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ERIC GORDY, ADNAN EFENDIC (EDS)

# MEANINGFUL REFORM IN THE WESTERN BALKANS

## BETWEEN FORMAL INSTITUTIONS AND INFORMAL PRACTICES



PETER LANG

This book contains collection of articles which provide policy implications related to the problem of achieving substantive reform on the basis of harmonising legislation in Western Balkan (WB) countries with the standards of the European Union (EU). While WB states have generally been successful in adopting legal reforms that make up a part of EU conditionality, many laws remain unenforced, amounting to “empty shells.” In the space between law, as it is written, and practices as they are engaged in everyday life, exists a gap, characterized by informality, clientelism, and exchange often based on strong tie relationships. Some instances of informality undermine the goal of establishing rule law and contribute to corruption. Others offer valuable solutions to persistent social problems or represent traditional vehicles of social cohesion that should be promoted. The recommendations in this book seek to address both, constructive and damaging instances of informality, and to identify policy measures that can help to harmonise not only legislation, but existing informal practices on the ground.

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# MEANINGFUL REFORM IN THE WESTERN BALKANS

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PETER LANG

Bern • Berlin • Bruxelles • New York • Oxford • Wien

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Eric Gordy and Adnan Efendic

# 1. Engaging Policy to Address Gaps Between Formality and Informality in the Western Balkans

This introductory chapter considers the interaction between formal and informal institutions, discussing an updated theoretical approach to this complex relationship but also touching related empirical evidence from the Western Balkans (WB) states. The approach adopted in this study is that informality cannot be *a priori* considered as a negative phenomenon, nor linked to the WB region, its cultures, traditions, religions or mentality of people living in this European space. This chapter and following contributions draw policy makers' attention to the fact that legal reforms in this region, including the institutionalisation of the EU rules, need to be sensitive to context, reducing informality where it is necessary by addressing the formal deficiencies that people resolve through informal practices operating on the ground, while integrating and formalising the positive contributions that are available sometimes exclusively through informality.

**Keywords:** formal institutions, informal institutions, informality, Western Balkan, policy

## Introduction

The texts in this book are products of the Horizon 2020 research project INFORM, „Closing the gap between formal and informal institutions in the Balkans“.<sup>1</sup> The project was carried out by a consortium of over forty researchers at nine institutions in nine countries, including the six Western

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1 INFORM is a project that brings together teams from nine European countries – Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Slovenia – to conduct multidisciplinary social science research on formal and informal institutions in the Balkans. The three-year research project, launched in March 2016, is carried out in the framework of the European Union's Horizon 2020 research and innovation programme under grant agreement No. 693537. This book is one of the outcomes of INFORM project, in which the authors provide empirical evidence and related policy implications from the interactions of formal and informal institutions in the process of Europeanisation of the Western Balkan states, including the spheres of politics, economy and everyday life.

Balkans (WB) states that are currently at various points in the process of accession to membership in the European Union. The fundamental question posed in the research was how empirical knowledge could make a meaningful contribution to assuring that the legal and structural reforms carried out as a part of the accession process could genuinely contribute, in a substantive way, to strengthening the capacity of states to govern, to consolidating processes of democratisation, and to improving the welfare, security, and confidence of citizens of these states. Thus, the main intention of every chapter is to come up with proposals for policy measures directed towards the institutionalization of EU laws and regulations based on empirical evidence regarding the relations between formal institutions generated in the process of Europeanisation of WB states and inherited and newly developed informal institutions in the spheres of politics, economy and everyday life.

The research was guided by a perception – widely shared among the researchers in the team and repeatedly confirmed informally in private conversations throughout the region – that while states had more or less been successful in adopting legislation that harmonises domestic law with the standards of the European Union, these legislative changes frequently amounted to „empty shells“, changes adopted exclusively at the formal level that states lack the capacity or will to implement (Dimitrova, 2010). In the face of formal resolutions that fail to regulate everyday activity, informal practices emerge, and very often as the substitutes for the formal institutional deficiencies (Efendic et al., 2011). Some of these can be described as corrupt practices, in which powerful brokers are able to make use of deficiencies in the institutional setup in order to divert public agencies to private purposes. Others of them, however, reflect strategies generated by citizens to accomplish necessary work in the context of institutional arrangements that fail to function. Still others express relationships of mutual support and solidarity that are both grounded in tradition and guided by necessity.

One of the generally recongized insights that follows from this approach is that it is not productive to regard informality *per se* as a problem or negative phenomenon linked to the Western Balkans region, its cultures, religions, traditions or mentalities. Rather, we sensed, the problem lies in *the gap between* formal legal resolutions and informal practices in everyday life. This means that there exist large portions of everyday life, including meaningful portions of the political and economic spheres, that

are not described by law. This insight takes on importance for policy (and dare we say, politics) if it is considered in the context of the historical experience of citizens in the states of Western Balkans over the past hundred years. They have confronted multiple projects, inspired from outside and bombastically announced from above, promising to fundamentally transform the institutional and social orders, which have often been short-lived, superficial, and implemented haphazardly and incompletely. Among the consequences have been popular insecurity and distrust, and these have been of longer duration than the regimes toward which they are directed. The concern is widely shared among people in the region, although it may not be apparent to EU reformers, that the current process of liberalisation and „Europeanisation“ or „Europeanunionisation“ may represent one more of these ambitious but ultimately superficial initiatives. The repeated experience is neatly summarised in a popular parody of political slogans: *„Hteli smo najbolje, a ispalo je kao i obično“* („We wanted the best, but it turned out as usual“).<sup>2</sup>

The researchers on the INFORM project were guided by the belief that empirical knowledge about the gap between formality and informality could contribute to developing policy proposals that could be useful in addressing the risk that legal and structural forms could appear comprehensive but turn out meaningless, prolonging the experience of states that fail to function, and that experience chronic crises of legitimacy. Although nearly everybody, from international experts to participants in coffee shop conversation, recognises the gap on which our research concentrates, this project represents the first effort to gain systematic and region-wide knowledge about its scope, character, and meaning. The contributions in this volume elaborate the policy proposals that derive from the findings of our research, covering the selected topics in the spheres of politics, economics and everyday life. The intention of this book is not to cover all possible examples that appear on the ground, but some of the most representative recognized by the researchers coming from these three fields.

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2 A recent iteration of the slogan appears as the title of an analysis of transgender equality initiatives in Serbia by Jelena Simić, „Hteli smo najbolje, a ispalo je kao i obično,“ *Peščanik*, 28 December 2017, available online at: <https://pescanik.net/hteli-smo-najbolje-a-ispalo-je-kao-i-obicno/>.

## A new theoretical approach to formality and informality

Core concern motivating the research is the perception that in Western Balkans (including two EU countries from the region in our sample, Slovenia and Croatia), the accelerated pace of EU accession has contributed to a rush in adoption of legislative reforms proposed solely for the purpose of compliance with the *acquis communautaire*, and frequently passed through the parliament without debate or substantive consideration. We have referred to these, as have others, as „empty shells“; although other labels have been suggested, among them „fabricating reforms“ and „reform simulation“ (e.g. Dimitrova, 2010; Đinđić and Bajić, 2018). They describe a situation in which legal resolutions are adopted by states which have neither the intention nor the capacity to implement them. Similar to the way that Verdery (1996) described a formally socialist economic system masking feudalist and capitalist practices on the ground, the adoption of liberal policy in the post-socialist period is marked by a disjunction between the world as it is described by official policy and the world that is confronted by citizens in their everyday experience. This results in a gap between formal and informal practices, which appears to be growing as states hurry to generate legal and regulatory frameworks that do not respond to actual conditions.

This phenomenon contributes to constructing an observation that is all too obvious to people who live in the region but is frequently not apparent to outside observers in government and media: there are large portions of the system by which political power and influence operate that are not represented by the official structures of formal power and not described by law. They represent, on the one hand (in their corrupt form), ways in which gaps in the system are exploited by people in a position to take advantage of them for personal gains, and in that sense are threats to the establishment and consolidation of a rule-based system that is predictable, efficient, and bound by regulations that act to protect the interests of citizens. At the same time they also represent (in their complementary form) strategies and networks that citizens draw upon in order to accomplish tasks that are not facilitated by systems that have been established in law but not enacted into practice.

These features add up to make Western Balkans a productive environment for the study of informality. Both the extended-transition characteristics

of the states and what is often perceived to be the „tradition“ of informality in regional cultures contribute to the richness of the research environment. The perception of the existence of a „tradition“, however, could be misleading. Much of the research suggests that informal practices of long standing derive from political conditions: repeated changes of political regime over the past century, a corresponding repeated failure of regimes to consolidate formal aspects of their rule, and a consequent and apparently permanent deficit of trust in institutions. But the perception of tradition also contributes to the longevity of a stereotype, which sees informality as in some ways embedded in the cultures of the region. A homologous stereotype of „backwardness“ traces its path through the literature to Banfield’s (1958) study of southern Italy, and is neatly reproduced in a 1991 regional survey tracing the „origins of backwardness“ in eastern Europe (Chiro, 1991). In both cases the persuasiveness of the characterisation of some parts of the world as fundamentally more „backward“ than others depended on the conditions and policies that produced „backwardness,“ and tended to disappear with the disappearance of those conditions. Is informality a product of cultural inclinations? Probably if it is, then it is so everywhere, or at least in a widely varying range of cultural environments (for a wide variety of examples from around the world, see Ledeneva, 2018). And to the degree that culture inclines societies to be accepting of „bad“ informality (such as bribery and the use of connections) it does so mostly in trivial ways (exchange of gifts, obligation to help family). Our research indicates that the prevalence of informality is primarily a product of dysfunctional regulatory environments. Evidence on entrepreneurs in Southeast Europe suggests that businesspeople will engage intensively in bribery and the instrumental exchange of gifts and favours to the degree that they understand these activities as being necessary for the conduct of their business, but that when predictable and efficient legal resolutions become easily available, the volume of informal transactions declines (e.g. Efendic et al., 2018). Similarly, corrupt practices can often emerge as a consequence of a formal system seeking to expand its accessibility and reach beyond the level of its capacity.

Another difficulty confronting the study of informality in this part of Europe involves one of the problematics that lies at the heart of this collection: the close relation between the emergence of informality as a research problem and the challenges that accompany implementation of the European Union’s rule of law agenda. A consequence of this is that informality tends to be viewed exclusively as a problem to be eliminated, closely related

to corruption and obstructing the establishment of stable and reliable legal institutions. This view is not inaccurate, but it is also not complete. It has the consequence of overlooking, in particular, ways in which many informal practices emerge as responses to the failures of formal institutions, and ways in which informality provides means for people to accomplish necessary tasks in their lives.

The mixed character of informality has encouraged the development of two opposing approaches to the problem, both of which are incomplete and extreme: condemnation and celebration. One camp advances pure formality as a goal and regards informality as a source of corruption and diversion that needs to be eliminated. The other points to the creative and „authentic“ character of informality as an organically generated set of strategies for problem solving, and encourages a view of it as a resource to build upon in the development of policy. Helmke and Levitsky's (2004) typology represents an effort to overcome this dualism, and as such has been widely influential – it is cited by several of the authors in this collection, as it is throughout the informality literature. But this solution brings with it some problems of its own. The main problem is that in distinguishing between „good“ (law-enhancing) and „bad“ (law-subverting) informality, it maintains both the dualism and the preference for state-based solutions that characterise the literature that precedes it. The principal obstacle to knowledge here is that an overly strongly drawn distinction eludes the basic interactivity of the relationship between formality and informality, and the fact that formal institutions function (necessarily) with informal practices, while informal practices develop rule-like strategies of enforcement (North, 1990; 1990a). This interactivity is not necessarily a problem or a failure, but rather it is a resource for the generation of information. The scale and type of informal practices tell us about the limitations of formally conceived systems.

Empirically grounded research elaborated by a clear understanding of the cultural contexts in which the empirical facts emerge helps us to move beyond the unhelpful dualism that is characteristic of a good quantity of the existing research on informality. It should also be helpful, ultimately, in the development of policy. To the degree that in the accession states of Western Balkans, the European Union's strategy of transposing formal rules from one environment to another can be viewed as having been unsuccessful on several fronts, it might be possible to conclude that among the principal sources of failure has been the introduction of formal practices into environments that have been, whether for structural, cultural or

political reasons, unreceptive. The contribution that researchers are able to make is to draw attention to aspects of the context into which new regulations are introduced, and to encourage flexibility and sensibility.

Less fully explored in many discussions of informality is the role played by external actors in promoting and consolidating informal practices. This dimension is frequently obscured by self-promoting stereotypes that view outside actors as bringing the rule of law to recalcitrant political actors who resist it. This perception is explicitly contested, for example, in INFORM's research on „leaders' meetings,“ which notes them as instances reflecting „the imprecise nature of EU's political criteria as a source of numerous inconsistencies ranging from vague conditions that are not based on EU wide standards to contradictory application“ (Markovikj and Damjanovski, 2018). In this context “leaders' meetings” break an impasse with a bypass, facilitating short-term agreements through direct consultation between the heads of political parties. While the tactic has an obvious appeal to EU mediators as a way of overcoming obstacles in the short term, the long term effect is to substitute short-term political gain on the part of political elites for the public interest. A clear but frequently overlooked conclusion is that outside actors, working with the overall intention of promoting legitimacy and the rule of law, are not immune to the temptation of internalising some of the informal practices that dominate political activity in unconsolidated states, thereby, probably unintentionally, undermining the institutions that they hope to promote.

## Contributions

The contributions in this volume shed light on some of the central characteristics of informality in Western Balkans, while also intersecting with some of the basic theoretical discussions in the study of informality generally. Some of the central characteristics of WB states that make them especially interesting as sites for the study of informality include: frequently low levels of institutional density, repeated experience of „fundamental“ structural change inspired from outside and imposed from above, and complex interaction between formal institutions that are consolidated to varying degrees and requirements for reform generated through external

processes (in particular, through pursuit of the goal of integration with the European Union). It might be said that these are states that are seeking to establish, with partial success, democratic systems, having emerged from a period in which they sought, with partial success, to establish socialist systems. The gaps emerged where failed elements of both of these ambitious efforts to construct society-transforming political systems left ample space for the development of compensatory informal practices. Some of these practices developed into stable forms of corruption, while others made it possible for everyday needs to be met in dysfunctional institutional environments. Additionally, as some of the states of the region are new states which have recently experienced violent conflict, the issues of institutional functionality and trust in institutions become more prominent.

Chapter 1 provides a parallel analysis by Ivan Damjanovski and Marko Kmezić, who trace processes of implementation of *acquis* requirements in Western Balkans EU accession states. The discussion concentrates on the degree to which, in the process of undertaking legal and institutional reforms, the norms underlying these reforms have also been internalised in the accession states. Examining the fields of judicial reform, media freedom, economic reform, institutional capacity, they find that while states frequently meet conditions for legislative or organisational reform, the implementation of these reforms, and their transformation from words printed on paper to substantive improvements in the environment and daily life of citizens, are blocked by a number of factors. These include the low credibility of the accession process itself (a problem compounded by weak public information), the weak capacity of states for implementation, and political elites who act as gatekeepers, blocking the implementation of changes that do not serve their short-term interests. In addition, the legacy of previously existing nonfunctional systems has generated a powerful subterranean system of informal networks and practices, which are durable and resistant to change, partly because of generally low levels of confidence in formal institutions. Addressing this type of legacy requires sustained engagement not only in terms of generating a public case for the norms that are promoted by means of reform, but also in recognising and diminishing the power of elite social actors who are able to assume the role of veto players. The risk of continued engagement solely on the level of form, bypassing substance, is that „democracy in the region will remain an empty shell” (see Chapter 1). Chapter 2 offers an analysis of the problems of “goldplating” and partial enforcement of EU-derived regulations by Miran Lavrič, Reana Senjković,



and Rudi Klanjšek, examining the problem through the lens of the sharing of meat produced by home slaughter. The issue involves a practice that is generally viewed positively in Western Balkans societies (including Slovenia and Croatia), as people consider domestically produced meat to be healthier and of superior quality to meat available through commercial outlets, while the practice itself is rooted in traditions of familial and communal solidarity and plays a role in religious observances. Although EU requirements in the area are in fact fairly minimal (mostly relating to health protection and animal welfare), several states used the opportunity of compliance with conditionality to introduce legislation that was considerably more restrictive than the EU demanded. This had the consequence of widening the gap between applicable law and the capacity and will of states to enforce the law, both undermining the credibility of institutions and opening up possibilities for abuse through selective or instrumentalised enforcement. The states' "goldplating" also resonates with a sometimes popular current in anti-EU opinion, which sees reforms demanded from outside as threatening widespread and cherished cultural practices, many of which concentrate on the domestic preparation of food. Overall the discussion points not only to the dangers of "goldplating" and the overproduction of unenforceable "empty shell" legislation, but also underlines the need to harmonise formal rules to cultural values, norms, and practices that are perceived as legitimate on the local level. Implementing this recommendation requires policymakers to engage the kind of cultural knowledge that is widely shared by citizens and available through research in the social sciences.

In Chapter 3 Adnan Efendic and Alena Ledeneva confront the phenomenon of informal networking, including both household and entrepreneurial sectors. Drawing on both statistical and ethnographic evidence, they establish the motivations of businesspeople to establish and maintain informal networks, and also generate a rough calculation of the costs of maintaining these networks. While there is variation according to location, gender, education, and stage of business development, the cost of maintaining an informal network is high, ranging from 80 to 150 Euros monthly in a region where the average monthly income of the survey respondents is 250 Euros. Businesspeople report that informal networks are maintained out of necessity: not only for the cultivation of clients and the exchange of information, but also to oil the wheels of an inefficient bureaucratic and regulatory system. The cost of networking is lower in states where regulation is more transparent and less burdensome. This evidence directly

contests the perception, derived from stereotype, that informal networks correspond to some sort of regional inclination to sociability or “mentality” – most businesspeople would prefer to work with efficient and predictable state agencies rather than having to cultivate contacts in order to secure bureaucratic resolutions. As one of the interviewed respondents nicely said, – ‘*But, I wish we had a state without it...*’. Conversely, in states where recent ethnonational conflict has made ethnic and religious diversity a site of contention, informal networks appear able to build and sustain relationships across cultural divides more successfully than do formal institutions, which are all too frequently the site of preferential behaviour and discrimination. The principal policy implication is that legal reforms need to be sensitive to context, reducing informality where it is necessary by addressing the formal deficiencies that people resolve through informal networks, while integrating and formalising the positive contributions that are available sometimes exclusively through informality.

The contribution in Chapter 4 by Misha Popovikj, Borjan Gjuzelov, and Jovan Bliznakovski explicates ways in which the informal practices of political parties undermine the legitimacy of formal systems of democratic representation and accountability: through the practice of relational clientelism. While a good deal of attention has been paid to such „fee for service“ practices as vote buying, the corrosive effect of informality on political representation looks more serious when it is viewed as an interactive process developing over a longer term. In a context where public institutions and public procurement fail to operate efficiently and transparently, both parties and citizens seek to form long-term mutual relationships in which help with solving practical problems is exchanged for loyalty. This type of relationship deprives political representation of its substantive content, while at the same time it consolidates politicians’ lack of interest in creating and maintaining stable and efficient institutions. What is essential in the relationship is that it is not only parties that offer incentives to citizens in exchange for votes – nearly as frequently, citizens seek out the services of parties as brokers mediating their needs and the institutions of the state. In states where political contestation is genuinely competitive, the scale of the relationships that are formed in this way may be enough to alter the outcomes of elections. The authors propose the introduction of a parliamentary oversight mechanism to monitor and control the functioning of relational clientelism. On a broader level, it might also be observed that the findings on this point reinforce two of the major outcomes of the INFORM project, that informal practices, including

practices that are corruptive, arise from: i) an institutional environment in which formal procedures fail to address the needs of citizens; and ii) the absence of political will to eliminate (or even the presence of direct political incentives to maintain) a dysfunctional institutional environment.

Informal pressures on political institutions are also the focus of Chapter 5, in which Vjollca Krasniqi, Nenad Markovikj, Ilina Mangova, Enriketa Papa-Pandelejmoni, and Jovan Bliznakovski explore the circumvention of legal institutions of democratic representation and decisionmaking through „leaders’ meetings,“ in which the heads of political parties resolve contentious issues informally through meetings in settings like restaurants and coffee shops, sometimes with the active encouragement and intervention of international diplomatic representatives. Frequently these meetings succeed as a tactical manoeuvre to overcome, at least temporarily, blockages in representative institutions. For this reason they may appear as an attractive „quick fix.“ Over the long term, however, they undermine the credibility of representative democracy, replacing public interest with private interests and reducing parliaments to institutions that ratify publicly agreements made secretly. The authors propose that the constructive function of „leaders’ meetings“ – as a forum in which contentious disputes can be resolved – can be maintained, while their subversive dysfunction can be reduced. This could be achieved by bringing contact among party leaders into the parliamentary system, and encouraging this contact to be oriented toward preventing intractable disputes rather than toward ironing them out once they have developed.

Chapter 6, by Vjollca Krasniqi, Enriketa Papa-Pandelejmoni, Armanda Hysa, and Gentiana Kera, interrogates the space between formal rules and „how things get done“ in everyday life. The authors conceive of formality and informality as interactive, with informal practices emerging to respond to shortcomings in formal institutions, and correspondingly providing information about the successes and failures of the formal sector. The authors explore the frequency of use of informal practices and the pursuit of „connections“ and mediation, both in the everyday sphere and in relations with political institutions such as parties, noting that informal mediation is sought most in those fields where formal rules fail to function equitable and efficiently. The phenomenon is most pronounced in areas such as access to health care, education, public services, and employment. These observations are of value to policymakers for two principal reasons: i) they contest the stereotypical view of informal networks as somehow

responding to cultural and traditional predispositions of citizens of Western Balkans states, and ii) they underscore the point that the most successful strategy for combating (bad) informality is not through repressive measures, but rather by providing citizens with the means to access public services and benefits without the need for mediation.

In the last chapter, Chapter 7, Mirza Mujarić and Ismet Kumalić offer an overview of how EU observers have assessed reform processes in South-east European states, as well as a comprehensive survey of how several post-socialist states, including ones both inside and outside the INFORM sample, developed strategies to confront the problem of informal employment. The scope of their review is broad and the evidence takes diverse forms, but it may be possible to draw out some unifying observations that are relevant to the development of policy. Principal among these would be that states have generated a consensus that informal („under the table“ or „cash“) employment has consequences that reverberate throughout the formal institutional system, undermining the rule of law while also depriving public budgets of tax income, depriving workers of protection in the areas of social welfare, safety and health, and increasing future burdens on the public in the form of unfinanced obligations for health and elder care. Enhanced inspection and enforcement was partly successful in addressing issues related to informal employment, but the most productive initiatives were ones that met the following criteria: i) they provided legal avenues by which workers could seek employment and, in the case of migrant workers, regulate their eligibility to participate in labour markets; ii) they made the process of complying with labour law faster, simpler, and less burdensome for employers, thereby reducing both transaction costs and the perceived benefit of informality; iii) they integrated campaigns to inform the public of the need for compliance and the means to achieve it. In general these insights converge around the principle that informal practices emerge as consequences of inefficient regulation and unmet needs, and that while enforcement is of course a necessity, the successful assertion of the rule of law also requires transparent procedures for addressing unmet needs, bureaucratic processes that make compliance easier rather than more difficult, and widespread knowledge and understanding among the public about the interests and purposes of formal regulation.

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Ivan Damjanovski and Marko Kmezić

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

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

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

### Introduction

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

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

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

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

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1 In the time of writing this chapter.



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

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

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

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

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

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

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

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

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

## Theoretical Approaches to Europeanisation Beyond the EU Member States

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

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

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

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

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

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

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

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

## Political Conditionality

### *Criteria*

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

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

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

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

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

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

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

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

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

### *The Reform of the Judiciary*

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

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

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



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

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

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

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

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

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

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

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

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

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

### *Media Freedom*

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

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

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

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

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

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

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

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

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

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

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

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

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

### *Compliance*

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



Table 2.1. Level of preparedness in fulfilling the political criteria

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

Source: European Commission 2016 country reports

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

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



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

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

## Economic Conditionality

### *Criteria*

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

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

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

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

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

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

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

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

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

### *Compliance*

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

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

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

Table 2.2. Level of preparedness in fulfilling the economic criteria

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

Source: European Commission 2016 country reports

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

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

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

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

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

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

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



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

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

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

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

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

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

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

### *Criteria*

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

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

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

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

### *Compliance*

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

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

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

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

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

Source: European Commission 2016 country reports

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

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

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

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

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

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

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

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



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

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

## Conclusion

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

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

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

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

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

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

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

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

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

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### 3. Implementation and Enforcement of EU Rules in South East Europe

The problem of implementation of EU rules in new EU member states and candidate countries, including Western Balkan (WB) countries, has been increasingly recognised by researchers and policy makers. Following empirical evidence, some scholars in recent years raised the question whether the formal transposition of EU rules also leads to their institutionalization, or alternatively, whether the imported rules tend to remain “empty shells”. The current study focuses on the effects of the adopted EU rules on domestic production and consumption of food, specifically in the area of pig and sheep home slaughter (hereafter HS) in three WB countries (Bosnia and Herzegovina, Kosovo and Macedonia) and in two EU member states (Croatia and Slovenia). The practice of HS is a good example of many areas of everyday life, which are on the one hand subject to the newly imposed EU rules, and on the other, strongly connected to local traditions and ordinary people’s everyday economic self-subsistence.

**Keywords:** implementation of EU rules, Western Balkan, pig and sheep home slaughter, “gold-plating”, institutional capacity and resources, policy implications and recommendations

#### Introduction

The problem of implementation of EU rules in new EU member states and candidate countries, including Western Balkan (WB) countries has been increasingly recognised by researchers and policy makers. Following empirical evidence, some scholars in recent years raised the question whether the formal transposition of EU rules also leads to their institutionalization, or alternatively, whether the imported rules tend to remain “empty shells” (e.g. Dimitrova, 2010; Kmezić, 2014). Dimitrova stresses that studies dealing with the issue of Europeanisation through the implementation of the EU rules focus mostly on the formal transposition of EU rules into domestic legislation, but tend not to deal with actual effects of these rules “on the ground”, i.e., whether if and how these rules function (if at all) in people’s everyday life.

The wider and crucial question in this regard is to what extent and under which conditions formal rule adoption leads to the institutionalization of these rules, and consequently, to behavioural changes (Schimmelfennig and Sedelmeier, 2005). In a review paper, based on a wide literature review, Trieb (2006) urged that more energy needs to be devoted to systematic research on the phase of practical implementation of EU rules. Soon after, Falkner and Trieb (2008) indicated that many adopted EU rules in the new member states indeed exist largely as “dead letters” since they do not get to be implemented in practice.

One of the most obvious solutions to this problem lies in stronger law enforcement capacities of states. Kmezić stresses that “even the best laws make little sense if law enforcement bodies are not objective and competent” (2015: 19). Similarly, Dimitrova (2010) notes that the implementation literature stresses the importance of domestic administrative traditions and capacities as crucial for the implementation of EU rules. In addition, she also observes that domestic administrations in former state socialist countries tend to be weak and “in flux” (e.g., lack of/low motivation, high staff turnover etc.). The crucial role of administrative power was also indicated in another study, based on analysis of the transposition of EU directives in 15 member states (Falkner et al., 2005: 319). In addition, this study concluded that the national cultures, responding to adaptation requirements, create different, country specific patterns of implementation.

Based on the described insights and also on decades of relatively slow and uneven process of “Europeanisation” of Western Balkans countries, scholars increasingly agree that the old “conditionality approach”, which rests on the “logic of consequentiality” might not be as successful as previously thought. It seems that this approach should be complemented with what is commonly called “constructivist institutionalism”, which is based on the “logic of appropriateness” and deals predominantly with the process of “norm socialization”. It involves asking questions like “to what extent, when and why are (sets of) EU rules regarded as legitimate”. Namely, an important part of a successful rule implementation (i.e., being internalized by the domestic elites and populations) is that those rules have to be (perceived as) legitimate. Following this logic, rule transfer can be effective only if domestic elites and populations identify with the new rules and are thus open to “norm socialization” (Kmezić, 2014: 20–21).

This chapter draws on these insights while presenting a case study on the effects of the adopted EU rules on domestic production and consumption of food, specifically in the area of pig and sheep home slaughter (hereafter HS) in three WB countries (Bosnia and Herzegovina, Kosovo and Macedonia) and in two EU member states (Croatia and Slovenia). The practice of HS is chosen, being a good example of many areas of everyday life, which are on the one hand subjected to the newly imposed EU rules, and on the other, strongly connected to local traditions and ordinary people's everyday economic self-subsistence (such as home brandy production, selling of homemade cheese and sour cream, or sowing of old and locally specific varieties of vegetables).

Qualitative research was deemed suitable for this research project, following legal documents' and related media content analysis. In addition, gathered qualitative research was further illuminated by quantitative research drawing from the survey data. The results are presented in accordance with research procedure, providing evidence for policy implications and, in the end, policy recommendations.

