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## 2. Europeanisation and Institutionalisation of EU Rules in the Western Balkans

This empirical analysis draws on in-depth case studies of six EU candidate countries in the Western Balkans. All cases display similarities in terms of potential explanations – they are targeted by the same policy of enlargement, premised on similar institutional settings, and driven by the same package of incentives. In addition, over the past decade all of the countries involved experienced a deep-rooted system of state capture that impeded the consolidation of liberal democratic society based on the rule of law. Yet, some of the countries experience additional impediments on their EU membership paths. The combined comparative insights from the cases makes it possible to trace patterns in explaining the deficiencies in EU norm promotion through enlargement to the Western Balkan candidate countries. The chapter addresses the implications of credibility of the accession process, political costs and administrative capacity on compliance with the political, economic and *acquis* criteria in the Western Balkans. It emphasizes the importance of the political dimension of the EU accession process as a key challenge for advancement in the Europeanisation of the Western Balkans countries.

**Keywords:** European Union, Western Balkans, conditionality, EU integration, Europeanisation, compliance, rule of law, media freedom, economy, *acquis communautaire*

### Introduction

At the Thessaloniki summit in 2003, the European Council declared, “the future of the Balkans is within the European Union” (European Council, 2003). This political commitment of the heads of state and prime ministers of the European Union (EU) countries was understood as a strong incentive and a promise that the future of the region, within the EU, will be stable and prosperous. However, apart from Croatia that entered the EU in 2013, fifteen years after the Thessaloniki Summit, Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia are still far away from full EU membership.

While the contractual relationship between the EU and the Western Balkans embodied in Stabilization and Association Agreements (SAA) have now entered into force for all six countries, only Montenegro (28 chapters opened, 3 provisionally closed) and Serbia (12 chapters opened, 2 provisionally closed)<sup>1</sup> continue their accession negotiations. In the meantime, Albania awaits the opening of its first negotiating chapters conditioned by a convincing track record in implementation of judicial reform. Despite being the first Western Balkan country to sign the SAA with the EU, following the end of a deep and prolonged political crisis, Macedonia must implement Urgent Reform Priorities concerning the functioning of rule of law and the “Prespa Agreement” in order to open accession negotiations. Bosnia and Herzegovina filed its accession application, but then it took almost two years only to submit responses to the EU accession Questionnaire. The EU and Kosovo held their first SAA Council meeting in November 2016, however due to prolonged internal political stalemate in the country EU integration had not progressed ever since.

Contrary to initial hopes that the accession of the region to the EU will gradually introduce a liberal democratic form of government founded on the rule of law in six non-EU Western Balkan countries, serious backsliding in terms of democracy and the rule of law can be observed throughout the region over the past decade (Freedom House, 2018; BTI, 2016). Several countries are governed by semi-authoritarian leaders whose commitment to political transformation is lukewarm at best. While liberal democratic Western Balkan governments seem to identify with the EU, they often remain overshadowed by the high number of domestic formal and informal ‘gate keeper’ elites that continue to control the state in an effort to preserve their private economic interests and their grip on political power.

Moreover, the Western Balkans is suffering from a development gap. Despite rapid growth recorded in the early 2000s, effective economic reforms have often been delayed due to the fact that regional economies are incapable of withstanding the competitive pressures of the EU common market. Throughout much of the Western Balkans, economies have remained lagging behind the EU, often relying on aid, loans and remittances, and prone to high levels of state intervention. With the current average growth rates, it will take these countries at least several decades to converge with the average EU GDP per capita (Sanfey and Milatović, 2018). The demographic picture of some countries with the “oldest” populations in Europe and low birth rates

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1 In the time of writing this chapter.

is causing additional concerns for the future. Emigration from the region is persistent and is no longer driven by political, but economic conditions as well.

In addition to the democratic and socio-economic setbacks in the region, numerous unresolved bilateral disputes and incomplete processes of reconciliation after the 1990s violent conflicts threaten to undermine fragile regional stability (Dimitrov, Djolai and Wunsch, 2015). The EU's "unfinished business" in the Balkans opens the door to various political, economic and security alternatives as powerful geopolitical actors, particularly the US, Russia, Turkey, China and countries of the Gulf are increasingly competing for economic influence and for political dominance in the countries on the outskirts of the EU (See for example Bechev 2017; Bartlett et al. 2017). Frustration with the inability to progress in EU accession could easily translate the already growing Euro-skepticism into more openly anti-Western sentiments, which could be followed by a further rise of populism, nationalism and possibly even religious fundamentalism in some of the countries in the region.

Finally, in its latest Enlargement Strategy entitled "The Credible Enlargement Perspective for the Western Balkans", the European Commission (2018) too has acknowledged the lack of progress among current EU candidate countries. Going beyond the usual diplomatic language used in the EU Progress Reports, the Commission has established that "the [Western Balkan] countries show clear elements of state capture, including links with organised crime and corruption at all levels of government and administration" (European Commission, 2018). Furthermore, the document added that "none of the Western Balkans can currently be considered a functioning market economy nor to have the capacity to cope with the competitive pressure and market forces in the union" (European Commission, 2018).

So why, after almost two decades of ongoing enlargement process, does Europeanisation of the region fail to produce more than just surface-level reforms? This study conceptualizes and investigates the factors that explain the reasons for (non-) compliance with EU accession conditions embodied in the political, economic and administrative accession criteria, focusing on both the supply and demand sides of the enlargement. Operationally, by taking stock of the identified gap between norm adoption and implementation, we highlight the lack of accountability of the political 'elites' in charge of the enlargement process –EU actors mostly

coming from the Member States, and domestic elites– as well as omissions in the EU's strategy for norm diffusion in order to explain the (d)evolution of rule transfers.

The empirical analysis draws on in-depth case studies of the six remaining non-EU Western Balkan countries. All cases display critical similarities in terms of potential explanations – they are targeted by the same policy of enlargement, premised on similar institutional settings, and driven by the same package of incentives. In addition, over the past decade all of the countries involved experienced a deep-rooted system of state capture that impeded the consolidation of liberal democratic society based on the rule of law. Yet, some of the countries experience additional impediments to their EU membership paths, such as bilateral conditionality imposed by neighbouring EU member states, as in the case of Macedonia due to ongoing name dispute with Greece, or non-recognition by five EU member states, as observed in the case of Kosovo. The combined comparative insights from the cases makes it possible to trace the possible patterns in explaining the deficiencies in EU norm promotion through enlargement to the Western Balkan candidate countries.

The results of the research presented in this chapter are based upon a combination of two methodological strands. First, we will employ a normative approach by means of a content analysis of the EU Progress Reports and legal rules and administrative regulations which were adopted and implemented in the candidate countries as a basis upon which to raise the standards in political, economic and administrative sectors tested against the external demands established within the EU accession process. Second, through a problem-oriented empirical approach, we will assess the practical aspects of enforcing political and economic transformation, analyzing progress, and singling out gaps between legislation and implementation of reforms. Particularly, we will highlight the political, administrative and societal context in which these dynamics are operating.

The chapter is organized in six major parts. Following the introduction, the second part of the chapter outlines theoretical approaches to Europeanisation of EU candidate countries reflecting on the induction of compliance with the EU norms. Next three sections will draw on the extensive desk and field research aiming to trace the compliance with accession conditionality criteria set-forth by the European Commission in fields of rule of law, economy and *acquis communautaire*, defining possible gaps and analysing main reasons for them. This is followed with a concluding

section which translates the main findings of this chapter into tangible recommendations with regard to varying level of compliance to EU conditionality across different policy fields.

## Theoretical Approaches to Europeanisation Beyond the EU Member States

Since the 1990s the EU began to use the attractiveness of its membership incentive for the post-communist countries to promote “the external projection of internal solutions,” (Lavanex, 2004: 695) manifested in a broad range of political and economic membership criteria. The concern of scholars of EU integration thus shifted towards evaluation of norm transfer from the EU to the candidate countries and the variation in its effectiveness. This led to the creation of the Europeanisation of candidate countries as a separate sub-field of the Europeanisation agenda that looks not only at the instruments and the degree of EU impact on domestic politics and policies, but also analyzes how this impact takes place and how compliance with the EU norms can be induced (Schimmelfenning 2010; 2012; Sedelmeier, 2011; Noutcheva, 2015, etc.). Informed literature can be seen as arriving at two principal explanations about why candidate countries adjust to the EU norms, namely the ‘logic of consequentiality’ based on ‘rationalist institutionalism,’ and the ‘logic of appropriateness’ based on ‘constructivist institutionalism’ (March and Olsen, 2004).

