

Western Balkans 2020



State-Capture Risks and Policy Reforms



WESTERN BALKANS 2020:

STATE-CAPTURE RISKS AND POLICY REFORMS

Southeast European Leadership for Development and Integrity (SELDI) is a regional civil society anti-corruption and good governance initiative created in 2012. It is the successor of the Southeast European Legal Development Initiative pioneered by the Center for the Study of Democracy, Sofia and the International Development Law Organisation, Rome in 2001. As of 2021, SELDI covers 14 countries from South East Europe and the Black Sea through its more than 30 partner civil society organisations.

SELDI contributes to a dynamic civil society in the region, capable of participating in public debate and influencing policy and decision-making process in the area of anti-corruption and good governance. The initiative established a coalition for the development and endorsement of a regional CSO strategy and action agenda and carries out good governance monitoring. SELDI raises public awareness and advocates reformist policies through its Regional Anticorruption Reports and Regional Good Governance and Anticorruption Policy Forums.

This Regional Anticorruption Report 2020 presents the innovative State Capture Assessment Diagnostics of the Western Balkans and the regular Corruption and Hidden Economy Monitoring System results for the region. The report proposes relevant recommendations for taking the EU enlargement process further, in particular as it relates to rule of law and anticorruption.

SELDI coalition founding members and contributors to this publication are:

Macedonian Center for International Cooperation (MCIC), Republic of North Macedonia

Center for the Study of Democracy, Bulgaria

Albanian Center for Economic Research (ACER), Albania

Institute for Democracy and Mediation (IDM), Albania

Center for Civic Initiatives (CCI), BiH

Zašto Ne, BiH

Partnership for Social Development (PSD), Croatia

Rinvest Institute, Kosovo*

Institute for Democracy 'Societas Civilis' Skopje (IDSCS), Republic of North Macedonia

Center for Democratic Transition, Montenegro

Institute Alternative, Montenegro

Centre for Contemporary Politics, Serbia

Turkish Economic and Social Studies Foundation, Turkey

Editors: Dr. Ognian Shentov, Ruslan Stefanov, Boyko Todorov



This publication has been produced with the financial assistance of the European Union (EU) and the Central European Initiative (CEI). Its contents are sole responsibility of SELDI.net and do not necessarily reflect the views of the EU and the CEI.

2020, Southeast European Leadership for Development and Integrity (SELDI)



Creative Commons License

Attribution-NonCommercial-NoDerivs 3.0 Unported

ISBN: 978-608-4848-39-4

Executive Secretariat

Macedonian Center for International Cooperation

PO Box 55 st. "Nikola Parapunov" 41A

Skopje, North Macedonia

Tel: +389 2 3065 381

Fax: +389 2 3065 298

Knowledge and Outreach

Center for the Study of Democracy

5 Alexander Zhendov Str.

1113 Sofia

Tel.: (+359 2) 971 3000

Fax: (+359 2) 971 2233

csd@online.bg, www.csd.bg

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.



Executive summary	7
Foreword: integration by way of integrity	15
1. The dynamics of corruption and state capture in the Western Balkans.....	17
2. The regulatory environment.....	25
3. Anticorruption in practice: the executive and the legislature.....	31
4. Anticorruption in practice: the judiciary.....	39
5. Anticorruption in the economy: the hidden sector.....	45
6. The role of civil society.....	53
7. International cooperation.....	59
The way forward: catalysing anticorruption in the Western Balkans	63
List of figures	65
List of tables	66
List of boxes	66
Annex (Executive summaries)	67
ALBANIA AND KOSOVO / Përmbledhje ekzekutive.....	69
BOSNIA AND HERZEGOVINA / Izvršni sažetak.....	75
MONTENEGRO / Izvršni sažetak.....	81
NORTH MACEDONIA / Извршно резиме.....	87
SERBIA / Zaključak.....	93



The dynamics of corruption

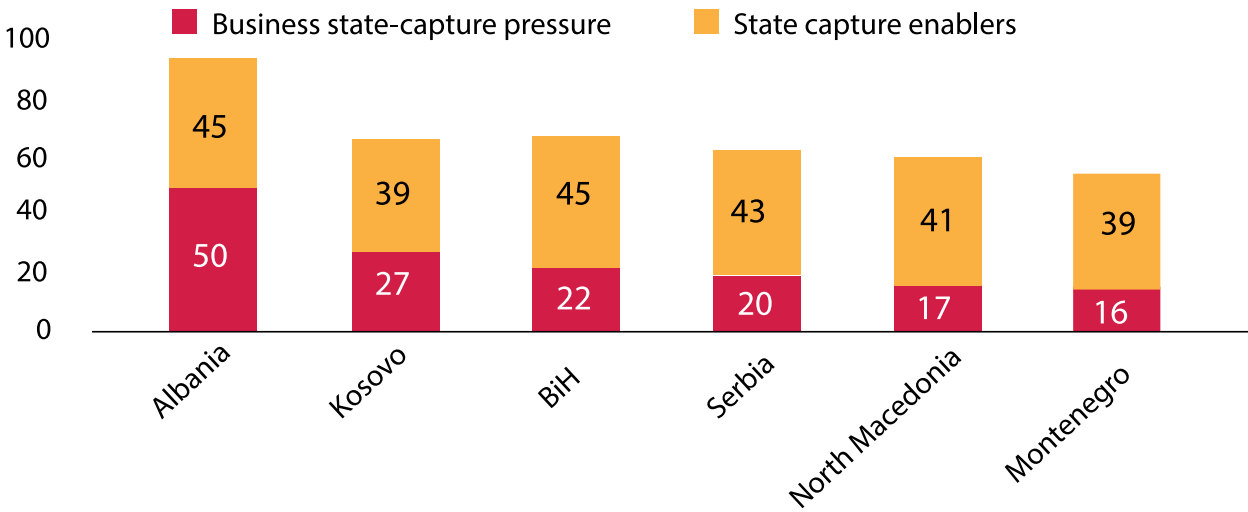
In the past two decades the Western Balkan countries have undergone considerable political, social and economic transformations. A number of outstanding challenges, however, remain, critical among which is the integrity of public governance. The matter of the rule of law in general and anticorruption in particular are now at the heart of the most consequential political project of the Western Balkans – their integration with Europe’s preeminent organisation, the European Union. SELDI’s contribution to the anticorruption agenda in the Western Balkans has been both specific and actionable, seeking to bridge monitoring, analysis and policy recommendations. The *2020 Regional Anticorruption Report* looks into the legislative framework and developments in the practice of the institutions of state – executive, legislature and the judiciary. The assessment of the regulatory and institutional factors enabling corruption in the region is not intended as a comprehensive inventory but rather emphasises some of the priority issues relevant to potential efforts for stemming common sources of corruption. The report provides a model for reporting on anticorruption progress by civil society in the Western Balkans.

SELDI’s monitoring tools provide data about changes in the actual proliferation of two types of corruption – administrative corruption (bribery), which affects individuals and businesses, and state capture (grand corruption) affecting the functioning of democratic institutions and government decision-making. With respect to the latter, the application of *SELDI’s State Capture Assessment Diagnostics (SCAD)* tool in the Western Balkans has revealed that there are considerable state-capture risks. **State-capture pressure** in the region still **remains at high levels**. The results show that none of the countries is close to full state capture, but there are critical impairments in the functioning of democratic and economic checks and balances.

SCAD findings indicate the presence of strong **environmental enablers** such as ineffective public organisations which lack integrity, impartiality and robust anti-corruption protocols. It also shows actual symptoms of **business state-capture pressure**, i.e. monopolisation happening at national, sectoral or institutional level. Monopolisation pressure is the highest in Albania and Kosovo.¹ Considerable levels are also recorded in BiH, Serbia, North Macedonia, and Montenegro. SCAD shows the symptoms of such developments in key economic sectors. One of these sectors is energy, due to its high levels of concentration, lack of transparency and inefficient corporate governance structure of state-owned enterprises, and lack of adequate regulatory oversight.

¹ The designation “Kosovo” is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

State-capture pressure levels in the region are high*

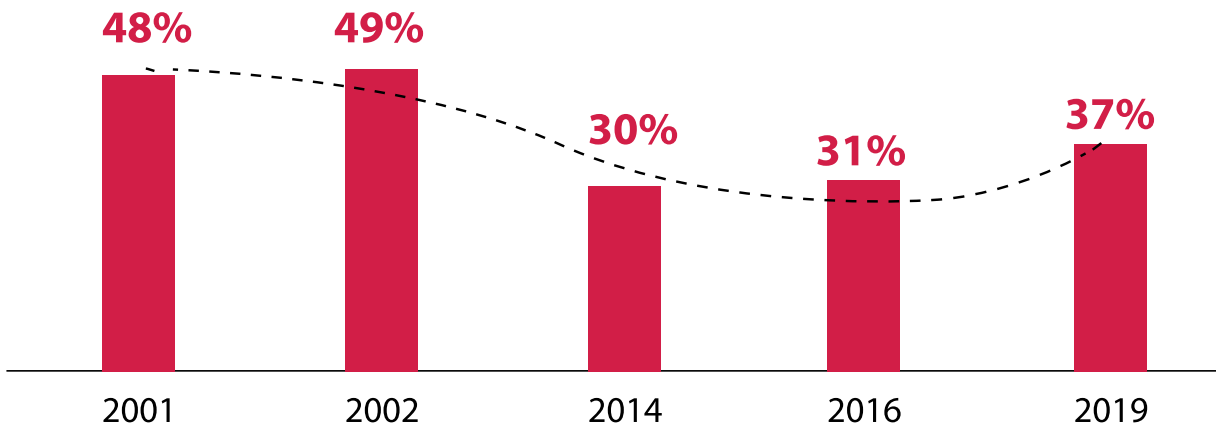


* Business state-capture pressure is centred on monopolisation pressure at national, sectoral or institutional level. State capture enablers include institutional and environmental factors at national level.

Source: SELDI SCAD, 2020.

The degree to which corruption is tolerated by the general public is an important indication of progress in the integrity of public office. SELDI's Corruption Monitoring System (CMS), which measures pettier forms of corruption (bribery), shows that the **acceptability of corruption** remains **relatively high** in the Western Balkans. Bosnia and Herzegovina (BiH), North Macedonia and Kosovo display higher acceptability than the rest. This also corresponds to certain levels of corruption pressure – the vast majority (82%) of people in the region who believe corruption is acceptable in principle expect to be asked for bribes. Even more importantly, more than half (62%) of those who do not accept corruption as the norm still think that they are likely to become victims of corruption pressure.

Corruption pressure: after a tangible drop in the mid-2010s it is on the rise again



Source: SELDI Corruption Monitoring System, 2019.

CMS findings show that compared to 2016 corruption pressure in 2019 increased in four of the six Western Balkans countries: Bosnia and Herzegovina, followed by Montenegro, Kosovo, and Serbia. Only Albania and North Macedonia have had a marginal decrease in corruption pressure. These results indicate that countries under more political pressure from the EU and a clear short-term goal on their EU accession horizon perform better.

Anticorruption legislation

In the range of legal anticorruption tools, the WB countries have achieved most progress in the development of their statutory laws, including in areas such as preventing conflicts of interest, protection of whistle-blowers, and requirements for assets declarations by public officials. Overall, they have **adopted the international anticorruption standards** in their national legislations, including provisions about the bulk of the mandatory corruption offences under the United National Convention on Anti-Corruption (UNCAC), as well as about some non-mandatory.

The regulatory activism in the Western Balkans was not the result of a feedback mechanism for the effectiveness of policies but rather a response to **growing demand for integrity** in governance coming from the domestic public and international partners. The task now for the national governments is to keep up with the shifting manifestations and forms of corruption while maintaining regulatory stability and avoiding overwhelming the judiciary with rapid changes of the applicable laws.

A case in point is **public procurement**. During the last three years, the laws on public procurement have been revised frequently, indicating that policies are trying to keep up with various malpractices. In the Western Balkans public procurement is an area of heightened corruption risk as it is used not only to procure goods and services for the public benefit but often to transfer public funds into private pockets. SELDI's assessment of public procurement in the WB countries reveals that it is particularly adversely affected by factors such as: tenders often designed to favour specific bidders, poor compliance oversight and enforcement of contract terms, overuse of negotiated procedures, a large number of tenders with only one bidder, etc.

Specialised anticorruption institutions

The establishment of executive institutions with exclusive anticorruption competences in the state capture environment of the Western Balkan countries faced a dilemma: **too few powers would render them useless, which would further increase public distrust of government; too many, and they risk becoming tools** for partisan political goals. Countries in the WB have sought to resolve this dilemma in different ways. In Kosovo, there is just an eight-person Office of Good Governance within the Office of the Prime Minister of Kosovo, which monitors the drafting and implementation of strategic documents against corruption. In Albania, also under the Prime Minister's authority, there is a National Coordinator against Corruption. In Serbia, the arrangement is more elaborate: the Anti-Corruption Agency has a fairly broad remit (monitoring and policy making, conflict of interest resolution, initiating changes and adoption of regulations in the field of anti-corruption, coordinating other anticorruption bodies, etc.). The Montenegrin Agency for the Prevention of Corruption has a similarly broad mandate - the implementation of measures for prevention of conflict of interest, collecting and checking the reports on assets and income of public officials, receiving and acting upon whistle-blower reports, etc. In BiH, due to its complex set-up, there are 14 anticorruption bodies at all levels of government and all of them are established by formal decision of the governments or parliaments and have their own jurisdictions.

Civil service integrity

Reforms aimed at enhancing the integrity of the public administration in WB countries, driven mostly by the European Union and the promise of EU accession, have resulted in **all of the countries adopting civil service laws**. There are various mechanisms for preventing and combating corruption among civil servants. For example, in BiH these issues are regulated by numerous and autonomous laws for each of the specified levels of government. In Kosovo, on the other hand, there are no specific anticorruption provisions in the law on civil servants, but only in the Code of Conduct of Civil Servants and the anticorruption law. However, **implementation** of these mechanisms and repression policies **remain rather weak** and without tangible effect, thus creating fertile ground for unethical behaviour to become acceptable. In all the WB countries, senior civil servants and particularly some special categories of civil servants employed in sectors of high corruption risk (police, tax administration, customs, etc.) are obliged to report their assets and incomes to the competent institutions. However, the institutions in charge of the control of assets and incomes are **mostly focused on elected public officials**, rather than on civil servants. In almost all of the countries there is a problem with dismissals that are annulled by the courts, indicating shortcomings in the implementation of warranted demotion or dismissal of civil servants.

Anticorruption enforcement: the judiciary

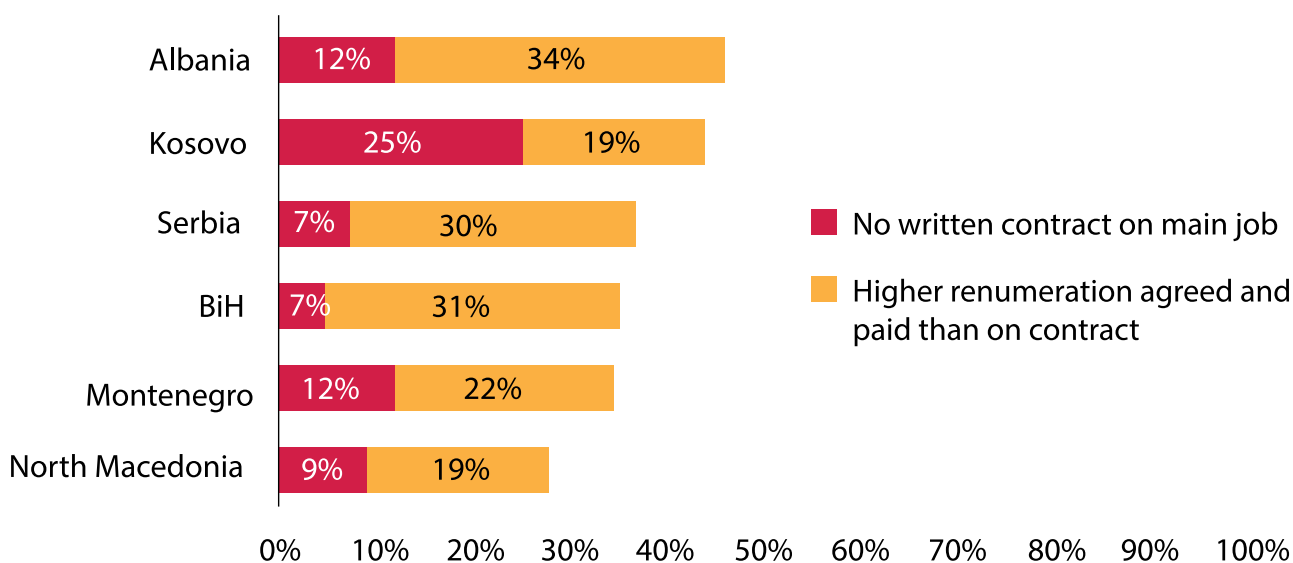
Although judicial reforms have been ongoing for more than a decade in all Western Balkan countries, they have **not produced significant progress**. The essence of these reforms has been limited to improving the legislative framework and other technical matters, followed by poor implementation and performance, especially as regards effective prosecutions and convictions – **final convictions of public officials** remain mainly **in the single digits**. This is particularly true for higher level corruption cases, although exceptions have started to appear. The separation of powers and creation of an independent judiciary are hindered by the **politicisation of the judiciary, undue influences and corruption** – the legislative and executive power still exercise a strong influence on the judiciary election process and budget allocation. All of these issues present major hurdles on the EU accession path of the Western Balkan countries. The main deficiencies in the governance and functioning of the judiciary include:

- influence of the legislative and executive branches in the selection and promotion of judges and prosecutors;
- the bodies governing the judiciary and the prosecution are not appropriately separated;
- the enforcement of the disciplinary accountability and of the codes of ethics for judges and prosecutors is still very limited;
- public prosecutor's offices lack resources, especially expertise in financial forensics;
- management structures are unclear and competences often overlap.

Anticorruption in the economy: the hidden sector

A significant **hidden economy sector closely linked to corruption** continues to plague the Western Balkans. The presence of this sector could be attributed to a plethora of causes, such as low tax morale; weak business environment and very high poverty levels; lack of trust in the institutions of government and high perceptions of corruption; high taxation and para-fiscal costs, in parallel to excessively coercive tax policy; insufficient inspections and audits; red-tape, burdensome severance payment system, and frequent changes of legislation.

Workers without written contract on the main job or receiving higher than the declared remuneration (2019, in %)



Source: SELDI Corruption Monitoring System / Hidden Economy Monitoring System, 2020.

High tolerance towards evasion of tax and social security contributions has been cultivated in the Western Balkans due to the perception that tax authorities and in general the public system are corrupt. According to 45.7% of the businesses in North Macedonia and 72.9% in Albania, corruption is the most important factor for the existence of the hidden economy. This leads the public to believe that taxes are not properly used for delivering better public services.

Western Balkan policy-makers have taken steps to introduce the **compulsory use of written labour contracts** on the main job but their efforts have remained largely unsuccessful, as the overall hidden economy levels continue to rise. This is due to the multiple alternative ways of evading the payment of health and social security contributions, such as under-declaring the amount of the received salary, or non-declaring secondary or part-time jobs.

The role of civil society

Throughout the Western Balkans, **civil society organisations (CSOs) have increased both their expertise and their ability** to utilise this expertise in a range of contributions to the anticorruption agenda. Their anticorruption impact is achieved through a variety of means – initiating legislative changes and benchmarks for good practices to increase transparency, accountability and integrity of public enterprises and enhancing the private business capacity to prevent and combat corruption.

Given their active role in promoting the integrity of public office, it is all the more appropriate that **CSOs should be held to the highest standards of transparency and accountability**. Overall, while a growing number of CSOs advocate for good governance, there is little progress in taking steps to make themselves more transparent. A clear measure of this is the low number of CSOs that publish online annual reports. In some countries (e.g., BiH), there is no specific requirement for CSOs to publish operational and financial reports – the law requires them to be “transparent” without defining any specifics. In practice, only CSOs that apply for governments funds are obliged to provide reports on a regular basis.

The way forward: catalysing anticorruption in the Western Balkans

Slow and patchy anticorruption progress has allowed private interests to acquire a hold on Western Balkan governments resulting in state capture. Releasing governance from this grip can only be achieved by an alliance of stakeholders acting in concert: **reform-minded policy makers, civil society and international partners**, chief among which the European Union.

At the national level, it is necessary for public bodies in the Western Balkans to set up **procedures for effective prosecution** of corrupt high-level politicians and senior civil servants. The analysis of SCAD data suggests that a key priority should be safeguarding and monitoring judicial independence and performance. The influence of the legislative and executive branches in the selection and promotion of judges and prosecutors should be normatively excluded or minimized. Countries where the majority of the judicial self-governing bodies are not elected among judges and by judges should adopt reforms increasing their voting power.

A proper **balance between prevention and repression** is especially important to strike when seeking to reduce the size of the hidden economy and its impact on corruption. Governments need to identify what incentivises employers and employees to engage in informal business activities; these would then be factored in when designing reforms for improving the business environment, the tax policy and the quality of the public services.

A critical issue in ensuring that governments are held accountable is **transparency of media ownership**, newsroom independence and safeguarding media freedom from political interference. A particular focus in the governments' efforts should be avoiding civil society capture, improving the corporate governance of state-owned enterprises, and the transparent management of large-scale investment projects.

The advancement of the quality of public governance in the Western Balkan countries is now closely linked with the process of their integration with the European Union. The underlying conditions which influence integrity reforms are different in each country, making the EU the regional stabilising factor for these reforms.

For its enlargement strategy to allow it to continue being such a factor, the **EU needs more active political engagement** with the Western Balkan countries, providing them with a clear perspective for the future. Stronger engagement would, however, need to guard against several unintended consequences, which could make it counterproductive. It would need to ensure that the benefits of closer economic integration with the Union do not accrue exclusively to a small clique of privileged oligarchs, thus further exacerbating business state capture. The membership-related conditionalities on the integrity of governments need to be accompanied by equally strong domestic public demand for accountability, lest the dominant political actors choose the former as an excuse to disregard the latter. Engagement in the diplomatic arena with politicians and senior government officials would also need to be performed in a way that does not create the impression of political endorsement. The overall effect of this process should be to stand up to and **neutralise the harmful effects of authoritarian influence** in the region.

The European Union has now strengthened the contingency of the enlargement process by introducing negative and positive conditionality and including options such as **suspension of negotiations and freezing of funds**. SELDI welcomes the incorporation in EU's approach to anticorruption in the context of accession of some of SELDI's earlier recommendations, including the

mainstreaming of anticorruption in a broader range of policies and not just in anticorruption institutions and the judiciary, and protecting the important EC–civil society relations, including their financial underpinning from unexpected distress. Still, the primacy of the rule of law agenda for progress in any other area of development of the Western Balkans needs to be further emphasised, in particular by broadening the range of stakeholders engaged in both monitoring and advocating for good governance reforms. Only a **public-private coalition** involving both EU institutions and actors and local public and private institutions and individuals would be able to ensure the scaffolding of positive anticorruption developments, i.e., their irreversibility.

EU's anticorruption assistance – both technical and financial – for the Western Balkans needs to be provided in synchrony with EU's general policy messages. This is what is now expected from the Instrument for Pre-Accession Assistance (IPA) III. Given the findings of SELDI's SCAD assessment of the intensity of state capture in the region, **EU funding should incorporate the *primum non nocere* (first, do no harm) principle**. In other words, it needs to ensure that it does not become counterproductive by strengthening clientelistic networks of corrupt politicians and privileged businesses which receive the lion share of EU funded procurement.

The EU needs to continue monitoring anticorruption developments in partnership with civil society in the region. Independent corruption and anticorruption monitoring mechanisms are needed at all levels – from corruption risk assessment of policies to proof-reading of key legislation and analysing the efficiency of the internal anticorruption procedures in individual public institutions. In helping the countries deal with the latter, the EU would be well advised to **mainstream innovative analytical instruments** to guide its policies, such as the ones piloted by SELDI:

- Monitoring Anticorruption Policy Implementation (MACPI) tool, which assesses the corruption resilience of institutions and identifies anticorruption policy and implementation gaps; and
- State Capture Assessment Diagnostics which helps identify state-capture vulnerabilities.

The European Commission would need to pay particular attention to safeguarding competition in **sectors of high monopolisation pressure** when implementing its investment plan for the region. The technical support, policy advice and EU funding should be directed towards anti-corruption and anti-monopoly efforts focused on critical sectors, such as **energy, infrastructure, banking and telecommunications**. The extension of **advisory missions** to the whole Western Balkans will also benefit the performance of the rule of law assessments; however, it is recommended that any case-based peer-reviews **include civil society experts**. The European Commission and the local EU Delegations should work together with local stakeholders to establish procedures for regular trial monitoring of corruption cases, as well as monitoring the progress of the judicial reforms.

FOREWORD: INTEGRATION BY WAY OF INTEGRITY



Two decades ago, when the Southeast European Leadership for Development and Integrity (SELDI) was launched, corruption was only an emerging concern both domestically and internationally. Today, it is at the heart of the most consequential political project of the Western Balkans – their integration with Europe’s preeminent organisation, the European Union. This is why **SELDI is measuring the dynamics of corruption and assessing the effectiveness of anticorruption policies** in the broader context of the integrity of the governance systems in the region.

The Western Balkans have made clear progress in tackling corruption. The rise of reformist politicians, external support from international partners and an active civil society have ensured that advanced anticorruption standards have been adopted, at least nominally, in the works of government. This process is encountering, alas, increasing headwinds, mostly in the form of government institutions and political parties becoming infiltrated by clientelist networks which subvert decision making for private gain. As the resulting **state capture is becoming the major obstacle to the development of the region**, SELDI is leading the way for a better understanding of its causes and effects through the State Capture Assessment Diagnostics; the results of its first application in the Western Balkans are presented in chapter I of this paper.

Rule of law failures also increasingly put the existence of liberal democracy into jeopardy (a process, incidentally, that has not been constrained only to EU candidate countries but has also spread to member states as well). This trend has been exacerbated by two additional factors. First, there are the emergency regulations introduced because of the **Covid-19** pandemic, which governments have used to intimidate media and curb democratic freedoms, including that of parliamentary oversight. Then there is the **resurgence of great power competition** with an increasing involvement of Russia and China, which has provided local leaders with convenient escape clauses from EU membership conditionalities. Russia has consistently demonstrated that it will use any fissure within and outside the EU to stop and/or even reverse the region’s Euro-Atlantic integration. China, on the other hand, claims it supports enlargement politically, but exploits and perpetuates corruption and state capture prone investments, implicitly promoting its authoritarian model. Both factors have aggravated the concentration of power leading to the oligarchisation of the region’s economies and the state capture of key government regulatory functions.

Tackling corruption in the Western Balkans has been put at the core of the reformed EU accession process, which has incorporated lessons learned from the 2004, 2007 and 2013 rounds of enlargement. The European Commission (EC) has undertaken a new approach to evaluating the countries before accession, along the lines of the French proposal made in November 2019. The new approach is providing more decision-making power to the EU governments, and includes mechanisms such as stopping and re-launching the negotiations and freezing of funds. It has also taken on board key **proposals from SELDI’s Regional Anticorruption Reports² and policy briefs, including:**

² SELDI, (2016), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*.

- a stronger focus on political engagement and economic fundamentals;
- mainstreaming of anticorruption efforts in more policies and not just in anticorruption institutions and the judiciary;
- a continuous clear engagement to reforms from local elites;
- tackling third countries' malign influence;
- protecting the important EC–civil society relations, including their financial underpinning from unexpected distress.³

In September 2020, the European Commission published its Annual Rule of Law Report, which emphasises that the rule of law “is also an important theme for the EU beyond its borders. The EU will continue to pursue a strong and coherent approach between its internal rule of law policies and how the rule of law is embedded in the work with accession and neighbourhood countries as well as in all its external action, at bilateral, regional and multilateral level.”⁴ Given their membership aspirations, the **Western Balkan countries should strive to uphold the same standards as EU member states**, including by applying the evaluation methodology used to assess the latter.

SELDI’s contribution to the anticorruption agenda in the Western Balkans has been both specific and actionable, seeking to bridge monitoring, analysis and policy recommendations. The 2020 Regional Anticorruption Report looks into the legislative framework and developments in the practice of the institutions of state – executive, legislature and the judiciary. The assessment of the regulatory and institutional factors enabling corruption in the region is not intended as a comprehensive inventory but rather emphasises some of the priority issues relevant to potential efforts of stemming common sources of corruption. The report provides **a model for reporting on anticorruption progress** by civil society in the Western Balkans.

³ SELDI, (2020), *The New Approach on Enlargement: Good Ideas in Need of a Captain*.

⁴ European Commission, (2020), *Communication - 2020 Rule of law report - the rule of law situation in the European Union*, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 30.9.2020 COM(2020) 580 final.

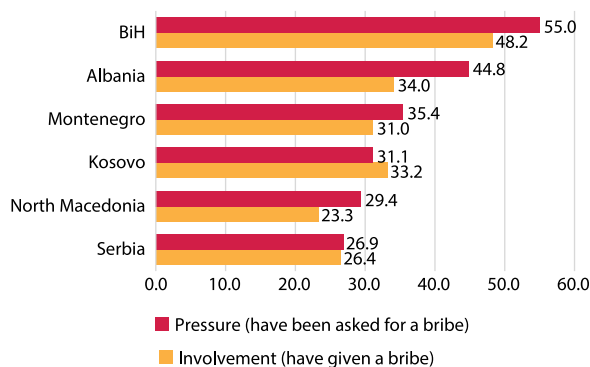


The proliferation of corruption

As with any other policy of the public realm, anticorruption needs reliable information about the dynamics of the social practices that are being studied. SELDI's Corruption Monitoring System (CMS) supplies a measure of the victimisation of individuals by corrupt officials accounting for their direct experience with various corruption patterns. It reflects the overall corruption environment in the countries in an objective and quantifiable manner, thus allowing comparability among countries and over time.

A key factor in the integrity of an environment of governance is **corruption pressure**. In 2019 in the Western Balkans, it remained high. At 27% Serbia, which fairs best in the Western Balkans, is still performing worse than the worst-performing members of the European Union. The results of Albania and North Macedonia confirm concerns over their anticorruption performance but also the differences between them – North Macedonia's corruption pressure is some 15 percentage points lower than that in Albania (45%).

Figure 1. Corruption pressure and involvement twice as high in BiH than in Serbia*



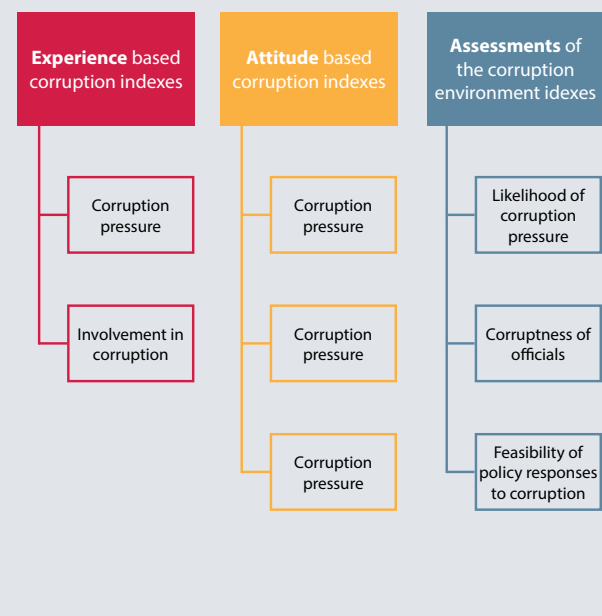
* 2019; % of the population 18+ who have been asked to give and have given a bribe/money/favour/gift

Source: SELDI CMS, 2019.

Box 1. CMS methodology

The CMS methodology ensures comparability of data across countries and registers the actual level and trends of corruption, as well as the public attitudes, assessments and expectations in relation to corruption. The major outputs of CMS are the corruption indexes. They are based on surveys included in the CMS and summarise the most important aspects of corruption behaviour patterns. The main indicators of the CMS describe corruption as a social phenomenon using three groups of sub-concepts - experience, attitudes, and perceptions.

Figure 2. Structure of CMS indexes

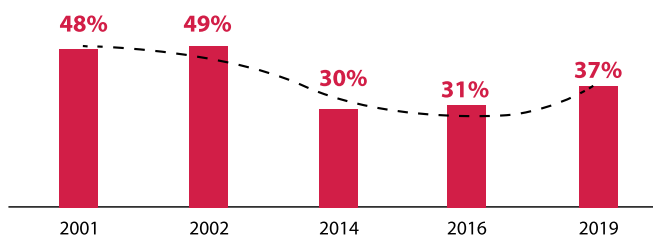


For public institutions to be considered corruption-free their corruption pressure needs to be below 5% on SELDI's evaluation scale. At this point, a **virtuous circle** could kick in with public trust in institutions increasing and providing sustained pressure for further anticorruption efforts. In turn, this reduces the incidents of corruption even further and empowers the judiciary to focus on the highest-level cases and state capture. The experience of the Visegrád countries, Bulgaria, Croatia and Romania shows that lower levels of corruption pressure are generally attainable over a 5-10 years' period but require concerted efforts combining a strong external anchor and internal champion of anticorruption. It is important to note that such positive results only come on the back of sustained economic growth and a continuous rise in incomes.

Corruption dynamics 2014 - 2019

Corruption dynamics of the last two decades demonstrate its **alarming pervasiveness** in the Western Balkans. The progress achieved by the mid-2010s has not been sustained since, and there has even been **some deterioration with respect to corruption pressure** between 2014 and 2019 (Figure 3).

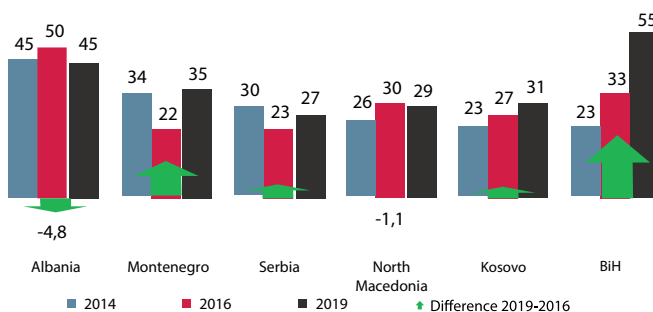
Figure 3. Corruption pressure in the Western Balkans since 2001



Source: SELDI Corruption Monitoring System, 2019.

SELDI CMS findings build upon the EU progress reports and demonstrate empirically that corruption pressure is on the rise in four of the six countries of the region (Figure 4), with only a marginal decline in Albania and North Macedonia. Higher expectations in these countries of starting accession negotiations might have contributed to the more positive results. The backsliding in Montenegro and in particular in Bosnia and Herzegovina demonstrate the fragility of achieved progress. The higher corruption pressure levels in Albania than in North Macedonia seem to require further sustained efforts from Tirana and its EU partners to justify the joint start of negotiations.

Figure 4. Corruption pressure by country

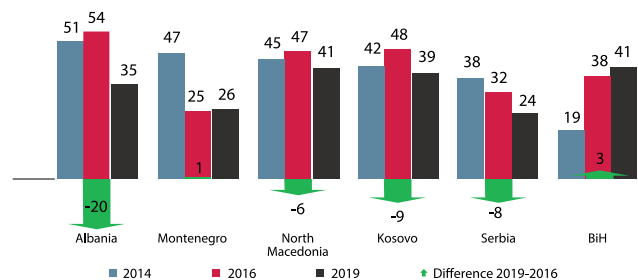


Source: SELDI CMS, 2019.

Acceptability of corruption

The acceptability of corruption – whether certain practices by public officials should be tolerated – remains relatively high in the Western Balkans, with Bosnia and Herzegovina, North Macedonia and Kosovo displaying higher acceptability than the rest. High levels of corruption pressure usually coincide with higher levels of acceptability and vice versa. Lower acceptability levels could also indicate citizens' **protest potential**, as well as the existence of strong public attitudes or movements for anticorruption and good governance. The results correspond to the fairly high protest potential, which in 2019 has been most visible in Serbia, Montenegro and Albania but has been present across the region. It should be noted, however, that Bosnia and Herzegovina has declined dramatically in both indicators since 2014.

Figure 5. The acceptability of corruption is on the decline, except in BiH*



* % of the population 18+ who find various forms of corrupt behaviour acceptable

Source: SELDI CMS, 2019.

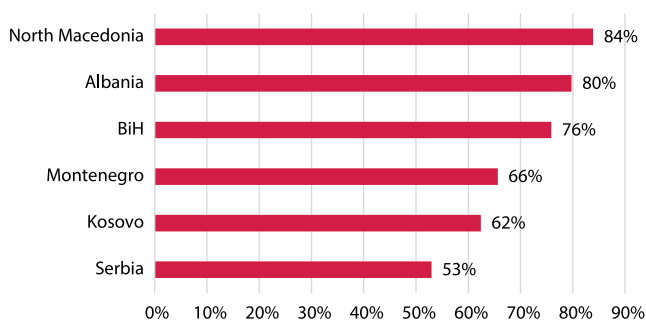
Likelihood of corruption pressure

The higher moral constraints on the acceptability of corruption seem to crumble when faced with the reality of everyday life. The vast majority (82%) of people in the region who believe **corruption is acceptable** in principle expect to be asked for bribes; even more importantly, more than half (62%) of those who do not accept corruption as the norm still think that they are likely to become victims of corruption pressure. This indicates that citizens perceive bribery as an everyday occurrence which is not likely to be prosecuted. It is also an indication of people's dormant potential to tackle corruption. If more than two-thirds of the population expect to be pressured into bribing in their everyday interactions with public officials, it is unlikely that they would provide credible deterrence to corruption. However, if decisive anticorruption

measures are undertaken at the institutional level to limit administrative corruption, people would stop perceiving it as inevitable and their natural resilience (indicated by low acceptability) would lead to fast improvement at the country level.

In this respect, the **prevalence of expectations of corruption pressure** in Albania and North Macedonia call for urgent focus and action. It seems that the political instability and uncertainty in both countries has trumped their government's pledges to focus and deal with high-level and administrative corruption.

Figure 6. The majority of people expect to be pressured into bribing*



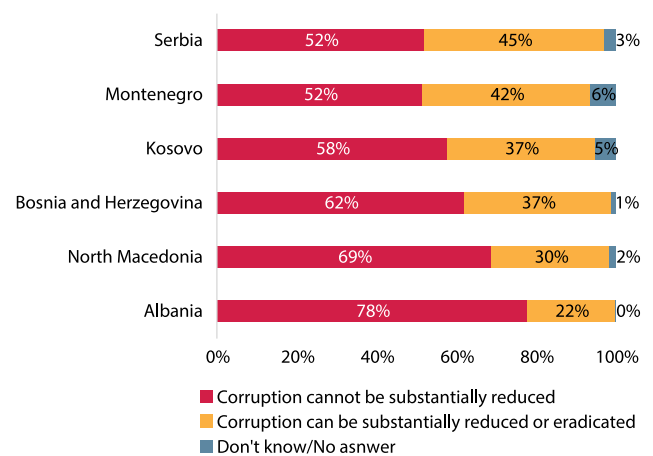
* % of the population 18+ considering corruption pressure "very likely" and "likely", excluding "not very likely" and "not likely at all"

Source: SELDI Corruption Monitoring System, 2019.

The way in which the general public in the Western Balkans evaluates the **feasibility of policy responses to corruption** is affected both by internal development and by their countries' European prospects. SELDI's monitoring reveals a lack of hope that corruption could be reduced substantially (Figure 7). Even in countries with low acceptability, like Serbia and Montenegro – both in EU negotiations, more than half of the population (52%) does not believe that improvement is possible. In addition, the share of citizens who distrust their governments' abilities to address corruption is on the rise in all countries except Serbia and Kosovo. Most notably, Albania, North Macedonia, and Bosnia and Herzegovina add 2%, 6%, and 12% respectively to their already large pools of anticorruption sceptics who have lost any hope that a culture of democracy and rule of law is feasible in their countries.

