

Anticorruption policies and the regulatory environment in the Western Balkans



Policy brief No 17, October 2022



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KEY POINTS:

- Despite the high corruption levels, observed through SELDI's 2021 Corruption Monitoring System (CMS), the Western Balkan countries continue to lack a coherent approach to tackling the problem.
- A number of institutional and legal improvements have been made in the framework of the EU accession (e.g. vetting of the justice system, increased length of sentences, linking the value of bribes and the punishment, defining subtler forms of corruption, regulation of the origin of assets of public officials, adopting conflict of interest legislation and lobbying laws).
- Still, the newly adopted laws and strategies, and the newly created specialised institutions are yet to bear fruit in decreasing corruption.
- Anti-corruption plans are being implemented in an uncoordinated manner, with responsibilities being split among multiple institutions, thus failing to improve the overall quality of governance.
- None of the Western Balkan countries have attempted to prioritise the efforts of the oversight and enforcement bodies by deciding which corrupt practices and/or risk groups of people or companies should be scrutinised first.
- The prosecution is yet to gain knowledge and experience on how to sentence complex cases (such as the ones related to state capture).
- The governments show readiness to include the CSOs in the policymaking and law-drafting process, although the consultations are sometimes performed in a formalistic manner.

The overall progress achieved during the recent years is the result of gradual and parallel developments in government, business and civil society.

INTRODUCTION

The fight against corruption remains a major shared challenge for Albania, Bosnia, and Herzegovina (BiH), North Macedonia, Kosovo, Montenegro, and Serbia. Since in EU's core value continues to be democracy, good governance and fight against corruption, for WB6 countries EU integration process has proven to be a strong impetus for undertaking important reforms for the fight against corruption. The countries have taken a number of anti-corruption steps, such as adapting legislation and establishing dedicated anti-corruption institutions with both preventive and repressive powers. **The European Commission, as well as various international organizations, have measured annual progress in this regard.** However, the latest estimates of **Transparency International Corruption Perceptions Index 2021**¹ shows that corruption continues to be one of the main problems in the region even though there is some level of preparation in the fight against corruption. Although the legal and institutional framework is largely aligned with that of the European Union, the concrete results achieved are disproportionately low. In this sense, declarative political will remains high to improve policies and laws, especially in the justice system.² Curb-ing corruption requires long-term efforts at all layers of the government (regional, national, and local) and active participation from a wide range of stakeholders. A better educated and demanding public, as well as a civil society with a stronger role in monitoring policies in regions prone to corruption, are also vital in the fight against

corruption. **The latest Nations in Transit 2022 report**³, which evaluates the state of democracy, divided into three categories as "democracies, hybrid regimes and authoritarian regimes", classified all Western Balkan countries in the category of hybrid regimes. Serbia, which was previously classified as the highest-ranking country in the region, dropped to third place, closely behind North Macedonia and Montenegro, which now share the first place in the Western Balkans. According to the analysis of **Freedom House**, these countries may be democratic in the minimal sense that they feature regular, competitive elections, but their dysfunctional institutions are unable to deliver the definitive components of liberal democracy: checks and balances, the rule of law, and robust protections for the rights and liberties of all.⁴ This situation is consistent with the findings of **SELDI's CMS**⁵: while there are some tangible differences, in all of the countries the prevalence of corrupt practices is at alarmingly high levels. The similarity of approaches, however, extends also to their deficiencies:

- It is seen that anti-corruption plans are being implemented separately and not to improve the overall quality of governance; thus, no link has been observed between anti-corruption progress and the improvement of public services.
- There are two attempts, the first is the creation of laws and specialized institutions against corruption, and the second is the analysis of "corruption" in a growing list of contradictory practices that contradict each other.
- None of the countries have attempted

1 [Corruption Perceptions Index](#), 2021

2 [European Commission Reports](#), 2022

3 Nations in Transit evaluates the state of democracy in the region stretching from Central Europe to Central Asia.

4 [Freedom House Report](#), Nations in Transit, 2022

5 Corruption in the Western Balkans not Abating: What's Next, <https://seldi.net/publications/policy-briefs/seldi-policy-brief-13-corruption-in-the-western-balkans-not-abating-whats-next/>

to prioritize terms of corrupt practices to prevent or address incoherence and contradiction between these policies.

This policy brief aims to highlight the importance of anti-corruption policies and legislation that Western Balkan countries have already undertaken, but also the many gaps that remain to be filled.

1. LEGISLATIVE DEVELOPMENTS: OFFICIAL DOCUMENTS ABOUND, UNLIKE RESULTS

The Western Balkan countries have been long undertaking similar measures to tackle corruption - the establishment of specialized anti-corruption institutions (both in the executive and the judiciary), the expansion of crime cases that constitute "corruption," approval of long-term strategies and short-term plans, adoption of laws on previously unregulated practices (declaration of assets of conflict of interest, whistleblowers, etc.). This situation is a consequence of a series of factors related to the time of their adoption, mainly during election periods, and due to their general nature, having no measurable objectives. The adoption of the strategies has been largely driven by external factors such as membership in the Council of Europe or aspirations to join the EU. The drafting of these plans and strategies against corruption are generally performed in silos, without an active participation of main actors.

