

A Date for Belgrade?

Conditionality, German leadership and Serbia's path to the EU

A DPC Policy Paper

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Berlin

June 2013

A report from
Democratization Policy Council

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Berlin
June 2013



This report was made possible with support from the Rockefeller Brothers Fund. The opinions and views of the authors do not necessarily state or reflect those of the Fund.

TABLE OF CONTENTS

EXECUTIVE SUMMARY AND RECOMMENDATIONS	I
INTRODUCTION.....	1
A GAME CHANGER: THE EU'S EXPERIENCE WITH THE TADIĆ GOVERNMENT	2
MILOŠEVIĆ'S HEIRS STRIKE UNPRECEDENTED AGREEMENT ON KOSOVO	4
A DEMOCRATIC TRANSITION AT LAST?.....	5
THE EU AS A SOURCE OF MOMENTUM	10
A DATE FOR SERBIA? - CONCLUSIONS AND RECOMMENDATIONS	11

EXECUTIVE SUMMARY AND RECOMMENDATIONS

In the space of less than a year, relations between the EU and Serbia's new government have undergone a remarkable transformation. The government's intentions appeared suspect, or at least uncertain, to most foreign observers. Yet in the end the concessions and compromises offered by Belgrade went far beyond what Brussels ever got out of the Tadić government over four years of a supposedly close partnership. The government has not only stayed the course of EU integration, but has also taken bold steps and taken the EU process more seriously than its predecessor. The agreements Belgrade signed in Brussels in April and May this year will, if implemented, lead to the integration of the Serb enclaves in north Kosovo into the Republic of Kosovo and the dismantling of any institutions of the state of Serbia on Kosovo's soil.

This policy shift in Belgrade has been brought about by a toughening of the EU's conditionality, German leadership, and a newly-found sense of pragmatism in Belgrade. All emanated from the failure of the EU's partnership with the previous Serbian government – a failure for which the EU itself carries at least half of the responsibility. The EU has pushed Serbia's leadership, made up of the nationalist forces that underpinned the Milošević regime, several steps in the direction of a complete break with the political, institutional and economic heritage of the 1990s, and the current Serbian leadership has taken substantial political risks by bowing to Western pressure.

However, the political and (para-) institutional basis for the government's policy shift and its current cooperation with the West is fragile, democratically highly problematic and unsustainable in the mid-term. The EU and the US have accepted this as a necessary evil. This means that Kosovo now appears as the easiest of all reform challenges facing Serbia. Once the April agreement has been implemented, the ruling forces in Belgrade will find themselves confronted with the need to transform themselves as a key precondition for the political, economic and social transformation of Serbia required by the EU accession process. It is for those two reasons – the political risks Serbia's leadership has taken and the imperative soon to create a sustainable basis to turn this policy shift into a real historical break with the recent past - that Belgrade is urging that the EU give it a date. This would be a symbolic, but no less crucial, deliverable vis-à-vis its constituents.

For the EU, this means that the European Council on June 27-28 will need to strike the right balance between encouraging the Serbian leadership on its reform path and securing the timely implementation of the April 19 agreement. The Union has been lucky to create unique momentum with its integration policy in a volatile environment both on the ground and within the EU itself and at a time where the EU crisis is sawing distrust in the Union's commitment to enlargement and a joint foreign and security policy has almost evaporated. As the EU has finally succeeded in maintaining strict conditionality, it cannot afford creating the impression that fulfilling conditions will remain unrewarded. That's why the EU Council's decision needs to contain a date for Serbia in some form. At the same time, the EU also needs to thoroughly plan its next steps, above all its approach to Serbia's accession negotiations on key reform areas. This requires that Serbia uphold its current commitment to EU integration, and that Germany maintains its leadership and the current level of engagement with Belgrade – a challenge in

view of this year's elections in Germany and elections to the European Parliament next year. Finally, the EU - as well as the US - must ensure that concessions made to Belgrade in the April 19 agreement not impede Kosovo's development into a functioning, multi-ethnic state.

A date for Serbia? – Recommendations

- The European Council should decide on June 27-28 to open accession talks with Serbia and set a date of January 2014, provided the April agreement is fully implemented by the end of 2013.
- The European Council should decide to start negotiations with Kosovo on a Stabilization and Association Agreement.
- The EU and its Western partners must ensure that concessions made to Belgrade in the April 19 agreement not impede Kosovo's development into a functional, multi-ethnic and democratic state.
- Germany needs to maintain its leadership inside the EU on the Serbia-Kosovo dialogue and on Serbia's EU integration beyond the *Bundestag* elections this autumn. It should continue close cooperation with member states like the UK and others that support the current policy approach.
- The EU must ensure that it make good use of the accession negotiations with Serbia to insist on comprehensive structural reforms in all key areas – judiciary, security sector reform, political system, decentralization and the economy.
- The EU should use accession negotiations to encourage (or pressure where necessary) Belgrade to initiate a comprehensive process of constitutional reform. This should include changes that form part of EU conditionality, but also a clear definition of Serbia's state borders – without Kosovo.
- The EU and its Western partners should put substantial pressure on the Serbian government to agree a Standby Agreement with the IMF and to start quickly with comprehensive structural reforms.

