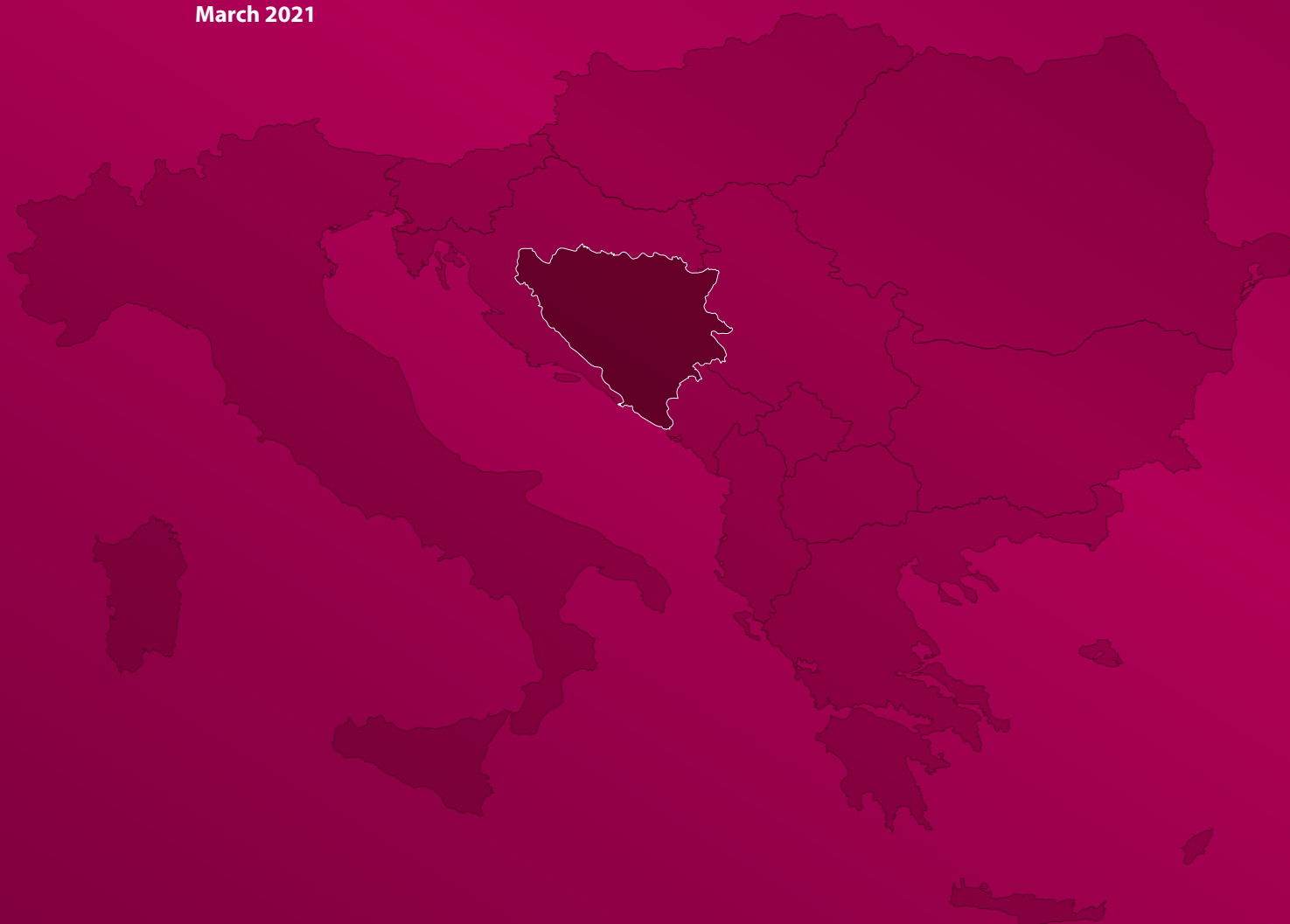




BiH's Decisive Electoral reform Strikes New Divisions among Internal and External Actors

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Executive Summary

The deepening political crisis in Bosnia and Herzegovina, whose extent was revealed during the COVID-19 pandemic and 2020 local elections has revived public interest in country's electoral reform. After avoiding and delaying reforms of its defunct electoral system for years, Bosnia Herzegovina's leaders are now forced to deal with this issue amidst the multidimensional health, political and economic crises caused by the COVID-19 pandemic.

Reform of BiH's election system is one of country's biggest challenges since the Dayton Agreement as it opens critical questions about relations amongst its three constitutive peoples and the very nature of the BiH political system. The importance and complexity of the debate on the reform draws also regional and international attention, especially from neighbouring Croatia and Serbia or the EU, US and Russia. Positions of key local actors on eventual electoral reform range widely, and take various, often opposite directions.

This paper analyses the different positions and strategies of key actors on the eventual electoral reform of BiH's defunct and corrupt electoral system and outlines its local, regional and international context. It focuses primarily on key internal and external actors, which are engaged in negotiations. Given the state of almost complete political deadlock as well as mistrust among local leaders, the outcome of this reform is likely going to be determined by external influences.

The analysis shows that the different positions reflect divergent views, which Bosniak, Bosnian Croat and Serb parties have on BiH's past, present and future. If successful, the reform would not only fix the country's election system, but also patch-up the Washington Agreement and relations between Bosniak and Bosnian Croat leaders, which is critical for the survival of BiH.

It further argues that given the depth of local political deadlock, the outcome of this reform will once again end up depending on the engagement of the US and EU, as well as other foreign influences. The renewed attention, which Washington and EU capitals have recently been paying to the Balkans looks encouraging. Nevertheless, if the West wants to achieve a breakthrough in BiH after 15 years of failed reform attempts, it will finally have to put its money where its mouth is, and find a different approach to addressing BiH's problems.

Any Western efforts will be facing opposition not only from local but from regional and other international actors. One of the key roles in BiH's unfolding electoral reform will be played by Croatia, which has already thrown all of its political and diplomatic muscle behind Bosnian Croat leadership and is determined to make sure that in future Bosnian Croat officials are elected by what they see as "legitimate" Bosnian Croat voters. In its efforts, Croatia may find unlikely allies in Serbia and Russia, since Zagreb, Belgrade and Moscow want to keep BiH's political system highly decentralized and ethnically-based.

The upcoming reform is caught in a legal and political quandary. On the one hand six rulings of the European Court of Human Rights, ECHR, require from BiH legislators to remove ethnic discrimination from BiH Constitution. On the other hand, BiH Constitutional Court in its 2016 ruling calls upon them to change the election law to ensure that political representatives of one constituent people are not elected by other ethnic groups.

Finding a proper balance between these two almost opposing poles, as well as among different ethnic, political and technical solutions for BiH electoral reform within such a difficult environment and limited timeframe will be exceptionally hard. Yet failure should not be an option, as it would risk the fate of Bosnia and Herzegovina and by proxy the stability of the Balkans and the whole of Europe.



Introduction

The COVID-19 pandemic has revealed the full extent of the dysfunctionality of BiH's political, administrative, and judicial systems, as well as its public services. Nevertheless, BiH's political crisis deepened even further towards the end of 2020, before, during and after the country's local elections. In addition to increased nationalist and populist rhetoric – a traditional part of BiH election customs – the elections brought with them numerous claims of election fraud, most of which the BiH Court rejected.

The extent of election manipulation witnessed in the 2020 local elections, and the failure of the BiH prosecution and judiciary to address it, has convinced local and international officials and experts that thorough electoral reform can no longer be avoided. Some of the officials stressed that holding any further elections in BiH is “pointless” since the current system does not reflect voters' opinions anymore. The holding of future elections was further put into question by Bosnian Croat and Bosnian Serb leaders, who warned that their parties would boycott and/or block the upcoming 2022 general elections unless the electoral system is fixed by then. Sources close to these parties stress that these warnings should be taken seriously, and that blocked elections could push BiH into anarchy.

These and similar statements, the deepening political crisis, as well as the recent 25th anniversary of the BiH Dayton peace agreement, have as of late revived public interest in electoral reform, both in BiH and abroad. The complexity of this reform is validated by the fact that over the last 15 years, at least five different reform attempts have failed, despite the strong and concrete engagement of the US and the EU. Finding a compromise is even more difficult in light of the fact that all key internal and external factors have divergent agendas, interests, as well as perceptions of the scope and direction of electoral reform.

This paper analyses the widely ranging positions of key actors on the eventual electoral reform and aims to outline the local, regional and international context of the upcoming reform of BiH's defunct and corrupt electoral system. It does not put so much attention to internal, legal, or technical aspects of electoral reform, since most of these issues have been debated and different options and

scenarios have been formulated during previous electoral reform attempts over the past 15 years, and upcoming negotiations will most likely rely on some of these already-existing drafts.

Instead, this paper focuses primarily on key internal and external actors, which are and will be engaged in negotiations. Given the state of almost complete political deadlock, as well as mistrust among local leaders in BiH, the outcome of this reform is likely going to be determined by these external influences.

The paper also takes a deeper look into the roots of BiH's structural and political crises, especially the fate of the alliance between Bosniak and Bosnian Croat political parties, which was established by the 1994 Washington Agreement. This alliance, which was once considered key to the subsequent Dayton peace agreement, now lies broken in pieces, destroyed by the short-sighted politics of Bosniak and Bosnian Croat ruling and opposition parties alike. Amidst past warnings from Western officials and the deepening local crisis, this paper raises the question whether BiH can survive – at least in its current form – without an urgent revival of the Washington Agreement.

