

Not Yet a Done Deal:

Kosovo and the Prishtina-Belgrade Agreement

A DPC Policy Paper

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

The agreement between Prishtina and Belgrade, brokered by the European Union in April 2013 opened the door to resolution of the status dispute between Serbia and Kosovo and unblocked both countries' path toward integration in the EU. This unprecedented development was made possible by a re-ignition of a previously frozen conflict, reactive but consistent German leadership – with strong British and US support – and political change in Serbia. The Prishtina-Belgrade dialogue holds out the promise as a vehicle which, in conjunction with bilateral pressure and a tailored EU enlargement process, could ultimately lead towards full normalization between Kosovo and Serbia. But this is not a done deal yet – as events following the signing of the agreement in April and an implementation plan in May have demonstrated. Due to developments since the summer, the process has reached a point at which it could go seriously awry, threatening the hard-won functionality of the state of Kosovo and the peaceful integration of the majority of Kosovo's Serbs, as well as perpetuating the status dispute with Serbia. Now is the time to shut down such threats once and for all.

In order to get there a number of key steps are necessary in the aftermath of the local elections scheduled for November:

- Germany, the United Kingdom, and the United States need to be directly engaged in order to prevent the future dialogue process from veering in the wrong direction.
- They need to state the basic elements of the only acceptable outcome: full sovereignty of Kosovo, full inclusion of Kosovo Serbs in the state institutions of Kosovo, and full normalization of relations between Prishtina and Belgrade – i.e., mutual recognition.
- The joint German-British proposal for the platform for accession talks with Serbia must build the basis for a medium and long-term strategy.
- Following municipal elections and the implementation of the April agreement, international attention must focus on ensuring the full withdrawal from Kosovo of Serbian security structures and the dismantling of Serbian parallel structures.
- Catherine Ashton's office should initiate negotiations for a second Belgrade-Prishtina agreement to be started in early 2014. Negotiations should concentrate on the dismantling and/or integration of the remains of Serbian parallel structures (health care, education, pensions, etc.) into Kosovo's institutional system, as well as on the transformation of Serbia's financial support to Kosovo Serbs.
- Brussels must enforce a clear division of work within the dialogue between high-level political talks and working group negotiations over technical details.
- The EU must confront Kosovo's democratic shortcomings. This must include reform of the electoral system in 2014 as well as broad external monitoring of the next general elections.
- The EU must oppose Prishtina's demands for the closure of EULEX in 2014. Instead it should seize the moment to streamline the mission and refocus its executive mandate on areas key for the consolidation of the rule of law in Kosovo.

Introduction

The agreement between Prishtina and Belgrade brokered by the European Union in April 2013,¹ along with an implementation plan agreed in May, opened the door for both countries to proceed toward EU membership. For Serbia, this meant negotiations as a candidate. For Kosovo, it meant negotiations for a Stabilization and Association Agreement. Both were reflected in the EU's Council conclusions in June.²

This represented unprecedented progress for the EU in the ongoing Serbia-Kosovo dispute. Violent unrest in northern Kosovo in the summer of 2011 provided the impetus for a radical shift. German Chancellor Angela Merkel reacted to an attack on German KFOR troops by unequivocally telling Serbian President Boris Tadić that his country's EU aspirations would be on hold until there was major progress toward complete resolution of the Kosovo status dispute. As one interviewee put it, "the German awakening changed the dynamic."³ Despite being reactive, this policy was resolute, making the EU's assumption of the undisputed Western leadership role in Kosovo possible. The United States curtailed its role as the dominant international player, shifting to a role centered on backing the EU agenda. Germany, with strong support from the United Kingdom, redefined the terms of the EU's engagement. The new approach was one of frankness and firm conditionality. Political change in Belgrade in 2012 delivered the final necessary ingredient. The new government, formally led by Socialist Party leader Ivica Dačić but dominated by Deputy Prime Minister Aleksandar Vučić and the Serbian Progressive Party, responded to the new reality with pragmatism.⁴ All these factors enabled the EU's External Action Service to broker a deal between Belgrade and Prishtina. Absent the new firmness from Berlin, the agreement would never have coalesced.

Yet the April agreement is far from a done deal. This policy brief seeks to highlight the difficulties encountered to date in the implementation of the agreement, as well as the deal's problematic elements and dangers. While billed as a great leap toward resolution of the Serbia-Kosovo dispute, the agreement could well delay the final reckoning – unless the major Western capitals give it the proper attention and exert the required pressure.

Pitfalls

Institutional guarantees to Serbs – potential threats to Kosovo's functionality

Implementation of the agreement has hit numerous snags and delays. Several of its benchmarks have not yet been met, and there are unresolved issues in interpreting the agreement's stipulations; this has become a source of friction between Belgrade and Prishtina, which has led to still further delays. Against this background, municipal elections in the north, to be held concurrently with elections throughout Kosovo on November 3 (with a runoff on December 1), have become the focus of attention,

¹ <http://www.europeanvoice.com/page/3609.aspx?&blogitemid=1723>.