New strategies that have been adopted still suffer from initial errors: providing exhaustive lists of relevant policy areas instead of setting specific priorities and goals and addressing all possible aspects of corruption; about anti-corruption, "strategic" still

means "exhaustive." Further, being general and comprehensive, national strategies have become difficult to distinguish. There is little or no national specificity to reflect national circumstances in the generation and the manifestation of corruption. The strategy has become one of the most widely used concepts applied to any goal setting documented by a public institution.

In the case of **Albania**, the Ministry of Justice in recent years has taken some measures (laws, strategies, or even action plans) in the fight against corruption, but these have yet to bear fruit in terms of decreasing corruption. After almost two years of the Special Anti-Corruption Prosecutor's Office and the Special Court against Corruption and Organized Crime (SPAK) operations, which have investigated high-level corruption, there are no visible results in punishing corruption.⁶ To strengthen the integrity of the public sector, through a Decision of the Council of Ministers of 2020, some changes were made in this strategy, extending its term until 2023. The strategy has been implemented through specific measures through the three Action Plans⁷. In **North Macedonia**, in accordance with the legal framework, the State Commission for Prevention of Corruption (SCPC) prepared and adopted a National Strategy for Prevention of Corruption and Conflict of Interest with an action plan for its implementation for the period 2021-2025. Based on a previously conducted corruption risk analysis, the SCPC implemented a broad, inclusive and transparent consultation process with all stakeholders. The text of the Strategy in the process of preparation was also available to the public for comments and recommendation, thus enabling a broad consensus on its scope and content.

⁶ [Corruption Perceptions Index](#), Albania 2021 According to the Corruption Perception Index for 2021, Albania has accumulated only 35 out of 100 points in total, ranking 110th, among the most corrupt countries out of 180 countries considered.

⁷ [Action Plan 2019-2023](#) In Implementation Of The Cross-Cutting Strategy Against Corruption, Ministry of Justice

After one year of implementation of the Strategy, SCPC published a report for the implementation of the Strategy where only 20% of the measures predicted for the first year were implemented by the state institutions.

In other Balkan countries, the government is seen to be in the process of reviewing and drafting new anti-corruption strategies. In case of the **BiH** the state anti-corruption strategy expired in 2019 and has not yet adopted a strategy. In June 2021, the Council of Ministers of BiH on its session did not adopt the Anti-Corruption Strategy 2020-2024 and the Action Plan for its implementation, proposed by the Agency for the prevention of corruption and coordination of the fight against corruption. Despite the fact, the lower levels of government have started creating (and some have adopted) their strategies. The same situation occurs in **Serbia**, where the Anti-Corruption Strategy expired in 2018, and a new one has not yet been adopted. In September 2021, the Government adopted the Operational Plan for the Prevention of Corruption in Areas of Special Risk which represents the basis for drafting the new National Anti-corruption Strategy.⁸ Work on the new strategy is planned for 2022.⁹

In the case of **Montenegro**, the only new documents in regards to fight against corruption are dynamic plans prepared for Chapter 23 (and Chapter 24 as well). The measures from the Action plans for Chapters 23 and 24 are either expired,

completed or ongoing, although irrelevant for the current context. However, there is no broad consensus for preparing new action plans for these two chapters until final benchmarks for these chapters are received. Therefore, in September 2021, dynamic plans for these two Chapters were adopted, with the deadline to complete their implementation by the end of 2021. The government also adopted a plan for addressing key recommendations of the European Commission's Report on Montenegro 2021¹⁰. However, the Parliament was not consulted in the process of drafting this document, although most of its activities requires the Parliament's involvement, particularly the resolution of the problematic situation in judiciary and prosecution. Therefore, this document was adopted without a broad political, institutional and social consensus.¹¹

In **Kosovo**, This Strategy and Action Plan 2021-2023 will be valid until the approval of the relevant Law on the Anti-Corruption Agency - the Law on the Prevention of Corruption which is in progress. According to the current draft of this law, it is determined that the Office of the Prime Minister will draft the Strategy and Action Plan against Corruption, while the Anti-Corruption Agency will be monitoring the activities deriving from the Action Plan.¹²

For the design, implementation, and monitoring of the anticorruption strategies, each of the governments of the Western Balkan countries has set up special institutions:

8 Republic of Serbia – Chapter 23 Negotiating Group, Revised AP for the Chapter 23, July 2020, [online] Available at: <https://www.mpravde.gov.rs/files/Revidirani%20AP23%202207.pdf> [Accessed 7 March 2022].¹¹⁴

9 Coalition PrEugovor, Alarm Report on Progress of Serbia in Cluster 1, November 2021 [online] Available at: <https://preugovor.org/Alarm-Reports/1689/Alarm-Report-on-Progress-of-Serbia-in-Cluster-1.shtml> [Accessed 7 March 2022]. 51-52

10 50th Government's Session held on December 9, 2021, available at: <https://www.gov.me/clanak/50-sjednica-vlade-crne-gore-9122021>

11 No progress towards the EU without the Parliament, Institute alternative, available at: <https://institut-alternativa.org/en/no-progress-towards-the-eu-without-the-parliament/>

12 Republic of Kosovo- Strategy-Anti-Corruption-2021-2023, available at: <https://kryeministri.rks-gov.net/wp-content/uploads/2020/12/Strategjia-Kunder-Korrupsionit-2021-2023.pdf>