Rationalist institutionalism presupposes cost-benefit calculations by both EU institutions and domestic elites. It deals with particular questions such as the clarity of EU demands, which is particularly problematic in the field of rule of law, and the credibility of conditionality in general. It assumes that actors choose the behavior that maximizes their utility under the circumstances. The ‘logic of consequences’ goes on to claim that the cost-benefit calculations of the candidate country can be successfully manipulated by the EU through external incentives. The predominant mechanism for the Europeanisation of candidate countries is conditionality based on the strategy of reinforcement by reward (Schimmelfenning and Sedelmeier, 2004).

Constructivist institutionalism, on the other hand, deals with the process of ‘norm socialization,’ in which domestic elites and populations at large internalize EU norms which they regard as legitimate. Instead of directly manipulating or indirectly influencing the cost-benefit calculations of the candidate countries, constructivists suggest that rule transfer can only be effective if elites and populations in candidate countries identify with the EU and are thus open to behavioral change by “social learning” through ‘soft’ mechanisms for the EU’s domestic impact – socialization and persuasion (Checkel, 2005). Thus, Europeanisation in this case works when the domestic actors are convinced of the legitimacy and appropriateness of EU demands.

The mushrooming literature on the Europeanisation of EU candidate countries confirms that credible conditionality has indeed played a significant role in the EU integration process, as it has successfully induced pressure on candidates (See for example Elbasani, 2013; Keil, 2013; Noutcheva, 2015). At the same time, the overall success of conditionality remains dependent on the level of adoption costs for domestic authorities. Alternatively, other instruments for promoting EU norms, such as socialization of domestic elites and persuasion, do not appear to have been effective substitutes for political accession conditionality (Sedelmeier, 2006), even though they are described as unique EU strategies.

Furthermore, the literature on compliance distinguishes between two dominant paradigms that explain the processes of implementation of EU legislation: the ‘enforcement’ and ‘management’ approaches (Tallberg, 2002). While the ‘enforcement’ approach emphasises the political will and the costs of implementation, both financial and administrative, as a prevailing factor for variation in compliance, the ‘management’ approach focuses on the administrative capacities and limitations as a source of compliance or non-compliance with EU rules (Sedelmeier, 2008). Previous research on compliance in the Central and Eastern European Countries (CEECs) has underlined the importance of administrative capacity as a prevailing factor for differences in implementation outcomes. Hille and Knill’s (2006) comparative study points towards the bureaucratic strength and bureaucratic effectiveness of a country as a key factor for effective alignment with EU rules. In a similar vein, single case studies of compliance with the *acquis* in the pre-accession stage have linked the successful approximation and implementation of EU legislation with high administrative capacity and well-established coordination mechanisms

for transposition (Maniokas, 2009) and the institutionalisation of a strong core domestic executive (Zubek, 2005).

Empirical findings show that although the *acquis communautaire* is at the core of Europeanisation in candidate countries, the contents of Europeanisation are “of a more general character” (Schimmelfenning, 2012: 22). This particularly relates to the ‘core goals’ of Europeanisation, such as democratization and the rule of law. Europeanisation therefore has differentiated impact not only across countries, but also across various issues (Schimmelfenning, 2012), as our study confirms. While the enlargement has “considerably contributed” (Lavanex, 2004: 695) to the political transformation in Central and Eastern Europe by exporting the rule of law, recent trends are raising concerns about the effectiveness of the EU’s mechanisms to influence current EU candidates.

This study contributes to the emerging Europeanisation theory literature by analyzing the impact of the EU norm diffusion in the Western Balkan candidate countries via assessment of the resonance between EU demands (conditions) and domestic rules (implementation). Specifically, we argue that besides the declared “credibility of enlargement” for the Western Balkans, their accession path remains all but credible as two main variables of credibility are missing – the first being determinacy, clarity and consistency of membership conditions, and the second being the certainty of the promise of full membership when these conditions are met. These factors are directly linked with the lack of incentives for investing in administrative capacity which is identified as the principal source of poor implementation.

## Political Conditionality

### *Criteria*

The principles of rule of law, human dignity, freedom, democracy, equality and human rights are defined by Article 2 TEU as a value upon which the Union itself is founded and which are ‘common to the Member States’. Most of these principles were not defined by the founders of the EU. They have instead become a predominant organizational model of contemporary

constitutional law, a dynamic “meta-principle” (Pech, 2009) providing a firm foundation for the functioning of the EU. Apart from standing as pillars of EU identity, these principles are now operationally used as an eligibility criterion for EU membership (Magen, 2016).

Political membership requirements were first addressed within the accession context in respect to the Mediterranean enlargements of the 1980s for the three post-authoritarian countries acceding to the EU within the wider framework of their respective democratic transitions. Yet, it was not until the prospect of Eastern Enlargement that the EU enhanced its political membership requirements. In regard to the CEECs, the European Commission (2007) defined its political criteria in Agenda 2000 as a combination of free and fair elections, political pluralism, freedom of expression and freedom of religion, the need for democratic institutions, and the independent judicial and constitutional authorities. Even so, this approach was criticized for its rather “simplistic sum” (Tatham, 2009: 209) of the rule of law and democracy, and the lack of “actual substance” (Leino, 2002: 80).

Only with the prospect of enlargement to the South East European (SEE) countries did the EU become more aware of the need to provide content criteria, or benchmarks, by which to measure success or failure in fulfilling the principle of democracy and the rule of law for EU acceding countries (Smilov, 2006). Hence, in its April 1997 Conclusions, the General Affairs Council declared the political criteria SEE countries need to fulfil to conclude an SAA – which marks only the beginning of the contractual relationship between the EU and the candidate country. This time the Council made express reference to the rule of law, as it concluded that each SEE country must be ready to demonstrate (1) the separation of executive, legislative and judicial powers, (2) effective means of redress against administrative decisions, (3) access to courts and the right to a fair trial, (4) equality before the law, and (5) freedom from inhumane or degrading treatment and arbitrary arrest. Additional clarifications aimed at each potential candidate country individually were voiced by the European Commission in its Progress (previously Regular) Reports (Kochenov, 2008). By analysis of these documents it can be observed that EU requires Western Balkan countries to demonstrate a credible track record of properly functioning judicial system, effective fight against corruption, and protection of fundamental rights.

The EU’s 2011 ‘new approach’ concerning the prioritization of the rule of law reforms in candidate countries was seen as an attempt to learn the

lessons of previous enlargements and to avoid having to initiate a Cooperation and Verification Mechanism after accession. The new approach rests on the principle that issues relating to the judiciary and fundamental rights and justice, freedom, and security “should be tackled early in the accession process and the corresponding chapters opened accordingly on the basis of action plans, as they require the establishment of convincing track records” (European Commission, 2011: 5). Furthermore, the ‘new approach’ envisages an interim benchmarking system that would assess the country’s preparedness to open and close a negotiating chapter, and introduces safeguard measures, most notably the overall balance clause, intended to stop negotiations on other chapters if progress on chapters 23 and 24 begins to lag behind.

More broadly, the Commission continues to use all other available instruments to strengthen the rule of law in candidate countries, including through its regular monitoring via joint bodies under the SAA, expert assessment missions, and structured dialogues currently existing in Albania, Bosnia and Herzegovina, Kosovo and Macedonia. The ‘new approach’ has placed particular emphasis on involvement of local stakeholders, including civil society organizations, in dialogue and monitoring. These actions are paired with generous financial assistance with a major focus on rule of law under the Instrument for Pre-accession Assistance (IPA) II. In addition, the EU supports institutional and human capacity building through its Technical Assistance and Information Exchange instrument of the European Commission (TAIEX) and twinning projects which bring public administration officials and other experts in law enforcement from the Member States into direct contact with their Western Balkan counterparts. Finally, the rule of law is supported through other EU instruments through projects that support democracy and human rights at country-specific, regional, or global coverage, namely the Instrument Contributing to Peace and Stability, the European Instrument for Democracy and Human Rights and thematic programs of the Development Co-operation Instrument.

Nevertheless, despite its evident prominence in the EU enlargement policy, there is still no uniform ‘European standard’ for institution-building or monitoring activities by the EU in the rule of law and democracy area. Hence, the EU democracy and rule of law diffusion taking part within the enlargement tends to measure alignment with the *acquis* against formal legal and institutional benchmarks with primary emphasis on the judiciary

(Carothers, 2006; Magen 2007; 2008; 2016). In the next sections, this study shows negative externalities of the specified approach.