² http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/EN/genaff/137614.pdf.

³ Interview with Kosovo media figure, Prishtina, September 2013.

⁴ See Bodo Weber, "A date for Serbia? Conditionality, German leadership and Serbia's path to the EU," DPC Policy Paper, June 2013. Available at <http://democratizationpolicy.org/images/policybriefs/serbiapolicy.pdf>.

with most other key issues stalled until after the elections. This leaves very little time afterwards to fully implement the agreement by the end of 2013, the agreed deadline.

While views among Kosovo Albanian opposition parties on the agreement vary, from embracing the concept of the dialogue while being concerned with the details (Democratic League of Kosovo – LDK) to outright rejection (Vetëvendosje), interlocutors conveyed near universal criticism and frustration with the conduct and direction of the process at present.⁵ Concessions made by Prishtina and Brussels to Belgrade that deviate from the existing constitutional order of the Republic of Kosovo and could have negative effects on the future functionality of the state generate more concern now among Kosovo Albanians and some foreign observers than they did when the deal was signed.

Serb-majority municipalities, four north of the Ibar as well as six south of the river that have been fully integrated in the Republic of Kosovo's structures, will form a Community of Serb Municipalities (ZSO) following the election of new, directly-elected mayors and municipal assemblies. Police in the north are to be integrated into the Kosovo Police, with a regional commander selected by the ZSO. This divides the regional police command foreseen in Kosovo's laws along the Ibar River into a northern, Serb, and a southern, Albanian, command. The northern Kosovo judiciary would also become integrated with the Kosovo judiciary, though a subdivision of the state-level Appellate Court in Prishtina, staffed with a majority of Serb judges would be part of the structure. This element has provoked sharp criticism from many Kosovars, who argue that it undermines the integrity of the judicial system, including the principle of equality under the law.⁶

Bringing Serbia back into Kosovo

The agreement includes an implicit but central contradiction that makes many Kosovars anxious, despite their recognition it might be a necessary evil: in order to get Serbs in Kosovo, especially in the north, to cooperate in the implementation of an agreement that will ultimately lead them towards integration into the Republic of Kosovo, after they have been told for three decades by Belgrade that they are an indivisible part of Serbia, Serbia's engagement in Kosovo needs to increase – for some time. On September 10, 2013, the Serbian government dismissed the mayors and assemblies in the four northern municipalities (North Mitrovica, Zubin Potok, Zvečan, and Leposavić) because of continued resistance against the April agreement and mobilization against the elections.⁷ Belgrade brought the preparation team for the ZSO under its control, though the implementation plan foresees an equal role for Prishtina. Neither of these moves prompted any discernible reaction from Prishtina.

Yet the Serbian government's activities to promote voter turnout in the local elections in the four northern municipalities – in order to get legitimate municipal authorities and to prevent the failure of

⁵ DPC conducted over 30 interviews in Kosovo in September-October 2013 with local civil society, political leaders and officials, and international community representatives of various stripes.

⁶ Interview with Kosovo civil society interlocutors, Prishtina, September 2013.

⁷ See Nataša Latković, "Serbs in Kosovo north determined not to go to polls on November 3 even under threat to be recalled," *Blic Online*, August 21, 2013.

the April agreement's implementation – have sparked suspicion about its true motives. Belgrade assembled a Serb candidate list for Serb municipalities in the north and south, mostly from members of Serb parallel institutions in Kosovo. Its promotion as a joint, single list for Serbs in Kosovo prompted widespread resistance – from other Serb parties and lists in Kosovo, from leading EU member states including Germany, and from the Kosovo government. Under pressure of the Central Election Commission (CEC) in Prishtina, the list, initially named “Serbia,” was renamed the “Serb civic initiative” (*Građanska inicijativa Srpska*).

The massive campaigning by Serbian government officials for the Serb list on Kosovo soil has escalated the conflict with Prishtina and turned Aleksandar Vulin, the head of the government office for Kosovo and Metohija, into a lightning rod for Kosovo government officials. Belgrade's campaign comes with a particular narrative: the elections are about voting for Serb institutions that for the first time will be recognized by the international community; the Belgrade-backed joint list is a patriotic choice. Vulin has made the most of the connotations the list's prefix “Srpska” carries, alluding to the Republika Srpska in Bosnia and Herzegovina and at some point raising “the need for a Kosovo Dodik.”⁸ In the run-up to the elections, his office's deputy Krstimir Pantić – who at the same time heads the Serb list and is running as its mayoral candidate for Mitrovica north – has raised tensions and insisted that the ZSO will be an “entity.”⁹

This spin from Belgrade creates confusion, especially among Serbs in the north. One interlocutor told DPC that Serbs are “confused, afraid of Albanians, fearful for loss of their jobs. There are no loud and clear messages being sent by Belgrade.”¹⁰ Fear remains a dominant factor, fed by a lack of information and a series of bomb attacks that have taken place since the beginning of the election campaign. One interviewee stated that in the north “people are tired of thugs herding them. They know they're in deep (trouble). Leaders have tried to manipulate fear – purveying this fantasy about a ‘second Operation Storm.’ They don't have access to alternative views, so the fear is genuine, if ill-founded. You have people afraid to go to Prishtina, Gračanica.”¹¹ Ironically, only opponents of the elections, mainly Vojislav Koštunica's Democratic Party of Serbia (DSS), tell Serbs the full truth – that local elections are elections within the political system of the Republic of Kosovo and will lead towards integration of the four municipalities. Smaller local parties and lists, by contrast, are stressing purely local topics.