In Albania, in addition to the Ministry of Justice, which runs the Network of Anti-Corruption Coordinators an Inter-Institutional Anti-Corruption Task Force was also established, responsible for inter-institutional anti-corruption inspections.¹³ Another measure taken by the government after receiving the third term is the establishment of three agencies focused on the fight against corruption: the anti-corruption agency (USATA),¹⁴ the Agency for Dialogue and Co-Government, and the State Agency for Strategic Planning and Assistance Coordination. (SASPAC). Despite the fact that the mandate of SASPAC does not explicitly refer to the fight against corruption,¹⁵ the creation of this agency has revealed the problems of central and local albanian institutions with precisely following the procurement procedures when it comes to the funds of western donators and the weak performance on how the funds are being managed.

For publicly unknown reasons, USATA was not created, but from the expert circles it can be determined that it is the low level of political will that has stopped its further development.

In **Albania**, the main institutions in investigating and punishing corruption established during the last two years are the Special Structure against Corruption and Organized Crime (SPAK) and the Special Court against Corruption and Organized Crime (GJKKO). The Prosecution for Serious Crimes has under investigation 590

files, of which about 176 passed into the hands of prosecutors of the Special Anti-Corruption Structure¹⁶. This court, during 2020, has completed the review of 50% of cases¹⁷ but this is not sufficient. The Specialised Structure for Anti-Corruption and Organised Crime (SPAK), comprising the Special Prosecution Office (SPO) and the National Bureau of Investigation (NBI), continued its operations. After a budget increase in 2021, the SPO now has 17 prosecutors in place, the recruitment of eight financial investigators is underway and the NBI reached its full operational capacity of 60 investigators after a second round of recruitment.¹⁸ The issues being investigated by the SPAK are mostly related to the corruption of senior officials and organized crime. A case that continues to be investigated by this court is the Incinerators of Tirana, Elbasan, and Fier. This case has been sent to SPAK by the Democratic Party and is considered one of the biggest corruption scandals in the country. From the investigations that SPAK is conducting for the file "Incinerators," the former Minister of Environment Leter Koka was arrested for office abuse and high active corruption¹⁹. Another significant case is the case of former Minister of Interior Saimir Tahiri: On September 20, 2019, the Criminal Court found the former interior minister guilty on several counts of abuse of power, sentencing him to 5 years in prison. This verdict was reversed by the First Instance Court and converted to 3-years- probation.²⁰ Also

¹³ Network of Anti-Corruption Coordinators, Ministry of Justice

¹⁴ 2020, USAID will establish the U.S. Albania Transparency Academy (USATA) -- a center of excellence where experts on anti-corruption convene, public events engage business and political stakeholders, and civil society participates in dialogue and advocacy efforts. (https://www.usaid.gov/sites/default/files/documents/Albania_transition_plan_external_FINAL.pdf)

¹⁵ <https://www.kryeministria.al/newsroom/vendime-te-miratuarane-mbledhjen-e-keshillit-te-ministrave-date-29-tetor-2021/>

¹⁶ Special Structure against Corruption and Organized Crime (SPAK), Annual Report 2020

¹⁷ Evaluation Report 2020, Activity of the Special Prosecution and Special Courts for Corruption and Organized Crime

¹⁸ https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY_22_6091

¹⁹ Online newsletter, Panorama.al, Arrest of Leter Koka and two other people in Durres, published in 14 Dec 2021

²⁰ <https://euronews.al/en/albania/2022/02/04/live-l-appeals-court-rules-on-former-minister-saimir-tahiri/>

in Albania at the time that this document was being written, Special Anti-Corruption Structure (SPAK) has declared the start of the investigation procedures for Albanian's ex-president Ilir Meta, not related directly to anti-corruption as a penal act. According to the press he is being accused of lobbying and money laundering.²¹ Despite the progress Albanian as made in preparation of the fight against corruption, increasing the number of final convictions of high-level officials remains an important priority to further tackle the impunity culture routed in decades. The lack of independence and the overshadowing role of the executive over special anti-corruption units recently established, risks to compromise the smooth functioning of this unit (SPAK). It is widely accepted that the executive – as in other SEE countries - has always had and still retains a certain degree of control over the judiciary (through the vetting processes) through the appointment of judges (indirectly) and allocation of the respective budget for it (directly). This mode of operation has often led to criticism on the degree of political will of the fight against corruption in general.

In **Serbia**, the resources and capacity of the Agency for Prevention of Corruption were strengthened by adopting new Law on Prevention of Corruption. However, some obstacles to its normal functioning remained. For example, the problem is overlapping in monitoring the implementation of AP²³ with the previously mentioned Coordinating Body and the lack of mechanism which

could solve potential disputable assessments in reports published by these institutions.²² From September 1, 2020, the ministries are obliged to, whenever they prepare a draft law, ask the Anti-Corruption Agency for an opinion on whether it contains a risk of corruption. However, in most cases, the competent ministries did not respect the obligation to submit draft laws to the Agency for their opinion.²³ When it comes to the Anti-corruption Council, the Government's advisory body, it is not being consulted on draft legislation and is not working in full capacity.