## Implementation of EU Rules in the Area of Pig and Sheep Home Slaughter

Many studies have been done on the consequences of EU membership on the performance of the agricultural sector in various countries, ranging from statistics that show changes in performance of the agricultural sector after entry into the EU, to implications of a UK exit from the EU for British agriculture (Van Berkum et al., 2016). A number of studies deal with producing and processing pork meat in part-time family farms, where the proprietor is a family which cannot earn their livelihood exclusively through farming but depends on off-farm income sources, and who keeps pigs for their own consumption. One of the examples is a study based on fieldwork carried out by national teams in 10 European countries as a part of the CORASON (A cognitive approach to rural sustainable development: the dynamics of expert and lay knowledge) work package on the dynamics of knowledge in the valorisation of local food) (Fonte, 2008). In many regions, as is shown, local lay knowledge, often exchanged and circulated through

informal social networks, is the dominant form of knowledge used. Spanish and Portuguese fieldwork, for example, showed that HS was an important cultural, social and economic event for families and communities, a cultural and anthropological component of social life, involving shared effort and fostering solidarity in the community. The authors of the study thus concluded that it is clear that scientific, general and theoretical perspectives are not the most relevant to these experiences: the best experts are not scientists from universities or bureaucratic-managerial experts from government development agencies. Scientific knowledge may only be a starting point but it needs to be integrated, adapted and mediated by those with expertise and training in specific traditional and artisan modes of food production, and by those who know the “place” (ibid: 221–222).

Some of the studies were also concerned with implementing the rules on animal welfare. Although the traditional system of raising animals outdoors surely contributes to their welfare (Cerjak et al., 2011), it is often stated that in old EU member states animal welfare directives developed through a “step-by-step process”, while for the new member states it appeared to be a “time-lapsed process” (Wellbrock, 2008: 26). Also, for the new member states new rules are sometimes difficult to comply with. As is shown in the Polish case (Dunn, 2003), standards often create barriers because they are embedded in specific geographies. On the one hand, many harmonized standards favour large-scale multinational capital and discourage local small-scale producers. On the other hand, the social legacies of previous economic systems—in this case, state socialism—give small-scale producers “tools” (e.g. informal markets, personal social ties, and political organizing skills) that can be used to create barriers for large multinational competitors.

However, it seems that much of local traditional practices recede. As is shown in the case of Hungary, HS, which was a family fiesta and a popular way of supplying fresh meat, bacon and sausage, is currently very rarely performed (Kovach, 2014). In the research done on Romanian farms and farmers facing the EU regulations it is shown that there was no consent about the attitudes towards EU regulations concerning agriculture: while some of them were welcomed by the population, others were strongly rejected. However, the most unpopular regulation, as stated by the authors, was exactly about HS.

Related research was also done in Slovenia and Croatia, predominantly addressing disease prevention and production yields. However, in

2009 results from an extensive fieldwork with 42 farm households during the two-year period and comprised of detailed interviews with farmers and other local and national stakeholders, participant observation and documentary analysis, were published. Results indicated that much of the agricultural production in these households was primarily oriented toward subsistence use, while part of it was used for exchange, or sold informally. In addition, the study indicated that biosecurity, as part of a broader shift in agri-food governance stemming from Slovenia's entry to the European Union, has dramatically reshaped the playing field for semi-subsistence producers, driving agricultural restructuring and diminishing farmers' strategies of subsistence HS and informal marketing (Frelih Larsen, 2009). As for Croatia, in 2008 a master's thesis entitled "Pig welfare in Croatia: A critical reflection on the EU pig welfare directives" was defended at the Wageningen University in Netherlands, a university that focusses specifically on the theme of healthy food and living environment. Efforts to terminate or intensify family farms, the author concluded, could lead to welfare impairment – both for pigs and for humans – instead of welfare improvement. For example, the author stated, neglect of part-time family farms could increase informal market activities (Wellbrock, 2008).

Thus, it is not surprising that during the EU accession process, the WB countries met the news about what is to be changed in respect to HS practices, with varying responses. While some of them raised no public debate on the issue, and welcomed the changes, in some countries, like Croatia, and to some extent Bosnia and Herzegovina and Macedonia, concerns were raised about survival of traditional practices of production and processing of food and beverages, but also about consequences for small family, especially peasant economies. Specifically, in Croatia, where these practices were represented as endangered by new legislation, reactions in public space were set between existential threat and Euroscepticism. It could be argued that the varieties of these public discourses may be partly due to the differences in openness of the accession processes. In Croatia, for example, the accession process was almost completely closed to the public (cf. Grubiša, 2012; Ivanović, 2011; Jović, 2012b). Still, in spite of such observed varieties, responses and corresponding discourse confirm what was identified by the past research. Namely, research done on how people perceive EU rules that regulate, or would regulate HS practices point at encroaching a complex field of the so-called ordinary everydayness, including culturally rooted and socially functioning practices (e.g. Grandin and Regenstein,

1994; Fonte, 2008; Roseman, 2010; Zoethout, 2013; Bergeaud-Blackler et al., 2015; Dorondel, 2016). This makes the question a ready-made weapon in hands of those who have publicly been advocating their disapproval of common European policy. A deliberate suppression of food production is in question, as is often stated, so people would be dependent on “imported agricultural products that often look and taste suspicious” (Zobel, 2011). At the other side of this apparently political spectrum, evidence was raised in defence of the changes, oftentimes by lessening the negative effects that EU regulations (would) produce in actual and local-specific surroundings. All in all, due to its deeply-rooted traditional aspects, HS seems more than an appropriate research area that enables a more nuanced perspective on perceived differences in meeting the new regulations in the WB area.

## Data and Methodology

In order to study partial implementation of EU rules effectively, the research team, as indicated, decided to choose one specific field of practices where partial enforcement can be expected and which could be studied in a comparative manner. After considering different options, the team opted for legislation and practices regarding HS as widely present practice in the Western Balkans region societies.

The sample of countries for our investigation involved five countries of the former Yugoslavia with significant differences in their level of integration with the EU. Two of them are member states of the EU; Slovenia since 2004 and Croatia since 2013. Macedonia is considered as an official candidate, while BiH has submitted a membership application in 2016 and is currently considered a potential candidate for the membership in the EU. Kosovo is another step further from the EU since it has not yet submitted a membership application.

The methodological approach was grounded in the model of Europeanisation, whereby initial research questions were structured according to the basic stages of the process (EU rules → Adoption of EU rules → Implementation/enforcement of EU rules → Behavioural change).



Our initial research questions were:

- i. What is basic content of the EU regulations?
- ii. Which EU rules were adopted and what were related public discourses?
- iii. What kind of attitudes toward the legislation and the EU prevail in countries observed?
- iv. To what extent are the most important regulations enforced in countries observed?
- v. What are reasons and motives for partial enforcement?
- vi. What was the impact of adopted EU rules on practices on the ground?
- vii. What formal and informal constraints were most important in regulating practices?

We first studied the existing literature dealing with the enforcement of EU rules in the area of agriculture in several European countries. Within the empirical work, we analysed related legal documents and media texts, conducted interviews with relevant public servants and HS meat producers and consumers and, finally, supplemented our results with INFORM's targeted survey data.

In applying the method of legal documents analysis, we first searched texts of EU directives and regulations which are relevant to HS. In the next step we analysed these legal contents in view of the theoretically and legally most relevant issues (e.g. regulations on selling/donating meat, or regulations on stunning animals before slaughter) and derived basic legal frames that were used for further analyses. In the third step, we analysed relevant legal documents at the national level and compared national regulations with EU directives and regulations.

Analysis of related media content available online was used as supplementary tool in order to assess national public discourses in relation to the adoption of the EU rules. Researchers searched the internet in their local languages searching for possible media content on this issue.

We conducted 17 interviews with relevant public servants, thus being able to collect valuable data in relation to practically all research questions. In BiH we conducted four expert interviews. Two of them were with veterinarians (one from the Veterinary Office of BiH and one from Inspections), one with a Muslim religious authority, one with a certified butcher and one with a controller of halal slaughter. In Croatia we interviewed the Head of the Veterinary Inspection Service, an employee of the Institute for Judicial and Administrative Veterinary Medicine and an employee at

one of the local veterinary stations. In Kosovo interviews were conducted with one veterinarian, one expert on EU law harmonization working in public administration, and a director of unit at the Food and Veterinary Agency. In Macedonia four interviews with experts/public servants from the Agency for Food and Veterinary were conducted: one interview was conducted with the head of the inspection unit, one with the head of the sector for legal affairs and two more were conducted with other civil servants within the Agency. In Slovenia, we interviewed three public servants, all employed at the Administration of Republic of Slovenia for food safety, veterinary and plant protection: one senior official from headquarters in Ljubljana, one specialized official for disposal of SRMs from headquarters in Ljubljana, and a higher official from a local branch of this institution.

In order to effectively identify practices on the ground and identify gaps between formal institutions and practices we conducted 33 interviews with farmers and 25 interviews with consumers of meat originating from HS. We set a minimum of six interviews per country for both categories of respondents together. The number of interviews varied from six in Kosovo to twenty-two in Slovenia. All interviews were conducted between November 2016 and February 2017.

INFORM's survey of perceptions and experiences of informality was conducted in three countries analysed in this report (BiH, Kosovo, and Macedonia) and also in Serbia, Montenegro and Albania. The entire sample consisted of 6.040 respondents aged 18 years or more among which 1.246 were from BiH, 930 from Kosovo, and 1.015 from Macedonia. The relevant variables from the acquired dataset were statistically analysed in accordance with the research goals.

## Most Relevant Results of Empirical Investigations

The results of the applied methods can be summarised in points, presented below.

Firstly, with some variation, the Western Balkan countries included in our research have a good track record in alignment of their domestic legislation with the relevant EU rules. Our research indicates quite strongly that the countries observed have fully complied with the EU standards in terms

of adopting appropriate formal laws and rules. The only slight exception we identify for Kosovo, where the stunning obligations provisioned by Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing have been adopted with the Law on Food. However, their application is limited only to licensed slaughter houses and it does not apply to production of meat for private home consumption, meaning that HS without stunning can be practiced without legal restrictions.

Secondly, *with a notable exception of Croatia, the public media discourse did not draw much attention to EU regulation of HS*. In Croatia some of the related media articles are characterized with sensationalist titles such as “The EU prohibits pig home slaughtering”, or “We should save pig home slaughtering” (Ivanuš, 2003). In Croatia, and to a much lesser extent also in BiH and Macedonia, broader concerns were also raised about the survival of traditional practices of production and processing of food and beverages, but also about consequences for (mostly rural) families. It should be noted that the varieties of these public discourses may be partly due to the differences in openness of the accession processes. In Croatia, for example, the accession process was almost completely closed to the public (Grubiša, 2012; Ivanović, 2011; Jović, 2012b).

Thirdly, meat from HS plays an important role in traditionally rooted exchange in community and is generally perceived as of substantially higher quality as compared to meat that is offered by retailers in the formal market. Our respondents expressed positive attitudes towards HS and highlighted quality of meat from home grown animals. Thus, the EU inspired rules in this case interfered with deeply entrenched traditional practices of not only consuming meat and meat products (bacon, sausages, pork cracklings etc.) within the household, but also of sharing them with relatives, friends and neighbours or even selling them on the black market.

Fourthly, although EU directives limit the use of meat from HS to private consumption, the definition of private consumption is open to different interpretations. The EU legislation does not provide clear guidelines as to what private consumption entails or who exactly is allowed to be given meat from HS. Our investigation suggests, however, that several official state agencies in EU member states limit private consumption to the members of the “immediate family”, whereby they interpret the term immediate family as the members of the family who reside in the household, i.e. the people that live permanently in the property (Food Standard Agency, 2013). We found that such an interpretation is also officially adopted in

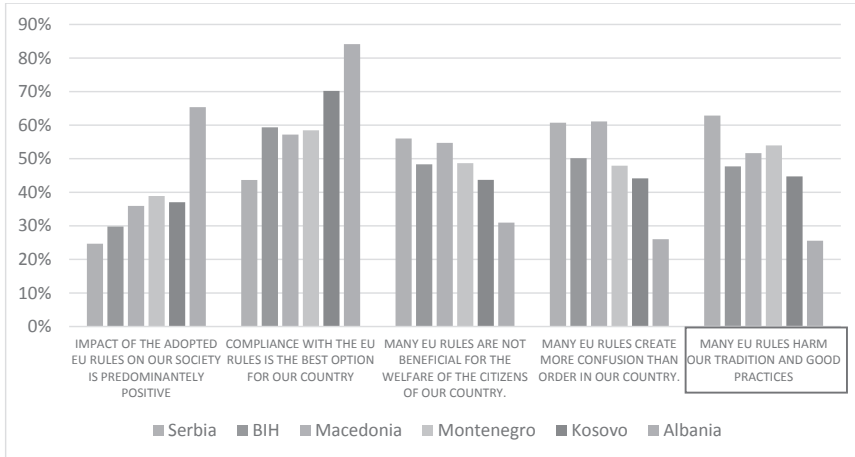
Croatia and Macedonia, where therefore any transfer of HS meat outside the household, even gifts to immediate family members who do not reside at the owner's household, can be considered as illegal. It is thus not surprising that some governments in the region have chosen to make the rules more stringent than they need to be. In Croatia, Kosovo and Macedonia, private consumption is restricted only to the household members of the owner of animals. In Slovenia, however, private consumption is defined as 'consumption of family members living in the household, including relatives and hired workforce'. The addition of 'relatives and hired workforce' significantly broadens the range of eligible parties. Importantly, according to a representative of Slovenian authorities who was directly involved in the transposition of the respective legal act, there was practically no pressure from the EU to make the definition of private consumption any more restrictive. Thus, our findings suggest that national political elites in Croatia, Kosovo and Macedonia, perhaps together with the EU, could do much more in terms of adjusting the related rules. In other words, the described situation in these countries resembles what is commonly called 'gold-plating'. The European Commission defines 'gold-plating' as the "... transposition of EU legislation, which goes beyond what is required by that legislation, while staying within legality" (Cited in Boci, De Vet and Pauer, 2014: 27).

Next, findings indicated that the relative restrictiveness of the adopted EU rules is in some cases incompatible with the extent of national public discourses. As indicated, there was a strong public debate in relation to the adoption of EU rules regarding HS in Croatia, while there was virtually no such debate in Slovenia. Nevertheless, Croatia accepted a much more restrictive definition of private consumption than Slovenia. Thus, the wide public discontent in Croatia did not result in less restrictive regulations, as one would expect.

Further, *large shares of population of Bosnia and Herzegovina, Kosovo and Macedonia express concerns regarding gold-plating practices*. Results from INFORM's survey data suggest that in Macedonia around 54 % of adults agree with the statement 'Our bureaucracy often introduces even stricter rules than the EU expects'. In Kosovo, this share amounts to 41 % and in BiH to 39 % (Slovenia and Croatia were not included in the survey). Thus, general public is relatively aware of the 'gold-plating problem' and would probably support stronger role of the EU in terms of preventing such practices by domestic elites.

Our survey data also suggest that *around half of the citizens of WB countries perceive the EU rules as potentially harmful for their tradition and good practices*. We find that the highest share of agreement with this statement was found in Serbia (63%), Montenegro (54%), Macedonia (52 %), followed by BiH (48 %) and Kosovo (45 %; see Figure 3.1).

Figure 3.1. Attitudes of citizens of the WB6 countries about the EU rules



Note: Percentages of those who fully or predominantly agree with individual statement are presented.

Interestingly, agreement with this statement is very strongly ( $r = 0,408$ ,  $p < 0,01$ ) correlated to agreement with the statement on gold-plating. This means that people who perceive EU rules as threatening to local traditional practices tend to see at least part of the responsibility for this situation in their national governments and state institutions. This means that people who perceive EU rules as threatening to local traditional practices tend to see at least part of the responsibility for this situation in their national governments and state institutions.

According to our next finding, *some adopted formal rules seem to remain "empty shells"*. Based on our data, this is especially true for Croatia, Kosovo and Macedonia. Our interviews with public servants, farmers and consumers of HS meat suggest that these actors do not take the limitation of HS meat distribution seriously. Transfer of HS meat within informal social networks (relatives, neighbours and acquaintances) is taking place on a regular basis and tends to be considered, even by state authorities, as

something acceptable. According to our respondents, including competent public servants, these practices pose a negligible threat in terms of public health and we found no reported serious sanitary problems related to regular traffic of HS meat through social networks or to HS practices in general. Furthermore, the transfer of HS meat within informal social networks is often seen as having important positive effects in terms of solidarity and social integration at the local level.

Our data also suggest that *the most frequently expressed reason for the weak implementation of rules relating to HS was the lack of capacity of the state*. State authorities in most cases complained that the limited number of veterinarians and inspectors prevents them from implementing rules effectively. However, this finding needs to be understood in the context of what has been said about the attitudes of public servants towards such rules (and their enforcement). Namely, at least in case of sharing HS meat outside the animal owner's household, such enforcement is generally not seen as necessary or functional for the society.

We further found that *the available resources of farmers are often problematic in relation to the rule on obligatory stunning*. Farmers are, apart from religion-related sheep slaughter in BiH, in favour of proper stunning of animals if not for anything else than because of the fact that this makes slaughter much easier. However, our data suggest that in many cases, especially in Kosovo and Macedonia, pig home slaughterers find it hard to afford the proper equipment and for this reason choose to apply traditional practices of stunning and slaughter.

The problem of capacity (i.e., the problem of weak institutions) and resources was also something that was raised during INFORM meetings with national and European officials responsible for enlargement process (in respectful countries and at the EU level). While all officials, national and European (DGNEAR) indicated that state/public administration is often too weak to effectively implement and/or negotiate the adoption of EU rules (also in terms of accommodating them to domestic values and norms), their emphasis was different. Specifically, while national officials stressed the problem of high rate of staff turnover, low awareness, low motivation and especially low resources, the EU officials (DGNEAR representatives) highlighted the importance of negative selection in public administration employment procedures, lack of planning (i.e., time is needed to address laws properly, but due to time constraints, often put by the countries themselves, this time is not available) and lack of "service

mentality” (i.e., public officials are not serving their “clients”/public but their political “godfathers”, controlling/monitoring mechanisms are not implemented, which then causes problems in establishing responsibility). In addition, DGNEAR representatives also indicated that the problem of institutional weaknesses is further exacerbated by the fact that EU delegations in the area are often significantly overstretched. However, both expressed strong sentiment that state officials need support from research which should be operationalized in concrete policy recommendations.

Within our analyses, also a socially dysfunctional potential overlap between interests of national governments and interests of their implementing agencies has been identified. While national governments may benefit from adopting relatively more restrictive legislation because they can present it as an achievement on the path of ‘Europeanisation’, implementing agencies may attempt at seeking rent from a situation where virtually ‘everyone is guilty’. In such a situation, the law can be turned against an individual small farmer at almost any time and it is ‘the good will of the inspector’ that keeps the small farmer functioning without a penalty. Such a situation creates perfect grounds for administrative corruption.

Finally, based on some of the above findings it can be concluded that, at least in the case of HS, *the partial implementation of EU rules can be best understood as spontaneous indigenization of formal rules*. Spontaneous indigenization of formal rules is a process where actors of implementation of rules apply such rules in an indigenized manner. This process probably occurs mainly because these actors are members of local societies themselves and therefore predominantly spontaneously and well-intentionally adjust the implementation of rules to local informal institutions and practices. Our data confirm this notion through the main reasons that were stated by the public servants for the weak/partial implementation of the observed formal rule limiting HS meat to private consumption. First, public servants took into consideration the economic implications for the farmers engaged in HS. Second, the HS was not considered problematic due to its very limited spread (quantity) and regulators were said to be focused primarily on the control of registered facilities. And third, traditional values and ways of life which are still functional were also considered as something that should be preserved.

## Conclusions and Policy Implications

The results of this study suggest that, at least in cases of deeply entrenched traditional practices such as pig and sheep home slaughter, implementation of the EU rules is often indigenised, i.e. adopted to local cultural context. This is largely due to a considerable gap between formal rules and traditionally entrenched informal practices. This gap, however, does not ensue only from the lack of flexibility of the EU rules. According to our results, some governments in the region have chosen to make the rules more stringent than they need to be. Such ‘gold-plating’ practices have also been noticed by the general public and are one of the crucial reasons why some adopted formal rules seem to remain “empty shells”. Such excessively stringent rules are not being implemented largely due to the lack of resources, both on the side of the state administration being unable to monitor the situation in the country and on the side of farmers being economically not able to meet all the prescribed requirements. Such a situation is very likely to lead to spontaneous indigenization of the imported formal rules. The problem of capacity, including the problem of weak institutions only further exacerbates here identified gaps.

Based on these findings, we developed four policy recommendations than can hopefully address some of the issues related to the problem of slow and partial implementation of EU rules in Western Balkan countries.

Firstly, the governments in the Western Balkans and representatives of the EU should actively participate in the process of adjusting formal rules to local cultural values, norms and practices. Almost half of the population of WB countries see EU rules as threatening to their traditional practices. Such perceptions undoubtedly substantially harm the process of rapprochement with the EU. Furthermore, insufficient “indigenization” of the EU rules tends to result in partial enforcement of these rules, which can have detrimental social effects (e.g. lower effectiveness of public institutions, higher frequency of corruptive practices, widespread pessimism, etc). Actors involved in the enlargement process should therefore more actively support indigenization of the imported rules, both administratively and financially. Such EU-supported indigenization, which should take into account both existing formal and informal institutions, should provide a relatively efficient tool for finding and implementing sufficient functional adjustment of EU regulations to domestic values, norms and practices. Probably, the most straightforward



way of seeking for appropriate patterns of indigenization is through identification of actually followed rules. In cases of partial implementation, these rules are often just modifications of formal rules.

Secondly, the governments in the Western Balkans and representatives of the EU should identify and minimize practices that resemble “gold-plating”. Adopting excessively restrictive rules demonstrably has harmful consequences for both, implementation of EU rules and Europeanisation of Western Balkans in general. “Gold-plating” usually leads to partial (or even absence of) implementation of the adopted rules, which, among other things, erodes the principles of rule of law as laws are applied selectively. Excessively restrictive laws also tend to turn public against the EU as such regulations can be perceived as an attack on local identity and common traditions. Therefore, there is a need of proactive role of the EU in shaping the national and local public discourses on issues related to transposition of EU rules. For instance, EU should address the potential public fears over “loss of national identity and traditions” that may endanger the process of Europeanisation by taking more active role in terms of following local public/media discourses and intervening in cases when needed. In the case of the distribution of meat from HS, it would be quite easy to show that the pressure from the EU is substantially lower than often publicly presented. Consequently, the problem of poor implementation public is also related to a rather poor image of EU rules. Education/raising awareness in this regard is very important, together with efforts to shape the formal rules in line with the one and only legitimate political goal – to provide citizens with physical, economic, social and legal security.

Thirdly, *the EU should actively participate in the process of adjusting formal rules to local cultural values, norms and practices*. The EU should also take a more active role in making sure that countries transposing certain EU legislation have the capacities to implement them in practice in a reasonable time. In our study, it has been shown that some countries simply lack administrative power to effectively implement certain rules. If the transposed rules do not take such issues into consideration this will inevitably lead to them being only partially implemented. Public servants dealing with law implementation in a particular field may be a good source of information about reasons for such modifications. Based on such information it should be possible to find effective ways for implementation of (accordingly adjusted) formal rules.

Finally, *the EU should follow and influence public discourse dictated by local elites and veto groups*. The EU should make more efforts to ensure that national publics get a realistic picture about the introduced legal framework and the rationale behind it. Our literature review and media content analyses revealed that, at least in Croatia, harmonization of rules on domestic production including pig slaughter led to a controversial public discourse of Europeanisation as a process endangering some deeply rooted traditional practices. Keeping in mind that Croatia is also one of the countries which adopted unnecessarily stringent rules regarding the distribution of meat from HS, it becomes clear that national political elites can play a kind of a double game. They, or parts of them, can by their own will introduce disproportionately strict rules and at the same time publicly present the EU as the one pushing for such rules and thus endangering local traditions. Obviously, such a situation can cause huge damage to the process of rapprochement and Europeanisation in general. Much of such damage can be prevented if the EU takes a more active role in terms of following local public/media discourses and intervening in cases when needed. In the case of the distribution of meat from HS, it would be quite easy to show that the pressure from the EU is substantially lower than often publicly presented.

Although here presented chapters focus on policy recommendations for the EU, it should be added that local actors such as political elites, governments and NGOs, of course should play central role in improving the implementation of EU rules, especially in regard to efforts that would strengthen institutional framework (of, for example, implementation and enforcement). It is crucial that these actors engage actively in the processes of transposition and adoption of EU rules.

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Adnan Efendic and Alena Ledeneva

## 4. The Cost of Informal Networking in the Western Balkans Region Matters!

This chapter explores the prominence of informal networking of individuals in the Western Balkans (WB) and their associated costs. We find that informal networking, or use of personal contacts for getting things done, is frequent and that the informal costs of networking amount to 100 Euros per month, which is substantial, given that the average income reported by respondents is around 250 Euros. In the structure of networking costs, the estimated costs of invested time, a proxy for sociability, dominate. We find that incurred costs are systematically higher for males, educated individuals and for entrepreneurs. As our key policy relevant finding, we establish that individuals in the WB region who invest into informal networking do so at a high cost, which implies that the culturally determined sociability of informal networking has an instrumental purpose. The evidence highlighting the power of economic factors points to the ambivalence – both sociability and instrumentality – of informal networking.

**Keywords:** informal networking, cost of time, cost of money, informal networking costs, Western Balkans, sociability, instrumentality, informal exchange, use of contacts

### Introduction

One of our respondents, an entrepreneur, has explained to us the importance of socialising and networking in the Western Balkan countries as follows:

I was educated in the USA, and when I came back here I tried to do everything by the book, so I did not fully understand (informal networking) and did not accept this “Balkan mentality”, let’s call it in that way. This was the case until several years ago when I realized how our system is functioning, and that it was better for me to start socializing and networking more to find my ‘own people’. I could not progress without them. So, Yes. Some informal networks are built. .... But not in the state institutions. No. I have that possibility, but my priority is business.... Informal networking is primarily used to create new business opportunities, to target new clients together....’ (CRO\_2)<sup>1</sup>.

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1 Acronyms used to code the interviews include: ALB for Albania, BiH for Bosnia and Herzegovina, KSV for Kosovo, MKD for FYR Macedonia and SRB for Serbia. The

The interplay between formal and informal institutions is associated with both formal and informal institutional costs, which inevitably translate to economic resources related monetary expenses, which should not be ignored. While we do have research on the costs of formal institutional environments (e.g. Wallis and North, 1987), its informal dimension is rather neglected in the existing literature. Why? A short answer to this question is simple: it is much more difficult to measure costs associated with informal institutions than those that are formal. A longer one involves complexity: although informal costs are linked to activities which are not formally visible, still every social interaction, including invisible ones, contains some costs (Marmaros and Sacerdote, 2006). Thus, in our study we analyse costs related to informal practices operating on the ground, as the first such research attempt, by asking the following questions:

How widespread is informal networking in the Western Balkan region?

What is the approximate cost of informal networking in the Western Balkan region?

To provide approximation for the costs of informal practices, we analyse the costs of informal networking in two sectors of the economy, the household sector (general public) and the business sector (entrepreneurs) in Western Balkans (WB) countries. Informal networking is a phenomenon which serves as a supporting intermediary mechanism for majority of informal practices in the formal economies of WB countries in focus. Informal transactions, exchange of information, experience and ideas as well as (self)enforcement are implemented through informal networks (supporting informal mechanism), which makes the phenomenon of informal networking sufficiently representative of informal practices in WB region. Therefore, our estimate of the direct and indirect (time) costs of informal networking is a good proxy for the costs of informal practices. Our intention is not to provide a precise calculation of these costs, but to suggest a way of approximation and useful numerical representation of these costs (time and money). Although the investigation provides regional analysis (Western Balkans), it has wider implications for the socio-economic literature on networks and informality.

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number after the abbreviation is the ordinal number of interview (e.g. BiH\_1, means interview number one in Bosnia and Herzegovina). All interviews are anonymised and archived following ethical guides from the INFORM project.



The underpinning analysis is based on quantitative and qualitative data; namely, a regional survey from the INFORM project is supplemented with qualitative interviews with entrepreneurs in the region. We find that individuals bear the high costs of informal networking not only for social and culturally determined reasons, but also with an instrumental purpose. Our evidence suggests that both sociability and instrumentality drive informal networking, in particular in the business sector. The network size and the associated costs are systematically higher for entrepreneurs, and it is business interest that motivates entrepreneurs to engage in informal networking, more than some traditional, cultural or other influences. On average, individuals and entrepreneurs spend around 100–160 Euros on informal networking per month respectively, with some differences between the countries in focus. There is a strong indication that the (opportunity) costs of (invested) time are larger than the real costs paid for informal networking.

This chapter is structured as follows. First, we provide a literature review covering informal networking and associated costs, which is followed by the section that explains the data and methodology. The main findings are presented in the penultimate section. The chapter ends with conclusions and relevant policy implications.