Introduction

On June 27-28, European Union leaders will gather in Brussels for their customary June European Council. Among other things, the Council will discuss the situation in the Western Balkans and the EU membership bids of the countries in the region. Top of the agenda will be a decision on whether and when to open EU accession negotiations with Serbia. The 27 leaders will judge whether Serbia has made sufficient progress in “normalizing relations with Kosovo,”¹ which in practice means implementing an EU-facilitated agreement between Serbia and Kosovo signed on April 19 this year.

At present, it looks like Serbia’s EU integration bid will once again turn into a race to the finish, with all eyes turned to Berlin. While a couple of EU member states have already spoken out in favor of a positive decision, the government of Angela Merkel has not taken its decision yet. Chancellor Merkel is scheduled to present the government’s position to the parliamentary group of her CDU/CSU party on June 25 and the Bundestag is going to vote two days later.² This is the second time in less than two years that Germany plays a key role in an EU decision on Serbia’s integration process. On a visit to Belgrade in August 2011, Merkel presented Serbia with a set of tough conditions regarding its Kosovo posture, marking a shift in the EU’s position. The previous month, following difficult and inconclusive talks brokered by the EU, the conflict had escalated into violent clashes between Kosovo’s authorities and local Serbs in northern Kosovo. When the subsequent resumption of the so-called technical dialogue between Serbia and Kosovo failed to produce sustainable results, Berlin blocked a decision in the European Council to grant candidate status to Serbia in December 2011. It was only after the dialogue resulted in an agreement that Merkel joined the other Council members in granting candidate status to Serbia in March 2012.³

Since then, the changes in Serbia and in its relations with the EU have been nothing short of stunning. The West lost its “pro-European” and “democratic” partner, President Boris Tadić, and his Democratic Party (DS)-led government in general elections in May and June 2012. For the first time since Slobodan Milošević was ousted from power in October 2000, the Serbian president and government are now made up of the very forces that formed the backbone of Milošević’s regime. Nevertheless, the new government has not only maintained Serbia’s commitment to EU integration but in fact agreed to accelerate the EU-led dialogue with Kosovo. Historic first meetings between the presidents and prime ministers of Serbia and Kosovo have taken place in Brussels. And after ten rounds of a high-level political dialogue between Belgrade and Prishtina both governments signed an agreement on the normalization of relations on April 19, 2013, followed by an implementation plan on May 21.⁴ If fully implemented, these agreements will lead to the integration of Serb-majority northern Kosovo into the state of Kosovo and the dismantling of any and all institutions of the Serbian state on Kosovo territory by the end of

¹ European Commission Opinion, October 2011, COM(2011)668 final.

² Under the German constitution the parliament has a prerogative over EU enlargement decisions.

³ *Kandidatura: otvaranje perspective*, *Helsinki Sveske* No. 86, March 2012; *A comprehensive vision for the North*, KIPRED Policy Paper, February 2012, p.11-13.

⁴ <http://www.europeanvoice.com/page/3609.aspx?&blogitemid=1723>;
<http://www.slobodnaevropa.org/content/tekst-plana-primene-sporazuma-beograda-i-pristine/24996181.html>.

2013.

Berlin's reluctance to reward the Belgrade government for the constructive role it played in recent months with a date for the start of accession negotiations suggests that the unprecedented political dynamics in Serbia are making it difficult for Germany's government and parliamentarians to assess how sustainable Serbia's policy shift on Kosovo might be. This difficulty extends to the ruling parties' motivation for their pro-European policy and their capacity, or political will, to continue reforms once the country has been given a date for accession talks.

A game changer: the EU's experience with the Tadić government

The current dynamics in the EU-Serbia relationship are the product of a shift in the EU's Serbia policy after the partnership with President Tadić broke down over the Kosovo issue in August 2011. The breakdown in relations with the EU also contributed to the ouster of Tadić and his DS in 2012.

Tadić's partnership with the West dates to 2008, after a majority of western and EU states had recognized Kosovo's independence, when elections in Serbia for the first time brought both the government and the presidency under the control of the DS. As the EU ended up divided over the Kosovo issue and the Tadić government decided to reconcile Serbia's nationalist heritage and the DS' democratic, pro-European orientation by opting for a virtual policy of "Kosovo and the EU", the Union and Serbia started to engage in a kind of game of mutual self-deception that was set to collapse mid-term. The EU pretended that recognizing Kosovo's independence was no (or no explicit) condition for Serbia's EU membership, in the hope that the Tadić government would eventually accept the new reality. This offered the government the opportunity to escape hard decisions, falsely suggesting that Serbia could hold on to both the EU and Kosovo.

Tadić's policy approach - ideologically conformist, tactical, and short-sighted - was supplemented by two additional elements. First, Tadić used the image of his governing coalition as the only truly democratic, pro-European political force in Serbia to blackmail the West into refraining from applying too much pressure over Kosovo and other sensitive reform issues. Otherwise, the threat was, Tadić would lose the next election and nationalist, anti-European parties would come to power. Second, he exploited the divisions among the EU's 27 over Kosovo and tried to circumvent hard reform conditions through effective lobbying with member states.⁵ The EU and the wider West largely fell for this simplistic perception of democrats vs. nationalists and granted Tadić substantial leeway. This approach served as a cover-up for the lack of political will inside the EU to tackle its division over Kosovo. Without unity and a real strategy, the EU failed to become a serious actor in the Kosovo-Serbia conflict and to take over leadership from the US, leaving a vacuum.