This calls for **specific actions to engage local communities in anticorruption**, but also points to the urgent need of external anchoring and support from the EU, in particular in bringing about successful cases in prosecuting higher-level corruption. Tackling corrupt local oligarchs could provide a much-needed boost to good governance in the region.

Figure 7. Perceptions of feasibility of policy responses to corruption*



* % of the 18+ population

Source: SELDI Corruption Monitoring System, 2019.

State capture in the Western Balkans

The European Commission has repeatedly noted the existence of state-capture risks in the Western Balkans, "including links with organised crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests."⁵ In its regional anticorruption reports, SELDI has provided clear and comprehensive evidence of the existence of **state capture mechanisms**, particularly in **highly monopolised sectors, such as energy**.⁶

⁵ European Commission, (2019), *A credible enlargement perspective for an enhanced EU enlargement with the Western Balkans*.

⁶ SELDI, (2016), *Energy Governance and State Capture Risks in Southeast Europe: Regional Assessment Report*.

Box 2. State Capture Assessment Diagnostics

A first step in tackling state capture is to make it tangible and explicit. To this end, the Center for the Study of Democracy (CSD) piloted a comprehensive methodology for monitoring and exposing state-capture vulnerabilities in the Western Balkans – the State Capture Assessment Diagnostics (SCAD).⁷ SCAD is an evidence-gathering mechanism that policy-makers need to utilise for two purposes:

- to detect the existence of state-capture practices in given economic sectors and regulatory/enforcement institutions;
- to suggest policy adjustments which prevent the utilisation of institutions of public governance to private ends.

SCAD is designed to measure both state-capture results/effects and the capture process itself. The measurement is achieved through a series of quantitative indicators based on experts and government officials' assessments, as well as composite governance indicators. The SCAD model includes two major components:

- business state-capture pressure, which is centred on monopolisation pressure at national, sectoral or institutional level;
- state capture enablers, which encompasses institutional and environmental factors at national level.

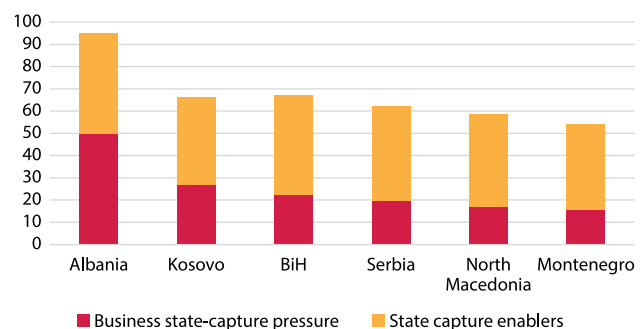
SCAD models business state-capture pressure at the national level through indicators which reflect monopolisation pressure and the ineffectiveness of antimonopoly laws. Monopolisation pressure reflects the share of the total company turnover of a country concentrated in economic sectors deemed by experts to suffer from monopoly. The ineffectiveness of antimonopoly laws indicator reflects the share of surveyed experts who believe that existing antimonopoly laws across economic sectors help, rather than hinder, the formation of monopolistic, oligopolistic or cartel structures in the country (a weighted average for all sectors is computed). At the sectoral level, additional indicators are monitored: proxies for the privileged status of a given business entity, such as whether it enjoys privileged access to public procurement; the presence of legislation or laws enhancing its market position; its privileged legal status that may shield it from prosecution; or its receiving of preferential treatment regarding state subsidies. Higher levels of business state-capture pressure generally demonstrate that more economic sectors in a given country are vulnerable to state capture.

SCAD further monitors a number of state capture enablers, i.e., characteristics of social domains which affect the system of governance by allowing or facilitating state capture. Enablers may be institutional (e.g., the ineffectiveness of anticorruption policies, lack of integrity, lack of impartiality and selective enforcement biased to private interests) or environmental (e.g., media, administrative and judiciary corruption).

Business state-capture pressure

The **monopolisation pressure** at national, sectoral or institutional level is at non-negligible levels in Montenegro, North Macedonia, Serbia and Bosnia and Herzegovina, approaches medium levels in Kosovo and is alarmingly high in Albania. This calls for more thorough scrutiny of legislation, procurement concentration and the work of specialised regulatory bodies in critical sectors in all the Western Balkan countries, especially in Albania and Kosovo.

Figure 8. State-capture pressure levels in the region are high*



* Business state-capture pressure is centred on monopolisation pressure at national, sectoral or institutional level; State capture enablers include institutional and environmental factors at national level.

Source: SELDI SCAD, 2020.

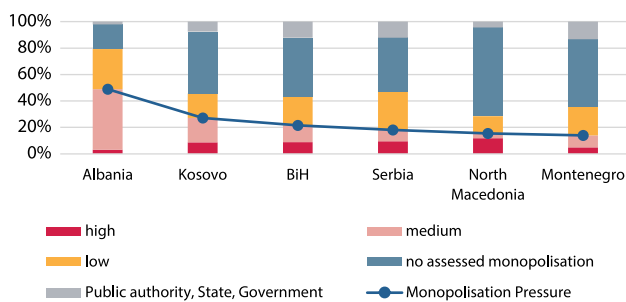
⁷ CSD, (2019), *State Capture Assessment Diagnostics*.

The relatively **high levels of business state-capture pressure** in the Western Balkans are driven by two main elements: monopolisation pressure and the ineffectiveness of antimonopoly laws. While monopolisation pressure is the highest in Albania and Kosovo, considerable levels are also recorded in BiH, Serbia, North Macedonia, and Montenegro. In North Macedonia, 12% of the total company turnover for 2019⁸ was concentrated in high monopolisation pressure sectors – the highest percentage amongst the six countries.

Sectoral vulnerabilities

SCAD reveals that multiple economic sectors in the region show symptoms which can potentially be attributed to state capture. **Energy, pharmaceuticals, telecommunications, construction** and other key economic sectors in all these countries show signs of monopolisation pressure potentially associated with state capture. Sectors showing high vulnerability in more than one country could become pathways to cross-country state-capture scenarios. These may involve internal actors, as in the infamous Agrokor case, or external ones, such as state-owned or state-controlled companies in the oil and gas energy sector.

Figure 9. Monopolisation pressure*



* Calculated as the share of the total turnover for the country of the companies operating in sectors with high and medium monopolisation pressure.

Source: SELDI SCAD, 2020.

Table 1. Economic sectors with high or medium monopolisation in two or more countries

	Assessed monopolisation						Antimonopoly laws facilitate the formation of monopoly*					
	Albania	BiH	Kosovo	Montenegro	North Macedonia	Serbia	Albania	BiH	Kosovo	Montenegro	North Macedonia	Serbia
Civil engineering	12%	41%	NA	25%	35%	30%	27%	27%	NA	22%	34%	31%
Construction of buildings	41%	47%	NA	46%	26%	51%	48%	30%	NA	30%	26%	35%
Electricity, gas, steam and air conditioning supply	47%	61%	38%	65%	74%	77%	54%	42%	38%	40%	43%	40%
Gambling and betting activities	50%	58%	36%	42%	33%	38%	49%	41%	31%	33%	31%	25%
Programming and broadcasting activities	21%	32%	4%	20%	18%	64%	27%	25%	19%	31%	46%	40%
Telecommunications	59%	67%	46%	49%	67%	47%	63%	40%	30%	31%	53%	36%
Wholesale of pharmaceutical goods	56%	53%	58%	48%	53%	51%	53%	40%	49%	29%	46%	27%
Wholesale of solid, liquid and gaseous fuels and related products	24%	35%	52%	15%	53%	42%	38%	30%	28%	20%	36%	33%
Wholesale of tobacco products	18%	38%	48%	29%	20%	17%	29%	32%	45%	24%	26%	26%

* Share of experts opting for “Antimonopoly laws facilitate the formation of monopoly” when asked to estimate whether antimonopoly laws prevent, facilitate or have no impact on the formation of monopolies

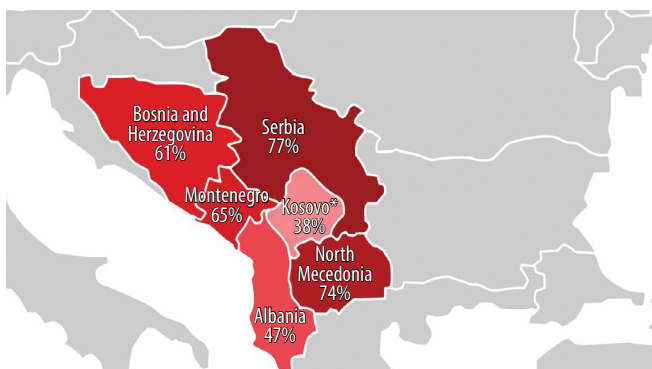
Source: SELDI SCAD, 2020.

⁸ Bureau Van Dyke, Orbis Corporate Database.

Besides typically vulnerable sectors across the region, there are some sectors which exhibit high or medium monopolisation pressure in only one of the countries. These include: air transport and extraction of crude petroleum in Serbia; pharmacy retail⁹ in BiH; manufacture of basic pharmaceutical products and pharmaceutical preparations, non-specialised wholesale trade, and retail sale of automotive fuel in specialised stores in Albania; waste collection, treatment and disposal activities; materials recovery in North Macedonia.

Energy is one of the sectors with high state-capture vulnerability across the region, due to its high levels of concentration, lack of transparency and inefficient corporate governance structure of state-owned enterprises and lack of adequate regulatory oversight.¹⁰ In this sector, the confluence of political meddling, poorly managed state-owned enterprises and dependence on foreign supply allows for widespread corruption and abuse of public funds. It is also prone to external pressure via foreign investments in supplies and transit of gas and oil, as well as energy infrastructure projects. The situation is further complicated by the high level of energy dependence of the Western Balkans on external actors, such as Russia. The sector is thus a natural starting point of reforms, given the Western Balkan countries' membership in the Energy Community, which can be a critical pull factor. However, the achievement of lasting liberalisation and democratisation of energy supply in the region would require a much closer engagement between the EU and local political elites, in order to build capacity for independent regulation and strong civic oversight.

Figure 10. Assessed share of monopolisation in the electricity sector*



* Electricity, gas, steam and air conditioning supply.

Source: SELDI SCAD, 2020.

⁹ The official name of the sector in English of NACE Rev.2 is "Dispensing chemist in specialised stores".

¹⁰ CSD, (2015), *EU and NATO's role in tackling energy security and state capture risks in Europe*, Policy Brief No. 47.

Another sector with high monopolisation pressure across the region is **telecommunications**. Telecom infrastructures of the WB6 countries are heterogeneous in both technical and technological terms, as well as in their distribution arrangements. Among its sub-sectors, the assessed monopolisation of programming and broadcasting is a particularly sensitive issue in Serbia – all national television frequencies are either directly controlled by the government or owned by those with close ties to the people in power. This contributes to the frequent compromising of journalistic independence of in the country.¹¹

Figure 11. Assessed share of monopolisation in the telecom sector



Source: SELDI SCAD, 2020.

The level of monopolisation in the **pharmaceutical sector** across the WB6 is also high. This is particularly worrying in the wake and the immediate aftermath of the Covid-19 crisis. The pharmaceuticals market in the Western Balkans faces a number of challenges, such as a lack of enforcement of rules and standards, limited access to drugs for low-income populations, and conflicts of interest between public health and industry objectives. It is not surprising that such an environment allows for public procurement practices that disproportionately favour local wholesalers or dominant pharmacy chains. One of the consequences of such lax regulatory practices is the noticeably higher price of pharmaceuticals compared to the rest of Europe. Moreover, the lack of a comprehensive system to assess domestic procurement practices benefits the wholesalers who already dominate the market and are able to pass the extra cost to the consumer. These wholesalers are able to win lucrative government contracts due to their privileged access to decision-makers.

¹¹ Simić, J. (January 31, 2019), "*Rise in Attacks on Journalists in Serbia Prompts Concerns for Press Freedom*," Euractiv.

Figure 12. Assessed share of monopolisation in the pharmaceutical sector



Source: SELDI SCAD, 2020.

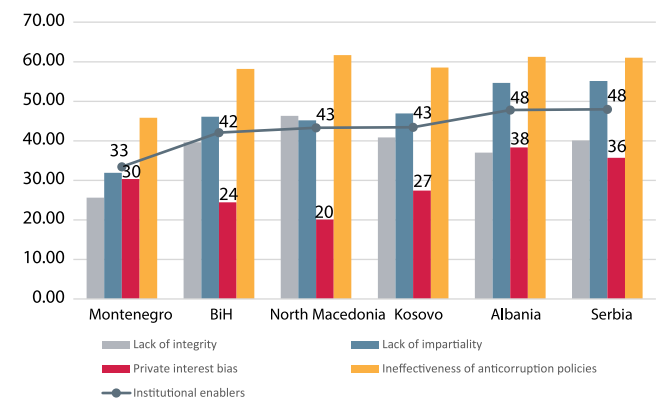
The deficient regulatory practices in the pharmaceutical sector were reflected in a not so recent but emblematic corruption case, which revealed some of the practices feared to be widespread in the sector. In the Pfizer/Wyeth subsidiary case, company representatives allegedly paid millions of dollars in bribes to secure drug markets in Eastern Europe, including those of Bulgaria, Croatia and Serbia. Employees of the pharmaceutical group working in subsidiaries in East European countries, including in the Western Balkans, paid bribes to doctors to increase sales. These kickbacks were made to influence purchase approvals and facilitate customs clearance.¹²

Institutional enablers of state capture

Albania and Serbia rank worst across all six countries by most of the factors enabling state capture (ineffectiveness of anticorruption policies, lack of integrity, lack of impartiality and selective enforcement biased to private interests), especially on its critical proxy: private interest bias.¹³ **Ineffective anticorruption policies** at the level of public organisations are a problem in all these countries. These results can be better understood in the context

of SELDI's CMS results,¹⁴ which show that the public doubts the effectiveness of anticorruption reforms. Even though high-level corruption cases dominate the media, the everyday experience with corruption of ordinary people is determined by interactions with low level public officials at the institutional level.

Figure 13. Institutional enablers of state capture



Source: SELDI SCAD, 2020.

Anticorruption policies are deemed especially ineffective in construction-related public institutions in Albania and North Macedonia, in labour inspectorates in BiH, North Macedonia and Serbia, in media-related public organisations in Kosovo and Serbia, and in mobility and transport and agriculture-related authorities in Albania. Energy, customs, tax authorities, privatisation, healthcare and pharmaceuticals, procurement, and local governance are also among the areas that highlight the high ineffectiveness of anticorruption policies in multiple Western Balkan countries.

¹² Reuters (August 7, 2012), *Pfizer settles foreign bribery case with U.S. government*; Courrier des Balkans (2012), *Corruption : Le Groupe Pharmaceutique Pfizer « Arrosait » Largement En Europe Orientale Et Dans Les Balkans*.

¹³ Private interest bias is the indicator assesses directly the risk of state capture. The score is the percentage of experts who reckon, for a given public organisation, that the "control and the imposing of sanctions are done selectively, and the choice of whom to control or sanction follows private interests". This indicator addresses one of the strongest state capture mechanisms: the use of public organisations not only to benefit certain private parties (which can easily be interpreted in the terms of classical corruption scenarios) but also as a tool or weapon against the competitors of the captor.

¹⁴ SELDI (2019), *Corruption in the Western Balkans: Trends and Policy Options*, Policy Brief No.9.

Table 2. Private interest bias by organisation

Organisation type	Serbia	Albania	BiH	Kosovo	Montenegro	North Macedonia
Agriculture-related	67%	51%		51%		24%
Anticorruption, organised crime and money laundering	44%	56%	67%	30%	49%	
Construction-related bodies		27%	38%		40%	10%
Customs		58%	23%	29%		36%
Energy sector regulation and control		35%	20%	25%		29%
Environmental regulation and control	25%	50%	20%			20%
Fiscal policies, regulation and control		38%			67%	
Labour conditions control and regulation; Employment policies	89%		29%	33%		44%
Local government		58%	33%	21%	32%	39%
Media-related bodies	56%			57%		33%
Mining and mineral resources				75%		
Mobility and transport		50%	21%			
Pharmacy and health related control and regulatory bodies		42%		80%		
Privatisation and post-privatisation control, restitution	25%	44%	20%	37%		
Procurement	33%	37%		31%	27%	50%
Social and health insurance authorities	39%		27%	20%		32%
Tax and audit authorities	52%	55%	28%	39%		37%

Source: SELDI SCAD, 2020.

Private interest bias indicates actual state capture-like behaviour of public organisations which are not merely ineffective or inactive, but also benefit specific private interests. It is especially concerning that four of the six countries (Serbia, Albania, BiH and Montenegro) have high private interest bias scores in the area of anticorruption, organised crime and money laundering prevention. Half of the experts (two-thirds in the case of BiH) assess organisations with such responsibilities to be pursuing private agendas rather than the public good. This means that rather than keep setting up new commissions, agencies or departments tasked with tackling a specific issue (more often publicity stunts than actual solutions for endemic problems), governments should focus on building strong and effective anticorruption protocols within existing public organisations.¹⁵

¹⁵ State-of-the-art instruments can facilitate such reforms. One example is CSD's *Monitoring Anti-Corruption Policy Implementation (MACPI)* toolkit which has been used with great success in various types of public organisations in multiple European countries, including several Western Balkan ones.



In the range of anticorruption tools, the **Western Balkan countries have achieved most progress in the development of their statutory laws.** Overall, they have adopted the international anticorruption standards in their national legislations, including provisions about the bulk of the mandatory corruption offences under UNCAC, as well as about some non-mandatory.

Not only was a broad spectrum of laws adopted or changed but the changes were numerous. This gave a certain dynamism to the development of the regulatory regimes, which in turn created an appearance of progress. While a certain volatility of the legal environment for anticorruption can be expected – corruption responds to pressure by changing form and moving to other social loci instead of disappearing – the regulatory activism in the Western Balkans was not the result of a feedback mechanism for the effectiveness of policies. It was rather a response to growing demand for integrity in governance coming from the domestic public and international partners. The task now for the national governments is to keep up with the shifting manifestations and forms of corruption while maintaining regulatory stability and avoiding overwhelming the judiciary with rapid changes of the applicable laws.

The strategic framework

When initially introduced, the specialised anticorruption laws and strategies were intended as an indication to the national public and international partners that governments took the problem of corruption very seriously and were determined to take extraordinary measures against it. The overarching strategies were warranted by the scale of the problem that needed rolling back and therefore the range of regulations that had to be changed or created. All of these measures aimed to **disrupt the informal channels of influence over government decisions.** While they may have had some limited success in doing so, they also interfered – by their very design – with already established constitutional arrangements, presenting governments with a dilemma.

The reason behind the dilemma was that *corruption* is a concept of policy, even of politics, but its manifestations – and therefore the tools for its counteracting – are too multifaceted and (in the case of the Western Balkans) too diffused throughout social domains to be submitted to the authority of a single body or piece of legislation. The way out was to design overarching strategies integrating all the aspects of an anticorruption agenda.

The common elements in the national strategies and action plans in the Western Balkans included **raising awareness, prevention and repression of corruption.** Such strategic documents in the fight against corruption have been adopted in North Macedonia,¹⁶ BiH, Albania¹⁷ and Kosovo along with their action plans.

The constitutional complexity of BiH provides that the state-level strategy (dating back to 2015) serves as basis for the anticorruption strategies of lower levels entities.¹⁸ Serbia and Montenegro have not adopted new anti-corruption strategies or action plans, since the previous ones expired, respectively in 2018 and 2014. In addition to the main strategies against corruption North Macedonia, Serbia and Albania have adopted other strategic documents in the area of justice and public administration reform. The existence of anticorruption agencies is regulated by law in Kosovo, North Macedonia, Serbia, and Montenegro. Albania does not have a special regulation for the agency but this role is exercised by the Anti-Corruption Task Force established in 2018.¹⁹

Legislative developments

During the last three years, the main changes in the legislation of the Western Balkan countries – both entirely new laws and changes to existing ones – have been focused on **preventing conflicts of interest, protection of whistle-blowers, requirements for the submission of asset declarations** by public officials, establishment of new anticorruption-related institutions, enhancing institutional coordination, as well as other issues of importance for the prevention of corruption.

¹⁶ Both North Macedonian strategic documents – the outgoing Strategy 2016-2019 and upcoming Strategy 2020-2024 – are designed in coordination with the country's strategic goals in the fight against corruption, development and reform processes.

¹⁷ The new Action Plan Against Corruption 2020-2023 was approved and the duration of the anticorruption strategy was changed from 2015-2020 into 2015-2023, by [DCM No. 516 dated July 1, 2020](#).

¹⁸ Brčko District has no anticorruption strategy. All cantons have their strategies except Sarajevo Canton and Bosnia-Podrinje Canton, while Sarajevo Canton has adopted just one action plan. Bosnia-Podrinje and the West Herzegovina Canton still have not adopted one.

¹⁹ Since 2018, the unit has been under the authority of the executive (Minister of Justice). More recently Albania has introduced specialised prosecution and court units to deal with corruption and organised crime cases.

Table 3: Status of key anticorruption regulations

Country/ regulation	North Macedonia	Albania	Montenegro	Serbia	BiH	Kosovo
Specialised anticorruption law	Yes	No	Yes	Yes	Provisions in the Law on the Agency for Prevention of Corruption	Yes
Conflict of interest	Provisions in the Law on Prevention of Corruption and Conflict of Interest	Law	Provisions in the Law on Prevention of Corruption	Law	Law	Law
Anticorruption Agency	Yes, regulated in the Law on Prevention of Corruption and Conflict of Interest"	No	Yes, regulated in the Law on Prevention of Corruption	Yes, regulated in a special law	Yes, regulated in a special law	Yes, regulated in a special law
Political Party Financing	Law	Law	Law	Law	Law	Law
Lobbying	Law	No	Law	Law	No	Law
Whistle-blower	Law	Law	Provisions in the Law on Prevention of Corruption	Law	Law	Law
Free Access to Information	Law	Law	Law	Law	Law ²⁰	Law

Small advancements have been made with regard to **clientelism and nepotism**. BiH has also addressed clientelism, nepotism and trade in influence in its Criminal Code. In Kosovo, the specialised anticorruption law does not cover clientelism and nepotism, which are regulated in the new Criminal Code, adopted in early 2019. Albania also does not have regulation for nepotism and clientelism.

Box 3. The "envelope affair" in Montenegro

This case broke in January 2019 in a video showing Slavoljub "Migo" Stijepovic, then Mayor of Podgorica, senior official in the Democratic Party of Socialists (DPS) and later adviser to the President, receiving €97,500 from businessman Dusko Knezevic, chairman of the Montenegro-based Atlas group. Formerly close to power, Knezevic claimed to have indirectly made this donation to Milo Djukanovic's party (the DPS) through Migo Stijepovic.²¹ It has raised questions about whether the party has hidden sources of funds that have helped it hold on to power for the past three decades. Dusko Knezevic said the donation was made to fund an election campaign, relying on the purchase of votes before the 2016 legislative elections. Prosecutors accused him of money laundering and the Anti-Corruption Agency launched a misdemeanour procedure against the DPS, although its decision on concluding the procedure has not been made public for almost a year. Knezevic told the media that he has given money to the party for the last 25 years.²²

A number of policies have been undertaken in recent years to address **conflict of interest** as a means of combating corruption and strengthening the integrity of government institutions in the region. The legal framework in this area has been amended during the last three years in North Macedonia (2019), Albania (2018) and Kosovo (2018) to cover conflicts of interest in the exercise of public office, public officials' reporting of their assets, and the development of online asset declaration systems. In the case of North Macedonia, the prevention of conflict of interest and the prevention of corruption are joined into a single legal act. In Albania an online system for asset declaration by senior officials was established, which makes face-to-face contact between the officials processing asset declarations and the civil servants submitting them unnecessary. There is a legal framework for conflict of interest in BiH at state and entity levels but it is weak as regards both the rules and the way they are enforced.

As regards the **regulation of lobbying**, the current law in North Macedonia has been in place for more than 10 years without any real implementation. The process of drafting a new law started in 2019 but after several reactions from civil society the process has been postponed. No legal amendments have been introduced in Montenegro, despite the poor implementation of the current law. In Serbia, lobbying regulation was introduced in 2019. Although the Anticorruption Agency is the primary institution responsible for the implementation of this law it has no obligation to publish lobbying reports. Albania has an electronic database for registering of lobbyists, but no actual regulation of lobbying. This practice is not regulated at all in BiH and Kosovo.

²⁰ There is legislation at the state and entity level, but only partly in line with international and European standards.

²¹ Institut Alternativa (April 22, 2019), *Blog: One Hundred Days of the 'Envelope Affair'*.

²² Biscevic, T. (February 2, 2019), *"Montenegrins demand end to corrupt regime."* OCCRP; Samir Kajosevic, S. (January 25, 2019). *"'Envelope' Affair Raises Suspicion over Montenegrin Party Funds."* BIRN.

In the last three years, North Macedonia, Kosovo, Serbia, and Montenegro made amendments to **laws on the financing of political parties and campaign finance**. Legal changes in Kosovo and North Macedonia concern increased transparency of the ways of financing and in the amount of public funds received by political parties. In Serbia, ahead of the 2020 parliamentary elections, the government amended the laws on the Anticorruption Agency, on public enterprises and on the financing of political activities in order to strengthen the separation of government and party functions, prevent the use of public assets in election campaigns, and establish the deadline within which the Anticorruption Agency needs to rule on possible violations of the law. In BiH, the legal standards in this area are in need of alignment with international standards, particularly following recommendations by the Group of States Against Corruption (GRECO). As regards campaign financing, in North Macedonia the Electoral Code has been amended thirteen times in the last three years in order to further implement GRECO and EU recommendations. In terms of enforcement, the **audit of political parties' financial statements** is carried out by the supreme audit authorities, the electoral commissions (Albania) or the specialised anticorruption agencies (North Macedonia, Montenegro, Serbia); in the latter case, the agency can request the national audit institution to audit the reports submitted by political parties.

All Western Balkan countries have adopted legislation on **whistle-blowing and whistle-blower protection**. Kosovo had an old law on whistle-blowers (the wording in the old law was “informants”), but it did not meet the legal requirements for whistle-blower protection, so after many delays and pressure from the EU and CSOs, the new law was finally adopted. In Serbia and Montenegro,²³ although the adoption of such a law was expected to increase the overall number of reporting of instances of corruption, this has not happened and as a result the regulation has not been fully effective. Overall, in the Western Balkans these regulations are in the early stages of implementation and therefore the public's knowledge and the confidence in the laws are low. In terms of public attitudes, there is still a stigma attached to whistle-blowing and the enforcement institutions need to work on raising awareness and promoting safe reporting.

Legal amendments have also taken place to extend the scope of anticorruption provisions in the **criminal legislation**. These consist in increasing the number of incriminated offenses, increasing the speed of procedures, and facilitating access to justice. North Macedonia, for example, incriminated trading in influence, abuse of

public office, bribery in the private sector, bribery by foreign nationals, etc. In Albania, the Criminal Code, the Criminal Procedure Code and the Civil Code were amended to bring more efficiency and faster procedures, shortening the duration and number of civil proceedings cases. In Serbia, pursuant to the ratification of UNCAC, it is necessary to make amendments to the Criminal Code to include the offence of illegal enrichment.

Box 4. The case of the ARMO refiner in Albania

Prime Minister Edi Rama is alleged by the opposition to have de facto given €50 million to the ARMO oil refiner's owner through unpaid due taxes. In reality, it turned out that this money allegedly was collected by the Prime Minister himself, with the refinery just being used as a façade.²⁴ This money would have paid the wages of Albanian oil workers, who protested for not receiving their November 2017 salaries. In that year, refineries of the ARMO's group (Ballsh and Fier) did not work for several weeks, and companies did not pay social security contributions for almost a year, not to mention disrespect for other workers' rights, such as overtime pay.²⁵ In 2019, the tax authorities revealed a list of the biggest debtors, at the top of which appeared to be oil refinery ARMO, owing an amount of €67.7 million. In fact, the oil processing refinery of ARMO has constantly been subjected to mismanagement linked to lax public oversight since it was privatised in 2008. The refinery has been rented out by a mysterious company, Trading Petrol and Drilling, not paying its tax dues and finally being abandoned by that company.²⁶

An important element of a system of governance that prevents state capture is **antimonopoly legislation**. SELDI's State Capture Diagnostics provides an assessment of the (in)effectiveness of antimonopoly laws – together with another measurable indicator, monopolisation pressure, it allows for an evaluation of the overall business state capture in a country. Ineffective laws allow special interests to exercise monopolisation pressure across countries and economic sectors.

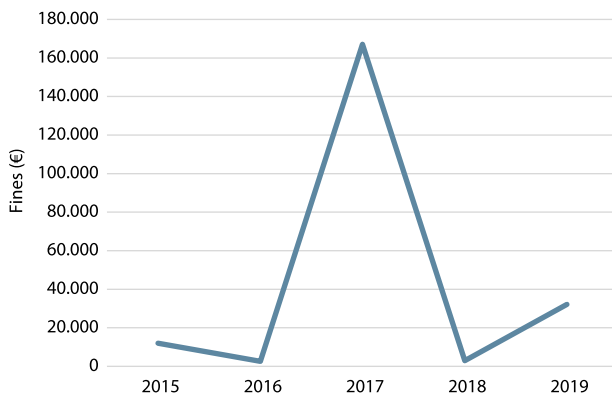
²³ Montenegro does not have a separate law on whistle-blowing but only a chapter in the Law for the Prevention of Corruption.

²⁴ European Affairs (January 24, 2018). *“ARMO as an example of Edi Rama's corruption.”*

²⁵ Environment South East Europe (February 04, 2018). *“State of the Albanian refineries: debt, corruption and bankruptcy.”*

²⁶ Tirana Times (October 14, 2019). *“Back taxes reach amount of 880 million euros with oil refinery company A.R.M.O dominating.”*

Figure 14. Fines imposed by the North Macedonian Commission for the Protection of Competition*



* Fines for prohibited contracts, decisions and harmonised behaviour between companies.

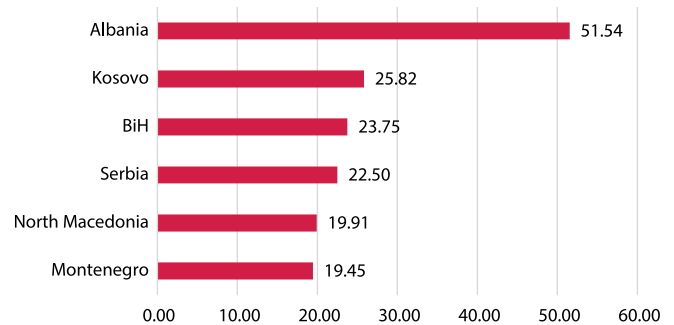
Source: North Macedonian Commission for the Protection of Competition (2015-2019), Annual Reports.

SELDI's SCAD shows that Albania has the least effective antimonopoly laws among the countries under review (52 out of 100²⁷), followed by Kosovo (26), BiH (24), Serbia (22), North Macedonia (20) and Montenegro (19) (Figure 15). It is typical for economies in transition, such as those in the Western Balkans, to have strong regulatory and economic barriers to market entry. The legal framework regulating the barriers of entry, such as licensing restrictions, trade rules or various administrative requirements is often skewed in favour of privileged actors, which helps them develop and sustain monopoly power. Ineffective antitrust laws or their weak implementation then contributes to the entrenchment of monopolies. The regulatory quality of the region thus remains relatively low in comparison to EU countries.²⁸ The vetting of concentrations of stock trading companies for antimonopoly purposes is mostly formal. Although competition authorities do carry out reviews and investigations of companies, typically there are no conclusions for specific cases and the market continues to be dominated by companies associated with political power.

²⁷ A score of 0 corresponds to perfect effectiveness, while 100 indicates complete ineffectiveness.

²⁸ Buccirosi P., Ciari L. (2018), "Western Balkans and the Design of Effective Competition Law: The Role of Economic, Institutional and Cultural Characteristics." In: Begović B., Popović D. (eds) Competition Authorities in South Eastern Europe (Springer), pp. 7-41.

Figure 15. Ineffectiveness of antimonopoly laws



Source: SELDI SCAD, 2020.

During the last three years, in the Western Balkan countries the **laws on public procurement** have been revised frequently. This is indicative of a certain level of regulatory uncertainty and the fact that policies have been trying to keep up with various malpractices. The purpose for these legal amendments was to increase the independence of oversight institutions, increase prudence, strengthen punitive measures, and increase impartiality in decision making.

Given the still tenuous but increasingly prospective linkage which the European Union seeks to establish between the protection of its financial interests and respect of the rule of law in individual countries, public procurement can be expected to feature more prominently in this agenda in the future. In the Western Balkans **public procurement is an area of heightened corruption risk** as it is used not only to procure goods and services for the public benefit but often to transfer public funds into private pockets. It is all the more appropriate, then, that procurement is now considered part of the so-called fundamentals – areas of negotiations with the candidate countries which will receive special attention (to be “opened first and closed last”).

SELDI's assessment of public procurement in the Western Balkan countries reveals that it is particularly adversely affected by the following **vulnerabilities**:

- The terms of the procurement tenders are often designed to favour specific bidders.
- There is poor oversight and enforcement of contract terms.
- There is very high percentage of direct contracts (concluded through a negotiating procedure).
- There is a large number of tenders with only one bidder.
- There is a large share of contracts concluded as

a result of a negotiated procedure without prior announcement of the contract notice.

- Compliance with public-private partnership procedures is poorly monitored.
- The administrative capacities for enforcement are insufficient.
- Frequent regulatory amendments create confusion for contractors and bidders.
- There is continued use of lowest price as the main criterion in tenders, even the law allows to use best value offer.

Overall, there is **very low level of competition in public tenders** – the number of bidders, which is a key indicator of competition in the process, is decreasing. This is the result of a number of factors, including complicated formal requirements for participation, lack of trust by private business in the fairness of the procedures and the fact that there are few potential providers on the market.

The integrity of public procurement is also compromised through **faulty law-making**. In Montenegro, for example, the applicable law was rushed through as a “temporary solution”, which then existed until 2019, only to be amended in a similarly truncated procedure with no public discussion. The integrity of the enforcement is then weakened by compromising the independence of the oversight institutions. In the case of Montenegro, the 2019 legislative changes turned the Public Procurement Office of Montenegro – a public authority which should be independent – into a department of the Ministry of Finance, thus making it susceptible to political intervention.²⁹

A problem specific to BiH, due to its complex administrative and territorial setup, is the extremely complicated concessions system. There are 14 concessions laws and 14 concessions commissions at the state, entity, canton and Brčko levels. Enforcement is dispersed among many line ministries, commissions, tax institutions, and therefore a suitable ground for various machinations and corruption pressure.

²⁹ Cuckić, N. (March 20, 2020). *“Reforming public procurement crucial for fighting corruption in the Western Balkans.”* EWB.



Specialised anticorruption institutions

The establishment of executive institutions with exclusive anticorruption competences faced the same conundrums as specialised laws and strategies, described in the previous chapter – they had to either fit within the existing checks and balances of the branches of power or disrupt them. The specific **dilemma for anticorruption agencies** was that too few powers would render them useless, which would further increase public distrust of government; too many, and they risked becoming tools for partisan political goals.

The Western Balkan countries have resolved these dilemmas in different ways. At one end, there are Kosovo and Albania. There is just an eight-person Office of Good Governance within the Office of the Prime Minister of Kosovo, which monitors the drafting and implementation of strategic documents against corruption, oversees anticorruption policies in the executive branch. In Albania, the Ministry of Justice performs the function of National Coordinator against Corruption, having a key role in the drafting, implementation and monitoring of the anticorruption strategy and action plan.

The arrangements in the other countries are more elaborate. In Serbia, there is the Anti-Corruption Agency, with a fairly broad remit (monitoring and policy making, conflict of interest resolution, initiating changes and adoption of regulations in the field of anti-corruption, coordinating other anticorruption bodies, etc.); there is also an Anti-Corruption Council, an expert advisory body of the government. According to the European Commission, “operational steps have been taken to strengthen the mandate and to ensure the independence of the Anti-Corruption Agency, as well as to enhance its capacities with a view to implementing the law on the prevention of corruption upon its entry into force in September 2020.”³⁰

The Montenegrin Agency for the Prevention of Corruption has a similarly broad mandate – the implementation of measures for prevention of conflict of interest, collecting and checking the reports on assets and income of public officials, receiving and acting upon whistle-blower reports, protecting whistle-blowers, the enforcement of the law on financing of political parties, election campaigns and lobbying.

In BiH, due to its’ complex set-up, there are 14 anticorruption bodies at all levels of government

and all of them are established by formal decision of the governments or parliaments and have their own jurisdictions.³¹ At state level, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, reporting to parliament, is responsible for prevention, education and coordination of anticorruption activities, including the analysis of corruption trends, development of anticorruption policies and monitoring of their implementation.

North Macedonia’s State Commission for Prevention of Corruption has a more robust enforcement mandate: it initiates proceeding before competent bodies for dismissal, deployment, replacement or application of other liability measures, and brings criminal charges against elected and appointed officials and authorised officers at public administration bodies. The 2019 changes in its legal framework resulted in an increased number of ex-officio cases initiated, as well as those initiated upon public request – a significant change on what the commission was known for in the previous period. The European Commission notes that the “State Commission for Prevention of Corruption has been particularly pro-active in preventing corruption and opened a high number of cases, including those involving high-level officials from across the political spectrum.”³²

Parliamentary oversight is an important guarantee of the independence of anticorruption agencies in the executive branch. BiH has a specialised parliamentary commission monitoring of the work of the anticorruption agency. It initiates the procedure of appointment and dismissal of the director and deputy director of the agency, and reviews the agency’s activity reports and financial statements. Under a similar arrangement in Montenegro, the parliamentary anticorruption committee oversees the work of the anticorruption agency and nominates members of the agency’s council. The committee also discusses the agency’s annual performance report before it comes to the plenary discussion.

³¹ It has been moved from under the jurisdiction of one institution to another – for the period 2015-2017, the Minister of State for Local Affairs was responsible for implementation of the Anti-Corruption Strategy and currently the Minister of Justice is in charge.

³² European Commission (2020), *North Macedonia 2020 Report*, p. 5.

³⁰ European Commission (2020), *Serbia 2020 Report*, p. 5.

Prevention of legislative capture and corruption in party funding

Legal regulations against legislative capture in the Western Balkan countries still do not provide an adequate protection from undue influence by special interests in the adoption of laws.

In Serbia, the Anti-Corruption Agency (ACAS) will have a new role as the primary institution for the implementation of the law on lobbying members of parliament, employees in executive branch, institutions of local self-governance, state owned enterprises and other public institutions. Yet ACAS is not under obligation to publish lobbying reports.³³

In BiH, the legislative process is still not sufficiently public. There are no public hearings or proper involvement of stakeholders, and there is hidden influence on decision-making (lobbying). The frequent use of urgent procedures makes the capture of the legislative process in many situations easier. There is a law regulating the financing of political parties, but there have been several complaints on its implementation and provisions, mostly in terms of oversight, control and sanctions.³⁶ Political parties are not obligated to record revenues of up to 100 convertible marks (~€50), which contributes to the creation of black funds to finance hidden campaign costs not shown in the official financial statements. Political parties operate multiple transaction accounts in banks and cash, which prevents adequate monitoring of money and control. Not all contributions are included in the official accounts too, such as from party affiliates who are employed in the public sector, which is also a way of abusing public money, especially from public companies.³⁷

Table 4. Anticorruption in parliament

Country	Ethical code	Anticorruption committee	Note
Serbia	✗	✗	Although an ethical code was first drafted almost ten years ago, it is still not adopted. The Committee on Administrative, Budgetary, Mandate and Immunity Issues according to the Rules of Procedures of the National Assembly has authorities to tackle conflict of interest and it is authorised to „adopt general and individual acts regulating issues of status and the material position, rights and duties of MPs.
BiH	✓	✗	A specific article on anticorruption and several on conflict of interest in the Code of Conduct passed in 2015 for the state parliament.
Albania	✓	✗	The code of ethics and a handbook on conduct in parliament include existing legal provisions providing guidance to MPs on legal and ethical issues, and measures for the registration and disclosure of finances, gifts, lobbying contacts, and conflicts of interest.
Kosovo	✗	✗	No specific rules for MPs.
Montenegro	✓	✗	Welcoming the adoption of a Code of Ethics, GRECO encouraged “the authorities to implement effectively the procedure for complaining and initiating proceedings against the violation of this Code by parliamentarians.” ³⁴
North Macedonia	✓	✗	The parliament of North Macedonia committed to increase its transparency under the Open Government Partnership initiative, but these commitments are yet to be put in practice. According to GRECO, the Code of Ethics “does not prescribe specific conduct for various situations of conflicts of interest and interactions with lobbyists,” pointing out that the imposition of sanctions for breaches is at the discretion of the supervisory body and their dissuasiveness questionable. ³⁵

³³ Đokić, K. et al. (March 2019), *PreEUgovor ALARM: Izveštaj o napretku Srbije u poglavljima 23 i 24*, p.34.