In case of the **North Macedonia**, during the past period, there have been no mandate changes in the anti-corruption institutions. Throughout 2021, the State Commission for Prevention of Corruption received new premises²⁴, which was a solution to the long-standing problem of the commission. The new offices are suitable for installing servers necessary to connect the Commission with all the 17 institutions, from which information should be extracted when detecting cases related to corruption and conflict of interest. In addition to the new premises, around EUR 615.000 have been provided from the state budget for equipping and modernizing the offices. The human capacities of the institution were supplemented with seven professional employments, which were necessary for smooth operation in accordance with their competencies. During the last couple of years SCPC had issues with cooperation with other institutions, and on many oc-

21 <https://lapsi.al/2022/08/24/zbulohet-kallezimi-ne-spak-ja-per-cfare-po-hetohet-ilir-meta/>

22 Coalition PrEugovor, Alarm Report on Progress of Serbia in Cluster 1, November 2021 [online] Available at: <https://preugovor.org/Alarm-Reports/1689/Alarm-Report-on-Progress-of-Serbia-in-Cluster-1.shtml> [Accessed 8 March 2022]. 50

23 Coalition PrEugovor, Alarm Report on Progress of Serbia in Cluster 1, November 2021 [online] Available at: <https://preugovor.org/Alarm-Reports/1689/Alarm-Report-on-Progress-of-Serbia-in-Cluster-1.shtml> [Accessed 8 March 2022]. 55

24 ЗПВ Николовски, Ивановска и Мирчевски на увид во новите простории на ДКСК: Сите ресурси ги ставаме во служба на реализација на Планот за борба против корупција, ДКСК наскоро се вселува во новите простории | Влада на Република Северна Македонија (vlada.mk);

casions the president of this body has emphasized the need for stronger cooperation of the institutions. President Ivanovska, pointed out that we are still witnessing party bargaining for managerial positions that otherwise need to be filled through public announcements, fair competition and merit system, dismissal of directors due to political revenge and employment according to the well-known patterns of nepotism, clientelism and cronyism. The Commission is still not able to classify cases according to importance and continues to work on the principle of opening all cases that are in SCPC.

The **Bosnian** Agency for the Prevention of Corruption and Coordination of the Fight against Corruption prepared a draft for the 2020-2024 period and tried to push it through the government agenda²⁵ but the Council of Ministers of BiH has still not adopted it. Not waiting for central government, some of the local governments have taken the initiative and adopted their own strategies. In Kosovo, the Anti-Corruption Agency has worked over the years to draft an anti-corruption strategy. During the drafting of the Anti-Corruption Strategy 2021 - 2023 and the Action Plan, all various local and international reports related to corruption and perceptions on corruption **in Kosovo** were taken into account. In this context, the primary sectors have been divided, to which greater accountability and full transparency will be required in the performance of tasks and mandate of the respective institutions. Also, based on the identified problems and challenges presented, measures and activities have been proposed which have most effectively provided the means and methods of prevent-

ing and combating corruption.

Change of the Government in August 2020 in **Montenegro** brought a declaratively new approach to fight against corruption. The National Council for Combating Corruption was formed in 2020. Legal mandate for their work and investigations were questionable from the very beginning, but at the end this Council has not fulfilled its function. Most members left the Council, including representatives of the NGO sector, dissatisfied with the absence of political will to conduct essential reforms. The new Government that formed in April 2022, led by Prime Minister Abazović, still has the fight against corruption as a highest priority, but in public there are doubts of its sincere approach, considering that it is supported by DPS, former ruling party accused of a number of corruptive affairs. Since its founding in 2016, the Anticorruption Agency failed to build credibility as an institution enjoying citizens' trust. The agency began to act more proactively when a new director was elected in 2020, but a key shortcoming of their work is not a question of quantity but quality. This institution continues to measure their results with statistics on the conducted activities, instead of measuring contributions to preventing and detecting conflicts of interest and corruption. Although there are doubts in public about the inexplicable wealth of former and current public officials, checks of origin of assets and transfer of ownership is absent.

Changes in the government from the last elections in **Kosovo**, held in February 2021, brought new energies and approach in government's objectives in the fight against corruption. In the new government pro-

²⁵ Agencija za prevenciju korupcije i koordinaciju borbe protiv korupcije, 9.12.2020, "Saopćenje za javnost povodom 9. decembra – Međunarodnog dana borbe protiv korupcije", <http://www.apik.ba/aktuelnosti/saopcenja-za-javnost/default.aspx?id=2189&langTag=bs-BA>

gram for the period 2021-2025,²⁶ strengthening the rule of law is one of the main objectives. Some of the aspects thoroughly elaborated in the program aiming at improving the rule of law are the vetting of the justice system, approval of the Rule of Law Strategy, and the reformation of the justice system administration. All these developments, in one way or another, are designed to tackle corruption and organized crime. It should be noted that the concept document prepared by the Ministry of Justice regarding the vetting system in Kosovo, which would serve as the basis for a vetting of judges and prosecu-

tors, has alarmed the EU Commission on its assessment report for Kosovo in 2021.²⁷ Regardless of the government's efforts to effectively combat corruption, there still remain legal deficiencies and institutional challenges that undermine the progress made. The lack of resources, primarily human resources, in the judiciary system is one of the key challenges in strengthening the rule of law in Kosovo.