In the south of Kosovo, Belgrade's activities have different, no less disturbing effects. Two-thirds of Kosovo's Serbs reside in six municipalities (Gračanica, Novo Brdo, Klokot, Parteš, Ranilug and Štrpce) that are fully integrated into the Republic of Kosovo's institutional system. They have so far been predominantly represented by the Free Liberal Party (SLS) that participates in Kosovo's governing coalition and controls most of the municipal authorities. Despite the continued existence of parallel structures funded by Belgrade (particularly in education and health care) that remain an important socio-economic factor, Serbs there have adjusted to the reality of an independent Kosovo state. Now

⁸ http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=08&dd=11&nav_id=741603.

⁹ <http://www.blic.rs/Vesti/Politika/415232/Pantic-Izbori-moraju-biti-statusno-neutralni>.

¹⁰ Kosovo Serb political figure, October 2013.

¹¹ Interview with Western diplomat, Prishtina, September 2013.

Serbian officials are telling them that by voting for the joint list, “Belgrade returns.” One observer noted: “People are confused. They have re-oriented towards life in Kosovo, but they believe Belgrade, which is telling them ‘Serbia is back’.”¹² Another Serb interviewee said: “Ninety percent of Serbs will always listen to Belgrade – they’ve accepted living in a independent Kosovo, but they look to Belgrade... This April agreement is returning us to a stage that we already had passed.”¹³

There is a certain logic behind Serbia’s push into the south – the April agreement was primarily supposed to integrate the four northern municipalities into the Republic of Kosovo, but within the future Community of (10) Serb municipalities, they could have ended up in a minority position vis-à-vis the six more populous southern municipalities. Yet this puts the SLS under enormous pressure – a party that also owes its existence to the support from those Western countries that stand behind the April agreement. Its representatives feel abandoned. One stated: “We Serbs from this part of the country were betrayed both by the international community and our domestic partners in government – the PDK (Party for a Democratic Kosovo).”¹⁴ The election campaign in the south has thus naturally turned into a battle between the current Serb political representatives who govern in the Serb-majority communities of the south and Belgrade’s joint list in which both sides seem to use their administrative resources to put pressure on citizens. Aleksandar Vulin has been blunt on this during a speech at a rally of the joint list in Klokot on October 11 in which he explained to Serb voters why their material benefit is in voting for Belgrade’s list: “If one thinks he can sell his vote for a package of wheat, five liters of oil, one voucher, he needs to know that he sells the future of his child. Don’t allow yourself to consider a 50 euro voucher to be of higher value than a 400 euro salary from Belgrade... listen to your state when it tells you to vote – get out and vote.”¹⁵

One interviewee noted in that context that “a majority of citizens are not fooled by this story about the ‘return of Serbia.’ They are mainly affected by insecurity concerning the continuation of financing their jobs by Belgrade.”¹⁶

Neither the EU nor the US has confronted Belgrade over these activities. One EU official interpreted it as “Belgrade spin necessary to get out the needed votes in the north”, while a German government official could see “no such return of Belgrade to Kosovo.”¹⁷ Yet various Serb interlocutors in the north and south are worried that developments may have slipped out of the control of Belgrade leaders, first and foremost of Serbia’s strongman, Aleksandar Vučić. “I think this is the government’s and ruling party’s [SNS] apparatus at work, making use of the situation by doing what they traditionally do, not a strategy coming from the top,” said one.¹⁸ Whatever the background, this puts the international community, with its preoccupation with voter turnout in the north, in a tight spot.

¹² Ibid.

¹³ Interview with Kosovo Serb media figure, October 2013.

¹⁴ Interview with Kosovo Serb political figure, October 2013.

¹⁵ <http://www.blic.rs/Vesti/Politika/412198/Vulin-Zajednica-srpskih-opstina-novi-pocetak-ili-kraj>.

¹⁶ Interview with Kosovo Serb media figure, October 2013.

¹⁷ Interview with EU and German government officials, Berlin, October 2013.

¹⁸ Interviews with Kosovo Serb interlocutors, Kosovo, October 2013.

Lack of transparency: necessary evil or source of future conflict?

Despite the amount of political capital invested in the Prishtina-Belgrade dialogue, or perhaps because of it, the April agreement and the May implementation plan, as well as subsequent agreements between the parties, have not been published for public inspection. The April agreement and the May implementation plan, as well as the agreement on electricity and telecommunications reached in September, have been leaked to the media. Only Kosovo authorities have published both the April agreement and the implementation plan – but only after they became part of a law passed by parliament. All other agreements reach the public only through mostly contradicting statements by members of the negotiation teams, leaving citizens, journalists and opposition members in Kosovo confused.