Another question that will determine the outcome of BiH's electoral reform – and the future of the country itself – is the one about the nature of BiH and its electoral, political and administrative systems, and whether it should remain set along ethnic lines, or if it would be better to evolve towards more civic-based models.¹ A parallel question on this very issue is whether BiH society at present really offers a choice between ethnic and civic models, or whether this debate is also being used as part of a local all-out political war.

The paper first shows how 2020 local elections and COVID-19 exposed the depth of BiH's dysfunctionality. In order to provide better insight into the positions, interests and strategies of different internal and external actors in the upcoming electoral reform, as well as possible obstacles and windows of opportunity that will be encountered along the way, it then provides a chronological overview of a series of similar reforms, which were attempted but have failed since 2006. The main analytical part outlines positions

¹ In this particular case, civic election model(s) refer to those based on one person – one vote system without any ethnic electoral quota, preferred by Bosniak parties and strongly rejected by Bosnian Croat and Bosnian Serb ones, which see it as a critical violation of the Dayton peace accord and a way for the domination of more numerous Bosniaks.



and strategies of relevant local, regional and global actors involved in the electoral reform debate. It first analyses the positions of Bosniak, Bosnian Croat and Bosnian Serb political parties, then looks at the situation in Croatia and Serbia and finally examines also the stance and potential role of the US, the EU and Russia.

COVID-19 and 2020 local elections reveal the depth of the BiH crisis

COVID-19 exposes BiH's dysfunctionality

The outbreak of COVID-19 has revealed the full depth of the BiH crisis, which has bankrupted country's administrative, political and judicial systems, as well as its public services. Instead of coordinating their emergency efforts, BiH's numerous administrative units² have established different health and security measures and regulations, creating further confusion, frustrations and concerns among the population. The public health system across the country effectively collapsed, with hospitals establishing different regulations for those infected with COVID-19, while almost completely abandoning all other patients.³

Meanwhile, BiH politicians intensified their populist and nationalist rhetoric, completely blocking the political and decision-making system. The depth and seriousness of the deadlock was reflected in the fact that the ruling parties at the state level were unable to agree over the division of emergency COVID-19 funds provided by the IMF more for than three months after the funds were approved.⁴

The all-out political war, which the country has witnessed in recent years has collapsed all functioning ruling coalitions on almost all administrative levels. Meanwhile, the main parties in the BiH Federation – the Bosniak Party of Democratic Action, SDA, and the Croat Democratic Union, HDZ – did not even try to implement the results of the 2018 general elections and establish a new Federation government. Instead, the outgoing Federal government of Fadil Novalić continued hobbling along in a caretaker mandate, without a stable ruling majority and facing several criminal investigations.⁵ Amidst the COVID-19

crisis, local media revealed numerous corruption scandals where governments circumvented regular procedures and engaged inappropriate companies for procurement of critical medical equipment, yet none of those scandals led to any verdicts.

BiH administration at the state and entities' level failed to establish any coherent programs to assist local companies and their workers in facing the consequences of the economic slowdown caused by COVID-19. As a result, more than 30,000 people lost their jobs only in the first two months of the pandemic.⁶ Although BiH statistical agencies showed a slow-down in this trend in subsequent months, experts warned this data was just the tip of the iceberg, since most companies that were forced to close down and lay off workers due to COVID-19 were from the gray or black economy, which usually passes unnoticed by official statistics.⁷

The dysfunctionality of local governments was confirmed once again in early 2021, when BiH remained one of the last countries in the world to get hold of COVID-19 vaccines. BiH authorities originally opted to order vaccines through the EU-supported COVAX facility, but were still empty-handed as of early March due to delays in that system. Facing growing pressure from the population, BiH's different administrative units meanwhile tried to launch their own individual procedures to acquire whatever vaccines they could get hold of. The RS entity proved to be most successful in these efforts, once again thanks to its government's links with Russia, which provided Republika

2 BiH has three administrative levels: the state level with the tripartite Presidency, the Council of Ministers and a bicameral Parliament; it also has two entities – BiH Federation and Republika Srpska – with presidents, governments and bicameral parliaments; the Brcko district also has its own government. The BiH Federation is further divided in ten cantons, each with its own government and assembly. The country also has 142 municipalities – 79 in the BiH Federation and 63 in Republika Srpska – each of the 24 official cities has a government and council. Altogether, the country has 143 ministers, 615 legislators, 80 courts and 20 prosecutors' offices. For more details see the Al Jazeera report from November 22, 2020.

3 "Who should be blamed for the collapse of the health system," *Žurnal.ba*, October 28, 2020.

4 "BiH received IMF loan but politicians cannot agree how to divide it," *Direktno.ba*, July 20, 2020.

5 "The respirators' scandal: BiH Federation Premier will be handed over to BiH prosecution," *Radio Free Europe*, May 29, 2020.

6 "BiH workers lose jobs and rights due to Coronavirus," *Deutsche Welle*, April 20, 2020.

7 Interview with a senior international official, December 2020



Srpska with the first batch of SputnikV jabs on February 1.⁸ The Bosnian Serb member of the BiH Presidency and the undisputed leader of the ruling Bosnian Serb party, the Alliance of Independent Social Democrats, SNSD, Milorad Dodik, offered to assist BiH's other entity, the BiH Federation, with acquiring these vaccines, but his offer was rudely rejected by the ruling Bosniak SDA party.⁹ Regardless of the growing public demands on BiH authorities to obtain vaccines, Dodik's SNSD party in BiH House of Peoples on March 2 blocked proposed changes of the legislation that would speed up this process, on the grounds that it would transfer some of the entities' powers to the state level.

Throughout this period, BiH authorities struggled to cope with the looming humanitarian crisis, which thousands of foreign migrants were facing in the middle of the Balkans' harsh winter. In 2020, BiH's Service for Foreigners' agency registered a drop in the number of migrants transiting

through the country on their way to the EU, mainly due to global travel restrictions caused by COVID-19.¹⁰ Yet the International Organization for Migrations (IOM) reported that reduced capacity for the accommodation of migrants – which was cut from 8,282 to 4,760 beds in the last quarter of 2020 – forced some 2,500 migrants to live in squats in forests and abandoned buildings, despite freezing temperatures.¹¹ EU and IOM officials blamed this situation on inefficient and disorganized local officials, while local officials criticized the EU and IOM¹² for mishandling this crisis and dropping it on BiH. Local authorities stressed that most of the EU funds earmarked for the migrant crisis in BiH have been paid directly to IOM, adding that the EU has allowed Bosniak territories – especially the Bihac region in the north-west – to bear the brunt of this crisis, while Bosnian Croat and Serb officials have refused to accommodate a single migrant.

Future elections made pointless without electoral reform

The BiH political crisis deepened even further before, during and immediately after the country's local elections, which were held across the country on November 15 and in the city of Mostar on December 20. In addition to increased nationalist and populist rhetoric – a traditional part of BiH pre- and post-election customs – the elections were tainted by numerous claims of election fraud, most of which the BiH Court rejected. Due to clear evidence of widespread electoral fraud and other violations of election regulations, BiH's Central Election Commission, CIK, moved to organize new elections in several voting centres in the cities of Doboje and Srebrenica, as well as in Travnik, where the two top candidates for the position of city mayor both died of COVID-19. However, the BiH Court rejected requests for new elections in the city of Mostar, despite ample evidence of election manipulations. This provoked strong protests, especially from Bosnian Croat and Bosnian Serb politicians who complained that the BiH Court as well as CIK are under political control of Bosniak parties.¹³ On the

other hand Bosniak parties boycotted repeated elections in Srebrenica, claiming that CIK has failed to root out all electoral manipulations organized by Bosnian Serb parties.

While electoral fraud was considered a problem in BiH's election system for years, the extent of election manipulation witnessed in the 2020 local elections, and the failure of the BiH prosecution and judiciary to address it, reinforced opinions of local and international officials and experts that thorough electoral reform was necessary.

"It is pointless to have any further elections in BiH without a proper reform of the election system. The current system does not reflect voters' opinions anymore," a senior BiH official said.¹⁴

The leaders of the main Bosnian Croat and Bosnian Serb parties, HDZ's Dragan Čović and SNSD's Milorad Dodik, upped the ante even further at the end of 2020, when they

8 ["The first contingent of Sputnik vaccines for RS arrives to Sarajevo,"](#) N1, February 1, 2021.

9 ["SDA: Dodik's offer to help us acquiring vaccines is hypocritical,"](#) Radio Sarajevo, February 2, 2021.

10 The agency registered a total of 16,190 migrants who applied for asylum in BiH during 2020 ([Al Jazeera report](#), February 2, 2021). However, aid workers say that the real number of migrants was significantly higher – possibly even over 20,000 – since not all of the migrants have applied for the asylum.

11 [IOM report](#), January 23-28, 2021.

12 ["What are the real reasons behind Bosnia's migrant crisis?"](#) Euronews, January 20, 2021.

13 ["Dušanka Majkić desperate after the BiH Court decision,"](#) Slobodna Bosna, January 5, 2021.

14 Interview with a senior BiH official, January 2021.



warned that their parties would boycott or even block the upcoming 2022 general elections unless the election system is fixed by then.¹⁵

These and similar statements stirred by local elections, as well as the recent 25th anniversary of the BiH Dayton peace agreement, have as of late revived public interest in electoral reform, both in BiH and abroad. However, none of the main political parties has so far come up with any concrete proposals. After months of growing expectations, Čović has recently informed a group of Bosnian Croat parties gathered in the Croat National Assembly (HNS)¹⁶ that his HDZ party would publicly reveal their proposal for electoral system reform by early March.¹⁷ Subsequently, HDZ and SDA delegations led by Čović and Izetbegović met on February 23, and agreed to form three inter-party working groups. The three groups should offer solutions for outstanding political problems in the BiH Federation by the end of March; a proposal for electoral reform by the end of April; and ideas on speeding up progress on the country's EU path in the next few months.