The table below summarizes the main institutions in the fight against corruption and the respective strategies for each of the Western Balkan countries. (Table 1)

Table 1 – Western Balkans countries' anti-corruption bodies and strategies

Country	Main preventive anti-corruption bodies	National Anti-Corruption Strategy
Albania	National Coordinator for Anti-Corruption (NCAC)	Cross-cutting Anti-Corruption Strategy 2023 Strategjia Ndërsektoriale Kundër Korrupsionit, 2023-2030. (draft) ²⁸
BIH	Agency for the Prevention of Corruption and Coordination of the Fight against Corruption	Draft Strategy for the Fight against corruption 2020-2024
North Macedonia	State Commission for Prevention of Corruption	National Strategy for prevention of corruption and conflict of interest 2021-2025 and its Action Plan
Kosovo	Kosovo Anti-Corruption Agency (KAA)	Anti-corruption strategy 2020-2023
Montenegro	Agency for the Prevention of Corruption	No recent strategy available
Serbia	Anti-Corruption Agency	No recent strategy available

Source: SELDI generated

²⁶ Kosovo Government Programme 2021-2025, available at: <https://kryeministri.rks-gov.net/wp-content/uploads/2022/04/Programi-i-Qeverise-se-Kosoves-2021-2025.pdf>

²⁷ EU report for Kosovo 2021 https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en

²⁸ Draft Strategy 2023-2030 https://www.drejtesia.gov.al/wp-content/uploads/2022/08/DRAFT-_KONCEPT-DOKUMENTI-STRATEGJIK-SNKK-2023-2030_-_8.8.2022_AL.pdf

2. LEGISLATIVE DEVELOPMENTS: UPGRADING ANTICORRUPTION LAWS

The initially dynamic rate of legislative activity in the field of anticorruption in the Western Balkans has slowed down due to the fact that more of the key aspects have been covered. One approach that was adopted throughout the region was expanding the range of statutory incrimination of corruption-related offences. This was a relatively unproblematic option as it did not immediately affect any special interests (unlike, for example, conflict of interest regulations) and corruption the criminal justice system made sure that the provisions are applied selectively.

Lately, legal amendments or innovations concern aspects such as length of sentence, value of bribe or defining subtler (and therefore more difficult to prosecute) forms of corruption. It is these latter upgrades to criminal anticorruption laws that might face some opposition as they would infringe on the practice of state capture. In Albania, for example, the latest wave of amendments to the Criminal Code came in parallel with the amendments to the Code of Criminal Procedure regarding the substantive jurisdiction of the Special Courts against Corruption and Organised Crime. The purpose of undertaking the initiative was to create appropriate conditions for the exercise of criminal prosecution by the Special Anti-Corruption Structure (SPAK) and the Special Courts for those criminal offenses for which the consequences are serious. The criminal offenses related to the active corruption of persons exercising public functions, the exercise of illegal influence over persons exercising public functions, the passive corruption of persons exercising public functions, and the

violation of equality in tenders are divided into two different paragraphs. These are based on the value of the irregular benefit. The above criminal offenses have been reformulated with the aim of fair implementation by the prosecuting authorities, setting monetary limits for the qualification of these criminal offenses and, consequently, adjusting the sentence, depending on the relevant qualifying circumstances. This law was voted by a majority in the parliament, but was returned to by the President because, according to him, these amendments to the Criminal Code were adopted through a completely unconstitutional procedure, without transparency and comprehensive consultation.²⁹

Other legislative amendments which curb more institutionalised corruption practices can be expected to face even stiffer opposition. In **Albania**, for example, it took the formation of a “Political Council” – a body consisting of representatives of the parliamentary majority, representatives of the parliamentary opposition, and representatives of the extra-parliamentary opposition – in order to draft changes to the law on financing of political parties. The amendments envisaged reducing the possibilities of donation by individuals or businesses for the electoral campaign of a political party, in order to prevent the involvement of dubious sources of funding in the campaign, changes regarding the rules of financing the election campaign of candidates and the reporting of candidates on their expenses, the prohibition of the use of state resources for the election campaign, etc. Agreement among parties was difficult to achieve and the law was returned for review by the President (and only managed to pass at the second attempt, disregarding the President’s objections).

Regulation of the origin of assets of pub-

²⁹ Significant changes in the criminal code in Albania and the effect on reducing corruption, 2021

lic officials has recently been added under the anti-corruption legal framework of the Western Balkan countries. A novelty in the North Macedonian anticorruption legislation is the proposal for enactment of a Law on the Origin of Assets. The process of creating this law is ongoing, but it takes place behind closed doors and stakeholders are not involved in the process. So far, only statements by state officials involved in the process and referring to possible solutions have been made public. The representatives of the civil society organisations requested to open the process for discussion and consultation so that the purpose and intention of the proposers and the possible solutions could be seen.

