¹

While previously articulated criteria have been sidestepped, reduced, or quietly laid to rest, the EU has adopted new instruments for BiH (subsequently applied in other Western Balkan countries) in the hope of compensating for the lack of progress on the standard EU accession path. Among these is the Commission's flagship, the Structured Dialogue on the Judicial Sector (SD), initiated in June 2011. Another unprecedented mechanism, the High-Level Dialogue on the Accession Process (HLDAP), was initiated in June 2012. Yet both new formats face structural dilemmas that put their utility in question. First, it remains unclear why the sheer lifting of EU integration dialogue from the level of officials to that of party leaders and the European Commissioner should make up for the lack of progress. Second, these formats are of a *de facto* extra-institutional character, as they are not rooted in the formal EU integration mechanisms and procedures. As a consequence, the lack of progress or non-compliance of BiH officials entails no consequences in the EU integration process.

The HLDAP thereby (at least implicitly) acknowledged BiH's oligarchical political structure by centering the EU's approach on political party leaders. The resulting roadmap on EU accession adopted by these leaders in June 2012 set a November deadline for fulfilling the remaining SAA conditions, such as implementation of the Sejdić-Finci ruling.⁵² That deadline came and went without consequences, only to be followed by new deadlines.

The RS's non-compliance with the Structured Dialogue proceedings reveals the deficiencies of these *ad hoc* EU formats even more clearly. The EU explained the establishment of the SD as a policy response to the specific challenge of judicial reforms in the Western Balkans. But the SD actually emerged from a bargain between Ashton and Dodik, ending the RS referendum threat without the use of the Bonn Powers. Brussels has not yet explained how SD can overcome Banja Luka's enduring antipathy to state-level judicial institutions. When EUSR Sørensen took office in September 2011, he inherited a conflict with the RS over a draft entity Law on Courts. The draft law undermined the HJPC's authority and competences, ran contrary to the higher-instance HJPC law and also undermined the independence of the judiciary. In its conclusions from the second SD meeting in November 2011, the Commission demanded that the RS adjust the draft RS law on court to fully satisfy the HJPC's objections and recommendations. EUSR Sørensen insisted on full compliance up until the very day in December when the law entered the RSNA for the final reading – to be passed in almost complete defiance of those objections.⁵³ It was soon published in the official journal and became law.

⁵¹ *IPA National Programme 2011 – Bosnia and Herzegovina: 11. Agriculture*. Unpublished document. The project was only re-initiated in 2012, when state authorities slowly started long-needed reforms, and probably too late to meet conditions before July 1, 2013, the date of Croatia's EU entry. Discussion with BiH official, Sarajevo, February 2013.

⁵² Joint Conclusions from the High Level Dialogue on the Accession Process of 27 June 2012

http://europa.eu/rapid/press-release_MEMO-12-503_en.htm.

⁵³ <http://istinomjer.ba/13/01/2012/its-the-eus-turn-now/>

Despite this affront, the Commission on January 30, 2012 brokered a closed-door meeting between HJPC President Milorad Novković and then-RS Justice Minister Đerard Selman. The compromise deal that emerged from this meeting fell far short of full compliance with the HJPC's numerous and substantial objections, despite the Commission's insistence just two months before. After further complications, the deal was finally sealed in a meeting in December 2012. EC officials noted that at some point in that meeting they had left Novković and Selman alone to "reach their own accommodation."⁵⁴ Given that Novković is reported by numerous observers to be under considerable pressure from Dodik, little imagination is required to imagine how the "accommodation" was reached. With its stance, the Commission undermined the HJPC and judges' and prosecutors' associations from all over the country (including the RS), which had resisted Banja Luka's effort to weaken the HJPC's capacity to safeguard the independence of the judiciary. The move was also an own goal by the Commission, which subverted the credibility of its own instrument, the Structured Dialogue, as well as that of its new "reinforced" presence.⁵⁵

Officials in the joint EU Delegation/EUSR began showing signs of dissatisfaction and desperation. According to diplomatic sources, Delegation staff expressed frustration at the 2012 Progress Report's content, noting that their input was limited and dated from the spring, despite the report's publication in October.⁵⁶ They also complained about being out of the loop on direct contacts between Brussels (both Commission and EEAS) and Banja Luka.⁵⁷