This policy of "hope is our plan" did not produce the expected outcomes. Instead it complicated the EU's handling of the two main conditions for Serbia's EU integration further down the road – Kosovo and

⁵ See Kurt Bassuener/ Bodo Weber, *Croatian and Serbian policy in Bosnia-Herzegovina: help or hindrance?*, DPC Policy Study, October 2012, p.10.

cooperation with the UN's war crimes tribunal, the International Criminal Tribunal for the former Yugoslavia (ICTY). Concessions made by the European Council in 2010 on conditionality for Serbia's integration process only strengthened Belgrade's belief that it could avoid tough decisions on the Kosovo.⁶ Tadić's insistence on the "EU and Kosovo" policy set the Serbian government increasingly on a collision course with the European Union. When an EU-brokered technical dialogue between Prishtina and Belgrade in summer 2011 ended up violent clashes in northern Kosovo between Kosovo Serbs and Kosovo state police and a shooting incident involving German KFOR soldiers, the game of mutual self-deception between the EU and the Tadić government broke down. Merkel confronted Tadić with three sets of Kosovo-related conditions for Serbia's further EU integration during their meeting in August 2011 and put an end to Belgrade's virtual policy approach.⁷ By taking leadership of the EU on the matter, she began turning the EU into a serious actor in the Serbia-Kosovo conflict, signaling to Tadić there would be no more maneuvering space to exploit the EU's weakness.

When Tadić finally gave in on the technical dialogue at the beginning of 2012 and shifted course on the Kosovo issue less than half a year ahead of parliamentary and presidential elections, his previous, opportunistic warning that he would lose elections if pressured to undertake drastic reform became a self-fulfilling prophecy. Perhaps surprisingly, it was not primarily Tadić's policy shift on Kosovo but the bad shape of the Serbian economy that prompted the country's citizens to vote President Tadić and his DS-led government out of office⁸ – a fact that proved the fallacy both of his political philosophy and of the West's approach. Serbia's voters raised their voice against the dramatic economic effects of the government's failure to undertake serious and painful structural reform in economic and social policy. Tadić's tactical and conformist policy approach on EU integration and Kosovo – an approach the West had actively supported by relaxing conditionality – backfired in the economic sphere. The fact that Tadić's Kosovo policy played only a secondary role in voters' decisions demonstrated that the majority of Serbia's citizens had long since developed a much more realistic attitude on the Kosovo than political leaders in Belgrade and the West were prepared to acknowledge.

As the partnership between the West and the Tadić government was ending, a German diplomat summed it up as "a personal disappointment", while his US colleagues conceded, "we got very little out of Tadić."⁹

⁶ In June 2010 the EU decided to unblock the ratification of a Stabilization and Association Agreement (SAA) with Serbia even though the condition of full cooperation with the ICTY, especially the arrest of Bosnian Serb wartime military leader Ratko Mladić, remained unmet. Many EU governments, as well as Washington, had put pressure on a Dutch caretaker government to back down on the condition most strongly upheld by The Hague due to the specific link of the Netherlands with the fall of Srebrenica in 1995. The EU's hope to soften Belgrade's stance ahead of an upcoming ruling by the International Court of Justice (ICJ) on Kosovo's declaration of independence soon proved to be wrong. Only after the Dutch parliament forced the government, and subsequently the EU, to return to strict conditionality did Belgrade arrest Mladić in May 2011 - after having insisted for years it could not get a hold of the ICTY indictee.

⁷ <http://www.bundeskanzlerin.de/Content/DE/Mitschrift/Pressekonferenzen/2011/08/2011-08-23-pk-merkel-tadic.html?nn=75644>.

⁸ Ivan Torov, "Overavanje ukupnog stanja", *Helšinska povelja* No.163-164, May-June 2012, p. 13.

⁹ Conversations with German and US officials, Berlin-Washington, June 2012.

Milošević's heirs strike unprecedented agreement on Kosovo

Tadić's election defeat in mid-2012 left domestic and international observers wondering what the new coalition government might seek to achieve. Tomislav Nikolić, leader of the Serbian Progressive Party (SNS), narrowly defeated Tadić in the second round of the presidential election in June, and the SNS subsequently succeeded to lure the Socialist Party (SPS) away from the previous coalition with the DS by offering its leader, Ivica Dačić, the prime minister's post.¹⁰

The uncertainty was especially acute in the case of the SNS. The party had been formed in 2008 as one kind of response from the far right to Serbia's political dilemma – either the EU or Kosovo. When the leader of the Serbian Radical Party (SRS) and ICTY indictee Vojislav Šešelj ordered his MPs to vote against the ratification of the SAA from his cell in The Hague because of the Western-backed declaration of Kosovo's independence, Nikolić, then acting party president, broke away with other SRS members and set up the SNS.¹¹ The SNS became the second largest parliamentary party and turned the SRS into a marginal political force. Yet in subsequent years it failed to articulate a clear ideological-programmatic direction. It would criticize the Tadić government from a democratic, pro-European standpoint but also from a Serb nationalist position.¹² Its various boycott activities failed to bring down the government.