Conflict of interest legislation is another powerful anticorruption tool as it narrows the opportunities for corrupt officials (even when under-enforced) to enjoy the proceeds of graft and makes corrupt deals more difficult to accomplish. All Western Balkan countries have such legislation (in Albania, Serbia, Kosovo and BiH it is a specialised law, while in Montenegro and North Macedonia it is bundled with the general anticorruption law). The 2018 North Macedonian law was opened again for amendments in 2021. The need for amendments arose from the requests of the SCPC to increase the functionality of the law in line with the competencies of the Commission. The working group drafting the amendments has been proceeding in a transparent manner and includes all relevant stakeholders (unlike the process of the origin of assets law; see below).³⁰

Lobbying laws are being changed in North Macedonia and Montenegro. In North

Macedonia, the 2008 law was almost not implemented due to the legal gaps that were seen in it and the overall negative connotation of the term lobbying. In 2021, a new Law on Lobbying was adopted (which started with implementation in June 2022), which regulates the conditions for acquiring the status of lobbyist and lobbying organization, registration of lobbyists and lobbying organizations, obligations of lobbyists and lobbying organizations and obligations of the persons and bodies where lobbying takes place.

The upgrading of the Montenegrin anti-corruption legislation presents certain challenges as there are overlapping regulations among the various laws. The law on political party funding, for example, was being amended within the Parliamentary Committee on Comprehensive Electoral Reform. **The anticorruption law (Law on Prevention of Corruption)** is expected to be amended also by the same Committee, since the law regulates the Agency for Prevention of Corruption, which, in turn, is in charge of implementation of the political party funding. However, the anticorruption law mainly covers assets declaration, conflict of interest of public officials and whistle-blowers protection, which makes it meaningless to have the electoral reform committee treat it as an issue of elections. "There have been no amendments to the Criminal Code that address new forms of crime in the public sector, particularly in areas vulnerable to corruption, such as unlawful enrichment of public officials, corruption in public procurement, privatisation and bankruptcy, even though strong evidence in favour of such amendments can

³⁰The process for amendment of the Law on Prevention of Corruption and Conflict of Interest is led by the Ministry of Justice, while the Law on Origin of Assets is led by the Deputy Prime Minister for Combating Corruption and Crime, Sustainable Development and Human Resources with the support of Council of Europe. The two institutions have shown different approach in this process, as there is no unique consultation procedure established. The Law on Origin of Assets is being prepared by an expert group established by the Cabinet of the Prime Minister and Council of Europe.

be found in international conventions and useful comparative experiences.”³¹ In addition to the above legislative developments, there are other laws that may weaken the effect of anti-corruption legislation. In February 2021, an authentic interpretation by the parliament of Serbia of the Law on the Prevention of Corruption narrowed the scope term “public official.”³² This excluded a number of officials in the public sector, such as directors and board members of state-owned enterprises, but also directors and members of steering and managing boards of healthcare institutions.³³ The latter is particularly revealing of where the government’s anticorruption priorities lie, given that “when asked to single out only one institution that they consider the most corrupt in Serbia, the respondents [...] answered - health care.”³⁴ In March 2021, implementation of the **Law on the Origin of Property and Special Tax began**. While this Law was announced as one of the anti-corruption mechanisms, the key question remains - why the legal mechanism that already provided for cross-verification of property and income has not been applied for almost two decades, and how the new Law will solve the issue of political will required for applying the laws.³⁵ Many experts have warned that the amendments still leave many areas suitable for abuse,

such as the fact that the inspection of property abroad is not covered by the law.³⁶ In October 2021 amendments to the Law on Access to Information of Public Importance were adopted at the level of Government. In August 2022 text of amendments to the **Law on Public Procurement** of BiH was adopted. According to Transparency international (TI), despite certain improvements which are primarily related to the segment of conflicts of interest, collusion and transparency, some of the key mechanisms for the prevention and fight against corruption did not find their place in this regulation. Thus, even after five years of work on amendments to this law and international pressures, the mechanisms for sanctioning law breakers, both in the domain of misdemeanor and criminal liability, have not been expanded, the possibilities of protecting the public interest by competent bodies have not been removed, political influences on appointments and the work of the members of the Office for considering complaints, and the further development of the e-procurement system and the accompanying transparency, were extended for another year by changes in the law. According to opinion of Transparency international (TI), the law will not significantly advance the fight against corruption in this area, which was a key requirement that the

31 MANS, 2021, State Capture: Montenegro National Report, p. 8, http://www.mans.co.me/en/wp-content/uploads/2021/06/eng-state-captu_53661842.pdf

32 The process of adoption of the change is indicative of haphazard way in which law-making takes place. In its original form, the interpretation – introduced hastily and without an official justification – narrowed the scope of the term so much that it would have led to the absurd situation in which the judicial quota in the Constitutional Court appointed by the President and the Supreme Cassation Court would not qualify as public officials. It was later “corrected” in the same hurried and non-transparent way. See: Coalition PrEUgovor, May 2021, PrEUgovor Alarm: Report on the Progress of Serbia in Chapters 23 And 24, <https://preugovor.org/Alarm-Reports/1642/Alarm-Report-on-Progress-of-Serbia-in-Chapters-23.shtml> page 25.

33 European Commission (2021), Serbia 2021 Report, p. 28.

34 Center for Free Elections and Democracy (CeSID), (2020), “Opinion poll Report: citizens’ perceptions of anti-corruption efforts in Serbia 2020”, p.7.