This secrecy extends to member states; they reportedly receive little information from the EEAS on the process – the same goes for KFOR.¹⁹ The standard explanation given by EU officials when asked about the reason – “These are bilateral agreements. It’s not up to us to publish them but to the parties”²⁰ – is hardly convincing in light of the EU’s performance in other cases of “facilitation.”²¹

Kosovo’s government has kept a tight lid on all information on the dialogue, including with the Kosovo Parliamentary Assembly. Members interviewed by DPC noted that they were presented with the April agreement just hours before a scheduled vote.²²

This approach seems to suit all participants in the process – the governments of Kosovo and Serbia and the EEAS facilitation team. The EU’s bureaucratic prerogative of maintaining maximal freedom of maneuver has trumped transparency regarding an agreement that has been claimed to be in the public interest of all concerned. One diplomat posted in Prishtina expressed sympathy for the secrecy, opining that the entire process would become unmanageable if it was inclusive of member states. “You can’t facilitate negotiations if you have to go to 27 [member states]. It would leak, but also generate opposition and problems. You’d get lots of offers to ‘help,’ etc... So not much choice but to ‘blackbox’ it.”²³ This argument may be valid as long as it applies to the negotiating process; but once there is an actual agreement, the secrecy loses all justification.

The lack of transparency not only undermines public trust in the arrangements, but also opens space for political spin by all parties. Furthermore, it enables Belgrade to pursue tactical advantage on every element of the agreement. For example, the municipal elections have been proclaimed “status neutral” by Serbia, even though they quite obviously are elections held within the Republic of Kosovo electoral framework.²⁴ Serbia’s objection to the Kosovo state emblem on the ballots and ballot boxes follows this

¹⁹ Interview with EU member state diplomat, Prishtina, September 2013; interview with KFOR staff, October 2013.

²⁰ Interview with Kosovo media figure, Prishtina, September 2013.

²¹ See the European Commission’s mediation on the Sejdić-Finci case in Bosnia-Herzegovina on October 10, which saw a list of principles published on the Commission’s website the very same day.

²² Interview with Kosovar political figure, Prishtina, September 2013.

²³ Interview with Western diplomat, Prishtina, September 2013.

²⁴ Interview with European officials, Prishtina, September 2013.

line of reasoning as well, as did the “Serbia” electoral list.²⁵ The citizens of Kosovo as all other outside observers can only guess what has been agreed on these as well as on many other controversial issues.

The non-publication of all the relevant public agreements is counterproductive for the Kosovo Government, which is deeply invested in the success of the dialogue with Serbia. The lack of transparency stokes confusion throughout Kosovo – generating fears among Kosovo Albanians, putting wind in the sails of opponents of the dialogue, and sparking inflated hopes among Serbs in the north about the nature of the agreement. The legitimacy and desirability of the process is coming under increasing doubt among Kosovo Albanians – and not just from protest parties such as Vetëvendosje. It similarly generates confusion in Serbia, although public concern understandably appears considerably lower there than in Kosovo.²⁶ Pressures that result from the lack of clarity, including attempts to seek tactical advantage, will ultimately erode whatever trust has developed, making further implementation, much less further progress, more difficult.

The EU’s black-box negotiating culture

The EEAS staff dedicated to the Prishtina-Belgrade dialogue remains quite small, despite the growing complexity of the agreements reached, rising from “two and a half” to “seven” since the signing of the original agreement and implementation plan.²⁷ The process is overseen by High Representative Catherine Ashton herself, along with her envoy for the process, Fernando Gentilini. Both have micromanaged the negotiation process to an unusually high degree. The EU’s facilitation of negotiations has involved closed-door talks, in line with common diplomatic practice. However, several interviewees took a negative view of the degree to which Gentilini controls the flow of information from these talks; the interviewees included EEAS staff and EU officials in Kosovo.²⁸ Relevant expertise from within the EU on police and judiciary matters has only been included in the dialogue after the two basic documents had been agreed on in April-May, which produced avoidable errors that have created problems for implementation. For example, there are discrepancies between the judicial elements of the April agreement and of the May implementation plan. The latter includes the formation of basic courts in Serb majority municipalities²⁹ – a clear violation of Kosovo’s constitutionally ordained judicial structure, in which basic courts are regional courts than span a number of municipalities.³⁰ “They are total nonsense from the point of view of judicial organization,” one international official said.³¹ Implementation of this aspect of the deal has therefore stalled. A government official told DPC: “You wouldn’t believe what kind of materially unsubstantiated proposals we received from the EEAS throughout the dialogue.”³²

²⁵ Ibid.

²⁶ Interview with Western official based in Belgrade, Prishtina, September 2013.

²⁷ Interview with European official, Prishtina, September 2013.