### *The Reform of the Judiciary*

In an attempt to excel at their EU integration, all of the Western Balkan countries produced comprehensive strategies for judicial reform between 2004 in Macedonia and 2016 in Albania. The documents introduced required Constitutional amendments, established novel Judicial and Prosecutors' Councils, as well as instruments for training and capacity building in the judiciary across the region. Adopted legislative frameworks guaranteeing judicial independence became highly sophisticated, and "if fully observed, should generally ensure a proper functioning of the judicial system to a high standard," as observed in Macedonia within the Priebe Report (2015: 9). However, the evident problem across the region remains poor implementation of adopted norms prompted by specific legal, political, economic, cultural and historical influences, pressures, threats or interference. As seen in the Montenegro 2016 Progress Report (European Commission, 2016e), the Commission recognizes the favourable legislative framework on the judiciary that has strengthened its independence and professionalism, but concludes that adopted laws have not yet been fully implemented.

Accumulated evidence of the relationship between the judiciary, crime and politics clearly indicates that the judicial apparatus in the Western Balkans has gradually turned into a mechanism facilitating state capture, and that the main problem regarding the functioning rule of law remains precisely the political influence over judiciary. The European Commission has acknowledged politically motivated threats on the judiciary in Bosnia and Herzegovina (European Commission, 2016b), it has criticized political comments on ongoing investigations and cases that continue to call judicial independence into question in Serbia (European Commission, 2016f), or has established that dominant influence of politicisation, corruption and weak inter-institutional cooperation hampers the Albanian judiciary (European Commission, 2016c).

Secondary sources shed more light to the Commission's findings, as seen particularly in the explosive leaked wiretapped materials from which Macedonians have learned of striking influence that the government led

by Nikola Gruevski had on the judiciary. A series of discussions involving top state officials, judges and pro-government news editors exposed party patronage and informality as the main impediments in judicial operations in the country.<sup>2</sup> The disclosed wiretapped materials show, for example, how a former Minister of Justice and members of his immediate family bluntly interfered with court processes (Marušić, 2015). The public in Albania has learned of selective justice implemented towards the government's political opponents (Elbasani, 2017). Alternatively, the judiciary was persistently obstructing and ultimately closing for various procedural reasons cases of high-level abuse of power, which is another indicator of political influence over the judicial system (Kmezić, 2017). So far, none of the high level cases of abuse of power have been brought to closure, while a handful of judgments over political corruption concerned lower ranking state secretaries, heads of sectors, and local government officials (Taleski, Kmezić and Pollozhani, 2016). In Macedonia the Government abused the judiciary in an attempt to prevent unforeseen costs to the state budget by instructing judges not to reward compensation for damages when the state was sued (Taleski, Kmezić and Pollozhani, 2016). In addition, it was noted that the government and public administration are not implementing laws pertinent to the independence of the judiciary and they are not respecting court decisions.

Clearly such practice echoed in the lack of popular trust in judiciary, whereas according to the latest Balkan Barometer region-wide survey nearly eighty percent of Western Balkan citizens considered courts as susceptible to political influences (Balkan Barometer, 2017: 125). Experts corroborate such findings, as shown in a survey involving judges and rule of law professionals, where the majority of respondents indicated undue political influence as the main impediment to the independence of the judiciary in Macedonia (Taleski, Kmezić and Pollozhani, 2016).

How did the Western Balkans get here and why did the judiciary become an enabler of widespread corruption and abuse of office? Indeed, this manifestation did not occur over night. A historical overview of the evolution of the judiciary branch in the region tells a story of fundamental cultural predispositions shaped by the strong legacy of communist rule in the administrative sphere, whereby various formal and informal institutions were traditionally

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2 For more information: "Interactive Overview of Macedonia's Largest Wire-Tapping Scandal", Al Jazeera. Available at: [4http://interactive.aljazeera.com/ajb/2015/make-donija-bombe/eng/index.html](http://interactive.aljazeera.com/ajb/2015/make-donija-bombe/eng/index.html).

in a dominant role over justice regardless of legal guarantees of its independence (Kmezić, 2017). Embarking on a democratic transition in the late 1990s, the judiciary was already vulnerable and open to infiltration by party cronies belonging to the new political elites. In addition to the initial placing of loyalists without enough professional qualifications throughout the system, the establishment managed to keep the judicial appointments and promotions in control, thus creating an informal institutional network that carried out the party patronage line.

The Judicial Councils – autonomous bodies established to achieve the independence and self-government of the judiciary, were effectively subordinated to the executive either via government appointment to the Judicial Council as seen in Macedonia, or through neglect and non-implementation of Council's decisions as observed in Serbia. Furthermore, the administrative evaluation of judges' performance that may result in election, promotion or removal from office, was widely performed by politically appointed court presidents against quantitative criteria, such as the percentage of repealed decisions under legal remedy and the number of resolved cases per year in Macedonia; or against vaguely set qualitative criteria in Serbia and Montenegro, thus in both cases setting fertile ground for nontransparent decision making. In addition, inadequate funding of the judiciary has hampered court operations as government-imposed budgetary constraints were used as a mechanism of control over the judiciary (US State Department, 2014: 6). Furthermore, covert political influence was also exercised from within the judiciary through the role of the court's administration, which manipulated the assignments of politically sensitive cases and influenced the court budgets.

From the above overview it can be concluded that despite the EU's long-term involvement in initiating, negotiating and financing major institutional reforms in the Western Balkans, judicial systems throughout the region have failed to create favourable conditions for the personal independence of judges. The Judicial Councils were unsuccessful in building their integrity using the existing legislative framework, while political influence over judiciary – particularly seen in the content of judgments in high profile or politically sensitive cases – reinforced elements of state capture.

Instead of focusing on the perceived negligence towards constitutional and legal guarantees for the judicial independence and its instrumentalization for political oppression, the EU's rule of law strengthening efforts

focused mostly on increasing technical capacities of judiciary, improvement of court infrastructure, providing initial and continuous training of judges, reducing the backlog of cases, establishing centralized criminal records registries, and mediation systems. Hence, most of the EU's interventions remained of a superficial character failing to investigate historical processes and main actors of corruption and informality behind the façade of judicial independence. But even here, the EU's track record of reforms remains mixed as observed in negligible or non-improvement in the backlog of court cases across the region, except in Macedonia where court backlogs have not been an issue of concern for several years now. Yet, even in Macedonia the overall length of court proceedings from initiation to final judgment still remains a concern in a number of old cases (European Commission, 2016g).

Most importantly, this analysis has identified the lack of determination of EU officials to publicly name and shame corrupt individuals responsible for the lack of progress in rule of law reforms. Even when confronted with concrete evidence, as in the case of the wire-tapping scandal in Macedonia, the EU has remained rather silent on democratic backsliding in the country. By choosing to strengthen formal institutions in unconsolidated democracies, the EU's top-down institutional approach failed to fulfil its primary purpose – to create a system in which citizens trust the law and state institutions.

### *Media Freedom*

Media freedom is frequently seen as a corollary to the general right to freedom of expression. This comes as no surprise, since a diverse and impartial media is in fact a crucial promoter, but also protector, of freedom of expression (Lichtenberg, 1991). Within the context of enlargement, the European Commission tests candidate countries' commitment to promoting media freedom. Given the apparent lack of definition of media markets in the *acquis*, the Commission has produced a number of objectives used to test the state of media in aspiring member states. These include creation of an enabling legal, regulatory and policy environment for the exercise of rights of freedom of expression and media and media integrity; increased resilience of media against external pressures; securing qualitative and trustworthy investigative journalism available to citizens;

and, increasing capacity and representativeness of journalist professional organizations capable of taking responsibility of sector relevant issues in dialogue with authorities as well as providing services to their members (European Commission, 2014b). These objectives are paired with tangible benchmarks such as the annual assessments of existing legislation affecting media, the number of rulings related to media and their consistency with European Court for Human Rights case law, the number of statements by public officials having self-censorship effects on media, the number of physical attacks, threats and other forms of intimidation of media, transparency in dispatching state aid and financial assistance provided by state-owned companies, etc.

In order to foster media reforms, the Commission offers a combination of political and financial support to meet the objectives. Political support foresees involvement of media and civil society in the accession process, including in the monitoring of sector strategies for EU financial assistance, while economic support focuses on advocacy and capacity building aiming primarily at decreasing media organizations' dependency on international donor funding, including funding from the EU.

However, despite all the EU's efforts, media freedom is still in continuous deterioration across the board in the Western Balkans. According to *Freedom House's* annual Freedom Press Report, regional media is considered only partly free (2018). The *Media Sustainability Index*, produced by the IREX, reports on the "collapse of law, ethics, professionalism, and social norms" (IREX, 2016), which marked the previous year in the media field in the Western Balkans. According to both sources, regional press freedom has declined for seven years in a row, with setbacks registered in the legal, political and economic environment.

Addressing the EU objectives relating to the media sphere, Western Balkan countries have all adopted ambitious Media Strategy Plans focusing on a new set of legal acts dealing with public media systems, media ownership and financing, the Regulatory Body for Electronic Media, and privatization, as these were regarded as the key issues concerning media diversity, freedom and pluralism. Although the EU has praised current candidate countries for putting in place legal and institutional conditions for creating an enabling environment for freedom of expression (see for example European Commission, 2014a), the fact is that the media scene throughout the region has not yet improved, mostly due to political influence on media.