35 Coalition PrEUgovor, PrEUgovor Alarm Report, [online] Available at: <https://preugovor.org/Alarm-Reports/1642/Alarm-Report-on-Progress-of-Serbia-in-Chapters-23.shtml> [Accessed 7 March 2022]. 23

36 KRIK: Zakon o poreklu imovine – da li će pod lupom biti „tetka iz Kanade“ i „24 stana“, [online] Available at: <https://www.krik.rs/zakon-o-poreklu-imovine-da-li-ce-pod-lupom-biti-tetka-iz-kanade-i-24-stana/> [Accessed 7 March 2022].

European Union set for Bosnia and Herzegovina through 14 priorities³⁷.

In Kosovo, the Ministry of Justice is working on the process of the design of the legislation for the introduction of **the vetting of the justice system**. This initiative does not seem to be supported by the European Union, as European Commission in their annual progress report for Kosovo considers this development as a serious concern. Moreover, it is mentioned that all other tools and mechanisms that ensure the integrity and fight the corruption of judicial officeholders should be exhausted before starting such a process. According to the president of Kosovo, vetting of the justice system is crucial in order to secure law enforcement in Kosovo. The government has already established working groups that will draft constitutional amendments as the first step toward the justice system reforms. As mentioned in the government program, the rule of law strategy was approved in July 2021³⁸ and in December 2021, the government approved the draft law proposed by the Ministry of Justice which is supposed to add two additional categories of public officials that have to declare their assets, namely doctors and academic personnel in universities.

In addition, the government has also drafted a new law, namely the Law on the Agency for Prevention of Corruption which will enhance the competencies of the Anti-Corruption Agency. Article 17 of this draft law regulates the procedures that should be followed when Agency starts an administrative investigation, which represents a new development.³⁹

Another important development is the new concept document on the confiscation of unjustified wealth, which was proposed

by the Ministry of Justice and approved by the government in April 2021. This concept document presents the steps that should be followed in order to address the issue of confiscating unjustified wealth. The next phase is the design of a draft law, on which the Ministry of Justice is currently working. The main law in Montenegro is Law on Prevention of Corruption (Sl. list CG, no. 53/2014 and 42/2017). At the end of 2021, the Government presented the concept of the Law on the origin of the property, called the colloquial "Law against Mafia". It is currently a legal text in the harmonization phase with European partners, and is still not in the form that would be ready for a public hearing. Furthermore, the Government explained that in practice, if there was a suspicion that someone unlawfully acquired property, two proceedings would be initiated in which the subject is exclusively assets, not a person as in criminal cases, and the outcome of the first is not dependent on the outcome of another.

3. THE ROLE OF CIVIL SOCIETY IN DRAFTING ANTI-CORRUPTION FRAMEWORK

When it comes to cooperating with relevant actors on issues related to the fight against corruption, the state showing readiness to have a consultation process with CSOs. The platform of CSOs for the fight against corruption in each of the Western Balkan countries has been somehow part of the open consultations during the drafting of anti-corruption strategies and the laws related to the prevention of corruption.

Recently, civil society in Albania has developed a high level of expertise regarding

³⁷ TI BiH press releases regarding the new law on public procurement <https://ti-bih.org/ti-bih-ovakve-izmjene-zakona-o-javnim-nabavkama-nece-sustinski-unaprijediti-borbu-protiv-korupcije-iako-je-to-bio-prioritet-eu/?fbclid=IwAR39g1Sd74pNiaBTF-YYFDBcSQ2kE-il1fzsMqYHT70fLn005kQNzoyy5M>

³⁸ Strategy for rule of law <https://md.rks-gov.net/desk/inc/media/6DC1CBD5-0DF1-46AE-9D1A-78C96146C7D0.pdf>
³⁹ Draft law on the Agency for prevention of corruption <https://kryeministri.rks-gov.net/wp-content/uploads/2022/07/PROJEKTLIGJI-PER-AGJENCINE-PER-PARANDALIMIN-E-KORRUPSIONIT.pdf>

the techniques and methods of drafting and monitoring anti-corruption measures. Therefore, the involvement of civil society actors in designing, monitoring, and implementing government anti-corruption measures is considered very important. In Albania, however, civil society participation in public consultations is low, in some cases merely formal.⁴⁰ In North Macedonia, during the last two years, the CSO Platform for Fight against Corruption has participated in consultations on laws such as the Law on Fight against Corruption and Conflict of Interest in 2018, the Law on Lobbying, and the Law on Free Access to Public Information, etc. CSOs were also part of creating the National Strategy for the Fight against Corruption and its Action Plan for the period 2021-2025. In 2021, representatives from CSOs participated in the working group on amendments to the Law on Fight against Corruption and Conflict of Interest. The Ministry of Justice, SCPC, and the Government see the civil sector as relevant partners in this issue. However, the institutions did not conduct consultation process for drafting the law on origin of asset for which CSOs have many concerns especially of the need of regulation of issue that is already regulated in the existing legal framework. In Bosnia and Herzegovina, CSOs (mainly Transparency International BiH) actively worked on the Law on Conflict of Interest in BiH Institutions. Although part of the proposal of civil society organizations was accepted during the drafting of the Law on Amendments and Amendments to the Law on Public Procurement, there is still room for improvement of the existing proposal. In case of Serbia, although certain mea-