The EU's "reinforced presence" and the international community

The EU's approach, given its dominance in setting the overall policy tone within the international community, has had a profound effect on how other organizations operate. The OHR has been paralyzed – by design. The High Representative has been chastened by the PIC SB's admonition (driven by Germany, France and Italy, supported by Russia) not to employ the Bonn Powers *under any circumstances*. He has repeatedly proven himself unwilling to challenge this constraint on his executive role. The US acceded to EU demands to "streamline" OHR by cutting its budget further; the modalities of this streamlining remain contentious. What is readily apparent is that the cuts are aimed at further neutering the institution as one more step toward its closure.⁵⁸ There has been no appreciable progress toward meeting the 5+2 objectives and criteria in the past year. Closure of the Brčko Final Award Office did not include ending Supervision, owing to Turkey's objections to abjuring that authority.⁵⁹ No solution to the defense and state property issues, vital to activating the Membership Action Plan with NATO, appears forthcoming. The OHR, unable to defend the products of state-building, nevertheless has been

⁵⁴ Discussions with EC officials, Sarajevo, February 2013.

⁵⁵ Interviews with judicial officials, EU officials and European diplomats, Sarajevo 2011-2013.

⁵⁶ Conversations with European diplomats, Sarajevo, October and November 2012.

⁵⁷ Conversation with EU official, February 2013.

⁵⁸ Conversation with international officials and diplomats 2012-2013.

⁵⁹ See page 52 of *Croatian and Serbian Policy in Bosnia and Herzegovina: Help or Hindrance? How to Effectively Employ Western Leverage - A DPC Policy Study*, October 2011.

http://www.democratizationpolicy.org/images/studies/dpc_neighbors_study_final.pdf

given the thankless tasks, such as dealing with political deadlock in Mostar, following four years of inability to form a government and the Federation Constitutional Court's ruling that the Ashdown-era imposed Mostar Statute was partly unconstitutional.⁶⁰ In effect, OHR has been reduced to a dead-letter office.

The US appears to be emulating the EU's quest for deliverables. In autumn 2012 US Ambassador Patrick Moon initiated a process of constitutional reform in the Federation. Officially, the effort was billed as a reflection of bottom-up recognition of the entity's dysfunctional governance. But despite efforts to conjure demand, none was forthcoming. An expert working group, including a number of respected figures,⁶¹ was assembled to conduct wide consultations with civil society and governance experts to develop proposals, leading up to a conference held on May 15, 2013 which generated a final list of proposed amendments to the FBiH Constitution.⁶² This list of 181 points is to be jointly presented by Ambassador Moon and EUSR Sørensen to party leaders. Likewise, Ambassador Moon has missed few opportunities to support EUSR and EC efforts to arrive at a Sejdić-Finci deal.⁶³

The January initiative: shifting tone without shifting policy

In January 2013, it was announced that Sørensen had returned from Brussels newly empowered to press for delivery on Sejdić-Finci and the wider reform agenda.⁶⁴ Füle's speech at the PACE also struck a harder tone. But upon inspection, it is clear that such statements only reflected increasing desperation, not a new policy or any strengthening of policy instruments. According to a senior European diplomat, queries as to what the "strengthened mandate" of EUSR Sørensen entailed led to an admission that the consequences would be "only the indirect sanction of not moving forward toward the EU." He found this "pathetic."⁶⁵ Füle's threat that BiH officials, if elected in 2014 under current rules, could be considered by the EU as illegitimate seems to have been no more than a spontaneous outburst of frustration over the lack of progress on SAA conditionality. No strategy seems to have been discussed or proposed within the Commission, nor is it remotely clear how an EU policy that sidelines BiH state officials would actually work.⁶⁶

The EU's new harder line, which called for results in less than two months, was the product of frustration with the inability to achieve results on gaining even "credible effort" toward the implementation of Sejdić-Finci, with general elections looming in 2014. It also reflected apprehension at

⁶⁰ http://www.ccbh.ba/eng/odluke/povuci_html.php?pr=dXN0YXYgZ3JhZGEgbW9zdGFyYQ==&pid=342263

⁶¹ The members of the expert group are: Mirjana Nadeždin-Defteđarević, Kasim Trnka, Krešimir Zubak, Mile Lasić, and Vehid Šehić.

⁶² See *Draft Recommendations – Constitution of the Federation of Bosnia and Herzegovina*, May 7, 2013, <http://www.slobodnaevropa.org/content/preporuke-za-promjenu-ustava-federacija-funkcionalnija-i-jeftinija/24986976.html>

⁶³ http://sarajevo.usembassy.gov/speech_20121023.html,

⁶⁴ http://europa.eu/rapid/press-release_SPEECH-13-50_en.htm?locale=en

⁶⁵ Discussion with senior European diplomat, February 2013.

⁶⁶ Discussion with EUD BiH officials, Sarajevo February 2013.

the EU's own internal calendar – German elections in September 2013 and European Parliamentary elections in May 2014, followed by the formation of a new European Commission. The prospects for progress after spring 2013 look dismal.