By taking a broader historical perspective into account, it can be observed that backsliding in media freedom in the Balkans is neither a recent trend nor an exception, but rather the rule. Following 40 years of communist rule marked by the strict control of media (Jović, 2008), it was in the late 1980s that press freedom was curtailed by the emerging nationalist and authoritarian political elites. This media landscape was formally pluralist, but it remained heavily government-controlled. Furthermore, the economic vulnerability of independent journalists provided opportunity for economic interference in the media, including influence exercised by the representatives of foreign capital.

The new legislative framework has failed to break the patronage chain and prevent political influence on media. First, new laws have omitted to regulate state advertising and at the same time allowed for the co-financing of media projects of common interest as a permissible form of state aid. These categories, therefore, remain unregulated and non-transparent, and as such they remain potential tools for the creation of clientelistic relations between state bodies and the media. According to a study prepared by the Balkans Investigative Reporting Network (BIRN), in 2012 and 2013, Serbian Government, together with its specialized agencies and public companies, have spent approximately 12.5 million EUR on media. Half of this sum was shared between only four media outlets, while the other half was divided among 500 other recipients (Maksić, 2015). In addition, pressure on media comes from marketing agencies that are intimately connected to the ruling elites (Tadić and Šajkaš, 2016). For instance, after the change of power in Serbia following the 2012 elections, the *Mediapool* marketing agency run by Goran Veselinović, the former employer of the current Serbian President Aleksandar Vučić, became the most influential actor in the advertising business despite having a relatively low profile until then (Georgiev and Đorđević, 2014).

Further, media privatization was marked by numerous controversies, including purchasing media by party cronies, with examples of family members of governing Ministers privatizing local media, or privatizations implemented by a legal entity wholly or partly financed from public funds (Dobrašinović, 2016). Thus, political influence and control of the media has survived the ownership transformation only to reappear in a new shape.

Particularly worrisome are political influences on public media broadcasters. These are based on budgetary dependence of public media broadcasters, as in the case of Montenegro and Albania (European Commission 2016e; 2016c). However, even in cases of properly regulated public funding, the 2016 dismissal of the entire editorial team and several journalists at *Radio Television Vojvodina* (RTV), coinciding with a change in power in the northern Serbian province, raise serious concerns about the proper implementation of the Law on Public Service Media. In an open letter, 77 journalists and editors in the RTV condemned the wave of dismissals and demanded an explanation as to whether the dismissals were politically motivated (Dragojlo, 2016).

Particularly worrisome is the trend of abuse of state bodies in order to prevent the work of journalists. In a 2015 incident involving the Belgrade communal police, journalists working for two independent news organizations, *KRIK* and *Istinomer*, were prevented from reporting on the controversial Belgrade Waterfront project (Radišić, 2015). Criminal law remains a significant potential pressure mechanism on the media, in particular through using open-ended concepts such as public disturbance, incitement to hatred or security-related standards. In addition, judges remain unaccustomed to key international legal documents relating to freedom of speech, as well as the practice developed by the European Court of Human Rights (Kmezić, 2015). As a result it happens that, as in the case of Stojan Marković, journalists are held responsible even for satirical articles about public officials (NUNS 2014), which fully contradicts established European Court for Human Rights case law (See for example *Oberschlick v. Austria* (No 2)). As seen in the case of *Zrenjaninske novine* in Serbia, the Government selectively uses its tax policies so that critical media may be shot down as a reprisal for their critical journalism, while loyal media, as can be observed in the case of *TV Pink*, allegedly are allowed to owe millions of euros in unpaid taxes (Barlovac, 2015).

Finally, government officials are involved in formal manifestations of media abuse observed in direct pressure on the media. Matic (2016) establishes that pressures on the editors-in-chief are more powerful than any legal pressure to respect the rights of others. In such cases, the editors serve as brokers in the clientelistic chain. Their dependency is based on the previously established pattern of politically driven appointments of chief editors in the remnants of the state owned media, and their low paid incomes under the

private ownership. Over the past five years, government officials, including most prominently Serbian President Aleksandar Vučić, repeatedly engaged in transparent confrontations with journalists and media outlets (BIRN, 2015a). Remnants of publicly owned media and mushrooming tabloid journals are used to back up such attacks and continue smear campaigns against independent news outlets and critical journalists.

Comparing the set of newly adopted media laws with described features of the crisis of press freedom over the past decade in the region, it can be concluded that despite the ongoing Europeanisation process, media freedom in the Western Balkans still remains deficient owing to shortfalls in norm implementation and political restraints imposed on journalists. The absence of an independent, efficient and accountable judiciary and police additionally aggravates the position of media in the region. Media freedom is guaranteed if media outlets are financially viable, free from intervention by owners and the state, and if journalists are guaranteed reliable and efficient protection. In the Western Balkans none of this is the case. Yet, it seems that despite its importance for the democratic functioning of a country, media freedom is “not necessarily the most central element of establishing compliance with EU norms,” as concluded in the European Parliament’s study (2014: 7). In this regard, it is no surprise that non-compliance with this part of the Copenhagen political criteria had only a “negligible effect” (Vogel 2015: 10) on Serbia’s standing in Brussels. This is perhaps best observed in a statement made by Johannes Hahn, the Commissioner for the European Neighbourhood and Enlargement, who claimed he needed “proof, not rumors” (BIRN, 2015b) in order to react to violations of media freedom in the region.

### *Compliance*

This chapter sets out to explore structural impediments and limitations to the political part of accession criteria compliance in EU candidate countries. Despite the evidence of limited progress in judiciary reforms and media freedom, this research highlights serious and persistent gaps between European standards in these thematic areas and the realities on the ground in the Western Balkans.

Table 2.1. Level of preparedness in fulfilling the political criteria

Criterion	Montenegro	Serbia	Macedonia	Albania	Bosnia & Herzegovina	Kosovo
Functioning of the judiciary	<i>Moderately prepared</i>	<i>Some level of preparation</i>	At an <i>early stage</i>			
Freedom of Expression	<i>Moderately prepared</i>	<i>Some level of preparation</i>				

Source: European Commission 2016 country reports

Pursuing the theoretical framework of Europeanisation studies, we have identified two sets of obstructing factors explaining the apparent gap between the adoption and implementation of the EU promoted political reforms in the Western Balkans. On the supply side, i.e. on the side of the EU processes and strategies, these are the lack of *clarity* and *credibility* of EU conditionality while on the demand side, concerning the domestic drive for reforms, these relate to the obstructionist potential of *gatekeeper elites* and *legacies* of the past.

First, we have confirmed that the accession system is only loosely rooted in the EU Treaties, which despite the elaborated system of benchmarks, still hinders the clarity of EU conditions. An additional predicament arises from the difficulty of quantitatively verifying the achieved level of compliance with regard to the Copenhagen political criteria. In contrast to economic reform, little can be established with accuracy in the field of the rule of law and democracy due to the very nature of these concepts. Hence, during the accession process the EU mostly engages in technical issues related to legislative improvement and smart design of formal institutions aiming to improve the rule of law reforms in candidate countries. However, as this study has demonstrated, legal-institutional measures alone cannot engineer the firm political and societal support needed to succeed in the transformation process. Moreover, the credibility of conditionality is closely linked with the ability of the EU to efficiently monitor the fulfilment of its requirements. Although the transparency of the overall monitoring process has recently increased with the adoption of recalibrated progress reports, the observed practice of repeatedly ignoring evident shortcomings in rule of law implementation and failure to publicly 'name and shame' politicians responsible for the obstruction of democracy

in candidate countries considerably impedes the credibility of EU's accession conditionality.

On the demand side, which concerns the drive for political reforms within the accession countries, we observed problems relating to the obstructive role of domestic ruling elites and legacies from the past. The main obstacles to democratic reform in the Western Balkans are not technical or financial, but rather political. The political transformation promoted by the EU indirectly aims at extending the accountability of individuals to the legislation of the state. This endeavour threatens the rent-seeking interests of domestic political elites by increasing the prospects of them losing their position in power, and possibly even resulting in them facing criminal indictment and imprisonment, as seen in the case of former Croatian former Prime Minister Ivo Sanader. Hence, despite their declarative commitment to reforms, the actions of political elites are dominantly focused on the refusal to cede traditional impunity and vested interest manifested in regularized patterns of delaying key reforms that would lead to a substantive development of judiciary independence and media freedom in the Western Balkans.