³⁴ GRECO (February 2020), Fourth Evaluation Round, *Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report Montenegro*, p.7.

³⁵ GRECO (October 2020), Fourth Evaluation Round, *Prevention of corruption in respect of members of parliament, judges and prosecutors, Interim Compliance Report North Macedonia*, p.15.

³⁶ Transparency International BiH, *Finansiranje političkih stranaka i kampanja*.

³⁷ POD LUPOM, *Transparentnost Finansiranja Političkih Stranaka U BiH*.

Lobbying is not regulated by a specific law in Kosovo. Legislation concerning the transparency of the legislative process and citizen participation in decision-making and policy-making are difficult to implement in practice, even though the legal framework provides all the necessary legal reasons to be implemented. As for the financing of political entities, in June 2019, after much criticism from civil society and part of the opposition of a proposed amendment to the draft law – mostly related to the concealment of sponsors and donors of political parties and the right given to political parties to delete the names of these donors – the government of Kosovo withdrew the amendment.

The legislative developments in Montenegro on the financing of political parties and election campaigns introduced in December 2019, can be expected to increase the integrity in this area, although it is early to properly account for all effects. The timeframe for reporting on budgetary spending and social aid has been halved; the allocation of aid from the budgetary reserve is forbidden both on the local and central level during the entire electoral year; legal entities founded and partially or majority owned by the state or local self-governments are prohibited from writing off debts to citizens, including bills for electricity, water and all types of public services in the period starting the day the elections are announced until one month after the elections.

In 2019, a draft proposal for a new Law on Lobbying was submitted in the North Macedonian parliament. The existing legislation had been made dysfunctional because the Constitutional Court annulled a provision in the law requiring the use of registered lobbyists for all interested parties because it was not clearly defined and possible abuse could happen. Among other things, the annulment of the provision protected the right of civic organisations to advocate and influence legislation. The draft law, however, again did not discriminate between different actors in the private sector, inflicting an undue burden on civic organisations to register as, or hire, lobbyists. The process of adopting the draft law was stopped and returned to the Ministry of Justice.

Access to information

The availability and ease of access to information about the functioning of government agencies are key indicators of management capacity and transparency – themselves indicative of the level of integrity of the civil service.

Although all Western Balkan countries have some form of freedom of information provisions, the institutional setup for implementation of the legislation and

protection of the right of access to information varies significantly. In Bosnia and Herzegovina some weak powers in this regard are granted to the Ombudsperson. In July 2019, an Information and Privacy Agency was established in Kosovo. However, the process of electing its commissioner was opposed by civil society due to a lack of qualified candidates for parliament to vote on.³⁸

In Albania, Montenegro and Serbia, such institutions are in charge of both data protection and freedom of information, with independent commissioners in Albania and Serbia and an agency in Montenegro all answerable to parliament. In North Macedonia, there is an Agency for the Protection of the Right to Free Access to Public Information, answerable to parliament, which replaced the collegiate commission under new legislation.

In Serbia, a draft law³⁹ published by the Ministry for Public Administration and Local Self Governments does not aim to overcome existing problems – decreasing transparency and restrictions on the right to free access to information, neither in terms of procedures and scope of implementation, nor in terms of strengthening institutional capacities for protecting this right. Quite the opposite, it envisages solutions which aim to exclude public companies from this law, as well as the possibility of the first instance public authorities to file administrative lawsuits against decisions of the commissioner for information of public importance and personal data protection, whose task is to control their work.

The situation is similar in Montenegro. A proposal for a new access to information law envisages serious limitations to the right of free access to information. “Abuse of the right” to access information is introduced as a basis for rejecting a request, while general and imprecise formulation allows these provisions to be applied arbitrarily in almost every case. The draft law allows information to be classified – for example, absolute restrictions on access to information in the intelligence and security sector are introduced, as well as information exchanged in cooperation with international organisations or other countries. It also envisages that the basis for withholding information may be introduced by other laws, which means that the list of exceptions is unlimited. Bearing in mind the fact that the free access to information represents the main tool for the civil society’s work, it is safe to say that this law, if adopted in its current content, will continue to increase the worrying trends of shrinking the space for civil society.

³⁸ Lëvizja FOL. LAJME. *‘Të anulohet përzgjedhja e komisionerit për informim dhe privatësi.’*

³⁹ The procedure started at the beginning of 2018 and should have been finished at the end 2019 but is still in a drafting stage as of October 2020.

National audit institutions

The **weakness of mechanisms for ensuring the implementation of the recommendations** and remedying of the problems identified in state audit reports is an issue in all of the countries of the region. This includes both the measures taken by the audit institutions themselves, as well as the missing follow-up from other institutions in charge of financial oversight, primarily parliaments who use the outputs of audit institutions sparingly and without in-depth monitoring of implementation of recommendations.

The productivity of audit institutions varies among countries, ranging from obligatory audit of all institutions each year (such as in BiH) that leads to repetitive and low-quality reports, to just a few reports produced per year, with some entities being audited once per decade or not at all (such as in Montenegro). In most of the countries (except North Macedonia) the independence of the audit institutions is protected by law. However, budgetary independence remains an issue of concern, with audit institutions in BiH and Serbia subject to direct influence from the executive (e.g. cutting their budget) and procedures that allow for this in other countries. In 2019 in North Macedonia, a long delay by parliament in electing the Chief Auditor (leaving the Audit Office to be run by acting directors) demonstrated that the appointment is seen as highly political and was left until the very end since inter-party negotiations could not produce an agreement on the person to be elected.

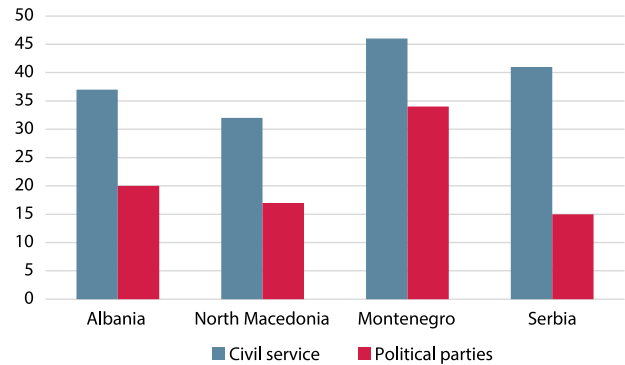
The civil service

Reforms aimed at enhancing the integrity of the public administration in the Western Balkan countries, **driven mostly by the European Union and the promise of EU accession**, have resulted in all of the countries adopting civil service laws. The countries have developed various mechanisms for preventing and combating corruption among civil servants, ranging from very complex ones, such as in BiH, where these issues are regulated by numerous and autonomous laws for each of the specified levels of government, to more simple ones, such as in Kosovo, where there are no specific anticorruption provisions in the law on civil servants, but only in the Code of Conduct of Civil Servants and the anticorruption law. However, implementation of these mechanisms and repression policies remain rather weak and without tangible effect, thus creating fertile ground for unethical behaviour in the civil service to become acceptable.

In all the Western Balkan countries, senior civil servants and particularly some special categories of civil servants

employed in sectors of high corruption risk (police, tax administration, customs, etc.) are obliged to **report their assets and income** to the competent institutions. However, the institutions in charge of the control of assets and income are mostly focused on elected public officials, rather than on civil servants.

Figure 16. The civil service trusted more than political parties*



* 2019; share of the public who "tend to trust"

Source: Standard Eurobarometer 92

An additional requirement for senior officials to report the income and assets of their spouses, unmarried partners and underage children if they live in the same household was introduced in Serbia. Officials who fail to do so would be subject to a warning or public recommendation for dismissal by the anticorruption agency. The arrangement in Montenegro is similar, with the difference that the anticorruption agency can launch a misdemeanour procedure. In Albania, the enforcement of integrity rules for civil servants is done within the executive – by the Department of Public Administration. An independent public body (the Commissioner for the Oversight of the Civil Service) monitors the legality of the implementation of the civil service legislation; it also oversees law enforcement and the management in all institutions that employ civil servants. The asset declarations for Kosovo civil servants are required not only on an annual basis, but also at the request of the anticorruption agency and upon termination or dismissal from the position. The asset declarations of the North Macedonian civil servants are also overseen by the country's anticorruption agency. In 2019, the government drafted a law on senior civil service management, which is intended to reform the modalities for the appointment of state secretaries in the administration and directors of public enterprises. Even though the analysis and support for the development of institutional integrity plans is one of the pillars of accountability in the public administration reform, the anticorruption agency started working on this task only in 2020.

The legislative framework that regulates **recruitment**

and dismissal is generally good or sufficiently clear on introduction of merit-based elements into recruitment and dismissal procedures. However, these are rarely applied in practice, with institutions lacking either capacity or will to limit discretionary decisions and incorporate more merit-based aspects.

In almost all of the countries there is a problem with dismissals that are annulled by the courts, indicating shortcomings in the implementation of warranted demotion or dismissal of civil servants. Instability of the top managerial positions in the civil service is high in countries such as North Macedonia, indicating potentially discretionary dismissals. In some cases, the legal framework regulating integrity issues in civil service is “complex and highly fragmented” endangering its implementation.⁴⁰ In Albania, court decisions on unfair dismissal from the public administration continue to have negative effects for the state budget.⁴¹ OECD’s 2017 assessment about BiH that there is a “need to prevent a constant intention at all levels to allow direct or indirect political influence on appointments to senior managerial posts” is still valid today.⁴² In Serbia, the legal framework allows for too discretionary and potentially unfair dismissals of senior civil servants⁴³ with political influence on senior managerial appointments highlighted as an issue of serious concern by the EC.⁴⁴

Although in all of the countries the legal framework on public sector integrity has been strengthened and new institutions set up or existing upgraded, the practical results are weak. In North Macedonia, the regulations still allow impunity for offenders and unfair use by the authorities of the disciplinary process.⁴⁵ In Montenegro, broad political discretion in appointment of senior civil servants is a persistent feature. In Kosovo, although the regulations prescribe clear limitations on the political party roles of officials and those occupying senior

positions,⁴⁶ they are still “highly vulnerable to undue political influences.”⁴⁷ In Serbia, the anticorruption agency does not have the power to enforce specific sanctions or measures in cases related to integrity plans governing recruitment processes. In BiH the anticorruption agency is not active at all levels of governance and it has limited powers to enforce integrity plans.

All Western Balkan countries have legal and institutional frameworks for **internal control in the public administration**, although in practice the mechanisms operate at suboptimal level and their results are not visible to the public. The work of inspectorates has been marked by lack of transparency, shortage of inspectors, overlapping of competences, problems with the announcement of inspections in advance (such as when inspectors do not respect the schedule for advance warning and use this to put pressure on the inspected entity with an unannounced visit), and misuse of inspections by exercising excessive control as means for rent-seeking. The government of Serbia⁴⁸ has made an effort to digitalise and coordinate the work of the inspectorates by introducing an e-inspectorate mechanism connecting 36 inspectorates in one information system with the aim to create an archive on the entities across sectors and avoid excessive inspections. At the beginning of 2019, the state inspectorates’ service in Albania was reorganised to avoid overlapping of legal competences between inspectorates.⁴⁹ The e-inspectorate system in Albania increased five-fold the inspections done online, which is a step towards greater transparency. A difficulty specific to BiH⁵⁰ is that the designation of compliance assessment bodies and the application of compliance assessment procedures are not ensured consistently throughout the country. In this respect, the Federation entity and Brčko District implement the state-level law on technical requirements for products and conformity assessment, while Republika Srpska implements its own law on technical regulations and a regulation on conformity assessment procedures and the appointment of respective compliance assessment bodies.

⁴⁰ OECD (2017), Monitoring Report: The Principles of Public Administration, Albania, SIGMA OECD, Paris.

⁴¹ The effect on the state budget for unfair dismissals of employees was estimated at about USD 22 million in 2017 (ALSAL, *Raporti Vjetor I Performancës 2018*).

⁴² OECD (2017), Monitoring Report: The Principles of Public Administration, Bosnia and Herzegovina, SIGMA OECD, Paris, p. 7.

⁴³ OECD (2019), Monitoring Report: The Principles of Public Administration, Serbia, SIGMA OECD, Paris.

⁴⁴ European Commission (2019), *Serbia 2019 Report*, p.3. In its *Serbia 2020 Report*, the EC noted that “no progress was made on the three Commission recommendations of last year, which therefore remain valid. There was no sizeable reduction of the excessive number of acting senior manager positions” (p. 13).

⁴⁵ OECD (2019), Monitoring Report: The Principles of Public Administration, North Macedonia, SIGMA OECD, Paris.

⁴⁶ Official Gazette of the Republic of Kosovo. *No. 8. Ligji nr. 06/l - 114 Për Zyrtarët Publikë*.

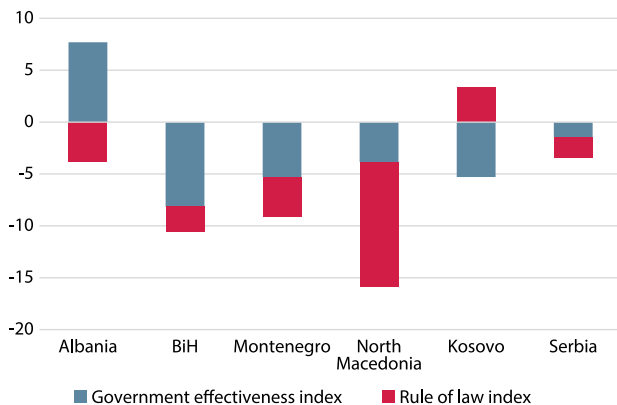
⁴⁷ OECD (2017), Monitoring Report: The Principles of Public Administration, Kosovo, SIGMA OECD, Paris, p.72.

⁴⁸ In Serbia, work of the inspectorates is regulated by the Law on Inspection Oversight (2015, 2018), with the Coordination Commission for Inspectorates Oversight serving as the body for coordination of activities of 43 inspectorates.

⁴⁹ Regjistri Elektronik për Njoftimet dhe Konsultimet Publike, “*Lënda: Relacion për riorganizimin e Trupave Inspektuese të Inspektorateve Shtetëror ekzistues, Agjencive dhe Drejtorive, të cilat kryejnë procedura inspektuese*.”

⁵⁰ Bosnia and Herzegovina has 120 compliance assessment bodies (68 testing laboratories, 2 medical and 8 calibration laboratories, 2 product certification bodies and 40 inspection bodies).

Figure 17. Rule of law and government effectiveness index, 2014-2018*



* The performance scale ranges from zero to 20, where higher positive values correspond to better indicator results and lower negative values indicate poorer performance.

Source: The Worldwide Governance Indicators (WGI) 2014-2018.⁵¹

According to the Worldwide Governance Indicators (WGI), only Albania and Kosovo have made significant progress on government effectiveness and rule of law. On average, WB6 percentile rankings regressed in both categories (Figure 17).

Law enforcement

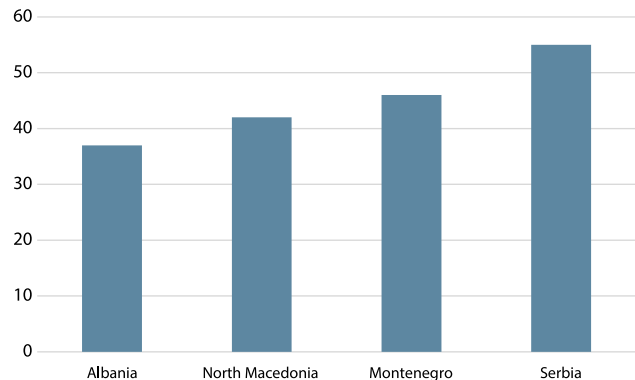
Law enforcement agencies in the region are a weak link in the system of criminal justice. As noted in previous Regional Anticorruption Reports, their anticorruption role is highly compromised by their high vulnerability to corruption, which is the result of a number of factors, chief among which is political capture. They remain politicised and an instrument in the hands of political elites. At the heart of this problem is recruitment and promotion of officials, senior management and officers based on political affiliation instead of merit.

Specialised police units in the region are typically embedded in the larger police forces or the ministries of interior, which deprive them of the institutional autonomy required for a specialised anticorruption body. In the case of Montenegro, for example, the needs and requests of these units are not always a priority of their institutions. Not enough is being done to encourage the best candidates, which is seen in the small number of candidates applying for positions in these bodies.

⁵¹ The government effectiveness index includes aspects such as perceptions of the quality of public services, the aptitude of the public administration, the degree of independence from political interference, while the rule of law index covers perceptions of the extent to which actors trust and respect the rules of society, and in particular the quality of contract enforcement, property rights, the police and the courts, etc.

In addition, not much has been achieved in building an internal system that recognises merits in work, acknowledges differences between employees who achieve greater and those who achieve lesser results, and takes into account the complexity of the cases.

Figure 18. Police most trusted in Serbia, least in Albania*



* 2019; share of the public who "tend to trust" the police

Source: Standard Eurobarometer 92

The experience of Kosovo is somewhat different. A key weakness of the Task Force with the Kosovo Ministry of European Integration is that no prior research was made to assess the need of establishing a new anticorruption mechanism, and there is no coordination between local and international prosecutors, since EULEX prosecutors deal with high profile corruption cases, while local prosecutors only deal with lower-ranking profile cases.

Policy feedback mechanisms

The availability of feedback channels allowing the evaluation of anticorruption policies is crucial for their effectiveness. Yet, a **reliable, systematic and comprehensive mechanism for collecting, processing and making publicly available data on anticorruption progress**, including on the performance of government institutions, is still a long way off in the Western Balkans.

In Serbia, only statistics which indicate the number of reported crimes and convicted adults sorted by the types of criminal offences are available. There is no "corruption crime" explicit in the statistics, the closest being "criminal offences against official duties" – abuse of authority, violation of the law by a judge, prosecutor or deputy prosecutor, public sector fraud, embezzlement, receiving and giving bribe and trade in influence and some other offences. Statistical data on the fight against corruption are only "partly reliable,

comparable and transparent”.⁵² Public prosecutors and courts are publishing annual reports and the Ministry of Interior when reporting on their activities represents corruption cases together with other types of crimes. In an apt example of what has become an inverted accountability, the government does not publish the statistical data on investigations and convictions of corruption provided to the European Commission.⁵³

In Montenegro, statistics are incompatible, ambiguous, and collected and reported in a way that does not allow to follow specific cases from the beginning until the end. For example, the police report on criminal offences, the prosecution reports on the persons against whom proceedings for specific criminal offences have been initiated, while the courts report on cases. Because of such discrepancies, a qualitative assessment of the work of these bodies cannot be made, and especially it cannot be discerned which of the activities initiated by the police resulted in a final court decision, there is no interest in improving the reporting. The same applies to the “difference between frozen assets, temporarily and permanently seized assets and monetary portion of imposed sanction” – it is not clearly explained,⁵⁴ which gives wrong impression about the success in conducting financial investigations.”⁵⁵

The State Statistical Office of North Macedonia merges the data on indicted and convicted persons from prosecutor and court offices, with results collated by the categories of the Criminal Code. This makes it difficult to assess the number of cases of persons tried for corruption, except on two accounts – taking or giving bribes, and less so in cases where the grounds are abuse of office. A specialised registry dedicated to collecting corruption cases is still lacking.

⁵² Đurković, S. (ed.) (2019), *Izveštaj o Napretku Srbije u Poglavljima 23 i 24*, prEUGovor Alarm, p.30.

⁵³ Ibid.

⁵⁴ I.e. these types of sanctions are lumped together in one category.

⁵⁵ Bajramspahić, D. (March 12, 2018), “*Commentary for FOS Media on Government Statistics in Chapters 23 and 24.*” Institute Alternative.



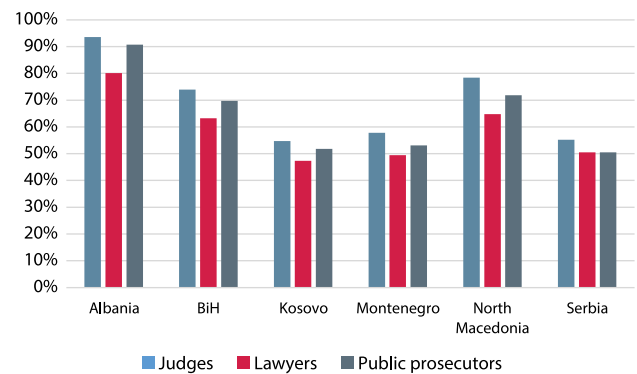
Although judicial reforms have been ongoing for more than a decade in each country of the region, they have not produced significant progress. The essence of these reforms has been limited to improving the legislative framework and technical matters. However, implementation and performance along this framework, especially as regards effective prosecutions and convictions, have been poor – final convictions of public officials remain mainly in the single digits. The separation of powers and creation of an independent judiciary are hindered by the politicisation of the judiciary, undue influences and corruption. The legislative and executive power still exercise a strong influence on the judiciary election process and budget allocation. All of these issues present major hurdles on the EU accession path of the Western Balkan countries.

The **main deficiencies** in the governance and functioning of the judiciary in the Western Balkans include:

- influence of the legislative and executive branches in the selection and promotion of judges and prosecutors;
- management structures are unclear and competences often overlap; the bodies governing the judiciary and the prosecution are not appropriately delineated;
- the procedures for the appointment, promotion and dismissal of judges are not sufficiently transparent to the public;
- the enforcement of the disciplinary accountability and of the codes of ethics for judges and prosecutors is still very limited;
- cooperation between the prosecution and the police and other law enforcement institutions is not sufficiently effective;
- public prosecutor's offices lack resources, especially expertise in financial forensics.

The poor anticorruption performance of the judiciary is reflected in public attitudes: according to the SELDI Corruption Monitoring System, between 55% and 94% of the general public in the Western Balkan countries believe that judiciary officials are corrupt.

Figure 19. Public perceptions of corruption among magistrates



Source: SELDI CMS, 2019

Judicial independence

The **appointment, promotion and dismissal of judges** in the Western Balkan region are predominantly the responsibility of judicial councils. Judges are appointed for permanent tenure, except in Serbia where first-time judges are elected for a three-year term. In recent years, the Western Balkan countries introduced continuous trainings and assessments of judges as part of the appointment and promotion processes. In all the countries, promotion is conditioned on meeting the criteria of professional experience, usually demanding specific length of experience for different posts, as well as positive performance ratings for judges. Countries are slowly introducing systems for evaluation of performance, the effects of which are yet to be fully manifested.

Table 5. Appointment requirements for judges

Country	Requirements for initial appointment as a judge
Albania	<ul style="list-style-type: none"> To be a graduate of the School of Magistrates in the initial training with at least 70% of the maximum grade. To have good internship evaluations. To have passed the asset declaration and background check.
Bosnia and Herzegovina	<ul style="list-style-type: none"> To possess adequate expertise, legal analysis capacity, professional impartiality and reputation, previous work experience, education and training, and crisis communication skills. To have published research papers.
Kosovo	<ul style="list-style-type: none"> To have a law degree and to have passed the bar exam and the exam for judges. To have at least 3 years of work experience. Not to have been convicted of criminal offenses.
Montenegro	<ul style="list-style-type: none"> To have passed the bar exam, an interview and a written test in specific cases. Selected candidates are sent to initial training, before they are appointed judges.
North Macedonia	<ul style="list-style-type: none"> To have a law degree and to have completed training at the Academy of Judges and Public Prosecutors. Not to have an effective conviction or a ban on practicing a profession or conviction for any other crime for which imprisonment of at least six months is prescribed at the time of election. To have a high reputation and integrity and social skills for exercising the judicial office (to be ascertained by way of integrity and psychological tests).
Serbia	<p>The constitution provides for two procedures:</p> <ul style="list-style-type: none"> The National Assembly elects first time candidates for judges based on nominations by the High Court Council (HCC) for three-year terms. Any Serbian citizen with law degree who has passed the state exams and fulfils basic criteria for work in the public administration can be elected. The second procedure is for election of judges for permanent exercise of judicial function by the HCC.

As with many other aspects of the anticorruption infrastructure, ethnic quotas in the election of judges and prosecutors – i.e., when the criteria of ethnicity supersede expertise – are a major problem in BiH. This often leads to the elimination of better candidates for judicial office, as candidates who belong to a particular ethnicity are given preference. Since the best candidates usually do not make the cut, bowing to political pressure becomes inevitable for judges and prosecutors. Judging by public surveys, independence is not a characteristic attributed to judicial office holders in BiH.⁵⁶

Kosovo is in the initial stage of establishing a functioning judiciary. The implication of judges and prosecutors in numerous corruption affairs is generally perceived as

one of the key problems of the judicial system in the country. Both public and professional opinion consider political interventions in the judiciary in Kosovo as too obvious. According to the European Commission, the “ongoing Functional Review of the Rule of Law Sector has provided a sound basis to reform and modernise various aspects of the judiciary.”⁵⁷

⁵⁶ Spaić, B. and Papović, B., (March 2018), “Izbor i napredovanje sudija i tužilaca: uslovi znanja, obuke i obrazovanja”, CDT/ Cepris.

⁵⁷ European Commission (2020) *Kosovo* 2020 Report*, p. 5.

Box 5. Integrity vetting of judges in Albania

In order to strengthen judicial independence, Albania has embarked on an unprecedented EU-mandated vetting process that entails the re-evaluation of assets, potential ties to criminal groups and probes into integrity of all judges and prosecutors.

Three years into the process, by mid-2020, 101 magistrates had been dismissed from duty, 90 confirmed in their positions and 39 had resigned. More than 286 dossiers have been processed thus far, resulting in 62% dismissals, mostly for issues related to unjustified assets or resignations. If this trend continues, this means that at the end of the vetting, several hundred judges and prosecutors will have been withdrawn from the judiciary system, cutting its capacity roughly in half.

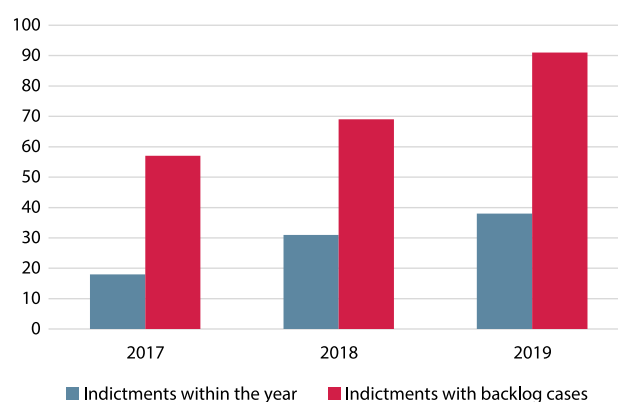
The Albanian experience is valuable as it demonstrates the benefits, but also the costs of such a process of scrutiny. On the one hand, it provides evidence of the integrity gap in the judiciary which hinders future anticorruption policies' implementation. Even more importantly, this kind of lustration could kick start anticorruption efforts across all public services as it would be able to rely on the integrity of a key branch of power.

Such a comprehensive changeover, however, presents a number of short-term hurdles to be overcome. The first challenge is whether the vetting findings – resulting in the dismissal and resignation of magistrates – provides sufficient grounds for criminal investigation of their past actions related to their assets. Another difficulty is the sequencing of the vetting process in order to avoid a deadlock or a domino effect. For example, the appointments at the Constitutional Court will be performed once the Justice Appointment Council is established. The problem is that not all candidates for the Justice Appointment Council have undergone the vetting process yet, although in principle this body was to be established already two years ago. In fact, none of the foreseen self-governing bodies in the judiciary has been established yet, due to the slow vetting process and the high dismissal rate. The considerable number of judges and prosecutors dismissed by the first instance commission has created room for an open-ended delay of the establishment of the new judicial bodies. This difficult transition is reflected in the Constitutional Court and the High Court being paralysed because of a shortage of judges.

Another challenge is the replacement of magistrates who have exited the system. To make up for the gap, the School of Magistrates will have to increase its capacity in the initial training program by 300% in order to train up to 75 magistrate candidates a year for a period of 5-7 years, in order to ensure the replacement of vacancies created by the dismissal of magistrates. Among other factors, the recruitment of qualified magistrates is affected by factors common to the recruitment of all public servants – brain-drain and uncompetitive remuneration in the public sector compared to the private.⁵⁸

The general regional pattern is evident in Montenegro too. Despite an improved legislative framework, the new system for election and promotion of judges has never been consistently implemented in practice. The process of electing judges is accompanied by numerous allegations of abuse of office, breach of procedure and conflict of interest.⁵⁹ There are no sufficient guarantees of independence and impartiality of those members of the Judicial and Prosecutorial Council who come from the ranks of eminent lawyers, given that some of them are former representatives of political parties and the executive branch.

Figure 20. The rising number of indictments in high level corruption cases in Montenegro



Source: Annual reports of the Prosecutorial Council of Montenegro

⁵⁸ Information in this box has been sourced from: European Commission (2020), *Albania 2020 Report, Accompanying the 2020 Communication on EU Enlargement Policy*, Commission Staff Working Document, Brussels, 6.10.2020, SWD(2020) 354 final; Exit News, 18-06-2020, *“Three Years of Vetting: The Numbers So Far”*; EWB, 03.03.2020, *“Judiciary under reconstruction. Albania’s EU-orientated reforms in progress”*; EWB, 13.11.2019, *“Vetting process in Albania – the marching failure”*; Osservatorio Balcani Caucaso Transeuropa, 05.12.2018, *“Albania, vetting process and bilateral issues with Greece.”*

⁵⁹ Papović, B. (March 2020), *“Judiciary in the shadow of consecutive mandates”*, CDT, Podgorica.

For the first time, a vetting process in the judiciary is being planned in North Macedonia, which has stirred a heated public debate. Those against it invoke what they believe to be the bad experiences of Serbia, Bosnia and Herzegovina and Albania. Judges, prosecutors and experts claim that the vetting of the entire judiciary is unnecessary and might instead be applied only to some judges suspected of being politically corrupt or having ties to business elites.⁶⁰

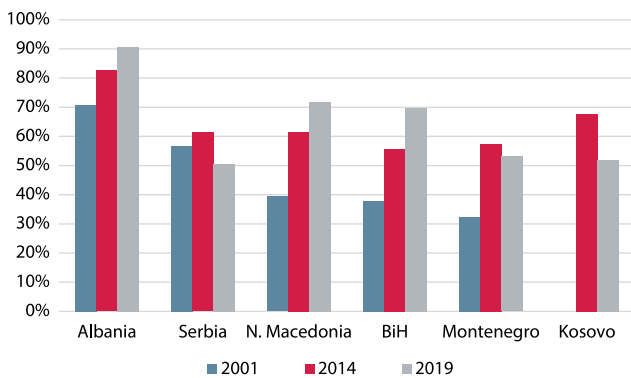
Although the judiciary in Serbia is nominally autonomous and independent, the country's constitution foresees a role in its governance for all three branches of government. Thus, there is a need of a judicial reform which would strengthen the independence of the judiciary against political interference.⁶¹

When it comes to monitoring compliance with codes of ethics, **official data on disciplinary proceedings related to judicial corruption is lacking.** However, it is clear that the number of cases is not big and imposed sanctions are not a deterrent, which calls into question the effectiveness of this system. In the entire region there are few dismissals of judges or criminal proceedings launched against them; disciplinary sanctions are also very rare. This lack of punishment or preventive measures stands in stark contrast to the public perceptions of corruption, or the publicised cases of judges entangled in corruption scandals and having inexplicable wealth.

Judicial integrity

Western Balkan countries typically do not have legal provisions and bodies dealing with corruption specifically among judges. **Measures are set broadly and corrupt practices are not defined in detail.** The basic principles in the ethical codes include independence, impartiality, dignity, responsibility. Judicial councils are mainly in charge of disciplinary proceedings.

Figure 21. Perceptions of corruption among prosecutors increase, with few exceptions*



* share of respondents believing "almost all or most are involved in corruption"

Source: SELDI CMS, 2020

⁶⁰ Blaževski, T. and Rizaov, G. (March 2020) *Judiciary Reforms: laws adopted, EU satisfied, experts with divided opinions*, Metamorphosis.

⁶¹ Spaić, B. and Papović, B., op.cit.

Table 6. Oversight of judicial integrity

Country	Institutions and procedures
Albania	As a result of the latest constitutional changes, judicial oversight will be ceded to the High Inspector of Justice, who will be appointed by parliament. Until then, the High Council of Justice and existing inspectorates will continue to decide on disciplinary measures on the proposal of the Minister of Justice, and suspend implicated judges according to a procedure and criteria provided by the law.
Bosnia and Herzegovina	The High Judicial and Prosecutorial Council (HJPC) is in charge of disciplinary proceedings, conducted through the Office of the Disciplinary Prosecutor, which receives and acts on complaints, conducts investigations, initiates disciplinary proceedings and proposes sanctions to disciplinary bodies within the HJPC (disciplinary commissions).
Kosovo	The Judicial Council is in charge of holding judges accountable for misconduct in their decision-making, following the initiation of disciplinary proceedings. Two institutions facilitate this process: The Office of the Disciplinary Counsel (ODC) and the Disciplinary Committee. ⁶²
Montenegro	Formal mechanisms for filing complaints on the work of judges are established, but the accountability system is criticised for not being objective since complaints rarely result in sanctions. ⁶³ Control of the work of the Code of Ethics Commissions is not ensured because only judges or prosecutors against whom proceedings have been instituted have the right to appeal against decisions of the Code of Ethics Commissions, but not the petitioners. ⁶⁴
North Macedonia	The Judicial Council may remove a judge on the grounds of a serious disciplinary offence, unprofessional and non-ethical exercise of office, serious violations of the rights of participants in the proceedings that breaches the dignity of judges and the court, violations of the principle of non-discrimination, etc. The disciplinary accountability of judges has been improved through amendments to the Law on Courts and to the Law on the Judicial Council, which allow any member of the public to initiate a procedure before the Judicial Council.
Serbia	The disciplinary procedure is overseen by the Disciplinary Commission – a body composed of judges appointed by the High Court Council. The Commission may issue a warning measure, impose a salary reduction, ban the promotion of a judge for up to three years or propose the dismissal of the judge for serious offences.

Anticorruption specialisation

Given that similar legal solutions based on international anticorruption standards produce significantly different results, the challenge for the Western Balkan countries is to **adapt them to the characteristics of corruption in their national contexts**. This is particularly relevant to the specialisation of judicial bodies. While international legal documents do not prescribe the establishment of special institutions (prosecutors' offices or courts) dealing exclusively with corruption, best practices also suggest the benefit of having magistrates *professionally* specialised in criminal proceedings related to corruption and organised crime. Thus, the institutional arrangements vary considerably among the countries: from Albania's specialised anticorruption court to no specialised institution in Kosovo.

Albania's judicial reform has resulted in the establishment of a Special Anti-Corruption Structure (prosecution and investigation unit; SPAK) to prosecute and investigate

criminal offenses of corruption and organised crime composed of two sections: one dealing with organised crime and the other with corruption.⁶⁵ However, this body suffers from personnel shortages given the high number of cases. The Special Courts judges are yet to be appointed. Two contradictory tendencies regarding SPAK go beyond legal and constitutional provisions and the public interest. First, in many cases the prosecution and the courts, especially prosecutors who have not complied with the vetting process, rush to close cases that should have passed under the jurisdiction of the SPAK. Second, cases that involve state authorities – regarding damage to the state budget and mismanagement of public funds, as well as corruption – are often removed from the jurisdiction of the SPAK. Despite the large number of cases handed over to SPAK, there is thus a tendency to “supply” SPAK with peripheral issues. Overall, the European Commission estimates that “Albania's judicial system has some level of preparation / is moderately prepared. The implementation of a comprehensive and thorough justice reform has continued consistently, resulting in good progress overall.”⁶⁶

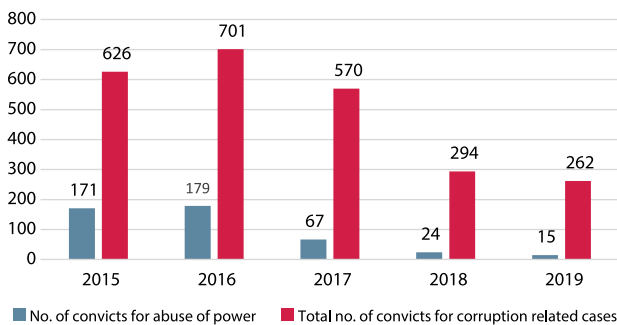
⁶² Center for International Legal Cooperation, FOL Movement and Kosova Democratic Institute (KDI)/Transparency International, *Kosovo Justice Sector Integrity Scan*, 2017.

⁶³ Papović, B., op.cit.

⁶⁴ Građanska alijansa (2017), *Primjena Etičkih Kodeksa Tužilaca, Sudija I Policije*.

⁶⁵ As of 1 June 2020, 11 prosecutors of SPAK had passed the vetting process (*SPAK, Mbi krijimin e seksioneve në Prokurorinë e Posaçme*).

⁶⁶ European Commission (2020) *Albania 2020 Report*, p. 5.

Figure 22: Corruption convictions are on the decline in Albania

Source: Albanian Ministry of Justice: <http://www.drejtësia.gov.al/statistika/>

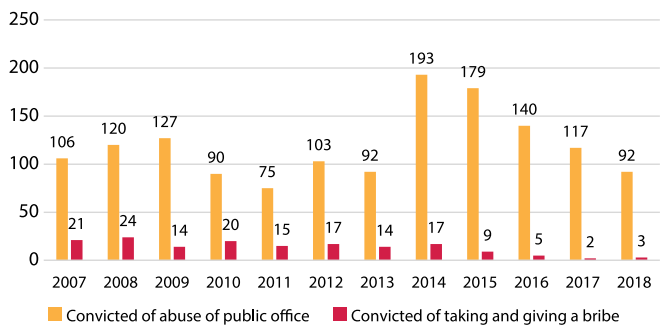
Each entity in Bosnia and Herzegovina has its own judicial system, which is hierarchically organised. There are 14 anticorruption bodies at different levels of government in BiH and their work is not coordinated. The judiciary's response to corruption is poor, particularly regarding cases of high-level corruption and organised crime. Many basic challenges in the functioning of the system remain, such as resolving conflicts of jurisdiction, harmonising jurisprudence on corruption-related offenses, drafting indictments, gathering evidence, the oversight of judges during indictment review, reasoning in court decisions and sentencing for corruption crimes.⁶⁷

Montenegro has a specialised department at the High Court in Podgorica for organised crime, corruption, terrorism and war crimes. A Special Prosecution Office (SPO) is in charge of prosecution of perpetrators of organised crime, high-level corruption, money laundering, terrorism, war crimes and violation of electoral rights. The SPO has at its disposal a special police unit.⁶⁸ A reorganisation of the police in 2019 has created a set of overlapping chains of command, such as when the special anticorruption prosecutor appoints the head of a special police unit in the Ministry of Interior but not the higher-ranking head of the department where the unit is placed. This has led to warnings by the EC of a risk of the executive power's de facto stronger control regarding investigations into organised crime.⁶⁹ Challenges to the SPO's effectiveness include its broad legal mandate, lack of human resources and poor working conditions. Financial investigations, including money laundering have merely prompted larger investigations that have yielded no concrete results.