## Informal Networking

The functioning of informality is impossible without supporting channels associated with informal networking. Informal transactions, favours, information, experience and ideas as well as their (self)enforcement are implemented through informal networks. Although informal networks seem to be a biographical by product, they are costly to establish, maintain and expand – it takes a lifetime of individual effort, time, and resources. The importance of informal networking varies across different sectors of the economy. The business sector is thought to be particularly associated with informal networking, thus informal institutions (Williams & Vorley, 2015). Informal institutions affect entrepreneurial activity and shape the behaviours of entrepreneurs (North, 1990; Valdez & Richardson, 2013; Williams & Vorley, 2015). Not only does the informal economy rely on

informal networking, but also, intriguingly, many formal businesses are in part informal (De Soto, 1989). The general business orientation of entrepreneurs is influenced by informal networks (Field et al., 2015), in particular in transition countries (Ledeneva, 1998; 2006), while more extensive business dynamics are identified among individuals who have entrepreneurs within their social networks (Klyver, Hindle, & Meyer 2008). While measuring costs of informality is a very demanding research task, measuring costs of informality in the formal sector is even more challenging (De Soto, 1989).

Informal institutions are used to complement or substitute formal institutions (Helmke & Levitsky, 2004; Furubotn & Richter, 2005; Brousseau & Glachant, 2008; Andersson, 2008; Efendic, Pugh & Adnett, 2011). However, the presence and costs of informality are caused primarily by the absence of good formal institutions, legal framework and good governance (De Soto, 1989). As the core channels of the informal institutions, informal networks serve a variety of purposes, from exchange of information, experience and ideas between agents to provision of goods, services, and favours that are not freely exchanged on the market (Jackson & Wolinsky, 1996). Establishing, maintaining and expanding of such networks incurs a considerable cost, but also brings significant benefits. The costs of informal networking depend upon network size, which is limited, given the finite nature of individual time and monetary resources. The available literature reports that density of networks has a significant influence on costs; higher density of informal networks lowers transaction costs (Henning, Henningsen & Henningsen, 2012). Moreover, the structure of networks might influence informal costs differently – network diversity based on race or ethnicity, for example, or networks based on family and friends, or acquaintances (Marmaros & Sacerdote, 2006; Silk, 2003) all might have different effects on costs.

Although any informal networking can be costly, the costs of maintaining informal networks in the business sector vary depending on the phase of business development (Greve and Salaff, 2003). At the initial stage of business development, entrepreneurs must identify their opportunities, find relevant resources, employees, and institutional support; informal networks and their diversity have a significant influence on addressing these challenges. Thus, informal networking is particularly important for entrepreneurs in the early stage of business development and in situations when formal institutions are underdeveloped (Chakraborty, Mukherjee, & Saha, 2015).

Great attention in the business literature on network structure has been devoted to whether strong or weak networks or ties bring more benefits (Granovetter, 1973; Greve & Salaff, 2003; Wang & Altinay, 2012). While strong ties (especially family-based) may provide the entrepreneur with emotional and motivational support, weak ties (acquaintances and more distant members) may better help to secure access to new knowledge and information (Efendic, Mickiewicz, & Rebmann, 2015). Accordingly, different combinations of strong and weak ties have a direct impact on discovering new opportunities and gaining legitimacy for entrepreneurs as well as on the informal costs of networking (Elfring & Hulsink, 2003).

The literature to some extent suggests that forming and maintaining informal networks leads to variety of costs, including in particular: cost of time and costs of money (Marmaros & Sacerdote, 2006; Brueckner, 2006; Silk, 2003; Pesämaa & Franklin Hair, 2007), which needs to be materialized and comparable. At the same time, informal networks seem to be beneficial for entrepreneurship growth when formal institutions are not sufficiently developed, which is the case with the countries that we investigate in our sample. Being inspired with the literature and evidence from the WB region, we provide the first study of informal networking costs, with the data coming from both household and business sectors of these societies.

## Measuring Informal Networking – Survey Data and Interviews

To construct indicators on informal networking and their costs we rely on qualitative and quantitative data gathered in WB region. We use quantitative data collected through a targeted INFORM survey implemented in six WB countries (Albania, BiH, Kosovo, Macedonia, Montenegro, and Serbia) over the period March – June 2017. To collect this data, a multi-stage random (probability) sampling methodology was used to ensure representative samples. In every household, the ‘closest birthday’ rule was applied to select respondents, while every subsequent address was determined by the standard “random route” procedure. The dataset comprises 6,040 respondents from these countries, including 302 entrepreneurs, enabling

us an investigation that includes the general public as well as a subsample of entrepreneurs. The survey covers a variety of topics related to formal institutions and informal practices in the countries of WB. The relevant questions related to informal networking, including the size, structure and associated costs of networks, are included, which are used to construct variables relevant for our investigation.

We also conduct semi-structured interviews implemented in the WB region (namely, in Albania, Bosnia and Herzegovina, Kosovo, Macedonia, and Serbia) and two EU countries involved in the INFORM project (Croatia and Slovenia). The interviews were implemented among entrepreneurs who run or manage micro, small, and medium businesses. The interviews were conducted over the period November 2016 – February 2017. The majority of interviews were recorded with the approval of interviewees, coded to ensure the anonymity of respondents, organized in transcripts, and used for qualitative analysis. The effective sample includes 70 interviews: five in Albania, sixteen in BiH, five in Kosovo, ten in Macedonia, nine in Serbia and 25 in the EU (Croatia and Slovenia). Through these interviews, we also collected essential data about the interviewed entrepreneurs and their companies, including the costs of informal networking<sup>2</sup>.

## Informal Networking in the Western Balkans

The literature review provides indications that the size of informal networks might be linked with the total informal networking costs. Thus, our first step is to investigate the size of the informal networks reported by our respondents in the INFORM survey (Table 4.1). The obtained data suggests that the average network size in the WB region is 13 members, being the largest in Montenegro and Macedonia (19 and 16 members respectively) and lowest in Albania and Kosovo (8 and 9 respectively), while the other WB countries are closer to the average.

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2 This chapter provides a summary of the key findings based on the both quantitative and qualitative data, and for the both sectors, household and business sector, while for a more detailed presentation of the data and empirical methodologies applied in this investigation can be found at Efendic and Ledeneva (2018) and at INFORM publications available at: <http://www.formal-informal.eu/home.html> .

Table 4.1. Estimated size of informal networking by different categories of individuals

Business status		Gender		Level of education			
Citizens	Entrepreneurs	Males	Females	Primary	Secondary	University	Postgraduate
13	17	15	12	10	14	16	13

Source: INFORM, 2017 survey data and calculations of the authors. The numbers are rounded.

If we look at the individual characteristics that might be associated with the informal networks size, we find that male respondents report slightly bigger networks and respondents with higher education, although this effect does not show a clear pattern. However, the highest effect in the sample has entrepreneurial status, where entrepreneurs report some 30% bigger networks. Our qualitative investigation of this pattern identifies that entrepreneurs are often explicit in saying that they are trying to expand their networks even further, because they see this as an important strategy for their further success, and some of them have built rather huge informal networks.

'If we look as far as to the lowest levels, then (my informal network) includes more than 100 people. Because, success can be measured by the size of your network. The larger it is, the more successful you are. It is better if you have someone you know at any (formal state) institution or it is you know someone who knows someone else. This is because everything is so complicated here. It is almost impossible to go to an institution and finish everything you need (without knowing someone there)... The more people you know the more progress you make in your business. And, I prefer to know more and more people on an informal basis (...) which means to know more people whom you are more or less ready to help tomorrow, and also, they are willing to do the same for you without going to lunch, without gifting and those kind of things' (BiH\_4)

Most of the WB countries seem to have a similar performance when it comes to informal networking, the motives behind it and especially the ways in which informal networks are used. For example, in every observed WB country, entrepreneurs recognize the importance of having informal networks for establishing, developing and maintaining their businesses. It is business interest that motivates them to do the informal networking, more than some traditional, cultural or other influences.

'It is very hard to impose yourself today. In our society, there is still a system where you cannot make progress without some sort of informal connections. But, I wish we had a state without it...' (BiH\_1)

‘There are segments in our society where, to put it simply, you just have to have informal connections even when you are meeting all other criteria; that is having the money, having a contract and other documentation – you just have to have the ear (in formal institutions) that listens to you in order to get what you need without damaging anybody.’ (BiH\_10)

We identify that informal networks are used for different purposes, such as: to exchange ideas, information, knowledge, ensure access to the market, to compensate for the lack of rule of law, as a protective shell against political influence, but most frequently to avoid formal institutional rigidities and time-wasting procedures, unnecessary formal institutional costs, while in this diverse spectrum we identify even examples of informal networking providing personal psychological benefits. Still, a majority of entrepreneurs insist that informal networks are used primarily to substitute for the failures of formal institutional outcomes and to offset political influences in their business.

‘We utilize informal networks for getting information, speeding up procedures, getting new business deals. It is not just one thing.’ (MKD\_3)

‘If we do not create informal networks in our business segment, we cannot function. You cannot rely only on professional relations. So, an informal network of contacts simply has to exist. If there was a regulated market in the country, these contacts would have been unnecessary. These contacts enable you to “swim in muddy waters.” If there was a more functioning rule of law in the country, one would not need these kinds of contacts.’ (MKD\_3)

We recognize that where formal institutions relevant for business development are more efficient, informal networking is less present and used for different purposes. These two processes seem to be simultaneous – the more intensive informal networking goes hand in hand with the less credible formal institutions. Interestingly, we arrive to the same conclusion in our empirical investigation conducted with individual survey data (i.e. household sector). Conversely, the entrepreneurs and citizens operating in more efficient institutional environments use these informal networks to a lesser extent. In the first example, where informal networking is intensive, it is also used widely and for various purposes – from exchange of information and ideas to avoiding formal institutional complexities. When formal institutions are more efficient and credible, however, informal networking is less intensive, it is primarily used to complement formal institutions,

for exchange of ideas, and sometimes as a protective shell against political influence.

The entrepreneurs report 'aversion' towards informality and perceive it as a burdensome but necessary strategy to cope with the poor formal institutional environment. Although informal networking is frequently used in WB economies and is firmly integrated into the business cultures, it is not generally perceived as something positive, even if used, but rather as a necessary strategy 'to get things done'. ...*But, I wish we had a state without it...* (BiH\_1). Once the formal institutional environment for business is improved, for which the best example is Macedonia as a non-EU, post-conflict and transition economy, informality is less used and the aversion towards it decreases.

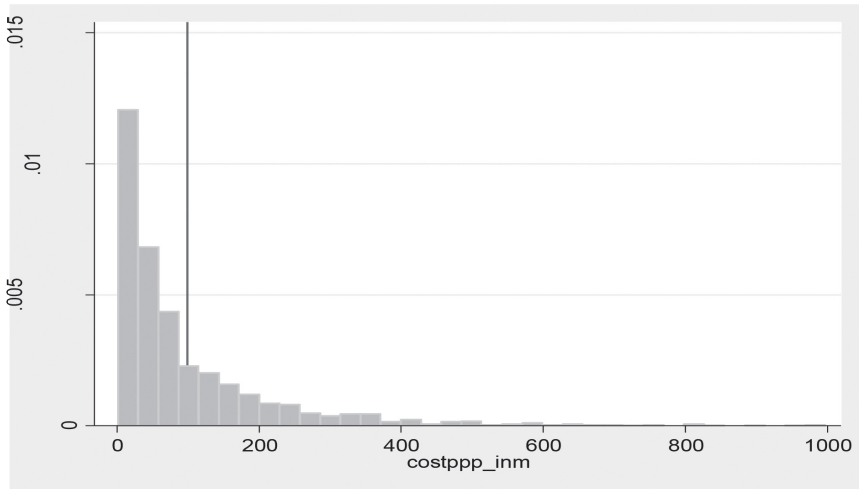
Entrepreneurs prefer to do their business relying on weak-tie network members, and sometimes strive to separate business from private relationships, if strong-tie network members cannot be avoided. This is consistent with the conventional business literature.

'To be honest I have heard this from various people but it is not my case. I keep separated my family, kin and friendship ties from my business. I prefer to do things by myself. The less one relies on such ties, the less troubles one has, this is my principle. So, I resolve my problems all by myself.' (ALB\_4)

The main intention of our study is to provide an estimate of the cost of informal networking. We focus on two main types of informal networking cost – the costs of money (resources) and costs of time (lost opportunities). Our dataset contains information on both types of costs – estimates of time and money spent on informal networking by our respondents in WB region. To reach an estimate of money invested into informal networking over a typical week, we asked the respondents to assess their expenses on a nine category scale: 1) 0 Euro; 2) 1–10 Euro; 3) 11–20 Euro; ...; 9) over 100 Euro. We use the mean value of the scale to calculate the average amount of money invested by every individual. For the last category, which is open (over 100 Euro), we use 150 Euro as the mean value. The calculation of the time spent on informal networking is also based on a weekly scale: 1) 1-2 hours; 2) 3-5 hours; 3) 6-10 hours; 4) 11-20 hours; 5) over 20 hours. For the last category, which is open (over 20 hours), we use 30 hours as the mean value. Following the same procedure, we use the mean value of the scale to calculate the average time spent in networking over a typical week by every individual. In the next stage, we monetize the costs of time by calculating

the average value of a working hour (Euros) for every individual based on the information on their net monthly earning based on the following question: What is your monthly income, including all sources: income\_1: up to 100 Euro; income\_2: 101–200 Euro; income\_3: 201–300 ... to the highest income category, income\_9: over 1,500 Euro. The advantage of this approach is that it produces more accurate estimates, since we also have a question on their total income, from both formal and informal sources. After this transformation, we summarize the estimated costs of money and time expressed in Euros. In the final step, we use purchasing power parity (PPP) indices to equalize the monetary costs between different countries in the WB region and aggregate them to monthly totals. The estimated (aggregated) costs per month across the WB region (*costppp\_inm*) are reported in Figure 4.1.

Figure 4.1. The total costs of informal networking in WB, in Euros, PPP adjusted



Our survey data suggests that, on average, individuals in the WB region spend around 10 hours of their time on informal networking and around 11 Euros per week for gifts, coffee, meals, parties and other related costs. The total informal networking cost, the costs of time and money standardized by the PPP index, is around 23 Euros per week, on average, and if aggregated at the monthly level, around 100 Euros (red line on Figure 4.1). In the structure of these costs, there is around 10 Euros reported to be spent in terms of money, while the remaining 13 Euros, on average per



week, is the opportunity costs of time (which is calculated based on the individual earnings of every respondents in the database). This means that the estimated (opportunity) costs of time are greater than the reported monetary costs. Comparing the total cost among countries, the highest monthly informal cost is reported for Kosovo (150 Euros, average net earnings reported in our dataset for Kosovo is 270 Euros), the lowest one in Serbia and Macedonia (80 and 85 Euro, average net earnings reported for these two countries are 240 and 250 Euros respectively), while the other countries fall closer to the average. The average net income in our dataset is 250 Euros.

Interestingly, once asked about costs of informal networking in our in-depth interviews, our interviewees recognize these costs well; they provide quantitative estimates, including both costs they spend in terms of money and the time they invest in establishing, sustaining and expanding informal networking. In addition, throughout our interviews we identify a substituting relation between money and time – more time is invested in informal networking in the early stage of business development, while more money is invested in the later stage of company’s development, which is a consistent finding with business literature (e.g. Greve and Salaff, 2003). The entrepreneurs are rather explicit in trying to prevent any unnecessary time loss, even for informal networking, and apparently, they are buying their time with more money invested, which is the case when a business is more developed and financially stronger. The estimated costs of informal networking in our sample are larger for entrepreneurs by 60%.

Table 4.2. Estimated costs of informal networking by different categories, in Euros, PPP adjusted

Business status		Gender		Level of education			
Citizens	Entrepreneurs	Males	Females	Primary	Secondary	University	Postgraduate
95€	160€	120€	80€	50€	100€	150€	210€

Source: INFORM, 2017 survey data and calculations of the authors. The numbers are rounded.

The entrepreneurs are not the only category which reports much higher costs of informal networking. The level of costs is also gendered, where the male respondents report some 50% higher informal networking costs comparing to the female respondents. It also interesting to note that level of education provides a very clear pattern in the behaviour of these costs.

As the level of education of our respondents is getting higher, the average costs are also increasing. For example, the respondents with incomplete primary or primary education spend some 50 Euros on informal networking per month, while on the other end of the scale, the respondents with master or doctoral degrees spend over 200 Euros on informal networking per month. The effects of these individual characteristics might overlap (e.g. entrepreneurs might be more often male respondents who are more educated); hence, these influences might operate cumulatively, but at this stage we cannot say more on these effects.

Most entrepreneurs explicitly point to the blindness of informal networks to ethnicity and religion, which is a persistent problem for some of these formal institutional environments (e.g., BiH and Macedonia). This is a positive example, sending a message that informality (networks) deals better with ethnic and religious diversity than do formal institutions; the motives driving formal (political interest) and informal (in this case business interest) institutions are obviously different, and they produce different attitudes related to the role of ethnic heterogeneity in these societies.

'[...]my situation is that I don't really know the ethnic and religious belonging of people to whom I am connected, unless in cases when they say where are they from or to which religious group they belong. This happens because to me and my acquaintances this is not an issue at all.' (ALB\_1)

'In my network, there are various people, people from different spheres of life. In business relationships the ethnic background is irrelevant, because everyone is striving towards the same goal that is the mutual satisfaction coming from the job done. Everyday activities establish business connections and ties, thus creating a circle of people where everyone knows what to expect from others.' (BiH\_2)

'The people I work with come from different social and ethnic groups. Depending on one's needs (interest) business does not discriminate on the above stated criteria.' (MKD\_2)

It seems that formal institutions in the region can learn and try to integrate positive messages sent by informality, which one of our respondents from the EU (Croatia) commented on.

'In my opinion, all formal institutions have employees who are politically selected – in BiH, Croatia, Kosovo – they have the same problem. Those people are not in their positions because of their knowledge, experience, results – there is no criteria there. That is why they need a problem, to pull the brake. Mainly these are stories with ethnic

background, politically motivated – is someone left or right?, was someone a partisan or not?, was someone in the secret service (UDBA) or not?. They are telling us stories and poisoning us with these silly ideas. Actually, my conclusion is that political institutions, these formal ones, are mainly politicized, hence, biased in their structure. In contrast, informal institutions are built naturally, from the ground'. (CRO\_4)

Finally, assuming that informal networking is not free, an increase in the number of members in a network could be associated with a higher total cost of networking. We investigate this possibility by looking at the simple correlations between these influences. The pairwise correlation between the two variables – the cost and size of the networks – is indeed positive (0.09) and statistically significant ( $p$ -value=0.000). Accordingly, we have indications that a larger network size is associated with a higher informal networking cost, although this needs to be checked in a model with causal relationships to get more meaningful explanation.

## Policy Implications

This chapter provides empirical evidence that informal networking is widely used in the WB region. It plays an equally important part in the everyday life of people and in the daily business activities of entrepreneurs. Survey participants report to have around 13 active members in their informal networks and they spend around 100 Euros per month in terms of the money and time they invest. We find evidence that the costs of invested time are a bit higher than what average individuals pay in terms of money. This applies to the both randomly selected citizens and entrepreneurs, although entrepreneurs report having larger informal networks (by some 30%) and bigger informal networking costs (by some 60%). We also find evidence that informal networking is rather gendered as male respondents report having bigger networks and larger costs than females.

While the purpose of networking is diverse, our in-depth interviews with entrepreneurs find that informal networking is primarily used to support their business activities – from providing comfort, support, and advice through established networks to making new business deals within existing and expanding networks. What the majority of entrepreneurs

underline is that informal networking eases cumbersome and demanding formal institutions and their procedures.

The conducted investigation implies that policy makers should not look at informal networking and informal practices built in the household and business sector as an exclusively negative phenomenon associated with cultural and traditional backwardness or ethnic and religious roots, representative of the Western Balkans' mentality. Rather, informal institutions, channelled and supported by informal networks and practices on the ground send a valuable signal, serve as indicators of the functioning of formal institutions that need attention, and have the potential to be integrated into policy thinking. As our key policy relevant finding, we establish that individuals in the WB region who invest into informal networking do so at a high cost, which implies that the culturally determined sociability of informal networking has an instrumental purpose.

Policy makers know that informality in the WB business sector, although built and inherited from the past, do respond to the imposed positive changes of formal institutions over a quite short period of time. However, waiting for a complete turnover in the workings of formal institutions without simultaneous engagement with the informal sector is not an option. On the one hand, introducing relevant policies to increase the efficiency of formal institutions and regulations is likely to reduce informality without an additional effort to change culture, traditions, or mentality of people. On the other hand, the champions of change tend to use all available avenues in policy-thinking (Mungiu-Pippidi, 2015).

Exploring the potential of context-sensitive policies and engaging informal practices for policy implementation, and articulating the significant costs of informal networking for people in the WB region can help facilitate change and create shortcuts in post-conflict societies. Thus, for example, through their informal networking entrepreneurs deal successfully with the ethnic and religious issues that present multiple challenges for heterogeneous societies, and much more effectively than the formal institutions. While formal institutions are generally prioritized in policy thinking over informal ones, they are only one part of the solution. The other part will remain to depend on the integration of the well-established informal practices of social inclusion of ethnic and religious differences into formal institutional settings (ALB\_1; BiH\_2, MAK\_2), which brings economic benefits (Efendic and Pugh, 2018). While formal institutions tend to go 'formal' (by issuing legal requirements and constraints) in engaging

with diverse and complex environments in the region and thus send wrong signals to the international and local community, informal networking and unofficial channels provide a back-up and prove to operate effectively on the ground.

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## 5. How to Sustainably Decrease Clientelism and Ensure Fair Political Competition in the WB? The Case for Introducing Standing Parliamentary Committees

Political clientelism is widely present in the Western Balkan countries (WB) and has a substantial effect on electoral, political and policy outcomes. It involves an array of redistributive practices, facilitated through informal channels, which appear, in various forms and to varying degrees, throughout the WB countries (Albania, Bosnia and Hercegovina, Kosovo, Macedonia, Montenegro, and Serbia). Incumbent political parties take advantage of weak institutions to obstruct the enforcement of rules designed to prevent clientelist practices. This paper aims to identify sustainable political solutions to the problem of clientelism and the uneven playing field. Since clientelist practices extend beyond election periods, they need to be tackled continuously within institutional and political processes.

**Keywords:** clientelism, patronage, informality, political parties, Western Balkan, policy

### Introduction

Political clientelism is widely present in the Western Balkan countries (WB) and has a substantial effect on electoral, political and policy outcomes. It involves an array of redistributive practices, facilitated through informal channels, which appear, in various forms and to varying degrees, throughout the WB countries (Albania, Bosnia and Hercegovina [BiH], Kosovo, Macedonia, Montenegro, and Serbia). Incumbent political parties take advantage of weak institutions to obstruct the enforcement of rules designed to prevent clientelist practices. The lack of enforcement of such rules spurs the arbitrary allocation of public resources for clientelist goals and contributes to the par-tisation and deterioration of the public administration, thus strengthening

the incumbents and preventing credible democratic outcomes. Finally, clientelism may help incumbents take over institutions, which may ultimately lead to state capture (Grzymala-Busse, 2008).

Recent academic studies of clientelism have proposed a distinction between electoral and relational clientelism (Gans-Morse, Mazzuca and Nichter, 2014; Nichter, 2010), both of which are present in the Western Balkans region. Electoral clientelism represents ad hoc, short-lived relationships, typically involving transactions established and implemented during election campaigns and, in particular, on the election day. A very common example of electoral clientelist relationships is vote buying (a one-off exchange of money or goods for votes). Relational clientelism by contrast is based on long-term relationships, where the inducements that are distributed for the wellbeing of clients are much more substantial. Moreover, under relational clientelism, there is a wider 'catalogue' of inducements, ranging from party patronage in employment to long-term or permanent benefits, typically at the expense of public resources.

This distinction is key to understanding the varying degrees of enforcement of rules against clientelism: rules for preventing electoral clientelism, valid only before and during election cycles, are enforced to a greater extent than those that sanction practices between two elections. Rules to prevent electoral clientelism include the 'freezing' of the distribution of subsidies, procurement and employment in the public sector, as well as sanctions for biased media reporting. In addition, international election observation missions and media monitoring remain focused on manifestations of electoral clientelism. The monitoring findings filter through to EU country reports, with the result that EU conditionality focuses on only one part of the overall problem, since practices of electoral clientelism are in fact only a fraction of the full range of clientelist practices that harm political competition.

The lack of implementation of rules combating clientelism has exacerbated various political crises which threaten the political process in the WB. Ruling parties tend to abuse resources and capture the institutions that should ensure the rule of law and prevent clientelism, while opposition parties, unable to win elections in conditions of unfair competition, tend to use non-institutional measures such as boycotting of parliaments and organised protests. Such patterns of crisis have recently taken place in Macedonia (2012–2013; 2015–2016), Montenegro (2016) and Albania (2017). In all these cases, opposition parties have boycotted

the formal institutions and demanded international (EU) mediation as a route to resolve the situation. Such mediation has been conducted mainly through informal leadership meetings. One of the outcomes of these meetings has been the establishment of interim governments that supposedly increase the enforcement of rules against clientelism and corruption during elections.

However, such solutions have a temporary and unsustainable character: they only partially solve the problem of clientelism and the uneven political playing field. Clientelism prevention mechanisms, such as banning public sector employment contracts and procurement before elections, occur only during the limited pre-election periods, despite the fact that clientelism occurs continuously. Moreover, since such solutions are the product of internationally sponsored informal political agreements, they unintentionally undermine the role of national parliaments as institutions where political conflict should be addressed. International mediation, while relatively effective for resolving conflicts, is of an informal character and does not offer sustainable solutions mediated through formal institutional channels.

This chapter aims to identify sustainable political solutions to the problem of clientelism and the uneven playing field. It begins with a review of literature focused on the variations of clientelist linkages. Then it goes on to analyse the different types of clientelism in the WB by examining the findings from the research within the project 'Closing the Gap between Formal and Informal Institutions in the Balkans' (INFORM). Lastly, the chapter proposes an institutional solution for ensuring continuous tackle of clientelism through incentivising political will. Throughout the chapter we use survey data from the project INFORM, gathered during May-June 2017 (6040 face-to-face interviews with respondents from the WB countries). Empirically, we also rely on our conducted fieldwork (ethnography and semi-structured interviews with citizens and policy makers), but also on data produced by international and domestic election observation missions and media reports depicting clientelist practices in the region.

Since clientelist practices extend beyond election periods, they need to be tackled continuously within institutional and political processes. Therefore, we propose a standing committee within parliaments, which should be tasked with overseeing the measures taken by other state bodies against clientelism. This standing committee should be established in cooperation with civil society organisations. As the national parliament is

a forum where governing and opposition parties meet, incentivising oversight is an appropriate tool for overcoming the political conflicts created by clientelism or corruption. The success of such a body should be set as a condition for the further EU progress of the WB countries. This will enable a positive structure of incentives for constructive political dialogue, which should generate the much sought-after political will that is essential to facilitating the effective work of existing institutions tasked with tackling political clientelism.

## Variations of Clientelist Linkages in the Literature

The policy recommendation of this chapter, which aims at sustainable solutions to the continuous appearance of clientelism (both within and outside election cycles), is based on the understanding that there are various manifestations of political clientelism. These variations should be considered when designing policies for suppressing and preventing clientelism. While there is a recognition within the social science literature that the various manifestations of clientelism require different policy treatments, this is not the case in the sphere of policy making. Across the WB societies, policies are drafted and implemented with a view to the immediate period around elections, thus ignoring the manifestations of clientelism between election cycles. Our data suggests that clientelist linkages are forged continuously, not only just before or after elections. This section will briefly present the scientific literature on the variation of clientelist linkages, so as to elaborate a theoretical framework for our recommendation to establish standing parliamentary committees.

Political clientelism is defined in the literature as a non-programmatic political relationship between citizens (clients) and political parties or office-seekers (patrons), which is personalised, instrumental, reciprocal and asymmetric in terms of distribution of power and resources (Kitschelt and Wilkinson, 2007; Piattoni, 2001: 12–13; Scott, 1972: 92; Stokes et al., 2013). Within this broad category of relationships, which can be clearly differentiated from programmatic political linkages (classified as ‘standard’ in highly developed democracies), we find an underlying diversity in the key constitutive elements of the clientelist relationship. Indeed, the American

political scientist and anthropologist James C. Scott, one of the pioneers of the study of clientelism, maintains that “one could potentially make almost limitless distinctions among patron-client relationships” (Scott, 1972: 97). Scott stresses that the resource bases of patrons and clients, which are crucial determinants of the establishment and persistence of clientelist relationships, are one source of variation. Variations may also be found in the balance between affective and instrumental ties and between voluntarism and coercion; in the durability of the relationship over time; in the homogeneity/heterogeneity of the clientelist following; and in field (contextual) variables (Scott, 1972: 97–101). In another typology (which includes not only political clientelism but also its pre-mass politics manifestations), Eisenstadt and Roniger (1984: 221) differentiate between different types of clientelism on the basis of: the organisational patterns of clientelism; the modes of patron and client role taking; the styles of instalment into the relationship (tacit agreements vs. ceremonially or contractually sanctioned agreements); the types of clientelistic exchanges; and the degree of continuity and instability in the relationships. In developing the policy recommendation presented in this paper, we differentiated between clientelist relationships according to the types and contents of exchanges, which we found to be a suitable dimension for understanding the variety of clientelism in the WB. The types of exchanges within clientelist relationships, in turn, are strongly affected by the resource bases of both patrons and clients.