In a first surprise move, Nikolić handed over his function as party president to the secretary general and new deputy prime minister, Aleksandar Vučić, and declared he would restrict his role to the constitutionally defined, largely representational functions of the state president. He thus signaled a more democratic approach than his predecessor Tadić, who by keeping his party-leader function had built a kind of “super-presidential system”¹³ not foreseen by the constitution, but tolerated by his Western allies. On Kosovo, the new government did not even try to pick up the “Kosovo and EU” policy. Instead, Belgrade accepted the start of a high-level political dialogue brokered by the EU's Catherine Ashton. Prime Minister Dačić went to Brussels on October 19 for a first historical meeting with his Kosovo counterpart, Hashim Thaçi. Many more followed. A negotiating platform originally drafted by the president's office and adopted by the government in a modified version in December 2012, after interventions from Western diplomats, was followed by a resolution adopted by the parliament in January 2013.¹⁴ The two delegations reached a tentative agreement that was rejected by the Serbian delegation - led by Dačić and Vučić - on April 2; a modified version was endorsed by the Serbian government on April 19.

Vučić, who in addition to being deputy prime minister had also been appointed coordinator for the fight against corruption, declared at the end of 2012 the start of the government's fight against systemic corruption in Serbia. The campaign resulted in the opening of a number of high-level corruption cases

¹⁰ “Srbija ima novu vladu! SNS-SPS-URS”, *Blic*, June 28, 2012.

¹¹ http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=09&dd=08&nav_category=11&nav_id=317562.

¹² <http://istinomer.rs/akter/tomislav-nikolic/>.

¹³ Interview with EU official, Brussels June 2012.

¹⁴ Draft platform text; http://www.media.srbija.gov.rs/medsrp/dokumenti/politicka_platforma2013_cyr.pdf;
http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala_akta/2013/RS1-13Lat.pdf.

and in dozens of arrests, including that of the most prominent of Serbia's post-transition tycoons, Miroslav Mišković, as well as ministers from the previous government. This campaign overnight turned Vučić into the most popular politician in Serbia by far, and the SNS' approval rates rose close to an absolute parliamentary majority.¹⁵ At the same time the new government declared its determination to pursue reforms in all areas relevant to Serbia's further EU integration progress (such as judicial reform and regional cooperation).¹⁶

A democratic transition at last?

The pro-European course of Serbia's new government, now in office for almost a year, and its role in the Kosovo dialogue have caught many observers by surprise - not only those who were skeptical about the coalition but also those who took a more positive view. Yet Serbian politics has been dominated by the Kosovo negotiations and EU integration, and the government has barely begun facing up to other pressing domestic policy issues, feeding initial doubts about how sustainable the government's pro-democratic, pro-European orientation may be and whether the policy shift on Kosovo is irreversible. It thus seems worthwhile to take a closer look at the ruling elite's policy shift, the foundations of the current policy, and its implications for future democratic reforms.

Regarding Kosovo, the government within just a few weeks moved a long way from its original position towards meeting the EU's demands. The December platform, especially in its draft version, was a last attempt to have it both ways, to maintain the traditional nationalist Serbian position on Kosovo as a Serbian province and to respect Western benchmarks of "dismantling parallel structures".¹⁷ Practically nothing from the old position ended up in the April agreement. Faced with Western red lines, Belgrade early on shifted its negotiation target to the fight for territorial autonomy for Serbs in north Kosovo to create an autonomous region from the four Serb-majority municipalities, with a Council of Municipalities as a kind of regional government with broad executive authority.¹⁸ In the April 19 agreement, Belgrade got very little of this realized.¹⁹ Although Serbian officials have consistently

¹⁵ See chapter „Korupcija: bez sudskog epiloga“ in *Ljudska prava u Srbiji 2012*, Helsinki Committee in Serbia, June 2013, p.141-148.

¹⁶ Conversation with EU and European member state officials, Belgrade, March-May 2013.

¹⁷ Passages that Western diplomats insisted be deleted in the final version among other things asked for the Serbian army to be one of the guarantors of security in a demilitarized Kosovo. The formula that "nothing is agreed until everything is agreed" reflected the traditional hope that international power relations could change in the distant future, enabling Serbia to get back control over Kosovo.

¹⁸ <http://www.24sata.info/vijesti/regija/139219-Dacic-lzvrzne-ovlasti-srpskih-opcina-Kosovu-cijenu-datma-pregovora.html>.

¹⁹ Both the US and Germany early on in the negotiations clearly signaled that any form of regional autonomy would be unacceptable, citing the negative experience with the Republika Srpska in Bosnia-Herzegovina. Belgrade's "negotiation success" in getting beyond the Kosovo constitution and the Athisaari plan seems to mainly be in the ethnic composition of that part of the Kosovo judiciary in charge of the north as well as in the post of a regional police commander, who will be appointed based on a proposal by the Council of municipalities.