⁶⁷ USAID, Fact sheet: Judiciary against corruption activity in Bosnia and Herzegovina, February 2020.

⁶⁸ Komnenić, B. (September 18, 2018), "Katnić, Veljović i Baković u Specijalnom policijskom odjeljenju: Još jače protiv kriminala", AntenaM.

⁶⁹ European Commission, (November 2019), Non-paper on the state of play regarding chapters 23 and 24 for Montenegro.

Figure 23. Persons convicted of abuse of public office and bribery in North Macedonia

Source: Makstat

The experience of North Macedonia with setting up a special public prosecutor's office (known in the country as the SJO), and its subsequent demise is particularly instructive of the dilemmas faced by policy-makers in the Western Balkans when tackling corruption. With an initial five-year mandate, it launched a number of investigations against high-level corruption. In September 2019, however, it ceased operations following allegations of corruption against its leader, with all pending cases transferred to the general prosecution. The fact that the former special prosecutor found herself charged with corruption revealed the underlying flaw of personal integrity at the top level of criminal justice institutions. The inability to detect potential abuse of office within the special prosecution shows that lack of proper internal procedures and at the same time a corporate culture of subordination and lack of capacity to report wrongdoing.

In Serbia, four special prosecutorial departments for the fight against corruption have been established.⁷⁰ However, despite expectations of better detection and prosecution of corruption crimes as a result of increased technical expertise and better coordination between institutions, tangible improvements remain very weak. Particularly poor results have been observed in high-level corruption prosecutions, complex financial investigations, and the seizure and confiscation of criminal assets.⁷¹

⁷⁰ Cvejic, Ž. (2019), *Treći deo: "Korupcija i organizovani kriminal u Srbiji - u potrazi za integritetom"*, CRTA, p.16.

⁷¹ European Commission, Report on Serbia 2019, May 2019.



The hidden economy⁷² is closely linked to corruption – they are both a result and a symptom of failures in governance. Empirical studies show that they fuel each other – a one-point rise in the index of corruption, is associated with an increase in the level of hidden economy (in percent of GDP) by 0.253% points.⁷³ These are billions of unaccounted for cash flows, which support corrupt payments, distort competition and provide links to the illegal or black economy. Both phenomena are based on similar principles such as circumvention of regulations and non-payment of taxes. They undermine democratic governance and the rule of law, and negatively affect economic development.

The business environment and reduction of the informal economy is a critical dimension for the fulfilment of the Copenhagen economic criteria and the accession of the Western Balkan countries to the EU. In particular, the functioning of the domestic market and its capacity to endure the pressures within the EU single market are among the key issues assessed by each candidate in its Economic Reform Programme (ERP),⁷⁴ submitted on an annual basis to the European Commission. They also fall within the “fundamentals first” approach to EU enlargement. In each country’s ERP there is a special section devoted to the tackling of the informal economy.

Informal economic practices breed unfair competition and corruption, hamper regular enterprises from growing and innovating, and create problems with regard to access to finance. In the Business Environment and Enterprise Performance Survey (BEEPS V) 66% of Kosovar enterprises, for example, state that a major obstacle to regular business activities is informal competition (the average in all surveyed Western

Balkan countries is 39%).⁷⁵ As a result, reputable investors (from the EU) are unwilling to enter the region, whereas the size and persistence of informality attracts risky investors (from third countries) with predatory intentions towards the local economy.⁷⁶ The worst outcome is the entry of corrosive capital in the region, which then undermines the countries’ further integration into the European Union.⁷⁷

The causes of informality

The informality in the Western Balkans could be attributed to a plethora of **causes**,⁷⁸ such as:

- low tax morale;
- high levels of unemployment (in particular the youth and long-term unemployment);
- weak business environment and very high poverty levels;
- lack of trust in the institutions of government and high perceptions of corruption;
- high taxation and para-fiscal costs, in parallel to excessively coercive tax policy;
- insufficient inspections and audits;
- red-tape, burdensome severance payment system, frequent change of legislation and delays from the state on the VAT refund.

High tolerance towards evasion of tax and social security contributions has been cultivated in the Western Balkans due to **the perception that tax authorities and in general the public system are corrupt**. According to

⁷² SELDI has chosen the use of the term “hidden” economy to denote that the intent of the business entities and workers involved in its are deliberately trying to hide some or all of their economic activity. It typically involves the hiding of both legal (grey economy) and illegal (black economy) activities. Yet, the most common definitions, including the one employed by the European Commission, refer to the hidden economy as informal or undeclared economy, and define it as economic activities, which are legal in their nature but are fully or partially undeclared to the public authorities for the purpose of avoiding taxes or other regulations.

⁷³ Sorin, B., Monica-Violeta, A. and Miron, M. (2017), “Corruption, Shadow Economy and Economic Growth: An Empirical Survey Across the European Union Countries.” *Studia Universitatis Vasile Goldis Arad, Seria Stiinte Economice*. 27. 10.1515/sues-2017-0006.

⁷⁴ European Commission (2019), *2019 Economic Reform Programmes of Albania, Montenegro, North Macedonia, Serbia, Turkey, Bosnia and Herzegovina and Kosovo*. The Commission’s Overview & Country Assessments, Institutional paper 107*.

⁷⁵ European Commission (2019), 2019 Economic Reform Programmes of Albania, Montenegro, North Macedonia, Serbia, Turkey, Bosnia and Herzegovina and Kosovo, Institutional paper 107.

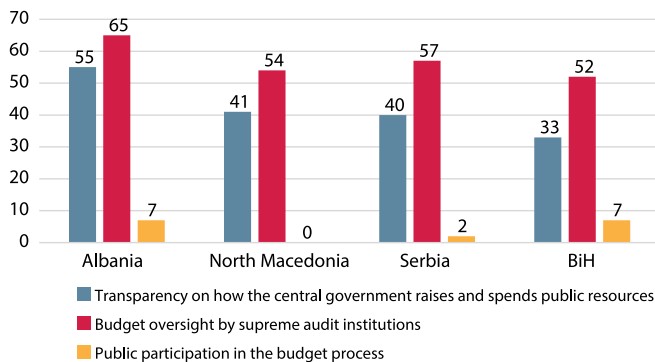
⁷⁶ Peci, B. (June 25, 2019), “*Informal economy: the devil on Kosovo’s shoulder*,” Prishtina Insight.

⁷⁷ Vladimirov, M., et al (2018), *Russian Economic Footprint in the Balkans. Corruption and State Capture Risks*, Sofia: Center for the Study of Democracy.

⁷⁸ SELDI (2016), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*; and SELDI (2016), *Hidden Economy and Good Governance in Southeast Europe Regional Assessment Report*.

45.7% of the businesses in North Macedonia and 72.9% in Albania, corruption is the most important factor for the existence of the hidden economy.⁷⁹ This leads the public to believe that taxes are not properly used for high-quality public services.⁸⁰ The Open Budget Survey 2019 confirms that the general public in the region lack accessible information on the ways their governments raise and spend the national budgets.

Figure 24. Transparency of budget spending in 2019*



* On a scale from 0 (worst) to 100 (best)

Source: Open Budget Survey (OBS), 2019.

For example, in Montenegro, the Programme for the Reform of Public Financial Management 2016-2020 was marked by a relatively low degree of implementation.⁸¹ The key mechanism for ensuring efficient and lawful spending of citizens' money – budgetary inspection, has been dysfunctional for many years. The critical issue in Albania seems to be different – the lack of trust of citizens in private financial institutions. One of the primary reasons for such distrust is the memory of the losses suffered by many Albanians from investing in firms around 1997, later exposed as Ponzi schemes. Thus, the development of the banking sector has been slow, especially in rural areas, although the use of electronic payments is expanding. According to the Bank of Albania,⁸² “paper” credit transfers shrank from 90% in 2008 to 38% in 2018. However, the circulation of currency outside the banking system remains high.

⁷⁹ CRPM, IDM, Democracy for Development (2018), *Monitoring the Hidden Economy in Macedonia, Albania and Kosovo*; Williams, C.C. and Kosta, B. (2019), “Evaluating institutional theories of informal sector entrepreneurship: Some lessons from Albania.” *Journal of Developmental Entrepreneurship*, 24(2), doi.org/10.1142/S1084946719500092.

⁸⁰ Kosta, B. and Williams, C. C. (2018), *Diagnostic report on undeclared work in Albania*. Sarajevo: Regional Cooperation Council.

⁸¹ Ministry of Finance (June 2020), *Annual Report on implementation of the Action Plan for Implementation of the 2016-2020 PFM Reform Programme, for the period January - December 2019*.

⁸² Bank of Albania (2018), *2018 Report*.

Box 6. Covid-19: an aggravating factor?

The Covid-19 pandemic has shed a new light on the seriousness of the problem:

- the spike in unemployment, thus increasing the risk of people seeking alternative (undeclared) work options in the services or the agriculture sectors.
- the enterprises employing undeclared workers will not be able to benefit from the emergency and recovery government measures, IPA funds or the €38 million in immediate EU support for the Western Balkans.⁸³

The lack of healthcare coverage of the fully undeclared workers poses a serious threat to their health and the general public during the Covid-19 crisis. According to SELDI's Hidden Economy Monitoring System, Kosovo is the worst affected country in the region in this respect, with 60% of the employed in a main job claiming to have no healthcare insurance. In the case of healthcare hidden economy and corruption have had a very malign influence, because they have diverged necessary public resources, leaving the most vulnerable people without proper health care and protection. This has provided further justification for governments to impose emergency measures, which have had an adverse effect on democratic governance in the Western Balkans.⁸⁴

Another major force driving informality in the region is the level of **taxation and perceived tax injustice**. Corporate tax rates in the Western Balkans are comparatively low, with the highest in Serbia and Albania of only 15%.⁸⁵ Yet the overall tax burden on employment is considered high, given the very low sophistication of the tax system, the lack of tax breaks, and the very low level of employment. In Montenegro, there is no progressive taxation, but 39% of the gross salary is deducted for social security and health care benefits, national and local taxes. The social security contribution rate is 37.05% in Serbia, which is second only to the level in Bosnia and Herzegovina (41.5%).⁸⁶ These high rates of social security contributions coupled with the very low level of wages and perceived unemployment benefits, creates high incentives for evasion. Similarly, the high tax wedge for social groups with low income in North Macedonia results in their difficult transition from social welfare to formal employment status.

⁸³ European Commission (March 30, 2020), *EU mobilises immediate support for its Western Balkans partners to tackle coronavirus*.

⁸⁴ Cuckić, N. (March 31, 2020), *COVID-19 pandemic as a threat to the rule of law in the Western Balkans*, EWB/SELDI.

⁸⁵ Trading Economics (2019), *List of Countries by Corporate Tax Rate*.

⁸⁶ Trading Economics (2019), *Social Security Rate*.

The **(para)fiscal burdens**⁸⁷ also present considerable obstacle to formalisation. These include the costly regulations related to the method of calculating the salaries or the burdensome severance/firing payments in Montenegro.⁸⁸ The same factors are at play in Bosnia and Herzegovina, where para-fiscal fees (e.g., excise duties) are widely implemented at municipal and cantonal level. The outcome is dis-incentivising the establishment of new companies and pushing existing ones towards operation into the hidden economy.⁸⁹ Employers in North Macedonia have also repeatedly called for more flexibility in the labour legislation, mainly related to the termination of contracts, as well as decreasing the occupational health and safety-related financial burdens.

Hidden economy trends

The European Commission notes that reliable methods for measuring informality in a consistent and continuous manner are still missing.⁹⁴ The International Labour Organisation reiterates the absence of fresh and reliable quantitative data about the levels of informality, for example in Montenegro.⁹⁵ SELDI's Hidden Economy Monitoring System,⁹⁶ designed to correspond to the Corruption Monitoring System,⁹⁷ fills this gap by providing detailed survey data on the overall size, different aspects and the dynamics of the hidden economy in the region. SELDI data show that hidden employment remains prevalent in the region. Between 2016 and 2019, the **hidden employment index has increased** in five out of the six Western Balkans

Box 7. The hidden economy in Bosnia and Herzegovina

Bosnia and Herzegovina has a complex administrative and political framework with fragmented governmental and public structure. This forces companies to comply with different procedures within different parts of the country. It also hinders the efforts of designing and implementing universal social and labour market policies, consequently blocking progress towards curbing informality.⁹⁰ Due to the large number of budget users (ministries, agencies, cantons, municipalities and cities), the share of public expenditure in BiH remains very high, despite continuous pledges and measures to restrict it. As a result, the role of the state in the economy is still disproportionate, absorbing substantial resources to fund inefficient public enterprises and social security system. The regulatory environment is confusing, with incompatible provisions of both old and new laws coexisting, whereas regulation is not consistent across the whole national territory. A distinctive type of informality, which has been developed after the collapse of the socialist regime and during the 1992-1995 civil war, and that still dominates the economy, is the so-called network marketing (e.g., provision of undeclared paid services such as children and elders' care and home-cleaning).⁹¹ In addition, two additional factors aggravate the hidden economy situation in BiH and put the country in a league of its own. Some 70% of unemployed youth in the country are long-term unemployed.⁹² In addition, the national economy suffers from persistent current account deficit, which has led to the extended reliance on remittances from the diaspora, which account for more than 10% of GDP.⁹³

⁸⁷ The most common examples of para-fiscal burdens in Montenegro are the following: taxes related to business advertising; taxes paid for road usage; tourist taxes; taxes for utilising a commercial property; administrative taxes; taxes for temporary use of public land; business start-up charges.

⁸⁸ Bejaković, P. and Stefanov, R. (2019), "Characteristics of Undeclared Work in Service Sector in Countries of South East Europe," *Zagreb International Review of Economics & Business*, Vol. 22, No. 1, p. 122.

⁸⁹ European Commission (2019), 2019 Economic Reform Programmes of Albania, Montenegro, North Macedonia, Serbia, Turkey, Bosnia and Herzegovina and Kosovo, Institutional paper 107, p. 183.

⁹⁰ ILO (2019), *About the ILO in Bosnia and Herzegovina*.

⁹¹ Efendic, N., Pasovic, E. and Efendic, A. S. (2018), "Understanding the Informal Economy in Practice – Evidence from Bosnia and Herzegovina," *Financial Internet Quarterly 'e-Finanse'*, vol. 14.

⁹² World Bank Group & The Vienna Institute for International Economic Studies (2019), *Western Balkans Labour Trend Markets 2019*, p. XII.

⁹³ Efendic, N., Pasovic, E. and Efendic, A. S., op.cit., p. 80.

⁹⁴ European Commission (2019), 2019 Economic Reform Programmes of Albania, Montenegro, North Macedonia, Serbia, Turkey, Bosnia and Herzegovina and Kosovo, Institutional paper 107, pp. 51, 61.

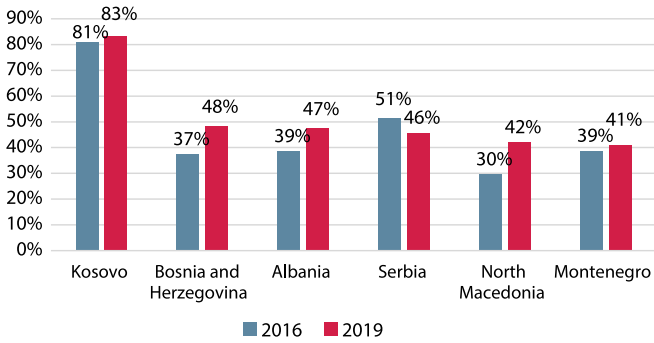
⁹⁵ ILO (2019), Decent Work Country Programme 2019-2021. Montenegro, International Labour Organization Decent Work Technical Support Team and Country Office for Central and Eastern Europe, pp. 4, 26.

⁹⁶ CSD (2016), *Hidden Economy Indexes in Bulgaria 2002-2015: Results and Methodological Notes*.

⁹⁷ SELDI (2017), *Sustainable Policy Impact through State-of-the-Art Research and Advocacy*.

countries by a factor of between 2.4% (in Montenegro) and 12.4% (in North Macedonia). Serbia is the only country which has had a decline in the hidden employment levels since 2016 (by 5.7%). Kosovo remains the country with the highest hidden employment share.

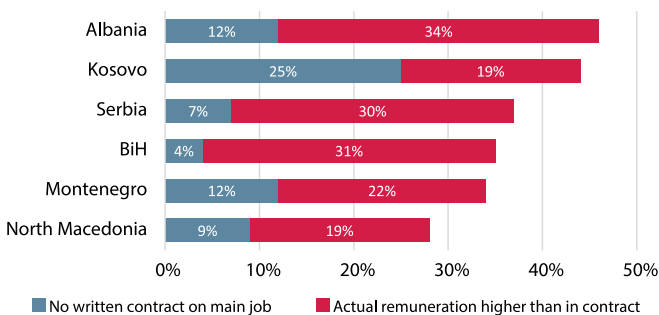
Figure 25. Hidden employment increases, except in Serbia



Source: SELDI Corruption Monitoring System / Hidden Economy Monitoring System, 2020.

Working without an employment contract or receiving higher remuneration than claimed in the employment contract both reflect the presence of hidden employment. While the share of those who work without any contract is highest in Kosovo (25%), when the practice of hiding the actual wage is added, Albania comes first with nearly half (46%) of all respondents engaged in a main job reporting either having no contract at all, or receiving some part of their salary unofficially. This shows that while the nature of the contractual agreement (or its absence) varies between countries, all of them have high shares of undeclared work, with even the lowest percentage in North Macedonia (27%) exceeding a quarter of all employed in a main job.

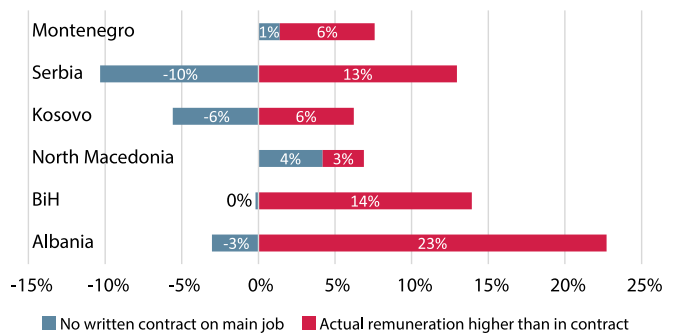
Figure 26. Workers without written contract on the main job or receiving higher than the declared remuneration (2019, in %)



Source: SELDI Corruption Monitoring System / Hidden Economy Monitoring System, 2020.

In most countries where the percentage of no-contract cases has declined since 2016 there is an equal (Kosovo) or even larger (Serbia, Albania, BiH) increase in the cases of payment of higher remuneration than the official one. This trend of transforming no-contract employment to partially declared work can be expected to continue across the region. This is due to the fact that in the second scenario the hidden employment is both easier to hide and more favourable for the employees, who can receive at least some health and social security coverage. It is also more difficult to detect and deter.

Figure 27. Workers without written contract on the main job or receiving higher than the declared remuneration (% change 2016-2019)*

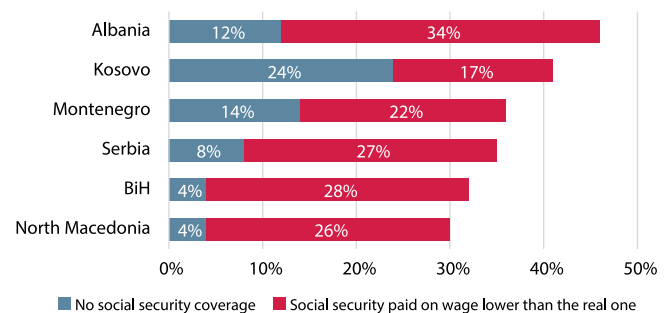


* Negative numbers show decline (improvement), while positive numbers show increase.

Source: SELDI Corruption Monitoring System / Hidden Economy Monitoring System, 2020.

Hidden practices related to social security include employees who either do not pay any contributions, or they are paid only on the basis of a lower “official” wage than the real one. The survey results on these practices naturally mirror the undeclared work indicators, as social security coverage is closely linked to the labour contract.⁹⁸

Figure 28. Hidden practices in social security coverage (2019, in %)



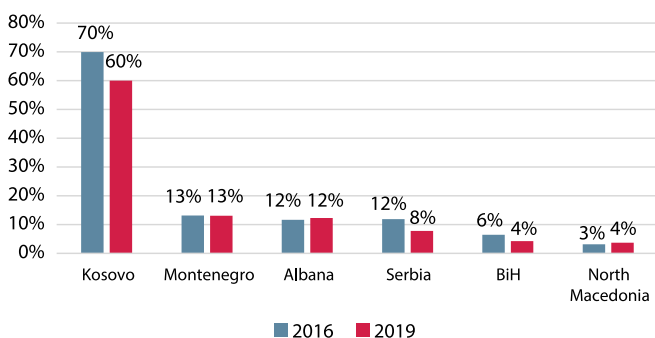
Source: SELDI Corruption Monitoring System / Hidden Economy Monitoring System, 2020.

⁹⁸ These two aspects are not always identical, since local regulations could leave room for discrepancies.

Changes in the hidden practices in social security coverage since 2016 also follow the same pattern as with the undeclared work: small or no decline in the percentage of cases without any social security coverage is accompanied by large increase in the cases where social security is paid on wage lower than the real one. Serbia is the only exception with 4% decline in the cases without any social security coverage and no significant increase in the cases where social security is paid on wage lower than the real one. All other countries show large increase (between 8% and 17% of the respondents engaged in a main job) in the latter practices.

The percentage of workers with no healthcare insurance is of critical importance in the context of the Covid-19 crisis and one of the worst effects of the hidden employment (considered by many a type of employment victimisation). As mentioned above, the situation in Kosovo is the worst of all six countries. Still, it should be noted that the country has achieved notable progress compared to 2016, when the percentage of cases with no health insurance coverage was 10% higher. There is also some progress observed in Serbia (4%) and BiH (2%) which confirms the overall conclusion that the increase of the hidden employment in the region comes in parallel to a transformation of the fully undeclared work to a partially declared one.

Figure 29. Workers with no health insurance coverage on the main job 2016-2019, % of all engaged in a main job



Source: SELDI Corruption Monitoring System / Hidden Economy Monitoring System, 2020.

Vulnerable sectors

The sector most affected by the hidden economy in the region is agriculture. This is particularly true for Albania, Serbia and Bosnia and Herzegovina. Real estate, wholesale trade and construction follow.⁹⁹ The services sector (mostly restaurants, hotels, transport and trade) and the banking sector (90% foreign-owned) are also affected by informality, with the latter not being able to rely on a well-established system of asset valuation, hence remaining under-utilised.¹⁰⁰ In Albania, additional affected sectors are the footwear and garment industry, mining and manufacturing.¹⁰¹ The fashion sector,¹⁰² which has significant impact on employment and the economy, also has substantial levels of informality. Illustrative examples from Kosovo concern call centres that employ persons without a contract, or construction workers who rotate every day on different construction sites (some studies suggest that 77.1% of the employees in the construction sector in the country are unregistered).¹⁰³ In North Macedonia, envelope wages are found primarily in the construction industry. However frequent incidences could also be traced in agriculture, hotels, cafes and restaurants.¹⁰⁴

In Montenegro, besides the wide-spread practice of envelope wages, there are many cases of under-reporting of the number of employees.¹⁰⁵ Around 2/3 of informal activities do not take place in companies or firms, but are rather related to door-to-door vendors, domestic work, family farms, and open-air markets.¹⁰⁶ Four out of five persons working in the agriculture in Bosnia and Herzegovina do so without declaring

⁹⁹ European Commission (2019), 2019 Economic Reform Programmes of Albania, Montenegro, North Macedonia, Serbia, Turkey, Bosnia and Herzegovina and Kosovo, Institutional paper 107, p. 218.

¹⁰⁰ OECD/ETF/EU/EBRD (2019), SME Policy Index: Western Balkans and Turkey 2019: Assessing the Implementation of the Small Business Act for Europe, SME Policy Index, OECD Publishing, Paris, p. 601.

¹⁰¹ Williams, C.C. and Kosta, B. (2019), op.cit.

¹⁰² Processing industries of textile, garments and footwear manufacturing, where the partial, or fully finished products are almost always exported to other countries.

¹⁰³ Peci, B., op.cit.

¹⁰⁴ Williams, C. C. and Bezeredi, S. (2017), "Illegitimate Economic Practices in FYR Macedonia." Findings from a representative survey of 2,014 citizens, GREY Working Paper No. 10, p. 46.

¹⁰⁵ European Commission (2019), 2019 Economic Reform Programmes of Albania, Montenegro, North Macedonia, Serbia, Turkey, Bosnia and Herzegovina and Kosovo, Institutional paper 107, p. 61.

¹⁰⁶ Katnic, M. and Williams, C. C. (2018), Diagnostic Report on Undeclared Work in Montenegro, Employment and Social Affairs Platform, pp. 24-26.

their activities.¹⁰⁷ Private tutoring¹⁰⁸ and unregistered tourist guides¹⁰⁹ become ever more popular. In Serbia, apart from agriculture where unpaid family workers dominate, the construction industry is adversely affected by incidents of envelope wages; a trend also observed in food preparation and other services.¹¹⁰

National policies and measures

The governments of the Western Balkan countries have all undertaken measures aimed at tackling informality, but not all of them can be said to be comprehensive, consistent, nor fully efficient. Nonetheless, some positive developments can be recognised.

Strategies and action plans for tackling the informal economy have been adopted under the auspices and recommendations of the International Labour Organization in Montenegro and North Macedonia or the International Monetary Fund in Albania. In Serbia, the National Programme for Countering the Grey Economy is perhaps a factor explaining why Serbia is the only country in the region which, according to SELDI data, has had a decline in the share of hidden employment between 2016 and 2019.

Yet, **stakeholders have also often criticised strategic documents** for tackling the hidden economy in the region. For example, the Albanian business community and economic experts reasoned that the primary task of the national action plan was to increase the collection of government revenues, rather than a genuine transition from informal to formal economy.¹¹¹ In North Macedonia, the strategy for tackling the informal economy assigns government institutions a large number of tasks for its implementation. Some critics note that only a loose cooperation exists among

these bodies, with no common databases or targets.¹¹² Montenegro has been trying to implement various new strategies for combating informality, as a follow-up to the 2013 national tripartite Enabling Environment for Sustainable Enterprises and the Action Plan for combating the grey economy adopted in June 2017. Yet, the European Commission has warned that the measures concerning social policy and employment are not well advanced, neither are effective in dealing with the root problems of labour market.¹¹³

Another common measure for tackling informality in the Western Balkans has been to **alter the tax regime**. For example, Montenegro introduced a two-percentage point reduction in employers' health insurance contribution in 2019. North Macedonia attempted to re-introduce progressive taxation as of January 2019, but has revoked the decision and returned to flat personal income tax as from January 2020. In the Federation entity and Republika Srpska in BiH the labour tax burden was lowered in 2019. Reform of the tax administration is also foreseen in the Serbian action plan on tackling the informal economy.

Oversight and inspections have also been emphasised as tools against informality. In Serbia, the upgrade of inspections through the use of better IT systems and coordination among authorities have been prioritised. Heavier fines were introduced, as well as punitive measures against tax evasion. According to the National Alliance for Economic Development, the intensity of inspection operations and the expected penalties altered the perceptions of businesses towards informality. In 2012, the perceived risk of detection and punishment was 14.5%, whereas by 2017 it grew to around 24%.¹¹⁴ Similar increase of inspections is observed in North Macedonia and Albania. In Kosovo, a reform of the inspection system is foreseen for 2020.¹¹⁵ The European Commission, however, has criticised countries in the region, noting that they often focus almost exclusively on inspections and controls, rather than on providing

¹⁰⁷ Pasovic, E. and Efendic, A. S. (2018), "Informal Economy in Bosnia and Herzegovina – an Empirical Investigation," *South East European Journal of Economics and Business*, Volume 13 (2), p. 116.

¹⁰⁸ Bejaković, P. and Stefanov, R. (2019), "Characteristics of Undeclared Work in Service Sector in Countries of South East Europe," *Zagreb International Review of Economics & Business*, Vol. 22, No. 1, p. 117.

¹⁰⁹ Efendic, N., Pasovic, E. and Efendic, A. S. (2018), "Understanding the Informal Economy in Practice – Evidence from Bosnia and Herzegovina," *Financial Internet Quarterly 'e-Finance'*, vol. 14, no. 4, p. 85.

¹¹⁰ Bejaković, P. and Stefanov, R. (2019), *Characteristics of Undeclared Work in Service Sector in Countries of South East Europe*, Zagreb International Review of Economics & Business, Vol. 22.

¹¹¹ Kosta, B. (February 16, 2018), "*Emerging from the Darkness: Albania's Informal Economy*," Prosper/CSIS.

¹¹² Blazevski, N. M. (2018), *Policy Brief on Undeclared work in The Former Yugoslav Republic of Macedonia - evidence and policy recommendations*, Regional Cooperation Council, pp. 6-7.

¹¹³ European Commission (2019), *2019 Economic Reform Programmes of Albania, Montenegro, North Macedonia, Serbia, Turkey, Bosnia and Herzegovina and Kosovo*, Institutional paper 107, p. 52.

¹¹⁴ National Alliance for Economic Development (2017), *Shadow Economy in Serbia in 2017. Key findings and recommendations*, p. 3.

¹¹⁵ OECD/ETF/EU/EBRD (2019), *SME Policy Index: Western Balkans and Turkey 2019: Assessing the Implementation of the Small Business Act for Europe*, SME Policy Index, OECD Publishing, Paris, p. 621.

incentives to businesses for formalising their activities.¹¹⁶

Western Balkan countries try to deal with informality also by introducing the latest technologies for **tracing payments and transactions**. Kosovo has installed a fiscal cash register. A two-stage plan for fiscalisation was also initiated in Albania at the beginning of 2020 to be implemented in three different phases in 2021.¹¹⁷ Montenegro will launch a system for issuing fiscal invoices electronically. If successful, the measure is expected to result in a more effective monitoring of goods and services transactions in real time, thus restricting informality.¹¹⁸ In Bosnia and Herzegovina, the government introduced the obligatory submission of VAT declaration in electronic format;¹¹⁹ it remains to be seen whether these efforts will produce fruitful results in the quest for formalisation.

Bosnia and Herzegovina has taken steps towards **reducing the fiscal burden on business**, thus facilitating formalisation. The central government has attempted to simplify the registration process for firms by introducing online platforms and one-stop-shops. The Kosovo Strategy and Action Plan for 2019-2022 also seeks to simplify the legislative framework and introduce a regulatory impact assessment system.¹²⁰

A better public understanding of the corruptive impact of the informal economy and the benefits of operating legally are promoted through various **awareness raising campaigns**. These range from “Take a Receipt and Win” lottery in Serbia to face-to-face meetings with small business representatives in order to encourage formalisation in Albania. In Albania and North Macedonia, additional measures aimed to promote the transparency and accountability of public spending (as a factor influencing corruption perceptions of the citizens) include the adoption of the public finance management reform programmes and the introduction of legal provisions on the reporting and recording of liabilities.

¹¹⁶ European Commission (2019), Economic Reform Programme of Albania (2019-2021), Commission Assessment, SWD, p. 22.

¹¹⁷ As of 1 January 2021 taxpayers should issue e-invoices for business to government transactions, from 1 July 2021 for business to business transactions and from 1 September 2021 for business to consumers (cash) transactions.

¹¹⁸ European Bank for Reconstruction and Development (2017), Strategy for Montenegro, p. 13.

¹¹⁹ Ibid, p. 177.

¹²⁰ Peci, B., op.cit.



Throughout the Western Balkans, civil society organisations (CSOs) have established themselves as important stakeholders in anticorruption. They have increased both their expertise and their ability to utilise this expertise in a range of contributions to the anticorruption agenda.

CSOs' **anticorruption impact** is achieved through a variety of means – initiating legislative changes and benchmarks for good practices to increase transparency, accountability and integrity of public enterprises and enhancing the private business representatives to prevent and combat corruption. CSOs' input in regulatory developments has included key pieces of legislation such as free access to information, financing of political entities and election campaigns, public procurement, protection of whistleblowers, declaration and confiscation of illegal assets, etc.

Another key area of impact – a dimension of anticorruption existing almost entirely thanks to the efforts of CSOs – is monitoring. They exercise this function both with regard to the actual spread of corruption as well as to progress achieved by anticorruption policies. CSOs monitor developments related to EU negotiations such as judicial reform, the fight against corruption and organised crime, public administration reform, and media freedom. They are also doing important analytical work, identifying corruption generators and areas vulnerable to corruption in state-owned enterprises.

Box 8. CSO-government collaboration: North Macedonia

CSOs were actively involved in the drafting of the Law on Prevention of Corruption and Conflicts of Interest and the Law on Public Procurement. Also, after the appointment of the new State Commission for Prevention of Corruption, it held consultations with civil society to discuss future cooperation during and after the presidential elections of 2019.¹²¹ This trend continues, with active involvement of CSOs in the process of making the National Strategy for Prevention of Corruption.¹²² The Council for Cooperation with and Development of the Civil Sector in the summer of 2019 announced a public call for the selection of civil society representatives in a working group for drafting a plan of measures and activities for the implementation of the process of vetting of the employees in the Ministry of Interior.¹²³ CSOs regularly provide input into the deliberation of anticorruption policies in the Council.

¹²¹ Sital, (25.02.2019), “Средба на ДКСК со граѓански организации.”

¹²² Чадиловска, Д. (31.03.2020) “Најнова ‘бум’ стратегија за спречување на корупција,” Истражувачка Репортерска Лабораторија Македонија.

¹²³ Јавен повик за избор на претставници од граѓанскиот сектор во работна група за изработка на предлог-план на мерки, активности и динамика за спроведување на процесот на проверка (ветинг) на вработените во Министерството за внатрешни работи.

Most of CSOs' contributions to anticorruption in the Western Balkans are made at the national level but there are also important **local level anticorruption efforts**. In Serbia, for example, CSOs are involved in establishing local anticorruption plans (LAPs) at the local government level. This came after CSOs helped form local anticorruption forums, bodies that were monitoring local level corruption and were predecessors to LAPs and monitoring committees. Even though the process of adoption of LAPs and the formation of monitoring committees still face major challenges, the implementation of this concept is a good example of possible synergy between civil society efforts and government policy.

Box 9. CSO-government collaboration: Serbia

The government has committed to improving cooperation with civil society, providing anticorruption grants to CSOs, as well as ensuring alternative (shadow) reports on implementation of the EU negotiations chapter 23 action plan and the national anticorruption strategy.¹²⁴ The Serbian anticorruption agency, as an independent regulatory body tasked with fighting corruption, established different forms of cooperation from civil society organisations, from declarative support, through cooperation to partnership.¹²⁵

Still, civil society's contribution to anticorruption progress faces a number of hurdles. CSOs are engaged in a delicate balancing act – to reconcile cooperation with government while performing their independent watchdog function. In most cases, whenever CSOs get involved in the advancement of anticorruption legislation it is mostly the result of their own initiative and advocacy, rather than any demand from government. Mechanisms for engaging civil society – even where they exist – often remain a formality or seek to co-opt national CSOs in portraying a more positive image abroad. More often than not, CSOs inputs get rejected by policy makers without satisfactory explanation, while those that do get accepted are predominantly of technical nature.

In Montenegro, for example, although a charter on cooperation between the Council of Ministers and civil society organisations was signed in 2017, there has been no significant follow-up. The case of Montenegro is also indicative of the pressures CSOs are under. The Central Bank of Montenegro publicised information






¹²⁴ Negotiation Group for Chapter 23, [Action Plan for Chapter 23](#).

¹²⁵ [Агенција За Борбу Против Корупције, Смернице За Сарадњу Агенције За Борбу Против Корупције Са Организацијама Цивилног Друштва.](#)

that €45 million was held in saving accounts of non-profit organisations, implying they enjoy undue higher standards of living. This was used for smear campaigns and pressure on CSOs aimed at undermining public trust in them. Critical CSOs are being targeted through informal channels that are hard to prove and identify.¹²⁶

SELDI supports CSOs anticorruption efforts in the Western Balkans through its small grants programme, launched in 2019. Some of its key results and impacts are presented in Table 7.

Table 7. SELDI's impact through CSO interventions

Anticorruption sub-field	Institution	Impact	
Social audit as an anticorruption tool: the case of public procurement	CSR Communication Center, Albania	The monitoring of public procurement has been upgraded with an additional monitoring tool.	
Anticorruption findings in audit reports	Center for Humane Politics, BiH	The audit reports in BiH benefitted from a new methodology for their analysis, which points to explicit or implicit corruption.	...
Public procurement transparency at the local level	Democracy Plus, Kosovo	An awareness raising campaign (including educational video and social media posts) enhanced the demand for transparency in the field of public procurement. The campaign was prompted by the results of a survey, pointing to limited knowledge among the public about the issue.	
Transparency of public funding of higher education	Centre for Civic Education, Montenegro	Introduced a methodology for monitoring of the system of financial planning, public procurement and financial reporting at public universities.	
Conflict of interests	Centre for Regional Policy Research and Cooperation Studiorum, North Macedonia	Survey and analysis of the level of understanding of conflict of interests, nepotism and cronyism among the general public.	
Investigative journalism against corruption in environmental projects	Roma Centre for Democracy, Serbia	Journalists trained in investigative methods and investigations, aimed at revealing and publicising cases of corruption in environmental projects.	

Integrity of CSOs

Given their active role in promoting the integrity of public office, it is all the more appropriate that CSOs should be held to the highest standards of transparency and accountability.

Overall, while a growing number of CSOs advocate for good governance, there is little progress in taking steps to make themselves more transparent. A clear measure of this is the low number of CSOs that publish online

¹²⁶ BCSDN (October, 2019) *Growing Pressure on Civil Society and What to do About it?* Regional Report on the trends in the enabling environment for civil society development in enlargement countries 2017/2018.

annual reports. In some countries (e.g., BiH), there is no specific requirement for CSOs to publish operational and financial reports – the law requires them to be “transparent” without defining any specifics. In practice, only CSOs that apply for governments funds are obliged to provide reports on a regular basis. Similarly, in Montenegro, the transparency, accountability

and integrity of CSOs is still relatively weak. Annual reports are mainly published by larger and more developed NGOs and there are no specific regulations of the financial operations of CSOs. They operate on the basis of the same financial and taxation laws as other legal entities. Annual financial audits are not mandatory under domestic laws, but are required for EU-funded projects above €60,000. These reports are hardly ever published.

A good practice has been established in Serbia. CSOs aspiring for cooperation with the anticorruption agency are required to have internal codes of ethics or to be members of networks that adopted such codes,¹²⁷ as well to submit their yearly financial reports to the Business Registers Agency and tax authorities and can be subject to a tax inspection.

Box 10. CSO transparency rating

Transparify is a methodology¹²⁸ that provides a global rating of the financial transparency of major think tanks. Initially, Transparify visited the websites of over 150 think tanks in over 40 countries to find out whether they provide information on who funds them and how much they receive from each source. This was followed up by a second round of ratings of the same think tanks to see whether their transparency has improved. Three SELDI members have 5 stars in the Transparify rating: Center for Democratic Transition (CDT) (Montenegro) Center for the Study of Democracy (CSD) (Bulgaria), and Institute Alternative (IA) (Montenegro).

EU support for CSOs anticorruption agenda

The European Commission in its 2007 enlargement strategy for the first time identified civil society development and civil society dialogue as a core priority of the enlargement process in the Western Balkans and announced setting up of a facility to support it. The priority has been translated to benchmarks for most of the countries under the political criteria for advancement in the EU integration process.

The 2019 Western Balkans summit of the EU in Poznan emphasised the importance of governmental cooperation with non-governmental organisations in policy debates and the significance of establishing an independent anticorruption civil society monitoring process with defined indicators to monitor and evaluate government commitments. At the summit, civil society representatives from the region expressed their strong

commitment to monitor closely their governments' progress on anti-crime and anticorruption pledges. However, according to the concluding statements, the consensus for a civil society monitoring approach was not reached at the government representatives' level. Policy makers reiterated that dealing with corruption remains a priority for the region but it seems that in reality the governments of the Western Balkans are not willing to submit themselves to monitoring by civil society.