Yet it is unclear whether the eventual joint HDZ-SDA proposal will include "only" amendments to the BiH election law, or if it will also address the flaws of the BiH Constitution as outlined in the decisions of the European Court of Human Rights (ECHR).¹⁸ In fact, the scope, depth and direction of BiH's electoral reform represents one of the main points of divergence among all key internal and

external actors, since the reform can be done in many different ways, and go in different directions.

Some (especially Bosniak and US) experts and officials have been in the past maintaining a maximalist approach, calling for thorough structural reform that would include serious changes of both constitutional and electoral law, and would hopefully enable the evolution of BiH elections more towards civic models, as suggested by the ECHR rulings. Some pundits warn that such an undertaking would require much time and effort, which BiH currently does not have, since any reform would have to be finished by this summer, or the end of the year at latest, before the start of pre-election campaigns ahead of the 2022 ballot.

On the other hand, Bosnian Croat and Serb leaders maintain rather minimalist approaches. Enjoying full support from Zagreb, Belgrade and Moscow, they insist on maintaining BiH's ethnic voting models and making only minimal changes in line with the ruling of the BiH Constitutional Court on the appeal by Božo Ljubić,¹⁹ which should in their view block Bosniaks from electing representatives of other ethnic groups.

Complexity of this reform is reflected in the fact that BiH decision-makers have failed to agree on this issue for the past 25 years, despite several serious attempts led by the US and EU, at times when they were much more present and influential in the country than today.

15 "Dodik reveals Čović's secret plan," *Republika*, November 1, 2020.

16 Croatian National Assembly (HNS) is an ad-hoc body gathering most but not all of the Bosnian Croat political parties, which was established in 2000 by the leadership of the HDZ party. The official reason behind its formation was better protection of Croat interests in BiH through the establishment of a common political bloc that could stand against the more numerous Bosniak or Bosnian Serb parties. Maybe an even more important reason was to pre-empt any serious opposition to HDZ. For the same reasons, Čović, who was elected HDZ president in 2005, revived this body in 2010 and used it more and more in subsequent years.

17 Interview with a senior Bosnian Croat official in Mostar, January 2021

18 Since its first such decision in December 2009 in the case *Sejdić-Finci Vs. Bosnia and Herzegovina*, the ECHR has issued a total of six rulings (*Sejdić and Finci*, *Zornić, Šlaku, Pilav, Pudarić and Baralija*) which identify different flaws in the BiH Constitution, which discriminate against citizens of BiH, preventing them from actively participating in the election process due to their ethnic background and/or place of residence. For details see the [ECHR rulings](#).

19 In its ruling from December 1, 2016, BiH Constitutional Court partially accepted the appeal filed by Bosnian Croat politician Božo Ljubić, declaring that election of representatives of one constituent people by other ethnic groups is unconstitutional. The Court also ordered BiH Parliament to adjust the election law, but the Parliament failed to do so. For details see the [court ruling](#) in the case U-23/14.



Chronology of BiH's failed electoral reforms

A full 25 years after the Dayton accord, most local, regional and international actors disagree over what went wrong with the Dayton Agreement, why, and what should be done about it. An overview of the Dayton Agreement,

its subsequent evolution and disintegration, as well as roles that various actors played in the process, may offer some insight into what could be done to promote future reform(s).

BiH: a post-war success story

BiH's Dayton Agreement was made possible by another, today almost forgotten but equally important Western peace plan for BiH – **the Washington agreement**. This agreement was signed under US auspices in Washington DC in March 1994, by Bosnian Premier Haris Silajdžić, Croatian Foreign Minister Mate Granić, and President of Herceg-Bosnia²⁰ Krešimir Zubak. It stopped the war within a war between the predominately Bosniak BiH Army and joint Bosnian Croat and Croatian forces, and established the BiH Federation, which combined territories controlled by the Bosnian government and Herceg-Bosna.

The Washington agreement created a tense but effective truce between Bosniak and Bosnian Croat forces, which started turning the tide in the BiH war as both the BiH Army and HVO were able to focus once again on their common enemy – Bosnian Serb forces. This eventually paved the way for the so-called the **Split agreement**, which was signed by Bosnian and Croatian Presidents Alija Izetbegović and Franjo Tuđman, Bosnian Premier Silajdžić and Herceg-Bosna President Zubak in the Croatian port town on July 22, 1995, under the auspices of Turkish President Süleyman Demirel. The Split declaration was a political and military agreement, which established a confederation between Croatia and the BiH Federation²¹ and called on the Croatian Army to intervene militarily in BiH.

It enabled a large-scale deployment of the Croatian Army in BiH, whose close cooperation with the BiH Army soon led to the lifting of the siege of Bihać, the capture of the Croatian

southern town of Knin, which had been under Serb control since 1991, and other strategic positions in the region during that summer. The Washington and subsequent Split agreements proved to be turning points in the military conflicts in BiH and Croatia. They came as a result of the realization by the US administration that a rapprochement between Bosniaks and Bosnian Croats and their political and military cooperation was of critical importance for eventual establishment of peace in BiH, both as “an example of ethnic reconciliation” in the country, as well as “a stabilizing balance of power vis-à-vis the Serbs.”²²

The Washington agreement, the renewed alliance between Bosniaks and Bosnian Croats, and the NATO bombing campaign against Bosnian Serb military positions in the summer of 1995 paved the way for the **Dayton Agreement**.

The peace agreement ended the country's three and a half year war, established its new constitution, and outlined key aspects of the international community's military and civilian role in ensuring its implementation. The Dayton Agreement established the Office of the High Representative, OHR, which was in charge of overseeing the civilian implementation of the agreement. Operating with approval from the UN Security Council and empowered with a peacekeeping mandate under Chapter VII of the UN Charter, NATO established a peacekeeping force, initially deploying over 60,000 troops to oversee the separation of the warring sides' military forces and their gradual disarmament.

20 At the beginning of the BiH war in April 1992, Bosniak and Bosnian Croat forces stood jointly against much stronger Bosnian Serb forces, which were reinforced by what was left of the Yugoslav National Army (JNA), as well as paramilitary units from Serbia and Montenegro. Yet as of October 1992, they turned against each other and fought a bitter war within a war, as the Bosnian Croat Defence Council (HVO) – supported by Croatian government and the Croatian Army (HV) established the autonomous entity of Herceg-Bosna in Croat-dominated territories in southern, central and parts of northern BiH.

21 Despite this agreement, the idea of political confederation between Croatia and BiH Federation never took flight.

22 “Bosnian Muslim-Croat Federation: Key to Peace in Bosnia?,” Congressional Research Service (CRS) report, June 26, 1998.



However, from the very beginning, the civilian implementation of the Dayton Agreement was blocked by some of country's ethnic wartime leaders, who were allowed to remain in power immediately after the war. This situation forced the international community to engage much more pro-actively in the implementation of the agreement. Since 1997, SFOR used its mandate to arrest persons indicted for war crimes by the International Criminal Tribunal for Former Yugoslavia (ICTY). Around the same time, countries involved in the ad-hoc group charged with overseeing implementation of the peace process, the Peace Implementation Council (PIC), reinforced the mandate of the High Representative to allow him to use his executive powers to prevent a blockade of the civilian implementation of the peace agreement by either imposing decisions or removing local officials from their posts.

In subsequent years, the international community provided tens of thousands of foreign peacekeepers to oversee peaceful implementation of the peace deal. The US and the EU, together with the World Bank, the International Monetary Fund (IMF), and other donor countries and

international organizations also provided more than 5 billion US dollars for the immediate reconstruction of the war-devastated country. By 2000, BiH infrastructure was rebuilt to nearly pre-war levels, while its internal structures, legislation and services were revamped.

The next big change came in 2002, when the then High Representative, Wolfgang Petritsch, imposed amendments to the constitutions of both entities to put them in line with the 2000 BiH Constitutional Court ruling.²³ Until then, Bosniak and Bosnian Croat parties in the BiH Federation government operated on the basis of full parity. Another breakthrough came at the end of 2005, when BiH leaders agreed to reform the country's defence sector, which the original Dayton Agreement entrusted to the two entities. By merging the entities' military forces and ministries, the state level defence ministry and joint BiH armed forces were established in December 2005. With all these developments, Bosnia and Herzegovina was by 2006 generally considered one of the few post-war success stories in the world, although by that time it was effectively operating as an international protectorate.

Origins of Dayton's disintegration

Questions about what went wrong, when, and who was to be blamed are still fervently debated among diplomats and experts, yet despite thousands of analyses and policy papers, they are still a source of controversy. In addition to blaming each other, most local and regional actors most often blame the downfall of Dayton on Western interventionism, yet they remain deeply divided over whether the US and EU have done too much, or too little, and whether the US has pulled out from BiH too early or too late. International actors follow a similar pattern – they all pin the responsibility for BiH's renewed crisis on local leaders, as well as on each other. Different schools of thought are additionally divided between those who believe that the main reason for Dayton's downfall was its complexity and vagueness, while others blame it on its often flawed and inconsistent implementation. As is often the case, the truth is somewhere in between all these different opinions.