²⁸ Interviews with European and Western officials, Prishtina, September 2013.

²⁹ Interview with several EU officials, Prishtina, September 2013.

³⁰ Interview with Western official, Prishtina, September 2013.

³¹ Interview with international official, Prishtina, September 2013.

³² Interview with Government of Kosovo official, Prishtina, October 2013.

The performance of the Kosovo government in the talks also appears have weakened its negotiation position. Numerous interviewees, Kosovar and foreign, noted that the Kosovo negotiating team regularly comes to the talks unprepared.³³ “They need to understand that they have a say,” said one Kosovar politician. “They seem to have a sense that Ashton should propose, not them.”³⁴ The team reportedly failed to provide input on agenda items; arriving without briefing materials; and being rather silent during discussions.³⁵ One interlocutor interpreted this posture as an expectation that the EU or other members of the international community (particularly Germany, the US and the UK) would protect Kosovar interests.³⁶ This has given the edge to Serbia and induced Brussels to compromise more than is good for the EU’s policy aims. Kosovo officials interviewed for this policy paper admit that their negotiating team’s position is weaker, but point to a structural disadvantage – Serbia’s historically stronger bureaucratic tradition. One of them noted: “Even one of our advisors from Croatia admitted that every time a Croatian delegation sits down at the negotiation table with Belgrade in Brussels, they come out at the losing end.”³⁷

Since the implementation process got complicated and slowed down during the summer, one gets the impression that the EU has failed to draw red lines and Ashton’s office has retreated into a typical EU mode of dialogue “facilitator.” This seems to be rooted in a structural tilt that characterizes the EU’s negotiation setting: while the dialogue in Brussels is formally organized as a bilateral negotiating process with the EEAS in a traditional facilitating role, it is in fact driven by German leadership in the EU (supported by the UK and the US). Berlin, with its allies, is defining the general direction, sets the red lines and undertakes the crucial communication with Belgrade and Prishtina. But in order to keep this complicated process running smoothly and to avoid deviations and backlashes, Berlin would need to engage in constant micromanagement at a senior level, which is beyond Berlin’s capacities, as a government official conceded in a conversation with DPC.³⁸

Another problem linked to this tilt is the regular intermingling of the high-level political dialogue and technical negotiations on details as highlighted by one European official: “The way the EU is running this process is not good. The whole point of ‘each side will regulate under its own laws’ was to not have to talk about all this [detail].”³⁹ The interviewee added that this approach was a “systemic mistake.” “On many issues we should simply define the red lines, declare the issue of Kosovo’s statehood over, and let the delegations negotiate over sorting out the technical details. Instead, we get stuck in technical discussions that then are brought to the table to be solved by prime ministers meeting in Brussels.”⁴⁰

³³ Kosovo civil society and international interviewees, Prishtina, September 2013.

³⁴ Interview with Kosovar political figure, Prishtina, September 2013.

³⁵ Interview with Kosovar media figure, Prishtina, September 2013.

³⁶ Interview with Kosovo media figure, Prishtina, September 2013.

³⁷ Interview with Government of Kosovo official, Prishtina, October 2013.

³⁸ Interview with German government official, Berlin, October 2013.

³⁹ Interview with European official, Prishtina, September 2013.

⁴⁰ Interview with European official, Prishtina, October 2013.

The amnesty law

One of the requirements set down in the April agreement was an amnesty for those who had broken Kosovo's laws in the north. It was the norm not to pay utility bills, for example. The logic of removing this impediment to the integration of the north with the rest of Kosovo was clear. But the stipulation was exploited by the government for its own purposes and was initially drafted to be far more inclusive than was required by the agreement. The effect would have been to amnesty serious crimes throughout Kosovo. The ruling party, the Party for a Democratic Kosovo (PDK), was catering to members and backers who would benefit from this amnesty, including nine serving mayors. Much of Kosovo's opposition would benefit, too.⁴¹

The EU and rest of the international community was thereby put "in a lousy position" that "threatened the dialogue," according to an interviewee. One diplomat noted "The problem is that it's rushed... Amnesty for all of Kosovo – we created a rod [to beat] our own backs with that. The initial draft was pretty pernicious. So there was controversy... It is a very tricky area." Our interlocutor continued: "EU lawyers were part of a very rushed process on the first draft," but were unaware that government figures were "packing it." The Ambassador of the Netherlands objected to the first draft; others reportedly joined him. The EU assessment of the law was done "in real time," according to one interlocutor, but no written version of the assessment could be obtained – no interlocutors were said to have seen it.⁴² But in general the international reaction was indulgent of what was regarded as a potential great step backward for rule of law in Kosovo, since implementation of the April agreement was such an overwhelming policy priority. "You can't go into conflict with your local interlocutors too much," one interviewee admitted.⁴³ Another added "there is no point in bashing the government publicly."⁴⁴

The draft failed in parliament. A second draft, also reviewed by EU lawyers, was seen to be a significant improvement, narrowing the scope for exploitation by adding the condition that only those who were engaged in an act of rebellion were eligible. But while some interlocutors viewed it as "way more satisfactory," they acknowledged "there are still problems."⁴⁵

The display of international unwillingness to openly confront what all acknowledged was a bad draft law was hardly reassuring to those who expected a greater Western commitment to defending its stated principles. This experience deepened the growing disenchantment with the international community, and the EU in particular, felt by much of Kosovo Albanian civil society.