The European Commission's DG NEAR has developed – in consultation with civil society – guidelines for EU support to civil society in enlargement countries (2014-2020). The guidelines encourage these countries to pass legislation conducive for civil society, promote the involvement of civil society in the pre-accession process, and provide a framework for monitoring and evaluation of the results achieved with the provided EU assistance. CSOs in the Western Balkans have regarded the guidelines as the key document for ensuring enabling environment for their actions and their development – a crucial precondition for civil society to play a significant role in their countries' development and the EU enlargement process. The guidelines, however, have not fully met these expectations. So far, they only provided a narrow analysis of the state and capacities of the civil society in the region, an analysis that was only used to a certain extent for programming of the EU financial assistance to civil society. From a civil society perspective, this indicated a lack of ownership, political will and commitment on the side of the EU as well. Such limited use has led to shortcomings in the implementation, monitoring and achieving of the objectives of the guidelines.¹²⁹

In order to ensure political leverage and legal basis for monitoring the development of civil society the guidelines need to be more than just a programming document. They should be reflected consistently in the most important monitoring reports prepared by the European Commission – the annual country reports. Not being an official EC document and not being adequately transposed into one (e.g., the country reports), they did not have any political weight and/or leverage to encourage both the governments and the EU initiatives, as they intended to in the first place. A corresponding monitoring methodology, as well as a well-defined structure for monitoring, needs to be defined in the document as well.¹³⁰

¹²⁷ Агенција За Борбу Против Корупције, op.cit.

¹²⁸ <https://www.transparify.org/our-methodology>

¹²⁹ BCSDN (January 2020), *Position on the New EU Civil Society Guidelines*.

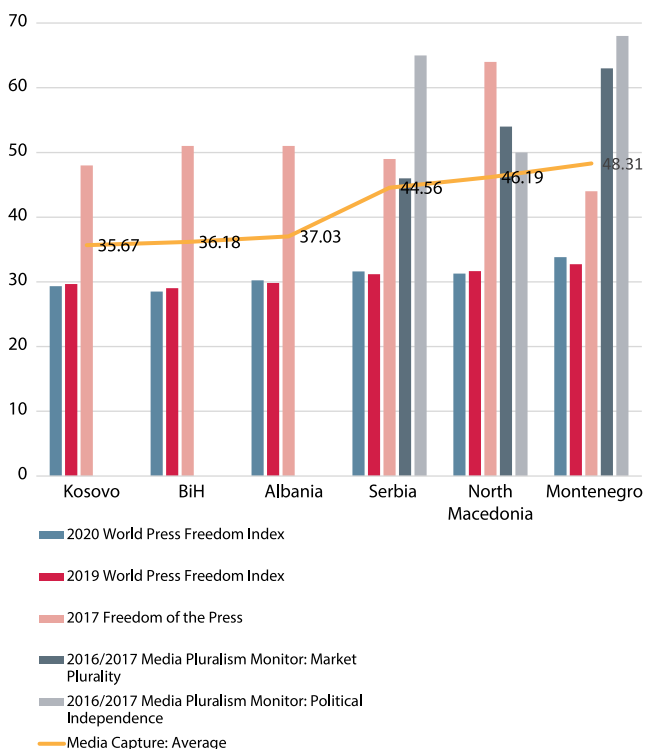
¹³⁰ Ibid.

Media capture

There are significant problems with media freedom in the Western Balkans which have contributed to the democratic backsliding of the region.¹³¹ Journalists, media and CSOs working in the areas of investigative journalism, human rights and corruption have been seriously threatened by officials in some countries (Bosnia and Herzegovina, Serbia and Montenegro), with civil society activists often being exposed to smear campaigns in pro-government tabloids, branded as “foreign mercenaries” or “enemies of the state”.

These problems are exacerbated by the trends of oligarchisation and state capture, which blur the lines between government and business control over newsrooms. Newsrooms across these countries suffer from well-documented interference of media owners.¹³² This hampers the role of the media to provide democratic oversight and results in the use of media outlets to denigrate opponents, influence politics and to extend private economic interests to politics or vice versa.

Figure 30. Press freedom and media pluralism indexes



Source: World Press Freedom Index 2019-2020, Freedom of the Press 2017, Media Pluralism Monitor 2016/2017, and SELDI calculations

¹³¹ Freedom House (2020), *Nations in Transit 2020: Dropping the Democratic Facade*.

¹³² Trpevska, S. and Micevski, I., (2018), *Indicators on the Level of Media Freedom and Journalists' Safety in the Western Balkans*, Independent Journalists' Association of Serbia.

Serbia, the largest media market in the Western Balkans, is a particular case in point. The country's lack of publicly accessible data or register on final beneficiary ownership of media allows for hidden control and influence to flourish. The widespread understanding of the Serbian language throughout the former Yugoslavia makes this a regional vulnerability. The Serbian government has put increasing pressure on critical media, in particular those producing investigative reports on corruption cases.¹³³ Moreover, the ongoing process of media privatisation has resulted in further cases of media ownership concentration in the hands of businessmen with close links to the government.¹³⁴ In a notable example, half of the shares of one of the influential conservative outlets, *Politika*, went to the Russian East Media Group. Despite this, there is extremely limited information about the structure of ownership and identity of the final beneficiary.¹³⁵ In addition, local and regional media in Serbia continue to be dominated by a conspicuous pro-government bias. In this context, it is not surprising that during the 2017 presidential elections the ruling party candidate received ten times more airtime on national broadcasters than all others combined.¹³⁶ Overall, the political pressure and questionable ownership exert significant negative effect on the media independence in Serbia.¹³⁷

In Albania, there is a trend of media ownership and revenues concentrating in the hands of a few family groups or oligarchs, which underscores media capture risks.¹³⁸ The legislation on electronic media is still far from international standards, which inhibits and interferes with the right of Albanian citizens to access information.

¹³³ Jungblut, M. and Hoxha, A., (2016), “Conceptualizing journalistic self-censorship in post-conflict societies: A qualitative perspective on the journalistic perception of news production in Serbia, Kosovo and Macedonia,” *Media, War and Conflict*, 10(2), pp. 222-238.

¹³⁴ Reporters without Borders (2017), *Who Owns the Media in Serbia?*

¹³⁵ Observatorio balcani e caucaso transeurope (2017), *Media Ownership in Serbia: a Foggy Landscape*.

¹³⁶ Reporters without Borders (2017), *Who Owns the Media in Serbia?*

¹³⁷ Balkan Insight (2018), *For Serbian Journalists, Obedience is the Norm*.

¹³⁸ Reporters without Borders (2019), *Albania: conclusions d'une mission conjointe pour la défense de la liberté de la presse*.

Media freedom¹³⁹

There is a decline in editorial independence, a weakening of public service media and inadequate accountability of media regulators in the region. Moreover, journalists and activists face pressure and intimidation and financing is being discontinued.

The previously higher ranking of Serbia on the World Press Freedom Index has been compromised since 2014 amidst changes in the political climate, accompanied by an increase in disinformation and the persecution of journalists.¹⁴⁰

In Serbia, media attacks have risen and journalism as a profession has become increasingly unsafe. Journalists are discouraged from covering sensitive topics such as the talks with Kosovo and corruption. Libel lawsuits have become commonplace and the Independent Journalists' Association of Serbia documented 102 incidents of political pressure and violence against journalists in 2018 alone.¹⁴¹ In a survey, 74% of media workers said that conditions in Serbia are not conducive to free speech or that free speech faces serious obstacles. Despite this, there remain serious investigative journalism organisations such as KRIK and the Balkan Investigative Reporting Network.¹⁴²

In Albania, the lack of public interest, a weak public broadcaster and a lack of transparency allow private and political interests to override those of consumers. An anti-defamation package – a set of media laws approved by the Albanian parliament – attracted attention in 2019, as the laws would have increased state regulation of online media outlets. It was later vetoed by the president. Still, investigative journalism remains rare and considered dangerous in Albania as journalists covering corruption are often harassed.¹⁴³

In Bosnia and Herzegovina, the press as well as online outlets currently face a hostile environment due to the country's polarized political climate, which is marked by nationalist rhetoric and threats to independent

media.¹⁴⁴ In Kosovo, while the constitution guarantees press freedom, the government and business interests influence editorial policy and journalists report frequent harassment and intimidation.¹⁴⁵

Media freedom in Montenegro is marked by an oversaturated market which leaves individual outlets vulnerable to political and economic pressure.¹⁴⁶ The government often withholds the signing of advertising contracts between publicly owned entities and opposition media outlets and self-censorship is commonplace as independent journalists try to avoid expensive defamation lawsuits and threats.¹⁴⁷

¹³⁹ The conclusions in this section are based on the forthcoming CSD publication "Russian Sharp Power Influence in Southeast Europe: Understanding and Responding to Kremlin's Media Capture Tools, Tactics and Narratives", supported by the National Endowment for Democracy.

¹⁴⁰ World Press Freedom Index, "Serbia Report", Reporters Without Borders, 2020.

¹⁴¹ Freedom House, "Serbia Report", 2019.

¹⁴² Media Sustainability Index, Serbia, IREX, 2019.

¹⁴³ Exit.al (January 12, 2020) "[Albanian President Vetoes Laws Censoring Online Media.](#)"

¹⁴⁴ UNESCO Assessment of Media Development in Bosnia and Herzegovina, IPDC, 2019.

¹⁴⁵ Freedom House, "Kosovo Report", 2020.

¹⁴⁶ Csaky, Zselyke, "Montenegro, an EU Accession Front-Runner, Moves Backward on Media Freedom", Freedom House. 20 September 2018.

¹⁴⁷ World Press Freedom Index, "Montenegro Report", Reporters Without Borders. 2019.



For more than a decade now, cooperation with foreign partners and international organisations has been a significant factor in any progress achieved in anticorruption in the Western Balkans. This cooperation has had two dimensions: the adoption – and the monitoring associated with that adoption – of international anticorruption standards and technical and financial assistance provided to the governments and CSOs.

Compliance with international anticorruption standards

Monitoring in the field of anticorruption – both of the dynamics of corruption itself and of compliance with rule of law standards – is now about two decades old. From initial scepticism and even resistance, it has now become an indispensable element of any policies advancing good governance. In a context, however, where the Western Balkan countries “show clear elements of state capture”¹⁴⁸ monitoring is faced with a new challenge: state capture creates a divergence between formal compliance and the actual integrity in governance. This gap has mostly emerged because of insufficient application of the measurement of institutional change.¹⁴⁹

The Western Balkan countries, except Kosovo, have signed and ratified international anticorruption and related conventions of the Council of Europe (the criminal and civil law conventions on corruption, and those on mutual assistance in criminal matters and money laundering) and the United Nations (UNCAC and the Palermo Convention). They are, again save for Kosovo (which co-operates and works in line with the international conventions derived from these organisations), also members of GRECO.

The anticorruption legislation of the signatories of the UNCAC among the WB6 are mostly in line with its provisions. Still there are parts where signatories are partly harmonised or not harmonised at all. Serbia has not included illicit enrichment in its Criminal Code, as

recommended in UNCAC.¹⁵⁰ In Montenegro, even after a consultative hearing took place five years ago, illicit enrichment is still not a criminal offence. In Albania, the Criminal Code partially address the requirements of Article 17 of the UNCAC (embezzlement and misappropriation), but illicit enrichment is not criminalized.¹⁵¹ North Macedonia has criminalised illicit enrichment pursuant to article 359-a, introduced in 2009 to the Criminal Code but no cases have been prosecuted based on that article.

The latest evaluation report by GRECO concluded that Montenegro has implemented satisfactorily 8 out of 11 recommendations.¹⁵² In 2019 in Serbia, GRECO concluded that the country had implemented satisfactorily or dealt with in a satisfactory manner 2 of the 13 recommendations contained in the Fourth Round Evaluation Report and partly implemented 10 out of 13 recommendations.¹⁵³ North Macedonia was included in GRECO’s fifth evaluation round, which found that since the fourth round of assessment “a non-compliance procedure was launched in June 2018 in response to poor performance: to date only 31% of recommendations have been fully implemented, 42% partly implemented and 26% remain not implemented.” Referring to the policy and institutional framework for preventing and combatting corruption in North Macedonia, GRECO concluded that its strength “is questionable as the implementation of different policies and laws is weak and selective in practice.”¹⁵⁴ Bosnia and Herzegovina did not perform much better – by the end of 2020 it had implemented satisfactorily none of the 15 recommendations.¹⁵⁵ As for Albania, GRECO concluded that Albania had implemented satisfactorily or dealt with in a satisfactory manner 9 of the 10 recommendations contained in the Fourth Round Evaluation Report.¹⁵⁶

¹⁵⁰ Đurović, L. & Diligenski, T.P., (June 2018) Analiza kompatibilnosti anti-korupcijskog zakonodavstva sa pravnim tekovinama eu i međunarodnim standardima, p. 21.

¹⁵¹ *Law no. 7895/1995, Criminal Code of The Republic of Albania.*

¹⁵² GRECO (February 2020), Fourth Evaluation Round, *Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report on Montenegro*, p.7.

¹⁵³ GRECO (November 2020), Fourth Evaluation Round, *Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report on Serbia*, p.15.

¹⁵⁴ GRECO, Fifth Evaluation Round, *Evaluation Report: North Macedonia: Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies*, pp.5, 3.

¹⁵⁵ GRECO (December 2020), *Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report on Bosnia and Herzegovina*, p. 16.

¹⁵⁶ GRECO (October 2020), *Corruption prevention in respect of members of parliament, judges and prosecutors, Addendum to the Second Compliance Report on Albania*, p.10.

¹⁴⁸ European Commission, (2018), A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2018) 65 final, p.3.

¹⁴⁹ On the significance of and tools for evaluating anticorruption performance at the institutional level see: Stoyanov, A., Gerganov, A., Di Nicola, A., Constantino, F. (2015), Monitoring Anti-Corruption in Europe: Bridging Policy Evaluation and Corruption Measurement, CSD, Sofia.

The role of EU enlargement

The prospect of joining the European Union is the single most important external factor in support of rule of law and anticorruption reforms in the Western Balkans. The stakes of success in this endeavour are high as what is involved is not just the future of good governance in the Western Balkans but also the credibility of the EU as a force for good governance beyond its borders.

The approach to anticorruption in the enlargement strategy pursued in that context by the European Commission has undergone considerable evolution, incorporating lessons from the 2004, 2007 and 2013 enlargements but also discussions among member states in 2019. The current “merit-based” approach breaks conditionality down into “negative and positive,” expects member states to “contribute more systematically to the accession process,” and includes options such as suspension of negotiations and freezing of funds.¹⁵⁷ SELDI welcomes the incorporation in the enlargement process of some of its earlier recommendations, including: a stronger focus on political engagement and economic fundamentals; mainstreaming of anticorruption efforts in more policies and not just in anticorruption institutions and the judiciary (the Commission states that “anti-corruption work will be mainstreamed through a strong focus in relevant chapters”); and protecting the important EC – civil society relations, including their financial underpinning from unexpected distress.¹⁵⁸

An important linkage was also established in 2020 between EU’s internal rule of law policies and “how the rule of law is embedded in the work with accession [...] countries [...]”¹⁵⁹ The significance of anticorruption is also acknowledged in another EU initiative towards the region in 2020 – the Economic and Investment Plan for the Western Balkans.¹⁶⁰ Yet, beyond the adoption of the “fundamentals first” approach (an important and welcome development), the primacy of the rule law

¹⁵⁷ European Commission (2020) *Enhancing the accession process - A credible EU perspective for the Western Balkans*, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 5.2.2020 COM(2020) 57 final.

¹⁵⁸ SELDI (2020), *The New Approach on Enlargement: Good Ideas in Need of a Captain*.

¹⁵⁹ European Commission (2020) *Communication - 2020 Rule of law report - the rule of law situation in the European Union*, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 30.9.2020 COM(2020) 580 final, p.2.

¹⁶⁰ European Commission (2020), *An Economic and Investment Plan for the Western Balkans*, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 6.10.2020 COM(2020) 641 final.

agenda for progress in any other area of development of the Western Balkans needs to be further emphasised, in particular through:

- Broadening the range of stakeholders engaged in both monitoring and advocating for good governance reforms. Expecting that incentive-driven compliance by the executive branches of government in these countries would muster the political momentum needed to roll back the advanced state of private interest capture of governance is unrealistic. Only a public-private coalition involving both EU institutions and actors and local public and private institutions and individuals would be able to ensure the scaffolding of positive anticorruption developments, i.e., their irreversibility.
- A more dynamic, rolling feedback mechanism for assessing actual progress is required, whereby assessments of performance would be made on a continuous basis (the time lag between annual assessment cycles and the incorporation of their findings into policy is too big). Innovative and tailored monitoring tools are needed to assess how corruption-proof specific public institutions are and to identify anticorruption policy and implementation gaps.

External rule of law assistance

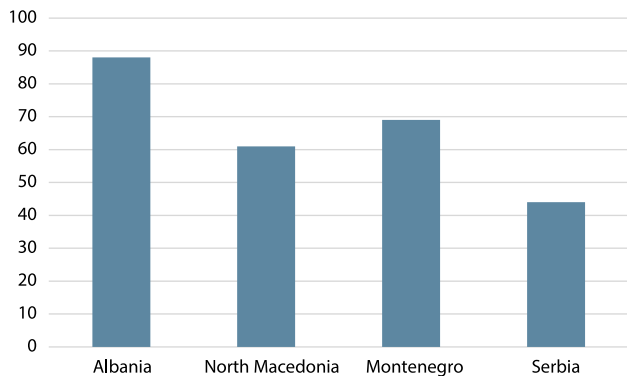
EU’s role as an external factor in domestic (anticorruption) reforms in the Western Balkan is further complicated as it defines performance targets and at the same time provides assistance for their achievement. Conducting negotiations (an activity that usually involves two sides with different, even conflicting intentions) while providing development aid and technical assistance to the other side in these negotiations is a delicate balancing act.

Anticorruption assistance – both technical and financial – for the Western Balkans needs to be provided in synchrony with EU’s general policy messages. This is what is now expected from the Instrument for Pre-Accession Assistance (IPA) III. Given the findings of SELDI’s SCAD assessment of the intensity of state capture in the region (see chapter I), EU funding should incorporate the *primum non nocere* (first, do no harm) principle. In other words, it needs to ensure that it does not become counterproductive by strengthening clientelistic networks of corrupt politicians and privileged businesses which receive the lion share of EU funded procurement.

IPA III has earmarked €14.5 billion – a 13% increase on IPA II – to support EU candidate countries and potential

candidates on their path towards fulfilling the EU accession criteria through deep and comprehensive reforms.

Figure 31. Albanians twice as enthusiastic about the EU as the Serbs*

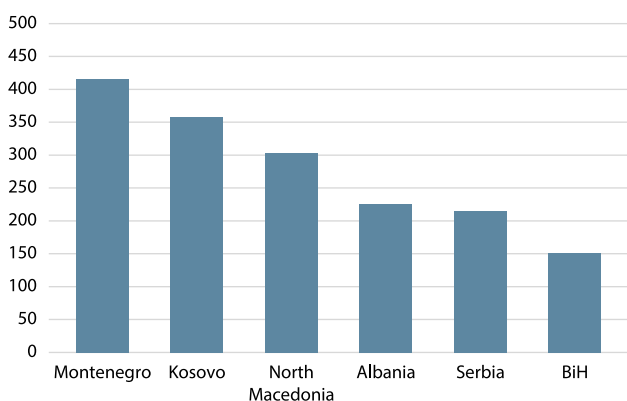


* 2019; share of those believing that EU membership of the country is a good thing

Source: Standard Eurobarometer 92

In Serbia, the outgoing support instrument IPA II focused on democracy, rule of law, competitiveness, and growth. There has not yet been any complete assessment what impact has been achieved (the latest available assessment shows that by the end of 2017, only 23% of the target values had been fulfilled).¹⁶¹ Technical assistance included trainings for employees of the Anti-Corruption Agency on financing of political parties, public procurement, complaints, communication strategy and strengthening the national mechanisms for the prevention and fight against corruption.

Figure 32. IPA II financial assistance per capita of the population, €

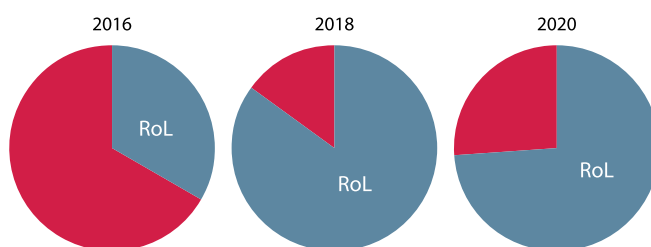


Source: Instrument for Pre-accession Assistance (IPA II)

¹⁶¹ Momcilovic, M. and Urosev, A. (2019), *External Evaluation of Serbian Public Administration Reform Strategy*, p.13.

The flagship EU-funded project in Albania is EURALIUS which supports and assists in the drafting and adoption of justice reform through support provided to the Ministry of Justice and the National Assembly. The current action programmes focus on reforms of key sectors such as democracy and governance, rule of law and fundamental rights, and competitiveness and growth. The latest action programme put emphasis on the rule of law, justice reform (€64 million) and environment protection and economic development (€30 million).

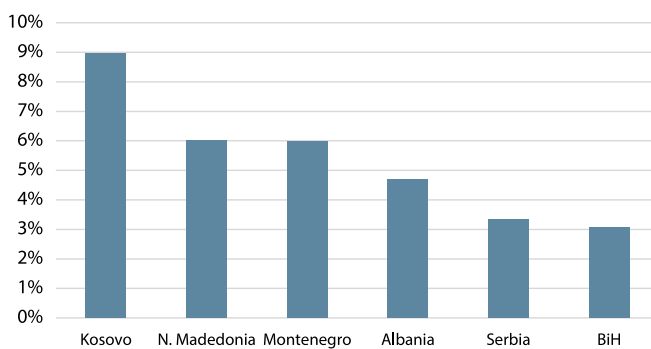
Figure 33. The share of RoL in overall EU financial assistance to Albania doubled over the past four years



Source: Instrument for Pre-accession Assistance (IPA II)

In North Macedonia, significant progress has been made in sector-based programming involving all stakeholders. The revised Indicative Strategy Paper seeks to enhance the response to new challenges such as migration, terrorism and violent extremism, climate change and economic governance.

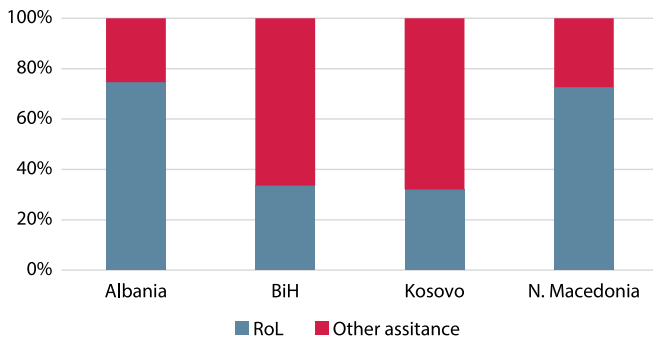
Figure 34. IPA II financial assistance as share of GDP in Kosovo three times that in BiH



Source: Instrument for Pre-accession Assistance (IPA II)

The EU anticorruption initiative in Kosovo is focused on mainstreaming anticorruption provisions in EU horizontal and sectorial legislation and policy, monitoring performances in the fight against corruption, supporting the implementation of anticorruption measures at national level via funding, technical assistance and experience-sharing and improving the quantitative evidence base for anticorruption policy.

Figure 35. The share of RoL in overall EU financial assistance differs significantly among the WB6



Source: Instrument for Pre-accession Assistance (IPA II)

In BiH, the most notable anticorruption projects under IPA are Institutional Support to Anticorruption (IPAK), which aims to strengthen the capacities of institutions in BiH in implementing the anticorruption and EU4Justice, which aims to enhance the effectiveness, integrity and professionalism of the institutions in the rule of law sector. The adoption of country-wide strategies such as on public financial management and on employment remains a key requirement for Bosnia and Herzegovina to benefit fully from IPA funding. For Montenegro, the emphasis of the action programme was put on the reforms and investments in the area of the rule of law and fundamental rights, agriculture and rural development and additional funds (performance reward) allocated to the social sectors, with a specific focus on the health sector.

THE WAY FORWARD: CATALYSING ANTICORRUPTION IN THE WESTERN BALKANS



The advancement of integrity governance and the squeezing out of corruption in the Western Balkans in the past five years has been incremental and slow at best. Slow and patchy progress has allowed private interests to acquire a hold on government resulting in state capture and democratic backsliding. Releasing governance from this grip can only be achieved by an alliance of stakeholders acting in concert: **reform-minded policy makers, civil society and international partners, chief among which is the European Union.**

At the national level, it is necessary for public bodies in the Western Balkans to set up procedures for effective **prosecution of corrupt high-level politicians and senior civil servants.** Through cooperation with the civil society, business, media and academia, they should also introduce an independent corruption and anticorruption monitoring mechanisms. Such mechanisms are needed at all levels – from corruption risk assessment of policies to proof-reading of key legislation (public procurement, privatisation, lobbying, anti-trust, whistle-blower protection) and analysing the efficiency of the internal anticorruption procedures in individual public institutions. Business associations should also strengthen their role in promoting self-regulation and facilitating the reporting of corrupt practices in companies.¹⁶²

The analysis of SCAD data suggests that a key priority should be safeguarding and monitoring **judicial independence and performance.** The influence of the legislative and executive branches in the selection and promotion of judges and prosecutors should be normatively excluded or minimised. Countries where the majority of the judicial self-governing bodies are not elected among judges and by judges should adopt reforms increasing their voting power. National governments need to ensure that the procedures for the appointment, promotion and dismissal of judges are transparent to the public.

Critical **economic climate issues** should be addressed through continuous monitoring of **hidden economy** areas. Particular attention should be focused on undeclared work and the hiding of revenues in excise and service sectors, as well as on identifying and addressing critical junctures and links to the black economy, corruption and organised crime. A proper balance between prevention and repression is especially important to strike when seeking to reduce the size of the hidden economy and its impact on corruption. First, national governments need to identify what incentivises employers and employees to engage in informal business activities; these would then

be factored in the design of reforms for improving the business environment, the tax policy and the quality of the public services (education, healthcare, infrastructure, etc.). Second, governments should consider the use of awareness campaigns, the introduction of flexible types of labour contracts, use of vouchers, amnesties or tax reductions to promote the transition from the informal to the formal sector. Third, the numerous intrusive inspections of small and micro-companies should be replaced with targeted inspections at key risk companies, sectors and locations. The latter would require consolidation of national registers, use of data-mining systems and redflags, and collaboration among all relevant national and cross-border public authorities. The development of e-government solutions and the encouragement of electronic payments (e.g., through lower thresholds for cash transactions) would also have a beneficial effect in formalising the economy.

Antimonopoly laws in the Western Balkans need to be made effective, including through the empowerment of antimonopoly commissions and the tracking of legislation for loopholes allowing the monopolisation of sectors or bias towards specific private interests.

A critical issue in ensuring that governments are held accountable is **transparency of media ownership, newsroom independence and safeguarding media freedom from political interference.** External oversight on any policy would not be possible without free access to information, media independence, freedom of speech and adherence to the critical transparency rules. A particular focus in the governments' efforts should be avoiding civil society capture, improving the corporate governance of state-owned enterprises, and the transparent management of large-scale investment projects.¹⁶³

The advancement of the quality of public governance in the Western Balkan countries is now closely linked with the process of their **integration with the European Union.** The underlying conditions which influence integrity reforms are different in each country, making the EU the regional stabilising factor for these reforms.

For its enlargement strategy to allow it to continue being such a factor, the **EU needs to engage more proactively politically** with the Western Balkans countries, providing them with a clear perspective for the future. Stronger engagement would, however, need to guard against several unintended consequences, which could make it counterproductive. It would need to ensure that the benefits of closer economic integration with the Union do not

¹⁶² CSD (2018), *Private Sector Corruption in Bulgaria*.

¹⁶³ SELDI (2016), *Shadow Power: Assessment of Corruption and Hidden Economy in Southeast Europe*.

accrue exclusively to a small clique of privileged elites and oligarchs, thus further exacerbating business state capture. The membership-related conditionalities on the integrity of governments need to be accompanied by equally strong domestic public demand for accountability, lest the dominant political actors choose the former as an excuse to disregard the latter. Engagement in the diplomatic arena with politicians and senior government officials would also need to be performed in a way that does not create the impression of political endorsement. The overall effect of this process should be to stand up to and neutralise the harmful effects of authoritarian influence in the region.

The European Commission and the local EU Delegations need to **expand their direct engagement with policy-makers and civil society** in the region, including in monitoring anticorruption developments. It needs to reinforce the accession negotiations' technical aspects on anticorruption with more political assertiveness regarding progress in tackling high-level corruption and state capture. In helping the countries deal with the latter, the EU would be well advised to mainstream innovative analytical instruments to guide its policies, such as the ones piloted by SELDI:

- Monitoring Anticorruption Policy Implementation (MACPI)¹⁶⁴ tool, which assesses the corruption resilience of institutions and identifies anticorruption policy and implementation gaps;
- State Capture Assessment Diagnostics (SCAD),¹⁶⁵ which helps identify state capture areas.

SCAD data suggests that the main challenge for countries in the region remains in the form of state capture enablers such as media control, corruption in the judiciary, lack of integrity of public organisations, impartiality and insufficient anticorruption procedures. These are, in fact, the areas at the heart of the EU enlargement process. The EU could expand the rule of law instrument introduced for its member states, which **links good governance performance with financial assistance** to the Western Balkans as well. In this respect, it is particularly important to allow for the reversibility of the process of accession with the possibility of both reducing or stopping of financial assistance in case of non-compliance with the agreed conditions.

The European Commission would need to pay particular attention to **safeguarding competition in sectors of high monopolisation pressure** when implementing its "robust economic and investment plan for the region" which aims to "boost the economies while improving their competitiveness, to better connect them within the region

and with the EU."¹⁶⁶ Business state-capture pressure is typically channelled through the concentration of public procurement, construction permits, concessions and privatisation deals, as well as licenses in regulated and excise duties' businesses. In fact, breaking the deadlock of this pressure might help to advance the economic development of the region as much as would EU development funds and investment loans.

The technical support, policy advice and EU funding should be directed towards anticorruption and antimonopoly efforts focused on critical sectors, specifically those vulnerable to state capture, such as energy, infrastructure, banking and telecommunications. The **extension of advisory missions** to the whole Western Balkans will also benefit the performance of the rule of law assessments; however, it is recommended that any case-based peer-reviews include **civil society experts**. The European Commission and the local EU Delegations should work together with local stakeholders to establish procedures for regular trial monitoring of corruption cases, as well as monitoring the progress of the judicial reforms.

For such a cooperation to produce a tangible impact, civil society organisations in the Western Balkans need to affirm their credibility as agents of anticorruption. This credibility is built on two pillars – **capacity and integrity**. In terms of the former, monitoring of both government performance and actual proliferation of corruption has already become a well-established domain of CSO competence. It needs to be supplemented by the skills to provide legislative inputs; these skills include analytical competence and the ability to conduct advocacy campaigns. **Shadow reporting** is an underused tool for CSOs, both with respect to EU initiatives and government policies. An indication of the quality of such reporting would be that its considerations be reckoned with in policy making and legislating. This kind of work at the national level needs to be complemented with actions among local communities.

None of the above can be expected to achieve any impact unless CSOs are themselves a paragon of integrity. They are not exempted from becoming targets of various corrupting influences, including by unscrupulous politicians and shady business interests. They are also the targets of smear campaigns by corrupt political elites. In order to ward off such influences, the civil society sector needs a more robust self-regulation. It should reinforce its integrity, including through introducing mandatory procedures for transparency in the sector, ensuring effective control of compliance with financial regulations, and wider use of auditing.

¹⁶⁴ CSD (2015), *Monitoring Anti-Corruption in Europe. Bridging Policy Evaluation and Corruption Measurement*.

¹⁶⁵ CSD (2019), *State Capture Assessment Diagnostics*.

¹⁶⁶ Council of the European Union (2020), *Zagreb Declaration*.

LIST OF FIGURES

Figure 1. Corruption pressure and involvement twice as high in BiH than in Serbia*	17
Figure 2. Structure of CMS indexes	17
Figure 3. Corruption pressure in the Western Balkans since 2001	18
Figure 4. Corruption pressure by country	18
Figure 5. The acceptability of corruption is on the decline, except in BiH*	18
Figure 6. The majority of people expect to be pressured into bribing*	19
Figure 7. Perceptions of feasibility of policy responses to corruption*	19
Figure 8. State-capture pressure levels in the region are high*	20
Figure 9. Monopolisation pressure*	21
Figure 10. Assessed share of monopolisation in the electricity sector*	22
Figure 11. Assessed share of monopolisation in the telecom sector	22
Figure 12. Assessed share of monopolisation in the pharmaceutical sector	23
Figure 13. Institutional enablers of state capture	23
Figure 14. Fines imposed by the North Macedonian Commission for the Protection of Competition*	28
Figure 15. Ineffectiveness of antimonopoly laws	28
Figure 16. The civil service trusted more than political parties*	34
Figure 17. Rule of law and government effectiveness index, 2014-2018*	36
Figure 18. Police most trusted in Serbia, least in Albania*	36
Figure 19. Public perceptions of corruption among magistrates	39
Figure 20. The rising number of indictments in high level corruption cases in Montenegro	41
Figure 21. Perceptions of corruption among prosecutors increase, with few exceptions*	42
Figure 22. Corruption convictions are on the decline in Albania	44
Figure 23. Persons convicted of abuse of public office and bribery in North Macedonia	44
Figure 24. Transparency of budget spending in 2019*	46
Figure 25. Hidden employment increases, except in Serbia	48
Figure 26. Workers without written contract on the main job or receiving higher than the declared remuneration (2019, in %)	48
Figure 27. Workers without written contract on the main job or receiving higher than the declared remuneration (% change 2016-2019)*	48
Figure 28. Hidden practices in social security coverage (2019, in %)	48
Figure 29. Workers with no health insurance coverage on the main job 2016-2019, % of all engaged in a main job	49
Figure 30. Press freedom and media pluralism indexes	56
Figure 31. Albanians twice as enthusiastic about the EU as the Serbs*	61
Figure 32. IPA II financial assistance per capita of the population, €	61
Figure 33. The share of RoL in overall EU financial assistance to Albania doubled over the past four years	61
Figure 34. IPA II financial assistance as share of GDP in Kosovo three times that in BiH	61
Figure 35. The share of RoL in overall EU financial assistance differs significantly among the WB6	62

LIST OF TABLES

Table 1.	Economic sectors with high or medium monopolisation in two or more countries.....	21
Table 2.	Private interest bias by organisation.....	24
Table 3.	Status of key anticorruption regulations.....	26
Table 4.	Anticorruption in parliament.....	32
Table 5.	Appointment requirements for judges.....	40
Table 6.	Oversight of judicial integrity.....	53
Table 7.	SELDI’s impact through CSO interventions.....	54

LIST OF BOXES

Box 1.	CMS methodology.....	17
Box 2.	State Capture Assessment Diagnostics.....	20
Box 3.	The “envelope affair” in Montenegro.....	26
Box 4.	The case of the ARMO refiner in Albania.....	27
Box 5.	Integrity vetting of judges in Albania.....	41
Box 6.	Covid-19: an aggravating factor?.....	46
Box 7.	The hidden economy in Bosnia and Herzegovina.....	47
Box 8.	CSO-government collaboration: North Macedonia.....	53
Box 9.	CSO-government collaboration: Serbia.....	53
Box 10.	CSO transparency rating.....	55



ALBANIA AND KOSOVO	
Përmbledhje ekzekutive.....	69
BOSNIA AND HERZEGOVINA	
Izvršni sažetak.....	75
MONTENEGRO	
Izvršni sažetak.....	81
NORTH MACEDONIA	
Извршно резиме.....	87
SERBIA	
Zaključak.....	93



ALBANIA AND KOSOVO

PËRMBLEDHJE EKZEKUTIVE

Në dy dekadat e fundit, vendet e Ballkanit Perëndimor kanë pësuar transformime të ndjeshme politike, sociale dhe ekonomike. Sidoqoftë, një numër sfidash të jashtëzakonshme mbeten kritike, ndër të cilat është integriteti i qeverisjes publike. Çështja e sundimit të ligjit në përgjithësi dhe antikorrupsioni në veçanti tani janë në zemër të projektit politik më konsekuent të Ballkanit Perëndimor – integrimi i tyre me organizatën kryesore të Evropës, Bashkimin Evropian. Kontributi i SELDI-it në axhendën antikorrupsion të Ballkanit Perëndimor ka qenë specifik dhe veprues, duke kërkuar të ndërtojë ura ndërmjet monitorimit, analizës dhe rekomandimeve të politikave.

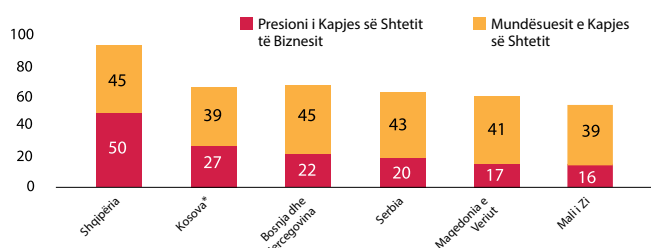
Raporti Rajonal Antikorrupsion 2020 shqyrton kuadrin legjislativ dhe zhvillimet në praktikën e institucioneve shtetërore - ekzekutivin, legjislativin dhe gjyqësorin. Vlerësimi i faktorëve rregullatorë dhe institucionalë që mundësojnë korrupsionin në rajon nuk synohet si një inventar gjithëpërfshirës, por përkundrazi, thekson disa nga çështjet prioritare të rëndësishme për përpjekjet e mundshme për nxjerrjen në sipërfaqe të burimeve të përbashkëta të korrupsionit. Raporti ofron një model për raportimin e progresit antikorrupsion nga shoqëria civile në vendet e Ballkanit Perëndimor.

Dinamikat e korrupsionit

Mjetet e monitorimit të SELDI-it ofrojnë të dhëna në lidhje me ndryshimet në përhapjen aktuale të dy llojeve të korrupsionit – korrupsionit administrativ (ryshfeti), i cili prek individët dhe bizneset, dhe kapjes së shtetit (korrupsioni i madh) që ndikon në funksionimin e institucioneve demokratike dhe në vendim-marrjen e qeverisë. Në lidhje me këtë të fundit, aplikimi i mjetit Diagnostikimi i Vlerësimit të Kapjes së Shtetit i SELDI-it (SCAD) në Ballkanin Perëndimor ka zbuluar se ekzistojnë rreziqe të konsiderueshme të kapjes së shtetit. **Presioni i kapjes së shtetit në rajon mbetet ende në nivele të larta.** Rezultatet tregojnë se asnjë nga vendet nuk është afër kapjes së plotë të shtetit, por ka cënime kritike në funksionimin e kontrolleve dhe të ekuilibrave demokratikë dhe ekonomikë.

Gjetete SCAD-it tregojnë praninë e fortë të **mundësuesve mjedisorë** siç janë organizatat publike jo-efektive, të cilave ju mungon integriteti, paanëshmëria dhe protokollat e fuqishme anti-korrupsion. Gjetjet, gjithashtu tregojnë simptoma aktuale të **presionit të kapjes së shtetit nga biznesi**, për shëmbull, monopolizimi që ndodh në nivel kombëtar, sektorial ose institucional. Presioni i monopolizimit është më i larti në Shqipëri dhe Kosovë.¹ Nivele të konsiderueshme janë regjistruar gjithashtu në Bosnjë dhe Hercegovinë, në Serbi, në Maqedoninë e Veriut dhe në Malin e Zi. SCAD-i tregon simptomat e zhvillimeve të tilla në sektorët kryesorë ekonomikë. Një nga këta sektorë është energjitika, për shkak të niveleve të larta të përqendrimit, mungesës së transparencës dhe strukturës joefikase të qeverisjes së ndërmarrjeve shtetërore si dhe të mungesës së mbikëqyrjes së duhur rregullatore.