In the framework of this paper it cannot be analyzed whether these concessions made by the Kosovo government and the European Commission on territorialized collective ethnic rights for the Serb minority will have a negative impact on the future development of the Republic of Kosovo as a functional, democratic and multi-ethnic state.

maintained that Serbia will never recognize Kosovo's independence and no document signed will have an impact on the future international status of Kosovo, they did in fact sign an agreement and implementation plan that essentially amounts to the integration of the north into the Republic of Kosovo and the dismantling of Serbian state institutions in the north. Some Serbian law experts suggest that Serbia thus not only *de facto* recognized Kosovo's independence, but also implicitly *de jure*.²⁰

Also, even while insisting there would be no recognition of Kosovo, Prime Minister Dačić and to some extent Deputy Prime Minister Vučić as well have shifted the public discourse in Serbia toward the unpleasant truth. In a remarkable article, Dačić in March admitted: "We were lying to ourselves that Kosovo is ours and even made this lie official in the form of the constitution. Today this very same constitution is of no help. The president of Serbia cannot travel to Kosovo, nor the prime minister, nor the ministers, nor the police, nor the army."²¹ This significant policy shift appears to be the result of two factors. First, faced with a tough choice between European integration or self-isolation, and with the EU's strict conditionality leaving very little maneuvering space, the leaders of the ruling parties have opted for the rational decision. Also, the government seems to believe that if it is in any case forced to take this decision, then it is better to do so at the beginning of its mandate. Finally, the deep economic and fiscal crisis in Serbia seems to have made the decision-making process much easier.²²

Belgrade's policy shift has been engineered by the triumvirate at the head of the state – President Nikolić, Prime Minister Dačić and Deputy Prime Minister Vučić - and is based on an unusual evolution of (para-) institutional relations and the balance of power between the three.²³ Nikolić lost considerable influence by restricting himself to the largely representational functions of the President of Serbia. His oscillation between traditional nationalist and more statesman-like statements has left him mostly sidelined by the West. Still, he has kept a certain influence over those parts of the SNS that remain uncomfortable with the policy shift that is underway.

Ivica Dačić, as Prime Minister and Minister of Internal Affairs, is formally the most powerful person in Serbia. Yet in fact his position is very weak, as he only heads the junior partner in the ruling coalition, the SPS. Also, the function of prime minister is institutionally fairly weak in Serbia, and has been further weakened by Tadić's super-presidential system. Aleksandar Vučić on the other hand has evolved into the strong man of Serbian politics, though he formally is only Deputy Prime Minister. His power derives from his role as the president of the largest ruling coalition party, as well as from his function as government coordinator for the fight against corruption, which turns him into a potential threat to officials from the previous government - in which the SPS participated. In this latter role Vučić, who is also defense minister but so far mostly leaves that work to his deputy minister, presides over working

²⁰ Vesna Rakić-Vodinelić, „Kome/ čemu je doista odzvonilo?“, <http://pescanik.net/2013/05/komecemu-je-doista-odzvonilo/>.

²¹ Ivica Dačić, „Đinđić je priča o Srbiji“, *NIN*, March 07, 2013.

²² Interviews and conversations with EU diplomats and domestic political analysts, Belgrade March, May 2013.

²³ Interviews with EU diplomats and domestic political analysts, Belgrade March, May 2013.

groups of the police, and thus exerts substantial influence over Dačić's ministry as well.²⁴ Western officials have recognized this balance of power and accept Vučić as the key person in their current relations with Belgrade.

Vučić's prime source of authority, the fight against Serbia's systemic corruption, also signals a change in Serbian politics that remains problematic from an institutional point of view. The fact that Vučić has tackled a series of high-level corruption cases that have been known to the public for years but remained unprosecuted under the previous administration clearly indicates that the judiciary and the police in Serbia are under strong political influence. This means that Vučić's anti-corruption fight is highly personalized – and has to be as long as there is no sufficient independence of the work of police, prosecutors and judges. As such, the future of the government's anti-corruption fight could evolve in two directions – it could end up as a means to control or weaken political opponents or develop into a truly institutionalized program to rid Serbia of its systemic corruption.²⁵

Another background feature behind the government's current course is the almost complete absence of any meaningful opposition, both inside and outside the parliament. In Parliament, there is an almost complete consensus on the government's shift on Kosovo and its pro-European course. Only the Democratic Party of Serbia (DSS) of Vojislav Koštunica, a former prime minister, with 20 out of 250 MPs, is resisting the government policy. The opposition parties are demoralized by the curious fact that the former nationalist opposition now in power is pursuing a policy that the current opposition lacked the political courage to adopt (DS) or has advocated for years and thus remained on the margins of the political game (Liberal-Democratic Party, LDP). At the same time, the DS is in permanent crisis. Plagued by a weak leadership and management and racked by continuing infighting, the DS has not managed to escape the disarray that followed from its loss of power, when Belgrade Mayor Dragan Đilas replaced Tadić as party president.²⁶

In addition, the change in government and disillusionment with the previous administration has left civil society and opinion-makers deeply divided.²⁷ Finally, the media are incapable of playing a strong corrective role due to persisting structural problems.²⁸ The change of government has been followed by a shift of friendly reporting towards the new ruling forces.

Major reform challenges ahead

Ironically, these factors, which have enabled the government's shift on Kosovo and EU integration, are

²⁴ Many analysts in Serbia insist Vučić is indeed controlling the police forces. In addition, he has also been named "coordinator of the security services", an institution established by Tadić that had been occupied by Tadić's chief of cabinet. Interviews with security sector experts and Western diplomats, Belgrade March-May 2013.

²⁵ „Korupcija: bez sudskog epiloga“, p.149-152; conversations with EU officials, political analysts, Belgrade March, May 2013.

²⁶ Interviews with political parties representatives, Belgrade March, May 2013.

²⁷ Interviews with civil society representatives, Belgrade March, May 2013; "Zašto deo civilnog društva podržava Vučića?", *Danas*, December 24, 2012.