## Economic Conditionality

### *Criteria*

Economic governance has been an important criterion for accession into the EU since the very onset of EU enlargement. Its importance continued to grow especially in the wake of the Mediterranean enlargements and the challenge to integrate the less developed economies of Greece, Spain and Portugal (Tatham, 2009: 224–225). As the economic competences of the EU and the establishment of the Common Market continued to grow, the appropriate economic performance and institutional adjustment of the candidate countries has become a necessary condition for advancement in all stages of the accession process. This notion has been considerably amplified at the beginning of the 1990s with the introduction of the provisions of the Economic and Monetary Union by the Maastricht Treaty (Hillion, 2004) and the enormous challenge of enlarging the EU with the

post-communist countries from Eastern and Central Europe (CEECs). This necessitated a stricter and more detailed conditionality approach which has been initiated with the decision of the Copenhagen Council in 1993 to further formalize (among others) the economic criteria for membership. Thus, the so-called second Copenhagen criterion entailed “the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union” as necessary conditions for accession. (European Council, 1993). The European Commission further developed the scope of the economic criteria in its communication “Agenda 2000”. The document presented a much more detailed explanation of the economic conditions for accession by breaking down the Copenhagen economic criteria into a larger number of sub criteria. Thus, the first economic criterion, i.e. the existence of a functioning market economy was further developed with the introduction of 6 formal requirements (European Commission, 1997):

- equilibrium between demand and supply is established by the free interplay of market forces; prices, as well as trade, are liberalised;
- significant barriers to market entry (establishment of new firms) and exit (bankruptcies) are absent;
- the legal system, including the regulation of property rights, is in place; laws and contracts can be enforced;
- macroeconomic stability has been achieved including adequate price stability and sustainable public finances and external accounts;
- broad consensus exists about the essentials of economic policy;
- the financial sector is sufficiently well developed to channel savings towards productive investment.

In a similar manner, the second criterion, i.e. the capacity to withstand competitive pressure and market forces within the Union has been broken down into five sub criteria (European Commission, 1997):

- the existence of a functioning market economy, with a sufficient degree of macroeconomic stability for economic agents to make decisions in a climate of stability and predictability;
- a sufficient amount, at appropriate costs, of human and physical capital, including infrastructure (energy supply, telecommunication, transport, etc.), education and research, and future developments in this field;

- the extent to which government policy and legislation influence competitiveness through trade policy, competition policy, state aids, support for SMEs, etc.;
- the degree and the pace of trade integration a country achieves with the Union before enlargement. This applies both to the volume and the nature of goods already traded with Member States;
- the proportion of small firms, partly because small firms tend to benefit more from improved market access, and partly because a dominance of large firms could indicate a greater reluctance to adjust.

This classification of the criteria has been employed by the EU as the principal framework for the assessment of the progress in satisfying the economic conditions for the candidate countries from both Central and Eastern Europe and the Western Balkans regions.

The lessons learnt from the accession process of the CEECs prompted the EU to further streamline its conditionality policy towards the Western Balkan applicant countries. Economic conditionality constitutes a major part of the Stabilisation and Association Process, as its main instrument, the Stabilisation and Association Agreements, has been primarily economic in its scope (Shelton, 2015). Even more, EU's principal enlargement policy framework, the new Enlargement strategy which was first introduced in 2005 promoted rigorous conditionality as one of its fundamental pillars. The inaugural Strategy document encompassed a benchmarking system of compliance assessment, which in the economic field emphasized the fulfilment of contractual obligations under the association agreement as a major condition for progress in the accession process (European Commission, 2005). The formalization of economic criteria was further bolstered by the 2013 and 2014 enlargement strategy which introduced a new 'fundamentals first' approach towards compliance with the economic requirements. With this, the EU has effectively put economic governance as one of the three key priorities of the enlargements process. The new approach introduced changes in the dialogue structure between the EU and the applicant states through increased determinacy of the assessment process and by providing further guidance for reforms. In this sense, the strategy introduced a new requirement for the candidates and potential candidate countries, which as of 2015 have to submit annual Economic Reform Programmes, comprised of two elements: a macroeconomic and fiscal programme, envisaged as an enhanced continuation of the previous Pre-Accession Economic

Programmes (introduced in 2001); and a structural reforms and competitiveness programme (European Commission 2013; 2014c). Finally, the 2016 enlargement strategy introduced a new refined methodology of assessment which encompassed a slight adjustment of the sub-criteria for the two economic conditions which have been used as an assessment framework for almost 20 years. This revision of the sub-criteria puts more emphasis on highlighting the main economic shortcomings and a more streamlined analysis of the deficiencies in the functioning of the markets and weakness in competitiveness (European Commission, 2016a). Under this methodological framework the existence of a functioning market economy is measured through the assessment of several sub-criteria that encompass the applicant country's policy commitment to economic governance, macroeconomic stability and the functioning of the product and financial markets. The capacity to cope with competitive pressure and market forces within the Union is measured through evaluation of the performance in the areas of education and innovation, the sectoral and enterprise structure and the level of trade and economic integration with the EU

### *Compliance*

From an overall regional perspective, the compliance record with the economic criteria in the Western Balkans has been a mixed bag. The initial positive developments at the beginning of the 2000s summed by strong GDP growth, increasing FDI's and declining inflation (Bastian, 2008), has been countered by the negative implications of the global financial crisis. Hence, macroeconomic policies in the past decade in all Western Balkans countries have been focused on economic recovery, albeit with a varying degree of success. The initially good progress in 2010 and 2011 has been offset by recession in 2012 that has been followed by a period of modest recovery. On one hand, all Western Balkan countries have been praised for managing to sustain a high degree of macroeconomic stability with stable financial sectors. On the other hand, economic governance in the Western Balkans has been marred by serious structural and socio-economic deficiencies. According to European Commission's assessments, none of the applicant countries is a functioning market economy or has the capacity to cope with the competitive pressure and market forces in the Union (European Commission, 2018). The region has the highest average unemployment in Europe,

constantly exceeding 20% of the labour force. The Commission assessments of compliance with the economic criteria in the past several years have noted many recurring structural shortcomings related to the slow pace of reform of labour markets, lack of public sector reforms, increases in budget deficits and public debt, low efficiency of the public sector and the negative impact of rule of law weaknesses on the business environment.

Nevertheless, despite the overall modest level of progress in meeting the economic criteria in the Western Balkan region, there is a notable cross-country variation in compliance performance. The European Commission assessment of compliance with the economic criteria puts Macedonia, Serbia and Montenegro as frontrunners in regard to the level of preparedness in fulfilling the economic conditions, with Albania slightly lagging behind, while Bosnia and Herzegovina and Kosovo are perceived as the least prepared (Table 2.2). Regarding the existence of a functioning market economy, Macedonia is the only country that has achieved a good level of preparation in developing a market economy. Serbia, Montenegro and Albania remain moderately prepared. Regarding the capacity to cope with competitive pressure within the Union, none of the candidate countries has a good level of preparedness. Serbia, Montenegro and Macedonia are only moderately prepared, while Albania has achieved some level of preparation. The potential candidates, Bosnia and Herzegovina and Kosovo, are at an early stage of compliance in relation to both criteria.

Table 2.2. Level of preparedness in fulfilling the economic criteria

<i>Criterion</i>	Montenegro	Serbia	Macedonia	Albania	Bosnia & Herzegovina	Kosovo
Existence of a functioning market economy	<i>Moderately prepared</i>	<i>Moderately prepared</i>	<i>Well prepared</i>	<i>Moderately prepared</i>	<i>At an early stage</i>	<i>At an early stage</i>
Capacity to cope with competitive pressure and market forces within the Union	<i>Moderately prepared</i>	<i>Moderately prepared</i>	<i>Moderately prepared</i>	<i>Some level of preparation</i>	<i>At an early stage</i>	<i>At an early stage</i>

Source: European Commission 2016 country reports

The country by country analysis of the economic sub-criteria based on the assessments in the Commission's progress reports presents a similar pattern of uneven compliance.

*Montenegro's* stable political consensus on the market economy fundamentals has been offset by recent criticism on the country's lack of commitment to economic reforms (European Commission, 2016e). Nevertheless, macroeconomic stability has been slightly improved by recent economic growth as the economy's ability for fast recovery after recession proves its resilience to shocks (European Commission, 2015b). However, the macroeconomic performance in the past five years has provoked constant criticisms for the high external deficits, weak fiscal position, weak sustainability of the external position and a rigid labour market that generates high unemployment rates. Regarding the functioning of the product markets, the business environment has been improving and the number of new companies has been growing. However, despite placing "regulatory guillotine" legislation for simplification of market entry procedures, the project has been criticised for the slow pace of implementation. Compliance with the sub-criteria on state influence on product markets and privatisation has been satisfactory as the privatisation process is at an advanced stage and state aid has been constantly decreasing in the past several years. Regarding the functioning of the financial market, Montenegro has managed to improve financial stability by stabilizing the banking system, but the small size of the non-banking sector is problematic. In addition, the high levels of non-performing loans and the dependency on external financing remain as significant challenges. In relation to its capacity to cope with competitive pressure and market forces within the Union, Montenegro's has manifested varied compliance records. The biggest challenges relate to low levels of investment in education, research and innovation (especially in the private sector) and a considerable skills gap in the labour market. On the other hand, the country has been progressing in the development of physical infrastructure, especially in the transport and energy sectors. However, the long-lasting process of restructuring of the economy through a notable expansion of the service sector is marred by a large informal segment of the economy.