Nivelet e presionit të kapjes së shtetit në rajon janë të larta*



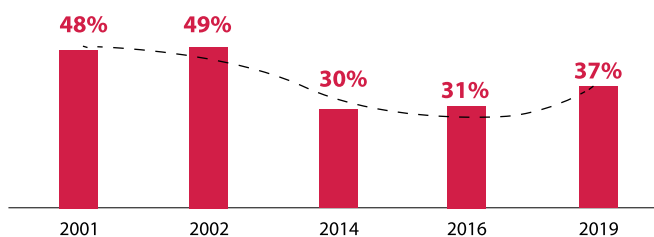
* Presioni i kapjes së shtetit të biznesit përqëndrohet në presionin e monopolizimit në nivelin kombëtar, sektorial ose institucional. Mundësuesit e kapjes së shtetit përfshijnë faktorë institucionalë dhe mjedisorë në nivel kombëtar.

Burimi: SELDI SCAD, 2020.

Shkalla në të cilën korrupsioni tolerohet nga publiku i gjerë është një tregues i rëndësishëm i progresit të integritetit të zyrave publike. Sistemi i Monitorimit të Korrupsionit (SMK) i SELDI-it, i cili mat format më të vogla të korrupsionit (ryshfeti), tregon se **pranueshmëria e korrupsionit mbetet relativisht e lartë** në Ballkanin Perëndimor. Bosnja dhe Hercegovina, Maqedonia e Veriut dhe Kosova shfaqin pranueshmëri më të lartë se pjesa tjetër. Kjo, gjithashtu korrespondon me nivele të caktuara të presionit të korrupsionit – shumica dërrmuese (82%) e qytetarëve në rajon, që besojnë se korrupsioni është i pranueshëm në parim, presin që t'u kërkohej ryshfet. Edhe më e rëndësishmja, më shumë se gjysma (62%) e atyre që nuk e pranojnë korrupsionin si normë ende mendojnë se ka të ngjarë të bëhen viktima të presionit të korrupsionit.

¹ Emërtimi "Kosova" nuk paragjykon pozicionet mbi statusin dhe është në përputhje me UNSCR 1244/1999 dhe Opinionin e Gjykatës Ndërkombëtare të Drejtësisë (ICJ) mbi deklaratën e pavarësisë së Kosovës.

Presioni i korrupsionit: pas një rënie të dukshme në mesin e viteve 2010, po rritet përsëri



Burimi: SELDI Sistemi i Monitorimit të Korrupsionit, 2019.

Gjetjet e SMK-së tregojnë se në krahasim me 2016-ën presioni i korrupsionit në vitin 2019 u rrit në katër nga gjashtë vendet e Ballkanit Perëndimor: Bosnja dhe Hercegovina, e ndjekur nga Mali i Zi, Kosova dhe Serbia. Vetëm Shqipëria dhe Maqedonia e Veriut kanë pësuar një rënie të lehtë të presionit të korrupsionit. Këto rezultate tregojnë se vendet nën presion politik më të lartë nga BE dhe me një qëllim të qartë afatshkurtër në horizontin e tyre të pranimit në BE, kanë shfaqur një performancë më të mirë.

Legjislacioni antikorrupsion

Në gamën e mjeteve ligjore antikorrupsion, vendet e BP kanë arritur përparimin më të madh në zhvillimin e akteve ligjore, duke përfshirë fusha të tilla si parandalimi i konfliktit të interesit, mbrojtja e denoncuesve dhe kërkesat për deklarimet e pasurive nga zyrtarët publikë. Në përgjithësi, ata kanë **adaptuar standardet ndërkombëtare të anti-korrupsionit** në legjislacionet e tyre kombëtare, duke përfshirë dispozitat për pjesën më të madhe të veprave të detyrueshme të korrupsionit sipas Konventës së Kombeve të Bashkuara Kundër Korrupsionit (UNCAC), si dhe për disa jo të detyrueshme.

Aktivizmi rregullator në Ballkanin Perëndimor nuk ishte rezultat i një mekanizmi reagues për efektivitetin e politikave, por më tepër një përgjigje ndaj **kërkesës në rritje për integritet në qeverisje**, që vjen nga publiku vendas dhe partnerët ndërkombëtarë. Detyra tani për qeveritë kombëtare është të gjurmojnë shfaqjet dhe format e korrupsionit duke ruajtur stabilitetin rregullator dhe shmangien e mbingarkesës së gjyqësorit me ndryshime të shpejta të ligjeve në fuqi.

Një rast në fjalë është **prokurimi publik**. Gjatë tre viteve të fundit, ligjet mbi prokurimin publik janë rishikuar shpesh, duke treguar që politikat po përpriqen të ndjekin praktikën e ndryshme të këqija. Në Ballkanin Perëndimor, prokurimi publik është një zonë e rrezikut të lartë të korrupsionit pasi përdoret jo vetëm për të prokuruar mallra dhe shërbime për përfitim publik, por shpesh për të transferuar fonde publike në xhepat privatë. Vlerësimi i SELDI-it për prokurimin publik në vendet e BP zbulon se ai është veçanërisht i ndikuar

negativisht nga faktorë të tillë si: tendera shpesh të hartuara për të favorizuar pjesëmarrës të veçantë në tendera, mbikëqyrja e dobët mbi pajtueshmërinë dhe zbatimin e kushteve të kontratës, përdorimi i tepruar i procedurave me negociim pa shpallje publike, një numër i madh tenderash me një ofertë të vetme, etj.

Institucione të specializuara antikorrupsion

Krijimi i institucioneve ekzekutive me kompetenca ekskluzive antikorrupsion në mjedisin e kapjes së shtetit të vendeve të Ballkanit Perëndimor u përball me një dilemë: **shumë pak kompetenca do t'i bënin ato të padobishme**, gjë që do të rrisë më tej mosbesimin e publikut ndaj qeverisë; **shumë kompetenca, dhe ata rrezikojnë të bëhen mjete për qëllime politike partizane**. Vendet në BP janë përpjekur ta zgjidhin këtë dilemë në mënyra të ndryshme. Në Kosovë, ekziston vetëm një Zyrë e Mirë-Qeverisjes me tetë persona brenda Zyrës së Kryeministrit të Kosovës, e cila monitoron hartimin dhe zbatimin e dokumenteve strategjike kundër korrupsionit. Në Shqipëri, gjithashtu nën autoritetin e Kryeministrit, ekziston një Koordinator Kombëtar kundër Korrupsionit. Në Serbi, angazhimi është më i hollësishëm: Agjencia Kundër Korrupsionit ka një detyrë mjaft të gjerë (monitorimi dhe bërja e politikave, zgjidhja e konfliktit të interesit, fillimi i ndryshimeve dhe miratimi i rregulloreve në fushën e anti-korrupsionit, koordinimi i organeve të tjera anti-korrupsion, etj.). Agjencia Malazeze për Parandalimin e Korrupsionit ka një mandat të gjerë të ngjajshëm - zbatimimi i masave për parandalimin e konfliktit të interesit, mbledhja dhe kontrolli i raporteve mbi pasuritë dhe të ardhurat e zyrtarëve publikë, marrja dhe veprimi i raporteve të sinjalizimit, etj. Në Bosnjë dhe Hercegovinë, për shkak të strukturës së saj komplekse, ka 14 organe antikorrupsion në të gjitha nivelet e qeverisë dhe të gjithë ata janë krijuar me vendim zyrtar të qeverive ose parlamenteve dhe kanë juridiksionet e tyre.

Integriteti i shërbimit civil

Reformat që synojnë rritjen e integritetit të administratës publike në vendet e BP, të nxitura kryesisht nga Bashkimi Evropian dhe premtimi i pranimit në BE, kanë sjellë si rezultat që **të gjitha vendet kanë miratuar ligje të shërbimit civil**. Ekzistojnë mekanizma të ndryshëm për parandalimin dhe luftimin e korrupsionit në radhët e nëpunësve civilë. Për shembull, në Bosnje dhe Hercegovinë këto çështje rregullohen nga ligje të shumta dhe autonome për secilin nga nivelet e specifikuar të qeverisjes. Në Kosovë, nga ana tjetër, nuk ka dispozita specifike antikorrupsion në ligjin për nëpunësit civilë, por vetëm në Kodin e Sjelljes së Nëpunësve Civilë dhe ligjin antikorrupsion. Sidoqoftë, **zbatimi i këtyre**

mekanizmave dhe politikave represive mbetet mjaft i dobët dhe pa efekt të prekshëm, duke krijuar kështu terren pjellor që sjellja joetike të bëhet e pranueshme. Në të gjitha vendet e BP, nëpunësit e lartë civilë dhe veçanërisht disa kategori të veçanta të nëpunësve civilë të punësuar në sektorë me rrezik të lartë korrupsioni (policia, administrata tatimore, doganat, etj.) janë të detyruar të raportojnë pasuritë dhe të ardhurat e tyre në institucionet kompetente. Sidoqoftë, institucionet e ngarkuara me kontrollin e aseteve dhe të ardhurave janë përqëndruar kryesisht në zyrtarë publikë të zgjedhur, në vend të nëpunësve civilë. Pothuajse në të gjitha vendet ekziston një problem me largimet nga puna që anulohen nga gjykatat, duke treguar mangësi në zbatimin e uljeve në detyrë ose shkarkimin e nëpunësve civilë.

Vënia në jetë e antikorrupsionit: sistemi gjyqësor

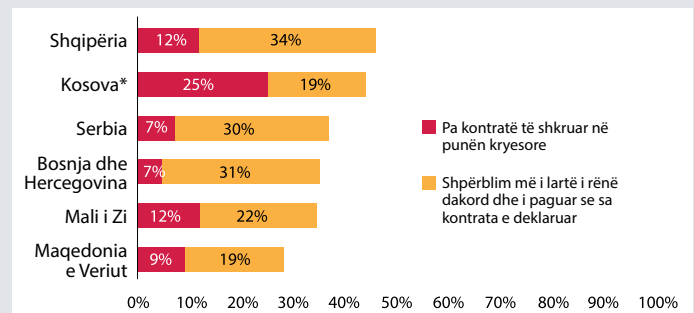
Megjithëse reformat gjyqësore kanë vazhduar për më shumë se një dekadë në të gjitha vendet e Ballkanit Perëndimor, ato **nuk kanë prodhuar progres të rëndësishëm**. Thelbi i këtyre reformave ka qenë i kufizuar në përmirësimin e kornizës legislative dhe çështjeve të tjera teknike, pasuar nga zbatimi dhe performanca e dobët, veçanërisht në lidhje me ndjekjet penale dhe dënimet efektive – **dënimet përfundimtare të zyrtarëve publikë** mbeten kryesisht në një shifër të vetme. Kjo është veçanërisht e vërtetë për rastet e korrupsionit të nivelit më të lartë, megjithëse përjashtimet kanë filluar të shfaqen. Ndarja e pushteteve dhe krijimi i një gjyqësori të pavarur pengohen nga **politizimi i gjyqësorit, ndikimet e padrejta dhe korrupsioni** – pushteti legjislativ dhe ekzekutiv ende ushtrojnë një ndikim të fortë në procesin e zgjedhjes së gjyqësorit dhe në shpërndarjen e buxhetit. Të gjitha këto çështje paraqesin pengesa të mëdha në rrugën e pranimin në BE të vendeve të Ballkanit Perëndimor. Mangësitë kryesore në qeverisjen dhe funksionimin e gjyqësorit përfshijnë:

- ndikimi i degëve legislative dhe ekzekutive në përzgjedhjen dhe ngritjen në detyrë të gjyqtarëve dhe të prokurorëve;
- organet që qeverisin gjyqësorin dhe prokurorinë nuk janë të ndara siç duhet;
- zbatimi i përgjegjësisë disiplinore dhe kodeve të etikës për gjyqtarët dhe prokurorët është akoma shumë i kufizuar;
- zyrrat e prokurorive publike u mungojnë burimet, veçanërisht ekspertiza në kriminalistikën financiare;
- strukturat manaxheriale janë të paqarta dhe kompetencat shpesh mbivendosen.

Antikorrupsioni në ekonomi: sektori informal

Një **sektor i rëndësishëm i ekonomisë informale** i lidhur ngushtë me korrupsionin vazhdon të shqetësojë Ballkanin Perëndimor. Prania e këtij sektori mund t'i atribuohet një numri të madh shkaqesh, të tilla si morali i ulët tatimor; mjedis i dobët i biznesit dhe nivelet shumë të larta të varfërisë; mungesa e besimit në institucionet e qeverisë dhe perceptimi i lartë i korrupsionit; taksimi dhe kostot e larta para-fiskale, paralelisht me politikën tatimore tepër shtrënguese; inspektime dhe kontrole të pamjaftueshme; burokraci, sistemi i pagesave të rënda të ndërprerjeve të marrëdhënieve të punës dhe ndryshimet e shpeshta të legjislacionit.

Punëtorët pa kontratë të shkruar në punën kryesore ose që marrin shpërblim më shumë se sa deklarohet (2019, në %)



Burimi: SELDI Sistemi i Monitorimit të Korrupsionit / Sistemi i Monitorimit të Ekonomisë Informale, 2020.

Toleranca e lartë ndaj evazionit të kontributeve tatimore dhe të sigurimeve shoqërore është kultivuar në Ballkanin Perëndimor për shkak të perceptimit se autoritetet tatimore, dhe në përgjithësi sistemi publik janë të korruptuar. Sipas 45.7% të bizneseve në Maqedoninë e Veriut dhe 72.9% në Shqipëri, korrupsioni është faktori më i rëndësishëm për ekzistencën e ekonomisë informale. Kjo e bën publikun të besojë se taksat nuk përdoren si duhet për ofrimin e shërbimeve më të mira publike.

Politikë-bërësit e Ballkanit Perëndimor kanë ndërmarrë hapa për të nxitur **përdorimin e detyrueshëm të kontratave të shkruara** në punën kryesore, por përpjekjet e tyre kanë mbetur kryesisht të pasuksesshme, pasi nivelet e përgjithshme të ekonomisë informale vazhdojnë të rriten. Kjo është për shkak të mënyrave të shumta alternative të shmangies së pagesës së kontributeve shëndetësore dhe shoqërore, të tilla si nëndeklarimi i shumës së pagës së marrë, ose mosdeklarimi i punëve dytësore ose me kohë të pjesshme.

Roli i shoqërisë civile

Në të gjithë Ballkanin Perëndimor, **organizatat e shoqërisë civile (OSHC) kanë rritur ekspertizën dhe aftësinë e tyre** për të përdorur këtë ekspertizë në një sërë kontributesh në agjendën antikorrupsion. Ndikimi i tyre kundër korrupsionit arrihet përmes një larmie mjetesësh – inicimi i ndryshimeve legjislative dhe standardeve për praktikën e mira për të rritur transparencën, llogaridhënien dhe integritetin e ndërmarrjeve publike dhe rritjen e kapacitetit të biznesit privat për të parandaluar dhe luftuar korrupsionin.

Duke pasur parasysh rolin e tyre aktiv në promovimin e integritetit të zyrës publike, është akoma më e përshtatshme që **OSHC-të të mbahen sipas standardeve më të larta të transparencës dhe llogaridhënies**. Në përgjithësi, ndërsa një numër në rritje i OSHC-ve avokojnë për mirëqeverisjen, ka pak përparim në marrjen e hapave për t'u bërë vetëmë transparente. Një masë e qartë e kësaj është numri i ulët i OSHC-ve që publikojnë në Internet raporte vjetore. Në disa vende (p.sh., në Bosnje dhe Hercegovinë), nuk ka ndonjë kërkesë specifike për OSHC-të që të publikojnë raporte operacionale dhe financiare - ligji kërkon që ato të jenë «transparente» pa përcaktuar ndonjë specifikë. Në praktikë, vetëm OSHC-të që aplikojnë për fonde të qeverive janë të detyruara të sigurojnë rregullisht raporte.

Rruga përpara: katalizimi i antikorrupsionit në Ballkanin Perëndimor

Përparimi i ngadaltë dhe i papërfillshëm i antikorrupsionit ka lejuar që interesat private të marrin një kontroll mbi qeveritë e Ballkanit Perëndimor duke rezultuar në kapjen e shtetit. Lirimi i qeverisjes nga ky kontroll mund të arrihet vetëm nga një aleancë e palëve të interesuara që veprojnë në bashkëpunim: **politikëbërës me mendje-reformuese, shoqëri civile dhe partnerë ndërkombëtarë**, kryesori ndërmjet të cilëve Bashkimi Evropian.

Në nivel kombëtar, është e nevojshme që organet publike në Ballkanin Perëndimor të krijojnë **procedura për ndjekjen penale efektive** të politikanëve të korruptuar të nivelit të lartë dhe nëpunësve të lartë civilë. Analiza e të dhënave të SCAD sugjeron që një përparësi kryesore duhet të jetë ruajtja dhe monitorimi i pavarësisë dhe performancës së gjyqësorit. Ndikimi i degëve legjislative dhe ekzekutive në përzgjedhjen dhe ngritjen në detyrë të gjyqtarëve dhe prokurorëve duhet normalisht të përjashtohet ose minimizohet. Vendet ku shumica e organeve të vetëqeverisjes gjyqësore nuk zgjidhen midis gjyqtarëve dhe nga gjyqtarët, duhet të miratojnë reforma duke rritur fuqinë e tyre të votimit.

Një **ekuilibër i duhur midis parandalimit dhe shtypjes** është veçanërisht i rëndësishëm për t'u arritur kur kërkohet të zvogëlohet madhësia e ekonomisë informale dhe ndikimi i saj në korrupsion. Qeveritë duhet të identifikojnë stimujt që nxisin punëdhënësit dhe punonjësit të angazhohen në aktivitete informale të biznesit; këto më pas do të faktorizoheshin gjatë hartimit të reformave për përmirësimin e mjedisit të biznesit, politikës tatimore dhe të cilësisë së shërbimeve publike.

Një çështje kritike për të siguruar që qeveritë të mbajnë përgjegjësi është **transparenca e pronësisë së medias**, pavarësia e redaksisë dhe ruajtja e lirisë së medias nga ndërhyrjet politike. Një fokus i veçantë në përpjekjet e qeverive duhet të jetë shmangia e kapjes së shoqërisë civile, përmirësimi i qeverisjes së ndërmarrjeve shtetërore dhe menaxhimi transparent i projekteve të investimeve në shkallë të gjerë.

Përparimi i cilësisë së qeverisjes publike në vendet e Ballkanit Perëndimor tani është i lidhur ngushtë me procesin e integritetit të tyre në Bashkimin Evropian. Kushtet themelore, të cilat ndikojnë në reformat e integritetit, janë të ndryshme në secilin vend, duke e bërë BE-në faktorin rajonal stabilizues për këto reforma.

Që strategjia e saj e zgjerimit ta lejojë atë të vazhdojë të jetë një faktor i tillë, **BE ka nevojë për një angazhim politik** më aktiv me vendet e Ballkanit Perëndimor, duke u siguruar atyre një perspektivë të qartë për të ardhmen. Sidoqoftë, angazhimi më i fortë do të duhet të ruhet nga disa pasoja të padëshiruara, të cilat mund ta bëjnë atë joproduktiv. Do të ishte e nevojshme për t'u siguruar që përfitimet e integritetit më të afërt ekonomik me Unionin, nuk i takojnë ekskluzivisht një klike të vogël oligarkësh të privilegjuar, duke përkeqësuar kështu më tej kapjen e shtetit të biznesit. Kushtëzimet e lidhura me anëtarësimin mbi integritetin e qeverive duhet të shoqërohen paralelisht nga kërkesa publike lokale po aq e fortë për llogaridhënien, që aktorët politikë dominues të mos e zgjedhin të parin si një justifikim për të [diskredituar / shpërfillur] të dytën. Gjithashtu, angazhimi në arenën diplomatike me politikanët dhe zyrtarët e lartë të qeverisë do të duhet të kryhet në një mënyrë që të mos krijojë përshtypjen e mbështetjes politike. Efekti i përgjithshëm i këtij procesi duhet të jetë përballimi dhe **neutralizimi i efekteve të dëmshme të ndikimit autoritar** në rajon.

Bashkimi Evropian tani ka forcuar modifikimet e sjelljes gjatë procesit të zgjerimit duke futur kushtëzim negativ dhe pozitiv dhe duke përfshirë mundësi të tilla si **pezullimi i negociatave dhe ngrirja e fondeve**. SELDI mirëpret përfshirjen në qasjen e BE-së për antikorrupsionin në kontekstin e pranimit të disa prej rekomandimeve të mëparshme të SELDI-it, duke

përfshirë integrimin e antikorrupsionit në një gamë më të gjerë të politikave dhe jo vetëm në institucionet antikorrupsion dhe gjyqësorin dhe mbrojtjen e marrëdhënieve të rëndësishme KE–shoqëri civile, përfshirë mbështetjen e tyre financiare nga ankthi i të papriturave. Akoma, përparësia e axhendës së sundimit të ligjit për përparimin në çdo fushë tjetër të zhvillimit të Ballkanit Perëndimor duhet të theksohet më tej, veçanërisht nëpërmjet zgjerimit të gamës së aktorëve të përfshirë në monitorimin dhe nëavokimin për reformat e qeverisjes së mirë. Vetëm një **koalicion publik-privat** që përfshin të dyja institucionet, edhe aktorët e BE-së dhe institucionet lokale publike dhe private si dhe individët do të ishin në gjendje të sigurojnë premisën e zhvillimeve pozitive antikorrupsion, d.m.th., pakthyeshmërinë e tyre.

Asistenca antikorrupsion e BE-së – si teknike ashtu edhe financiare - për Ballkanin Perëndimor duhet të sigurohet në sinkron me mesazhet e politikës së përgjithshme të BE-së. Kjo është ajo që pritet tani nga Instrumenti i Asistencës së Para-Anëtarësimit (IPA) III. Duke patur parasysh gjetjet e vlerësimit SCAD të SELDI-it për intensitetin e kapjes së shtetit në rajon, **fondet e BE-së duhet të përfshijnë parimin *primum non no cere* (së pari, mos bëj dëm)**. Me fjalë të tjera, ajo duhet të sigurojë që ajo të mos bëhet joproductive duke forcuar rrjetet klienteliste të politikanëve të korruptuar dhe të bizneseve të privileguara që marrin pjesën më të madhe të prokurimeve të financuara nga BE.

BE duhet të vazhdojë të monitorojë zhvillimet antikorrupsion në partneritet me shoqërinë civile në rajon. Mekanizmat e pavarur të monitorimit të korrupsionit dhe antikorrupsionit janë të nevojshëm në të gjitha nivelet – nga vlerësimi i politikave të riskut të korrupsionit në leximin e provave të legjislacionit kryesor dhe analizimi i efikasitetit të procedurave të brendshme antikorrupsion në institucionet individuale publike. Duke ndihmuar vendet të merren me këto të fundit, BE do të këshillohej mirë nëse do të përfshinte **instrumente novatore analitike** për të drejtuar politikën e saj, të tilla si ato të pilotuara nga SELDI:

- Instrumenti i *Monitorimit të Zbatimit të Politikave Antikorrupsion* (MACPI), i cili vlerëson rezistencën e korrupsionit të institucioneve dhe identifikon politikën antikorrupsion dhe boshllëqet e zbatimit; dhe
- *Diagnostikimi i Vlerësimit të Kapjes së Shtetit* i cili ndihmon në identifikimin e dobësive të kapjes së shtetit.

Komisioni Evropian do të duhet t'i kushtojë vëmendje të veçantë ruajtjes së konkurrencës në **sektorë me presion të lartë të monopolizimit** gjatë zbatimit të planit të investimeve për rajonin. Mbështetja teknike, këshillat e politikave dhe fondet e BE duhet të drejtohen

drejt përpjekjeve antikorrupsion dhe antimonopol të përqendruara në sektorë kritikë, siç janë **energja, infrastruktura, bankat dhe tele-komunikacioni**. Shtirja e **misioneve këshillimore** në të gjithë Ballkanin Perëndimor do të përfitojë gjithashtu nga kryerja e vlerësimeve të sundimit të ligjit; megjithatë, rekomandohet që në vlerësimin profesional të rasteve, të përfshihen **ekspertë të shoqërisë civile**. Komisioni Evropian dhe Delegacionet lokale të BE-së duhet të punojnë së bashku me palët e interesit lokal për të vendosur procedurat për monitorimin e rregullt të gjykimit të rasteve të korrupsionit, si dhe monitorimin e progresit të reformave gjyqësore.



BOSNIA AND HERZEGOVINA

IZVRŠNI SAŽETAK

U posljednje dvije decenije su zemlje Zapadnog Balkana prošle kroz značajnu političku društvenu i ekonomsku tranziciju. Međutim i dalje postoji nekoliko važnih neriješenih izazova, a takav je, između ostalog, integritet javne uprave. Općenito, pitanja vladavine zakona i antikorupcije su sada u središtu najvažnijeg političkog projekta na Zapadnom Balkanu – njegova integracija u istaknutu evropsku organizaciju, Evropsku uniju.

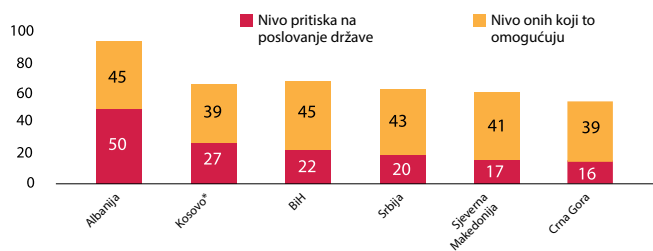
SELDI-ev doprinos antikorupcijskoj agendi na Zapadnom Balkanu je i poseban i djelotvoran u nastojanju da poveže monitoring, analize i preporuke za politike. U *Regionalnom izvještaju o borbi protiv korupcije za 2020.* istražuje se zakonodavni okvir i razvoj u praksi institucija države – izvršna vlast, zakonodavna vlast i pravosuđe. Namjera procjene regulatornih i institucionalnih faktora koji omogućavaju korupciju u regionu nije da se pruži svojevrsni sveobuhvatni popis faktora, nego da se istaknu određena prioritetna pitanja koja su relevantna za potencijalne aktivnosti u određivanju zajedničkih izvora korupcije. U izvještaju se nudi model izvještavanja o napretku u oblasti antikorupcije od strane civilnog društva Zapadnog Balkana.

Dinamika korupcije

Alatka SELDI-evog monitoringa pruža podatke u vezi promjena u stvarnom širenju dva tipa korupcije – administrativne korupcije (mito) koja pogađa pojedince i poslovne kompanije, i zarobljenost države (velika korupcija) koja pogađa funkcionisanje demokratskih institucija i odlučivanje vlasti. U pogledu ovog posljednjeg, primjenom *SELDI-evog alata za dijagnostiku procjene zarobljenosti države (SCAD)* na Zapadnom Balkanu otkrilo se da postoje značajni rizici zarobljene države. **Pritisak zarobljenosti države** u regionu i dalje je na visokim razinama. Rezultati pokazuju da niti jedna zemlja nije blizu potpune zarobljenosti države, ali postoje kritična oštećenja u funkcionisanju demokratskog i ekonomskog sistema teže i protuteže.

Nalazi SCAD-a ukazuju na prisustvo snažnih **okolišnih omogućavajućih faktora** poput neefektivnih javnih organizacija kojima nedostaju integritet, nepristrasnost, i robusni antikorupcijski protokoli. Nalazi pokazuju i stvarne simptome **pritiska korporativne zarobljenosti države**, odnosno monopolizacije koja se događa na državnom, sektorskom i institucijskom nivou. Pritisak monopolizacije je najveći u Albaniji i na Kosovu.¹ Značajni nivoi su zabilježeni i u BiH, Srbiji, Sjevernoj Makedoniji te u Crnoj Gori. SCAD pokazuje i simptome takvih razvoja događaja u ključnim ekonomskim sektorima. Jedan takav sektor je energetski, zbog njegovih visokih nivoa koncentracije, nedostatka transparentnosti i neefikasne strukture korporativnog upravljanja državnim preduzećima, te nedostatka adekvatnog regulatornog nadzora.

Nivoi pritiska zarobljenosti države u regionu su visoki*



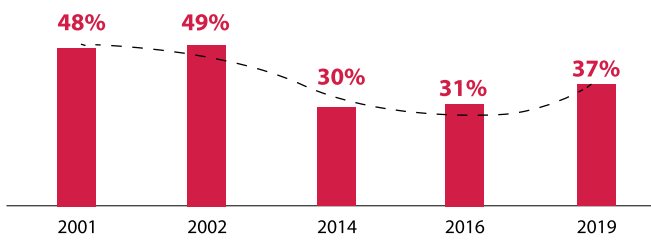
* Pritisak korporativne zarobljenosti države je usredotočen na pritisak monopolizacije na nacionalnom, sektorskom ili institucionalnom nivou. Omogućivači zarobljenosti države obuhvataju institucionalne i okolišne faktore na nacionalnom nivou.

Izvor: SELDI SCAD, 2020.

Stepen do kog generalna javnost toleriše korupciju važna je indikacija napretka u integritetu javne funkcije. SELDI-ev sistem monitoringa korupcije (Corruption System Monitoring CSM, kojim se mjere sitniji oblici korupcije (mito), pokazuje da je **prihvatljivost korupcije** i dalje **relativno visoka** na Zapadnom Balkanu. Bosna i Hercegovina, Sjeverna Makedonija i Kosovo pokazuju viši stepen prihvatljivosti nego ostale zemlje. To odgovara i određenim nivoima koruptivnog pritiska – velika većina (82%) ljudi u regionu koji vjeruju da je korupcija prihvatljiva u principu očekuju da se od njih traži mito. Još važnije je da više od polovine (62%) onih koji ne prihvataju korupciju kao normu još uvijek razmišlja na način da je vjerovatno da će postati žrtve koruptivnog pritiska.

¹ Naziv "Kosovo" je bez predrasude prema položaju i statusu i u skladu je s UNSCR 1244/1999 i mišljenjem Međunarodnog suda o proglašenju nezavisnosti Kosova.

Koruptivni pritisak: nakon vidljivog pada tokom 2010-tih, koruptivni pritisak je opet u porastu



Izvor: SELDI-ev sistem praćenja korupcije, 2019.

Nalazi CMS-a pokazuju da se u poređenju s 2016. koruptivni pritisak u 2019. povećao u četiri od šest zemalja Zapadnog Balkana: u Bosni i Hercegovini, zatim slijedi Crna Gora, Kosovo i Srbija. Samo su Albanija i Sjeverna Makedonija imale marginalno smanjenje koruptivnog pritiska. Ovi rezultati ukazuju da zemlje bolje rade pod povećanim pritiskom EU i uz jasan kratkoročni cilj na putu ka pridruživanju EU.

Antikorupcijski zakoni

U domenu pravnih antikorupcijskih sredstava su zemlje Zapadnog Balkana ostvarile najveći napredak u razvoju svojih zakonskih propisa, uključujući i oblasti poput sprečavanja sukoba interesa, zaštite zviždača te obaveze javnih zvaničnika koja se odnosi na izjavu o imovini. Svekupno, zemlje su u svoje nacionalne zakone **usvojile međunarodne antikorupcijske standarde**, uključujući odredbe u vezi obaveznih korupcijskih prekršaja u okviru Konvencije Ujedinjenih nacija protiv korupcije, te nekih neobaveznih.

Regulatorni aktivizam na Zapadnom Balkanu nije bio rezultat mehanizma povratnih informacija o učinkovitosti politika nego odgovor na **rastuće zahtijevanje integriteta** u upravljanju, koje je dolazilo od domaće javnosti i međunarodnih partnera. Sada je zadatak nacionalnih vlada da budu u koraku s promjenjivim manifestacijama i oblicima korupcije dok u isto vrijeme rade da održe regulatornu stabilnost i izbjegnu obasipanje pravosuđa rapidnim izmjenama važećih zakona.

Izrazit slučaj su **javne nabavke**. Tokom posljednje tri godine su zakoni o javnim nabavkama često revidirani, što ukazuje na to da se pokušava postići da politike prate razne zlupotrebe. Javne nabavke na Zapadnom Balkanu su oblast s povećanim koruptivnim rizikom, jer se koriste ne samo za nabavku roba i usluga koje su od javne koristi nego često i za transfer javnih sredstava u privatne džepove. SELDI-eva procjena oblasti javnih nabavki u zemljama Zapadnog Balkana razotkriva da je oblast posebno negativno pogođena faktorima kao što su: tenderi su često osmišljeni da favoriziraju određene ponuđače, slaba kontrola poštivanja zakona

i provođenja uslova ugovora, prekomjerna upotreba pregovaračkog postupka, veliki broj tendera sa samo jednim ponuđačem, itd.

Specijalizovane institucije protiv korupcije

Uspostava izvršnih institucija sa isključivo antikorupcijskim nadležnostima u okruženju zarobljene države u zemljama Zapadnog Balkana suočila se sa dilemom: **pre mali broj ovlaštenja učinio bi ih nekorisnim**, što bi dalje povećalo nepovjerenje javnosti u vlasti; a **u slučaju prevelikog broja, postoji rizik da postanu sredstvo stranačkih političkih ciljeva**. Zemlje na Zapadnom Balkanu su na različite načine nastojale riješiti ovu dilemu. Na Kosovu postoji samo jedna Kancelarija (od osam ljudi) za dobro upravljanje pri kabinetu premijera Kosova, i koja nadgleda izradu i implementaciju strateških dokumenata protiv korupcije. U Albaniji, također u okviru nadležnosti premijera, postoji Nacionalni koordinator za borbu protiv korupcije. U Srbiji je takav aranžman razrađeniji: Agencija za borbu protiv korupcije ima prilično široku nadležnost (monitoring i donošenje politika, rješavanje sukoba interesa, iniciranje izmjena i usvajanja regulativa u oblasti antikorupcije, koordinacija s drugim antikorupcijskim tijelima, itd.). Crnogorska agencija za prevenciju korupcije ima sličan širok mandat – implementacija mjera za sprečavanje sukoba interesa, prikupljanje i provjera prijava o imovini i prihodima javnih službenika, zaprimanje i djelovanje po prijavama zviždača, itd. U BiH, zbog njenog složenog ustroja, postoji 14 antikorupcijskih tijela na svim nivoima vlasti i sva tijela su uspostavljena formalnom odlukom vlada ili parlamenata i imaju svoje nadležnosti.

Integritet državne službe

Reforme koje su usmjerene na jačanje integriteta javne administracije u zemljama Zapadnog Balkana, i koje su uglavnom potaknute od strane Evropske unije i obećanjem o pridruživanju EU, rezultirale su time da su **sve zemlje usvojile zakone o državnoj službi**. Postoje razni mehanizmi za sprečavanje i borbu protiv korupcije među državnim službenicima. Na primjer, u BiH se takva pitanja regulišu u mnogim i autonomnim zakonima za svaki specifični nivo vlasti. Na Kosovu, s druge strane, u zakonu o državnim službenicima, ne postoje specifične antikorupcijske odredbe već se nalaze samo u Kodeksu ponašanja državnih službenika i u zakonu o borbi protiv korupcije. Međutim, **implementacija** ovih mehanizama i represivne politike **i dalje su slabe** i bez vidljivog efekta, zbog čega se stvara plodno tlo da neetičko ponašanje postane prihvatljivo. U svim zemljama Zapadnog Balkana, visoki državni službenici

i posebno neke specijalne kategorije državnih službenika zaposlenih u sektorima s visokim korupcijskim rizikom (policija, porezna uprava, carina, itd.), su obavezni nadležnim institucijama prijaviti svoju imovinu i prihode. Međutim, institucije zadužene za kontrolu imovine i prihoda su **uglavnom fokusirane na izabrane javne službenike**, a ne na državne službenike. U gotovo svim zemljama postoji problem s razrješenjima koja sudovi poništavaju, što ukazuje na nedostatke u provedbi zagarantovanog oduzimanja položaja (demoicije) ili razrješenja državnih službenika.

Provedba borbe protiv korupcije: pravosuđe

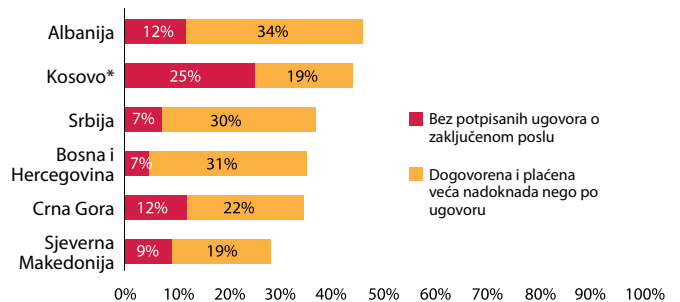
Iako se pravosudne reforme u zemljama na Zapadnom Balkanu provode već duže od deset godina, zemlje **nisu proizvele značajan napredak** u ovoj oblasti. Suština tih reformi je ograničena na poboljšanje zakonodavnog okvira i druga tehnička pitanja, praćena lošom implementacijom i učinkovitošću, posebno u pogledu efektivnog krivičnog gonjenja i presuda – **konačne presude javnim službenicima** i dalje su uglavnom **predstavljene jednocifrenim brojkama**. To je posebno istinito u slučajevima korupcije na višim nivoima, iako su izuzeci počeli da se pojavljuju. Razdvajanje ovlaštenja i stvaranje nezavisnog pravosuđa onemogućuje **politizacija pravosuđa, nedopušteni uticaj i korupcija** – zakonodavna i izvršna vlast i dalje vrši jak uticaj na proces izbora u pravosuđu i dodjelu budžetskih sredstava. Sva ova pitanja predstavljaju ozbiljne prepreke na putu zemalja Zapadnog Balkana u EU. Glavni nedostaci u upravljanju pravosuđem i u njegovom funkcionisanju uključuju:

- Uticaj zakonodavne i izvršne vlasti na odabir i unapređenje sudija i tužilaca;
- Tijela koja upravljaju pravosuđem i tužilaštvom nisu na odgovarajući način razdvojena;
- Provođenje disciplinske odgovornosti i etičkog kodeksa za sudije i tužioce je i dalje vrlo ograničeno;
- Tužilaštvu i dalje nedostaju resursi, posebno eksperita u oblasti finansijske forenzike;
- Upravljačke strukture su nejasne i nadležnosti se često preklapaju.

Borba protiv ekonomske korupcije: skriveni sektor

Značajan **skriveni sektor privrede usko povezan s korupcijom** nastavlja harati Zapadnim Balkanom. Prisustvo ovog sektora moglo bi se pripisati obilju slučajeva, poput niskog poreznog morala, lošeg poslovnog okruženja i veoma visokog siromaštva, nedostatka povjerenja u institucije vlasti i visoke percepcije korupcije, visokog oporezivanja i parafiskalnih troškova, paralelno s pretjerano prisilnom poreskom politikom, nedovoljnim inspekcijama i revizijama, birokratijom, opterećujućim sistemom otpremnina, te učestalim izmjenama zakona.

Radnici bez pismenog ugovora na glavnom radnom mjestu ili koji primaju veće od deklariranih naknada (2019. g. u %)



Izvor: SELDI-ev sistem monitoringa korupcije/sistem monitoringa skrivene ekonomije, 2020.

Visoka tolerancija prema izbjegavanju plaćanja poreza i socijalnih doprinosa se na Zapadnom Balkanu gaji zbog percepcije da su porezne vlasti i generalno javni sistem korumpirani. Prema mišljenju 45,7% kompanija u Sjevernoj Makedoniji i 72,9% u Albaniji, korupcija je najvažniji faktor u postojanju skrivene ekonomije. Ovo vodi ka tome da javnost vjeruje da se porezi ne iskorištavaju za pružanje boljih javnih usluga.

Donosici odluka na Zapadnom Balkanu poduzeli su korake ka uvođenju **obaveznog korištenja pismenih ugovora o radu** na radnom mjestu, ali su takvi napori uglavnom ostali bezuspješni, dok je sveukupni nivo skrivene ekonomije u porastu. To je zbog višestrukih alternativnih načina za izbjegavanje plaćanja zdravstvenih i socijalnih doprinosa, kao što je prikazivanje nižih iznosa primljene plate, ili nedeklarisanje sekundarnog zaposlenja ili zaposlenja sa skraćenim radnim vremenom.