Intensified negotiations with the leaders of the seven largest parties⁶⁷ in BiH and Brussels in March and early April had the air of an exercise in futility, given the paralysis of state and Federation governments. The EU Delegation for the first time presented its own (as yet unpublished) solution for the Sejdić-Finci deadlock. This proposal revolved around an electoral college, with premium votes allocated to the winners of electoral units (the RS and 10 Federation cantons). At the same time, the Delegation and Commission denied any authorship and insisted they were restricting their role to coordination and facilitation. Negotiations with party leaders along with the proposal's text remained more opaque than ever. This provoked considerable speculation in the press and reaction from those who believe that the mechanism would gut the equality of the franchise, empowering Croat-majority regions at the expense of large Bosniak-majority areas such as Sarajevo, thus further limiting the chances for the negotiating parties to find an agreement. EU personnel exuded desperation for a deal, struggling to conjure a deliverable from the “ownership” approach.⁶⁸

Ironically, after years of criticizing the OHR for being sucked into the morass of BiH politics, the EU became just as embroiled – and has less to show for it. In February 2013, Sørensen issued a joint statement with US Ambassador Moon calling on Federation President Živko Budimir to allow the appointment of nominees to the Federation Constitutional Court.⁶⁹ This would have unblocked the Federation government reshuffling process and created a more conducive environment for the Sejdić-Finci negotiations. Both the SDP- and SDA-led party blocs in the Federation have misused institutional procedures in their struggle for control. This international intervention put the EU and US in the position of taking sides in that struggle. Not only did it prove unsuccessful; it was in fact counterproductive.

Conclusions

For seven years running, international actors in BiH have obsessed over their posture, tools, structures and responsibility. But the commonly held assumption that BiH would propel itself into the Euro-Atlantic mainstream – the basis for the international community's plan to shift to an “ownership” policy based on EU leadership and the assumed pull of EU integration – foundered on the shoals of BiH's systemic realities. Deep divisions opened among members of the Peace Implementation Council's Steering Board and within the EU on the way forward.

The friction between PIC SB members was often presented in nearly theological terms. On one side

⁶⁷ The so-called “šestorka” of the SDP, SBB, SNSD, SDS, HDZ BiH and HDZ 1990, which governs at the state level, along with the opposition SDA.

⁶⁸ Conversations with EU officials and diplomats, Sarajevo-Brussels, February-April 2013.

⁶⁹ <http://www.delbih.ec.europa.eu/News.aspx?newsid=5575&lang=EN>

stood those who insisted on the transformative power of the EU integration process and the Union’s “soft power,” on the other those who questioned the pull of the “European perspective” and the wisdom of abandoning “hard power” tools such as the OHR and a Chapter 7-authorized EUFOR – the latter camp led by Britain in the EU and joined by the US and Turkey in the PIC SB. When Germany seized leadership of the former camp, this group’s dominance was assured. Yet the skeptics’ resistance prevented the complete closure of OHR and EUFOR, despite being in constant retreat.

The arrival of a “reinforced EU presence” under unified leadership in September 2011 gave the EU the undisputed lead international role in BiH. London and Washington seemed to agree to de-emphasize their misgivings and hope for a fresh start with EUSR Sørensen’s arrival. Yet the frictions and doubts that preceded his arrival did not evaporate, and while the international posture has substantially softened, the effects of international policy have remained nil. Even worse, the deepening political and institutional blockade has reached an all-time low point. BiH currently appears ungovernable.

This suggests that the international community’s main problem in BiH has never been primarily one of conflicting political philosophies, but rather of a lack of political will to deal with the reality on the ground. A lack of will on the part of mid-level bureaucrats to tell their political masters the truth about their failed policy is the causal element in this equation.

Despite the “reinforced presence” and the “Sørensen strategy,” the EU’s approach to BiH seems to have remained unchanged since 2011. It remains defined by what seems to be a substitute for a strategy – by bureaucratic incrementalism. This includes meeting political resistance on the ground – mostly from the RS – with lowering reform benchmarks or with refraining from applying conditionality. This policy leaves domestic political elites with the impression that far from entailing adoption of a non-negotiable list of standards, EU integration is an *à la carte* process in which the EU itself is often the supplicant – an open invitation to undermine existing rules and regulations, rather than work on adopting new ones to conform to the *Acquis*. It is no coincidence that the Brussels bureaucracy, left to their own devices by the political leaders of the EU, regularly looks as if it was assisting the always technically well-prepared RS-government machinery in undermining the state instead of countering Banja Luka’s efforts.