⁴¹ Interview with Kosovar media figure, Prishtina, September 2013.

⁴² Interviews with Western diplomats and officials, Prishtina, September 2013.

⁴³ Interview with European officials, Prishtina, September 2013.

⁴⁴ Interview with Western diplomat, Prishtina, September 2013.

⁴⁵ Interview with European diplomats, Prishtina, September 2013.

What next?

Integration of the north – unfinished business

The implementation of the agreements remains burdened with uncertainty, as does the future trajectory of the negotiations between Prishtina and Belgrade. The municipal election process will wrap up in early December. Municipal governments – and the ZSO – will be formed in early 2014. One interviewee stated outright in September that the implementation of the April agreement by December 31, 2013, as agreed, is simply not feasible.⁴⁶

The shape and nature of the ZSO remains very much in question. The police and judicial structures in the north will only become functional by the end of 2013 – and this is an optimistic scenario. The implementation plan also includes other deadlines running through the end of 2013 though actual implementation has lagged consistently. Nevertheless, at the end of December, the EU is scheduled to decide on a date for opening accession talks with Serbia.

Even in the event that all these elements are fully implemented on time, a considerable infrastructure of “parallel structures” will remain in Kosovo. These structures include education, health care, and other conduits for financing from Belgrade. There are thousands of Kosovo Serbs in parallel municipal administrations and phantom agencies both in the north and the south who are essentially paid salaries for non-work. Many of them have no prospect of finding any other “job.” This presents a huge social problem that can easily be turned into a political one. No transition plan is currently in sight.⁴⁷ In addition, numerous businesses remain registered in northern Kosovo, which has existed effectively outside the law of either Kosovo or Serbia and become a haven for smuggling and other varieties of organized crime. Measures to address all these matters have yet to be proposed, let alone agreed.

But it is expected that the ZSO will be dominated by the north, despite a greater number of more populous Serb-majority municipalities in the south.⁴⁸ One potential action that would prove particularly problematic is the transfer of Serbia’s extensive and unresolved property claims throughout Kosovo (e.g., beyond its 10 member municipalities) to the ZSO. This idea has been mooted, according to a number of interviewees.⁴⁹ In addition, some fear that the ambiguities will be exploited for the ZSO to make a power grab in Kosovo. As one put it, “Belgrade will prepare the local Serbs to say ‘whatever is not explicit is the ZSO’s competence.’”⁵⁰ If either or both of these possibilities were to be realized, this would fulfill the dark fears of the ZSO becoming an “entity,” like the Republika Srpska in Bosnia and Herzegovina.

Questions about the police and judicial sectors also abound. The police in the north have yet to be integrated into the Kosovo Police.⁵¹ The effectiveness of the police in the north is also in question;

⁴⁶ Interview with European diplomat, Berlin, September 2013.

⁴⁷ Interviews with Serb interlocutors in the south and north and with Western diplomats, Kosovo, October 2013.

⁴⁸ Interview with Kosovar official, Prishtina, September 2013.

⁴⁹ Interviews with European officials, Prishtina, September 2013.

⁵⁰ Interview with European diplomat, Prishtina, September 2013.

⁵¹ Interview with Western diplomat, Prishtina, September 2013.

manpower is low and an attempt to arrest a criminal has been seen off by crowds.⁵² The challenge posed by organized crime and radical political actors in the north is considerable. “You’ve got organized crime structures, security structures, radical political groups, the DSS-SRS, extremist organizations like ‘Obraz’ and ‘Naši,’ etc. – they are linked through money,” according to one local interviewee.⁵³ It is far from clear how or when this will be addressed.

Confronting Kosovo’s democracy gap

While Kosovo is rightly categorized as one of the forward-moving countries in the Western Balkans (together with Montenegro and Serbia) by MEP Jelko Kacin, many interviewees questioned whether this assertion was built on a firm foundation. “There are no putative statesmen, nobody with vision, nobody with a coherent idea of where Kosovo fits in within the region,” as one put it.⁵⁴

The ongoing Prishtina-Belgrade dialogue has crowded out all the other issues facing Kosovo. These issues include a lack of democratic and electoral transparency, leading to a widespread distrust of the political process.⁵⁵ Electoral fraud in 2010 led to an interparty agreement for electoral reform, witnessed by then-US Ambassador Christopher Dell.⁵⁶ This deal was never realized, deepening already pronounced political distrust and popular lack of faith in politics. The 2010 election experience led to deeper international attention to the upcoming municipal elections. As one European official stated, “there are problems in the system as such...we need electoral reform to fix systemic deficiencies.”⁵⁷ The EU will field a mission of 100 observers statewide, though some interviewees thought this number too low.⁵⁸ Political parties will field numerous partisan observers. Some interlocutors stated that there was a potential for violence should the electoral process be seen as unfair or otherwise not credible.⁵⁹ The general elections of 2014 will undoubtedly be affected by the conduct of the local elections, as will the prospects for substantive electoral reform.