Once the resource base of patrons and clients has been taken into account, a further instructive distinction becomes relevant: the distinction between electoral and relational clientelism (Gans-Morse, Mazucca and Nichter, 2014; Nichter, 2010). This distinction can effectively capture the variations that are at stake when devising policies to combat clientelism. Short-lived clientelist relationships, involving transactions established and implemented during election campaigns, especially on the election day, are classed as manifestations of electoral clientelism. Relational clientelism, by contrast, is based on long-term relationships, in which the inducements that are distributed for the wellbeing of clients are much more substantial.

The following analysis will show that the electoral vs. relational clientelism distinction can help understand political clientelism in the WB. Moreover, it should explain why substantial and long-term political engagement of key actors is needed (via parliamentary committees) to create effective conditions for combatting clientelism.

## Different Types of Clientelist Linkages in the WB and the Scope of Clientelism

Although political parties do not publicly announce their redistribution strategies in their clientelist dealings, the widespread pursuit of such strategies represents a ‘public secret’ (a form of informally institutionalised behaviour) in all WB countries. Some of the more obvious clientelist practices include vote buying, spoils-based employment in public administrations, favours ensuring preferential treatment in dealing with state institutions, and particularistic redistribution of state subsidies (Table 5.1).

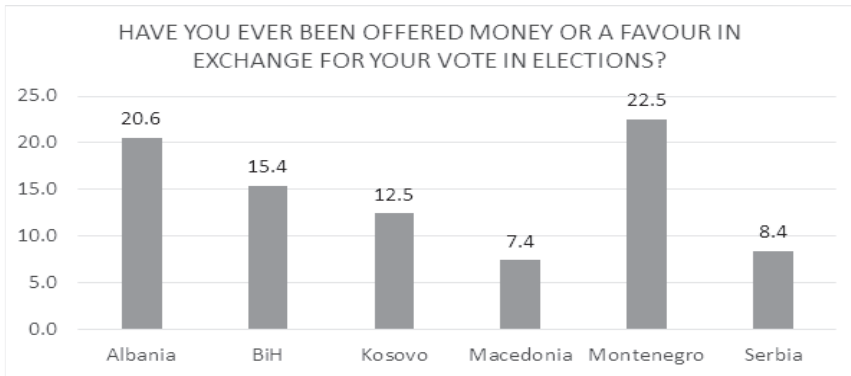
Table 5.1. Inducements and enforcement mechanisms that patrons employ across the WB

<p>Inducements:</p> <ul style="list-style-type: none"> <li>- Handouts for vote buying (money, goods)</li> <li>- Party employment in public administration</li> <li>- Selective distribution of subsidies for farmers</li> <li>- Selective distribution of social benefits and similar favours</li> <li>- Public procurement contracts</li> </ul>
<p>Enforcement mechanisms:</p> <ul style="list-style-type: none"> <li>- Carousel voting</li> <li>- Photographing the ballot</li> <li>- List of ‘secured voters’</li> <li>- Trading of influence, donations, protection from investigations</li> </ul>

The variety of goods that are exchanged (and the presence of different enforcement mechanisms) in return for votes point to the existence of both electoral and relational clientelism in the WB. At present, this ‘dynamics’ of the field is not tackled effectively with relevant policy responses.

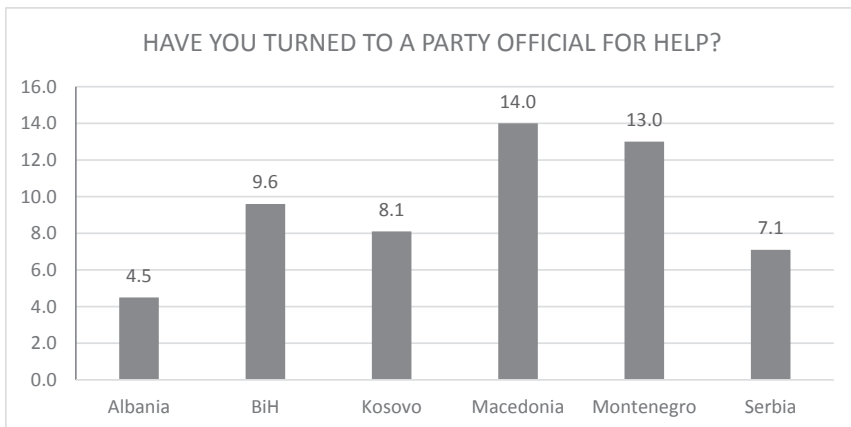
The need for continuous action against political clientelism is demonstrated by the reach and efficiency of clientelist practices in the WB6 countries. According to the INFORM survey, significant portions of the population have been offered money or favours in exchange for their vote. Notably, one in five respondents in Montenegro (23%) and Albania (21%) reported receiving an offer of money or favours in exchange for a vote, while the corresponding figures in Bosnia and Herzegovina (BiH) and Kosovo were 15% and 13% respectively. The clientelist pressure on voters is lowest in Serbia (8%) and Macedonia (7%) (Figure 5.1).

Figure 5.1. Have you ever been offered money or a favour in exchange for your vote in elections? (%)



Moreover, institutional dysfunctionality in the WB countries leaves significant space for the development of parallel informal ways of dealing with state institutions. Political parties in power have thus become the ‘middlemen’ between formal institutions (e.g. healthcare, employment, education) and citizens. People have become familiar with the ‘rules of the game’ and adapted to the situation by seeking access to services through political parties rather than the institutions.

Figure 5.2. Respondents who reported turning to party officials for help (%)



When respondents were asked whether they had ever approached a party official or activist for help, the highest proportions of affirmative responses were in Macedonia (14%) and Montenegro (13%), while the lowest was in Albania (4.5%) (Figure 5.2). The figures for the other countries lie in the middle: 10% of BiH respondents, 8% of Kosovars and 7% of Serbs reported asking help from political parties. This demonstrates the extent of ties that are less likely to have occurred only before elections, i.e. relational clientelism.

To gain a more practical understanding of the effect of clientelism on election days across the WB, we projected the figures onto the number of voters in the last general elections before our survey (Table 5.2). We compared this with the data about electoral performance in the same elections of the winning party/coalition and the party/coalition entering parliament with fewest votes. In each of the countries of interest, the number of respondents who have ever experienced a clientelist offer represents a substantial proportion of the voters, which is thus able to affect election outcomes. For example, this number makes up more than two-thirds of the votes for the election winners in Albania and Montenegro, while it exceeds the number of votes for the winners in BiH and Kosovo. Of course, our projections should not be taken as a precise indicator of the effects of clientelism on election outcomes. Nevertheless, they do provide a very rough illustration of the extent of its influence, suggesting that political parties in the WB devote significant energies to establishing clientelist linkages for the sake of political support. In short, our findings suggest that the scale of clientelism is enough to swing election results.

Table 5.2. Projection of survey responses onto the number of registered voters in the WB6 countries

	ALB 2013	BiH 2014	KOS 2014	MKD 2016	MNE 2016	SRB 2016
Registered voters*	3,271,885	3,278,908	1,799,023	1,784,416	528,817	6,739,441
% of reported pressured voters**	20.6	15.4	12.5	7.4	22.5	8.4
Projection of pressured voters	674,008	504,952	224,878	132,047	118,984	566,113
Votes: election winner (seats/total)*	993,904 (83/140)	274,057 (9/42)	222,181 (37/120)	454,577 (51/120)	158,490 (36/81)	1,823,147 (131/250)
Votes: last party entering parliament (seats/total)*	7,993 (1/140)	22,088 (1/42)	645 (1/120)	30,964 (2/120)	1,802 (1/81)	16,262 (1/250)

Sources: \*National electoral commissions and \*\*INFORM 2017 survey.



Furthermore, the analysis reveals that when citizens seek benefits, the chances of political parties seeking their loyalty is substantially higher: citizens seeking benefits have six times higher odds to experience clientelist pressure than those who do not do so. This effect is most marked in Kosovo, where benefit-seekers have 11 times the odds to participate in a clientelist transaction than non-benefit-seekers. In Albania, they have nine times the odds, in BiH seven times, in Macedonia six times, in Serbia four times and in Montenegro three times.

In addition to reported experiences of clientelism, our survey data on citizen perceptions of clientelist practices reveal the existence of shared expectations about informal rules. According to our data, for instance, citizens have shared expectations that employment is gained predominantly through informal channels such as party membership or connections. Citizens' perceptions thus act as informal, bottom-up incentives that encourage political parties to engage in clientelism, forming a sort of vicious cycle. Taken together, then, our data point to the simultaneous existence of two interconnected phenomena: a top-down process whereby political parties are actively engaged in practices of clientelist employment, which are reflected in respondents' perceptions; and a bottom-up process whereby the idea of party-sponsored employment is deeply embedded in citizens' perceptions, to the extent that clientelist employment is seen as a normal 'rule of the game'.

## Designing an Incentive Structure for Continuous Fight Against Clientelism

Since long-term practices of relational clientelism ensure advantages for incumbents well before elections, they need to be tracked and prevented continuously. The data above demonstrate two main findings: that clientelism is widespread in the WB, and that it can be efficient in swinging elections by creating an uneven field for political competition. Public institutions are mainly inefficient at tackling this situation, which eventually creates political conflicts that are settled outside the political process. While analysts and policy-makers in general focus on the inefficiency of

state bodies, less attention has been paid to the interests of political parties in sustaining clientelism. We claim that a solution should be sought in the political sphere, by structuring continuous political dialogue about the presence and effects of clientelism and employing parliaments as agents of oversight. This does not mean abandoning the reform of the preventive and suppressive institutions tasked with tackling corruption and clientelism; rather, it entails fostering these institutions through generating much needed political will within parliaments.

To combat clientelism in the long run, we propose the establishment of a permanent oversight mechanism in the legislature that can monitor the institutions of the executive branch and their redistribution of public funds, public service employment and decision-making of relevance for clientelist practices. This body should also aim to prevent potential overlap between the state and the ruling parties and ensure a more level playing field between political actors from the government and the opposition. The main task of this oversight mechanism would be to ensure that existing institutions tasked with prevention, monitoring, oversight and suppression of abuse of power function properly and coordinate in order to achieve tangible results. This may be achieved by demanding reports and achievements from existing institutions and by compiling an annual assessment report.

In order to be successful, this oversight mechanism should have political weight and expert capacity from supporting staff, and should be supported by the EU as an important segment of the conditionality mechanism for the WB countries. The committee should call upon existing institutions with the authority to prevent, monitor and curb abuse in these sectors, including ministries, agencies and bureaus, as well as independent and regulatory bodies. The members should have the right to demand reports from these bodies throughout the year and should inquire into how they are tackling current issues.

Once a year, the committee should draft a report on the risks of abuses of public office for party gains. Such reports should evaluate the current state of affairs and assess any improvements or backsliding in the functioning of the relevant state institutions (e.g. the National Audit Office, anti-corruption bodies) in monitoring and preventing potential abuses for party gains (clientelist practices). These reports should be produced by the standing committee and then discussed and adopted

in a plenary parliament session. The European Commission should also make use of these reports as a valuable input in its overall assessment of the country's rule of law and democratic competition.

The committee should oversee areas where there is a high risk of abuses that may lead to an uneven playing field, overlap between the state and the party, corruption and clientelism. These areas include in particular:

- Public procurement and public finance management
- Allocation of social benefit transfers
- Agricultural subsidies
- Employment and promotion in the public sector
- Prevention and suppression of corruption
- Media oversight.

This mechanism should be based on a parliamentary oversight committee, where the opposition holds the majority of seats and the chair is selected through a consensus.

The oversight committee should make full use of the independent civil society, expert and media sectors in the WB countries. In order to structure such cooperation, we propose creating a registry of organizations and individuals that could participate in the body's public discussions. Independent experts, civil society activists and journalists should be able to raise discussions and participate in setting the agenda as associate members without voting rights. Granting such figures formal agenda-setting rights should make the committee's work much more dynamic and effective than if it remained closed to the public.

Overall, the political character of the body should serve to ensure that its decisions are not purely administrative but also carry political weight. Political will should therefore be the main driver of oversight and any proposed measures and reforms. In this way, the committee will complement institutional reforms of other state bodies and will secure the development of institutions within a system structured by the political will for improvement.

## Conclusion

Political clientelism is widespread across the countries of the WB region. We have suggested that the distinction between electoral and relational clientelism, currently more frequently used in the academic literature than in policy making, is helpful when designing policies for suppressing and preventing clientelism. This suggestion is reinforced by the fact that some of the WB countries (Albania, Macedonia and Montenegro) that have launched stricter policies against clientelism have addressed the immediate periods around elections, leaving the fight against clientelism between elections weak and ineffective. In other words, the countries from the WB tend to be focused on combating short-term electoral clientelism, while disregarding its relational manifestations. Despite these policies, the extent of clientelism remains relatively substantial across the WB – at least substantial enough, as our survey findings show, to affect electoral outcomes.

The policy recommendation proposed in this article aims to create a specific type of incentive structure at the political level, which should naturally guide political actors towards suppressing clientelism, particularly those practices pursued by incumbents which tend to generate the relational form of clientelism. In order to facilitate the emergence of such an incentive structure, the permanent parliamentary committees that we envisage, tasked with overseeing the work of institutions combating clientelism, should be made up of a majority of members from opposition parties. In addition, the work of the committees should be closely monitored by the European Commission and their performance should be evaluated within the EU's conditionality mechanisms for the WB countries.

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## 6. Leaders' Meetings: Facilitating or Replacing the Formal Political Processes in the Western Balkan Countries?

Leaders' meetings, an informal practice for resolving political conflicts, have become a common feature of the political systems in the Western Balkan (WB) countries: Albania, Bosnia and Herzegovina (BiH), Kosovo and Macedonia. Formal parliamentary political institutions and processes in the WB are often incapacitated by boycotts, blockades or rejections from political actors, which turn political deliberation into political conflict. In turn, political conflicts have created and/or intensified political crises, rendering formal institutions dysfunctional, and opening the space for interventions by external actors. Indeed, the deadlocks in political decision-making and the fragility of formal political institutions have led to a reliance on leaders' meetings as an informal political mechanism. These include both meetings of leaders themselves and leadership meetings, which are attended by delegated representatives, and in many cases, external actors are also involved. This chapter explores the nature and the effects of the leaders' meetings in political decision-making. It asks whether the leaders' meetings facilitate or replace the formal political processes in the WB countries.

**Keywords:** informality, formal politics, leadership, actors, Western Balkans

### Introduction

Leaders' meetings, an informal practice for resolving political conflicts, have become a common feature of the political systems in the WB countries: Albania, BiH, Kosovo and Macedonia. Formal parliamentary political institutions and processes in the WB are often incapacitated by boycotts, blockades or rejections from political actors, which turn political deliberation into political conflict. Indeed, the deadlocks in political decision-making and the fragility of formal political institutions have led to a reliance

on leaders' meetings as an informal political mechanism. Leaders' meetings include both meetings of leaders themselves and leadership meetings, which are attended by delegated representatives, and in many cases, external actors are also involved. Leaders' meetings are negotiations among the major political party leaders that seek a consensual resolution on contentious issues and that occur outside formal institutions, in public places, commercial, as well as in diplomatic premises. The purpose of this informal practice is to deal with political disputes, which, having gone outside formal institutions, cannot be contained by them, so are resolved in private meetings, mainly between party leaders. As the political actors involved have little faith that what they agree will be respected and implemented, it is necessary for an external actor to facilitate, mediate and guarantee the leadership negotiation process to ensure that what is agreed in the meetings will be honoured. Most commonly, this role has been performed by the president of the country or representatives of the European Union (EU) and the United States (US).

Hence, against this backdrop, the book chapter, explores the nature and the effects of the leaders' meetings in political decision-making. It asks whether the leaders' meetings facilitate or replace the formal political processes in the WB countries. The chapter is divided into three parts. The methodology section lays out the methods used, theoretical framework and the concept of leaders' meetings. The second part offers four country specific case illustrations on contentious issues and where political actors resorted to informality in politics through leaders' meetings followed with an analysis of the outcomes and impact on formal politics. The third part presents concluding remarks. Finally, the chapter discusses the policy implications and it also proposes a set of recommendations to be addressed by domestic political actors and the 'international community' alike to address informality in political decision-making in WB countries. The chapter shows that leaders'/leadership meetings serve some sort of 'substitutive' function as the domestic political actors and 'the international community' aim at reaching a political decision in the context of dysfunctional formal institutions. It recommends ways to strengthen political dialogue, foster consensus-building on major political issues and strengthen democratic institutions.



## Formal and Informal Political Institutions and Decision-Making

The chapter is based on a qualitative methodology, namely process tracing, interviews with actors involved in the leaders' in all four case studies, and archival research: media reports and press releases as well as legislation. Informality constitutes an integral part of the functioning of societies in WB, as is the case in all former communist countries. As Giordano and Hayoz observe, 'no organization or democratic state can avoid informal practices, which make sense only with regard to a formal rule' (Giordano and Hayoz, 2013: 12). Informal practices, and informality as a phenomenon exist in Western societies as well, but differences in its scope, frequency and functioning are considerable compared to the former communist societies (Sampson, 1985: 44–66). To be sure, informality is embedded in the past experiences of post-communist countries, where formal institutions were often insufficient in solving everyday problems of citizens. As such informal practices developed as responses to the constraints of formal institutions. They were a form of reaction and 'tactical' means of survival in a highly insecure societal atmosphere. In post-communist societies, the state is still perceived more as a generator of crisis rather than an effective means of social organization, which is directly connected to past experiences during communist times. As Giordano observes:

Informality as an adequate principle of social organization (along with its social practices, mentioned above) is strictly linked to the dreadful experiences that members of a given society have continuously had with the state both in a recent and distant past. (...) these negatives spaces of experience, which have a marked influence on the actors and the formation of their horizons of expectation, do not reproduce themselves automatically by tradition (...) These spaces of experience must be constantly confirmed in the present. (...) In accordance with the members' perception of these experiences, the corresponding systems of representations and behavioural models will be strengthened, modified, or discarded (Giordano, 2013:42).

The legacy of socialism has shaped the process of democratic transition of post-communist countries, with informality being perpetuated as a practice in the new democratized settings. This has led to continuation of old and emergence of new informal practices. Looking at informality in politics, the chapter has taken North's definition of institutions as 'humanly

devised constraints that structure political, economic and social interaction consisting of ‘informal constraints (...) and formal rules...’ (North, 1991: 97). Similarly, Helmke and Levitsky define institutions as ‘rules and procedures (both formal and informal) that structure social interaction by constraining and enabling actors’ behavior’ (Helmke and Levitsky, 2004: 727). Along these theoretical lines, informality could be perceived as ‘a set of one-on-one behaviours – highly personalized – which can be regarded as the most simple, basic and universal of human relationships’ (Giordano, 2013: 30) which does not exclude the possibility of informality taking place between groups, with informality brokers on both sides, notwithstanding that both domestic and foreign political elites could play the role of informality promoters.

However, an important definition on informality in this inquiry is the one that interprets informal institutions as ‘socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels’ (Helmke and Levitsky, 2004: 727). As such this definition differentiates informal institutions from the formal ones, but is also points to informality being an integral part of the formal rules. Moreover, looking at the motives of informal institutions, Helmke and Levitsky offer three motives for emergence of informal rules and institutions. They have included the following:

- Actors create informal rules because formal institutions are incomplete;
- Informal institutions may be a ‘second best’ strategy for actors who prefer, but cannot achieve a formal institutional solution;
- Actors create informal institutions when they deem it less costly than creating formal institutions to their liking (Helmke and Levitsky, 2004: 730).

Moreover, as Hans-Joachim Lauth argues, there are three types of institutions, defined by the interplay of the informal and formal institutions. They are 1) the complementary type, in which they co-exist side by side and mutually reinforce and support each other; 2) the substitutive type, in which either formal or informal institutions are effective in the sense of being functionally equivalent to each other; and 3) the conflicting type, when the two systems of rules are incompatible (Lauth, 2000: 25).

Yet, to understand how (in)formal political decision-making through leader's meetings works, it is important to engage in explaining two crucial aspects that relate to EU's conditionality policy and the role of the 'the international community' in the state politics in the WB countries. EU integration processes is often broadly referred in political discourse via the concept of 'Europeanisation.' Indeed, this concept has become widely used to describe the process of (a) construction, (b) diffusion and (c) implementation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things', as well as shared beliefs and norms, which are first defined and consolidated in the making of EU public policy and politics (Radaelli, 2004: 3). However, the more generic term institutionalization often time used also in the context of approximation of aspiring states for EU membership points to 'the process by which the actions and interactions of social actors come to be normatively patterned' (Schimmelfennig and Sedelmeier, 2002: 503). This 'includes the transposition of EU legislation into domestic law, the restructuring of domestic institutions according to EU rules, or the change of domestic political practices according to EU standards' (Schimmelfennig and Sedelmeier, 2002: 503). Indeed, both concepts refer to the same outcome of adjusting societal structures and behaviour to patterns given by external actors, being that such structures need not be necessarily formal. Looking at the institutional change as a result of EU conditionality, Antoaneta Dimitrova has pointed out that

institutional change conceptualized as the interplay between formal and informal rules can be seen in a different light when analysing EU enlargement (...) a process where new institutions arise as a result of changes in informal rules that are later followed by changes in formal institutional rules, enlargement brings changes in formal rules which may later be followed by changes in informal rules (Dimitrova, 2010: 139).

Hence, EU's conditionality politics arises as a mechanism of 'political give and take', where political elites of aspiring countries for EU membership can effectively recognize the reward of institutional adaptations and embark on harmonization of the EU rules. Mutual political manoeuvring requires constant adaptation of strategy on both sides, given that the actors on the side of candidate countries can often have diverse and heterogeneous interests, especially during political crises occurring in the countries that aspire EU membership. Ambitious political goals set by the EU to aspiring states are implemented through conditionality which basically

denotes ‘a bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions’ (Schimmelfennig and Sedelmeier, 2002: 670). The mechanism of conditionality entails that

[...] it is simple and based on granting rewards for the fulfilment of given conditions and, conversely, withholding rewards for failure to meet the conditions. Very rarely has the EU opted for direct negative sanctions in cases when the EU’s conditions were not met. In most cases, failure to comply with the conditions resulted in ineligibility to transition to the next phase of integration or withholding of EU funds earmarked for the potential candidate state in question (Blagovcanin, 2017: 16).

The logic of conditionality implies that it ‘rewards those countries that have successfully mastered the quantifiable and urgent challenges of political and economic reform rather than the less tangible long-term objectives of regional cooperation’ (Meurs and Yannis, 2002: 3). In order to satisfy conditionality requirements, aspiring countries —the four analysed here— have to frequently overcome political turmoil that occurs when socially divisive questions arise. Even more so, if one has in mind that the base of conditionality is *democratic conditionality* driven from the Copenhagen criteria which encompass ‘the fundamental political principles of the EU, the norms of human rights and liberal democracy’ (Schimmelfennig and Sedelmeier, 2002: 677) where the ‘main external incentive in this context is, first, the establishment of institutional ties, such as association, and subsequently, the opening of accession negotiations (Schimmelfennig and Sedelmeier, 2002: 677).

## The ‘International Community’ and Politics in Western Balkan Countries

State-building in post-communist and post-conflict societies in WB countries, occurs based on interaction between domestic and international actors through an interplay of imposing values by ‘the international community’, reflexive feedback by domestic political elites and gradual internalization of these values in domestic political systems, or the lack thereof. This does not imply a deficit of authentic internalized political values; however, it implies a

frequent impossibility to resolve political crises and to align with the external demands as the EU's *acquis communautaire* or more fundamentally the Copenhagen criteria. Fragile and often defunct institutions, informal pressure groups, corruption and political interests of domestic veto players often stand in the way of a more effective state-building process that is both suffering from excessive particularism (Mungiu Pippidi, 2005: 49–68) and visible social, ethnic and political cleavages.

In Albania, BiH, Kosovo and Macedonia, 'the international community' has played a great role in post-socialist and post-conflict democratisation in the region. Yet, the involvement of 'the international community' is short of decisive when it comes to political processes and internalization of democratic values. The transformational efforts of 'the international community' have focused not only at the institutional level, but also social level, trying to create common and shared values and norms with a focus on interactions between institutions and individuals' (Pilavdzija, 2013). Yet, shared norms in post-communist and post-conflict societies have proven challenging due to deep social and political divisions. Such institutional approaches may assist the functioning of the political institutions, but they fail to satisfy the citizens expectations and needs, as political elites often compromise on values they represent, and by deepening the divisions that influence political processes from within.

## Leader's Meetings: An Informal Practice in Politics

The political systems in Albania, BiH, Kosovo, and Macedonia, have produced an informal practice in political decision-making termed as the 'leaders' meetings'. Formal parliamentary political institutions and processes have faced with s stalemates in the political decision-making. This has signalled the fragility of formal political institutions and it has led way to the informality through leaders' meetings, in which substantive political disputes are resolved in private meetings between party leaders circumventing legislative and other decision-making institutions.

The leaders' meetings constitute a practice of negotiation among the leaders of the major political parties taking place outside the framework of formal institutions reaching an agreement on a politically contentious

issue. Unlike in formal institutions, where a policy is adopted by the decision of a majority, in this setting leaders reach a solution consensually. The leaders' meetings represent a mid-point from when the formal processes fail to resolve the problem at stake and the informal ones fill the void in an attempt to reach a resolution. Often the leaders themselves are not directly involved in negotiating the various aspects of the issue at stake, which are being discussed by negotiators, similarly in form to a working group. The negotiators act as 'informality brokers,' although they operate without full authorisation to decide on the issues and must consult with the leaders throughout the negotiation process. However, through their 'delegates,' the leaders monitor all the lower level meetings throughout the process. They are defined as the leadership meetings.

Leaders'/leadership meetings have entailed negotiations among the major political party leaders and their delegated representatives occurring outside formal institutions seeking a consensual resolution on contentious issues. Distrust by the political actors that what they agree will be respected and implemented opens up a space for an external actor to mediate/facilitate and guarantee the leadership negotiation process and ensure that what is agreed in the meetings will be honoured. Most commonly, the representatives of the EU and USA, and/or the president of the country has assumed this role. The ability of the outside actor to facilitate and guarantee the negotiation process depends on her/his political power and the ability to provide positive and negative incentives as stimuli to nudge the political actors to accept or concede the proposed position. Negotiations on level of political elites (as in the case of leadership meetings) reflect a practical *modus operandi* for reaching political compromises rather than reflection of political demand, which in these societies can often lack democratic substance. This practice is not only used in WB region. The scope of this use is larger in WB, but this practice has accompanied political decision-making in other contexts as well. To illustrate informal political decision-making the following is a sketch of four country case illustrations.

#### *Case #1 Albania: The 2016 Judicial Reform*

The dispute/conflict: Albania's judicial reform, intended to remove corrupt judges and suppress organised crime, was a top priority for the country to embark on the path to EU accession. However, the Socialist Party (SP) and

the opposition Democratic Party (DP) could not agree on how the reform should be carried out. It took the two parties 18 months of negotiations, disputes and mutual accusations, as well as a meeting between the SP and the DP and constant intervention from EU and USA, to reach an agreement. Eventually, at midnight on 21 July 2016, the Albanian Parliament unanimously passed a constitutional package substantially amending the judicial system of the country.

Internal actors: The three largest political parties: SP, DP were primary actors, and the Socialist Movement for Integration (LSI) was a secondary actor.

Leaders in negotiations: chair of the SP; leader of the DP.

External actors: The European Commission (EC), through the European Commissioner for Enlargement, MEPs; the EU ambassador to Albania, US ambassador to Albania.

Resolution: Adoption of judicial reform by changing the Constitution of Albania with the mutual agreement of the majority and opposition. This gave a green light for the adoption of vetting procedures for the judiciary and more efficient measures against corruption and organised crime.

### *Case #2 BiH: Adoption of the EU Coordination Mechanism, 2016*

The dispute/conflict: BiH's fraught history of policy decision-making and implementation is the result of its complex institutional structures, which entail overlapping authorities, and mistrust between the three constitutive ethnic communities, which are fuelled by the actors of the ethnicity-based political system. The Coordination Mechanism (CM) on EU matters is thus a response to BiH's fragmented and multi-layered formal institutional structure, as it establishes procedures for the effective coordination and implementation of EU-driven policies, and structures the interaction of the country as a whole with the EU. Despite being a key EU requirement for BiH, the adoption of the CM was hindered by the Republika Srpska (RS) leadership's view that it was a threat to the entity's position within the country. When a deal on the CM was established between the leader

the Bosniak and Serbian leaders, an objection was raised by their Croatian counterpart, who regarded the CM as a threat to the position of BiH's cantons. Eventually, the CM was finalised and formally adopted, with the package being brokered through a series of leadership meetings held in the period 2015–2016, in which the EU ambassador also participated.