The most recent, desperate attempts by EU officials to push the main party leaders towards last-minute fulfillment of SAA conditions demonstrate that even without any executive mandate, the EU is and will remain an actor stuck in the morass of BiH politics – but one that refuses to recognize or respect itself as a political actor. The EU cannot bring itself to admit the limitations of its approach in BiH. Yet it eschews applying the potential leverage of its existing “toolbox” as a democratization instrument. Unless this potential is developed and employed, the “reinforced” EUSR/Head of Delegation will be as unsuccessful as his three double-hatted predecessors.

The cancellation of the April 11 High-Level Dialogue meeting by Commissioner Füle presents a forced admission of the failure of the EU’s reinforced presence “strategy.” Now is the time to develop a real, integrated strategy toward making BiH a self-sustaining state.

Where to go from here? – Recommendations for a new policy approach

The extended political impasse in and over BiH has led a growing number of policy actors to conclude that the situation is insoluble. This, of course, provides a convenient excuse for the international community to stick to the current, failed policy. Yet the fundamental problems in BiH are not difficult to identify – or fix. In fact, now is the most opportune time since Dayton to confront them. Never since the war have BiH’s citizens had such a pronounced sense of how poorly served they are by their entire political elite. Instead of catering to these politicians in the hope of short-term false grails of progress, international actors need to actively engage the population as their constituency for progress, increasing the pressure on a political elite which has never truly represented them.

Those refusing to contemplate the necessary strategic reassessment often posit a false choice, claiming that those pointing out the failings of the current approach yearn to go back in time to the Ashdown-era OHR. But wholesale revolution in the international community’s policy is not required to radically change the prevailing dynamic. Nor is a major reshuffling of existing international institutions on the ground or an investment of substantial additional resources. A return to a pre-2005 OHR-led approach is not required – or even desirable. There is no problem in principle with EU leadership, the idea of “ownership” *per se*, or the EU’s tools for enlargement. The currently mandated policy tools are sufficient. But a new policy strategy is needed to make effective use of them.

This shift would necessarily begin with the EU demonstrating real leadership by acknowledging, at least implicitly, that the current policy has failed and then demonstrating the political courage to adopt a new approach. This new strategy would need to begin with accepting the ground realities that make BiH fundamentally different from previous enlargement cases: its institutional setting, its systemic incentives for the elites’ political and institutional performance, the inherent contradiction between the elites’ verbal support for EU membership and actual behavior, and the differentiation between the elite’s interests and the citizens’ needs. To succeed in this environment, the EU, together with the PIC SB, must

- 1) neutralize the politicians’ ability to leverage fear and re-establish respect for the basic Dayton rules (including defending institutions and procedures adopted post-Dayton);
- 2) adjust its tools, institutions and mechanisms based on the return to the strict application of conditionality;
- 3) show determination to confront the political elites and actors who block or undermine reforms;
- 4) build a popular constituency for this approach with BiH’s citizenry.

This new policy approach for BiH would demand four key adjustments: definition of a division of labor between the EU institutions and the Dayton instruments, a new approach toward using the EU’s integration toolbox, a new policy toward financial assistance, and a substantially different mode of engagement with BiH citizens. None of these requires major *institutional* change. However, all would require a major *philosophical* reset for the major foreign actors in BiH, particularly the EU.

Division of labor between EU institutions and Dayton instruments:

The EU needs to recognize the limits of its policy tools and to get over its allergy to the Dayton instruments. It needs to end its antagonistic relationship and turn the coincidental coexistence of the EU's "reinforced" policy instruments and the Dayton-mandated institutions into a natural division of labor. Such a division should neither question the primacy of the EU nor of its ownership approach, but end the current rules-free environment and eliminate the fear factor from BiH politics in a way that would establish a framework in which the EU's policy could really gain traction.

- Reaffirm a strategic and collaborative relationship between the EU and other powers on the PIC Steering Board, particularly the US and Turkey.
- Set a new, logical benchmark: the Dayton institutions (OHR and EUFOR) will be maintained and fully capable of exercising their mandates until they are no longer needed – when BiH has adopted a new constitutional order which obviates the need (and legal basis) for them. This would supersede the substandard 5+2 benchmark and make clear to all in BiH that these tools are integral to the new international strategy.
- Close cooperation among all international actors to counter attempts to realize any unfulfilled agendas in BiH, making clear they will prevent or respond to any attacks on the territorial integrity or sovereignty of BiH.
- Define the terms of division of labor based on cooperation and synergy:
 - The OHR's role is to ensure adherence to the Dayton Peace Accords, to defend the sovereignty and territorial integrity of the state, and to defend institutional progress made through 2005. This function is inherently conservative in nature – its role will diminish in prominence as BiH becomes more democratically accountable and functional;
 - The next High Representative should either be a senior American political figure or a qualified candidate of sufficient stature hired on the open market.
- EUFOR's deterrent capacity must be strengthened and its Chapter 7 mandate reaffirmed. COMEUFOR needs to demonstrate his resolve to employ it to maintain a safe and secure environment and to react to any threats. This will neutralize the political elites' attempts to vector social discontent away from themselves by stoking ethnic tensions and violence.