There is no question that the main responsibility for BiH's renewed crisis lies with its local actors, mainly politicians, but also intellectuals and media, who failed to grasp the historic opportunity provided by the Dayton Agreement and cleanse their own ranks from corrupt, populist and nationalist ideas and practices. Yet in hindsight it is clear that equal responsibility for Dayton's demise lies with those who were in charge of its design and implementation – the international community and especially the OHR. Instead of nurturing the growth of local democracies under international tutelage, they often sought shortcuts to democracy, experimented with solutions, applied double standards and in general tinkered with the local political scene. In the process, the OHR lost its initial position of unbiased arbiter and became an actor on its own. Very often, especially during the mandate of the late High Representative Paddy Ashdown, the OHR pressed for reforms that were too far outside of the original

23 Acting upon an appeal filed in 1998 by the late Bosniak leader Alija Izetbegović, who claimed that Bosniaks and Bosnian Croats were discriminated against in Republika Srpska, and Bosnian Serbs in the BiH Federation, BiH Constitutional Court in 2000 made an historic ruling requiring the two entities to amend their constitutions to ensure the full equality of the country's three "constituent peoples" throughout its territory. After local leaders failed to reach an agreement on this issue, Petritsch imposed what was at the time considered a compromise solution.



Dayton Agreement, such as attempted centralization of police forces, which failed by 2005. OHR ignored Western experts who warned that OHR's "rule by decree"²⁴ not only confused the local political scene by constantly "moving the goalposts" but also robbed BiH of the opportunity to develop its own authentic democratic culture and practices. By doing so, from once being the solution to BiH problems, the OHR itself had itself become a part of the problem.

April package:

One could argue that Dayton's downfall started in April 2006, when the BiH House of Representatives rejected the so-called April package of constitutional changes. This constitutional reform was prepared through a long and careful consultation process led by the US diplomat and former deputy High Representative Donald Hays, and was strongly supported by the US administration. The US envisaged this reform package as its exit strategy: it was supposed to cement the progress which BiH had achieved in previous years, thus enabling America to disengage from active participation in Bosnia's daily politics.

The package envisaged the BiH Parliament electing one president and two deputies, one for each constituent people, who were supposed to rotate every 16 months, with much more ceremonial roles than the current presidency; it strengthened the mandate of the Council of Ministers and its Chairman; it created state ministries for agriculture, technology and the environment; it established a new category of shared competences between the State and entities in the areas of taxation, justice and electoral affairs; it included the "EU clause" that would have allowed the State level to assume necessary competences from the entities; it provided for an enlargement Parliament, etc.

At that time, many local politicians and experts saw the April package as a mere cosmetic change and called for even bigger modifications, hoping that it would make the country more centralized and efficient. On these grounds, but even more so as a part of their pre-election campaign, the reform was torpedoed in the House of Representatives by Bosniak and Bosnian Croat opposition parties – Party for BiH of Haris Silajdžić (SZBiH), and Croatian Democratic Union 1990 (HDZ1990). Today, however, most experts fear

that most of the proposals from the April package are far outside of BiH's reach, which only shows how much has BiH devolved in the last 15 years.

Despite the failure of the April package, the US administration gradually disengaged from Bosnia's daily politics and transferred the responsibility for BiH's safekeeping to Brussels. The idea was that in BiH, like in the rest of the Balkans, the EU accession process would gradually ensure key reforms, thus cementing the progress achieved by then. Yet the EU proved to be unwilling and/or unable to establish itself as a strong political actor in the Balkans, while the EU's enlargement perspective proved to be too far-off, vague and unrealistic to inspire true reforms in the region. The EU and US's withering presence in the Balkans created a power vacuum, in which local leaders gradually abandoned reforms, while other foreign actors – China, Russia, Turkey and other Islamic countries – strengthened their influences.

Prud agreement:

Local leaders – the president of the SDA at that time, Sulejman Tihić, as well as Dodik and Čović – tried to make their own deal, outside of any Western-mediated negotiations. On 8 November 2008 they met in the small village of Prud, close to Tihić's home town of Bosanski Šamac, after which they announced a historic compromise that took everyone by surprise. The so-called "Prud agreement" included long-reaching reforms related to state property, the census, reconstruction of the Council of Ministers, resolving the legal status of the Brčko District, and other constitutional changes.²⁵

Čović, Dodik and Tihić have met three more times to clarify outstanding issues and fill in the gaps in their original agreement. Local officials close to this process said the breakthrough was enabled mainly thanks to Tihić, who was able to ignore and neutralize Čović's populist and Dodik's nationalist politics. However, by mid-2009, this process effectively died under strong pressure from opposition parties. Much of the criticism came from the Bosniak ethno-political bloc, as opposition parties and SDA conservatives alike attacked Tihić and blamed him for betraying their national interests.²⁶

24 "Travails of the European Raj" European Stability Initiative paper, July 3, 2003. In the paper authors stated: "The OHR has been allowed to evolve into a latter-day version of the Utilitarians' "vigorous despot," assuming ever wider responsibilities in the name of preparing society for self-governance."

25 For further details on the Prud agreement see ICG report "Bosnia's Incomplete Transition: Between Dayton and Europe," March 9, 2009.

26 Interviews with local politicians, 2008-2010.



Butmir package:

EU and US officials made another attempt at reform in 2009, when they tried to persuade local leaders to accept the so-called Butmir package, which was essentially a repackaged and slightly toned-down April package. Yet by that time, BiH's renewed political crisis has already spoiled personal and political relations within and among the three ethno-political blocs. As US diplomats moved to prepare the ground for negotiations, they were informed by more or less all key local political actors that the moment for compromise has passed and that there was no willingness for a new agreement.²⁷ Nevertheless, the US and EU still decided to launch the initiative. Among other issues, this move was prompted by the long-expected decision of the European Court of Human Rights (ECHR), which in December 2009 found the BiH Constitution in violation of the European Convention on Human Rights,²⁸ and called for changes to it in the election of the BiH Presidency and House of Peoples. However, by April 2010 the so-called Butmir process was effectively dead, killed by the all-out political war inspired by the approaching general elections that were scheduled for October of that year.²⁹

This was also the time when the fragile political alliance between Bosniak and Bosnian Croat politicians started falling apart, a scenario which US experts had warned about back in the late 1990s.³⁰ For some time, the main Bosniak and Bosnian Croat parties – SDA and HDZ – established a joint front against a bloc of Bosniak and Bosnian Croat opposition parties – led by Party for BiH (SBIH) of Haris Silajdžić and HDZ1990 of Božo Ljubić. Yet both of these coalitions broke apart in August 2009, when Bosniak and Serb ministers (mainly from the leftist Socialist Democratic Party, SDP) outvoted their Croat colleagues on changes to a key international development project, the Herzegovinian portion of the Trans-European Corridor Vc. When the dust settled down, a new balance of political forces was

established in which the Bosniak and Bosnian Croat ethno-political blocs stood against each other.³¹

BiH Federation constitutional reform:

In parallel to the talks on the reform of the state constitution in relation to the Sejdić-Finci ruling, which the EU facilitated between 2012 and 2014, in early 2013 the US Embassy supported formation of an independent expert group, tasked with putting together a proposal for the reform of the BiH Federation's constitution. After an intense consultation process, in May 2013 the group presented its 188 recommendations to the FBiH Parliament. Despite the fact that many of these changes were technical and not political, and although almost all officials and experts agreed that these changes would have significantly improved the entity's constitution, the proposal was eventually rejected by the FBiH Parliament and quickly forgotten.³²

The main reason for its failure was the fact that its main sponsor, former US Ambassador Patrick Moon, ended his mandate in August 2013, and after his departure neither the US Embassy nor the US State Department bothered to follow through with this proposal. The fate of this botched reform underlined the indolence of local leaders and their dependency on international engagement, but also the inconsistency of Western officials.

Füle package:

The last big EU-led reform attempt was initiated by former Czech Enlargement Commissioner Štefan Füle, who led negotiations with BiH decision-makers through 2012 and 2013 aimed at adjusting the BiH Constitution and election system in line with the Sejdić-Finci ruling. Different local and Western diplomats privately say that this push was doomed to fail almost from the outset, due to the deepening political crisis in BiH, as well as severely depleted EU authority in the country. This situation made any

27 Interviews with US diplomats and BiH officials, 2009-2010.

28 ECHR ruled on parallel appeals from BiH citizens Dervo Sejdić and Jakob Finci, who in 2006 filed a case against BiH because as a Roma and a Jew, respectively, they were not eligible to be elected into the BiH tripartite presidency and the upper chamber of the state parliament – the House of Peoples. These two institutions are only open to Bosnian Serbs from the Republika Srpska and Bosniaks and Bosnian Croats from the BiH Federation entity. Thus they exclude minorities, as well as members of one of the three main ethnic groups from the "wrong" entity. For details see the ECHR ruling from December 22, 2009, cases 27996/06 and 34836/06, and the [final judgment](#).

29 Bieber, Florian, "Constitutional reform in Bosnia and Herzegovina: preparing for EU accession," European Policy Centre (EPC) policy brief, April 2010.

30 In his 1998 CRS report, Steven Woehrel, a specialist in European Affairs Foreign Affairs and National Defence Division warned about this possible scenario: "The long-term viability of the Federation is open to question, however, due to continued mistrust between the two sides and significant differences in their perceived interests."

31 For a detailed explanation of structural and political problems which haunted the BiH Federation, see the ICG report "Federation of Bosnia and Herzegovina – A Parallel Crisis," September 28, 2010.

32 For details of this reform and its recommendations, see the [Expert Group materials](#).



reform impossible without much stronger and consistent engagement from the US.³³

Besides fixing the BiH Constitution in line with the Sejdić-Finci ruling, Füle's negotiations also tried to address the so-called "Bosnian Croat question" – the reduced presence of Bosnian Croat parties in the BiH Federation executive branch following the OHR's 2002 constitutional changes, as well as the capacity of more numerous Bosniaks to outvote Bosnian Croats and elect two representatives to the state presidency.