²⁸ These are above all a weak tradition of investigative journalism, the state of media legislation, and economic pressure. Conversation with journalists and media experts, Belgrade May 2013.

not only highly problematic from an institutional, a democratic and a rule-of-law point of view. They also represent major obstacles to key reforms the government will have to undertake in the future, both under its EU accession process and beyond. These are:

Kosovo: Belgrade's major short-term challenge will be implementing the April 19 agreement with its very short deadlines. This tight schedule does not allow any space for resistance by Kosovo Serbs in the north, people who have been instrumentalized by Belgrade for more than two decades. Still the balance of power between Belgrade and the north suggests that implementation could go more smoothly than expected. A very different kind of challenge for Belgrade will be the inherent contradiction between Belgrade's handover of control over the north to Kosovo's authorities and the legal heritage of the current Serbian constitution which defines Kosovo as part of its state territory.²⁹

Political system: Serbia's political system remains highly dysfunctional. Governments are composed from a large number of parties. Ministers, who include many party leaders, have almost absolute control over their ministries. This makes the establishment of a consistent government policy almost impossible, which instead usually issues from a set of deals struck between the ministers and party leaders. This setting is partly a consequence of the legally weak position of the prime minister, and partly of an election system that sees a large, rising number of parties, including extremely small ones, entering parliament and the ruling coalition through party coalitions competing in parliamentary elections. The role of Serbia's parliament remains weak, too. The existing proportional election system leaves MPs highly dependent on their party leaders and without a link to their constituents. MPs have no staff of their own, so there is very little opportunity to specialize in a specific policy field. As a consequence parliament mostly serves as a voting machine for party leaders and for the passing of laws drafted by the government. Oversight of the executive's work and the implementation of adopted legislation remain weak.³⁰

Judiciary: The judiciary is among the biggest construction sites the ruling coalition inherited from the previous government, whose reform attempts ended in utter failure. A reappointment process for all judges and prosecutors, initiated in 2009-10, was supposed to purge the judicial system from officials who were professionally or legally discredited in the Milošević era. The much-needed procedure, however, was badly prepared and legally fraught. Unfortunately, the EU indirectly supported this reform farce – one of the sub-chapters of the EU's ill-designed partnership with the Tadić government.³¹ In June 2012 the Constitutional Court annulled the whole process. As a consequence over 800 judges and prosecutors, one third of the total, have to be returned to their workplace. With 900 officials who had in the meantime been appointed judges and prosecutors, this not only means the annulment of the re-appointment process, but also the death blow to the streamlining of the judiciary - adding to the

²⁹ Interviews with EU officials, domestic political analysts, Belgrade March, May 2013.

³⁰ Interviews with MPs, political analyst, Belgrade March, May 2013. EC Serbia Progress Report 2012.

³¹ In the 2011 Serbia progress report, the Commission presented the state of the re-appointment process in a much more favorable light than it did in internal papers. The case was eventually made public by the European parliament. Conversation with MEPs, Brussels 2012.

instability and lack of independence of the judiciary.³² The direct election of judges and prosecutors in Serbia by the parliament is only the most visible part of political interference. The EU has already demanded that this provision be removed from the constitution once Serbia opens chapter 23 of accession negotiations (expected to be among the earliest chapters to be opened).³³

Police: Reforming the police is the second key reform required for securing the rule of law in Serbia. The heritage of the Milošević era – when the police formed the backbone of the authoritarian regime and the boundaries between criminal underground and security services had been deliberately erased for political purposes and in pursuit of war aims – still weighs heavily on the police. After more than a decade of support from Western governments and international organizations to reform the security services, the Ministry of Internal Affairs remains the “least affected by reforms.”³⁴

Decentralization: The vertical division of power in the Serbian state remains an open political issue and a source of political instability and potential ethnic conflict. This relates especially to the regional level, to the status of the northern Serbian province of Vojvodina with its multiethnic population, but also to the Preševo valley in the south with its large Albanian population and the Sandžak with its Bosniak population. On the municipal level, too, post-2000 reforms have led to a largely incoherent system of local self-governance.³⁵ A comprehensive solution to decentralize Serbia’s governance system in a way that leads to more democracy and efficiency has so far been prevented by the Kosovo issue, as much as it served as a welcome excuse and a tool of political manipulation.³⁶

Constitutional Reform: Serbia’s 2006 constitution is a highly problematic document. Hastily drafted as the result of a bargain between Boris Tadić and Koštunica, prime minister at the time, it was designed as an expression of political resistance against Kosovo’s forthcoming declaration of independence rather than as the founding document of a political community. As a consequence, the constitution is riddled with inconsistencies, legally contradictory provisions, and democratically problematic solutions and leaves a number of key political issues unresolved.³⁷ Some elements such as the political appointment of judges and prosecutors will need to have been changed at an early stage of Serbia’s EU accession negotiations.

The economy: The economy is by far the biggest and most pressing reform challenge for the government, which currently faces a serious budget crisis as a result of long-lasting resistance by the political elites to serious structural reforms. Serbia’s economy and fiscal position are burdened by a huge public sector with hundreds of public companies that have not been privatized or are stuck in so-called

³² Interviews with legal experts, Belgrade March 2013;

http://ec.europa.eu/enlargement/pdf/key_documents/2013/sr_spring_report_2013_en.pdf.