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

- Apply strict conditionality – conditions should no longer be lowered in hope of progress and jump-starting "momentum" toward reform. *Implementation* of reform must be the requirement.
- Put the SAA into force and immediately suspend it until BiH fully meets the outstanding conditions.
- End the reductionist concentration on conditionality for SAA and membership application. The wider, overall package of reform requirements BiH will need to fulfill to ultimately join the EU should be emphasized. First and foremost among these should be the constitutional changes to create a functioning, non-fragmented state and the establishment of a single market.

- Develop a coherent package of reform conditions. This should be built around BiH’s specific institutional and structural problems and constraints, and not on a minimalistic approach to the *Acquis* or a lowest common denominator of EU member state practices. This conditionality package should include the EU returning to its demands for a state-level Agricultural Ministry and a state-level Supreme Court. Technically, this would require:
 - Extending the 2008 European Partnership Document for BiH, or better yet, drafting a new one in light of the international joint strategy;
 - Avoiding setting deadlines for the fulfillment of reform conditions unless there is the intention to stick to them and to lay out the consequences if conditions are not met.
- Curtail high-level meetings in Brussels and visits by senior EU officials to BiH until there is substantial progress in reforms or recognizable will for reforms.
- Strengthen the authority of the EUSR/EUD vis-à-vis Brussels by delegating to it more agenda-setting authority. For example, the EUSR should be designated lead in developing the new EU integration policy strategy in BiH and more generally the locus for EU policy development on BiH – not a mere representation office.
- The Council of the EU should empower its EUSR/Head of Delegation by making a unanimous political commitment to accept his recommendation for the application of restrictive measures (visa bans, asset freezes, funding curtailment) *pro forma* and without debate, under the terms of the March 2011 Council conclusions.⁷⁰

A more prudent financial assistance policy:

- The EU should curtail macro-financial assistance to BiH without strict application of conditionality, as has been the case with the approval of the first tranche of budget support in March 2013. One avenue to achieve this would be tying this conditionality to the World Bank’s stricter approach, rather than to the IMF’s looser (and less political) conditionality.
- The EU and other Western actors should encourage the IMF to opt for stricter conditionality in its financial assistance to BiH.
- The EU needs to make BiH’s access to the new IPA 2 funds conditional on the establishment of domestic planning mechanisms that are based on the harmonization of development policies on the state level, and that are not the mere outcome of bargaining processes between the entities and cantons. In addition, the EU needs to insist that once agreed, these mechanisms cannot be re-negotiated at a later stage.

Building a popular constituency for a functional BiH:

Perhaps the biggest change in the EU’s mindset would be required for the last of these four elements. Yet it is of the utmost importance. Even after the international structures and tools in BiH are recalibrated, no success is possible without the citizens seeing them as instruments for their own

⁷⁰ Council Decision 2011/173/CFSP of 21 March 2011 concerning restrictive measures in view of the situation in Bosnia and Herzegovina
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:076:0068:0071:EN:PDF>.

benefit. Long numbed into cynicism and resignation by seeing the EU and other international actors address and cater to BiH's predatory elites as "partners," citizens will have to not only *hear* a changed line, but *see* it in action to believe it. Therefore, with the EU in the lead, international actors need to engage citizens as partners – and force multipliers – in their effort to catalyze the transformation of BiH into a country which can serve its citizens and ultimately join the EU and NATO.

- Spell out the EU's new integrated approach with the PIC SB, and how this can finally lead to BiH's membership in the EU, clearly and unequivocally that BiH political elites cannot spin their way out of it before the public.
- Specify lost opportunities and direct damage inflicted by BiH's political class by their unwillingness to meet EU requirements:
 - Specify real-time costs of not meeting EU requirements on specific sectors of the population and the economy. This could be done in relation to the various forms of financial assistance (IPA funds, EU budget support). For BiH's agricultural sector, for example, the Commission could produce grounded estimates of the actual losses accrued from loss of market access to the EU on a per hectare basis for specific types of producers, as well as the future benefit of participation in the EU's agricultural funds.
 - Identify those politicians, parties, and governments which have undermined or blocked reforms and publicly assign responsibility to them for the consequences of their action or inaction.