In *Serbia*, the overall commitment towards creating a functioning market economy has been strengthened in the past several years. Since 2014, Serbia has managed to improve its macroeconomic stability portfolio after a period of recession and volatile inflation. Since then, the country

has stabilized its currency and reduced inflation, reduced the budget deficit and improved fiscal consolidation. The previously imbalanced macroeconomic policy mix has been stabilised and the growth of exports has reduced the external imbalances. Nevertheless, the EU has strongly criticised the structural deficiencies of the labour market and the constantly high unemployment rates. Compliance with the functioning of product markets sub-criteria has been slow and uneven. Although the set-up of a legislative framework for market entry and exit has gradually progressed in the past five years, problematic implementation and enforcement of laws, red tape and problems in issuing of construction permits have been emphasised by the Commission as major impediments for the business environment. At the same time, the country has not been successful in limiting state influence on competitiveness as the level of state presence and state aid in the economy has remained substantial (European Commission 2015c; 2016f). The privatisation process hasn't completed although the restructuring and privatisation of state owned companies started to accelerate in the past three years. Regarding the functioning of the financial market, Serbia has been successful in providing financial stability through a well-capitalized and liquid banking system. However, the high rates of non-performing loans and the underdeveloped non-banking financial sector are perceived as a significant obstacle. Compliance with the second criterion has had limited success. As elsewhere in the region, the country's educational system hasn't been able to adequately match the human capital market demands. Demands for further investments in education and innovation need to be matched with adequate investments in physical infrastructure which remains underdeveloped.

Regarding the overall economic policy of the country, in the last decade *Macedonia* has managed to maintain a firm commitment and a broad consensus on the fundamentals of a market-oriented economy. However, the macroeconomic policy performance has been facing significant challenges. While the country has been constantly performing well in meeting the criteria for macroeconomic stability through implementing stability-oriented monetary and exchange rates policies, these achievements have been offset by continuous structural deficiencies of the labour market and the failure of the country's labour policies to significantly reduce the high unemployment rates. In the last five years, the macroeconomic performance has been hampered by weakened fiscal discipline and notable rises in public debts and borrowing from abroad. Regarding the functioning of

product markets, the country has managed to largely complete the privatisation and price and trade liberalisation processes, to limit state influence on product markets and to largely set up an adequate legal framework for market entry and exit. However, the Commission has criticized the sizeable shadow economy, corruption and the uneven implementation and enforcement of laws which have been hampering the business environment (European Commission, 2016g). The functioning of the financial market has benefited from a good level of capitalization and liquidity and a stable banking sector, however progress in this field has been marred by problematic access to finance and underdevelopment of the non-banking sectors of the financial market. Compliance with the second economic criterion has been progressing at a slower pace. The EU has criticized the slow progress in the diversification of the economy and especially the lack of sustainable reforms in the education and innovation sectors. The country continues to suffer from weak skillsets of its human capital endowment, low capital stock and lack of investments in public infrastructure. Macedonia has had limited success in meeting the conditions for the sectoral and enterprise structure, as its structure of the economy has been criticized by the Commission for being stagnant, markedly centred on low productivity businesses and hampered by a large informal sector.

In the case of *Albania*, the country has been able to maintain its commitment towards the development of a market economy. This has been matched with satisfactory results in macroeconomic stability as the country's economic recovery has been improving, the monetary policy has been stabilised and the inflation has been kept low. Nevertheless, several macroeconomic risks prevail, most notably the high level of public debt and the high rates of unemployment and informal employment. Regarding the functioning of product markets, the business environment has benefited from incremental legislative reforms for market entry procedures. However, the Commission has been constantly criticising the deficiencies in rule of law, contract enforcement and enforcement of property rights as obstructing factors for the business environment (European Commission 2015a; 2016c). On the other hand, Albania has progressed well in meeting the conditions on state influence on product markets and privatisation, as it has been able to limit state presence in the economy and reach an advanced stage of privatisation and market liberalisation. Concerning the functioning of the financial market, financial stability has been maintained via a stable and liquid banking system, which, however, is exposed

to credit risks. Growth of the non-banking sector and the lowering of non-performing loans present significant challenges. Albania's compliance with the second economic criterion is more limited. As in the other candidate countries, the economy is hindered by low investments in education and innovation. The education system has been criticized for failing to meet the demands from the labour market. The development of physical infrastructure has been below par, as more emphasis needs to be put on the transport and energy networks. The structure of the economy has been criticised for lack of diversification and the presence of a large informal sector. Although services have a major share of the economy, the agriculture sector still takes a significant portion of the economy.

As they are at an early stage of preparation to meet the economic criteria, both Bosnia and Herzegovina (BiH), and Kosovo are lagging in their compliance record in comparison to the candidate countries. Despite slight consolidation of its commitment towards market-oriented reforms in recent years, the political divisions in BiH have hindered the political consensus on its economic policy for most of the last decade. Despite that, the country managed to maintain its macroeconomic stability through low inflation, appropriate monetary policy and sound currency board management. Nevertheless, the macroeconomic outlook is faced with many serious challenges. In spite of the declining trends in the last couple of years, public debt and external imbalances are still relatively high, economic growth is low and the rigidities of the labour market have been constantly generating high unemployment. BiH has also had significant difficulties in meeting the conditions for the functioning of product markets. The advancement of the business environment has been stalled by a slow consolidation of the legal framework for market entry and exit, while the competitiveness of the markets has been suffering from a large informal economy which is estimated to be between 30% and 50% of GDP (European Commission, 2016b). Compared to the candidate countries, BiH is significantly lagging in complying with EU demands on state influence on product markets and privatisation. The economy is still substantially influenced by the state and the privatisation process is far from completion. Regarding the functioning of the financial market, the compliance record is somewhat better. The country has been successful in maintaining financial stability, which has been supported by a liquid banking sector. As elsewhere in the region, the financial sector is burdened by high levels of non-performing loans. The country has been limited in its capacity to cope with competitive pressure

within the Union. The education and innovation sectors have so far manifested low levels of investment and a big skills mismatch with the labour market demands. The EU has been critical of the overall quality of physical infrastructure which is in dire need of more investments, particularly in the transport and energy sectors.

Being the youngest and least experienced country in the development of economic policies, *Kosovo* is at an early stage of compliance with the economic criteria. The country has maintained a commitment towards development of a market economy and has been able to keep up with the regional trends of macroeconomic and fiscal stability, at the same time keeping the public debt at low levels. However, in terms of economic development there is a notable gap with the rest of the region (European Commission, 2016d), as the macroeconomic situation is hurting from high external imbalances, trade deficits, bad labour market conditions and high unemployment rates. Regarding the functioning of product markets, the compliance record has been poor. The business environment suffers from slow development of an adequate legal framework for market entry and exit, substantial rule of law shortcomings and a significant informal economy. At the same time, state influence on the product market has been constantly high, while the advancement of the privatisation and restructuring processes has been very limited. On the other hand, *Kosovo's* performance in relation to the functioning of the financial market has been better as the country has been able to preserve the stability of the financial sector. Apropos the second economic criterion, *Kosovo* has low capacity to cope with competitive pressure and market forces within the Union. Investments in the education and innovation sector have been very limited while the large skills gap in the labour market is contributing towards high youth unemployment in a country that has the youngest population in Europe. Improvements in physical infrastructure have been confined to investments in the road network, whilst the energy and water supply infrastructure remains underdeveloped. The sectoral and enterprise structure has been marred by a weak private sector, over-reliance on remittances and a large share of informal economy.

In sum, despite some progress in recovering their economies from the impact of the financial crises and maintaining macroeconomic stability, compliance with the economic criteria for the Western Balkan applicants is not progressing at the desired pace. Productivity is hampered by low investments in infrastructure, education and innovation as the labour market suffers from high unemployment and low capacity. Compliance with

EU conditions imposes political costs for the ruling elites who are reluctant to accelerate the liberalization of economic governance and substantially reduce the levels of state interference in some sectors of the economy. Finally, linkage with the dynamics in compliance with the political criteria is evident, as the competitiveness of the economy and the enforcement of market liberalization reforms are obstructed by deficiencies in the legal systems of the applicant countries.