Over the years, these developments shifted the fragile ethno-political balance established by the Washington agreement and threatened to collapse the Dayton peace accord. The position of Bosnian Croat national parties – mainly the HDZ – was further weakened by the 2006 split within the party and the creation of a splinter party, HDZ-1990. Bosnian Croat parties' representation in state and Federal institutions were further undermined by the brain drain, which affected this smallest of the three constituent groups more than other two.

A combination of these elements, as well as the OHR's direct intervention for the first time after the 2010 elections enabled the establishment of the FBiH government without HDZ representatives. A growing alliance between Čović and Dodik prevented a group of Bosniak parties from also electing the state government without Bosnian Croat parties.³⁴ Furthermore, HDZ also lost its position in the BiH Presidency, where Željko Komšić from the leftist SDP party won the Croat position for the first time in 2006. That development by itself did not bother Bosnian Croat national parties too much, since Komšić's 2006 victory clearly came as a result of HDZ and HDZ1990 running with individual candidates.³⁵ Yet in the 2010 elections Komšić repeated the feat, humiliating candidates from the Bosnian Croat national parties by winning almost double their joint

tally.³⁶ Results clearly showed that Komšić was elected by a majority of Bosniak votes, which did not violate any BiH regulations or laws, but was clearly against the spirit of the Washington and Dayton Agreements.

Bosnian Croats' electoral plight initially drew attention and sympathies from the West. As a result, from an early stage Füle-led negotiations tried to fix this issue in parallel with fixing Sejdić-Finic. After several rounds of futile talks, EU and US experts jointly prepared a new kind of proposal, built on the American presidential system, suggesting the introduction of electorates and gerrymandering within BiH electoral districts. This proposal was tested, tweaked, and retested several times and was finally offered to BiH leaders in early 2014. Under strong US and EU pressure Bosniak and Bosnian Serb parties generally accepted the proposal, which was then rejected by Čović himself, to the EU and US' great surprise and shock.³⁷

Čović rejected the proposal on the grounds that it did improve Bosnian Croats' chances for electing their representative into the presidency, but did not guarantee it.³⁸ Most Western officials, however, saw this rejection as evidence that Čović was not trying to resolve the "Bosnian Croat question" but was trying to keep it open, since it kept radicalizing Bosnian Croats, thus maintaining HDZ's and Čović's reign. One way or the other, this marked the end of Füle's negotiations.³⁹

The failure of Füle's negotiations also meant the end of EU-driven constitutional reform, as EU and US officials became acutely aware that BiH officials did not want to resolve the country's problems, but preferred to keep them open in order to use them for their own political purposes.⁴⁰ However, as part of its principle of avoiding criticism of local politicians, EU officials avoided talking about the details of the breakup of Füle-led negotiations, therefore

33 Interviews with top local and international officials from 2012 onward.

34 For details on the making of the FBiH and the evolution of political relations and legal framework see ICG's report "[Federation of Bosnia and Herzegovina – A Parallel Crisis](#)," September 28, 2010.

35 In 2006, HDZ and HDZ1990 candidates Ivo Miro Jović and Božo Ljubić jointly won some [130,000 votes](#) to Komšić's 116,000.

36 In 2010 Komšić won [337,000 votes](#), which was almost double compared to the joint sum of 170,000 votes won by HDZ and HDZ1990 candidates Borjana Krišto and Martin Raguž.

37 Interviews with BiH, EU and US officials, 2014 onwards.

38 Ibid.

39 European Commission Memo "[Bosnia-Herzegovina - EU: Deep disappointment on Sejdić-Finci implementation](#)," February 18, 2014.

40 Ibid.



enabling Čović to continue demanding justice for the Bosnian Croat plight.

The SDA and most other Bosniak national and leftist parties in the 2014 elections tried to appease Bosnian Croats by deliberately proposing that weak ethnic Croat candidates allow Čović to be elected to the presidency.⁴¹ Yet Čović apparently missed their message of goodwill and used his mandate in the presidency to radicalize his nationalist positions. Bosnian Croat officials and experts also stress

that they wanted new regulations rather than Bosniaks' goodwill to allow Bosnian Croats to elect their own political representatives. In the 2018 elections Bosniak parties responded in kind to Čović's renewed nationalist drive. Komšić ran for the BiH Presidency again and humiliated Čović by winning 225,500 votes, again almost exclusively from Bosniak-dominated areas. Čović managed to muster close to 155,000 votes, which is considered to be a significant portion of the Bosnian Croat electorate in BiH, yet even that did not prove to be enough for victory.

41 Interviews with Bosniak officials, 2014-2015.

Electoral reform revisited

After their repeated failures to bring about a reform of BiH's Constitution and electoral system, the EU and the US have abandoned this issue for several years. However, the deepening of the BiH crisis amidst the COVID-19 epidemic, Bosnian Croat and Bosnian Serb leaders' threat to blockade future elections, as well as the EU and US's renewed attention to BiH have in recent months brought this issue back into local and international attention. Nevertheless, finding a compromise will still be difficult due to the fact that divisions and animosities among key internal and external factors have only worsened in recent years and months. This worsening political climate is being also reflected in actors' divergent agendas and interests, as well as perceptions of the required scope and direction of the electoral reform.

Some believe that the reform must include changes to the BiH Constitution regarding the election of the BiH Presidency and House of Peoples to meet the requirements of the ECHR rulings. However, BiH has less than a year for this reform before pre-election campaigns kick into full force at the end of 2021. Therefore, some experts warn that achieving something that BiH was unable to do for the past 15 years – even at a time of much stronger EU and US influence – in such a short period of time looks like a mission impossible.

Actors are also bitterly divided over the direction of this reform. Some insist on changes that would shift the BiH election system more towards a civic model, while others insist on dialling it back towards the ethnic voting model that existed in the original Dayton Agreement, which was also confirmed by the BiH Constitutional Court in the Ljubić ruling. Some of the actors do not care too much about

ECHR rulings and focus on technical changes to the election law, especially reorganization of election districts, de-politicization and professionalization of the election system in order to reduce or completely prevent election fraud. Some parties do not seem to mind the current regulations and would be happy to keep most if not all of the election system as it is, as long as they can tinker with it.

Western diplomats and legal experts stress that most of these options and scenarios have already been analyzed and can be found amongst some of the old proposals that are still sitting in officials' desks. This should save at least some of the time, as instead of pondering and drafting new solutions, politicians and diplomats will be able to propose or repackage some of those past solutions. Yet the main obstacle will still remain lack of political will for a serious reform, among both ruling and opposition parties alike.

Given the poor personal and political relations among key local actors, most experts and foreign diplomats presume that strong Western involvement will be required to shift deeply entrenched local positions. Foreign influences, however, will bring their own risks for the success of the eventual reform and for the overall situation in the country, since most regional and global actors have conflicting, one-sided views on this issue. Furthermore, given the heightened tensions on the global scene, especially between Russia on the one hand and the US and EU on the other, as well as their conflicting positions in the Balkans, BiH and its electoral reform could become one of the arenas for the fast-developing new Cold War.

This is the basic outline of the state of play among local, regional and international actors:

Local actors: politicization and conflicting views block progress

Positions of key local actors regarding eventual electoral reform are spread far and wide, and go in different, often opposite directions. These positions reflect different views which Bosniak, Bosnian Croat and Serb parties have on BiH's past, present and future. While Bosniak national and leftist parties want BiH to become a more centralized country, Bosnian Croat and Serb parties insist on BiH being a highly decentralized country with a weak state

and near-autonomous entities and cantons. An additional obstacle for any kind of compromise is the deepening politicization of all key issues in the general public, where ruling and opposition parties alike, as well as their affiliated media and intellectuals, undermine any reform attempts as part of their endless power struggles.



Bosniak parties

All Bosniak parties nominally support constitutional and electoral changes that would push BiH more towards a civic state. Leftist opposition parties like SDP and Naša Stranka are often very aggressive in their push for a civic state, and their officials are frequently much more radical in public statements, which most Bosnian Croat and Serbs see as disguised Bosniak nationalism, while some leftist intellectuals call it civic nationalism.⁴² In December 2020, SDP tabled amendments to the BiH Constitution which were originally proposed as a part of the April package in 2006, yet this proposal was quickly rejected by the BiH Parliament's Constitutional and Legal Commission as being unconstitutional.⁴³

The ruling Bosniak SDA party, on the other hand, is usually more muted in its positions and its officials often avoid direct verbal clashes with Bosnian Croat or Serb leaders. SDA leader Bakir Izetbegović has in several recent public statements acknowledged that any electoral reform should respect a balance between the ethnic and civic models.⁴⁴ Izetbegović recently spoke about electoral reform with Matthew A. Palmer, the deputy assistant at the US State Department Bureau of European and Eurasian Affairs, where he underlined that electoral reform would have to be conducted in line with principles that he and HDZ leader Čović had agreed to as part of the US and EU-brokered agreement on June 17, 2020.⁴⁵ On the other hand, Izetbegović on several occasions also stressed that before SDA agrees to electoral reform, HDZ would have to lift its blockade of the establishment of a new BiH Federation government,⁴⁶ which Čović repeatedly criticized as yet another of Izetbegović's political tricks.