³³ Interview with European official, Belgrade May 2013.

³⁴ Conversation with Serbian security sector experts, March-May 2013.

³⁵ The European Commission’s 2012 Progress Report states that “there is no available overview of the functions delegated to the municipalities.”

³⁶ See chapter “Decentralizacije vs. centralizacije” in *Ljudska prava u Srbiji 2012*, p.440-494. Conversations with analysts and political party representatives, Belgrade May 2013.

³⁷ See Venice Commission Opinion No. 405/2006; “Da li je Srbija ustavna zemlja?”, *Novi Magazin*, June 13, 2013.

restructuring. Those largely unproductive companies still employ some 100,000 workers; most are incapable of producing for the market yet generates hundreds of millions of euros in costs for the state. Wages in the public sector – on average 30% above those in the private sector - present a larger distorting factor. An unreformed pension and health care system and a system of inefficient state subsidies further burden the economy and the budget.

Serbia's protectionist economic policy rests on a nexus of state officials, ruling elites and big private companies, the result of Serbia's pseudo-privatization process. At the same time, very little support is available to small and medium-sized enterprises that could be drivers of innovation and employment. This unpromising business environment is further weighed down by the lack of a functioning judiciary and ineffective tax and customs authorities, which enable massive tax evasion and a burgeoning grey economy.³⁸

The government has traditionally responded to the destabilizing fiscal effects of its economic policies with borrowing and other short-sighted measures for bridging acute budget deficits – a policy that has now reached its limits. The current government refused support from the IMF in December 2012 because a standby agreement was conditioned with a commitment to comprehensive structural reforms. Borrowing cheap money on the financial market instead, it took less than half a year for Serbia to find itself back in serious budget crisis. Foreign and domestic economic experts, as well as the government's own fiscal council, all agreed that the government faces a choice between structural reforms or a Greek scenario in the near future.³⁹

The EU as a source of momentum

The momentum in the negotiations between Serbia and Kosovo and the pro-European course of Serbia's government are primarily the product of a policy change in the international community, notably the European Union. The EU's conditionality hardened as a result of the EU's experience with the Tadić government. The Tadić government manipulated the EU by giving-in to conditions at the very last moment and then failing to implement these agreements once a positive decision from Brussels had been secured. The insecurity following the change of government last year reinforced the EU's determination to uphold conditionality.

Several factors helped drive the political dialogue between Serbia and Kosovo to its conclusion in April and May 2013.⁴⁰ The EU had no clear plan as to what it wanted to achieve with the dialogue, but the framework had been set by Merkel's third condition from August 2011 – the "dismantling of parallel structures in the North." The shift from the previous "technical dialogue" to a high-level political format became an imperative not only because of Belgrade's insistence, but also because of the EU's disappointing experience with the former format.

³⁸ Interviews with economic experts, Belgrade March 2013; „Kud plovi ovaj brod?“, *NIN*, May 23, 2013.

³⁹ http://fiskalnisavet.rs/images/izvestaji/23052013predlog_fs_za_stabilizaciju_jav_fin.pdf;
<http://www.imf.org/external/np/ms/2013/052013b.htm>.

⁴⁰ Reconstruction based on interviews with EU member state diplomats and German MPs, Belgrade-Berlin March-June 2013.

The intimate format of the dialogue reflected the seclusion of Ashton's office, but the red lines were set by Germany (and to a lesser extent the US) – above all the rejection of any form of substantial regional autonomy for the north. Germany thus maintained the EU leadership it had taken in 2011. Germany's key role was further underlined vis-à-vis Belgrade by the initiative of a group of MPs from Merkel's CDU-CSU parliamentary group that presented a seven-point plan of conditions for supporting the opening of accession talks in the *Bundestag*. That plan is largely in line with the EU's policy and the April agreement, but contains additional points that clearly indicate that the path on which Belgrade has embarked will eventually, in the long term, have to lead to some form of recognition of Kosovo's independence.⁴¹ Finally, these external factors have also generated pressure for a quick solution with fairly short implementation deadlines, in light of Germany's general election in September and elections to the European Parliament next May, followed by the formation of a new European Commission and the appointment of a new EU foreign-policy chief. These factors have joined together to generate momentum that was barely conceivable a year ago.

At the same time, these external factors also suggest that the achievements so far are fragile and that all actors are in a balancing act. For example, while Merkel has taken indispensable leadership in the Western Balkans, back home she has not been above espousing skepticism toward further EU enlargement. The initiative of her party's MPs is also partly driven by growing enlargement fatigue within the party and the parliamentary group.

A date for Serbia? - Conclusions and Recommendations

In less than a year, relations between the EU and Serbia's new government have undergone a remarkable transformation. The government's intentions appeared suspect, or at least uncertain, to most foreign observers. Yet in the end the concessions and compromises offered by Belgrade went far beyond what Brussels ever got out of the Tadić government over four years of a supposedly close partnership. The government has not only stayed the course of EU integration, but has also taken bold steps and taken the EU process more seriously than its predecessor. The agreements Belgrade signed in Brussels in April and May this year will, if implemented, lead to the integration of the Serb enclaves in north Kosovo into the Republic of Kosovo and the dismantling of any institutions of the state of Serbia on Kosovo's soil.