## Acquis Conditionality (Ability to Assume the Obligations of Membership)

### *Criteria*

From an administrative and financial standpoint, the ability to assume the obligations of membership is by far the most demanding criterion as it (in principle) requires the candidate states to provide timely approximation and implementation of the *acquis communautaire*, i.e. the entire body of EU legislation, before they become members of the EU. The approximation of the existing EU legislation into the domestic legal systems of the candidate countries has been the principal requirement for membership since the very first wave of enlargement. However, as the scope of EC/EU policy making has expanded over the years so has the content and structure of the *acquis*. A very common illustration of this evolution is the number of pages that cover the *acquis* which have ranged from less than 100 for the first enlargement in 1973 up to 80,000 for the fifth enlargement in 2004 (Tathnam, 2009: 229) In 1992, the European Commission defined the *acquis* as “the rights and the obligations actual and potential, of the community system and its institutional framework”, which encompass “the contents, principles and political objectives of the Treaties (...), the legislation adopted in implementation of the Treaties, and the jurisprudence of the Court; the declarations and resolutions adopted in the Community framework; the international agreements, and the agreements between Member States connected with the Community’s activities” (European Commission, 1992).

The challenge of assuming the obligation of the *acquis* became much more prominent in the wake of the accession of the CEECs and the prospects of enlarging the EU with the Western Balkan countries. Having in mind the significant gap in the political, economic and administrative capacity between the post-communist candidates and the EU member states, the whole endeavor of adopting the *acquis* required a more extensive and stricter approach by the EU. The Copenhagen European Council in 1993 conditioned membership with the “ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union” (European Council, 1993). Through the course of the CEE enlargement the EU imposed a strict *acquis* conditionality framework which went beyond the simple task of transposition of EU directives and regulations. In its seminal White Paper, the European Commission (1995: 23) laid the ground for assessment of future compliance by stressing that “the main challenge (...) lies not in the approximation of their legal texts, but in adapting their administrative machinery and their societies to the conditions necessary to make the legislation work. This is a complex process requiring the creation or adaptation of the necessary institutions and structures, involving fundamental changes in the responsibilities of both the national administrative and judicial systems and the emerging private sector”. Thus, the ability to assume the obligations of membership also presupposes adequate administrative capacity for effective transposition, implementation and enforcement of EU rules. The importance of administrative capacity as a criterion to apply the *acquis* has been imposed by the Madrid European Council conclusions (1995) and by Agenda 2000.

This framework has been further strengthened in the course of the Western Balkans accession process. The Stabilisation and Association Agreements have been the principal legal basis for approximation and enforcement of EU law, as they oblige the applicant states to ensure gradual approximation of domestic law with EU law. The new enlargement strategy introduced a revised framework of accession negotiations which directly tackles the progress of approximation and implementation of the *acquis*. Having in mind the shortcomings from the application of conditionality in the CEE accession, the 2006 strategy (European Commission, 2006) introduced opening and closing benchmarks as a new tool for assessing progress within each chapter of the *acquis*. The benchmarking system was further strengthened with the introduction of interim benchmarks whose fulfilment has been set as a prerequisite for the launch of the closing

benchmarks (European Commission, 2012). In addition, in order to progress in the accession negotiations, the candidate countries are required to show a satisfactory track record of implementation of EU rules. The *acquis* has been spread out across 35 negotiating chapters which entail the whole scope of EU legislation and policies including the internal market policies, and sectoral policies such as environment, agriculture, energy, transport, Justice and Home Affairs and social policy.<sup>3</sup>

### Compliance

Having in mind the institutional, administrative and political limitations of state capacity of the Western Balkan countries, we assume a more emphasised role of administrative capacity, costs and low credibility of the process for the limited compliance outcomes of implementation of the *acquis*. Almost two decades after the launching of the Stabilisation and Association Process, the Western Balkans applicant countries are still progressing slowly in their ability to assume the obligations of membership. According to the Commission assessments, none of the applicant countries has achieved an advanced level of alignment with the *acquis*. On the contrary, the three regional leaders, Montenegro, Serbia and Macedonia have achieved only moderate levels of preparation to assume the obligations of the *acquis* in majority of chapters. Albania is moderately prepared in even fewer chapters, while Bosnia and Kosovo are lagging as they are either in an early stage or have some level of preparation in most areas subject to assessment.

These scores are obviously linked with the capacity of the administrative systems for transposition and implementation of EU legislation as similar patterns of compliance are on display in regard to public administration reform. None of the Western Balkan countries has a well-functioning administration. Montenegro, Serbia and Macedonia are moderately prepared in the area of public administration reform, while Albania, Kosovo and Bosnia are further behind.

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3 For a comprehensive overview of the chapters and a concise explanation of the content of the *acquis* for each chapter see: [https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en) (accessed 25 January 2018).

Table 2.3. Level of preparedness in the ability to assume the obligations of membership

Criterion	Montenegro	Serbia	Macedonia	Albania	Bosnia & Herzegovina	Kosovo
Ability to assume the <i>acquis</i>	<i>Moderately</i> prepared in most areas	<i>Moderately</i> prepared in most areas	<i>Mod-erately</i> prepared in most areas	<i>Moderately</i> prepared/ <i>Some level</i> of preparation in most areas	<i>Some level</i> of preparation in many areas	At an <i>early</i> stage
Public administration reform	<i>Moderately</i> prepared	<i>Moderately</i> prepared	<i>Mod-erately</i> prepared	<i>Some level</i> of preparation	At an <i>early</i> stage	<i>Some level</i> of preparation

Source: European Commission 2016 country reports

Conversely, our cross-country analysis of Commission's compliance assessment in selected single market and sectoral policy chapters points towards notable mismatches between approximation and implementation of EU rules instigated by high implementation costs, institutional deficiencies and weak human resources.

Compliance with the chapters on the four freedoms (free movement of goods, workers, services, capital) has been progressing slowly and mainly confined to gradual alignment with the relevant EU legislation. The transposition of key EU legislation, such as the General Products Safety Directive, the New and Global Approach *acquis*, the Services Directive or the money laundering *acquis* has been partial and has been progressing with a similar pace across the candidate countries. Compliance in all cases is hindered with weak implementation of standards and technical requirements, low market surveillance capacities and all-round weak administrative capacity for enforcement of legislation.

Another example of uneven compliance is procurement policy, which has received special attention in Commission's assessments as it is closely associated with the rule of law fundamentals. Apart from gaps in harmonization with the 2014 procurement directives in the area of concessions in some cases, the legal framework on public procurement is largely in line with the EU procurement directives in both the candidate and potential candidate countries. The institutional infrastructure is also well aligned with the *acquis* as all Western Balkan countries have established adequate

public procurement agencies. However, the Commission has been critical on the capacity of those institutions in implementing and enforcing legislation, as lack of prevention of corruption during the procurement cycle becomes a major challenge.

Competition policy is a key area of the single market that ensures free competition through prevention of dominant positioning on the market and limitations of state aid. Regarding the former, all the candidate countries have maintained good levels of alignment with the relevant Treaty provisions and secondary EU legislation. Legislative developments have also been backed by adequate institutional frameworks as all candidates have put in place corresponding state agencies for protection of competition. However, the moderate record in enforcement has been impeded by human resource deficits. Thus, even in cases where the agencies are adequately staffed, the public officials in place lack the necessary levels of expertise. On the other hand, harmonisation with State aid legislation is less advanced in all candidate countries where the good level of alignment with the relevant treaty provisions has been offset by partial transposition of secondary EU legislation. Although all candidates have established units for State Aid control, they have been criticised for their insufficient capacity for enforcement. Prior research in state aid enforcement in the Western Balkans has also emphasised the importance of the low credibility of the membership perspective as an undermining factor in the incentives for implementation of the State aid rules (Botta, 2013).

Similar structural deficiencies have been obstructing compliance with the sectoral policies *acquis*. In transport policy there is a notable variation in compliance. While BiH and Kosovo are at an early stage of adoption and implementation of the *acquis*, the candidate countries have had steady progress in alignment with the *acquis*. Most of the candidates have good levels of alignment with the road transport *acquis* and the *acquis* on summertime arrangements. However, the adoption of legislation on Intelligent transport systems is going at a slower pace. On the other hand, the transposition of EU rules in this sector hasn't been matched with a good record in implementation. The Commission has emphasized the need for further efforts in implementing legislation in all applicant countries. As elsewhere, the mismatch is facilitated by low investments in human and physical resources. Hence, the need for strengthening the administrative capacity in all modes of transport has been a reoccurring EU demand in almost every applicant country.