In addition, Kosovo suffers from systemic corruption (as do its neighbors).⁶⁰ As one opposition politician told the authors, “the problem with government is governance – corruption, links with organized crime, unemployment. *This* is their weakness. They really mismanaged. The north isn’t the real problem. We can make it a disaster. It doesn’t have to be.”⁶¹ He added that “decisions are made outside the official structures; the decision-makers are not in the system. The only exception in the prime minister himself...

⁵² Ibid and interview with international officials, Prishtina, October 2013.

⁵³ Interview with Kosovo Serb political figure, October 2013.

⁵⁴ Interview with Kosovo civil society figure, Prishtina, September 2013.

⁵⁵ Interviews with civil society, media, and political figures and Western diplomats and officials in Prishtina, September-October 2013.

⁵⁶ Interviews with civil society and political figures, Prishtina, September 2013.

⁵⁷ Interview with European officials, Prishtina, September 2013.

⁵⁸ Interview with Western diplomat, Prishtina, September 2013.

⁵⁹ Interview with Kosovar political figure, Prishtina, September 2013.

⁶⁰ Interview with Kosovar officials, political and civil society figures, September 2013.

⁶¹ Interview with Kosovar political figure, Prishtina, September 2013.

The government are just implementers.”⁶² Even government officials openly admit that “rule of law, organized crime and public administration” are “the most problematic reform areas.”⁶³ The government’s performance on the amnesty law, along with demands for the closure of EULEX in 2014, hasn’t served Prishtina’s democratic image with its Western allies – it has disturbed Berlin as much as other Western capitals.⁶⁴ The economy is in dire condition and its condition is worsening, dependent on remittances and commercial trade; there is little production to speak of. “Services, diaspora – that’s the economy. They send us less and less. Only companies that do trade are making money – supermarkets and so on. Very low production, a little agriculture,” one interlocutor summarized.⁶⁵ The level of perceived (and experienced) corruption repels foreign investment, including by the diaspora.⁶⁶

Securing continuity of EU leadership and policy

The EU’s political calendar for 2014 includes significant events as well. Elections to the European Parliament will be held in May. How much the European Commission will be able to accomplish as a lame duck, prior to a new Commission taking office in October, remains unclear. The question of EU enlargement, which has already provoked debate and strong resistance in many member states, remains open. Some member state parliamentarians have even questioned the need for an Enlargement Commissioner and Directorate General, given the lack of appetite for further expansion of the Union following Croatia’s accession in July 2013. Also, Ashton’s tenure as High Representative for the Common Foreign and Security Policy will come to an end. “I sense we need to get the April 19 deal implemented while Ashton is still in. The Balkans is not sexy and who knows if we can get the attention again,” one interviewee stated.⁶⁷ Another local observer said “(the EU) are fixated on making Ashton successful. They don’t care about Kosovo stability. This generates tensions. It has long-term implications. All of this is based on short-term priorities.”⁶⁸ All these factors press the EEAS to try to drive the Prishtina-Belgrade dialogue forward as quickly as possible prior to the EP elections, correspondingly de-emphasizing problems along the way for the sake of “momentum.” What more can be implemented – and agreed – prior to May remains to be seen.

Germany and Britain, in a recent joint non-paper,⁶⁹ list a number of necessary endpoints for the Kosovo-Serbia dialogue and the EU’s approach to the two countries through the accession process. These include the following elements:

- “Full normalization” guaranteed by the end of the accession process;
- Conditionality on normalization must be hardwired through each chapter negotiation, including through relevant chapter opening/closing benchmarks;

⁶² Ibid.

⁶³ Interview with Kosovar official, Prishtina, September 2013.

⁶⁴ Interviews with German and other Western diplomats, September-October 2013.

⁶⁵ Interview with Kosovar economist, Prishtina, September 2013.

⁶⁶ Interview Kosovar political figure, Prishtina, October 2013.

⁶⁷ Interview with Western diplomat, Prishtina, September 2013.

⁶⁸ Interview with Kosovo civil society interlocutors, Prishtina, September 2013.

⁶⁹ Joint German-British untitled and undated non-paper obtained by DPC in October 2013.

- Chapter 35 will lock in Serbia's overall progress towards full normalization, across the board and throughout its negotiations;
- A watertight, binding mechanism to prevent either Kosovo or Serbia blocking the other's EU path (likely taking legal form in Serbia's accession treaty);
- A strong role in the process for EEAS/HR.