Uloga civilnog društva

Širom Zapadnog Balkana su **organizacije civilnog društva (OCD) povećale i svoje znanje i sposobnost** da koriste ekspertizu u pružanju doprinosa agendi borbe protiv korupcije. Njihov antikorupcijski uticaj se ostvaruje putem velikog broja sredstava – iniciranje izmjena zakona i mjerila dobrih praksi u cilju povećanja transparentnosti, odgovornosti i integriteta javnih preduzeća, te povećanje kapaciteta privatnih kompanija da rade na prevenciji i borbi protiv korupcije.

S obzirom na njihovu aktivnu ulogu u promovisanju integriteta javne funkcije, to je tim više prikladno da se **OCD trebaju držati najviših standarda transparentnosti i odgovornosti**. Sveukupno, dok sve veći broj OCD zagovara dobro upravljanje, postoji mali napredak u poduzimanju koraka da same sebe učine transparentnim. Jasna mjera ovog je mali broj OCD koje online objavljuju svoje godišnje izvještaje. U nekim zemljama (npr. u BiH), ne postoji specifična obaveza OCD da objavljuju svoje operative i finansijske izvještaje – zakon ih obavezuje da budu „transparentne“ bez definisanja specifičnosti toga. U praksi, OCD koje apliciraju za javna sredstva imaju obavezu redovnog izvještavanja.

Put naprijed: katalizacija borbe protiv korupcije na Zapadnom Balkanu

Spor i nestalan napredak u borbi protiv korupcije omogućila je privatnim interesima da utiču na vlasti zemalja Zapadnog Balkana što rezultira stanjem zarobljene države. Oslobođanje upravljanja iz takvog jednog stiska se može postići samo kroz zajedničko djelovanje saveza aktera: **reformski nastrojeni donosioci politika, civilno društvo i međunarodni partneri**, gdje je glavni voditelj Evropska unija.

Na nacionalnom nivou je neophodno da javna tijela na Zapadnom Balkanu uspostave **procedure za efektivno procesuiranje** korumpiranih visokih političara i visokih državnih službenika. Analiza podataka iz SDAC sugerise da bi ključni prioritet trebao biti zaštita i praćenje nezavisnosti pravosuđa i njegovog rada. Uticaj zakonodavne i izvršne vlasti u odabiru i unapređenju sudija i tužilaca bi trebalo normativno isključiti ili minimizirati. Zemlje u kojima se većina pravosudnih samoupravnih tijela ne bira među sudijama i od strane sudija trebaju usvojiti reforme kojima će se povećati njihova glasačka moć.

Pravilna **ravnoteža između prevencije i represije** posebno je važna prilikom pokušaja da se smanji veličina skrivene ekonomije i njezin uticaj na korupciju. Vlade trebaju identifikovati šta je to što potiče poslodavce i uposlenike da se uključuju u neformalne poslovne

aktivnosti; to bi se zatim uzelo u obzir prilikom dizajniranja reformi za poboljšanje poslovnog okruženja, politike oporezivanja i kvalitete javnih usluga.

Pitanje od izuzetne važnosti u osiguravanju odgovornosti vlasti je **transparentnost vlasništva nad medijima**, nezavisnost redakcije (novinske kuće) i zaštita slobode medija od političkog uplitanja. Poseban fokus u aktivnostima vlasti bi trebao biti na izbjegavanju zarobljavanja civilnog društva, poboljšanju korporativnog upravljanja javnim preduzećima i na transparentnom upravljanju investicionim projektima velikih razmjera.

Unapređenje kvalitete javnog upravljanja u zemljama Zapadnog Balkana je sad usko povezano s procesom njihove integracije u Evropsku uniju. Temeljni uslovi koji utiču na reforme u integritetu se razlikuju od zemlje do zemlje, što čini da je EU regionalni stabilizirajući faktor za ove reforme.

Da bi se strategijom proširenja omogućilo da EU i dalje ostane takav faktor, **potrebno je da EU ima aktivniji politički angažman** u zemljama Zapadnog Balkana, dajući im jasnu perspektivu za budućnost. Snažniji angažman je međutim potreban da bi se zaštitilo od nekoliko neplaniranih posljedica koje bi takav angažman mogle učiniti kontraproduktivnim. Bilo bi potrebno osigurati da prednosti bliskije ekonomske integracije s Unijom ne budu na korist isključivo maloj grupi privilegovanih oligarha, čime bi se dodatno pogoršalo stanje korporativne zarobljenosti države.

Uslovljenost članstva integritetom vlasti treba pratiti jednako snažna javno zahtijevanje odgovornosti, kako dominantni politički akteri ne bi odabrali ovo prethodno kao izgovor za [diskreditaciju/zanemarivanje] ovog posljednjeg. Angažman u diplomatskoj areni s političarima i visokim zvaničnicima u vlasti bi se također trebao izvršiti na način da se ne stvara utisak da se istima pruža politička podrška. Svekupni efekat ovog procesa bi trebao biti suprostavljanje i **neutralizacija štetnih efekata autoritarnog uticaja** u regionu.

Evropska unija je sada ojačala mogućnost procesa proširenja uvođenjem negativne i pozitivne uslovljenosti i uključivanjem opcija poput **suspenzije pregovara i zamrzavanja sredstava**. SELDI pozdravlja uvrštavanje nekih SELDI-evih ranijih preporuka u pristup EU-a u borbi protiv korupcije u kontekstu pristupanja. To se odnosi na uključivanje borbe protiv korupcije u širi domen politika, ne samo u institucije zadužene za borbu protiv korupcije i pravosuđe, i zaštitu važnih odnosa između EU i civilnog društva, uključujući i njihovo finansijsko podupiranje i zaštitu od nečekivanih nepriklipa. Ipak, primat agende koja se odnosi na vladavinu zakona za napredak u svakom drugom području razvoja na Zapadnom Balkanu potrebno je dalje naglasiti,

posebno proširenjem grupe aktera uključenih u praćenje i zagovaranje reformi dobrog upravljanja. Samo bi **koalicija između javnog i privatnog**, koja obuhvata i institucije EU, i aktere, i lokalne javne i privatne institucije i pojedince, bila u stanju osigurati potpunu strukturu sačinjenu od pozitivnih antikorupcijskih događanja, odnosno njihove nepovratnosti.

Pomoć EU u oblasti borbe protiv korupcije – i tehnička i finansijska – za Zapadni Balkan se treba pružiti u sinhronizaciji sa generalnim porukama EU. To se sada očekuje od Instrumenta pretpristupne pomoći (IPA) III. S obzirom na nalaze SELDI-eve SCAD procjene intenziteta zarobljene države u regionu, **finansiranje od strane EU bi trebalo uvrstiti načelo** *primum non nocere* (**prvo, ne učiniti štetu**). Drugim riječima, potrebno je osigurati da finansiranje od strane EU ne postane kontraproduktivno zbog jačanja klijentelističkih mreža korumpiranih političara i privilegovanih kompanija koje primaju najveći udio nabavki koje finansira EU.

Potrebno je da EU nastavi pratiti razvoj događaja u oblasti borbe protiv korupcije u partnerstvu sa civilnim društvom u regionu. Nezavisni mehanizmi za monitoring korupcije i antikorupcije su potrebni na svim nivoima – od procjene rizika korupcije za neku politiku do korekture ključnih zakona i analiziranja efikasnosti internih antikorupcijskih procedura u pojedinačnim javnim institucijama.

U pružanju pomoći zemljama u njihovim naporima da se bave ovim posljednjim, dobar savjet Evropskoj uniji bi bio da **uvrsti inovativne analitičke instrumente** u vođenje svojih politika, poput onih kojima je upravljao SELDI:

- *Alat za praćenje implementacije antikorupcijske politike (MACPI)* kojim se procjenjuje otpornost institucija na korupciju te identifikuje antikorupcijska politika i nedostaci u provedbi; i
- *Dijagnostika procjene zarobljenosti države* kojom se pomaže u identifikaciji osjetljivosti zarobljenosti države.

Evropska komisija bi prilikom implementacije svog investicionog plana za regiju trebala obratiti posebnu pažnju na zaštitu konkurentnosti u **sektorima gdje postoji visoki pritisak monopolizacije**.

Tehnička podrška, savjet u oblasti javnih politika, te finansiranje od strane EU bi se trebalo usmjeriti na aktivnosti borbe protiv korupcije i monopola s fokusom na kritične sektore, poput sektora **energetike, infrastrukture, sektora bankarstva i telekomunikacija**. Proširenje **savjetodavnih misija** na čitav Zapadni Balkan će doprinijeti u provedbi procjena vladavine zakona;

međutim, preporučuje se da svaki pregled **uključi stručnjake iz reda civilnog društva**. Evropska komisija i lokalne delegacije EU trebale bi raditi zajedno sa lokalnim akterima na uspostavljanju procedura za redovni probni monitoring korupcijskih slučajeva te monitoring napretka pravosudnih reformi.



MONTENEGRO

IZVRŠNI SAŽETAK

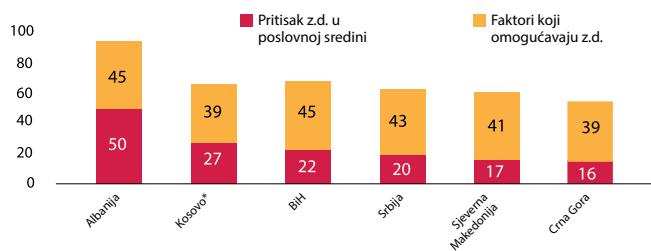
Tokom prethodne dvije decenije, zemlje Zapadnog Balkana su podlegle značajnim političkim, društvenim i ekonomskim promjenama. Međutim, izazovi sa kojima se region suočava su i danas prisutni, među kojima je i ključno pitanje integriteta javne uprave. Pitanje vladavinine prava, u opštem smislu, kao i borbe protiv korupcije, u užem smislu, nalaze se u središtu najuticajnijeg projekta na području Zapadnog Balkana – projekta integracije regiona u najistaknutiju evropsku organizaciju, Evropsku uniju. Doprinos SELDI mreže (Liderstvo za razvoj i integritet Jugoistočne Evrope) borbi protiv korupcije na Zapadnom Balkanu sastoji se od odabranih i izvodljivih mjera, koje za cilj imaju spajanje monitoringa, analiza i preporuka u oblasti javnih politika. Regionalni izvještaj o borbi protiv korupcije iz 2020. godine sagledava pravni okvir i promjene u djelovanju državnih institucija – izvršne, zakonodavne i sudske vlasti. Procjena regulatornih i institucionalnih faktora koji omogućavaju korupciju u regionu nema za cilj da služi kao sveobuhvatni inventar navedenih faktora, već da naglasi prioriteta pitanja u kontekstu suočavanja sa uobičajenim uzrocima korupcije. Izvještaj predlaže model za izvještavanje o napretku u borbi protiv korupcije od strane organizacija civilnog društva na Zapadnom Balkanu.

Dinamika korupcije

Alati za monitoring koje koristi SELDI mreža omogućavaju sakupljanje podataka o promjenama u dinamici širenja dvije uobičajene vrste korupcije – administrativne korupcije (mito), koja utiče na pojedince i preduzeća, kao i zarobljavanje države (velika korupcija), koja utiče na funkcionisanje demokratskih institucija i na proces donošenja odluka unutar vlade. U odnosu na drugu stavku, primjena alata SELDI mreže *State Capture Assessment Diagnostics (SCAD)* – *Dijagnostika zarobljavanja države* na države Zapadnog Balkana ukazala je na značajne rizike u okviru pitanja zarobljavanja države. **Pritisak zarobljavanja države** u regionu **ostaje visok**. Rezultati pokazuju da nijedna od zemalja u regionu nije blizu stanja potpune zarobljenosti države, ali očigledni su ključni nedostaci u funkcionisanju demokratije i u mehanizmima kontrole i ravnoteže u ekonomiji.

Nalazi SCAD alata ukazuju na prisustvo snažnih **faktora iz okruženja**, poput nedjelotvornih javnih institucija kojima nedostaje integritet, nepristrasnost i robustni protokoli za borbu protiv korupcije. Takođe, ukazuju na stvarne simptome **pritiska zarobljenosti države u poslovnoj sredini**, odnosno na prisustvo monopolizacije na nacionalnom, sektorskom i institucionalnom nivou. Pritisak monopolizacije je najizraženiji u Albaniji i na Kosovu.¹ Značajan je i u Bosni i Hercegovini, Srbiji, Sjevernoj Makedoniji i Crnoj Gori. SCAD alat ukazuje na simptome takve dinamike u ključnim sektorima ekonomije. Jedan od ovih sektora je i energetski, usljed visokog stepena koncentracije, manjka transparentnosti i neefikasnih struktura korporativnog upravljanja u državnim preduzećima, kao i nedostatka adekvatnog regulatornog nadzora.

Stepen pritiska zarobljenosti države (z.d. na grafiku) u regionu je visok*



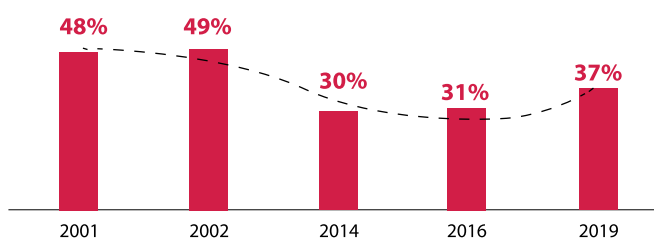
* Pritisak zarobljenosti države u poslovnoj sredini temelji se na pritisku monopolizacije na nacionalnom, sektorskom ili institucionalnom nivou. Faktori zarobljavanja države uključuju institucionalne i faktore iz okruženja na nacionalnom nivou.

Izvor: SELDI SCAD, 2020

Mjera u kojoj javnost toleriše korupciju važan je indikator napretka u oblasti integriteta vršenja javnih funkcija. SELDI Sistem za monitoring korupcije (CMS), koji mjeri sitnije oblike korupcije (mito), pokazuje da je **prihvatljivost korupcije na relativno visokom nivou** na Zapadnom Balkanu. Bosna i Hercegovina, Sjeverna Makedonija i Kosovo pokazuju veći stepen prihvatanja korupcije od ostalih zemalja regiona. Ovi nalazi korespondiraju sa nalazima o stepenu pritiska korupcije – dominantna većina (82%) ljudi u regionu koji smatraju da je korupcija prihvatljiva očekuju da će se od njih iznuđivati mito. Još je važnije pomenuti da više od polovine (62%) ispitanika iz grupe koja ne prihvata korupciju kao normu, ipak, smatra da će vjerovatno nekada biti žrtve pritiska korupcije.

¹ Ovaj natpis ne prejudicira status Kosova i u skladu je sa rezolucijom 1244/1999 i mišljenjem MSP-a o kosovskoj deklaraciji o nezavisnosti.

Pritisak korupcije: nakon osjetnog pada sredinom prethodne decenije, ponovo je u porastu



Izvor: SELDI Sistem za monitoring korupcije, 2019.

Nalazi CMS pokazuju da je, u odnosu na 2016. godinu, pritisak korupcije u 2019. godini porastao u četiri od šest zemalja Zapadnog Balkana: Bosni i Hercegovini, potom Crnoj Gori, na Kosovu i u Srbiji. Jedino su Albanija i Sjeverna Makedonija zabilježile marginalni pad pritiska korupcije. Ovi rezultati pokazuju da su zemlje pod većim političkim pritiskom od zemalja EU, i ukazuju na jasnu potrebu za ostvarenjem kratkoročnog cilja popravljajući učinka u kontekstu perspektive približavanja EU.

Zakonodavstvo u oblasti borbe protiv korupcije

U kontekstu pravnih alata za borbu protiv korupcije, zemlje Zapadnog Balkana su najveći napredak ostvarile u razvoju statutarne prava u oblastima poput sprečavanja konflikta interesa, zaštite zviždača, i zahtjeva za prijavu imovine i prihoda za javne funkcionere. Uopšteno, zemlje su **usvojile međunarodne standarde za borbu protiv korupcije** kroz nacionalno zakonodavstvo, uključujući odredbe o velikom broju oblika (prekršaja i krivičnih djela) korupcije, koje se smatraju obaveznim u skladu sa Konvencijom Ujedinjenih nacija o borbi protiv korupcije (UNCAC), kao i odredbe koje nisu obavezne.

Regulatorni aktivizam na Zapadnom Balkanu nije rezultat mehanizma povratnih informacija u odnosu na djelotvornost politika, već odgovor na **sve veće zahtjeve za integritetom** u javnoj upravi, od strane javnih domaćih i međunarodnih partnera. Zadatak pojedinačnih vlada je da održe korak sa promjenljivim manifestacijama i oblicima korupcije, a da pritom ulažu u regulatornu stabilnost i ne zasipaju sudstvo prebrzim izmjenama zakona koji su već u primjeni.

Jedan takav primjer je **sistem javnih nabavki**. Tokom prethodne tri godine, zakoni o javnim nabavkama su se često mijenjali, što ukazuje na trud da se kroz javne politike održi korak sa raznim vrstama zloupotreba. U zemljama Zapadnog Balkana, javne nabavke su oblast visokog rizika od korupcije jer se ne koriste samo za nabavku roba i usluga za javne potrebe, već vrlo često i za

transfer javnih sredstava u privatne džepove. Procjena sistema javnih nabavki u zemljama Zapadnog Balkana SELDI mreže pokazuje da na sistem javnih nabavki naročito negativno utiču faktori poput: tendera koji se pripremaju za unaprijed odabrane ponuđače, loša kontrola usklađenosti i primjene ugovornih odredbi, prečesta upotreba konkurentnog pogađanja s ponuđačima, veliki broj tendera sa samo jednim ponuđačem, itd.

Specijalizovane institucije za borbu protiv korupcije

Proces uspostavljanja izvršnih institucija sa isključivom nadležnošću za borbu protiv korupcije u ambijentu zarobljavanja država na Zapadnom Balkanu suočava se sa sljedećom dilemom: **prenizak stepen nadležnosti bi ih učinio beskorisnim**, što bi dalje dovelo do rasta nepovjerenja u sistem vlasti; **dok bi previsok stepen nadležnosti doveo do rizika da postanu alati** za jednostrane političke ciljeve. Zemlje Zapadnog Balkana pokušavaju da se sa navedenom dilemom obračunaju na različite načine. Na Kosovu je uspostavljena Kancelarija za dobro upravljanje u kojoj sjedi osam ljudi, i koja se nalazi pod Kancelarijom premijera Kosova, koja prati izradu i implementaciju strateških dokumenata u oblasti borbe protiv korupcije. U Albaniji je uspostavljeno tijelo Nacionalnog koordinatora za borbu protiv korupcije, koje je takođe pod nadležnošću premijera. U Srbiji, struktura je nešto složenija: Agencija za sprečavanje korupcije ima širok okvir nadležnosti (monitoring i definisanje javnih politika, rješavanje pitanja konflikta interesa, iniciranje promjena i usvajanje regulativa u borbi protiv korupcije, koordinisanje drugih tijela za borbu protiv korupcije, itd.). Crnogorska Agencija za sprečavanje korupcije takođe ima širok mandat – implementacija mjera za sprečavanje konflikta interesa, sakupljanje i provjera izvještaja o prihodima i imovini javnih funkcionera, primanje izvještaja zviždača i reagovanje na izvještaje, itd. U Bosni i Hercegovini, usljed složene institucionalne strukture, postoji 14 tijela za borbu protiv korupcije na svim nivoima vlasti, svako tijelo je uspostavljeno formalnom odlukom vlada ili parlamenta, i imaju sopstvene oblasti nadležnosti.

Integritet državne službe

Reformama koje za cilj imaju snaženje integriteta javne uprave u zemljama Zapadnog Balkana uglavnom rukovodi Evropska unija kroz okvir pridruženja EU, zbog čega su **sve zemlje usvojile zakone o državnoj službi**. Postoje razni mehanizmi za sprečavanje i borbu protiv korupcije u državnoj službi. Na primjer, u Bosni i Hercegovini, ova pitanja su regulisana brojnim autonomnim zakonima za svaki pojedinačni nivo vlasti. Sa druge strane, na Kosovu ne postoje odredbe koje se

odnose na sprečavanje korupcije u zakonu o državnim službenicima, već samo u Kodeksu ponašanja državnih službenika i u Zakonu o sprečavanju korupcije. Međutim, **implementacija** ovih mehanizama i politike suzbijanja ove pojave su **prilično slabe**, i ne daju opipljive rezultate, čime se stvara plodno tle za opšte prihvatanje neetičkog ponašanja. U svim zemljama Zapadnog Balkana, državni službenici na višim rukovodećim pozicijama, a naročito posebne kategorije državnih službenika koji su zaposleni u sektorima koji su pod visokim rizikom korupcije (policija, poreska uprava, carina, itd.) su pod obavezom da prijave prihode i imovinu relevantnim institucijama. Međutim, institucije koje su zadužene za kontrolu prihoda i imovine **uglavnom se fokusiraju na javne funkcionere**, a ne na državne službenike. U gotovo svim zemljama regiona, prisutan je problem otpuštanja, koja sudovi potom opozivaju, što ukazuje na nedostatke u implementaciji procesa zaslužnog premiještanja na nižu poziciju, ili otpuštanja državnih službenika.

Primjena mjera za borbu protiv korupcije: sudstvo

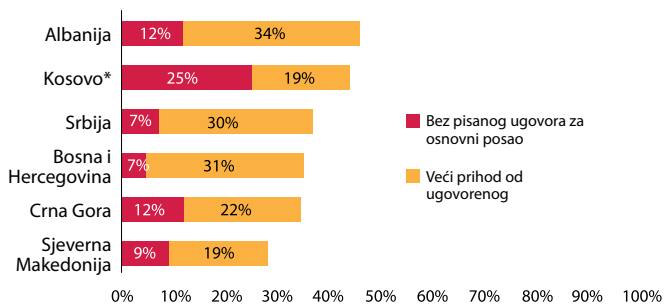
Iako se reforme u sudstvu sprovode duže od deceniju u svim zemljama Zapadnog Balkana, nijesu dovele do značajnog napretka. Najveći dio ovih reformi ograničen je na poboljšanje zakonodavnog okvira i drugih tehničkih pitanja, pri čemu se nastavilo sa slabom implementacijom i učinkom, naročito po pitanju efektivnih postupaka i presuda – **pravosnažne osuđujuće presude javnih funkcionera** su i dalje **malobrojne**. Ova pojava je naročito prisutna u slučajevima visoke korupcije, iako postoje rijetki izuzeci. Odvajanje ovlašćenja i stvaranje nezavisnog sudstva ograničeni su **politizacijom sudstva, neprimjerenim uticajima i korupcijom** – zakonodavna i izvršna vlast još uvijek imaju jak uticaj na proces izbora sudija i odluke o budžetu. Svi ovi izazovi predstavljaju značajne prepreke na putu pridruživanja zemalja Zapadnog Balkana Evropskoj uniji. Ključni nedostaci u upravljanju i funkcionisanju sudstva uključuju:

- Uticaj zakonodavne i izvršne vlasti na izbor i unapređenje sudija i tužilaca;
- Tijela odgovorna za upravljanje u sudstvu i tužilaštvu nemaju adekvatno razdvojene nadležnosti;
- Primjena disciplinarne odgovornosti i kodeksa ponašanja za sudije i tužioce je i dalje ograničena;
- Kancelarije javnih tužilaca nemaju dovoljno resursa, a naročito ekspertize u oblasti finansijske forenzike;
- Strukture upravljanja su nejasne i nadležnosti se često preklapaju.

Borba protiv korupcije u ekonomiji: skriveni sektor

Sektor skrivene ekonomije, koji je u značajnoj mjeri povezan sa korupcijom i dalje ima osjetno negativan uticaj na Zapadni Balkan. Samo postojanje ovog sektora može se pripisati velikom broju uzročnika, poput slabog pridržavanja poreske politike; lošeg poslovnog okruženja i vrlo visoke stope siromaštva; nedostatka povjerenja u institucije vlade i visoke stopa percepcije korupcije; visokih poreskih i parafiskalnih nameta, u kombinaciji sa pretjeranim kaznenim poreskim politikama; nedovoljnog broja inspekcija i revizija; birokratije, komplikovanog sistema otpremnina, kao i čestih promjena zakona.

Radnici bez pisanog ugovora o radu za osnovni posao, ili koji zarađuju više u odnosu na prijavljeni prihod (2019. u %)



Izvor: SELDI Sistem za monitoring korupcije / Sistem za monitoring skrivene ekonomije, 2020.

Visoka stopa tolerancije u odnosu na neplaćanje poreza i doprinosa je trend koji na Zapadnom Balkanu opstaje usljed percepcije da su sistemi poreskih uprava i, uopšte, javni sektor korumpirani. U Sjevernoj Makedoniji, 45.7% privrednika smatra da je korupcija najvažniji uzrok postojanja skrivene ekonomije, dok taj stav zastupa 72.9% privrednika u Albaniji. Posljedično, javnost ne smatra da se porezi adekvatno koriste za poboljšanje pružanja javnih usluga.

Kreatori javnih politika na Zapadnom Balkanu su preduzeli korake ka uvođenju obavezne upotrebe **pisanih ugovora o radu** za osnovni posao, ali su ovi naponi u velikoj mjeri neuspješni jer opšti stepen skrivene ekonomije nastavlja da raste. Uzrok takvog trenda su mnogobrojni alternativni načini za izbjegavanje plaćanja zdravstvenog osiguranja i doprinosa, poput prijavljivanja niže zarade, ili neprijavljivanja sekundarnih ili honorarnih poslova.

Uloga civilnog društva

Organizacije civilnog društva (OCD) na Zapadnom Balkanu unaprijedile su stručnost i kapacitete da tu stručnost usmjere ka određenom broju ciljeva u agendi za borbu protiv korupcije. Uticaj mjera koje ove organizacije primjenjuju u borbi protiv korupcije ostvaruje se kroz niz raspoloživih sredstava – iniciranje promjena u zakonodavstvu i izrada repera za dobru praksu u kontekstu snaženja transparentnosti, odgovornosti i integriteta javnih preduzeća, i jačanje kapaciteta privatnog sektora u borbi i sprečavanju korupcije.

Imajući u vidu aktivnu ulogu OCD u promovisanju integriteta javne službe, prikladno je da se **OCD također pridržavaju najviših standarda transparentnosti i odgovornosti**. Uopšteno, iako sve veći broj OCD zagovara dobro upravljanje, ove organizacije su ostvarile slab napredak u osnaživanju transparentnosti svog rada. Jasan pokazatelj ove činjenice je nizak broj OCD koje objavljuju godišnje izvještaje. U pojedinim zemljama (npr. BiH), ne postoje specifični zahtjevi da OCD objavljuju operativne i finansijske izvještaje – zakonom je propisano da moraju raditi „transparentno“, ne ulazeći u specifične mjere. U praksi su samo OCD koje se prijavljuju za državna sredstva u obavezi da redovno dostavljaju izvještaje.

Sljedeći koraci: ubrzavanje borbe protiv korupcije na Zapadnom Balkanu

Spor i neujednačen napredak u borbi protiv korupcije omogućio je privatnim interesnim grupama da zadbiju moć nad vladama u zemljama Zapadnog Balkana, što rezultira zarobljavanjem države. Oslobođanje vlada iz ovog statusa može se ostvariti samo kroz savezništvo zainteresovanih strana i kroz zajedničko djelovanje **kreitora javnih politika koji su usmjereni na reforme, civilnog društva i međunarodnih partnera**, među kojima je na prvom mjestu Evropska unija.

Na nacionalnom nivou, organi javne uprave na Zapadnom Balkanu treba da uspostave **procedure za djelotvorno procesuiranje** slučajeva visoke korupcije među političarima i državnim službenicima. Analiza podataka SCAD dijagnostike pokazuje da ključni prioriteti treba da budu zaštita i monitoring nezavisnosti i učinkovitosti sudstva. Uticaj zakonodavne i izvršne grane vlasti u odabiru i unapređenju sudija i tužilaca treba biti normativno sveden na minimum ili eliminisan. Zemlje u kojima se većina samoupravnih sudskih organa ne bira među sudijama i od strane sudija treba da usvoje reforme kojima se povećava moć njihovog glasa.

Adekvatan **balans između prevencije i suzbijanja** naročito je važan kada je riječ o smanjenju obima skrive-

ne ekonomije i njenog uticaja na korupciju. Vlade treba da identifikuju motive poslodavaca i zaposlenih koji se odluče da rade u neformalnom sektoru. Podatke o navedenim motivima treba uzeti u obzir pri izradi reformi za snaženje poslovne sredine, poreske politike i kvaliteta javnih usluga.

Ključni preduslov za pozivanje vlasti na odgovornost je pitanje **transparentnosti vlasništva medija**, nezavisnosti redakcija i zaštite slobode medija od političkog uticaja. Vlade naročito treba da se fokusiraju na sprečavanje zarobljavanja civilnog sektora, snaženje korporativnog upravljanja u državnim preduzećima, i transparentno upravljanje velikim investicionim projektima.

Proces unapređenja kvaliteta javne uprave u zemljama Zapadnog Balkana blisko je povezan sa procesom integracije u Evropsku uniju. Faktori koji utiču na reforme u oblasti integriteta razlikuju se u zemljama u regionu, što čini EU regionalnim faktorom stabilnosti za navedene reforme.

Kako bi strategija pridruženja Evropskoj uniji nastavila da bude tako važan faktor stabilnosti, **EU je potreban aktivniji politički angažman** sa zemljama Zapadnog Balkana, pri čemu zemlje treba da imaju jasnu perspektivu za budućnost. Međutim, intenzivniji angažman bi također trebalo zaštititi od neželjenih posljedica, koje bi proces učinile kontraproduktivnim. Unija također treba da osigura da benefiti intenzivnije ekonomske integracije ne doprinesu napretku isključivo malih krugova privilegovanih oligarha, čime bi se pogoršalo stanje zarobljenosti država od strane poslovnih interesnih grupa. Uslove koje nameće proces pridruživanja i članstva u EU, a koji se odnose na integritet vlada treba ojačati jednako dosljednim javnim pozivima na odgovornost – u suprotnom, dominantni politički akteri koriste prethodno navedeni okvir procesa pridruženja da [ignorišu/ne pridaju važnost] pitanju odgovornosti. Rad u diplomatskoj areni sa političarima i višim državnim službenicima također treba obavljati na način koji ne stvara utisak političke podrške. Krajnji rezultat ovog procesa treba da bude **neutralizacija negativnih efekata autoritarnog uticaja** u regionu.

Evropska unija je osnažila model uslovnosti procesa proširenja uvođenjem pozitivnog uslovljavanja i sankcionisanja, kao i uvođenjem opcija poput **obustave procesa pregovaranja i zamrzavanja pristupa fondovima**. SELDI mreža pozdravlja odluku EU da u okviru borbe protiv korupcije uključi preporuke koje je SELDI mreža ranije objavila, uključujući uvođenje pitanja borbe protiv korupcije u širi spektar javnih politika, a ne samo u institucije za borbu protiv korupcije i sudstvo, kao i zaštitu važnih odnosa između Evropske komisije i civilnog sektora, uključujući kroz finansijsku podršku u slučajevima neočekivanog pritiska. Međutim, reforme

u oblasti vladavine prava kao prioritet za dalji razvoj u svim ostalim oblastima za zemlje Zapadnog Balkana treba dalje ojačati, naročito u smislu širenja kruga zainteresovanih strana koje se bave monitoringom i zalaganjem za reforme za dobro upravljanje. Jedino se kroz **koaliciju privatnog i javnog sektora** sa institucijama i akterima unutar EU, kao i lokalnim javnim i privatnim institucijama i pojedincima može osigurati dalji napredak u borbi protiv korupcije, odnosno spriječiti nazadovanje u ovoj oblasti.

Evropska unija treba da koordiniše tehničku i finansijsku pomoć za borbu protiv korupcije za Zapadni Balkan sa opštim porukama, usklađenim sa mjerama javne politike. Ovakav pristup se očekuje od Instrumenta za pretprijetnu pomoć (IPA) III. Imajući u vidu nalaze SELDI SCAD procjene stepena zarobljenosti država u regionu, **fondovi EU treba da uključe princip** *primum non nocere* (**nenanošenja štete**). Drugim riječima, fondovi treba da osiguraju da nemaju kontraproduktivan efekat jačanjem klijentelističkih mreža korumpiranih političara i privilegovanih biznisa koji dobijaju najveći broj tendera koji se plasiraju kroz EU fondove.

EU treba da nastavi sa monitoringom napretka u borbi protiv korupcije u saradnji sa civilnim društvom u regionu. Nezavisni mehanizmi za monitoring korupcije i borbe protiv korupcije potrebni su na svakom nivou – od politika za procjenu rizika od korupcije, do provjere ključnih zakona i analiza efikasnosti internih procedura za borbu protiv korupcije u pojedinačnim javnim institucijama. Predlog upućen EU je da **uključi inovativne instrumente analize** u izradu mjera javne politike, poput alata koje je pilotirala SELDI mreža:

- *Monitoring implementacije politika za borbu protiv korupcije (MACPI)*, alat koji omogućava procjenu otpornosti institucija na korupciju, kao i prepoznavanje politika za borbu protiv korupcije i nedostataka u implementaciji; i
- *Dijagnostička procjena zarobljenosti države*, alat koji omogućava prepoznavanje ranjivosti sistema u odnosu na zarobljavanje.

Evropska komisija bi trebalo da posebnu pažnju posveti zaštiti konkurencije u **sektorima koji su pod izraženim pritiskom monopolizacije** pri primjeni investicionog plana za region. Tehničku podršku, savjetovanje u oblasti javnih politika i finansijsku podršku EU potrebno je usmjeriti ka naporima za borbu protiv korupcije i monopolizacije u ključnim sektorima, poput **energetike, infrastrukture, bankarstva i telekomunikacija**. Produžavanje **savjetodavnih misija** na nivou Zapadnog Balkana takođe osnažuje učinak procjena u oblasti vladavine prava; međutim, preporučuje se da recenzije i analize pojedinačnih slučajeva **ukluče i stručnjake iz**

civilnog sektora. Evropska komisija i lokalne kancelarije Delegacije EU treba da sarađuju sa lokalnim zainteresovanim stranama kako bi uspostavile procedure za redovno praćenje sudskih postupaka u slučajevima korupcije, kao i za monitoring napretka u oblasti sudskih reformi.



NORTH MACEDONIA

ИЗВРШНО РЕЗИМЕ

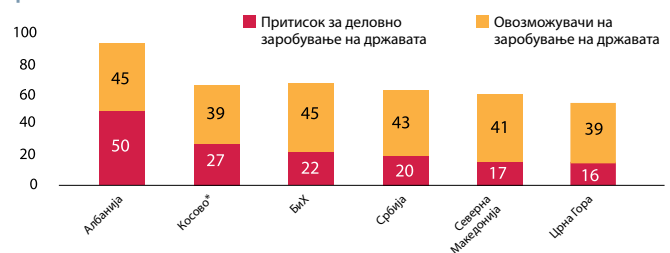
Во последните две децении, земјите од Западен Балкан претрпеа значајни политички, социјални и економски трансформации. Меѓутоа, голем број на нерешени предизвици остануваат критични, меѓу кои е и интегритетот на јавното управување. Прашањето за владеењето на правото во општа смисла и особено антикорупцијата сега се во срцето на политичкиот проект со најголеми последици во Западен Балкан – нивната интеграција со истакнатата европска организација, Европската Унија. Придонесот на СЕЛДИ во антикорупциската агенда во Западен Балкан е истовремено специфичен и активен, обидувајќи се да ги премости препораките за следење, анализа и политики. Во Регионалниот антикорупциски извештај за 2020 година се разгледува законската рамка и развојот во пракса на државните институции – извршната, законодавната и судската власт. Проценката на регулаторните и институционалните фактори кои овозможуваат корупција во регионот не е наметната како сеопфатен попис, туку таа нагласува дел од приоритетните прашања поврзани со потенцијалните напори за спречување на вообичаените извори на корупција. Извештајот дава модел на известување за напредокот во борбата против корупцијата преку граѓанското општество во Западен Балкан.

Динамика на корупција

Алатките за следење на СЕЛДИ обезбедуваат податоци за промените во реалното ширење на два вида корупција – административна корупција (поткуп), што влијае врз поединци и деловни субјекти, и заробување на државата (голема корупција) што влијае врз функционирањето на демократските институции и владиното донесување одлуки. Во однос на второто, примената на алатката за Дијагностичка проценка на заробеноста на државата (SCAD) на СЕЛДИ во Западен Балкан откри дека постои значајни ризици за заробување на државата. **Притисокот за заробување на државата** во регионот сè уште **останува на високо ниво**. Резултатите покажуваат дека ниту една од земјите не е блиску до целосно заробување на државата, но постојат клучни нарушување во функционирањето на демократската и економската контрола и рамнотежа (*checks and balances*).

Резултатите од SCAD посочуваат на присуство на силни **овозможувачи од животната средина**, како неефективни јавни организации на кои им недостига интегритет, непристрасност и робусни антикорупциски протоколи. Исто така, покажува реални симптоми на **притисок за деловно заробување на државата**, т.е. монополизација која се случува на национално, секторско или институционално ниво. Притисокот за монополизација е најголем во Албанија и Косово.¹ Значајни нивоа се забележани и во БиХ, Србија, Северна Македонија и Црна Гора. SCAD ги покажува симптомите на таквиот развој во клучните економски сектори. Еден од овие сектори е енергијата, поради своите високи нивоа на концентрација, недостигот на транспарентност и неефикасната корпоративната структура на управување на државните претпријатија, како и недостигот на соодветен регулаторен надзор.

Нивоата на притисокот за заробување на државата во регионот се високи*



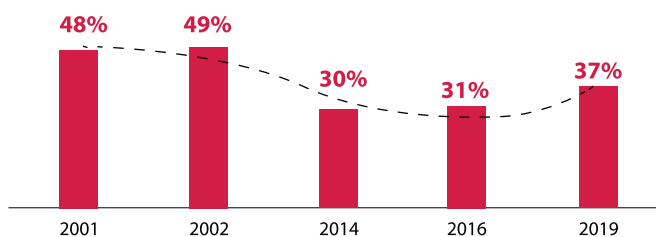
* Притисокот за деловно заробување на државата е фокусиран на притисокот за монополизација на национално, секторско или институционално ниво. Овозможувачите на заробеноста на државата подразбираат и фактори од животната средина на национално ниво.

Извор: SELDI SCAD, 2020.

Степенот до кој општатата јавност ја толерира корупцијата е важна индикација за напредокот во интегритетот на јавната служба. Системот на следење корупција на СЕЛДИ (CMS), со кој се мерат секундарните форми на корупција (поткуп), покажува дека прифаќањето на корупција останува релативно високо во Западен Балкан. Босна и Херцеговина, Северна Македонија и Косово покажуваат поголемо прифаќање за разлика од останатите. Ова, исто така, кореспондира со одредени нивоа на притисок за корупција - најголемото мнозинство (82%) луѓе во регионот кои, во основа, веруваат дека корупцијата е прифатлива очекуваат да им побараат поткуп. Повеќето е што повеќе од половина (62%) од оние кои не ја прифаќаат корупцијата како норма сè уште сметаат дека тие веројатно ќе станат жртви на притисокот за корупција.

¹ Ознаката „Косово“ е без предрасуди кон позициите за статусот и е во согласност со UNSCR 1244 и Мислењето на МСП за Декларацијата за независност на Косово.

Притисок за корупција: по значаен пад во средината на 2010 г. повторно се зголемува



Извор: Систем за следење на корупција на СЕЛДИ, 2019 г.