asures have been officially taken for greater involvement of civil society organizations (CSOs) in the process of drafting certain regulations, participation is still limited due to constant pressure, intimidation, violation of the activities of CSOs, damaging their reputation through the activities of government-organized non-governmental organizations (GONGO), but also through statements by state officials.⁴¹ Because of this, it is difficult to establish effective cooperation between the Government and CSOs. On the other side, the institutions, such as the Agency for the Prevention of Corruption organize from time-to-time different consultative meetings with representatives of CSOs. However, those meetings are being held rarely.⁴² The newly established Ministry of Human and Minority Rights and Social Dialogue has not yet provided an arena for constructive dialogue between the CSOs and government. However, when it comes to other stakeholders, such as the business sector, chambers of commerce, trade unions, etc., are usually out of the process, and the government does not see them as a partner. The Law on Lobbying and the Law-Making Process in Serbia require that the organized business sector to be part of the working group given their future position under the law. Still, the Ministry of Justice has not taken this into account. CSOs continue to strive to contribute to working groups and influence the adoption of laws, strategies, and other acts, but their effectiveness remains questionable.

Representatives of civil society in Montenegro are involved in the development of policies and laws through participation in

40 Action Plan 2019-2023 In Implementation Of The Cross-Cutting Strategy Against Corruption, Ministry of Justice

41 Centre for Contemporary Politics, State of Democracy in Serbia 2021, [online] Available at: <https://centarsavremenepolitike.rs/wp-content/uploads/2020/07/State-of-Democracy-in-Serbia-2021.pdf> [Accessed 7 March 2022]. 24

42 Agency for Prevention of Corruption, [online] Available at: <https://www.acas.rs/aktivnosti-ocd/> [Accessed 7 March 2022]

councils and working groups. Similarly like others Western Balkan Countries, this participation does not have much impact on quality of results, but is implemented more formally.

Also, representatives of civil society are members of the working groups for Chapters 23-24, but these groups are not functional. The new government has members who were once part of the civil sector, most notably the new Deputy Prime Minister for Foreign Affairs and Minister of European Affairs Jovana Marovic. The first task of the new government is to revise the anti-corruption framework and plans in areas 23-24 and establish a new structure.

On the other hand, Civil Society in Kosovo in general is very active and persistent when it comes to its participation in policy-making at all levels, especially regarding anti-corruption policies. Political debates whether inside institutions (i.e. Kosovo's Assembly) or through political discourses of the political parties, mainly the opposition, have always been informed by the work and opinions of the civil society. It should be noted that civil society has been instrumental in the development of anti-corruption policies and capacity building at the institutional level. The involvement of the CSOs in the development of public policy is usually channeled through joint working groups in the policy design phase as well as ex-post monitoring of the implementation of adopted policies. Members of the CSO community were also an active part of the working group with the Government of Kosovo in drafting the concept document on the development of the vetting process in the justice system.⁴³ The importance of close cooperation between CSOs is also highlighted in strategic docu-

ments. In 2019, the Government of Kosovo approved the National Strategy for Cooperation with Civil Society where increasing CSO participation in policymaking is one of the key objectives.⁴⁴

Even though in Western Balkans CSOs are consulted in formalistic manner they face with a number of challenges. SELDI intends to give contributions in projects by increasing and improving the capacity and actions of CSOs, their role in their democratic process and to increase transparency and advocate for good governance.

The institutional anti-corruption environment is related with a number of key drivers: from better and more efficient courts and prosecutorial bodies to the strengthening of democratic institutions, from stronger civil society and investigative journalism to higher levels of education.

SELDI partners, in addition to frequently use of CMS for measuring perceived levels of corruption or trying to quantify its economic and social risks, have created the necessary capacities to design a special tool to map the anti-corruption environment and assess countries' ability to uncover, punish and deter corruption: the Capacity to Combat Corruption (CCC) Index. This Index - already introduced in Latin American countries⁴⁵ - could evaluate, and rank countries based on how effectively they can combat corruption.

⁴³ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2022\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2022)005-e)

⁴⁴ <https://zqm.rks-gov.net/assets/cms/uploads/files/Strategjia%20ne%20tri%20gjuhe.pdf>

⁴⁵ The Capacity to Combat Corruption Index https://www.controlrisks.com/-/media/corporate/files/campaigns/ccc/2019ccc_report.pdf?la=en&hash=93A4E1DC136F91DDC7E98653CD1285A80C0E0AE4

POLICY RECOMMENDATIONS

- The cooperation among governments and civil society in the anti-corruption area should be elevated to higher political and cross-border level.
- The Western Balkan countries should share experiences, and exchange good practices in order to ensure long-term and sustainable results in the fight against corruption. This would enable the countries to move in parallel during their process of integration into the European Union.
- The countries from the region need to demonstrate political will in implementing anti-corruption reforms, improving the quality of governance and the efficiency of the institutions.
- The countries should create long-term anti-corruption strategies that prioritise state capture and illicit enrichment practices among key risk people, companies, areas and sectors. Any over-regulation should be avoided.
- The countries need to adopt a comprehensive approach in the process of detection, prevention and punishment of corruption and strive to further improve the justice system.
- An essential element in the fight against corruption is informing and promoting the work of the civil society and strengthening its role in developing and monitoring anti-corruption policies.

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