Internal actors: The three largest political parties: Party of Democratic Action (SDA), Alliance of Independent Social Democrats (SNSD) and the Croatian Democratic Union of Bosnia and Herzegovina (HDZ BiH).

Leaders in negotiations: leader of the SDA and Chairman of BiH Presidency, leader of the SNSD, President of RS; and leader of the HDZ BiH, member of BiH Presidency.

External actors: EU, Head of Delegation to BiH.

Resolution: The final text of the 'Decision on the system of coordination of the process of BiH's European integration' was drafted in terms that were acceptable to all sides and formally adopted by the Council of Ministers in August 2016, contributing to BiH's EU prospects.

### *Case #3 Kosovo: The 2014 Parliamentary Elections*

The dispute/conflict: The 2014 Kosovar parliamentary elections were evaluated overall as transparent and well-organised, but there was no clear winner and a government could not be formed for six months. The Democratic Party of Kosovo (PDK) coalition, despite coming first in the elections, faced a challenge to form a government when the opposition parties – the Vetëvendosje Movement, the Democratic League of Kosovo (LDK), the Alliance for the Future of Kosovo (AAK) and the Initiative for Kosovo (NISMA) – joined forces to form the so-called VLAN coalition, thus becoming the majority political force in the Assembly. The VLAN coalition claimed the right to form a government as they had the majority of seats. However, the PDK coalition persisted, arguing that they had won the plurality of votes in the elections and thus had the right to form the government. Eventually, a Constitutional Court of Kosovo ruling granted the



PDK coalition the power to form the government, rather than the VLAN post-election coalition.

Internal actors: Political parties who won seats in the Assembly of Kosovo in the 2014 national elections: PDK, LDK, AAK, NISMA, Vetëvendosje.

Leaders in negotiations: leader of the LDK; leader of Vetëvendosje; chair of the AAK; chair of NISMA; leader of the PDK.

External actors: The German ambassador, the German Ministry of Foreign Affairs representative for Southeast Europe; the UK ambassador; the US ambassador.

Resolution: The rupture between the leaders of the LDK and the AAK over the Prime Minister's post led to the disintegration of the VLAN coalition. The LDK then joined the PDK and the deadlock was broken.

#### *Case # 4 Macedonia: The 2014 Parliamentary Elections and 2014–2016 Political Crisis*

The dispute/conflict: The credibility of the 2014 parliamentary elections was rejected by the Social Democratic Union of Macedonia (SDSM)-led opposition, which abandoned formal political processes and boycotted Parliament, claiming that state institutions had been captured by the much more powerful VMRO-Democratic Party for Macedonian National Unity (VMRO-DPMNE). After a period of stagnation, SDSM's release of wire-tapped conversations of political elites in February 2015 triggered a process of leaders' and leadership meetings for resolving the political conflict, facilitated by the EU and the US. Political party leaders and their representatives were in continuous negotiations until August 2016. Ultimately, they reached an agreement to implement measures in the electoral, judicial and media systems that guaranteed the trust of all parties in these institutions before new parliamentary elections were held.

Internal actors: The four largest political parties: VMRO-DPMNE and SDSM were primary actors, and the Democratic Union for Integration (DUI) and Democratic Party of Albanians secondary actors.

Leaders in negotiations: leader of VMRO-DPMNE; leader of the SDSM; leader of the Democratic Union for Integration; and leader of the Democratic Party of Albanians.

External actors: EC, through the European Commissioner for Enlargement; the USA, through the US ambassador, MEPs.

Resolution: The Przino Political Agreement, which introduced: a special public prosecutor; electoral reform measures; media reform measures; an interim technical government; an end to the release of wiretapped conversations; and parliamentary elections, which took place on 11 December 2016.

## The Outcomes of the Leaders' Meetings and Impact on Formal Politics

The country case illustrations evidenced that important decisions were made in informal meetings among politicians of biggest political parties and the EU and US officials and diplomats. In Albania, the 'leaders' meetings' became a rule rather than exception on the justice reform. The political processes in BiH, after the country's stalemate in the EU accession process. Yet it led way to an informal approach resolving political dead-ends. The issue of the EU coordination mechanism was moved outside the formal decision-making. The 'soft' pressure of 'the international community' was less publicly visible in the Kosovo case. In the period from July to December 2014 several leaders' meetings among the coalition parties took place in Kosovo. The meetings were neither facilitated nor organised/or called by the US or EU member states ambassadors, as in the case of Albania, BiH and Macedonia. Yet the media attributed the breaking of the deadlock to the Ambassador of the German Ministry of Foreign Affairs for Southeast Europe. In Macedonia, numerous leaders' meetings were often called and led by the international actors, and with the EU Commissioner himself and four MEPs of the European Parliament, as facilitators in the process.

The leaders' meetings have served as a quick fix to larger political issues and crises of the political arena. Indeed, the leaders' meetings have been successful in bringing to an end of disputed political issues and closure to political crises. Yet the connecting thread between the cases and their outcomes is that they stand in relation to the larger theme of EU membership. The success of the leaders' meetings rests on the instrumentality of EU conditionality as Albania, BiH, Kosovo and Macedonia all aspire an EU membership. To be sure, EU has used its active leverage in all four cases, where the solution to the specific crisis has been posted as a *conditio sine qua non* for furthering the EU accession process. In Albania, BiH and Kosovo active EU conditionality has been followed by more direct diplomatic pressure by US representatives, as an additional tool in the 'carrot and stick politics'. In other cases, as Macedonia, the EU has taken the leading role in the process, through involving MEPs in the developments, predominantly as mediators but also informality brokers, which signals a larger level of involvement and an attempt of the EU to have a leading role and manage specific political crisis at hand.

However, the leader's meetings have altered formal politics, positing informality as a substitutive modality of political decision-making. All cases show that the constitutional/political design does not safeguard formal decision-making and that 'informal institutions may also limit presidential power' (Helmke and Levitsky, 2004: 726). Informal leaders' meetings have a lasting impact on the legitimacy of polity and democracy. Just as any other form of informality, the leaders' meetings erode democracy. The leaders' meetings may have been efficient but not transparent, contrary to formal institutions that are projected to be transparent, but often are not efficient. They suffer from an embedded transparency deficit as they took place behind closed doors, far away from the public eye, and with no consideration of citizens' voices. The leader's meetings have shifted the political decision-making from formal channels into informal ones. They also have constituted and served as a modality through which 'the international community' is both 'invited' and legitimized as a partner in the political processes and decision-making in WB countries.

## Conclusions and Policy Implications

The analysis of the practice of leaders' meetings in Albania, BiH, Kosovo and Macedonia has led us to conclude that political elites in the WB region are sometimes unable to address political disputes through regular political processes and within the formal political institutions, which exacerbates political conflicts and crises. When such situations arise, leaders' meetings become a medium of an informal process for overcoming political conflicts and crises. Due to the inability of political elites in the region to reach agreements within formal political settings, leaders' meetings circumvent the institutions of the political system, seeking more neutral ground and causing a 'spill-over' effect in the political process. As a result of leaders' meetings, political decision-making becomes more centralised, less inclusive and non-transparent. Besides the bypassing of institutional arrangements, crucial information is often withheld from the public.

The decisions made during the leaders'/leadership meetings are formalised through their adoption and implementation by formal political institutions. Leaders' meetings serve some sort of 'substitutive' function as the domestic political actors and 'the international community' have the same goal – reaching a political decision in a political context of dysfunctional formal institutions. Leaders' meetings never perform a pre-emptive function; that is, they do not aim to forestall political crises. This means that they rarely take place unless a crucial political issue has already reached a dead-end such as the examples presented here on judicial reform, coordination mechanism, elections or political negotiations related to a general political crisis. In all cases, EU and USA representatives deployed a similar diplomatic strategy of conditionality politics.

Leaders' meetings may be an effective way of overcoming political crisis in the countries of the WB. Utilising this format is undeniable when it comes to efficient decision-making in times of turbulent crises. However, in the long run, leaders' meetings create political side-effects that undermine democratic principles and institutions. Moreover, they create a long-term dependency on the actors of 'the international community', meaning that domestic political players prefer relying on external help for resolving polarising political issues to seeking a solution within the institutional setup. Furthermore, frequent utilisation of leaders' meetings decreases confidence in domestic political institutions, meaning that

they are seen merely as implementing agents of the decisions being made in leaders' meetings in a centralised, non-inclusive and non-transparent manner.

Based on this analysis, we have come to several recommendations. Leaders' meetings should be used as a pre-emptive mechanism. Their purpose should thus be altered, instead of using the format as a damage control mechanism, they should serve to strengthen political dialogue, foster consensus-building on major political issues and prevent political crisis.

The countries of the WB, in cooperation with 'international community' actors, should develop early warning mechanisms to predict possible shortcomings of the political processes that might generate political crises. Early prediction of political crises can lead to more effective management of political challenges and, in the long run, can result in increased trust in the institutions and the political system in general.

A consensus-seeking parliamentary committee for key strategic matters should be established within the formal institutional framework of the WB countries, so that political dialogue can be sustained inside institutions and addressed through formal channels. Such a body could be part of the solution to prevent similar political conflicts in the future.

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## 7. Informality and Everyday Life: How ‘Things Get Done’ in Contemporary Western Balkan Societies

This chapter provides an overview of informal practices in everyday life in six countries of the Western Balkans (WB): Albania, Bosnia and Herzegovina (BiH), Kosovo, Macedonia, Montenegro and Serbia. It presents the literature review on informality and its multifaceted expressions in everyday life. Using survey and ethnographic data, the chapter discusses citizens’ perceptions and practices towards informality, highlighting the domains where informality permeates everyday life. The chapter shows that citizens across WB, while agreeing to formal rules, often subscribe to informal ones to ‘get things done,’ as informality ensures security of the procedures to make things happen due to the shortcomings of public institutions. In addition, the chapter discusses specific policy measures to address informality at the levels of state, civil society and the European Union (EU).

**Keywords:** informality, everyday life, perceptions, informal practices, Western Balkans

### Introduction

Informality is a pattern of social life; it is multifaceted, socially embedded, and connected to formal institutions. As a diverse phenomenon ‘covering wide range of economic, social and political practices’ (Polese et al., 2016: 184)—stretching across space and time—informality is challenging to identify, measure and compare as not only the actors’ motivations vary, but the institutional frame also shifts. Formal rules and informal practices are organically linked in everyday life. Informal rules are resilient and enduring, and often remain in the private domain of family and kinship relations to ‘get things done.’

Grounded in survey findings and ethnographic observations, this book chapter outlines how informality pervades everyday life in societies of the WB, more specifically Albania, BiH Kosovo, Macedonia, Montenegro, and Serbia. The approach taken here places an emphasis on the nature of informality in everyday life, aiming to highlight informal practices and also to understand how citizens in the WB navigate through formal rules and informal practices. The everyday life here concerns the attitudes and practices that are familiar, ordinary and routine, often taken for granted.

The chapter is organised into three main sections. The first one presents methodology and a literature review on informality in relation to everyday life. Second, using survey and ethnographic data, the chapter discusses citizens' perceptions towards informality and practices, highlighting the domains where informality permeates everyday life. The chapter shows that citizens across the WB societies, while agreeing to formal rules, often subscribe to informal ones to 'get things done' as informality ensures security of the procedures to make things happen due to the shortcomings of public institutions. Finally, the chapter discusses specific policy measures to address informality at the state level, civil society and the EU.

The evidence that we rely on is based on quantitative and qualitative methodology. The quantitative data stem from a representative survey within the framework of the INFORM project, conducted in 2017 through *face-to-face* interviews with around 6,000 respondents: 900 in Albania; 1,200 in BiH; 1,000 in the Former Yugoslav Republic of Macedonia; 900 in Kosovo; 800 in Montenegro; and 1,100 in Serbia (hereafter referred as the INFORM Survey 2017). The questionnaire included demographic, economic, political and social capital questions in relation to formal and informal institutions and practices. Aiming at 'bottom up' knowledge production on informality in everyday life, this research has taken advantage of ethnography as a research method. Thus, to understand informality and the micro-politics of everyday life, the chapter reflects on the qualitative data stemming from the ethnographic observations through *day-to-day* field research and conversations with ordinary citizens in their given social settings.



## Informality in Everyday Life: Theoretical Grounding

The way individuals and social groups act in everyday life is contingent on an array of social conventions, rules, and norms. Indeed, conventions, norms and rules set the standards of behaviour among the members of a community and the society at large. They constitute an important source for the transmission of social knowledge from one generation to the next. Yet as Jack Knight has pointed out, 'informal conventions form the base on which a vast range of formal institutions organise and influence economic and political life' (Knight, 1992: 1). True, institutions – as a set of rules – structure social interaction in particular ways. However, not all rules constitute an institution. For Knight, a set of rules become an institution when the knowledge of rules is shared by the members of the given community or society (Knight, 1992: 2). Moreover, Knight contends that 'institutions are constraints that help individuals avoid the negative 'emerging effects' of collective action; institutions enable social actors to work together towards beneficial social goals; and institutions reconcile rationality at the individual level with rationality at the collective level' (Knight, 1992: 10). As such, institutions are indispensable as they are able to resolve problems in society.

When embarking on the research on informality in everyday life one has to keep in mind that in human relationships, as Max Weber argued long ago, the relationship between informal behaviour and formal rules is complex and reciprocal (Weber, 1921). Within legal theory, as Friedrich Hayek emphasised, 'informal law or moral rules have evolved over a long period before some of them eventually did transform into legislation, and that beneficial informal rules were principally subject to a kind of selection through 'cultural evolution' that was neither natural nor artificial' (Hayek, 1973; 1988 cited in Chavance, 2008: 58). As Bernard Chavance argues 'followers of this line of thought consequently give great weight to informal, evolved rules, and view formal, deliberate ones as beneficial only when they correspond closely to the former. [...] formal rules may reflect a constructivist attempt to build an extended order following the pattern of a teleological organization, in which case they will endanger society and economy' (Chavance, 2008: 59). Thus, formal institutions are perceived to be rational and purposeful and as such beneficial to society, in contrast to informal institutions that are believed to be deviations from the rational

ways of organising (Herzfeld, 2005). Yet, in this inquiry, informal practices, rules and constraints, are not considered as constituting institutions. Attention is paid to instances when an informal practice enters the formal realm and how it becomes ‘institutionalised’.

Douglass North (1990; 1993) in his theory of institutional development and change, has emphasised the distinction between formal and informal constraints, with the latter both underlying and supplementing the former. Noticeable, North points out, ‘is the persistence of so many aspects of a society in spite of a total change in the [formal] rules’ (North, 1991: 36). Thus, defining institutions as constraints, he maintains that ‘informal constraints that are culturally derived will not change immediately in reaction to changes in the formal rules’ (North, 1991: 45). For North, institutions are ‘the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints: sanctions, taboos, customs, traditions, and codes of conduct, and formal rules: constitutions, laws, property rights’ (North, 1991: 97).

North’s distinction between formal and informal institutions has been adopted by several scholars in the study of post-socialist transformation, in the economic field, in particular (Chavance, 2008: 60–61). Pejovich (1999) built on the ‘interaction thesis,’ distinguishing different relations between formality and informality. According to Pejovich, this relationship is four-fold, including the following: ‘(i) formal institutions suppress, but fail to change informal institutions; (ii) formal rules directly conflict with informal rules; (iii) formal rules are either ignored or rendered neutral; and (iv) formal and informal rules cooperate — as in cases where the state institutionalizes informal rules that had evolved spontaneously’ (Pejovich, quoted in Chavance, 2008: 60).

In the sociological vein, for Gretchen Helmke and Steven Levitsky, ‘informal structures shape the performance of formal institutions in important and often unexpected ways. Informal institutions also shape formal institutional outcomes, yet in a less visible way: by creating or strengthening incentives to comply with formal rules. In other words, they can be enabling and constraining to formal institutions and informal rules’ (Helmke and Levitsky, 2004: 726). Thus, they define informal institutions ‘as socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels’ (Helmke and Levitsky, 2004: 727). For Helmke and Levitsky, ‘informal rules which are endogenous to formal institutional structures have diverse origins; informal structures

are created by actors because formal rules are incomplete; informality may be a 'second best' strategy for actors who prefer, but cannot, achieve a formal institutional solution. One motivation for creating informal rules may be the pursuit of goals not considered to be publicly acceptable. Some have a cultural and long-standing nature, but many have a limited time span and a remote or weak relationship with cultural values and rules' (Helmke and Levitsky, 2004: 727). Helmke's and Levitsky's theory is taken critically and a reason for that is anthropological. Institutions have rules such as laws that are designed to be resistant to change, whereas the responsive character of informal rules entails that they can modify relatively quickly in response to changes in the environment.

On the other hand, studies in anthropology and interpretative sociology— characterized by micro-perspectives and a bottom-up outlook on social life — make different theoretical and methodological choices with regard to informality. Given this specific approach, data collection in anthropology and interpretative sociology, not surprisingly, is based on techniques specific to qualitative research, such as participant observation, interviews and life histories. In terms of the analysis of the various forms of informality and their relation to formal structures, anthropology and interpretative sociology tend to build knowledge focusing on the meanings that actors give to informality (Giordano and Hayoz, 2013: 14). Therefore, in this current of thought informality tends not to be fully understood on negative terms but rather as ambiguous, neither good nor bad, neither positive nor negative, and neither functional nor dysfunctional, but sensible and rational, contingent on a given socio-cultural context.

Informality is an expression of state-society relations (Polese et al., 2016: 182). There is no organization or democratic state that is free of informal practices. Indeed, 'informality is, in fact a globally enduring and resilient phenomenon, not transitory and only characteristic of modernizing/transitioning societies' (Polese et al., 2016: 184). Informality can be understood only in relation to formal rules as it can only exist in the presence of formal rules. Yet, the nature of the interaction between the formal and informal rules and practices is contextual and temporal. Looking at social and political change after socialism, Chavance drives home the point that 'post-socialist transformation has not taken place in a uniform way in informal institutions: enduring legacies have co-existed with the rapid collapse of unwritten rules and with the swift emergence of new non-codified rules' (Chavance, 2008: 65). Informality underpins the democratic system

across East European countries. It has shaped governance via personalized networks that undermine democracy and the rule of law. This mode of governance cannot maintain itself without informal institutions. Hence, as Giordano and Hayoz have argued, ‘understanding how democracy is reworked we need to pay attention to how informal arrangements, rules or institutions have become indispensable’ (Giordano and Hayoz, 2013: 11) and how they shape social, political and economic life.

The everyday life, commonly referred to as ‘the informal’ is no less important than the formal bureaucratic institutions. The notion of ‘informality’ in everyday life and impact on lived experience often went unrecognized by many theoretical models (Steenberg, 2016: 294). As Rune Steenberg has pointed out, studying informality one needs to recognize the analytical limitations of the concept itself. Indeed, Steenberg sees utility in the concept of informality, yet argues that the usefulness of the term itself ‘depends not only on our recognition of its limits and its strong ideological embeddedness, but also in its communicative potential’ (Steenberg, 2016:303). Thus, in the vein of Steenberg’s line of thought, it would be erroneous to insist on the negative effects of informal practices and to project bad informality as a trait of WB societies, or more generally, societies of the global south. Moreover, it would be also misleading to put the ‘negative’ conception of informality, usually associated with corruption and clientelism, in the field of political science studies on democracy, and leave the ‘good’ informality in the field of anthropology and micro-sociology.

This inquiry on informality in everyday life takes advantage of the theoretical model of the INFORM project to analyse how informal relations and practices interact with formal institutions in the domain of everyday life. This model builds on Gretchen Helmke and Steven Levitsky’s definition of formal institutions as constitutional and legal norms, as well as contracts and mechanisms of implementation (Helmke and Levitsky, 2004: 727), considering them as determining ‘formal constraints’ of social behaviour. Thus, informal constraints consist of unwritten rules derived from traditions, customs, beliefs, former formal rules or practices in response to new formal rules in the ‘emerging game.’ Here, formal constraints are treated as by-products of new formal rules, which in our case relate to the set of EU provisions known as *acquis communautaire*. Examples of laws passed in compliance with the EU law but not put into practice in WB societies have indicated that rules, whether formal or informal, do not automatically become constraints. In order to become effective in practice

they must pass through what has been termed as an ‘enforcement belt’ – the process of interpretation, designing mechanisms of implementation, and of positive and negative sanctions that would enable their effectiveness (Hysa, Kera, Pandelejmoni, 2018: 8). The following is the discussion of key findings stemming from the survey and ethnographic data showing how informality pervades realms of everyday life in WB societies.

## Informality is Omnipresent in WB societies

Citizens in WB societies perceive informality to be omnipresent. The 2017 INFORM survey shows that more than 70% of those surveyed in these societies think that having connections and to ‘have people in places’ is crucial in order to ‘get things done.’ However, perceptions of informality vary in the fields surveyed by the research and across countries. For instance, giving money, having contacts or giving gifts to doctors is perceived as most most widespread in BiH and Serbia, followed by Montenegro. This perception is less marked in Macedonia, Albania and Kosovo. In terms of institutions, the survey data indicate that informality is more pervasive in the health sector. In kindergartens, schools and university education, informality is viewed as most prevalent in BiH (47.4%) and least in Albania (13.6%). Offering gifts to police officers in order to dismiss or avoid paying a fine is perceived as a widespread practice in BiH (47.4%) and Serbia (43.8%). This is seen to be to less common in Kosovo (10%) and Macedonia (26%).

Moreover, the research affirms strong bonds of family and kinship. Citizens across these societies express that they can rely on their parents, cousins or friends to help them with childcare or care for the elderly and ill (70%). A further 50% to 60% of the respondents consider that, in cases of great life misfortunes (death, illness, permanent loss of employment), they can count on the help of their families, cousins, friends, and neighbours. However, trust in people is rather low across the region, scoring from 2.9 in Macedonia and 3.8 in Albania (1.0 min to 5.0 max). The level of trust in state institutions is higher than trust in people. It is the highest in Montenegro (mean score reaching 4.9), followed by Albania, Serbia and Kosovo. In contrast, BiH and Macedonia show less trust in state institutions (mean

scores 3.5 and 3.7). The family is the most trusted institution while political parties are the least trusted. Relatives and friends enjoy high levels of trust, while colleagues, neighbours, people of the same national and religious backgrounds are somewhat trusted. Thus, we are able to conclude that eroded trust in state institutions is conducive to informality.

## Encountering Informality on an Individual Level

When looking at personal experiences of respondents and the people they know about informal practices, such as gift giving, providing services, money, and connections to 'get things done' in healthcare, courts, the education system, and gaining employment in the public sector, the INFORM survey identifies sites where informality emerges. Informal practices in healthcare are a fact of life throughout the region. The survey data show that half of the respondents from all the countries, except Kosovo, know someone personally who has had to bring a gift, provide a service, pay money, or find a connection in order to obtain better health care. Moreover, most respondents in Albania and Kosovo paid to get treatment in public healthcare (Albania 68%, Kosovo 54%); in Macedonia and Montenegro 40% of respondents sought and found a connection. Gift giving is the most frequent practice in Serbia (45%); in BiH almost the same percentage of respondents give gifts and as give money (39%).

With regard to informality in the courts, a smaller number of respondents report resorting to informal practices to influence court decisions. This is not to say that the level of informality is lower in the courts compared to other institutions. One should bear in mind that interaction of citizens with the courts is less frequent compared to other institutions. However, the most common practice of informality in the courts consists of 'giving gifts' with around 47% in BiH, Serbia 44%, Montenegro 35%, Macedonia 26%, Albania 14%, and Kosovo 10%, reporting that they have offered gifts in order to obtain service from the courts. However, informal practices favour/s, giving money and connections are in place also.

Enrolling children in kindergarten, school or university is less connected to informal practices in comparison to other domains of everyday life. The percentage of those who know someone who has used connections

to get a place for their child in the kindergarten and/or enrol in school and/or university ranges from around 18% in Kosovo to 30% in Macedonia. The informal practice that was least frequently reported is having to seek connections to get a place for a child in a kindergarten and/or enrol in a school or university (Macedonia 6% and Kosovo 2%).

The research data also indicate that informality encompasses employment. Of those surveyed who have reported to personally know someone who had to provide a gift, service, pay money or find a connection to get employment, it is Macedonia and Serbia that score the highest (40%), followed by Kosovo (16.7%) and Montenegro (9.3%). It is in BiH that these practices that are the least prevalent (2.7%).

## The Informality Mediators: Family and Friends

The mediators in the informal exchanges across all countries are interwoven between family and friends. Informality through family members and relatives is most often prevalent in Kosovo and Albania. While friends are everywhere, they are most common in Montenegro (44.83%) and Macedonia (44.35%). In BiH (25.40%) and Serbia (36.13%) friends are the main mediators to 'get things done.' In dealing with the courts, the main mediators are friends and relatives, followed by political parties. In employment, the mediators are friends. In BiH (47.98%) there are fewer intermediaries and respondents report less help from friends, while in Albania friends (30.92%) and relatives (35.20%) are the main mediators. In Kosovo (33.33%), relatives seem to be of paramount importance to gain employment in the public sector.

The research data indicate that many citizens are in pursuit of connections to 'get things done.' Indeed, connections, as Čarna Brković has argued, 'intertwine with public administration and how *veze* and *stele* enable flexibility to approach the 'right people' (Brković, 2017: 106–107). In order to get what they need, many citizens approach friends and family with 'connections.' The interlocutors count on connections, as can be seen from the following quotes:

In order to get the job that I applied for I had to contact someone, as I knew I wouldn't have a chance to get the job without connections. Besides me another person applied for the same job, who did not have a CV like me, but had two years of

work experience more than I did. And the commission first gave the job to that person, because of those two years. Thus, I had to intervene through somebody and finally I got the job. (A teacher, Tirana)<sup>3</sup>

Not all people can have ‘connections,’ yet they proactively search for them. A single mother, unemployed from the countryside near Tirana, with three daughters, one of whom is a university graduate, when asked what about how to find a job for the daughter, replies that:

It’s not easy to get a job; it requires ‘mik’ (friend/acquaintances) and ‘lek’ (money). We don’t have money, we have to look for friends. (unemployed woman in Tirana)

A teacher from eastern Albania confirmed that family and kinship ties are important in finding a job.

I have relatives and kin, who are employed in Tirana. I have an aunt’s son who has employed many of my kin... he offered ‘punë me mik’ (a job through connections). (teacher from Eastern Albania)

These experiences are exemplary of how informality reworks the power relations shifting the ‘state’ and the ‘public’ towards ‘personal relations’ and ‘private arenas’ (Brković, 2015: 279), having a profound impact on the distribution of rights in the society. Thus, connections and personal relationships not only show how ‘things get done,’ but also how certain actors improve their livelihoods (Brković, 2017: 107).

## Political Parties as Mediators of Informality

The ethnographic fieldwork on the case of the 2017 elections in Albania indicates that people get involved in clientelist relationships and practices, especially during elections. When individuals were asked whether resolving issues of everyday life had influenced their decision to vote, the research identified two types of problem-solving through favours. The first has to do

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3 To protect the privacy and confidentiality of participants in the research, personally identifiable information such as name, age, residence and affiliation were altered from the interview transcripts to ensure that the informants and the data participants in the research remain anonymous.



with long term problems, where a vote might attract help in solving them. The second is related to problems which might not show up during the elections, but once they emerge, people have to find contacts in a party that influences the institution involved. From the ethnographic fieldwork in Albania it seems that employment and other issues which are important for economic and social security and wellbeing lead to the creation of long-lasting clientelist relationships between individuals/families and political parties, in which resolutions are offered in exchange for votes (Hysa, Kera and Pandejmoni, 2018: 55). Such practices are shared by citizens of Montenegro as well who think that 'in state institutions in particular, more people than necessary are employed and that their employment stems from their loyalty to the ruling party' (Sedlenieks, Puzo and Dubrovska, 2018: 25–26).

## Concluding Remarks and Policy Implications

Informality in the WB can be understood through the interconnections between formal institutions and informal practices. The most common practice is 'gift giving' followed by rendering services, giving money, and favours achieved through clientelist relations. Our data implies that informality is most prevalent in the public health system and the least so in childcare and education. The research confirms that informality does not exist independently of everyday life experiences, but it is part of it, and that it can only be defined in the context of formality.

In Albania, BiH, Kosovo, Macedonia, Montenegro and Serbia, informality permeates everyday life through various practices that are often based on family/kinship relations, but also in response to formal constraints on upward social mobility. Informality is not the preferred course of action, but a reaction to unresponsive state institutions. The research findings indicate that informality is not free from ambivalence and ambiguity. Practices of informality can be understood only in relation to the interplay between the accepted norms and rules on the one hand, and formal structures and processes on the other. In everyday life informality is embedded in social norms, solidarity and reliance on kinship and social networks. Overall the research finds that citizens across WB countries, while agreeing to formal rules, often subscribe to informality to 'get things

done' as informality ensures the security of the procedures that make things happen.