Резултатите на CMS покажуваат дека во споредба со 2016 година притисокот во 2019 година се зголеми во четири од шесте држави во Западен Балкан: Босна и Херцеговина, по која следат Црна Гора, Косово и Србија. Само во Албанија и Северна Македонија има маргинално намалување во притисокот за корупција. Овие резултати покажуваат дека земјите под поголем политички притисок од ЕУ и со јасна краткорочна цел за нивен прием во ЕУ имаат подобри резултати.

Антикорупциско законодавство

Во опсегот на антикорупциски алатки, земјите од Западен Балкан оствариле најголем напредок во развојот на нивните статуторни закони, вклучувајќи области како спречување конфликт на интереси, заштита на укажувачите и барањата за пријавување на имотот од страна на јавните службеници. Свкупно, тие ги **усвоиле меѓународните антикорупциски стандарди** во нивните национални законодавства, вклучувајќи одредби за мноштвото задолжителни престапи поврзани со корупција според Конвенцијата на Обединетите Нации против корупција (UNCAC), како и некои незадолжителни.

Регулаторниот активизам во Западен Балкан не е резултат на механизам за повратен одговор за ефективност на политиките, туку одговор на **сè поголемата побарувачка за интегритет** во владеењето, која доаѓа од националните јавни и меѓународни партнери. Задачата сега за националните влади е да бидат во чекор со променливите манифестации и форми на корупција, истовремено одржувајќи регулаторна стабилност и избегнувајќи оптоварување на судството со брзи промени на применливите закони.

Таков случај се **јавните набавки**. Во текот на последните три години, законите за јавни набавки често се менуваат, посочувајќи дека политиките се обидуваат да бидат во чекор со разните злоупотреби. Во Западен Балкан, јавните набавки се област со зголемен ризик за корупција, бидејќи не само што се користат за набавка на добра и услуги за јавна корист туку често се користат и за трансфер на јавни пари во приватни џебови. Процентот на јавните набавки на СЕЛДИ во земјите од Западен Балкан откри-

ва дека тие се под особено негативно влијание од фактори како: тендери кои често се прават за фаворизирање одредени понудувачи, недоволен надзор за усогласеност и спроведување на договорните услови, преголема употреба на постапките за преговарање, голем број на тендери со само еден понудувач итн.

Специјализирани антикорупциски институции

Основањето на извршни институции со ексклузивни антикорупциски надлежности во средина на заробеност на државата во земјите од Западен Балкан се соочило со една дилема: **премалку надлежности ќе направат тие да бидат бескорисни**, што дополнително ќе ја зголеми недовербата во владата, а **доколку имаат премногу тогаш тие ризикуваат да станат алатки** за партизански политички цели. Земјите од Западен Балкан се стремат да ја решат оваа дилема на различни начини. Во Косово, постои Служба за добро управување од само осум лица во рамки на Кабинетот на премиерот на Косово, која ги следи изработката и спроведувањето на стратегиските документи против корупција. Во Албанија, под надлежност на премиерот, постои Национален координатор против корупција. Во Србија организираноста е малку посложена: Агенцијата за спречување корупција има релативно широка надлежност (следење и изработување политики, решавање конфликт на интереси, координирање други тела за спречување корупција итн.). Црногорската агенција за спречување корупција има слична широка надлежност – спроведување на мерките за спречување конфликт на интереси, собирање и проверка на извештаите за имот и приход на јавните службеници, примање и дејствување по пријави на укажувачи итн. Во БиХ, поради нејзината сложена поставеност, постојат 14 антикорупциски тела на сите владини нивоа и сите тие се основани со официјална одлука на владите или собранијата и имаат свои надлежности.

Интегритет на државната служба

Реформите кои целат кон зајакнување на интегритетот на јавната администрација во земјите од Западен Балкан, водени претежно од Европската Унија и ветувањето за прием во ЕУ, резултираа во тоа **сите земји да донесат закони за државни служби**. Постојат различни механизми за спречување и борба против корупцијата меѓу државните службеници. На пример, во БиХ овие прашања се регулирани со бројни и автономни закони за секое нивоа на власт. Од друга страна, во Косово, во законот за државни службеници нема конкретни одредби за борба против корупцијата, туку само во Кодексот на однесување на државните службеници и законот за борба против корупцијата. Сепак, **спроведувањето** на

овие механизми и политиките на репресија **остануваат прилично слаби** и без опишлив ефект, со што се создава плодна почва за неетичкото однесување да стане прифатливо. Во сите земји од Западен Балкан, високите државни службеници, а особено некои посебни категории на државни службеници вработени во сектори со висок ризик од корупција (полиција, даночна администрација, царина, итн.) се должни да ги пријавуваат своите средства и приходи до надлежните институции. Меѓутоа, институциите задолжени за контрола на средствата и приходите **повеќе се фокусираат на изгласаните јавни службеници**, отколку на државните службеници. Во скоро сите земји постои проблем со отпуштања кои судовите ги поништуваат, што укажува на недостатоци во спроведувањето оправдано деградирање или отпуштање на државни службеници.

Спроведување на антикорупција: судството

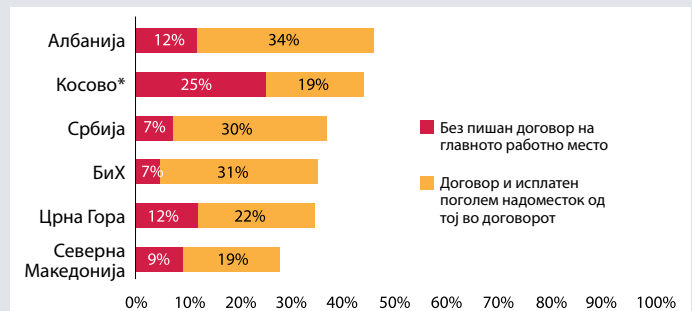
Иако судските реформи се спроведуваат повеќе од една деценија во сите земји од Западен Балкан, тие немаат **дадено значаен напредок**. Суштината на овие реформи е ограничена на подобрување на законската рамка и други технички прашања, проследена со слабо спроведување и изведба, особено во однос на ефективни гонења и пресуди – **конечните пресуди на јавни службеници** остануваат главно **со едноцифрен резултат**. Ова особено е точно за случаите на корупција од повисоко ниво, иако почнуваат да се појавуваат и исклучоци. Поделбата на власта и создавањето независно судство се попречени од **политизацијата на судството, непотребните влијанија и корупција** – законодавната и извршната власт сè уште имаат силно влијание врз изборниот процес во судството и распределбата на буџетот. Сите овие прашања претставуваат огромни пречки на патот за пристап во ЕУ на сите земји од Западен Балкан. Главните недостатоци во управувањето и функционирањето на судството вклучуваат:

- влијание на законодавната и извршната власт при изборот и унапредувањето на судиите и обвинителите;
- органите кои управуваат со судството и обвинителството не се соодветно одделени;
- спроведувањето на дисциплинската одговорност и етичките кодекси за судиите и обвинителите сè уште е многу ограничено;
- канцелариите на јавното обвинителство немаат ресурси, особено експертиза во финансиско вештачење;
- структурите за управување се нејасни и надлежностите често се преклопуваат.

Антикорупција во економијата: скриениот сектор

Значаен **скриен економски сектор тесно поврзан со корупција** продолжува да ги мачи земјите од Западен Балкан. Присуството на овој сектор може да се припише на изобилство од причини, како што се низок даночен морал; слаба бизнис средина и многу високи нивоа на сиромаштија; недостаток на доверба во институциите на владата и високи перцепции на корупција; високи трошоци за оданочување и парафискални трошоци, паралелно со претерано принудна даночна политика; недоволни инспекции и ревизии; бирократски систем, тежок систем за исплата на отпремнини и чести промени во законодавството.

Работници без потпишан договор на главното работно место или примаат повисоки надоместоци од пријавените (2019 г., во %)



Извор: Системот на следење корупција на СЕЛДИ/Систем за следење на скриена економија, 2020 г.

Во земјите од Западен Балкан се одржува **висока толеранција** кон затајување данок и надоместоци за социјално осигурување поради перцепцијата дека даночните власти и воопшто јавниот систем се корумпирани. Според 45,7% од бизнисите во Северна Македонија и 72,9% во Албанија, корупцијата е најзначајниот фактор за постоењето на скриената економија. Ова ја насочува јавноста да верува дека даноците не се соодветно искористени за обезбедување подобри јавни услуги.

Креаторите на политики во Западен Балкан презеле чекори за воведување на **задолжителна употреба на пишани договори за работа** за главното работно место, но нивните напори главно останале неуспешни, бидејќи севкупното ниво на скриена економија продолжува да расте. Ова е поради бројните алтернативни начини за избегнување плаќање надоместоци за здравствено и социјално осигурување, како што е пријавување на помал износ од добиената плата или пак непријавување на втора или хонорарна работа.

Улогата на граѓанското општество

Низ Западен Балкан, **граѓанските организации (ГО)** ја зголемија и својата експертиза и нивната способност да ја користат оваа експертиза во низа придонеси кон антикорупциската агенда. Нивното антикорупциско влијание се постигнува со различни средства - иницирање законски измени и одредници за добри практики за зголемување на транспарентноста, отчетноста и интегритетот на јавните претпријатија и зајакнување на капацитетот на приватните бизниси за спречување и борба против корупцијата.

Со оглед на нивната активна улога во унапредувањето на интегритетот на јавните функции, **уште посоодветно е граѓанските организации да се придржуваат кон највисоките стандарди на транспарентност и отчетност.** Генерално, иако сè поголем број граѓански организации се залагаат за добро управување, има мал напредок во преземањето чекори тие да станат потранспарентни. Јасна мерка за ова е малиот број граѓански организации кои објавуваат годишни извештаи на Интернет. Во некои земји (на пример, БиХ), не постои конкретно барање граѓанските организации да објавуваат извештаи за работењето и финансиски извештаи - законот бара од нив да бидат „транспарентни“ без да дефинираат какви било специфики. Во пракса, само граѓанските организации кои аплицираат за средства од владите се должни редовно да даваат извештаи.

Активности што треба да се преземат: катализиција на антикорупцијата во Западен Балкан

Бавниот и недоволен антикорупциски напредок им овозможи на владите од Западен Балкан да постигнуваат свои приватни интереси, што резултира со заробување на државата. Ослободувањето на владите од оваа стега може да се постигне само со здружување на засегнатите страни кои дејствуваат заеднички: **реформистичките креатори на политики, граѓанското општество и меѓународните партнери**, меѓу кои главна засегната страна е Европската Унија.

На национално ниво, неопходно е јавните органи во Западен Балкан да утврдат **постапки за ефективно гонење** на корумпирани високи политичари и постари јавни службеници. Анализата на податоците на SCAD укажуваат на тоа дека клучен приоритет треба да биде заштитата и следење на судската независност и работење. Влијанието на законодавните и извршните гранки во изборот и унапредувањето на судии и јавни обвинители треба нормативно да се исклучи или намали на минимум. Земјите во кои мнозинството на судските самоуправни тела не се бира меѓу судиите и од страна на судиите, треба да усвојат реформи што ја зголемуваат нивната гласачка моќ.

Соодветна **рамнотежа меѓу спречувањето и репресијата** е особено важно да се постигне при обид да се намали големината на скриената економија и нејзиното влијание врз корупцијата. Владите треба да утврдат што ги поттикнува работодавачите и вработените да се занимаваат со неформални деловни активности; тие, потоа, треба да се земат предвид при создавање реформи за подобрување на деловното опкружување, даночната политика и квалитетот на јавните услуги.

Критично прашање во осигурувањето одговорност на владите е **транспарентноста на медиумската сопственост**, независноста на редакцијата и заштитата на слободата на медиумите од политичко мешање. Посебен фокус во напорите на владите треба да биде избегнување заробување на граѓанското општество, подобрување на корпоративното управување на државните претпријатија и транспарентно управување со големи инвестициски проекти.

Унапредувањето на квалитетот на јавното управување во земјите од Западен Балкан сега е тесно поврзано со процесот на нивна интеграција во Европската Унија. Основните услови што влијаат на реформите за интегритет се различни во секоја земја, што ја прави ЕУ регионален стабилизирачки фактор за овие реформи.

За нејзината стратегија за проширување да ѝ овозможи да продолжи да биде таков фактор, **на ЕУ ѝ е потребен поактивен политички ангажман** со земјите од Западен Балкан, обезбедувајќи им јасна перспектива за иднината. Меѓутоа, посилен ангажман треба да се заштити од неколку несакани последици, што би можеле да го направат контрапродуктивен. Потребно е да се осигури дека придобивките од поблиската економска интеграција со Унијата нема да бидат исклучиво на мала група привилегирани олигарси, со што дополнително ќе се влоши заробувањето на деловната држава. Условите за интегритетот на владите поврзани со членството треба да бидат придружени со подеднакво силно барање за одговорност на локалната јавност, за доминантните политички чинители да не го избираат првиот како изговор за [дискредитација/непочитување] на вториот. Ангажирањето во дипломатската арена со политичари и високи владини службеници, исто така, треба да се изведе на начин што не создава впечаток за политичка поддршка. Целокупниот ефект на овој процес треба да биде да се спротивставиме и да ги **неутрализираме штетните ефекти на авторитарното влијание** во регионот.

Европската Унија сега ја зајакна непредвидливоста на процесите за проширување со воведување негативни и позитивни условувања и вклучување опции како што се **прекинување на преговорите и замрзнување на средствата**. СЕДДИ го поздравува вклучувањето во пристапот на ЕУ кон антикорупцијата во контекст на

пристапување кон некои од претходните препораки на СЕЛДИ, вклучувајќи ја и интеграцијата на антикорупцијата во поширок спектар на политики, а не само во антикорупциските институции и судството и заштитата на важните односи на ЕК со граѓанското општество односи, вклучувајќи ја и нивната финансиска поддршка од неочекувана неволја. Сепак, треба да се потенцира приматот на агендата за владеење на законите за напредок во која било друга област на развој на Западен Балкан, особено со проширување на опсегот на засегнати страни вклучени во следењето и застапувањето за реформи за добро управување. Само **јавно-приватна коалиција** која вклучува институции и чинители на ЕУ и локални јавни и приватни институции и поединци ќе може да обезбеди основа на позитивни антикорупциски случувања, т.е. нивната неповратност.

Антикорупциската помош на ЕУ – техничка и финансиска – за Западен Балкан треба да се обезбеди во синхронизација со пораките за општа политика на ЕУ. Тоа е она што сега се очекува од Инструментот за претпристапна помош (ИПА) III. Со оглед на наодите од процената од SCAD на СЕЛДИ за интензитетот на државно заробување во регионот, **финансирањето на ЕУ треба да го вклучи начелото *primum non nocere* (прво, не предизвикувај штета)**. Со други зборови, треба да се осигури дека со зајакнување на клиентелистичките мрежи на корумпирани политичари и привилегирани бизниси кои добиваат голем дел од набавките финансирани од ЕУ нема да стане контрапродуктивно.

ЕУ треба да продолжи да ги следи антикорупциските случувања во партнерство со граѓанското општество во регионот. Независни механизми за следење на корупцијата и антикорупцијата се потребни на сите нивоа - од проценка на ризикот за корупција на политиките до ревизија на клучното законодавство и анализа на ефикасноста на внатрешните постапки за борба против корупцијата во одделни јавни институции. Помагајќи им на земјите да се справат со второто, ЕУ ќе знае како да ги **вклучи иновативните аналитички инструменти** за водење на нејзините политики, како што се оние со кои управува СЕЛДИ:

- *Алатката за следење на спроведувањето на антикорупциската политика (MACPI)*, со која се проценува отпорноста на корупцијата во институциите и се утврдуваат политиките за антикорупција и празнините во спроведувањето; и
- *Дијагностичка проценка на заробеноста на државата* што помага да се утврдуваат ранливостите на заробувањето на државата.

При спроведувањето на својот инвестициски план за регионот, Европската комисија треба да посвети особено внимание на заштитата на конкуренцијата во **секторите**

под висок притисок во монополизација. Техничката поддршка, политичките совети и финансирањето на ЕУ треба да бидат насочени кон антикорупциски и антимонополски напори насочени кон критични сектори, како што се **енергијата, инфраструктурата, банкарството и телекомуникациите**. Проширувањето на советодавните мисли на целиот Западен Балкан, исто така, ќе придонесе кон спроведувањето на процените на владеењето на правото; меѓутоа, се препорачува какви било рецензии врз основа на случаи да **вклучуваат експерти од граѓанското општество**. Европската комисија и локалните делегации на ЕУ треба да работат заедно со локалните засегнати страни за да воспостават постапки за редовно судење за случаите на корупција, како и за следење на напредокот на судските реформи.



SERBIA

ZAKLJUČAK

U poslednje dve decenije zemlje Zapadnog Balkana pretrpele su značajne političke, socijalne i ekonomske transformacije. Ipak, i dalje ostaje niz nerešenih izazova, od kojih je kritičan integritet javne uprave. Pitanja vladavine prava uopšte a posebno borbe protiv korupcije sada su u srcu najvažnijeg političkog projekta Zapadnog Balkana - njegove integracije sa najistaknutijom evropskom organizacijom, Evropskom unijom. SELDI je na specifičan i delotvoran način dao doprinos borbi protiv korupcije na Zapadnom Balkanu, uz nastojanje da premosti nadzor, analizu i preporuke politike. *Regionalni izveštaj o borbi protiv korupcije za 2020. godinu* razmatra zakonodavni okvir i razvoj prakse državnih institucija - izvršne, zakonodavne i sudske vlasti. Procena regulatornih i institucionalnih faktora koji omogućavaju korupciju u regionu nije zamišljena kao sveobuhvatan popis, već naglašava neka od prioritarnih pitanja relevantnih za potencijalne napore na suzbijanju zajedničkih izvora korupcije. Izveštaj pruža model za izveštavanje civilnog društva o napretku u borbi protiv korupcije na Zapadnom Balkanu.

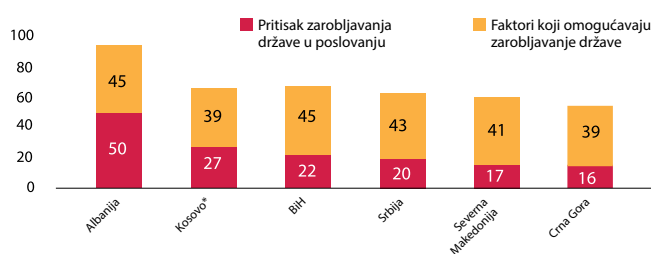
Dinamika korupcije

SELDI instrumenti za praćenje pružaju podatke o promenama u stvarnom širenju dve vrste korupcije - administrativne korupcije (primanje mita), koja pogađa pojedince i preduzeća, i zarobljavanje države (velika korupcija) koja utiče na funkcionisanje demokratskih institucija i odluke vlade. Što se tiče ovog poslednjeg, primena *SELDI instrumenata za dijagnostičku procenu zarobljavanja države (SCAD)* na Zapadnom Balkanu otkrila je da postoje značajni rizici zarobljavanja države. **Pritisak zarobljavanja države** u regionu i dalje **ostaje na visokom nivou**. Rezultati pokazuju da nijedna zemlja nije blizu potpunog zarobljavanja države, ali postoji kritično povećanje rizika u funkcionisanju demokratskih i ekonomskih kontrola i kočnica.

Nalazi SCAD-a ukazuju na prisustvo jakih **faktora sredine koji omogućavaju korupciju**, kao što su neefikasne javne organizacije kojima nedostaje integritet, nepristrasnost i robusni protokoli za borbu protiv korupcije. Takođe pokazuje stvarne simptome **pritiska zarobljavanja države u poslovanju**, tj. monopolizac-

iju koja se dešava na nacionalnom, sektorskom ili institucionalnom nivou. Pritisak monopolizacije najveći je u Albaniji i na Kosovu.¹ Znatno nivo takođe je zabeležen u BiH, Srbiji, Severnoj Makedoniji i Crnoj Gori. SCAD pokazuje simptome takvog razvoja događaja u ključnim ekonomskim sektorima. Jedan od ovih sektora je energetika, zbog visokog nivoa koncentracije, nedostatka transparentnosti i neefikasne strukture korporativnog upravljanja državnim preduzećima i nedostatka odgovarajućeg regulatornog nadzora.

Nivoi pritiska zarobljavanja države u regionu su visoki*



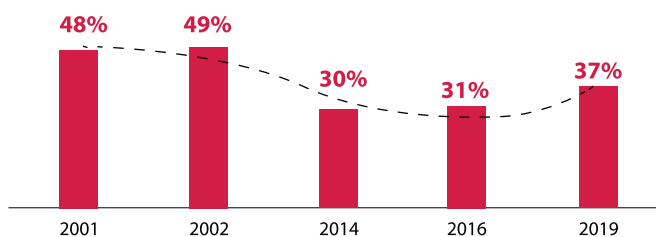
* Pritisak zarobljavanja države u poslovanju usredsređen je na pritisak monopolizacije na nacionalnom, sektorskom ili institucionalnom nivou. Faktori koji omogućavaju zarobljavanje države uključuju institucionalne i faktore sredine na nacionalnom nivou.

Izvor: SELDI SCAD, 2020.

Stepen do kog javnost toleriše korupciju važan je pokazatelj napretka u integritetu javnih funkcija. SELDI sistem za praćenje korupcije (CMS), koji meri sitnije oblike korupcije (podmićivanje), pokazuje da je prihvatljivost korupcije i dalje relativno visoka na Zapadnom Balkanu. Bosna i Hercegovina, Severna Makedonija i Kosovo pokazuju veću prijemчивost od ostalih. To takođe odgovara određenim nivoima korupcijskog pritiska - velika većina (82%) ljudi u regionu koji smatraju da je korupcija u principu prihvatljiva očekuje da će se od njih tražiti mito. Još važnije, više od polovine (62%) onih koji ne prihvataju korupciju kao normu i dalje misli da će verovatno postati žrtve korupcijskog pritiska.

¹ Oznaka "Kosovo" ne dovodi u pitanje stavove o statusu i u skladu je sa Rezolucijom SB UN 1244/1999 i mišljenjem ICJ-a o proglašenju nezavisnosti Kosova.

Korupcijski pritisak: nakon opipljivog pada sredinom 2010. godine ponovo je u porastu



Izvor: SELDI sistem za praćenje korupcije, 2019.

Nalazi CMS-a pokazuju da se u poređenju sa 2016. godinom korupcijski pritisak u 2019. godini povećao u četiri od šest zemalja Zapadnog Balkana: Bosni i Hercegovini, zatim Crnoj Gori, na Kosovu i u Srbiji. Samo su Albanija i Severna Makedonija imale marginalni pad korupcijskog pritiska. Ovi rezultati pokazuju da zemlje koje su pod većim političkim pritiskom EU i imaju jasan kratkoročni cilj na horizontu pristupanja EU imaju bolji učinak.

Zakon o borbi protiv korupcije

U nizu pravnih instrumenata za borbu protiv korupcije, zemlje Zapadnog Balkana postigle su najveći napredak u razvoju svog statutarog prava, uključujući u oblastima kao što su sprečavanje sukoba interesa, zaštita uzbunjivača i zahtevi za prijavljivanje imovine javnih zvaničnika. Sve u svemu, oni su **usvojili međunarodne antikorupcijske standarde** u svojim nacionalnim zakonodavstvima, uključujući odredbe o većem broju obaveznih krivičnih dela korupcije prema Konvenciji Ujedinjenih nacija o borbi protiv korupcije (UNCAC), kao i o nekim neobaveznim.

Regulatorni aktivizam na Zapadnom Balkanu nije rezultat mehanizma povratnih informacija za efikasnost politika, već pre odgovor na **sve veće zahteve za integritetom** u upravljanju od strane domaće javnosti i međunarodnih partnera. Zadatak nacionalnih vlada je da drže korak sa promenljivim manifestacijama i oblicima korupcije, uz istovremeno održavanje regulatorne stabilnosti i izbegavanje da se pravosuđe preplavi brzim promenama važećih zakona.

Primer toga su **javne nabavke**. Tokom poslednje tri godine, zakoni o javnim nabavkama često su revidirani, što ukazuje na to da politike pokušavaju da prate razne zloupotrebe. Na Zapadnom Balkanu javne nabavke su područje povećanog rizika od korupcije, jer se koriste ne samo za nabavku javnih dobara i usluga, već često i za prebacivanje javnih sredstava u privatne džepove. SELDI procena javnih nabavki u zemljama Zapadnog Balkana otkriva da na njih posebno negativno utiču faktori kao što su: tenderi često dizajnirani da favorizuju određene ponuđače, loš nadzor nad

poštovanjem i sprovođenjem uslova ugovora, prekomerna upotreba pregovaračkih postupaka, veliki broj tendera sa samo jedan ponuđačem itd.

Specijalizovane institucije za borbu protiv korupcije

Osnivanje izvršnih institucija sa ekskluzivnim antikorupcijskim nadležnostima u državnom okruženju zemalja Zapadnog Balkana suočilo se sa dilemom: **pre-malo moći bi ih učinilo beskorisnim**, što bi dodatno povećalo nepoverenje javnosti u vladu; **previše njih i rizikuju da postanu oruđe** za lične političke ciljeve. Zemlje na Zapadnom Balkanu pokušavale su da reše ovu dilemu na različite načine. Na Kosovu postoji samo Kancelarija za dobro upravljanje koju čine osam zaposlenih u okviru Kancelarije kosovskog premijera, koja nadgleda izradu i sprovođenje strateških dokumenata protiv korupcije. U Albaniji, takođe u nadležnosti premijera, postoji nacionalni koordinator za borbu protiv korupcije. U Srbiji je aranžman složeniji: Agencija za borbu protiv korupcije ima prilično široku nadležnost (nadgledanje i kreiranje politike, rešavanje sukoba interesa, pokretanje promena i usvajanje propisa u oblasti borbe protiv korupcije, koordinacija ostalih tela za borbu protiv korupcije itd.). Crnogorska Agencija za prevenciju korupcije ima slična široka ovlašćenja - sprovođenje mera za sprečavanje sukoba interesa, prikupljanje i proveru izveštaja o imovini i prihodima javnih funkcionera, prijem i postupanje po izveštajima uzbunjivača, itd. Zbog složene strukture u BiH postoji 14 tela za borbu protiv korupcije na svim nivoima vlasti i sva su osnovana formalnom odlukom vlada ili parlamenata i imaju svoje jurisdikcije.

Integritet državne službe

Reforme čiji je cilj jačanje integriteta javne uprave u zemljama Zapadnog Balkana, vođene uglavnom Evropskom unijom i obećanjima o pristupanju EU, dovele su do toga da su u **svim zemljama usvojeni zakoni o državnoj službi**. Postoje različiti mehanizmi za sprečavanje i borbu protiv korupcije među državnim službenicima. Na primer, u BiH su ta pitanja regulisana brojnim i autonomnim zakonima za svaki od navedenih nivoa vlasti. Sa druge strane, na Kosovu ne postoje posebne odredbe o borbi protiv korupcije u zakonu o državnim službenicima, već samo u Kodeksu ponašanja državnih službenika i Zakonu o borbi protiv korupcije. Međutim, primena ovih mehanizama i politika represije i dalje su prilično slabe i bez opipljivih efekata, što stvara plodno tlo da neetično ponašanje postane prihvatljivo. U svim zemljama Zapadnog Balkana stariji državni službenici, a naročito neke posebne kategorije državnih službenika zaposlenih u sek-

torima visokog rizika od korupcije (policija, poreska uprava, carina, itd.), dužni su da imovinu i prihode prijave nadležnim institucijama. Međutim, institucije zadužene za kontrolu imovine i prihoda uglavnom su usredsređene na izabrane funkcionere, a ne na državne službenike. U skoro svim zemljama postoji problem sa otkazima koje poništavaju sudovi, što ukazuje na nedostatke u sprovođenju opravdanog degradiranja ili otpuštanja državnih službenika.

Sprovođenje antikorupcijskih mera: pravosuđe

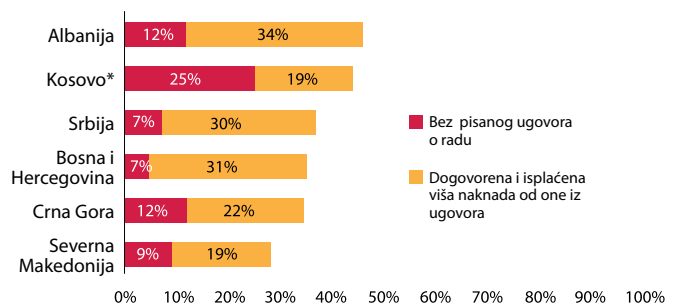
Iako se pravosudne reforme sprovode u toku više od jedne decenije u svim zemljama Zapadnog Balkana, **one nisu dovele do značajnog napretka**. Suština ovih reformi bila je ograničena na poboljšanje zakonodavnog okvira i drugih tehničkih pitanja, praćena lošim sprovođenjem i učinkom, posebno u pogledu efikasnih krivičnih gonjenja i osuđujućih presuda - **pravosnažne osuđujuće presude javnih službenika** uglavnom se iskazuju **jednocifrenim brojem**. Ovo se posebno odnosi na slučajeve korupcije višeg nivoa, iako su izuzeci počeli da se pojavljuju. Podjelu vlasti i stvaranje nezavisnog sudstva sputavaju **politizacija sudstva, neprimereni uticaji i korupcija** - zakonodavna i izvršna vlast i dalje snažno utiču na izborni proces u pravosuđu i raspodelu budžeta. Sva ova pitanja predstavljaju velike prepreke na putu pristupanja zemalja Zapadnog Balkana EU. Glavni nedostaci u upravljanju i funkcionisanju pravosuđa uključuju:

- uticaj zakonodavne i izvršne vlasti na izbor i unapređenje sudija i tužilaca;
- organi koji upravljaju pravosuđem i tužilaštvom nisu na odgovarajući način odvojeni;
- sprovođenje disciplinske odgovornosti i etičkih kodeksa za sudije i tužioce i dalje je vrlo ograničeno;
- državnim tužilaštvima nedostaju resursi, posebno stručnost u finansijskoj forenzici;
- upravljačke strukture su nejasne i kompetencije se često preklapaju.

Borba protiv korupcije u privredi: siva ekonomija

Značajan sektor **sive ekonomije usko povezan sa korupcijom** i dalje muči Zapadni Balkan. Prisustvo ovog sektora moglo bi se pripisati mnoštvu uzroka, kao što su nizak poreski moral; slabo poslovno okruženje i vrlo visok nivo siromaštva; nedostatak poverenja u institucije vlasti i visoka percepcija korupcije; visoki porezi i parafiskalni nameti, paralelno sa prekomernom prinudnom poreskom politikom; nedovoljne inspekcije i revizije; birokratija, opterećujući sistem otpremnina i česte promene zakona.

Radnici bez pisanog ugovora o radu ili primanje veće naknade od one koja je prijavljena (2019, u %)



Izvor: SELDI sistem za nadzor korupcije / Sistem za praćenje sive ekonomije, 2020.

Visoka tolerancija prema utaji poreza i doprinosa za socijalno osiguranje našla je pogodno tlo na Zapadnom Balkanu zbog percepcije da su poreske vlasti i uopšte javni sistem korumpirani. Prema 45,7% preduzeća u severnoj Makedoniji i 72,9% u Albaniji, korupcija je najvažniji faktor za postojanje sive ekonomije. To navodi javnost da veruje da se porezi ne koriste pravilno za pružanje boljih javnih usluga.

Kreatori politike Zapadnog Balkana preduzeli su korake da uvedu **obavezno korišćenje pisanog ugovora o radu** za glavno zaposlenje, ali njihovi naponi su uglavnom ostali neuspešni, dok ukupni nivoi sive ekonomije nastavljaju da rastu. To je zbog višestrukih alternativnih načina izbegavanja plaćanja doprinosa za zdravstveno i socijalno osiguranje, kao što je prijavljivanje iznosa primljene zarade u iznosu koji je niži ili neprijavljivanje sekundarnih ili honorarnih poslova.

Uloga civilnog društva

Širom Zapadnog Balkana, **organizacije civilnog društva (OCD) povećale su svoju stručnost i sposobnost** da pruže doprinos na planu borbe protiv korupcije. Njihov uticaj u borbi protiv korupcije postiže se na različite načine - pokretanjem zakonodavnih promena i merila dobre prakse za povećanje transparentnosti, odgovornosti i integriteta javnih preduzeća i jačanjem privatnog poslovnog kapaciteta za sprečavanje i borbu protiv korupcije.

S obzirom na njihovu aktivnu ulogu u promovisanju integriteta javnih funkcija, utoliko je prikladnije da se **OCD drže najviših standarda transparentnosti i odgovornosti**. Sve u svemu, iako se sve veći broj OCD zalaže za dobro upravljanje, malo je napretka u preduzimanju koraka da se učine transparentnijim. Jasan pokazatelj toga je mali broj OCD koje objavljuju godišnje izveštaje na mreži. U nekim zemljama (npr. U BiH) ne postoje posebni zahtevi za OCD da objavljuju operativne i finansijske izveštaje - zakon nalaže da budu „transparentne“ bez definisanja bilo kakvih specifičnosti. U praksi su samo OCD koje se prijavljuju za vladine fondove dužne da redovno dostavljaju izveštaje.

Put napred: ubrzanje borbe protiv korupcije na Zapadnom Balkanu

Spori i neravnomerni napredak u borbi protiv korupcije omogućio je privatnim interesima da drže vlade Zapadnog Balkana što je rezultiralo zarobljavanjem države. Oslobođanje upravljanja iz ovog stiska može se postići jedino savezom zainteresovanih strana koje deluju zajedno: **reformski nastrojenih kreatora politike, civilnog društva i međunarodnih partnera**, među kojima je glavna Evropska unija.

Na nacionalnom nivou, neophodno je da javni organi Zapadnog Balkana uspostave **procedure za efikasno krivično gonjenje** korumpiranih političara visokog ranga i visokih državnih službenika. SCAD analiza podataka sugeriše da bi ključni prioritet trebalo da bude zaštita i praćenje nezavisnosti i učinka pravosuđa. Uticaj zakonodavne i izvršne vlasti na izbor i unapređenje sudija i tužilaca treba normativno isključiti ili minimizirati. Zemlje u kojima većina sudijskih samoupravnih tela nije izabrana između sudija i od strane sudija treba da usvoje reforme povećavajući svoju glasačku moć.

Odgovarajući balans između prevencije i represije posebno je važan za postizanje smanjenja obima sive ekonomije i njenog uticaja na korupciju. Vlade treba da utvrde šta podstiče poslodavce i zaposlene da se bave neformalnim poslovnim aktivnostima; oni bi se tada

uzeli u obzir prilikom osmišljavanja reformi za poboljšanje poslovnog okruženja, poreske politike i kvaliteta javnih usluga.

Ključno pitanje osiguranja odgovornosti vlada je **transparentnost vlasništva nad medijima**, nezavisnost redakcija i zaštita slobode medija od političkog uplitanja. Poseban fokus u vladinim naporima treba da bude izbegavanje zarobljavanja civilnog društva, poboljšanje korporativnog upravljanja državnim preduzećima i transparentno upravljanje velikim investicionim projektima.

Napredak kvaliteta javnog upravljanja u zemljama Zapadnog Balkana sada je usko povezan sa procesom njihove integracije u Evropsku uniju. Osnovni uslovi koji utiču na reforme integriteta različiti su u svakoj zemlji, čineći EU regionalnim faktorom za stabilizaciju ovih reformi.

Da bi joj strategija proširenja omogućila da i dalje bude takav faktor, **EU treba da se aktivnije politički angažuje** sa zemljama Zapadnog Balkana, pružajući im jasnu perspektivu za budućnost. Veće angažovanje bi, međutim, trebalo da se zaštiti od nekoliko neželjenih posledica, koje bi ga mogle učiniti kontraproduktivnim. Trebalo bi da osigura da korist od bliže ekonomske integracije sa Unijom ne pripadne samo maloj kliku privilegovanih oligarha, što dodatno pogoršava zarobljavanje države u poslovanju. Uslovi povezani sa članstvom u vezi sa integritetom vlada moraju biti praćeni jednako snažnim lokalnim javnim zahtevanjem odgovornosti, da dominantni politički akteri ne biraju ovo prvo kao izgovor za [diskreditovanje/zanemarivanje] ovog drugog. Angažovanje u diplomatskoj areni sa političarima i visokim vladinim zvaničnicima takođe bi trebalo da se obavlja na način koji ne stvara utisak političkog odobravanja. Sveukupni efekat ovog procesa trebalo bi da bude suprotstavljanje i **neutralizacija štetnih efekata autoritarnog uticaja** u regionu.

Evropska unija je sada ojačala nepredviđene slučajeve procesa proširenja uvođenjem negativnih i pozitivnih uslovljavanja i uključujući opcije kao što su **obustava pregovora i zamrzavanje sredstava**. SELDI pozdravlja uključivanje u pristup borbi protiv korupcije EU u kontekstu prihvatanja nekih ranijih preporuka SELDI-ja, uključujući uvođenje borbe protiv korupcije u širi spektar politike, a ne samo u antikorupcijske institucije i pravosuđe, i zaštitu važnih odnosa civilnog društva Evropske komisije, uključujući i njihovu finansijsku potporu kod neočekivanih teškoća. Ipak, primat na dnevnom redu vladavine zakona za napredak u bilo kojoj drugoj oblasti razvoja Zapadnog Balkana treba dodatno naglasiti, posebno širenjem spektra aktera koji su uključeni u praćenje i zalaganje za reforme dobrog upravljanja. Samo **javno-privatna**

koalicija koja uključuje i institucije i aktere EU i lokalne javne i privatne institucije i pojedince bila bi u mogućnosti da obezbedi niz pozitivnih dešavanja u borbi protiv korupcije, tj. njihovu nepovratnost.

Pomoć EU u borbi protiv korupcije - kako tehnička, tako i finansijska - za Zapadni Balkan mora se pružiti uporedo sa porukama opšte politike EU. To se sada očekuje od Instrumenta za pretpristupnu pomoć (IPA) III. S obzirom na nalaze SELDI-jeve SCAD procene intenziteta zarobljavanja države u regionu, **finansiranje EU trebalo bi da sadrži princip *primum non nocere* (prvo, ne nanosi štetu)**. Drugim rečima, mora da osigura da ne postane kontraproduktivna jačanjem klijentelističkih mreža korumpiranih političara i privilegovanih preduzeća koja dobijaju lavovski deo nabavki koje finansira EU.

EU treba da nastavi da prati razvoj borbe protiv korupcije u partnerstvu sa civilnim društvom u regionu. Nezavisni mehanizmi za praćenje korupcije i borbe protiv korupcije potrebni su na svim nivoima - od procene rizika od korupcije do provere ključnog zakonodavstva i analize efikasnosti unutrašnjih postupaka za borbu protiv korupcije u pojedinim javnim institucijama. Pomažući zemljama da se izbore sa poslednjim, EU bi bilo dobro savetovati da **integriše inovativne analitičke instrumente** kako bi vodila svoju politiku, poput onih koje je sprovodio SELDI:

- *Instrument za praćenje primene antikorupcijske politike (MACPI), koji procenjuje otpornost institucija na korupciju i identifikuje propuste u antikorupcijskoj politici i primeni; i*
- *Dijagnostiku procene zarobljavanja države koja pomaže u identifikovanju ranjivosti zarobljavanja države.*

Evropska komisija bi trebalo da posveti posebnu pažnju zaštiti konkurencije u **sektorima visokog pritiska monopolizacije** prilikom sprovođenja svog investicionog plana za region. Tehnička podrška, saveti o politikama i finansiranje od strane EU trebalo bi da budu usmereni na borbu protiv korupcije i antimonopola usmereni na ključne sektore, kao što su energetika, infrastruktura, bankarstvo i telekomunikacije. Proširenje savetodavnih misija na čitav Zapadni Balkan takođe će biti od koristi u obavljanju procena vladavine zakona; međutim, preporučuje se da sve provere zasnovane na slučajevima uključuje stručnjake iz civilnog društva. Evropska komisija i lokalne delegacije EU treba da rade zajedno sa lokalnim zainteresovanim stranama na uspostavljanju postupaka za redovno praćenje suđenja u slučajevima korupcije, kao i praćenju napretka pravosudnih reformi.