SDA's recent shifting positions during the implementation of Mostar's local elections were also seen by many Bosnian Croats as further evidence of Izetbegović's inconsistent and swindling policies.⁴⁷ Some local and international officials suspect that SDA may not have too much motivation to support electoral reform, because it seems to be counting on Bosniaks' larger numbers as well as its influence on the Central Election Commission (CIK) and the BiH Court to continue gaming the election process.⁴⁸

Most Bosniak parties, media and intellectuals, however, seem to be oblivious to the fact that by robbing Bosnian Croats of their legitimate political representatives Bosniaks have pushed BiH to the edge of dissolution, which would hardly happen without a new war.⁴⁹ Many Bosnian Croat officials and intellectuals warn that Bosniaks' continued attempts to maintain dominance over Bosnian Croat parties are pushing both Bosnian Croats and Serbs against the idea of a joint country.⁵⁰

The level of antagonism between Bosnian Croat and Bosniak political, media and academic circles has reached an all-time high in recent months, raising the question whether the American idea for the Washington Agreement – an alliance between Bosniaks and Croats – can be saved and revived. Without it, the Dayton construct – and BiH itself – has little chance of surviving.

Bosnian Croat parties

The main push for electoral reform comes from Bosnian Croat politicians who – although increasingly dissatisfied with Čović's politics – line up behind HDZ in hopes that jointly they would be able to secure legitimate political representation for themselves. Bosnian Croats are focused on making sure that Bosnian Croat representatives

42 "Perfidious civic nationalism," Dani magazine interview with Dino Mustafić, July 1, 2013; "Croats are right to be frustrated by Komšić, Bosniaks would impose representatives even to Others" Dnevni.ba interview with Damir Nikšić, October 20, 2020.

43 "SDP club in the BiH Parliament calls upon the adoption of the April package," Oslobodjenje, December 9, 2020.

44 "Izetbegović: We have to find a balance between ethnic and civic principles," FENA, January 20, 2021.

45 "Izetbegović spoke with Palmer: speed up EU and NATO integration process, broader debate needed on electoral reform," Faktor, February 16, 2021.

46 HDZ has been blocking the establishment of a new BiH Federation government since the last general elections in October 2018, insisting on the adoption of electoral changes before a new FBiH government can be established. However, officials close to both parties admit that neither SDA nor HDZ have so far had much interest in establishing a new government, since SNSD would require at least one ministerial post, which would only further complicate the balance of power in that body.

47 Interviews with Bosnian Croat officials and intellectuals, February 2021.

48 Interviews with local and international officials, 2020-2021

49 Interviews with local and international officials and experts.

50 "All those who are trying to eliminate Croats from BiH authorities are pushing Serbs towards secession," op-ed by Frano Vukoja, Večernji List, February 22, 2021.



in the BiH Presidency, as well as in the state and BiH Federation Houses of Peoples, are elected by Bosnian Croats, not Bosniaks or other ethnic groups. They are also concerned that if the 2022 elections are held under current regulations, Bosniak parties will for the first time win a majority in the Croat caucus in the FBiH House of Peoples. That would enable them to elect their own candidates to executive positions of the BiH Federation, thus making it a fully Bosniak entity.⁵¹

Bosnian Croat national parties, however, bear their own part of the responsibility for the gradual weakening of Croat positions, as well as the dwindling of the Croat population in BiH. HDZ1990 leader Božo Ljubić was one of the main forces in bringing down the April package in 2006, while HDZ's Čović rejected the EU and US proposal in 2014. Either of the two agreements would have fixed the so-called "Bosnian Croat question" in BiH. Furthermore, while Bosnian Croat national parties complained against what they called illegitimate ethnic representation in the BiH Federation, they completely ignored the fact that Bosnian Serb parties have been for years regularly electing Bosnian Croat representatives in Republika Srpska. Also, Bosnian Croat leaders have in subsequent years showed little good will, skill and/or diplomacy in negotiating a positive solution. These facts have made many Western diplomats start suspecting that the Bosnian Croat leadership's true intention was not to reform the system, but to keep the problem open, thus keeping the national leadership in power.

Instead of choosing diplomacy and negotiations to resolve this problem, HDZ officials have steadily radicalized their positions in state and Federation institutions, using them to block their functioning, including the signing of important international agreements, adoption of budgets, etc. By hijacking the work of joint institutions, HDZ tried to blackmail Bosniak parties, mainly SDA, into accepting

electoral reform agreeable to HDZ. Yet the only thing this has achieved so far is to antagonize and unify Bosniak parties and diminish chances for a resolution of this issue.

Despite all the hubbub, none of the Croat national parties in BiH have so far offered their own proposal for the reform of the BiH constitution they so bitterly demanded. In 2017, HDZ proposed amendments to the election law, which other local as well as international officials quickly dismissed as being even worse than the original law.⁵² According to the latest information, HDZ is working on a new proposal for electoral reform, which is expected to be presented in March 2021. At the same time HDZ and SDA working groups will be working on solutions to these problems and it is not clear how will these two parallel processes work out. Therefore, it is still not clear whether these proposals will include only proposed changes to the election law, or if they will also offer solutions for the changes of the BiH Constitution. HDZ also calls for the reshuffling of the Central Election Commission (CIK), which they deem illegal and hold to be controlled by SDA and Bosnian Serb opposition parties.⁵³

Bosnian Serb parties

Political implications of the electoral reform are mainly linked to the position of Bosnian Croats and their power-sharing with Bosniaks in the BiH Federation, and do not have direct and immediate implications for the Bosnian Serb parties. Yet this did not stop RS leader Milorad Dodik from engaging strongly on this issue. Dodik's engagement is mainly motivated by his realization that the gradual collapse of the Washington agreement and Bosniak-Croat relations in BiH represents his historic opportunity to achieve what seems to be his long-term goal: the breakup of BiH and independence of Republika Srpska.⁵⁴

By establishing and then steadily reinforcing his alliance with Čović, Dodik is tilting the balance of ethno-political

51 Interviews with Bosnian Croat officials and intellectuals, September 2020- February 2021.

52 Interviews with Western and BiH officials, 2017.

53 On March 12 2020, the BiH Parliament appointed Vanja Bjelica-Prutina and Jovan Kalaba as the two new Bosnian Serb members of the CIK. Bjelica-Prutina comes from the RS opposition SDS party, while Kalaba is a senior member of another RS opposition party, the PDP. The two were elected with votes of these two opposition parties as well as the main Bosniak SDA. By voting for these candidates, SDA went against its official coalition partners, the SNSD and HDZ. The SDA repeated the same manoeuvre on May 20, when its MPs in the state parliament voted for Željko Bakalar to become the new Bosnian Croat member of the CIK, again against the votes of SNSD and HDZ. This appointment added insult to injury for both of these parties - but especially for the HDZ - since Bakalar came from the office of the Croat member of the presidency, Željko Komšić, whose legitimacy has been disputed by the HDZ, as he was elected to his position thanks to Bosniak votes. SNSD and HDZ complained that these appointments violated BiH regulations as well as the principle that prohibits appointment of political figures in the CIK, yet the BiH Court has rejected these claims.

54 Interviews with Bosnian Serb officials and experts.

powers in BiH, which increasingly resembles the situation from the early 1990s. Furthermore, Dodik, as well as other Bosnian Serb leaders, are concerned that if the BiH Federation effectively becomes a fully Bosniak entity, it could enable Bosniaks to use their larger numbers to gradually undercut Republika Srpska and over the course of several election cycles take control over the entire country.⁵⁵

This is why Dodik and Čović announced already in October their intention to block and/or boycott the 2022 general elections if no electoral reform is carried out by then. Local officials say these warnings should be taken very seriously.⁵⁶ In his recent public appearances, Dodik offered few new details about his plan, saying that without electoral reform, the SNSD-led RS government would prevent the establishment of local election boards and would not allow any public buildings to be used for the elections.⁵⁷ This

scenario would pitch the country into political and legal chaos and anarchy, and could lead to its final breakup.

While Dodik is for the time being not expected to come up with his own proposal for electoral reform, he will continue insisting on the rejigging of the CIK, and on keeping BiH as decentralized as possible. The fact that at the end of 2020 RS officials rejected rather mild conditions required by the IMF for a new program of financial support for BiH, despite the increasingly difficult economic and financial situation in that entity, shows that Dodik is determined to block BiH's EU integration process regardless of whatever negative consequences it may have for the people of RS.⁵⁸ The same goes for SNSD's decision to block legislation that would speed up acquisition of urgently needed COVID-19 vaccines.

Croatia and Serbia: (un)friendly neighbours

Croatia

One of the key roles in the unfolding drama of BiH's electoral reform belongs to Croatia. It has already thrown all of its political and diplomatic muscle behind Čović and his HDZ, and is determined to make sure that in future Bosnian Croat officials are elected by what they see as "legitimate" Bosnian Croat voters. Croatia has been steadily increasing its support for Čović after the leader of the sister Croatian HDZ party and Croatian Prime Minister Andrej Plenković cemented his control over HDZ and the Croatian government following HDZ internal elections and then the Croatian general ballot in 2020. Facing little opposition from within his own HDZ, Plenković is determined to use 2021 to force Bosniaks to accept whatever electoral reform Bosnian Croats deem acceptable.⁵⁹ This unquestioning support which Zagreb provides to Čović is as of lately reflected in almost weekly visits by Croatian ministers, as well as in initiatives which Croatian officials are undertaking in EU institutions.⁶⁰

This is not a new approach, since Croatia has held similar positions towards BiH on and off since the breakup of Yugoslavia. The fact that Zagreb does not have a detailed understanding of BiH's complex political scene, and shows little interest in improving its relations with BiH, leads to a situation in which Croatia fully buys into Čović's claims and positions, ignoring his own responsibility for the increasingly weak status of Croats in BiH. These Croatian attitudes have aggravated Bosniaks and radicalized their positions towards Zagreb as well as Bosnian Croats, thus damaging relations between the two neighbouring countries.