The states, civil society and the EU each have a stake in overcoming challenges that informality poses in everyday life. Governments should work towards an integrated policy framework to address informality in everyday life and demonstrate accountability in governance through the rule of law. The states in WB region should promote equality and anti-discrimination policies, as well as increase transparency mechanisms to guarantee equality and fairness in healthcare, employment, education, social services, judiciary and security. Moreover, the governments in WB region should extend social and health protection; improve the public health system by increasing public expenditure on health and welfare protection. In addition, the governments in most of the WB countries should enact legislation to combat corruption, clientelism, and nepotism in employment in the public sector and ensure that recruitment is merit-based.

Not only should government be active, but the civil society should continue to promote equality, solidarity and reciprocity and counteract negative informality. Civil society organisations should work to restore public trust through citizens' participation in decision-making at community and state levels. The EU policy should prioritise socio-economic development as integral to EU integration strategy of the countries of WB.

Finally, EU policy should ensure that the national governments take steps to enhance the trustworthiness of formal institutions and uphold the rule of law. In addition, the EU's support to WB countries should address informality in the public sector, especially in health, public administration and courts as the growth of informal practices is a consequence of insufficiency of formal institutions.

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## 8. Formal and Informal Institutions in Policy – Evidence from South East Europe

This chapter provides a systematic review of the literature and policy measures in 13 post-socialist countries, now EU member states. The chapter starts by reviewing academic literature on institutionalization of EU rules with particular focus on the resulting gap between formal and informal institutions. Then, the treatment of various forms of informality in this sample of countries by EU staff working documents (SWDs) is discussed. In its appendix, the chapter offers a discussion of specific policy measures implemented in each of these countries to tackle informality, which helps us to recognize some of the policy implications for the current aspirants to EU membership.

**Keywords:** informality, informal institutions in South East Europe, informal economy, informal employment, policy measures on informal employment

### Introduction

The process of transposition of the EU rules and directives which makes the *acquis communautaire* and *enlargement acquis* by the candidate countries is not easy. There are many factors to be considered when adopting and sometimes imposing new rules in a country. The results are often not achieved as envisaged, and usually carry some side effects as well—particularly when combined with lack of engagement to implement the new rules. There are also many cases of backsliding from the adopted rules in favour of more short-term interests. Therefore, the main focus of transposition of the EU rules in the literature is put on their institutionalization, that is building institutions that take ownership of those rules and invest effort in their implementation. Dimitrova (2010) recognizes three results of this process: a successful one which implies that the EU rules are institutionalized in the accessing country, a failing one in which the rules are eventually reversed, and a hybrid one, which the author calls “empty shells,”

implying that the rules are transferred to the accessing country but are not implemented or respected.

The main focus of this chapter is on the “empty shells,” or rules that are adopted but poorly implemented in the 13 post-socialist countries, now EU member states. Deficient implementation brings into existence a gap between the rules and everyday practices—gaps that are usually filled with informal practices. In this chapter we review the EU staff working documents (SWD) in order to find how informal practices are discussed, and more importantly, what recommendations are given to restrain informal phenomena that filled these gaps between rules and practices.

A general finding of this chapter is that the EU reports pay little attention to the informal sector. However, we identify two broad informal phenomena that are most frequently considered: corruption on the one hand, and informal economy and informal employment on the other hand. Other informal practices remain mostly uncovered.

Our analysis consists of reviewing the SWDs for the countries in focus, both before and after these countries became EU member states. The time frame we encompassed varies from country to country and is conditioned by the availability of those documents, but in general, we sought to cover at least five years before and five years after each state’s accession to EU membership. In some cases, this chapter managed to go beyond this time frame. We also provide an overview of all case studies on policies implemented in the focus countries to curb the informal economy, which are made available by Eurofound (European Foundation for the Improvement of Living and Working Conditions).

The chapter begins by reviewing relevant literature on transposition and institutionalization of EU rules in accessing countries, and links the available literature to the INFORM theoretical framework. There follows a discussion of informal institutions evidenced in EU staff working documents. The final section offers concluding remarks and some general policy indications for future actions. A review of policy measures on tackling informal economy is given in the appendix to the chapter.

## Transposition and Institutionalization of EU Rules – a Literature Review

One of the essential steps in the process of the EU enlargement is the transposition of the EU rules and directives by the candidate countries. There are 35 chapters (EU Info Centar, 2015) covering diverse fields. Aligning domestic legislation with the requirements of the EU *acquis communautaire* can involve an impressive volume of legislation, rules and norms. Along with the *acquis*, EU also promotes the less defined enlargement *acquis* which is designed to address conditions in post-socialist countries, the adoption of which is envisaged to facilitate democratic consolidation and relevant market reforms. The candidate country has to adopt the rules and norms that operate well in the atmosphere of established EU member states, but may meet challenges in environments with different cultures and traditions, where people may have developed, for various reasons, different ways of doing things in everyday life. Therefore, the process of transposition of the EU rules is complicated by the problem of adjusting formal rules to the conditions that predominate in candidate countries, even though some space for modifications is left to the accessing countries. Overall, however, accession to the EU is conditional on adoption of a number of rules, which sometimes pushes candidate countries to rush with the transposition of EU rules, with the consequence of deepening tensions between formal rules and material conditions, or of proclaiming rules that may be reversed or never enforced.

There are many cases of actual backsliding from EU rules once adopted. For example, In an article from 2006<sup>1</sup>, The Economist points to several cases in Poland and Czech Republic, where laws were either passed or postponed in order to give politicians more influence in the process of appointing civil servants. These are clear instances of laws being passed in the EU pre-accession process and then not implemented or delayed post-accession. However, the revocation of rules does not need to happen to call the adoption of the rules a failure—simply, if behaviour does not follow the adopted formal rules then the rules themselves have not achieved their intended impact. Or to put it simply, adopting all 35 chapters of the *acquis*

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1 The Economist (2006). The European Union's new members: Through the looking glass. 30 November 2006, printed edition.

by a new member state does not mean that the accession process is complete in the way it was initially envisaged.

When it comes to the transfer of EU rules to candidate countries, the main focus of theoretical debate concerns the institutionalization of rules—i.e., building institutions based on the transposed rules. North (1990) defines institutions as setting “the rules of the game”. However, even though conditionality has motivated domestic institutions to adopt the EU “rules of the game”, the rules adopted were formal rules (Dimitrova, 2007), and were frequently in conflict with the “rules-in-use”—a focus of institutionalization, as suggested by Ostrom (1999).

The theoretical framework of INFORM project explains that institutions are defined in a way meant to account for both formal and informal rules and mechanisms of enforcement. First, the *rules continuum* encompasses both formal and informal rules—both rules coming from the EU *acquis communautaire* and informal rules entrenched in social values and norms. Then the rules pass through the enforcement belt, which represents the processes of recognition and implementation that rules need to acquire in order to become obligatory, followed and respected in everyday behaviour—that is, to become constraints. This implies that the rules will be interpreted and implemented by their users, and that mechanisms to sanction misinterpretation and mis-implementation will be established. Finally, formal and informal constraints shape behaviour and influence practices on the ground. When combined together, rules, enforcement belt and constraints constitute institutions. However, it is important to notice that behaviours (practices on the ground) are not seen only as rule-guided, but are also dependent on the resources available to individuals, organisations, companies and other bodies; as well as the social fields where the practices are happening (political, economic, legal, etc.).

In the short run, it can be said that behaviours are influenced and shaped mainly by formal and informal constraints. It follows that formal and informal constraints can only steer behaviour in the same direction if they are aligned with one another. Several conventionally shared beliefs are at work here, and these are visible in the literature: the first is the contention that formal rules tend to develop out of informal norms and social values (Helmke and Levitsky, 2004), and the second is the contention that through social learning some rules get followed by broader groups of society, and these are the ones most likely to be formalized (Sedelmeier, 2006). The principal postulate involved here is an organic



metaphor where there exists a logical path from informal to formal ways of doing things, which is absent due to EU conditionality. Dimitrova (2007) points out that the transposition of EU rules, which are created in different contexts and states and for a different set of preferences, in the accession process raises issues of deficits in influencing and shaping behaviours in accession countries. She also stresses (2002) that an important distinction is to be made between transfer of policy rules, on the one hand and rules that form a part of the broader institutional building, on the other. In the first case, the governments would only implement EU policies and not necessarily adopt the values behind the policies, whereas in the second case the focus is on institutionalization of rules which implies building institutions that would take ownership of the values and rules and ensure implementation of policies.

The process of transposing rules and building institutions faces unique complexities in post-socialist countries. The transformation from planned to market-oriented countries was believed to be hindered only by their authoritarian rulers who, once overthrown, will leave countries that will welcome democracy and free markets. But, overthrowing their rule proved to be only the start of a long process of state building, which uncovered many state weaknesses (Migdal, 1988). Weak states and their institutions opened up a space for many interest groups to take over particular areas, often under the cloaks of reforms, institution building and EU integration. However, Hellman (1998) and Ganev (2001) argue that the early winners of reform and institution building processes sometimes redirected the process of public policy reform to private interest. Ganev (2001) points out that the early winners first join forces with state agencies but obstruct progress once state agencies try to reassert control over public assets. After the fall of communism, the post-socialist countries were left with various stakeholders who profited from the initial waves of democratization and institution building due to an innovative and flexible policy style (Dimitrova, 2007) which won international support. However, once their power increased during the process to give them the hybrid right (formal and informal mix) of playing veto they acquired the ability to block institutional reform.

Hille and Knill (2006) find that the implementation of the *acquis* in accession countries has been constrained by bureaucratic capacity and institutional ability to comply. This is further deepened by the countries' inability to prevent their leading experts from attaining more lucrative

opportunities abroad. This lack of resources is also a focus of other pre-accession institutionalization studies (e.g., Seidentopf and Ziller, 1988; Verheijen, 2000). They primarily suggest that scarce financial resources and poor administrative capacity will have an impact on institution building based on the adopted EU rules.

On the other hand, Falkner et al. (2006) reject administrative capacity as a factor in compliance, and stress that a national culture of complying to requirements plays the pivotal role. A cultural inclination to comply ensures stability and longevity of adopted rules and norms. Furthermore, Sedelmeier (2006) and Epstein (2005) argue that the pre-accession period is crucial in the institutionalization process, as it allows for a period of social learning to take place. Rules that are adopted through social learning become part of the informal social values and norms, and are harder to reverse despite political actors acting as veto players and bottlenecks. It is also important to notice that country specific factors have influence on institutionalization of imported rules (Dimitrova, 2007). Dimitrova (2010) sees that the results of EU conditionality and rule transposition can be threefold:

- Reversal
- Institutionalization (alignment of formal and informal rules)
- “Empty shells” (actors ignore the new rules, parallel informal rules used) (Dimitrova, 2010: 17)

Reversal of adopted rules implies abandoning those rules and enforcing different ones instead. This is the most probable outcome when the rules adopted are not part of the EU *acquis*—most likely implemented in the first place to send a message that the accession process is progressing—and when the veto players find that it is in their interest to oppose those rules. Institutionalization, on the other hand, happens when the adopted formal rules are part of the EU *acquis* and when they conform to existing informal rules. Also, if veto players’ preferences are for the new set of formal rules, the rules have higher chances of institutionalization. And finally, ‘empty shells’ are result of formal rules being adopted as part of the EU *acquis* which conflict with existing informal rules, and opposing veto players’ preferences for maintaining the status quo.

## Informal Institutions in Post-socialist Countries – Evidence from EU Reports

This section analyses the representation of the informal sector in EU reports; thus, it based on an overview of the European Commission Staff Working Documents (SWD) for 13 post-socialist countries. This includes countries that have become full members of the EU or are in the process of joining the EU. Additionally, the reports for Cyprus and Malta, located in the south of the Western Balkans (WB), were analysed. All of the above data was taken from the listed Country Reports<sup>2</sup>.

Our general finding and impression is that the Reports pay little attention to the informal sector. However, they discuss the impact of some forms of informal practices such as: corruption, inefficiency of (formal) state institutions, and tax evasion. From these Reports we can conclude that all countries have made progress and that new institutions in line with the EU integration process have been established in the most countries. Despite these efforts, several Western Balkan countries (WB) continue to show the symptoms of a *captured society*. “Enterprises, institutions or powerful individuals that with their illegal activities affect policies, design the policies as well as the legislative environment and economy, and all that according to their own interests”<sup>3</sup>. The Reports cite unjustified political interference in the work of public administration, public media services and non-transparent public financing of social needs.

The Reports reveal that the continuing weakness of the rule of law negatively affects the overall climate for investment and development. A weak and inefficient judicial system, frequent changes in legislation, unfair

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2 European Commission: Country Report – *Communication on EU Enlargement Policy*, Brussels SWD (2016) for countries: B&H; Montenegro; Serbia; Macedonia; Albania and Kosovo. Available on: <https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information>; European Commission: Country Report – *Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011*, Brussels, SWD (2017) for countries: Slovenia; Romania, Bulgaria, Hungary; Slovakia; The Czech Republic; Poland; Estonia; Latvia; Lithuania; Croatia; Cyprus and Malta. Available on: [https://ec.europa.eu/info/publications/2017-european-semester-country-reports\\_en](https://ec.europa.eu/info/publications/2017-european-semester-country-reports_en)

3 European Commission: EU Enlargement Policy Statement for 2016: 4. Available on: <http://dei.gov.ba/dei>

competition, poor management of public finance, administrative restrictions, and an unaccountable informal sector diminish investors' interest in direct foreign and domestic investment.

On the other hand, weak tax policies, public expenditures, non-enforcement of laws, including the fight against corruption and organized crime, diminish the tax base and the effectiveness of economic policies. The extent and presence of these factors indicate a high presence of informal practices in WB countries. The impacts of informality differ from country to country. The Reports show that the economic role of the informal sector ranges between 30% and 50% in Bosnia and Herzegovina, between 20% and 40% in Macedonia, between 20% and 30% in Serbia, above 33% in Albania, and is 24.5% of GDP in Montenegro (SWD 365, 2016; SWD 362, 2016; SWD 361, 2016; SWD 364, 2016; SWD 360, 2016).

Post-socialist countries that have successfully implemented reforms required by the *acquis communautaire* are now full members of the EU. However, they have not resolved all of the challenges related to informality and are below the EU average with regard to tax evasion, corruption, and employment. The share of the informal sector in Latvia is 21% of GDP (SWD 79, 2017) and the share in Estonia is between 15% and 26% (SWD 72, 2017).

Although the EU reports do not provide much quantitative data for all countries regarding the informal sector, the analysis of corruption, unemployment, tax evasion, the independence of the judiciary and public administration indirectly indicates the presence and influence of informal practices. Below is a brief overview of the findings on the countries studied listed in the Reports.

Corruption is widespread in all studied countries. Although almost all countries have made progress in fighting corruption in recent years, some have recorded an increase in corruption, such as Cyprus. Across the countries studied, corruption is present in almost all public institutions and sectors, though the prevalence and impact of corruption varies. Poor institutional capacity for law enforcement combined with the widespread corruption has a negative impact on the business environment and the development of the private sector, particularly in Bulgaria, Kosovo, Montenegro, and Macedonia. According to the Reports, public procurement is the segment most susceptible to corruption. "*Corruption in public procurement takes several forms. The most common forms of corruption include collusive bidding, tailor-made specifications for particular*

*companies, conflict of interests in the evaluation of bids, involvement of bidders in the design of specifications, abuse of negotiated procedures or abuse of emergency grounds to justify the use of non-competitive or fast-track procedures, and amendments to the contract terms after concluding the contract” (SWD 89, 2017: 45).*

Slovenia has the least pronounced perception of corruption, but even there 37% of companies declared that they could not win tenders due to corruption. In Lithuania, the percentage is somewhat higher, around 39%, while perception of corruption remains higher in the following countries: The Czech Republic 41%, Romania 52%, Slovakia 54%, and Bulgaria 60%. Over 40% of public procurement contracts are awarded on the basis of only one tender in Slovenia. Likewise, the largest number of competitive bidders are excluded from the offer. After political instability, corruption is reported as the second most problematic factor for business in Hungary. In the Czech Republic, after ineffective government bureaucracy and tax regulations, corruption is regarded as the third most troublesome factor for doing business. The studies carried out in Cyprus underline the perception that patronage, bribery, and abuse of power are significant problems in public administration, and 87% of entrepreneurs confirmed that corruption hinders competition. In Romania, corruption is generally considered as a major problem. In Serbia, as in Albania, corruption is widespread and represents a serious problem, despite efforts to prevent and fight against corruption. Progress has been made in Bosnia and Herzegovina following the adoption of action plans at different levels of government, but the fragmentation of the country diminishes the effectiveness of implementation. In Kosovo, which is at the initial stage of preparation for fighting corruption, there is no political will to solve the problem in a comprehensive way (SWD 89, 2017; SWD 80, 2017; SWD 69, 2017; SWD 88, 2017; SWD 90, 2017; SWD 68, 2017; SWD 72, 2017; SWD 78, 2017).

As stated in the Reports, in some countries, the practice of “pocket payment” has developed. “Pocket payment” is most widespread in the health sector. In Cyprus, this form of payment in the health sector reached 50% (EU average is 15%), in Latvia it is 39%. Informal payments “under the table” in Slovakia are up to 23% and potentially hinder equal access to services (SWD 78, 2017; SWD 79, 2017). In the case of Hungary, the share of that payment method, which includes the estimated amount of informal payments, is 27% compared to 17.6% in the EU. Patients use informal payments to avoid long waiting lists or to seek access to preferential treatment (SWD 82, 2017).

All studied countries have made steps forward in institution building and the adoption of anti-corruption strategies and policies. Issues of the efficiency of institutions and governance in the public sector are the main challenges facing the fight against corruption at all levels. The low level of processed corruption cases, especially for high-level individuals, creates the perception that corruption is an acceptable behaviour. The high level of corruption in the studied countries confirms the significant role of informality in creating a business environment.

The Reports find tax evasion in all studied countries. Tax evasion is a consequence of the weakness of tax policy and the high participation in the informal sector. "Poor tax authorities, high levels of tax evasion and undeclared work and, consequently, relatively low tax revenues provide limited fiscal space" (SWD 68, 2017: 21). Tax debts, tax evasion, and the grey economy are the main challenges for establishing tax discipline. Despite progress in public finance and tax discipline, there lacks an effective framework of tax risk management. According to assessments presented in the Reports, the extent of tax fraud in Croatia is 35% of net tax revenues, while the extent of tax fraud is 24% in Poland, and 18% in Hungary, all above the EU average of 14% (SWD 76, 2017; SWD 86, 2017; SWD 82, 2017). The Report shows that various factors, including the weaknesses in tax policy, corruption, uninsured labour force, informal employment, unfair competition, non-enforcement of laws, organized crime, and tax fraud, reduce public revenues and strengthen the informal sector. In Serbia, tax evasion is also affected by the lack of harmonization of tax legislation with the code of conduct for business taxation. Weak institutions and the informal sector in Albania have resulted in an informal exchange of assets, which leads to disputes that further burden the courts and cause additional loss of tax revenues. "However, patterns of tax fraud are constantly changing as fraudsters adapt to new rules, exploit loopholes and move to new sectors. The objective of the changes is to improve tax collection and simplify tax obligations for taxpayers via consolidation of tax and customs administrations" (SWD 86, 2017: 17).

Countries that record high rates of unemployment also have high participation in the informal sector. In Serbia, Albania, Bosnia and Herzegovina, Macedonia and Kosovo, more than one fifth of the working age population is unemployed. With limited employment opportunities, informal employment is a strategy for survival. Furthermore, "Informal employment includes work without a formal contract, but also under-reported

remuneration ('envelope wages') or evasion of social security contributions" (SWD 68, 2017: 31). There is an important difference between registered (statistical) labour force data, and the informal labour market, which is highlighted in the EU Reports. In Montenegro, every third person works in the informal sector, which is not included in statistics. Similarly, in Macedonia, it is estimated that over 20% of employees work in the informal sector, and in Albania about 40% work in the informal sector (SWD 360, 2016; SWD 362, 2016; SWD 364, 2016). In Bosnia and Herzegovina, the active population rate is 44%, and the employment rate is 32%, this difference of 12% indicates a high level of employment in the informal sector (SWD 365, 2016). There is a similar situation in Bulgaria and Romania where the rate of undocumented workers ranges between 15% and 20%. In Romania, "undeclared work remains prevalent, also reducing both labour supply and fiscal revenue. National data estimate people in the informal economy at around 1.2 million" (SWD 88, 2017: 2, 20). Countries that have become full members of the EU have lower unemployment rates. Cyprus and Croatia have the highest unemployment rates of 13%, followed by Slovakia and Latvia with 10%: the unemployment rate in each of these countries is above the EU average (SWD 78, 2017; SWD 76, 2017; SWD 90, 2017; SWD 79, 2017). In the Czech Republic, Estonia, Malta, and Poland, unemployment rates are below the EU average. In Latvia, the payment of wages in the "envelope" is in decline, although estimates demonstrate that participation is still high (18% of real wages in 2015). In these countries, there is frequent and increasing migration to other EU countries. While this reduces unemployment, it also results in shortages of qualified labour. In the case of Poland, 2.4 million Poles migrated out of the country, with no intention of returning. 14% of Bulgarian citizens live abroad. Labour shortages are "compensated" by migration from other countries. The Reports show that all countries are facing the problem of unemployment of vulnerable groups. The largest number among the unemployed are young people, women, "low skill" workers, elderly, women with young children, and Roma people. In Serbia, only 18.5% of Roma people aged 20 to 64 were engaged in "paid jobs," in Slovakia 25%, and in Bulgaria 26% (SWD 361, 2016; SWD 90, 2017). The difference between the participation in employment of women and men indicates that labour market conditions are still unfavourable for women. The unpaid work of women remains a challenge. "The absence of state services for child care in rural areas increases women's unpaid household



work” (SWD 364, 2016: 54). Unemployment benefits the informal sector that further affects job creation, including those for young people, “Informal work concerns especially young workers and long-term unemployed” (SWD 362, 2016: 28).

It can be concluded from the Reports that legal insecurity, distrust in state institutions and predictability of regulatory, tax, and other policies discourage investors and contribute to lower growth rates. “Legal certainty, trust in the quality and predictability of regulatory, tax and other policies and institutions are important factors that could allow an increase in the investment rate. The rule of law and an independent judiciary are also essential in this context” (SWD 86, 2017: 2). This presents a systemic threat to the rule of law, creates legal insecurity, and supports informal practices. Legal uncertainty has a negative impact on entrepreneurship and the development of the private sector. “The private sector is underdeveloped and hampered by weaknesses in the rule of law” (SWD 361, 2016: 25). Moreover, “the low trust in the judicial system and public institutions hinders private investment” (SWD 68, 2017: 3). In addition to the legal uncertainty of the studied countries, they also face the problem of the quality and efficiency of the judiciary, as is stated in the case of Cyprus: “the low quality of Cypriot regulations and inadequate enforcement due to lengthy administrative and court proceedings weaken the effectiveness of Cyprus’ legislation and overall legal certainty” (SWD 78, 2017: 45). However, the judiciary is not only slow and inefficient, it is also faced with the lack of responsibility of judicial officers and is subject to undue political influence. “The judiciary is still vulnerable to undue political influence and rule of law institutions suffer from lack of funding and human resources” (SWD 363, 2016: 5). Insufficient political support for reform, as well as fragmentation of the public sector, hinder efforts towards institutional and legislative reforms. The Reports conclude that all countries have an obligation to improve their judicial system and make it independent and efficient. “Intensified efforts are needed to strengthen the rule of law to ensure that regulatory improvements translate into an improved investment climate” (SWD 360, 2016: 26). In many countries of the Western Balkans, the legal framework is still not in line with European standards, leaving room for political influence on the recruitment and appointment of judges and prosecutors. The present public comments on investigations and current cases, including those at the highest political levels, further aggravate the judicial independence:



“Bulgaria is among the weakest in the EU in terms of accountability, rule of law and control of corruption” of all full EU members (SWD 68, 2017: 38). According to the Reports, declared political commitments to fight against corruption have not shown sufficient concrete results.

Altogether weak rule of law, widespread corruption and inefficient administration continue to harm the business environment. “Trust in the public institutions is undermined by a high perceived level of corruption” (SWD 78, 2017: 30). Repeated survey findings highlight the perception that patronage, bribery or abuse of power are significant problems in public administration (World Bank, 2015). Institutions are especially weak when it comes to indicators of competitiveness, due to weak protection of property rights, the protection of intellectual property, as well as the independence of the judiciary and the transparency of government policy (Bulgaria and Romania). The unstable regulatory environment is one of the biggest obstacles to doing business in Hungary. In Slovakia “shortcomings in public administration have been identified as one of the obstacles to improving the business environment” (SWD 90, 2017: 33).

In almost all countries, the inefficient judicial system and the lack of qualified labor force negatively impacts the investments needed to support growth and convergence. “The business environment in the Czech Republic is characterised by a heavy regulatory burden and numerous administrative barriers, which act as an impediment to both private and public-sector investment” (SWD 69, 2017: 24). Malta successfully implemented reforms and established an acceptable business environment. As a result, newly established companies can start working within two or three days by filing a short electronic form on an online portal after a two-step process. Unlike Malta, in Bosnia and Herzegovina “the business environment remains difficult: business registration procedures remain cumbersome and costly, and the requirement for a company to register in both entities if it has a commercial presence has not been addressed” (SWD 365, 2016: 53). Estonia achieves the best performance in digital public services, which is evidenced by its shift from fourth place in 2015 to first in 2016. In WB countries, “elections are seen as an opportunity to achieve political control over wider administration, including independent institutions” (EC, 2016: 6). Despite updated civil service legislation, the structure of public administration in most countries remains complex and does not provide sufficient accountability. There is a crucial influence of political interest on the election or appointment of the management positions of regulatory

bodies,. This hinders the achievement of a high quality regulatory environment guaranteed by independent and responsible oversight. Therefore, citizens' rights to good governance, access to information, and administrative justice are limited. The introduction of e-government services remains a priority, as it can be a key factor in increased transparency, speed, and consistency in public services. Based on the Reports, it can be concluded that all countries have made progress in strengthening the institutional framework and business environment, but there are still many challenges that each country needs to resolve and eliminate in order to bring the business environment to an acceptable level.

## Conclusions and Policy Implications Presented in the EU documents

High levels of corruption, tax policy weakness, underdeveloped labor markets, legal insecurity and inefficient administration in the studied countries are indicators of underdeveloped formal institutions. Strengthening formal institutions and eliminating weaknesses remain among the main challenges for all countries. Many countries, through formal procedures and institutions, have adopted various strategies for eliminating related problems, but their implementation is still inefficient and insufficiently effective, sometimes even counterproductive in terms of diverging from the EU *acquis*. In order to ensure the reduction of informal practices that detract institutional effectiveness, additional and comprehensive measures are needed.

Control of corruption is a key challenge for all countries. The stated political commitments in the fight against corruption have not been translated into concrete actions. The Reports recommend that all countries should establish independent and specialized anti-corruption institutions. Corruption in all forms should be legally and publicly sanctioned, and property acquired by corruption should be seized and used to finance the education system and the protection of socially vulnerable persons. Political declarations of commitment to anti-corruption activities should be implemented, and instances of non-enforcement must be sanctioned.

According to the Reports, corruption is most pronounced in the public procurement system. Most EU recommendations go in the direction that it is necessary to change public procurement regulations in order to strengthen competition and transparency. Procedures must be clear, simple, and pre-established. Furthermore, it is necessary to establish and strengthen control mechanisms for rapid action and elimination of irregularities in the creation of amendments to existing regulations. Offenders should be punished in a timely and effective manner. The fight against organized crime in the public procurement system must be comprehensive in order to dismantle corrupt networks. Finally, the EU Reports recommend that anti-corruption institutions and authorities have the capacity to disclose criminal networks and the power to seize assets and initiate systematic financial investigations.

Apart from corruption, another informal phenomenon emerges as frequent in the EU country reports. High unemployment rates are accompanied by high levels of participation in the informal employment sector. Unemployment problems are to be tackled by creating a stimulating business environment for entrepreneurship, with attention to the domestic and foreign investors. Simplified procedures that are implemented include legalizing work, increased access to financial resources, tax relief in the first years of business, and advisory and educational assistance for startups and small businesses. This will encourage participants in the informal sector to formalize their businesses. Growth of investments and reduction of the informal sector entails new employment, which reduces unemployment. In order to overcome the challenge of employing people in vulnerable social categories, state intervention is required through additional education, retraining, credit rating, and stimulative systems. As stated in the Reports, special attention should be paid to young and elderly people whose rates of unemployment are the highest. In the appendix to this chapter, we offer an overview of policies the 13 post-socialist countries, now member states, have implemented in order to curb the practices related to informal economy and particularly informal employment. The analysis is separated by country and serves as an overview of more and less efficient measures that have been undertaken recently.

Many countries have improved the business environment by updating laws on general administrative procedures, but there is still a problem of cross-sectoral differences in administrative procedures. The structure of state administration, in most countries, is still complex and unresponsive.

In the EU Reports, countries are encouraged to find the appropriate balance between central, regional, and local authorities to improve the implementation of reforms in providing services to citizens. Citizens have the right to good governance, access to information, and efficient administration. Administrative procedures must be simplified, understandable, and publicly available. The introduction of e-government services remains a priority as a key factor for transparency, speed, and consistency in public services (as demonstrated by the example of Estonia).