This policy shift in Belgrade has been brought about by a toughening of the EU's conditionality, German leadership, and a newly-found sense of pragmatism in Belgrade. All emanated from the failure of the EU's partnership with the previous Serbian government – a failure for which the EU itself carries at least half of the responsibility. The EU has pushed Serbia's leadership, made up of the nationalist forces that underpinned the Milošević regime, several steps in the direction of a complete break with the political, institutional and economic heritage of the 1990s, and the current Serbian leadership has taken substantial political risks by bowing to Western pressure.

⁴¹ Conversations with German MPs; http://www.kas.de/wf/doc/kas_9213-1442-1-30.doc?130322143943.

However, the political and (para-) institutional basis for the government's policy shift and its current cooperation with the West is fragile, democratically highly problematic and unsustainable in the mid-term. The EU and the US have accepted this as a necessary evil. This means that Kosovo now appears as the easiest of all reform challenges facing Serbia. Once the April agreement has been implemented, the ruling forces in Belgrade will find themselves confronted with the need to transform themselves as a key precondition for the political, economic and social transformation of Serbia required by the EU accession process. It is for those two reasons – the political risks Serbia's leadership has taken and the imperative soon to create a sustainable basis to turn this policy shift into a real historical break with the recent past - that Belgrade is urging that the EU give it a date. This would be a symbolic, but no less crucial, deliverable vis-à-vis its constituents.

For the EU, this means that the European Council on June 27-28 will need to strike the right balance between encouraging the Serbian leadership on its reform path and securing the timely implementation of the April 19 agreement. The Union has been lucky to create unique momentum with its integration policy in a volatile environment both on the ground and within the EU itself and at a time where the EU crisis is sowing distrust in the Union's commitment to enlargement and a joint foreign and security policy has almost evaporated. As the EU has finally succeeded in maintaining strict conditionality, it cannot afford creating the impression that fulfilling conditions will remain unrewarded. That's why the EU Council's decision needs to contain a date for Serbia in some form. At the same time, the EU also needs to thoroughly plan its next steps, above all its approach to Serbia's accession negotiations on key reform areas. This requires that Serbia uphold its current commitment to EU integration, and that Germany maintains its leadership and the current level of engagement with Belgrade – a challenge in view of this year's elections in Germany and elections to the European Parliament next year. Finally, the EU - as well as the US - must ensure that concessions made to Belgrade in the April 19 agreement not impede Kosovo's development into a functioning, multi-ethnic state.

For the European Council on June 27-28:

- The European Council should decide on June 27-28 to open accession talks with Serbia and set a date of January 2014, provided the April agreement is fully implemented by the end of 2013. A report by High Representative Ashton and Commissioner Füle shall form the basis for the Council to confirm its decision or delay the opening of negotiations.
- The European Council should decide to start negotiations with Kosovo on a Stabilization and Association Agreement.

On Kosovo's future development:

- The EU and its Western partners must ensure that concessions made to Belgrade in the April 19 agreement which institutionalized ethnicity beyond the Ahtisaari plan not impede Kosovo's development into a functional, multi-ethnic and democratic state.
- The 22 recognizers of Kosovo's independence among EU member states should ask Belgrade to support them in explaining to the 5 non-recognizers how the normalization of Serbia-Kosovo relations and the EU integration process depend on them stopping to block Kosovo's path to the EU.

On Germany's role:

- Germany needs to maintain its leadership inside the EU on the Serbia-Kosovo dialogue and on Serbia's EU integration beyond the *Bundestag* elections this autumn. It should continue close cooperation with member states like the UK and others that support the current policy approach.
- A German government that demands painful decisions from Serbia (and Kosovo) needs to actively promote the importance of the EU's enlargement policy in the Western Balkans vis-à-vis its domestic public.

For EU accession negotiations:

The EU must ensure that it make good use of the accession negotiations with Serbia to insist on comprehensive structural reforms in all key. The full range of existing instruments - such as opening and closing benchmarks for each chapter - plus various forms of support to Serbian authorities shall be used.

This policy should concentrate on the following key areas:

- Judiciary
- Security sector reform, especially police
- Political system
- Decentralization
- Economy

In those areas where the EU *acquis* is weak (security sector, decentralization) the EU should develop innovative approaches, for example informal conditionality by member states as well as financial incentives and assistance from other international institutions (Council of Europe, OSCE, World Bank, IMF, etc.).

The EU should encourage the Serbian government to include the opposition in the EU accession process. The EU should also establish cooperation with civil society in Serbia to promote an effective watchdog function for NGOs in the accession process.

- The EU should use accession negotiations to encourage (or pressure where necessary) Belgrade to initiate a comprehensive process of constitutional reform. This should include changes that form part of EU conditionality (e.g., the appointment of judges and prosecutors in chapter 23), but also a clear definition of Serbia's state borders – without Kosovo. This would prevent potential legal conflicts from the de-facto recognition of Kosovo through the signature and parliamentary ratification of the April 19 agreement, and would substantially facilitate and accelerate Serbia's EU integration.

On the economy:

- The EU and its Western partners should put substantial pressure on the Serbian government to agree a Standby Agreement with the IMF and to start quickly with comprehensive structural reforms. This policy should be supported by
 - the early opening of accession chapters relating to economic and social reforms;
 - substantial financial assistance from the EU and others to reduce transition costs for key structural reforms.