Compliance with the *acquis* in energy policy is particularly challenging due to high material and political costs of adoption. A good example are the candidate countries who have had mixed responses to EU's demands for compliance with the Energy Community Treaty and the third energy package. In all cases the alignment with the third energy package for liberalisation of the electricity and gas markets has been hindered by reluctance to adopt and implement secondary legislation for unbundling suppliers from operators. The case of Macedonia is telling, as due to fears of high political costs the government has been stalling compliance with EU demands for opening of the electricity market for operators. Similarly, Serbia is yet to fully unbundle and open the gas sector, while Albania has been criticised for lack of efforts in unbundling its state-owned transmission and distribution companies.

Finally, environmental policy imposes probably the greatest compliance challenge within the sectoral policy cluster. The priority of this sector for the EU has been effectuated by an ever-growing EU legislation whose implementation imposes significant material costs on complying governments. For example, the estimated costs for implementation of the environmental *acquis* and the build-up of environmental policy institutions in the CEECs in the pre-accession phase ranged from 80 to 100 billion Euro, or an average of two to three percent of their gross domestic product (Carmin and Vandaveer, 2007: 8). The gravity of the environmental *acquis* and its financial implications is affecting the compliance record of the Western Balkan countries which is amongst the lowest in comparison to other chapters. Thus, according to the Commission's 2016 country assessments none of the Western Balkan countries is not even moderately prepared to assume the environmental *acquis*. All candidate countries have achieved some level of preparation in the fields of environment and climate change, while Bosnia and Herzegovina and Kosovo are at an early stage of preparation. All countries have been partially progressing in the alignment of legislation to the *acquis*. Across all candidate countries, only the alignment with the air quality and waste management *acquis* is at a satisfactory level. The transposition of EU legislation in water quality, industrial pollution, nature protection, chemicals and climate change is partial and varies across countries. The absence of evident progress in alignment with the *acquis* is coupled by significant implementation gaps. Lack of investment in administrative and institutional capacities significantly constrains implementation and enforcement of environmental policy. Thus,

all Commission assessments of environmental policy in the Western Balkan countries have stressed serious weaknesses of administrative, financial and infrastructural capacities at both central and local levels and across all environmental sectors.

In sum, our study confirms the importance of administrative capacity as a factor of successful approximation and implementation of EU rules. In comparison to the political criteria, the determinacy of the EU rules in this sector is more prominent. The content of most of the *acquis* doesn't lack clarity or precision and as such is not susceptible to political manoeuvring and interpretation. This makes alignment with the *acquis* more of a bureaucratic process. Hence, the slow progress in meeting the obligations of the *acquis* in the Western Balkans is heavily dependent on the administrative capacity of the respective governments to implement EU legislation. Although the applicant countries have been able to maintain steady progress in transposition of the *acquis*, there are considerable gaps between norm adoption and implementation of EU legislation due to administrative ineffectiveness. Even in cases where the authorities have been able to set up institutional arrangements in line with EU requirements, their enforcement capacity and effectiveness is impeded by weak and insufficient human resources. Finally, the modest compliance records are augmented by enforcement costs. Most of the reforms that are induced by EU legislation are very expensive, both administratively and financially. Consequently, in many cases they increase political costs for domestic elites who are reluctant to raise or allocate funds for unpopular reforms.

## Conclusion

Despite the internal political consensus and relatively favourable public support for EU membership in the Western Balkan countries, the region is still far from achieving full convergence with EU rules and values. Even in the case of the two EU membership candidates that have opened accession negotiations, Montenegro and Serbia, the prospects of full membership remain uncertain. Present analysis of formal compliance with EU rules in the Western Balkan countries highlights the slow pace of Europeanisation in the region. The low credibility of the accession process coupled with

structural deficiencies, low administrative capacity and gate-keeping political elites contribute to a mediocre record of compliance in the Western Balkans, despite observed cross-sectorial variation. On the other hand, this study has identified a significant discrepancy between EU demands for formal institutionalization of rules and existing informal social practices which are deeply rooted in cultural traditions and socialist legacies. The durability of these informal arrangements and their resistance to change and adapt to formal demands further constrain the processes of Europeanisation of the Western Balkans.

With regard to the political aspect of EU conditionality, the EU accession process has generated unique, broad-based and long-term support for reforms and progress towards EU membership in the Western Balkans. However, while EU conditionality has an important role in prompting reforms, a sustainable reform process also requires additional domestic and EU related conditions. On one hand, the EU's political conditionality in the Western Balkans lacks a strong normative justification, which affects the degree of compliance with the EU's demands. Additionally, the apparent lack of credibility with regard to uncertain time of accession opens up space for political actors to manipulate compliance and to explore the possibility of trade-off between full compliance and stability in the region. On the other hand, the EU needs to assert critical domestic conditions to prevail – most notably the reduction of the number of veto players and the elimination of institutional obstructions exhibited in informal clientelistic relationships among the domestic ruling elites and institutions prone to corruption. Finally, this study has particularly emphasised the implication of domestic political costs on rule of law and media policies in the Western Balkans. The lack of accountability of the political elites is enhancing their leeway to circumvent and delay the political reform processes that would significantly reduce their power over the institutions. The EU should apply a more structured pressure in publicly exposing corrupt political elites and their illiberal practices, accompanied with more investments in the empowerment of watchdog civil society actors.

Compliance with the economic EU membership criteria is largely constrained by institutional deficiencies and continuing informal practices. Low investments in development of human and infrastructural resources appear as major obstacles for economic growth and the pursuit for higher competitiveness of the economies of the Western Balkan countries. Compliance with the economic criteria has thus far

been dependent on the quality of implementing institutions, impartial enforcement of rules and procedural efficiency, all of which are currently progressing at a slow pace in the Western Balkans. Institutional weakness and procedural inefficiency are increasing the economic costs in Western Balkan societies and are seen as major contributors towards broadening gaps between the outcomes of the formal institutional regulatory framework and the large informal sector in the economy of the Western Balkan region. The durability of the share of the informal economy and high unemployment levels which haven't been reduced despite the membership candidates' approximation to the EU imply that weak implementation and enforcement of rules continue to provide incentives for functioning of informal practices in the Western Balkans economies. In essence, modest investments in capital infrastructure projects, lack of effective educational and innovation policies, coupled with procedural and administrative burdens – all have serious implications on the economic (under)performance in the region and the overall lack of competitiveness of the Western Balkans economies with the EU average. Policy makers in the region should urgently address the skills mismatch with the labour markets by streamlining reform of the education sectors towards improvement of research and development skills of the workforce.

The development of the ability to assume the *acquis* in the Western Balkans countries follows a familiar pattern of compliance that emphasizes the gap between the transposition and implementation of EU legislation. On a 'macro' level, the successful adoption of EU rules is significantly constrained by the low administrative capacities of state agencies responsible for their implementation. There is no evidence of significant socialization effects of Europeanisation on the bureaucratic structures and practices in the applicant states. In contrast, well established informal codes of institutional behavior coupled with insufficient investment in human resources and infrastructure reinforce the transposition – implementation gap. On a 'micro level', in many instances, implementation of the *acquis* is confronted with informal practices based on long lasting traditional cultural norms which are resistant to the processes of internalization of the 'new' EU-induced rules. This results with partial implementation outcomes due to processes of spontaneous indigenization of formal rules, where the implementing agencies choose to selectively apply the rules. This study identifies the administrative capacity gap as a crucial challenge

for the implementation of EU norms in the Western Balkans. The EU and the Western Balkan governments should therefore prioritise the processes of depoliticization and meritocratic recruitment of public administration officials. Sound retention policies based on more generous financial and promotion incentives could be critical for securing satisfactory compliance with EU norms in the accession and post accession periods.

It can be concluded from the above that due to higher determinacy and the more technical nature of the economic and *acquis* accession criteria, norm diffusion in these sectors has progressed in a more linear progression among the six Western Balkan countries aspiring EU membership. However, progress in compliance with the economic criteria and the adoption of the *acquis* is directly linked to compliance with the political criteria, as rule of law effectiveness is critical for enforcement of the *acquis*. Hence, our study underlines the seminal importance of the political dimension of the EU accession process as a key challenge for the successful outcome of societal transformation in the Western Balkans.

In order to address these observed deficiencies, the interactional dimension reaching deeper beyond the institutional (state) structure in order to empower and provide the wider public with the skills necessary to hold the elites accountable should be further explored by the EU. The EU should bolster its credibility by focusing on the strict monitoring of aspiring members towards stable and prosperous democracies governed by the rule of law. Eventually, this approach would enable the social and cultural continuity of the transferred norms, particularly by providing every responsible member of society with rules for their implementation. Otherwise, as the democratisation in the region remains an empty shell, the EU integration process will stall and likely grind into standstill.

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