Given the recent changes on the geopolitical scene, these Croatian positions and activities are causing even more of a stir than before, often undermining Croatia's own positions in the EU, whereas more and more EU officials and leaders see Croatia as a biased, malign influence in BiH's affairs. This situation could hurt Plenković himself, who is said to have

55 Ibid.

56 Interviews with SNSD, HDZ and other local politicians in Banja Luka, Mostar and Sarajevo, December 2020- January 2021.

57 "Dodik announces blockade of 2022 elections," Dnevni.ba, February 18, 2021.

58 Interview with a senior Western diplomat, December 2020.

59 Interviews with Croatian officials and experts, Zagreb, December 2020 – February 2021.

60 According to EU diplomats, in the second part of 2020 Zagreb circulated a memo among selected members of the European Council, calling for EU support for electoral reform in BiH. Croatian deputies in the European Parliament have already in recent years initiated and tried to influence several resolutions on BiH. Most of these activities support Bosnian Croat claims for legitimate representation.



ambitions to run for some of the top positions in the next European Commission.⁶¹

Interestingly, in their joint endeavour Bosnian Croats and Croatia have recently found support from an unlikely ally – Russia – which is also resolute not to allow any further reforms that would bring BiH closer to EU and NATO integration. Following the December 2020 meeting with his Russian counterpart Sergei Lavrov, the Croatian Foreign Minister Gordan Grlić Radman publicly stated that Croatia shares the same positions towards BiH with Russia, contrary to the US and EU views.⁶² In a more recent interview he stressed that “Croatia would not allow imposition of any artificial model that would be harmful for any ethnic group.”⁶³

Serbia

Contrary to the positions of Zagreb, Serbian President Aleksandar Vučić has always held a bit more moderate official attitude towards BiH. The biggest difference between Plenković and Vučić is that Vučić does not take Dodik’s positions for granted, and is sometimes discounting

or even opposing Dodik’s more radical views and initiatives, especially when such policies bring bonus points in Serbia’s relations with the EU and US. Unlike Zagreb, which refuses to recognize legitimacy of BiH’s presidency as long as Komšić sits in it,⁶⁴ Vučić has regularly stated that he respects BiH’s sovereignty, but also advocates for the continued existence of Republika Srpska as one of BiH’s entities.⁶⁵

In the upcoming BiH electoral reform, Vučić is expected to position himself again in a way that will provide him with maximum influence on the process and secure his position as one of the key political actors in the region. His concrete role will mostly depend on which positions Dodik and other RS leaders will take in this process, but also on the positions of the EU and US. In the past, Vučić has openly stood against Dodik’s extremist ideas when they threatened to undermine his own positions and relations with Washington and Brussels, as was the case in the 2016 referendum in RS.⁶⁶

EU, US and Russia: enablers and/or disablers?

Since the late 1990s the US and EU have been closely coordinating their efforts in the Balkans, with clear political leadership by the US while the EU plays a more supportive role, focused more on technical, legal and financial issues. This division of labour changed significantly since the US gradually disengaged from the region as of 2010, when the EU took up the leading role. However, the EU was never able – or willing – to impose itself as a strong political actor in the region.

In its approach, the EU relies exclusively on the EU enlargement perspective, which has significantly undermined the EU’s position in the region after Balkan leaders realized that the EU has effectively removed a

realistic enlargement perspective from the table for many years, if not forever. The weakening of the Western presence in the region has created a power vacuum, which was over the years filled by other external actors with their individual interests in the region, such as Russia, Turkey, China, Saudi Arabia and other Gulf states. The presence and coordination of EU and US efforts in the region suffered another major blow following the 2016 victory of Donald Trump in the US Presidential elections. Trump’s narrow focus on America, his aversion to the EU, and his self-serving foreign policy have further complicated and weakened Western positions in the Balkans.

61 Interviews with Croatian officials and experts, Zagreb, December 2020 – February 2021.

62 “Lavrov and Grlić Radman: Croatia and Russia share the same position towards BiH,” Herceg-Bosna, December 16, 2020.

63 “Croatia will not allow that anyone imposes civic model in BiH,” interview with Grlić Radman, Večernji List, February 27, 2021.

64 Ibid.

65 “Vučić: Srbija supports BiH’s territorial integrity but also has right to support continued existence of Republika Srpska,” Danas, July 23, 2020.

66 RS held a referendum that was seeking public opinion on the continuation of celebrations of the RS national day, despite the BiH Constitutional Court ruling it unconstitutional on the basis that it discriminated against non-Serbs. Dodik organized the referendum despite strong warnings from the US and EU, and even Vučić, who openly spoke out against it.



The USA

Some Western diplomats argue that BiH has benefitted from Trump's foreign policy, as it remained below his radar, thus allowing the local US Embassy to deal with local issues as best it could. In this situation the current US ambassador Eric Nelson did well, staying away from the public focus and from big statements, and managing to overcome some of the local deadlocks through closed-door diplomacy conducted in close cooperation with the head of the EU delegation, Johann Sattler.

The election of Joe Biden as the new US president at the end of 2020 has fuelled major expectations, especially among Bosniaks and some American experts, who hope that Biden's expertise in foreign policy and his past connections with the region will bring back the old-style, hands-on American engagement. Some of the American and/or Balkan experts proposed that the new US administration should go back to using the OHR's executive powers, sanctions, and even reinforcing the current NATO-led peacekeeping forces in order to halt and reverse the BiH crisis.⁶⁷ Some pundits, however, find such proposals unrealistic and even potentially harmful, as they ignore changes that in recent years took place on the local, regional and global scene, because of which such radical American course could easily trigger similarly radical reactions from Bosnian Serb, Bosnian Croat and Russian officials.

Several US officials and diplomats confirmed that the new US administration will indeed strengthen its positions in the Balkans, yet they stressed that this will mainly be within Biden's plan to rebuild American relations with and presence in Europe.⁶⁸ These officials, however, stressed that the Biden administration will at least in the first year be fully preoccupied with cleaning up the mess left by Trump, and it will have no appetite for big new international interventions. Some American officials and experts went even further and stressed that even before Trump took over the White House, the USA had lost its exclusivity and moral high ground, and will need to restore it before it jumps into

new international adventures.⁶⁹ In this situation the US's old "bull in a china shop" approach in the Balkans would risk doing more harm than benefit, these pundits say.⁷⁰

Nevertheless, the US will certainly play a role in the upcoming BiH electoral reform, but it will likely be less pronounced and more diplomatic than some Bosniak and American experts would hope. This was reflected in the US Embassy posting on social networks on February 17, in which it called on BiH leaders to "get down to business" on constitutional, electoral and other reforms and to "stop waiting for the international community to do their job for them."⁷¹ This notion was further underscored by Palmer himself, who in a recent interview stated that some in BiH expect the Biden administration "to ride over the hill on a white horse"⁷² carrying new proposals for constitutional reform. He added that this is "contrary to what they should think and do."⁷³

However, the US should think twice about the direction and scope of the reform it will support and/or require from local actors. US diplomacy in BiH in principle has a general tendency to push for bigger constitutional changes, driving BiH as much as possible towards a civic state. Yet none of the local parties has the capacity to prepare and implement any deeper constitutional reforms, while Bosnian Croat and Serb leaders are unlikely to accept such a direction for the reform, regardless of pressure and possible sanctions. A mistake in the Western approach would easily further diminish already the slim chances for this reform.

The EU

The EU position in BiH and the rest of the Balkans has grown even more precarious since the outbreak of COVID-19, despite its pledge to provide the region with nine billion Euro in investments, grants and loans for its economic and social revival. The EU's already weak image was additionally tainted by Bulgaria's blockade of the North Macedonia accession process, its simplistic approach to the ongoing migrant crisis affecting BiH in particular, the EU's own internal divisions regarding the rule of law and human

67 For details see "Fixing Dayton: A New Deal for Bosnia and Herzegovina," Wilson Center publication, November 2020.

68 Interviews with and statements from different US diplomats participating in online events, December 2020 – February 2021.

69 Interviews with US diplomats and experts, December 2020 – February 2021.

70 Ibid.

71 US embassy in Sarajevo Twitter posting, February 17, 2021.

72 "Matthew Palmer: US's continued engagement and partnership with Western Balkans," interview by the VOA, February 24, 2021.

73 Ibid.



rights, as well as the failure of the EU-supported COVAX system, which most Balkan countries hoped would help them to acquire COVID-19 vaccines.

While Brussels and EU capitals managed to only further estrange themselves from the Balkans in this period, the EU delegation in BiH managed to somewhat strengthen its political clout thanks to the new head of the EU delegation, Johann Sattler, who proved to be more willing and able to engage in local politics than any of his predecessors. Close coordination between Sattler and Nelson managed to help SDA and HDZ in reaching an agreement in July 2020, which enabled the holding of Mostar local elections for the first time since 2008. While this dynamic diplomatic duo will certainly be an important asset in the upcoming negotiations on electoral reform, any breakthrough will require more concrete engagement from Brussels.

However, the EU's internal divisions regarding the rule of law and human rights' principles may also undermine EU's role in the BiH reform, since it is clear that Brussels and some EU capitals – starting with Zagreb – may have different views, interests and agendas in this process. Furthermore, EU engagement in the upcoming negotiations could be further diluted if the EU – as is usually the case – tries to push for overly broad and complicated reform. Currently, the EU wants electoral reform to address six rulings from the ECHR: constitutional and legal issues outlined in 14 priorities from the Opinion on the BiH application for EU membership from May 2019;⁷⁴ 22 recommendations outlined by OSCE's Office for Democratic Institutions and Human Rights; the ODIHR report after BiH's last general elections in October 2018;⁷⁵ as well as recommendations from the Council of Europe GRECO reports.⁷⁶

Even with maximum political will for compromise, which is nowhere to be seen, the capacity of BiH institutions has been weakened to the point where they would require years to carry out such a broad reform. Given the urgency of the electoral reform and possible dire consequences of its failure, the EU and US may be better off identifying the minimum acceptable reform that would enable holding of

the 2022 elections in a calmer atmosphere and then using the subsequent four years for deeper changes.