Our analysis of the Reports indicates that informal practices are widespread in the studied countries. The prominence of informal practices results in a very noticeable informal sector that diminishes potential economic development opportunities. Political will needs to be ensured in order to adopt a comprehensive strategy to tackle negative informalities. The gap that appears between the will to pass laws and the will to implement them indicates the irresponsibility of the ruling political structure that governs formal institutions. It is necessary to maintain pressure on governing structures to ensure implementation.

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# Appendix

## Policy Measures on Deterring Informal Economy /- Country Specific Case Studies

### *Bulgaria*

Since the 1990s, the transition period in Bulgaria has given rise to enormous informal economy to such an extent that it started to undermine the stability of official state transfer channels. According to the EC barometer survey, it was estimated that more than 35% of the country's GDP comes from informal economic activity (Eurofound Bulgaria, 2009b). The majority of small and medium enterprises (SMEs) were involved in engaging employees without employment contracts, especially in the tourism, hospitality and construction sectors. In large companies, on the other hand, a significant portion of wages was reimbursed informally (envelope wages) creating a crisis in the social security system due to insufficient insurance coverage (Eurofound Bulgaria, 2009a). The following measures were implemented by the Government, and supported by NGOs and international stakeholders:

- In 2002 amendments to Labour Code, mandatory registration of employment contracts with National Social Security Institute were introduced,
- The government negotiated a minimum social insurance threshold for industry sectors and branches of economy, and for occupational categories, and since 2003 those thresholds are adopted annually in the State Budget Act.
- The results of these changes were that in 2003 about 300,000 additional employment contracts, alongside close to 60,000 new employers were registered. The revenues from social security increased by

more than 200 million euros. Furthermore, there was a reduction of more than 10% in the number of workers who received a higher wage than reported.<sup>1</sup>

As the issues of informal work was not completely resolved, some NGOs undertook steps in enabling citizens/workers to educate themselves on the matter as well as to file anonymous complaints online. In the first month only 121 infringements were reported and forwarded to the appropriate institutions, including the state inspectors. However, the campaign did not yield the expected results. One of the main reasons for this was low support from formal institutions. Subsequently the Government through its institutions (Ministry for Labour and Social Policy and General Labour Inspectorate) introduced an additional campaign called “work legally” in 2008. In two months (during the peak of the tourism season), some 5,100 inspections (12% at night) were carried out in about 4,800 companies. Close to 25,000 violations of labour legislation were uncovered, and special recommendations including deadlines were given. Furthermore, close to 190 operations were halted, while some 1,630 persons were levied with administrative sanctions.<sup>2</sup>

The efforts to decrease informal economic activity continued after 2008. Both government and NGOs took part in a longer-term fight against informal work, employing both restrictive measures (i.e. inspections and sanctions) as well as social actor-based measures (i.e. changing attitudes). First, a “National Rules for Business Centre” project was initiated, and a centre was established to monitor informal economy (primarily informal work) and promote research and awareness on formal economy. During the project three national and 10 branch studies were developed, encompassing thousands of respondents and hundreds of interviewees. Also, more than a thousand people were educated through a distance learning platform. This project was supported by intensified measures from Government through inspections and sanctions. In just 3 years, between July 2009 and June 2012, close to 150 thousand audits were carried out in over

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- 1 Eurofound (2009): Mandatory registration of individual employment contracts, Bulgaria. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/mandatory-registration-of-individual-employment-contracts-bulgaria>, accessed: March 2018
  - 2 Eurofound (2009): ‘Work legally’ campaign, Bulgaria. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/work-legally-campaign-bulgaria>, accessed: March 2018

100 thousand enterprises that employ more than half of all employees in the country. As a result of these measures, more than 30,000 employees with reported part-time hours have signed full-time contracts, alongside more than 10,000 people who were discovered without employment contracts. Apart from intensifying inspections, the Government also enforced legislation which envisaged all trade enterprises to issue all of their invoices through fiscal devices connected to National Revenue Agency's central computers in real time. This measure further extended control over the informal economy. Since more than 300,000 fiscal devices were connected in the beginning of 2012, an increase of 10% in declared turnover was registered compared to the preceding period.<sup>3</sup>

### Croatia

Croatia's main objectives were related to aligning its legislation with the EU *acquis*, and particularly the European Commission's requirements for transparency, competition and accountability mechanisms (Bejakovic et al., 2007; Simic-Banovic, 2015)<sup>4</sup>. In 2006, the Government introduced a project Hitrorez, a part of e-Croatia initiative, which was intended to cut the unnecessary regulative and administrative procedures which required more than 40 days to open a business. This administrative transformation was intended also to tackle the informal economy, through facilitating the formal way of doing business. Furthermore, the project unified and simplified various administrative procedures, and introduced the FINA e-card which replaced several e-cards already

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3 Eurofound (2013): Joint effective control on informal work, Bulgaria. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/joint-effective-control-on-informal-work-bulgaria>, accessed: March 2018; Eurofound (2013): Rules for Business Centre, Bulgaria. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/rules-for-business-centre-bulgaria>, accessed: March 2018; Eurofound (2013): Connecting fiscal devices to the National Revenue Agency, Bulgaria. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/connecting-fiscal-devices-to-the-national-revenue-agency-bulgaria>, accessed: March 2018.

4 Bejaković, P., Šućur, Z. and Zrinscak, S., (2007), The social dimension in selected candidate countries in the Balkans: Country report on Croatia (December 14), ENE-PRI Research Report No. 39. Available at: <http://ssrn.com/abstract=2027419>; Šimić Banović, R. (2015). Cutting the red ribbon but not the red tape: the failure of business environment reform in Croatia. *Post-Socialist Economies*, 27(1), 106–128.

in use, speeded up businesses and business registration processes and eliminated unnecessary paperwork. However, although the project was implemented, its potentials have not been utilised properly and encountered many problems entrenched in the traditional way of doing business (Simic-Banovic, 2015).<sup>5</sup>

To tackle high unemployment in the youth population and prevent young people from turning to informal work, in 2009 the Government introduced grants to employers who provided working opportunities to young people for a period of one year. A total of one thousand young people took part in this program, which enabled them access to much needed experience and new skills—eventually increasing their employability. Furthermore, the Government introduced additional active labour market measures including upskilling, requalification, education and public works.<sup>6</sup>

Undeclared work in Croatia was a constant issue in agriculture. Since agriculture is a business heavily dependent on weather conditions, it made little economic sense for employers in the sector to declare workers—the taxes and contributions were usually paid on a monthly basis, whereas it was not a strange situation that only 5 days of work were achievable due to weather conditions. In order to prevent informal work in the sector, the Government introduced seasonal work vouchers, which included taxes and contributions. Each employer would purchase vouchers from the Employment service and was obliged to give a voucher to each employee for each day spent on work. This way, the employers were motivated to engage and declare seasonal workers through vouchers and the state could prevent the informal work and keep the appropriate taxes and contributions.<sup>7</sup>

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5 Eurofound (2013): One-stop shop business registration, Croatia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/one-stop-shop-business-registration-croatia>, accessed: March 2018.

6 Eurofound (2013): Targeted incentives to register employees, Croatia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/targeted-incentives-to-register-employees-croatia>, accessed: March 2018.

7 Eurofound (2013): Seasonal work vouchers, Croatia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/seasonal-work-vouchers-croatia>, accessed: March 2018.

## Cyprus

The informal economy in Cyprus is most present in the construction and tourism sectors, where informal work tends to affect the most vulnerable groups of workers, such as migrants and Turkish Cypriots. In this context, sector specific measures have been developed in order to tackle this issue. In April 2007, special tripartite commissions—where Government, employers and employees were represented—were brought up to tackle informal work in the construction sector. The specific objectives of these commissions were to understand the issue and examine ways to tackle informal work—and detailed lists that emphasize relevant terms in contracts for construction in the public sector were sent to operators of works still in progress, so that inspections could be scheduled. The inspections were carried out by a joint group of the labour and social security departments. The second focus was to overcome the issue of Turkish Cypriots declaring themselves as self-employed and sole contractors which enabled them to avoid registration in the social insurance scheme and evade taxes and contributions. The inspections from 2008 showed that close to 4% of employers were not enrolled in the social insurance scheme and more than 27% of employees were not declared for tax purposes. These numbers represent an improvement from the 2003 data when 11% of employers and 30% of employees were missing from the social insurance scheme.<sup>8</sup>

These mixed inspections were intensified in the period after 2009, and four teams were operating in the main districts. The focus was again on the construction and hospitality sectors. From April 2009 till May 2012, close to 7,500 inspections were carried out, 4,300 of which were in the construction sector.<sup>9</sup>

Changes in standard contracts in public works and services have also been introduced due to an increase of violations in the construction sector—only 2 public works locations were found to be in full compliance out of 26 inspected. The changes included a series of measures like:

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- 8 Eurofound (2009): Tripartite committee to combat informal work in construction sector, Cyprus. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/tripartite-committee-to-combat-informal-work-in-construction-sector-cyprus>, accessed: March 2018.
  - 9 Eurofound (2013): Mixed teams of inspectors, Cyprus. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/mixed-teams-of-inspectors-cyprus>, accessed: March 2018.

- Contractors who have committed violations of labour legislation (i.e. informal employment) will be excluded from public tenders,
- A fivefold increase of penalties for illegal employment,
- Informing relevant bodies of engagement of employees in advance.<sup>10</sup>

To help the inspectors carry out their work, the Ministry of Labour and Social Insurance introduced amendments to the Social Insurance Law in 2012. The most prominent amendment imposed on employers the obligation to submit a certificate of employment to the nearest Social Insurance Service for each of their employees by the end of the month in which the employee started working. Violations were fined with 200 euros, while repeated violations were fined with an additional 400 euros per worker.<sup>11</sup>

### *Czech Republic*

Illegal and informal employment of foreign workers was always a bigger issue than informal employment of domestic workers in Czech Republic. Therefore, in 2000 a Multi-ministerial Body for Combating the Illegal Employment of Foreign Workers was established, where government representatives, social partners and research institutions were brought together to monitor illegal employment, produce recommendations for legislative improvements, and coordinate and control various activities of institutions that are directly involved in the issue of illegal and informal employment of foreign workers. The establishment of this body contributed significantly to expert debate, raising awareness and knowledge about the issue as well as encouraging networking, debate, and exchange of ideas. The recommendations of this body influenced amendments to the Employment Act in 2007 which tightened restrictions on employment of foreign workers in a way that reduced illegal employment. The establishment of this body was influential in terms of inspections and checks that were intensified, and which averaged around 10 thousand checks per year

10 Eurofound (2013): Changes to standard contract in public procurement, Cyprus. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/changes-to-standard-contract-in-public-procurement-cyprus>, accessed: March 2018.

11 Eurofound (2013): Amendment to Social Insurance Law, Cyprus. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/amendment-to-social-insurance-law-cyprus>, accessed: March 2018.



from 2001 to 2007. However, since the body did not have the legal status of a government advisory body or a formal institution, its powers and reach were limited.<sup>12</sup>

The first steps against illegal employment were undertaken in 2004 when the Employment Act introduced illegal employment as a concept and strengthened control and sanction mechanisms. These amendments came after a special “Report on certain measures being applied and prepared to restrict the grey economy” was issued by the government. Apart from defining illegal employment (informal work), the Act also strengthened the jurisdictions of inspection authorities and imposed stricter rules on employment of foreign workers (i.e. for the first time foreign workers were required to have a working permit). Sanctions were also introduced, from up to 360 Euros for foreign workers breaching the Law to up to 73,000 Euros for domestic natural or legal persons enabling foreign workers to engage in these activities. However, it proved difficult to enforce the Act and sanctions as the inspection bodies had a hard time determining illegal employment—particularly because the phenomenon is a consequence of a mutually beneficial verbal agreement between employer and employee, and because other legislation allows for short-time informal employment that can be arranged verbally.<sup>13</sup>

Afterward, the focus shifted yet again to the illegal employment of immigrants primarily from Ukraine—as Ukrainian citizens make up close to 30% of all illegal employees in the country. These high numbers were a consequence of an informal institution called the “client system” in which workers from Ukraine used informal channels to come and work in Czech Republic. The combined project of the Ministry of Interior and Ministry of Labour and Social Affairs titled “Assistance system for the employment of Ukrainian citizens in the Czech Republic” resulted in setting up a network of advice centres—3 in Ukraine and 5 in the Czech Republic. The centres operated as a mediator between workers from Ukraine and employers and institutions in the Czech Republic. Workers were given information

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12 Eurofound (2009): System to improve access to employment for Ukrainian citizens, Czech Republic. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/system-to-improve-access-to-employment-for-ukrainian-citizens-czech-republic>, accessed: March 2018.

13 Eurofound (2009): Employment Act and the fight against illegal labour, Czech Republic. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/employment-act-and-the-fight-against-illegal-labour-czech-republic>, accessed: 22 March 2018.

about legal employment opportunities, legal entry and residence encompassing help with all the administrative procedures. The Ukrainian workers furthermore benefited from the centres which arranged contacts with legal employers, acted as mediators, and offered socio-legal consultations and help including dealings with embassy. Similarly, consultancy regarding employment of foreigners, administrative improvements and online systems for finding workers as well as assistance in dealing with formalities was made available to Czech employers. The initiative was labelled as successful, as the message was sent to both employers and workers that the “client system” is not necessary to provide work for people coming to Czech Republic, as the assistance and advice centres operated in a similar way but carried more security and less risk. However, the project was difficult to administer and coordinate as it covered a wide area of services.<sup>14</sup>

The employment office of the Czech Republic contributed to the struggle against the informal work. Their two-year project implied that all the people unemployed and registered at the Employment office should regularly (2-3 times a week) report to the “Czech POINT” counter at the nearest post office. The project was intended to make it harder for people unemployed and registered in the Register of Unemployed to engage in illegal work. However, it was found that these measures were non-productive, and even the Ombudsman demanded a cancellation of the attendance obligation which was perceived as violating human dignity.<sup>15</sup>

Afterwards, the focus was yet again given to inspections—in 2012 the total number of planned inspections increased to astonishing 200,000; out of which 35 thousand were inspections of illegal work. The legislation adopted in 2012 also imposed heavier sanctions for illegal work and evading employment contracts. The inspections were equipped with moving Czech POINT counter office vehicles in order to have all information at their disposal. The inspections plan was met in the first six months and the

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14 Eurofound (2009): Multi-ministerial body to combat illegal employment of foreign workers, Czech Republic. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/multiministerial-body-to-combat-illegal-employment-of-foreign-workers-czech-republic>, accessed: March 2018.

15 Eurofound (2013): Unemployed attendance scheme, Czech Republic. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/unemployed-attendance-scheme-czech-republic>, accessed: March 2018.

inspections discovered several shortcomings of the legislation which were used to further improve the legislation.<sup>16</sup>

### *Estonia*

In January 2005, a roundtable was held at the Estonia's Tax and Customs Board where social welfare organizations, public institutions and social security bodies signed an agreement to join forces in trying to prevent the practice of informal work, which oscillated around 14% of total workers. The primary goal of the agreement was to raise public awareness about the negative consequences and losses caused by the informal employment. The ten partners that signed the agreement represented a significant portion of the Estonian labour market, while the declarative nature of the agreement sent a strong message that social welfare organizations, public institutions and social security bodies were intensifying their cooperation in order to get rid of the informal work. This was to be done through measures which spanned from raising public awareness and persuading dishonest employers to comply, to analysing the legislation and proposing improvements while focusing on the industries with acute informal employment problems, to engaging public agencies and setting up an inter-organizational system of information and control. Some indicators suggest that the initiative brought positive results—the wage groups at largest risk of engaging in informal employment decreased by 10%, while the wage groups of people earning more increased.<sup>17</sup>

Two more information campaigns were launched in 2005 and 2006. In January 2008, a third information campaign was initiated with the aim of improving tax compliance and raising awareness about the benefits of tax compliance, as well as the social losses caused by tax fraud and evasion. Additionally a public debate was initiated to discuss the risks related to informal income as well as the large-scale impacts of this practice on society. Posters and handouts were distributed in both Estonian and Russian,

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16 Eurofound (2013): Undeclared work inspections, Czech Republic. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/data-base/informal-work-inspections-czech-republic>, accessed: March 2018.

17 Eurofound (2009): Social partner cooperation agreement, Estonia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/data-base/social-partner-cooperation-agreement-estonia>, accessed: March 2018.

and TV and radio programmes addressed the issue as well. People were invited to report tax frauds and inadequate payment of informal wages. However, it is difficult to assess the results and impact of the campaign.<sup>18</sup>

The second part of the campaign consisted of personalized appeals/notification letters sent to companies with below average wage levels compared to the business sector they were operating in—a total of 2,000 employees and 1,000 companies. As a result, 46% of the companies that received the appeals adjusted their wage levels, 43% of employers had no reaction to the appeals while in 8% of cases tax compliance worsened. The letters achieved the strongest results in instances where both employee and employer were notified—56% of these notifications resulted in improved tax compliance.<sup>19</sup>

Information campaigns continued from 2010 to 2012. The later campaigns were based much more on marketing tools and were intended to trigger emotions and result in longer-term improvements in tax morality—i.e., pictures of firefighters were displayed on the back of trolleys with messages like “Should we take the trolley bus to an emergency call-out? This can happen if you do not pay your taxes!” The focus was to improve the voluntary tax compliance by concentrating on how taxpayers’ money was used. The campaigns were measured in terms of visibility as well as how people responded to the messages sent out, and were regarded as successful.<sup>20</sup>

Apart from information campaigns, Estonia tried to tackle informal work by raising the minimum wage. The Estonian Institute of Economic Research (year of publication) found that there are much higher risks for household members with lower income levels to receive and accept informal wages than those with higher income levels. Throughout the period beginning in 2002 the minimum wage rose rapidly culminating in 2008 with a more than 20% increase compared to year before. Due to economic crisis it remained at the same level until 2011, when the government and

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18 Eurofound (2009): Information campaign on informal wages, Estonia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/information-campaign-on-informal-wages-estonia>, accessed: March 2018.

19 Eurofound (2009): Notification letters from Tax and Customs Board, Estonia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/notification-letters-from-tax-and-customs-board-estonia>, accessed: March 2018.

20 Eurofound (2013): Information campaign on tax compliance, Estonia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/information-campaign-on-tax-compliance-estonia>, accessed: March 2018.

social partners negotiated a raise of close to 5%. However, increases in the minimum wage have not been shown to have direct links to reduction in informal work.<sup>21</sup>

In 2012, Estonia also increased inspections to combat tax fraud and informal work, and engaged additional inspectors. However, the Estonian way of implementing inspections consists of first executing comprehensive research to identify the companies practicing informal work. After 1,300 companies were identified and around 30 million Euros in unpaid tax from those companies was estimated, notification letters were distributed in order to give companies the opportunity to improve their tax compliance on their own. The inspections were carried out only in the companies that either did not improve their compliance or did not give satisfactory explanations for their business activities. In the end, only 500 inspections were carried out, while an increase of 11 million Euros in tax income was registered.<sup>22</sup>

### *Hungary*

With over 80,000 micro and small enterprises, the construction sector in Hungary is highly susceptible to informal work. Some observers estimate that close to 200,000 employees engage in informal work activities, which is greater than the number of people legally employed in companies with four and more employees. The common practice among employers was to report their employees at minimum wage and supplement the difference through envelope wages. In order to combat this practice, trade unions and employer organisations in the construction industry negotiated a sectoral collective agreement in November 2005. The agreement involved changes to legislation in order to restore order in the industry and make it attractive again for young employees and apprentices. The core of changes concerned the compulsory tariff wage system which set wages above the national minimum. Some 20 pay levels were adopted for employees, with

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21 Eurofound (2013): National minimum wage agreements, Estonia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/national-minimum-wage-agreements-estonia>, accessed: March 2018.

22 Eurofound (2013): Targeted control of enterprises for informal work, Estonia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/targeted-control-of-enterprises-for-informal-work-estonia>, accessed: March 2018.

minimums set for all unskilled, semi-skilled and skilled workers. The collective agreement was renewed for 2006, 2007 and 2008, while the government introduced a new system, in which labour costs in public tenders were calculated on the basis of the minimum hourly wage set by the employment contracts. In two reports, the Ministry of Finance deemed the above measures as successful. However, the collective agreement did not set up any mechanisms for monitoring and control, meaning that no social partner was able to control the effective implementation of the collective agreement in the workplaces.<sup>23</sup>

Apart from the construction sector, the agriculture and tourism are also prone to informal work in Hungary. Both require a large seasonal work force, and the previous regime was tolerant towards people making money in the grey economy. This made the agriculture and tourism highly prone to informal work, as there were few incentives motivating employers to declare their employees. In order to address this problem, the government adopted a simplified employment act in order to simplify the complicated and slow administrative procedures required for employing workers. The new legislation simplified employment registration by allowing employment to be declared by a short SMS text after the initial registration in the system. Furthermore, fixed amounts of taxes were set on a daily basis for both industries, which furthermore simplified the procedure and motivated employers to declare their workers. However, during simplified employment workers were not eligible for full social security—only accident health care services and job seeking allowances—and the pension eligibility for this type of employment was restricted. Nonetheless, the simplified employment institution was largely used and in July 2010 more than 500,000 simplified employments were registered.<sup>24</sup>

Simplified employment brought many benefits to seasonal workers but has not eradicated the practice of informal work. Notification of authorities was not always easy and smooth, either due to geographical locations without internet connection or due to the unwillingness of

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23 Eurofound (2009): Reducing informal work in construction sector, Hungary. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/reducing-informal-work-in-construction-sector-hungary>, accessed: March 2018.

24 Eurofound (2013): Labour Inspectorate campaign, Hungary. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/labour-inspectorate-campaign-hungary>, accessed: March 2018.

employers to declare their seasonal workers. In order to curb these obstacles, the Labour Inspectorate undertook inspections and published yearly reports with objectives, changes in regulations and employer-employee wrongdoings on which to focus in the coming year. The inspections focus on the legal formalities of declaring employment, existence of written contracts, breaches of obligations, discovering discrepancies between legal and informal work and issuing penalties and fines. Penalties span from 100 Euros to 35 thousand Euros, and from the point of view of the Inspectorate, they have achieved significant success in tackling informal work. Since 2007, when the inspections of informal work began, decreasing trends of discovering informal work have been recorded: from more than 16 thousand companies with over 70,000 involved employees in 2007 to some 4 times fewer companies and 5 times smaller number of employees in 2011.<sup>25</sup>

### *Latvia*

In 2004, the shadow economy in Latvia was anywhere between 17%, as estimated by the Central Statistical Office, and 25% of GDP according to Ministry of Finance estimate. The pivotal issue in the shadow economy was informal work as it deprived workers of social security and other services and restricted budget revenue and fair competition. The key ingredients facilitating informal work were identified as:

- A complicated taxation system,
- Inadequate controls,
- A lack of cooperation among the authorities,
- An increase in economic crime,
- The possibility to register fictitious companies,
- Unemployment, and
- A low level of public awareness regarding labour law.

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25 Eurofound (2013): Simplified Employment Act, Hungary. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/simplified-employment-act-hungary>, accessed: March 2018.

The government came up with a strategy to combat this issue through four groups of measures: (i) increasing the capacity of the State Labour Inspectorate, (ii) improving cooperation between inspection authorities, (iii) increasing public awareness, and (iv) education of pupils and students.<sup>26</sup>

Greater coordination between controlling authorities implied improving cooperation and exchange of information among organizations, which eventually led to establishing a coordination mechanism in 2005 for information exchange to tackle informal work at an early stage. However, it took some time for the coordination mechanism and activities to yield significant results. For instance, in a 2007 Assessment of informal work report published by University of Latvia it was concluded that despite improvements, coordination activities were still poor while complicated databases held by agencies involved in the struggle against informal work were often non-compatible and useless to other agencies. On the other hand, no single agency was keeping records on details from employment contracts or work regimes.<sup>27</sup>

The State Labour Inspectorate (VDI), the agency with the responsibility to control and repress informal work, has the authority to propose amendments to legislation in order to improve working conditions. 'Measures for the prevention of illegal employment' were drafted with key principles to improve the capacities of VDI to control companies, especially those in construction, wholesale and retail, forestry, beauty and health care. The insufficient staff and low salaries of inspectors were considered as important factors hampering the VDI's capacity to decisively tackle informal work, and it was proposed to enhance salaries through additional funding from EU structural funds. Since 2004, VDI submitted several amendments to improve legislation and most were adopted, except the proposal to temporarily prohibit engagement in business activities to employers who consistently fail to declare their workers. In 2006 the decision was made not only to penalise employers but also employees who accept work without a contract. However, despite the legislative improvements and increased capacities of VDI, as well as the frequency

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26 Eurofound (2009): Control measures to limit illegal employment, Latvia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/control-measures-to-limit-illegal-employment-latvia>, accessed: March 2018.

27 Eurofound (2009): Improved cooperation between inspection authorities, Latvia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/improved-cooperation-between-inspection-authorities-latvia>, accessed: March 2018.



of inspections and penalties, informal employment did not decrease but rather showed signs of increase. Still, an additional 31 thousand people were registered as employees, which increased the budget revenue by some 8 million Euros.<sup>28</sup>

Another measure from the key principles was the intensification of information campaigns meant to raise awareness and educate people on the requirements of labour law and the importance of having employment contracts. Also, the consequences of informal work were communicated to both employers and workers. In June 2006, the State Revenue Service (VID) sent around nine thousand letters to companies asking them to increase salaries to their workers based on the assumption that part of their remuneration was distributed through envelope wages. In 2007, VID launched additional campaign to enhance public awareness and educate people on the harm caused by receiving envelope wages—over 100 thousand people received black envelopes containing strong messages as well as explanations on the losses caused by accepting envelope wages. Since 2007, VID also started naming the offenders/companies that were giving envelope wages to warn workers about possible breaches of their rights. In 2008, VID launched yet another extensive media campaign to explain the negative consequences of receiving envelope wages—like restrictions on getting loans, ineligibility for unemployment benefits and social services, and lower retirement remuneration. However, it was recorded that the campaigns organised by the VID were seldom aggressive and were annoying to wider public.<sup>29</sup>

In 2010, the government adopted the “Action plan for combating shadow economy and ensuring fair competition for 2010–2013,” which included a total of 63 measures aimed at particular industry sectors. The plan was to make shadow economic activities as unattractive as possible, and increase the attractiveness of the formal economy. The measures included:

- Simplification of tax regime and consolidation of multiple taxes into one micro-enterprise tax,
- Obligatory declaration of material possessions (including cash and valuables) of the population,

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28 Ibid.

29 Eurofound (2009): Awareness-raising campaigns, Latvia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/awareness-raising-campaigns-latvia>, accessed: March 2018.

- Paying mandatory tax and social contributions to previously informal income visible through mandatory declaration of material possessions,
- Increasing employers' responsibilities for declaring workers (and hence informal work)—i.e., if it was not possible to determine the starting date of a work contract the tax authority was authorised to charge 3 months of taxes and contributions for each violation.

The results of the above action plan were visible from the start, as the increased responsibility of employers resulted in decreasing levels of shadow economy and informal work in 2011 compared to the preceding year.<sup>30</sup>

In addition to the Action plan, the Latvian Employers' Confederation launched a nation-wide campaign titled 'Against the shadow economy—for fair competition'. The campaign was implemented over a period of two months, and the results were presented and discussed at a related business conference. The campaign was multi-layered and provocative, starting by displaying slogans "I spit on it!" in yellow letters on black tape over a white background—the uncovering of which in the later stages stirred public debate on the effects of shadow economy. "I spit on it!" over "Happy childhood?", "Young families?" and "Well provided old days?" gained a lot of attention and was subject to various discussions—from media to social networking platforms. An online tool was introduced where each individual could calculate its own participation in the shadow economy, while public engagement campaigns operated in central squares and were covered in the media. While envelopes were distributed to citizens passing by—more than 50% of whom expressed greater interest in being engaged on minimum salary and receiving higher wages through envelopes than regular salaries. The campaign took place simultaneously with the government's Action plan activities, so it is hard to distinguish its independent impact, but it is clear that the campaign attracted public attention and engagement.<sup>31</sup>

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30 Eurofound (2013): Action plans to combat informal work, Latvia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/action-plans-to-combat-informal-work-latvia>, accessed: March 2018.

31 Eurofound (2013): Employers' campaign against the shadow economy, Latvia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/employers%2592-campaign-against-the-shadow-economy-latvia>, accessed: March 2018.