Clearly, Berlin and London envision a detailed and robust set of criteria for both countries. Among these is a proposal, jointly agreed with Enlargement Commissioner Štefan Füle, to add all Kosovo-related issues to Chapter 35 of Serbia's EU accession negotiations.⁷⁰ In their view, the endpoint of the Serbian accession talks will have to be the "full normalization" of Belgrade's relations with Prishtina. Given the strong support both Berlin and London have given Kosovo's independence and sovereignty, this can only mean recognition by Serbia. Since joining the Union requires the unanimous backing of existing member states, Serbia will have to accept Kosovo's independence in the end. What is far from clear is whether the EU institutions or the full panoply of member states, including the five non-recognizers, have arrived at a similar strategic assessment, much less devised a strategy of how to get there. In any case, this outlined approach is a highly sophisticated enterprise never before undertaken in the history of the European Union's enlargement policy.

Conclusion and recommendations

The Prishtina-Belgrade dialogue holds promise as a vehicle that, in conjunction with bilateral pressure and a tailored EU enlargement process, can ultimately lead to full normalization between Kosovo and Serbia. This would benefit all of Kosovo's citizens, Albanian and Serb alike. It would also be to Serbia's benefit. But the process is presently at a point at which it could go seriously awry, threatening the hard-won functionality of the state of Kosovo, the continued integration of the majority of Kosovo's Serbs, and the indefinite perpetuation of the status dispute with Serbia. Now is the time to definitively foreclose this negative potential.

International credibility is collectively suffering from a sense that form is trumping substance in implementation of the April agreement and pursuit of the dialogue. Strong leadership by Germany, the United Kingdom and the United States is essential to preventing the process from veering off course. These countries need to jointly proclaim that the only acceptable outcome of the process includes some basic elements:

- Full sovereignty for Kosovo (e.g., no impediments to its functionality);
- Full inclusion of Kosovo Serbs – south and north of the Ibar – must be articulated at the legislative and executive levels;
- Full normalization of the relationship between Prishtina and Belgrade. This means mutual recognition.

⁷⁰ Interview with European official, Prishtina, September 2013.

Berlin, London and Washington should work to get the two other members of the “Quint,” France and Italy, to align with this firm policy,⁷¹ as well as many other EU member states as possible. This would reduce the potential for a process-fetishistic and opaque EEAS to define the policy bureaucratically.

A medium and long-term strategy must be designed to achieve these goals. The EU membership aspirations of both Serbia and Kosovo must be tied to these strategic goals. Chapter 35 in the EC’s negotiations with Serbia must be the vehicle for this; it must be interpreted expansively and packed with all the elements that must be resolved between Kosovo and Serbia. Only with clear and firm red lines can the EU avoid importing this political and territorial dispute.

Essential to success is the more immediate concern of how to ensure full Serbian withdrawal from Kosovo following the municipal elections, in which it is deeply invested and engaged. Leaving in place Serbia’s ability to interfere with the functioning of the Republic of Kosovo will destroy the already tenuous credibility of the dialogue process with Kosovo Albanians. It will also cripple the evolution of a truly integrated Kosovo, which must include empowered Kosovo Serbs.

Ashton’s office should initiate a new round of negotiations for a second Belgrade-Prishtina agreement in early 2014. Negotiations should concentrate on the dismantling or integration of the remains of Serbian parallel structures in Kosovo (health care, education, pensions, etc.) and the transition of Serbia’s financing of Serb institutions in Kosovo into a transparently organized form of financial support.

In its “facilitating” role, Brussels must define and maintain a clear division of labor within the dialogue between high-level political dialogue and working group negotiations over technical details.

Kosovo’s shortcomings in the realm of democratic practice, corruption and rule of law have already weakened its hand in negotiations with Serbia and the EEAS; unless remediated, they will threaten the functionality of the country’s governance. Pervasive external monitoring of the 2013 municipal elections and the 2014 general elections is essential, as is credible domestic non-partisan election observation.

The EU must resist Prishtina’s demand for the closure of EULEX in June 2014. Instead it must seize the moment to refocus the mission on key areas to consolidate the rule of law in Kosovo. This must be combined with an exit strategy embedded into the Union’s EU integration policy strategy for Kosovo.

The refusal of the EU and its member states to explicitly require Serbia’s acceptance of Kosovo independence until now has only fed false hopes in Serbia in the 13 years since its democratic transition. If the rationale was that this would become easier with time, this has been proven false. Nor has it been good for Serbia; Serbia’s political elites have been provided with a handy issue to attempt avoidance of political responsibility on harder problems – such as the teetering economy and rule of law. With their recent non-paper, Germany and Britain appear to be committed to finally remediating this policy gap, a very welcome development. Yet sufficient attention must be paid to the dialogue process by these key member states (and hopefully others), as well as the United States, to ensure that

⁷¹ One interlocutor characterized the French and Italian positions as “let’s not be difficult on conditionality for Serbia.” Interview with Western diplomat, Prishtina, September 2013.

it is not exploited either tactically or strategically by Serbia to gain by bureaucratic maneuver what it could not retain by force – an ability to steer events in Kosovo. It must finally be made clear that its European vocation has foreclosed that option forever.