Russia

For the past several years Russia has somewhat reduced its political and economic presence in BiH. In this period, Russia paid more attention to the burning issues in its own neighbourhood, such as the situation in Ukraine or Belarus, while in the Balkans it focused its attention and efforts on Serbia as its most important ally in the Balkans. Yet this has started changing in recent months, as Russia radicalized its positions under the threat of new sanctions from the EU and fearing new American foreign interventionism following Biden's election. Russian experts say there are signals indicating that Kremlin is planning "diplomatic counter-offensives" in troubled regions such as the Western Balkans and Middle East, where they expect the Biden administration to try to further undermine Russian influence.⁷⁷

The Russian hardening of positions on BiH was already visible during the latest visit of Russian Foreign Minister Lavrov to BiH in December of last year, where he said that there are "efforts to bring down Dayton, to erode it" adding that "this may cause risks and grave consequences."⁷⁸ That visit was also marked by a diplomatic scandal, as upon his arrival Lavrov first met Dodik in East Sarajevo, violating usual diplomatic protocols. In response, Bosniak and Bosnian Croat members of the BiH Presidency refused to meet the Russian Foreign Minister, which was then followed by a brief disruption in BiH's supplies of Russian natural gas, which was seen as a sample of the Kremlin's payback for the diplomatic snub.

Given the growing political tensions on the global scene, experts and Western diplomats are concerned that Russia will use its influence in the region and especially links with Dodik to try to influence BiH's electoral reform, probably supporting Bosnian Croat and Serb positions.

74 [Opinion on Bosnia and Herzegovina's EU membership application.](#)

75 [For more details see the full report and recommendations.](#)

76 [GRECO Compliance Reports of Third and Fourth Evaluation Rounds on Bosnia and Herzegovina.](#)

77 [Interviews with Moscow-based Russian expert, November 2020 – February 2021.](#)

78 ["Russia's Lavrov says Bosnia's peace deal must not be changed," Reuters, December 14, 2020.](#)



Controversy over BiH's new High Representative

A key role in BiH's upcoming reform may belong to Christian Schmidt, Germany's former Federal Minister and delegate in the European Parliament, who was confirmed by Berlin as Germany's candidate for the new head of BiH's Office of the High Representative on January 20. Rumours about Schmidt's nomination started circulating in local and international media in December, triggering a major controversy among EU capitals and diplomats who were not even consulted by Berlin about this appointment.

The controversy was made even bigger following reports that Berlin has cleared this appointment with Moscow, which could block this appointment in the UN Security Council. Sources and media reported that both countries apparently preferred a German diplomat to sit in the High Representative's precarious chair, to control or prevent more radical interventions from the new US administration, or the existing High Representative, Austrian veteran diplomat Valentin Inzko.

Yet even if this agreement existed, it seemed to be off the table now, after the latest escalation of diplomatic war between Russia and the West, following the humiliation of the EU High Representative Josep Borrell during his recent visit to Moscow and the parallel expulsion of European diplomats by the Kremlin. Only a few days later, the Russian ambassador to Serbia, Aleksandar Bocan-Harcenko, told Tanjug news agency that Russia is against the appointment of a new High Representative.⁷⁹

This situation now places Germany in a difficult position. By withdrawing its nomination Germany would humiliate and weaken its position on the global scene. On the other hand, any attempt to push this nomination through without a Russian green light in the UNSC would risk tearing BiH apart. In that scenario, Russia could withdraw from the Peace Implementation Council, PIC, while at the same time Dodik would declare the Dayton peace agreement implemented, which would allow him to ignore any subsequent statements or actions from the OHR and PIC. This would create two parallel political realities in BiH, which could lead to dangerous escalation of local, regional and global tensions.

⁷⁹ "Bocan-Harcenko: Russia is against the appointment of a new High Representative in BiH," RTRS news report citing ambassador's interview for Serbian news agency Tanjug, February 10, 2021.

Conclusions

After avoiding and delaying reforms of its defunct electoral system for years, the country and its leaders are now forced to deal with this issue amidst the multidimensional health, political and economic crises caused by the COVID-19 pandemic.

Reform of BiH's election system is one of country's biggest challenges since the Dayton Agreement, as it opens critical questions about relations amongst its three constitutive peoples. This reform is especially important for the relations between Bosniak and Bosnian Croat ethno-political blocs, which have been steadily worsening since the collapse of the Washington agreement in the early 2000's. The revival of Bosniak-Croat relations is critical for the long-term survival for BiH, as it offers a positive example of ethnic reconciliation, but also establishes a balance of ethnic powers and relations within the country and its immediate neighbourhood.

BiH's electoral reform also opens the question about the very nature of the BiH political system, whereas some internal and external actors are trying to use this opportunity to replace BiH's mainly ethnic political system with civic models. While the establishment of a fully democratic and civic society is certainly a legitimate and positive goal, this transition is currently not only unrealistic but also potentially harmful. Without first developing genuine and authentic civic political options, media, academic and civil society, any push towards civic political models would inevitably lead to the further strengthening of Bosniak and/or civic nationalism, which is strongly rejected by Bosnian Croats and Serbs, as well as by Zagreb and Belgrade.

BiH's electoral reform also reveals the extent to which the BiH political scene has become politicized, divided and dysfunctional in recent years. This and other similar reforms are not only important for the country's path to the EU, but also for better functioning of BiH's administration. Nevertheless, most local parties have been ignoring peoples' interests while maintaining populist and maximalist positions, using this process as a part of their endless zero-sum power-struggles.

This task comes at difficult times for both the US and the EU, as they are preoccupied with major internal and external challenges themselves. Yet investing whatever effort needed

will pay off many times over, since a positive outcome would enable BiH to hold the 2022 election in a calmer situation and potentially open doors for further constitutional and/or electoral changes in subsequent years. Another failure of this critical reform, however, may push BiH beyond the point of no return. Combined with the fact that all key regional and global actors have a stake in BiH and the rest of the region, the disintegration of BiH could open the question of the stability of the Balkans and all of Europe.

In this situation, the US and EU will once again have a critical role in overcoming local deadlocks and steering negotiations in positive and constructive directions. This reform, however, will also represent a major challenge for the West, which has made several similar attempts that have all failed over the past 15 years – at a time when both the US and EU have had a much stronger presence and influence in BiH than what they have today. Any Western engagement in the upcoming reform will be further undermined by the much bigger internal and external challenges which both the EU and US face today.

The importance and complexity of BiH's electoral reform draws attention from other external influences, whereas all regional and global actors – from Croatia and Serbia to the EU, US and Russia – have conflicting views, interests and agendas in BiH. While some of these actors – like Croatia – see this almost as an internal political issue, others – like Serbia or Russia – appear to be ready to use their influences in BiH as part of their regional and global powerplays. These external influences will certainly not make the upcoming negotiations any easier, if not much, much harder.

Finding good ethnic, political and technical solutions for BiH electoral reform within such a difficult environment and limited timeframe will be exceptionally hard, and will once again demand strong and wise engagement from Washington, Brussels and EU capitals. Having in mind everything that this reform puts at stake, another failure should not be an option. Another botched reform could lead to boycott and/or blockade of the 2022 elections. Unless given proper attention by internal and external actors, this could finally push BiH towards becoming a truly failed state and its eventual disintegration – a path that could lead to new social violence or ethnic conflict.



About the author

Srećko Latal covered Bosnia and Herzegovina, Kosovo and the rest of the Balkans during the wars in the 1990s as Associated Press correspondent, and later editor and Sarajevo bureau chief. He also served as an overseas correspondent from other places such as Afghanistan and Pakistan. Since 2000 he worked as a communications expert and political advisor for the EU and the World Bank, while from 2008 he joined the International Crisis Group, ICG as its Balkan Analyst until 2013 when ICG left the region. Afterward, Srećko established a new regional think-tank,

Social Overview Service (SOS), and worked as its director and senior analyst. Over the past two decades, Srećko also cooperated closely with the Balkans Investigative Reporting Network, BIRN, and is currently working as their regional editor. Throughout this period, he also covered the Balkans for numerous international media and analytical organizations, such as Oxford Analytica, Janes Defence (currently IHS Janes), World Politics Review and Economist Intelligence Unit.

About the project

“Western Balkans at the Crossroads: Ways Forward in Analyzing External Actors' Influence” is a follow-up project that aims to build upon a knowledge base established in the preceding project “Western Balkans at the Crossroads: Assessing Non-Democratic External Influence Activities,” which mapped, analyzed and publicized Russian, Chinese, Turkish, and Gulf States' influence activities in the region. The innovative project focuses on in-depth socially rooted research and investigative journalism. Its design reflects the aim to go beyond conventional analytical frameworks, overcoming ideologically constructed stereotypes and methodological nationalism while combining a variety of methodological approaches from security studies to visual anthropology.

Project outputs consist of fifteen analytical studies and fifteen journalistic articles drawing on their findings. Major observations on external actors' influence gathered throughout the work on the project will be summarized in a final reflection paper.

Project duration: 10/2019 – 03/2021

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About Prague Security Studies Institute

PSSI is a non-profit, non-governmental organization established in early 2002 to advance the building of a just, secure, democratic, free-market society in the Czech Republic and other post-communist states. PSSI's mission is

to build an ever-growing group of informed and security-minded policy practitioners dedicated to the development of democratic institutions and values in Central and South-East Europe.