The Free Trade Union Confederation of Latvia also contributed to the struggle against the shadow economy and informal work by organising national competitions for students in 2011 and 2012. The pupils and students competed in knowledge of labour law and work safety regulations, and the winners in all categories were motivated by individual and team prizes. Measures like these proved to be especially valuable in the long term, as they also served as opportunities to produce effective study materials as well as to increase the interactivity of target populations—i.e. students appreciated videos on labour rights and safety at work and took an active part in their dissemination.<sup>32</sup>

### *Lithuania*

The economic transition provided a fertile ground for the shadow economy in Lithuania. Undeclared work was widespread, peaking in the period 1999–2000. A response from the government of Lithuania was to issue a ‘Decree on the Coordination of Undeclared Work Control’ in 2001, which authorised the State Labour Inspectorate (VDI) with the coordination of overall control and inspection operations in the country concerning informal work. The central coordination group for the control of informal work was set up, comprised of experts from various institutions, including the police force. The primary objective of the control group was to execute more efficient control and prevention of informal work through coordination of the efforts of different institutions. The group was also authorized to undertake research and analysis of various causes of informal work, setting up an agenda for prevention, approval of general ways of accounting for informal work, and analysis of international practices and experiences. Although no special evaluation was carried out, it appears that the system brought about prevention of informal work.<sup>33</sup>

Inspections of informal work in Lithuania have been in place since 1997, and since 2006 around two thousand inspections were carried out

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32 Eurofound (2013): SMARTS student competition, Latvia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/smarts-student-competition-latvia>, accessed: March 2018.

33 Eurofound (2009): Coordination of informal work control, Lithuania. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/coordination-of-informal-work-control-lithuania>, accessed: March 2018.

every year with the aim of uncovering and preventing informal employment. 80% of the inspections are carried out directly by State Labour Inspectorate, and 20% by other partners in consultation with the VDI. Each year, approximately 900 informal workers are discovered—30% to 40% of whom are employed in construction. While 150–300 cases end up in court hearings, a majority of them receive administrative penalties. In the case of Lithuania, it seems that the inspections serve as a positive measure to raise awareness aimed at combating informal work.<sup>34</sup>

Inspections were carried out in the core centre of Vilnius, where the Tourism and Promotion Division of the Culture and Education Department has been organising campaigns and inspections to prevent informal work in the tourism sector since 2002. Tour guides operating in the city had to be certified and carry proper licences. Informal tour guides when discovered were fined, but also instructed on how to obtain the tourist guide licence. This programme succeeded in decreasing number of illegally working tour guides, and also safeguarding the market for officially certified ones.<sup>35</sup>

The economic crisis of 2009 exacerbated problems of low income and wages and aggravated the heaviness of tax burden, indirectly contributing to an increase in informal work as well. In order to tackle this new wave of informal work, the State Labour Inspectorate started to shift its focus from performing inspections to business consulting, public information and awareness raising campaigns with the hope that increased public awareness about the consequences of informal work would change public attitudes toward it. The campaigns were implemented through various media channels which were used to also disseminate the secure line for members of the public to report informal work. According to VDI, this approach yielded positive results evident in the increased number of reports made by the citizens.<sup>36</sup>

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34 Eurofound (2009): Preventing informal work among tour guides, Lithuania. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/preventing-informal-work-among-tour-guides-lithuania>, accessed: March 2018.

35 Eurofound (2009): Inspection of informal work, Lithuania. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/inspection-of-informal-work-lithuania>, accessed: March 2018.

36 Eurofound (2013): Information and awareness-raising campaign, Lithuania. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/information-and-awareness-raising-campaign-lithuania>, accessed: March 2018.

In 2011, VDI set up standing groups to control and inspect for informal work in the five largest cities. Each standing group included of two VDI inspectors (lawyers) and was equipped with a car and video and photography devices. These groups were authorized, once they discovered informal work, to record everything and build up a court case against the offenders, as well as to represent the public interest during the court process. According to VDI, in 2011 alone the detection of informal work doubled compared to a year before.<sup>37</sup>

Due to special relationships between Lithuania and Latvia, some of the companies operating in both countries tried to seize the opportunity of labour and capital mobility and engage in informal work to reduce costs. The control of one company with headquarters in another country was difficult and problematic. Therefore, the Lithuanian and Latvian State Labour Inspectorates joined forces to exercise control on one another's behalf in their respective countries to reduce cross-border violations. Although no informal workers were discovered in little inspections that were carried out, the message was sent that borders were not an obstacle in tackling this informal phenomenon.<sup>38</sup>

### *Malta*

Malta's problems with informal work were felt most through abuse of the social security benefits intended for people without jobs. In 2005, the Ministry for the Family and Social Solidarity set up a Benefit Fraud and Investigation Directorate, whose purpose was to investigate abuses of the social benefits system. The director of this institution was authorized to appoint inspectors, who analysed the financial documents submitted to other institutions and had the authority to demand all necessary documents for conducting on-site investigations, and if necessary involve the police. In 2007, the Directorate conducted over 1,780 on-site inspections where various

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37 Eurofound (2013): Standing groups to control illegal work, Lithuania. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/standing-groups-to-control-illegal-work-lithuania>, accessed: March 2018.

38 Eurofound (2013): Cross-border cooperation, Lithuania. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/cross-border-cooperation-lithuania>, accessed: March 2018.

cases of unemployment benefits abuses were discovered and prosecuted—ending up with a saving of around 3.5 million Euros annually. The key factor in success was the collaboration between the Directorate and private and public entities.<sup>39</sup>

In order to prevent unemployed people from claiming social benefits while at the same time working without contracts, the Employment and Training Corporation (ETC) undertook a variety of initiatives to reduce and prevent informal employment. One of its pivotal measures was to introduce obligatory courses for the unemployed, which indirectly serve as an early warning signal for detection of informal work. Through maintaining an updated register of unemployed people and providing obligatory skills improvement and retraining courses, the ETC could monitor informal employment by observing people avoiding taking the courses. Every unemployed person is assigned to an employment adviser with whom they regularly meet with the aim of setting up a Personalized Action Plan, which identifies the appropriate training for the individual in order to improve his/her skills and make them more attractive in the labour market. The unemployed are obligated to follow the training regime specified, and if they fail to do so they are required to provide proper justification for their absence. If it is determined that the reasons are not justified (particularly if there are indications of informal work) the person is eliminated from the unemployed register and from receiving unemployment benefits. This makes it more difficult for people employed in the informal sector to abuse the system over the long term.<sup>40</sup>

Malta's ETC and its Law Compliance Unit try to identify jobseekers who are receiving unemployment benefits and are registered as unemployed and ready for work, but at the same time work in the informal economy. The ETC and LCU organized intensive media campaigns to raise awareness about informal work and empower the general public to report abuses through a free telephone service, which was widely advertised. Over 1,270 people were reported and found to be violating the law—they were receiving unemployment benefits while working informally. However, 57% of those people since declared their employment, and a further

39 Eurofound (2009): Benefit fraud and investigation directorate, Malta. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/benefit-fraud-and-investigation-directorate-malta>, accessed: March 2018

40 Eurofound (2009): Obligatory training for unemployed persons, Malta. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/obligatory-training-for-unemployed-persons-malta>, accessed: March 2018

39% stopped claiming unemployment benefits. Many of the reports that were received turned out to be false. One lesson from Malta's information campaigns is that they have greater impact if they last for periods of three months or longer.<sup>41</sup>

The most recent problem with informal work in Malta concerned immigrants from Africa, who were exploited as cheap and easily dismissed labour. Until 2012, individuals holding refugee status as well as those granted protection or humanitarian status, could participate in formal economy with an employment licence. However, illegal residents were obstructed from participation in the formal economy. In an effort to survive, these individuals would get involved in informal work and could be exploited as a cheap labour force. In order to curb this activity, ETC and the government introduced new rules and legislation regarding the minimum standards for employers of illegally staying third-country nationals. This regulation prohibited employment of illegal migrants, and put obligations on employers to take action to prevent informal employment. Sanctions were put in place for breaching the legislation.<sup>42</sup>

### *Poland*

In 2004, informal economy in Poland was a permanent feature of its labour market. Sarzalska and Szydłowski<sup>43</sup> estimated that between 764 and 1,317 thousand people were involved in informal employment. In order to reduce these numbers, the Polish government tried to limit the informal economy and shift the economic, social and cultural factors that determine its scope. In achieving the shift from omnipresent to limited informal economy, the government relied on traditional measures like increased inspections of companies, employees and their organizations (trade unions and employer organizations). Many institutions were involved – from customs, social

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41 Eurofound (2009): Media campaign to curb informal work, Malta. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/media-campaign-to-curb-informal-work-malta>, accessed: March 2018.

42 Eurofound (2013): New rules against employing third-country nationals, Malta. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/new-rules-against-employing-third-country-nationals-malta>, accessed: March 2018.

43 Sarzalska, M. and Szydłowski, A., 'Praca niejawna w gospodarce' [Hidden work in the Polish economy], in *Zatrudnienie 2006*, Warsaw, MPiPS, 2007, p. 178.

insurance office, police, to ministries and public employment offices. Inspectors were authorised to issue fines, demand fulfilment of legal requirements or propose prosecution. However, the inspections yielded limited results.<sup>44</sup>

After failing to limit informal economy with inspections, the efforts were shifted to understand the causes of the phenomenon. Research on the informal economy confirmed that households were frequent users of services that weren't reported to the tax and social security authorities, according to survey implemented by Central Statistical Office in 2004. In an effort to shift these activities to formal economy, the government introduced amendments to the employment act in 2005 which offered tax deductions to households that report such employment engagements. On the other side, the unemployed persons were only liable to be engaged through "activation employment contract," and thus become part of the formal economy. However, due to other conditions, like one prescribing that contracts be signed for at least one year, these proposals met a wave of public criticism, which later proved to be appropriate as most of the potential beneficiaries remained in the informal economy.<sup>45</sup>

Youth below 25 years old were also identified as highly susceptible to engaging in the informal economy, as in 2002 almost 25% of the unemployed were from this age category. Therefore, the Ministry of Labour and Social Policy designed the 'First Job' programme, intended to protect the high school students from unemployment. On the demand side, the programme primarily targeted companies that were not willing to employ youth without experience. In the three years up to 2005 in which the programme was operational, around 800,000 beneficiaries were involved. However, due to scale it was hard to measure the real employment after the programme completion, and thus the impact it had on reducing the informal economy.<sup>46</sup>

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44 Eurofound (2009). Employment legality controls, Poland. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-ineurope/database/employment-legality-controls-poland>, accessed: March 2018.

45 Eurofound (2009). Regulations for legalising domestic work, Poland. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-ineurope/database/regulations-for-legalising-domestic-work-poland>, accessed: March 2018.

46 Eurofound (2009). First Job programme, Poland. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-ineurope/database/first-job-programme-poland>, accessed: March 2018.



When the 'First Job' programme ended, the government initiated the 'First Business' programme in 2005. 'First Business' focused on supporting and promoting entrepreneurship and self-employment among young people. The programme involved training on setting up and maintaining a business, particularly the financial part of it including taxes, as well as subsidies intended to cover part of the establishment and maintenance costs. The programme still operates, and it has been providing around 25,000 young people with self-employment opportunities each year, promoting entrepreneurship culture in the formal economy.<sup>47</sup>

In 2007, new legislation regarding the National Labour Inspectorate (NLI) was introduced. The change in legislation assigned responsibilities related to the informal economy to institutions like the Customs Service, Border Guard, Social Security Institution, Fiscal Control and Police, which operated under the supervision of NLI in regard to informal employment. It also sought to improve efficiency of control over informal employment. With the consolidation of responsibility over informal employment controls, the inspectors from any of the included institutions gained authority to order the companies to pay employees appropriately, and to settle debts for taxes and contributions accordingly—something that was reserved to NLI inspectors before that. However, despite increased capacities, the legal framework (i.e. ability to employ someone on trial period on informal basis) limited the expected results. Further improvements were suggested by NLI, especially with regard to foreign workers.<sup>48</sup>

Following the enlargement of the EU in 2004, Poland efficiently closed its borders to non-EU residents from neighbouring countries who sought informal employment, but was later forced to reverse this decision due to workforce shortages. In 2006, the Ministry of Labour and Social Policy enacted conditions for short-term employment of foreigners without work permits. The conditions stipulated that the foreigners were able to work in Poland for up to three months in every consecutive six months, while this condition was further relaxed in 2008 in favour of foreign citizens to six months of work every year. The main objective was to attract foreign

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47 Eurofound (2009). First Business programme, Poland. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-ineurope/database/first-business-programme-poland>, accessed: March 2018.

48 Eurofound (2009). Coordinated approach to fight against undeclared work, Poland. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/coordinated-approach-to-fight-against-undeclared-work-poland>, accessed: March 2018.

workers to Poland, but also to reduce the probability of engaging in informal economy. This policy permitted foreign citizens to reside in Poland no longer than three months per year without a working contract and permit.<sup>49</sup>

Following the pressure from civil society organizations and economic experts, the Polish parliament passed a law legalising the illegal residents in Poland and giving them social rights. As illegal immigrants could not take formal employment, they were pushed towards informal economy by default. In 2011 the government offered an overall amnesty of illegal migrants to legalise their stay first temporarily, and in the long run to integrate them into the society and formal economy. The action lasted for six months in 2012, and anyone could submit an application to legalise their stay. Later on, concerns were raised with regard to the intentions of residence permit seekers.<sup>50</sup>

In 2010, the Ministry of Finance introduced cash registers which registered every sale electronically. While business operators initially objected to the change in legislation, the decision was eventually regarded as justified and successful. The main objective of cash registers were to improve efficiency in collecting taxes and curb tax evasion. However, the immediate effect was less than expected as only a third of entrepreneurs bound by the law notified the tax administration about implementing the cash register. However, the introduction of these procedures was well received by wider public who saw it as a just and appropriate way to improve equality under the law for all companies. Therefore, the government opted to increase fiscal pressure and double down the minimum limit on annual revenue above which adoption of cash register was required.<sup>51</sup>

In 2011, the government passed another law that allowed parents to choose for their infants and children an alternative path to public day care, such as hiring a babysitter. Apart from the social component, the envisaged effects of the law were twofold: first, to give mothers higher labour

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49 Eurofound (2009). Employment of migrant workers without work permits, Poland. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/employment-of-migrant-workers-without-work-permits-poland>, accessed: March 2018.

50 Eurofound (2013). Amnesty for illegal migrants, Poland. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-ineurope/database/amnesty-for-illegal-migrants-poland>, accessed: March 2018.

51 Eurofound (2013). Mandatory cash registers for entrepreneurs, Poland. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-ineurope/database/mandatory-cash-registers-for-entrepreneurs-poland>, accessed: March 2018.

market mobility, and second to introduce informal nannies and babysitters into the formal economy. The law stipulated signing the activation contract between the parents and nanny, and while the incentive for parents was to be available for the labour market and have higher mobility and flexibility at home, nannies were motivated to receive paid health and pension insurance by the state, whereas they had to cover their income tax themselves. Even though the exact number of nannies has never been established, the initial proposition was that more than 25% of them would be interested in using the benefits this law provided. However, in the end only 5% of the estimated number of nannies were registered with the social security in the aftermath of the new legislation.<sup>52</sup>

### *Romania*

The Romanian Labour Inspectorate (IM) is a specialised government agency established in 1999 whose main aim is to ensure that employers comply with their obligations related to labour relations, working conditions, and financial reporting. It has an office in each county of Romania. In the period to 2009, almost half of the fines issued were related to informal work. In order to tackle the problem more effectively, the IM focused on employing its resources based on industry sectors, so that staff could be specialized in particular sectors. Sectoral inspections seem to have yielded positive results, as the trend of issuing informal-work-related penalties and fines declined over the years—also due to the fact that sectoral inspections raised awareness of risk among employers. However, the problem of informal work is still widespread in Romania, as the head of IM stressed: “this is due to the ‘complicity between the victim and their executioner’—the employer and employee cover each other by refusing to testify in court.” Savings on taxes and social security contributions get divided between employer and employee through declaring minimum wages and paying the difference in cash.<sup>53</sup>

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52 Eurofound (2013). Crèches Act to legalise childcare workers, Poland. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-ineurope/database/creches-act-to-legalise-childcare-workers-poland>, accessed: March 2018.

53 Eurofound (2009): Builders’ Social Fund, Romania. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/builders-social-fund-romania>, accessed: March 2018.

The largest problem of informal employment in Romania lay in the textile, retail and food industries, but most importantly in the construction sector, as confirmed by many studies on informal work (Stanculescu and Ilie, 2001). Trade unions and employer organisations in the construction sector are aware of and confirm the issue with informal work, estimating that one in three workers in the sector is without a contract. In 1998, the Construction Workers' Social Fund (CSC) was established—the members of the Fund were construction companies and producers of construction materials, and the Fund offers welfare services to its members which provide an alternative to winter seasonal unemployment between November and March. After signing a sectoral agreement with the Romanian Association of Employers in Construction, the Fund was given a pivotal role. Measures have been applied to ensure that no single contribution to the Fund could be used to remunerate welfare to other contributors. Distinct records for each member of the CSC have been created, thereby preventing informal workers from receiving welfare during the off season. This joint initiative enabled social partners to jointly tackle the issues in the construction sector.<sup>54</sup>

In order to further the understanding of informal work in Romania, the OECD commissioned a study on informal employment. The report came out in 2008 and it analysed the incidence and characteristics of informal employment in Romania, which according to the report ranged between 20% and 50%, depending on how the phenomenon was defined. The results were debated at a seminar with invited experts in the field, where high government officials stressed the importance of the report for future struggles in dealing with informal employment.<sup>55</sup>

Only a year later, the Romanian government signed a Memorandum of Understanding with the European Commission with the purpose of implementing mechanisms for monitoring, controlling, and reducing illegal work. The aims of the mechanisms were to appropriately measure the extent and diversity of illegal work, continuously monitor its development, and coordinate actions to efficiently channel prevention, inspection and control activities. First, an Inter-ministerial Committee Against Undeclared Work was set

54 Eurofound (2009): Sectoral campaigns of the Labour Inspectorate, Romania. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/sectoral-campaigns-of-the-labour-inspectorate-romania>, accessed: March 2018.

55 Eurofound (2009): Report on informal employment, Romania. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/report-on-informal-employment-romania>, accessed: March 2018.

up in 2010, followed by a national strategy to reduce the rate of informal work and the drafting of an accompanying Action and Implementation Plan for 2010–2012. Amendments to the existing legislation were adopted with the aim of increasing awareness of the negative effects of informal work, but also of increasing the fines for both employers and employees in order to prevent their engagement in informal work. Consequently, reports indicated increases in both individual and joint inspections, as well as improvements in their efficiency.<sup>56</sup>

The National Trade Union Bloc implemented a two-year project to enhance understanding and improve the level of information on the labour market and workplace related issues. The project outlined that there was no organization in Romania that represented the workers' perspective in drafting studies and strategies related to labour market. Consequently, Observatory was set up as a platform through which social partners' voices could be heard, and one of the first things initiated through this platform was a report on the informal economy and its impact on the labour market. The study revealed that in Romania around 2.9 million people were employed in the informal economy, which accounted for around 32% of the workforce. More than 87% of those informally employed work in agriculture, forestry and fishing. Informal labour was found to be more frequent among people with low educational attainment, unskilled and low-skilled workers, young, elderly and retirees. The study also estimated that if only 20% of the informally employed shifted to the formal economy, the related budget revenues (not counting the declared business revenues and wages) would account for 1.2% of GDP.<sup>57</sup>

### *Slovakia*

Prior to 2000, informal work was only controlled through labour inspectors and regulation of working conditions on site. However, in 2000 a law on labour inspection was adopted and the inspection activities needed to be

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56 Eurofound (2013): National strategy to reduce illegal work, Romania. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/national-strategy-to-reduce-illegal-work-romania>, accessed: March 2018.

57 Eurofound (2013): Trade union study on the informal economy, Romania. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/trade-union-study-on-the-informal-economy-romania>, accessed: March 2018.

coordinated. In 2001 an agreement was signed by the Ministry of Labour and Ministry of Interior and their departments in order to implement coordination of regulations and jurisdictions in cooperation with local governments and employer organisations. In 2005 and 2006 additional legislation was adopted concerning informal employment and labour inspections. Inspections are conducted each year by Slovakia's labour authorities, and based on the information from labour inspectorate offices it seems that the majority of employers comply with the legislation on informal employment. This is mainly due to strong sanctions for breaches of the law on informal work, which include barring employers from receiving state assistance and from participation in public procurement.<sup>58</sup>

As of 2005, every company is obliged to register their employees with the Social Insurance Agency before the beginning of employment. The obligation begins one day before the actual start of work by the employee agreed in the employment contract. Each day overdue was chargeable at 3.5 Euros, and since 2004 the Agency has been authorised to issue fines of up to 16.600 Euros. In just one year, more than 5 million registrations and withdrawals were recorded. There were some issues, however. Some employers argued that the requirement was burdensome, a problem that was addressed by allowing the registration to be performed electronically. However, since there were issues with electronic signatures and certificates, the registration was performed via text message or electronically without electronic signatures, and printed registrations were sent by post or over-the-counter submission within 3 days of the electronic registration. This implies that the innovative solutions like electronic registration are often dependent on broader changes and amendments to the legislation, for example establishment of an agency to certify electronic signatures.<sup>59</sup>

In 2004, new legislation on employment services and amendments to the labour law addressed informal employment. First, employment services were introduced as intermediaries between employers and employees, with employers engaging an agency who would send workers where personnel had been requested. This accelerated the process of job brokering, where the employer would get workers and the agencies would pay

58 Eurofound (2009): Coordination of inspection activities at workplaces, Slovakia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/coordination-of-inspection-activities-at-workplaces-slovakia>, accessed: March 2018.

59 Eurofound (2009): Registration system for work contracts, Slovakia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/registration-system-for-work-contracts-slovakia>, accessed: March 2018.

social insurance contributions. The second amendment allowed external work contracts, by which employers were not obliged to pay the full taxes and contributions amounting to 35% of the employees' wages, but only 1.05% for accident insurance. Reducing labour costs enabled the employers to engage a larger number of workers and contribute to dealing with unemployment and informal work. However, there has been a significant rise in external contracts since 2009.<sup>60</sup>

During the crisis in 2009, GDP dropped by almost 5% while unemployment grew, with a simultaneous increase in informal employment. In order to address the trend of growing informal work legislative measures of tightening control and sanction mechanisms were introduced. First, the employers' obligations to report employees have been expanded, so that apart from the Social Insurance Agency employees from 2009 were required to be reported to Labour Inspectorate as well. An increase of power and authority of the inspectors followed: inspectors were authorized to report illegal employment to prosecutors, lists of entities violating laws were created and inspectors were given the authority to suspend external work and arrangements through employment agencies. Fines were also increased, and inspectors' field of work was broadened geographically, while police were also included in the inspection activities. The overall objectives were achieved—labour records and administration improved and the number of cases of informal work decreased.<sup>61</sup>

In 2011, specific measures based on the EU directive on illegal migration were adopted to suspend illegal employment of migrants, especially from Ukraine and the Balkans. Minimum standards for sanctions and measures against employers of third-country migrants have been adopted in compliance with the EU legislation. Employers became liable to inform the Office of Labour, Social Affairs and Family within a short period of time. Illegally working migrants could be expelled from the country and fined up to 330 Euros, while their employers were subject to penalties between 2 and 200,000 Euros. This is one of many examples where transposition of EU directives in

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60 Eurofound (2013): Tighter control over informal work, Slovakia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/tighter-control-over-informal-work-slovakia>, accessed: March 2018.

61 Eurofound (2013): Measures to curb employing migrants illegally, Slovakia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/measures-to-curb-employing-migrants-illegally-slovakia>, accessed: March 2018.



national legislation has strengthened domestic institutions and increased the risks for employers engaging in illegal employment of immigrants.<sup>62</sup>

### *Slovenia*

The extent of informal economy in Slovenia is somewhere between 15% and 25% of GDP according to various estimates. In 1997, Slovenia adopted a programme for detecting and preventing informal work, which foresaw introduction of relevant legislation as well as more stringent monitoring activities. A Commission for detecting and preventing illegal work and employment has been established, with representation from experts from relevant ministries and also from relevant Inspectorates, Tax administration, Customs administration, and the Uniformed Police Department. These efforts did not replace the existing inspections, but rather improved and strengthened them, including intensifying cooperation between the actors involved. The Labour Inspectorate introduced an automated telephone service to enable reporting potential illegal employment. The intensified inspections yielded in sharp decrease in irregularities and breaches of regulations—in 2005, compared to two years earlier, the rate of discovered illegal employees fell by more than 31%.<sup>63</sup>

In 2000, Slovenia adopted the Act on Prevention of Illegal Work and Employment, which was amended in 2006. It provided the legal framework for the Ministry of Labour, Family and Social Affairs to implement policies to tackle informal work. It introduced the categories of personal supplementary work, short-term work and small work. Personal supplementary work includes activities like carrying out supportive tasks in the household, picking and selling forest fruits and herbs, and under certain conditions making craft products. It may be carried out on the condition that the annual income derived from this work is below the minimum annual salary in Slovenia. Short-term work is defined as working occasionally (up to 40 hours a month) in a family business with fewer than 10 employees. Small work

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62 Eurofound (2013): Promoting external work contracts, Slovakia. Available at: <https://www.eurofound.europa.eu/data/tackling-informal-work-in-europe/database/promoting-external-work-contracts-slovakia>, accessed: March 2018.

63 Eurofound (2009): Measures to turn undeclared work into regular employment, Slovenia. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/measures-to-turn-undeclared-work-into-regular-employment-slovenia>, accessed: March 2018.



on the other hand is a work carried out by someone who is not full-time employee and does not receive a pension. This type of employment is regulated by an employment contract with maximum of 20 hours a week or 40 hours a month.<sup>64</sup>

The introduction of these types of employment was meant to decrease the frequency of informal work. From the data collected, it was estimated that about two thousand persons a year were registered to perform personal supplementary work. The major factor behind this achievement was the simplification of the registration procedure. On the other hand, strong suggestions were made to limit further increases in registering supplementary workers, as it was found that this measure was easily abused in a way that people registered for occasional work were performing this work continuously over the year.<sup>65</sup>

The simplification of procedures for registering employment, in particular for foreigners and seasonal workers, motivated the Slovenian Government to pursue further improvements in removing administrative barriers and simplifying rules and procedures. The Ministry of Public Administration was assigned with creating a more efficient and user-friendly public administration, which led to the adoption of the "Programme of measures for the reduction of administrative burdens" in 2005. These efforts focused on two objectives: removing administrative burdens, and systematic examination of all new regulations to prevent additional administrative burdens. Apart from cutting down administrative burdens, the goal was to design a legislative environment which would meet a positive reaction from companies and individuals. In 2006, 15 out of 34 measures the Programme envisaged were implemented. Also, the Act on Prevention of Illegal Work and Employment was updated to reduce the quantity of documents needed for registering employment. Compared to the previously requested 15 pieces of documentation, the amended act requested only 4 documents to be submitted when employing a foreign worker. Another significant improvement was the lifting of mandatory notification of the Employment service. It was found out that the Health Insurance Institute was already notified about employment and changes

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64 Eurofound (2013): Mandatory employment contract for undeclared workers, Slovenia. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-eu-rope/database/mandatory-employment-contract-for-undeclared-workers-slovenia>, accessed: March 2018.

65 Ibid.

in employment, and a system of data sharing has been set up, relieving employers of the obligation to register workers twice.<sup>66</sup>

In December 2006, the Act on Prevention of Illegal Work and Employment was further amended to protect workers. This amendment is accompanied by a simplified procedure for proving the elements of employment relationship, which made the inspection process easier for Labour Inspectorate. The protection of workers was a particularly focus of the new amendments. If the employer was found with workers on informal basis, they would be obligated to declare their workers within three days, and to declare their employment as permanent. Failure to comply would allow the worker to pursue judicial protection.<sup>67</sup>

In 2008, Slovenia amended the Kindergarten Act aimed at reducing unregistered childcare work, meaning that the individuals can provide at home child care services only upon registering with the Ministry of Education and satisfying the relevant conditions. Otherwise, home child care was deemed as illegal. The following audit on the availability of pre-school education concluded that registration reduced the number of childcare providers in the informal sector.<sup>68</sup>

In 2010, the Ministry of Labour, Family and Social Affairs in cooperation with supervisory authorities and social partners launched a public campaign “Let’s stop informal work!” The campaign lasted several months, and involved posters, brochures, radio ads, ads in business magazines and web banners. It was encouraged by the discussions and conclusions of the parliamentary Labour, Family and Social Affairs Committee on informal work in 2009. The specific focus of the campaign was to bring the following messages to the general public, businesses, workers and consumers:

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66 Eurofound (2009): Simplification of administrative procedures, Slovenia. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/simplification-of-administrative-procedures-slovenia>, accessed: March 2018.

67 Eurofound (2009): Joint action to detect and prevent undeclared work, Slovenia. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/joint-action-to-detect-and-prevent-undeclared-work-slovenia>, accessed: March 2018.

68 Eurofound (2013): Kindergarten Act, Slovenia. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/kindergarten-act-slovenia>, accessed: March 2018.

- Inform about the benefits of paying taxes and social security contributions, and the dangers posed by informal work does to the welfare state and public services,
- Raise awareness of consumers—i.e. no warranty for goods purchased on informal basis,
- Promote a culture of compliance and respecting the rules,
- Stress the negative effects of informal work such as unfair market competition.

Considering the harsh economic conditions that followed the economic crisis, a decrease in number of registered unemployed persons in 2011 was considered a success for the campaign.<sup>69</sup>

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69 Eurofound (2013): Let's stop undeclared work campaign, Slovenia. Available at: <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/lets-stop-undeclared-work-campaign-slovenia>, accessed: March 2018.



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